



Appeal Decision

Site visit made on 15 February 2023

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2023

Appeal Ref: APP/V1260/W/22/3306801

9 Pound Lane, Poole BH15 3PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Tuck against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref APP/22/00867/F, dated 22 June 2022, was refused by notice dated 23 August 2022.
 - The development proposed is sever plot at 9 Pound Lane, demolish garage and shed and erect a 2 bed detached house.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site lies within 5km of Heathland Site of Special Scientific Interest (SSSI) which is also part of the Dorset Heathlands Special Protection Area (SPA) and Ramsar Site, and the Dorset Heaths Special Area of Conservation (SAC). The appeal site is also described as being in close proximity to Poole Harbour SPA, SSSI and Ramsar site. SPAs and SACs are afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The National Planning Policy Framework (Framework) also requires that listed or proposed Ramsar sites should be given the same protection as habitats sites. In this decision I refer to these collectively as the Protected Sites. In the event that the appeal were to be allowed, I would be required to undertake an Appropriate Assessment in relation to the effect of the proposed development on the integrity of these sites.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the Protected Sites;
 - the effect of the proposed development on the character and appearance of the site and surrounding area;
 - whether the proposed development would create adequate living conditions for its future occupants, with particular regard to private outdoor space.

Reasons

Habitats Regulations

4. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of a European site, such as the SPAs and SACs. The Dorset Heathlands Planning Framework 2020-2025 SPD (April 2020) was prepared with advice from Natural England. It advises that the Dorset Heathlands SPA, SAC and Ramsar site are designated for protected and priority habitats and species including Dartford warblers, nightjars, woodlark, hen harrier, merlin, sand lizards and smooth snakes as well as other typical species of lowland heathland, wetlands and dunes.
5. The Poole Harbour Recreation 2019-2024 Supplementary Planning Document (April 2020) was also prepared with advice from Natural England. It advises that the Poole Harbour SPA was designated for its important bird species, including internationally important populations of regularly occurring and migratory species. Reference is also made to supporting habitats for seagrass, shallow inshore waters including coastal lagoons, intertidal sediments, saltmarsh and reedbeds.
6. Given the proximity of the appeal site to the Protected Sites, there is a reasonable likelihood that occupants of the proposed development would access these sites for recreational purposes. Consequently, increased recreational disturbance from the proposal, in combination with other developments in the area, would likely have a significant effect on these sites. The Dorset Heathlands SPD and the Poole Harbour SPD referenced above establish that mitigation of such effects would comprise Strategic Access Management and Monitoring (SAMM) contributions, secured through planning obligations. These contributions would be used to raise awareness of the issue of recreational disturbance and help pay for a warden to manage visitor pressures.
7. I note that the appellant has confirmed their willingness to pay such contributions. A draft heads of terms was submitted with the planning application confirming that the planning application would be supported by a unilateral undertaking addressing the payment of the SAMMs contributions. However, no such undertaking is before me. In accordance with the Procedural Guide: Planning Appeals (last updated 21 December 2022), appeal decisions should not be delayed to wait for an obligation to be executed, except in very exceptional circumstances¹. In the absence of such exceptional circumstances having been demonstrated here, there is no mechanism in place by which the required mitigation can be secured.
8. Consequently, I cannot conclude that the proposal would not have significant effects on the Dorset Heathlands and Poole Harbour Protected Sites. As such, having regard to the Habitat Regulations, permission must not be granted. Therefore the proposal would conflict with Policy PP32 of the Poole Local Plan (November 2018) (Local Plan) which seeks to ensure developments avoid adverse effects on important sites including Dorset Heathland and Poole Harbour. It would also conflict with Policy PP39 of the Local Plan by failing to provide the necessary planning obligation.

¹ Paragraph N.2.2 of Annex N: Planning Obligations

Character and Appearance

9. The appeal site is located within a relatively high density residential area. There is some variation in the distance between houses. Some slightly wider gaps allow glimpsed views of rear gardens, such as between adjacent semi-detached house Nos 20 and 18 on Pound Lane. Whereas other houses are positioned very close to one another. For example there is very little gap between No 9 and 7 Pound Lane. Nos 1 and 3 Winifred Road are similarly close to each other.
10. Houses are positioned behind modest front drives and gardens, with generally low level boundaries on to the road. Many front drives consist of hardstanding, some with small pockets of grass or planting. Consequently there is a high degree of visibility of front elevations from the road which creates an open and friendly feel. The consistency of this layout relative to the road and the visibility of front elevations are defining positive features of the character and appearance of the area.
11. The proposed dwelling would be positioned to a consistent building line with the existing house at No 1 Winifred Road. It would be sited close to the side boundary of No 1 but a gap to the rear of the appeal dwelling (No 9) would remain. In addition, a section of close boarded fence that forms the side boundary of No 9 and extends along the back of the pavement would be removed and replaced with a low boundary wall and drive entrance for the proposed dwelling. This would increase the sense of openness on that part of the site. The proposed extent of hardstanding at the front of the house would appear in keeping with the general style of front drives and gardens in the area. In any event, a condition could reasonably be imposed to require a degree of soft landscaping at the front of the proposed dwelling to soften its appearance and enhance the street scene.
12. The side and rear boundaries of the proposed rear garden would be set back from the road. Therefore, the extent to which the size of the proposed rear garden would be perceptible from the public realm would be relatively limited. Nevertheless, it appears that there is a reasonable degree of variation in garden sizes in the locality. Therefore the modest garden size of the proposed dwelling would not be so different so as to detract from the character and appearance of the surroundings.
13. Consequently, rather than resulting in an unduly cramped layout, the proposed dwelling would appear as a natural continuation of the relatively high density pattern of development here. Accordingly, the proposed dwelling would not harm the character and appearance of the surrounding area. Therefore it would accord with Policy PP27 and PP28 of the Local Plan. These generally seek to achieve good design and protect the character and appearance of the surrounding area. It would also accord with paragraph 126 of the Framework in achieving good design. Further, it would accord with paragraph 130 of the Framework, which amongst other matters, seeks to ensure developments are sympathetic to local character. I also find no conflict with paragraph 134 of the Framework with respect to local design policies and government guidance on design.

Living conditions

14. The proposed dwelling would include a modest rear garden for a two bedroom house. Whilst shorter than neighbouring gardens it would be of a comparable width. From the rear windows of the proposed dwelling the garden would be highly visible and readily accessible for its future occupants. It would therefore provide a small area of usable, private garden space for those occupants. The proposed garden would back on to other gardens. As such, there would be a sense of space within the garden despite its modest size. In addition, even taking into account the space required for a cycle shed, it would not be so small so as to make it unusable for activities such as sitting outside and drying clothes.
15. Accordingly, I am satisfied that the proposed rear garden would provide suitable living conditions for its future occupants. As such, it would comply with Policies PP27 and PP28 of the Local Plan which amongst other matters, seek to ensure proposals achieve adequate outside space for future occupants. It would further accord with paragraph 130 of the Framework, which includes a requirement for proposals to achieve a high standard of amenity for future users.

Other Matters

16. The Council confirms that it is not able to demonstrate a five year supply of deliverable housing sites and that the current supply is 4.1 years. Paragraph 11. d) i) of the Framework states that where policies most important for determining the application are out-of-date (including where a five year supply of deliverable housing sites cannot be demonstrated), permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 to the Framework confirms that the policies referred to include those relating to habitats sites and SSSIs. In light of my reasoning with respect to the likely significant effects on the Protected Sites here, the presumption in favour of sustainable development under paragraph 11. d) of the Framework does not apply.
17. Small sites can make an important contribution to housing supply and can be built-out relatively quickly. The proposal would achieve an incremental increase in housing supply in support of the Government objective of boosting the supply of homes, in an area with an acknowledged lack of future provision. The contribution of one new house, whilst a small contribution, would still be a benefit in the context of the Council's current housing land supply shortage. There would be small economic advantages of construction of the proposal which would be short term and a further modest benefit from occupation of the dwelling and associated spending in the locality. The proposal is located in an area with good accessibility to a range of goods and services and sustainable transport choices. Therefore Policy PP2 of the Local Plan offers in principle support for the proposal.

Conclusion

18. Whilst I have found the contribution to housing supply to be a benefit alongside other modest benefits, for the reasons given above with respect to the Habitats Regulations, the appeal is dismissed.

Rachel Hall

INSPECTOR