



Appeal Decision

Hearing Held on 18 April 2023

Site visit made on 18 April 2023

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal Ref: APP/D1265/W/22/3311383

Heatherfield Stables, Redbridge Road, Crossways DT2 8DY

- 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 Miss Ena Tuck against the decision of Dorset Council.
 - The application Ref P/FUL/2022/00125, dated 7 January 2022, was refused by notice dated 27 May 2022.
 - The development proposed is temporary siting of a cabin for five years.
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Decision

1. The appeal is dismissed.

Application for Costs

2. Before the hearing an application for costs was made by Dorset Council against Miss Ena Tuck. This application is the subject of a separate decision.

Procedural Matters

3. A mobile home / cabin has been sited on the appeal site and the land is being used for residential purposes. I therefore assessed the appeal on the basis that the proposed development has already been carried out.
4. In April 2019 Dorset Council was formed from a collection of previous Local Planning Authorities including West Dorset District Council. Given that Dorset Council does not yet have an adopted development plan, it is necessary for me to continue to rely upon the policies set out in the development plan produced by the now dissolved West Dorset District Council in making my decision.

Main Issues

5. From all I have read and heard, the main issues are:
 - whether or not the site is suitable for the development having regard to the development plan's spatial strategy for the supply of housing, with reference to the accessibility of services and facilities;
 - the effect of the development on the integrity of the Poole Harbour Special Protection Area (the SPA) with reference to nitrates; and,
 - other considerations which may weigh in favour of or against the development, with reference to:
 - whether or not the Council can demonstrate a five-year supply of deliverable housing sites;

- the emerging Purbeck Local Plan; and,
- the personal circumstances of the appellant, with reference to the Public Sector Equalities Duty (the PSED) and the Human Rights Act 1998 (the HRA).

Reasons

Suitability of the site

6. Heatherfield Stables comprises part of a paddock with lawful equestrian use within a rough linear group of dwellings approximately one mile to the east of the settlement limits of the village of Crossways. The site wraps around but excludes a stable block within the paddock. To the northeast of Crossways is Moreton Station, which provides train services to Dorchester and Weymouth.
7. Policies SUS1 and SUS2 of the West Dorset Weymouth and Portland Local Plan (adopted 2015) (the Local Plan) together seek for growth to be distributed based on a hierarchy of settlements in terms of their size and service provision. Despite being a village, Crossways is designated as a focus for future development by Policy SUS2, more akin to larger towns in the plan area.
8. Housing in the rural areas is directed to settlements with defined development boundaries (DDB) but the more limited settlements with no DDB may also provide growth where it would meet their local needs. The Local Plan provides a closed list of these settlements without any DDB. Whilst the housing around the site could be considered to form the hamlet of Redbridge, it does not make the list and so, for the purposes of planning policy, is not a settlement.
9. The site is instead in planning terms in the open countryside. Policy SUS2 iii) sets out circumstances where housing in the open countryside may be appropriate, but none of the given circumstances are met by the development.
10. The supporting text to Policy SUS2 identifies that there are problems with providing housing in locations with few facilities, and where people tend to commute to the towns. The resulting dependency on cars would inevitably increase carbon emissions and disadvantage those who do not drive.
11. The site is a moderate, level walk to the village. It would be an achievable walk or cycle for some, but not all. Miss Tuck has no vehicle or driving licence, but cycles to and from Crossways daily and has done so for a long time without any incident. It seems to me therefore that a personal condition would preclude any undue reliance on private motor vehicle use. In the alternative, the lawful equestrian use of the site would logically create additional vehicle movements. Given such, the use of the site by Miss Tuck would not undermine the objectives of the development plan to reduce commuting and the resulting dependency on cars and associated increases in carbon emissions.
12. Consequently, I conclude on this issue that the site is not suitable for the development having regard to the development plan's spatial strategy for the supply of housing, with reference to the accessibility of services and facilities. In these terms, the development conflicts with Policies INT1, SUS1 and SUS2 of the Local Plan. However, with the ability to impose a personal condition, I attribute the conflict with these policies limited weight. The Council has also relied on Policy HOUS6 of the Local Plan, but, as the Council accepted at the hearing, it is not applicable to this development.

The Poole Harbour SPA

13. Heatherfield Stables falls within the hydrological catchment of the SPA. The SPA is designated for its wading birds and supporting habitats. Wastewater from residential uses inside the hydrological catchment of the SPA contributes to an increase in nitrates in the SPA through the process of eutrophication, which encourages the growth of widespread algal mats. These mats restrict the growth, distribution and variety of the invertebrates the wading birds feed off and they affect other important features and processes within the SPA.
14. As the competent authority I must therefore carry out an Appropriate Assessment to consider the implications of the development for the SPA's conservation objectives, both alone and in-combination with other projects.
15. The nitrates issue has two strands, relating to nitrogen and phosphorous respectively. The main parties agreed at the hearing that the nitrogen side of things could be resolved pursuant to the Council's Nitrogen Reduction in Poole Harbour Supplementary Planning Document (2017). However, it was also agreed that there is currently no strategic mitigation strategy to enable the appellant to secure mitigation, and thus nutrient neutrality, for the phosphorous the scheme would discharge into the catchment of the SPA.
16. I understand that potential resolutions to this situation are contained within the Levelling Up and Regeneration Bill (LURB), but the LURB has yet to receive Royal Assent and go on to become an Act of Parliament. Although currently passing through Parliament, the specific timeframe for this to happen is unclear. In the immediate absence of a strategic solution for this phosphorus issue, it can only be potentially resolved on a bespoke, site-by-site basis.
17. A solution proffered by the appellant would be for a condition to prohibit the emptying and discharge of the appellant's septic tank until such time as a strategic solution is adopted. However, I have significant doubts about the reasonableness of preventing someone from emptying a septic tank. Equally, I question its enforceability, which would be contingent on excessive monitoring if it were to be adopted at this and/or other sites. The condition would be likely reactionary in practice so would not prevent discharge of the septic tank in the first instance, and so would fail to protect the integrity of the SPA as required.
18. I note the stable block is already plumbed in, albeit there is no toilet facility itself. However, I do not consider that potential foul discharge in conjunction with this equestrian use is comparable to the residential use of the appeal site.
19. Consequently, the development would have an adverse effect on the integrity of the Poole Harbour Special Protection Area (the SPA) with reference to nitrates. In this regard, the development conflicts with the objectives of Policy ENV2 of the Local Plan, the Framework, and the Habitats Regulations.

Other Considerations

Housing land supply

20. The appellant considers that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. To reach that conclusion, the appellant has aggregated the housing land supply situations across each former Local Planning Authority area which now comprise the Dorset Council area, which

culminates in a combined total of 4.93 years. This figure chimes with a referenced press report of problems in housing delivery across Dorset.

21. The Council's approach is to focus on each individual development plan area. Doing so provides the Council with a total housing land supply of around 5.34 years for the former West Dorset, Weymouth and Portland plan area¹. As planning applications and appeals must be determined in accordance with the development plan unless material considerations indicate otherwise, the Council's approach is the correct one. It follows that the tilted balance set out in Paragraph 11 d ii) of the Framework does not apply in this case. This situation is different to that at the Former Council Depot site nearby, where an appeal for housing was allowed on the titled balance in 2021.
22. Nonetheless, the Council did not dispute at the hearing that, if one were to adopt the appellant's approach, Dorset Council's housing supply would fall below five years in the manner suggested. This notional, modest shortfall is a material consideration which carries limited weight in favour of the proposal.

The emerging Purbeck Local Plan

23. Across Redbridge Road is a working quarry, which is allocated in the emerging Purbeck Local Plan (the ePLP), pursuant to its Policy H4, for 490 houses and a Suitable Alternative Natural Green Space (SANG). Whilst I understand that the ePLP is currently being held up by the phosphates issue, it is at an advanced stage of preparation and there is no evidence of any significant outstanding objections to Policy H4. Emerging Policy H4 therefore attracts significant weight, and it is more likely than not that the land to the north of the site will see considerable development in the future.
24. Given that the SANG is intended for mass public use, it is logical that direct pedestrian access would be provided from Moreton Station and Crossways to it through the allocated site. The Council accepted during the hearing that access into the allocated site from Redbridge Road is also probable. As such, the development of the allocated site under Policy H4 would likely significantly improve the accessibility of the appeal site to Crossways and Moreton Station.
25. That said, even if the SANG is delivered, the housing element is likely to be a building site for a number of years. An application currently sits with Dorset Council to extend the existing mineral operation by seven years, which may also jeopardise start dates for development of the allocated site. Given also that the ePLP is yet to be adopted, these factors cast real doubt in my mind as to the timescale for the delivery of the infrastructure improvements the appellant's case relies upon. Instead, the prospect of the allocated site bringing Crossways closer to the appeal site and improving the accessibility of the appeal site is a consideration of limited weight in favour of the scheme. It also follows that a temporary condition would achieve little in these circumstances.

Personal circumstances

26. The personal circumstances of the appellant are more compelling. Miss Tuck is an elderly pensioner living alone. Age is a protected characteristic under the terms of the PSED and I have had due regard to the aims of the PSED to (a) eliminate discrimination, harassment, victimisation and any other prohibited conduct (b) advance equality of opportunity between persons who share a

¹ West Dorset, Weymouth and Portland Five-year housing land supply April 2022 (published March 2023)

relevant protected characteristic and do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

27. Miss Tuck has been an established and indeed clearly cherished member of the Crossways community for forty odd years and is registered with the doctor's surgery in the village. The Council has accepted that Miss Tuck's financial circumstances mean that finding a home through the private rental market would be challenging. Social housing has been suggested, but the Council is unable to counter the appellant's assertion that ownership of the appeal site acts as a bar to the social housing register. Selling the land would obviously jeopardise the appellant's home before any social housing was provided, and the Council was unable to tell me roughly how long that may take.
28. It seems to me therefore that the appellant has little scope for an alternative place to live at present. In the absence of immediately available or suitable alternative accommodation, dismissal of this appeal would thus represent an interference with Article 8 of the European Convention on Human Rights relating to respect for private and family life as incorporated by the HRA.
29. In the context of the HRA and the PSED, the personal circumstances of the appellant are a substantial consideration in favour of the appeal.

Other Matters

30. The appeal site is also an accomplishable cycle ride or walk away from the Tadnoll and Winfrith Heath area of the Dorset Heathlands Special Protection Area. As such, I cannot rule out, in the first instance, that the proposed development would cause likely significant effects on the integrity of this Special Protection Area through increased recreational use.
31. The appellant has submitted a S111 agreement to seek to mitigate such affects under the terms of the Council's Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (2019). Had I been in a position to otherwise allow this appeal, it would have been necessary to consider this matter within a separate Appropriate Assessment. As the appeal is being dismissed for other reasons, I have not done so.

Planning Balance

32. The proposal would conflict with the development plan when read as a whole. The conflict with the spatial strategy attracts limited weight. Given my responsibilities as competent authority under the Habitats Regulations, the harm to the integrity of the SPA must carry substantial weight in the balance.
33. In favour of the appeal, the area around the site is likely to eventually become significantly more developed and accessible to services and public transport. A personal condition would ensure unsustainable transport patterns would not be created. A notional five-year housing land supply figure of 4.93 years for Dorset Council indicates a slight shortfall in supply across the Council area.
34. The scheme would present modest social and economic benefits through the housing provision and local spend. I attribute modest positive weight to the level of screening the site enjoys from the public realm. Its location within a defined cluster of dwellings at Redbridge, which in practical terms could be considered a hamlet, means that the mobile home is not an isolated home in

the countryside in terms of Paragraph 80 of the Framework. Enhanced landscape planting within the site would be a very small benefit.

35. Turning back to the appellant's personal circumstances, Article 8 as set out under the HRA is a qualified right; interference with it in this instance would be in accordance with the law and in pursuance of a well-established and legitimate aim: the statutory protection of European sites. Accordingly, it is proportionate and necessary to refuse to grant planning permission. There will be no violation of the appellant's human rights because the protection of the public interest cannot be achieved by means that are less interfering with their rights.
36. Similarly, with the PSED, the adverse effect on the integrity of the SPA outweighs the benefits of the scheme in terms of eliminating discrimination against persons with the protected characteristics of age, advancing equality of opportunity for those persons and fostering good relations between them and others. I must conclude that it is proportionate and necessary to dismiss the appeal.

Conclusion

37. The other considerations before me do not indicate that I should make a decision other than in accordance with the development plan.
38. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be dismissed.

Matthew Jones
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Bevan	Agent
Miss Ena Tuck	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Thomas Whild	Senior Planning Officer
Darren Rogers	Planning Officer

INTERESTED PERSONS

Agnes Hortense Gurney	Interested person
Joan Wallman	Interested person
Maria House	Interested person
Nigel P Bundy	Interested person
Nigel Wallace-Smith	Interested person
Trudi Baker	Interested person
Toby Hibbs	Interested person