



Appeal Decision

Site visit made on 6 June 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Appeal Ref: APP/D1265/W/22/3302831

1 Caesars Way, Corfe Mullen BH18 9DP

- 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 and Mrs Neza against the decision of Dorset Council.
 - The application Ref 3/21/1400/FUL, dated 13 July 2021, was refused by notice dated 2 February 2022.
 - The development proposed is partial demolition of the existing dwelling house, erection of an attached garage to the western elevation of the existing property, formation of new vehicular access for the existing property and erection of a detached dwelling house with associated access, landscaping and amenity space.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Whilst not forming part of the Council's reasons for refusal, the effect of the development on the integrity of Poole Harbour Special Protection Area (SPA) has been referred to by the Council in its appeal statement. Increased levels of nitrogen and phosphorus entering the harbour, as a result of new development, threatens the wildlife habitats for which the SPA was designated. It is incumbent upon me as the competent authority to consider the impact of the development on the SPA, so it is necessary to make that matter a main issue in this appeal. The main parties have been given the opportunity to make comments on the implications of this, and I have taken the comments into account.
3. The description of the development used in the heading above is taken from the planning application form, which is consistent with the description on the Council's decision notice.
4. The appeal is supported by an Arboricultural Appeal Statement (AAS) dated 17 May 2022, which illustrates an amended replacement planting plan. This is in addition to the Arboricultural Impact Assessment dated 8 June 2021 and submitted with the planning application. The Council and interested parties have commented on the AAS. I do not consider that the minor changes would materially alter the nature of the scheme or result in prejudice to any party. In these circumstances, I am satisfied that there would be no conflict with the 'Wheatcroft principles'¹, and I have taken the AAS into consideration.

¹ Bernard Wheatcroft Ltd v SSE [1982] JPL P37

Main Issues

5. The main issues are the effect of the proposed development:

- on the character and appearance of the surrounding area, with particular regard to the effect on the long-term health and vitality of trees, and
- on the Poole Harbour SPA.

Reasons

Character and appearance

6. The appeal site is part of an enclosed garden to the side of 1 Caesars Way. It occupies a corner plot next to the junction of Roman Road and Caesars Way within a residential area comprised of mostly large, detached dwellings. A characteristic feature of the area is the numerous tall trees, with a predominance of pine trees, growing amongst the dwellings and within garden areas. The tree population interrupts and softens the built environment and they provide an extensive visual connection and link that makes a strong positive contribution to sense of place, sylvan character and local distinctiveness of the area.
7. Trees in and around the appeal site are protected by an area Tree Preservation Order (TPO), number CM/11. In addition, one Beech tree and three Scots Pines within the appeal site are protected by TPO number CM/188.
8. There is no objection to the removal of an early mature Cherry tree and a semi mature Holly identified as T1 and T6 in the appellant's Arboricultural Impact Assessment. Whilst I note a comment concerning landownership, Certificate A was completed for the application and planning appeal forms certifying that the applicant is the sole owner of all the land within the boundaries of the application site.
9. The Council's concern lies in the importance and likely effect of the proposed development on the potential long-term health and vitality of the trees protected under CM/188, particularly the young Beech tree and two young Scots Pines, which are replacements for previously felled trees, and two young Field Maples within the appeal site. Whilst the Field Maples have been planted after the area TPO was made, they are also protected. These together with the replacement trees are collectively identified as number T3g. These trees are generally arranged in a row in close proximity to each other within the existing garden.
10. A proposed new vehicular access for the existing dwelling would be within the root protection area of the category B Scots Pine, identified as T5, which lies to the north of the existing dwelling. This area would be installed using an above ground cellular confinement system with a permeable finish. In the event planning permission were to be granted, a condition requiring works to be in accordance with an arboricultural method statement could ensure the long-term health and vitality of T5. With such a condition in place, the proposal would be unlikely to have any negative effects on this existing tree.
11. The Replacement Planting Plan submitted with the appellant's AAS confirms that the trees within T3g would be removed. Due to the presence of a boundary hedge and the limited height and ages of the trees identified as T3g,

the trees currently contribute very little to the character and visual amenity of the area. However, the two Scots Pines and the Beech are important in terms of their capability of achieving large stature on maturity and, therefore, their potential to contribute to the character and appearance of the area, as recognised by their inclusion in the TPO.

12. The appellants propose that the Beech and two Scots Pines could be replanted within the appeal site along the eastern boundary. The plan submitted with the AAS shows these trees with a radial crown spread of five metres in relation to the proposed dwelling. Whilst the Beech tree would be likely to have a significantly larger spread of crown on reaching maturity, it would be replanted with a greater distance between it and the adjacent Scots Pine compared to the current relationship. Furthermore, the relationship and proximity between these trees and the proposed dwelling would generally be consistent with the wider close-knit environment of trees and residential buildings.
13. The trees would be planted along the boundary, which is around 20 metres in length and, as such, there would be room for the crowns of the trees to develop as they mature. Whilst the Scots Pines would lie closer to the southern boundary, having regard to its likely spread of crown and position to the northeast of the south neighbouring dwelling, there would unlikely be harm to the living conditions of the neighbour by virtue of loss of daylight or overshadowing.
14. In this context, even as they mature, the trees would be unlikely to appear dominant or out of scale with the appeal scheme, but contribute to maintaining a line of large forest type trees along the road frontage. As such, I have little substantive evidence before me to demonstrate that the trees would be any less likely to survive and mature on site for many years within their proposed relocated positions.
15. The appellant suggests a condition, were planning permission to be granted, could require details of the location where the two Field Maple trees could be located. However, having regard to the submitted Replacement Planting Plan, there is little compelling evidence that the Field Maples could adequately be accommodated within the remaining area of the site.
16. I acknowledge that the Council and nearby residents feel strongly that trees are an important feature of the area and have expressed concerns with the proposal. However, given that I am satisfied that the Beech tree and Scots Pines could be relocated, and in having regard to the limited contribution that the Field Maples make to visual amenity, their removal would not cause harm to the character and appearance of the area. The relocated Beech and Scots Pine trees would retain the potential to contribute to maintaining the characteristic feature of the area, with a predominance of pine trees growing amongst the dwellings and within garden areas.
17. Having regard to the relationship of existing trees with overhead cables, there is little substantive evidence to demonstrate that these would be likely to cause significant detriment to the capability of the trees to survive and mature.
18. The longer-term risk to people and property from tree or branch failure is not calculable with any degree of certainty. In any event, the scheme drawings show a degree of separation between the location for the Beech and Scots Pine trees in their proposed positions and the proposed dwelling. Given the

distances that would be involved, it is unlikely that the appeal scheme would result in any greater concerns regarding future pressures to prune or fell the trees. Whilst the Beech tree would achieve a dense canopy when in maximum leaf it would lie within the northeast corner of the site. Moreover, the Scots Pines would have high crowns and would be in a position to the east side of the proposed dwelling. As such, there would likely be limited overshadowing of the property.

19. In addition, as trees are an attractive feature of the area, it is likely that future occupants of the development would choose to reside here on the basis of its sylvan character and would consequently be unlikely to seek to significantly reduce tree coverage at the site. As such, I do not consider the proposal would inevitably result in pressure to prune or fell the trees.
20. My attention has been drawn to an appeal decision² relating to a nearby site. However, that proposal would necessitate the felling of several trees, including some of which were of considerable stature and is not directly comparable to this appeal proposal. Moreover, the case was not subject to the Christchurch and East Dorset Local Plan Part 1 – Core Strategy April 2014 (CEDLP) policies.
21. Consequently, the development would in itself be unlikely to compromise the ability of the Beech tree and two Scots Pines to achieve large stature on maturity, and the trees would be capable of contributing to the sense of place, sylvan character and local distinctiveness of the area for many years. I am therefore satisfied that, subject to conditions, the proposed development would have an acceptable impact on the character and appearance of the surrounding area, with particular regard to the effect on the long-term health and vitality of trees. There would be no conflict with Policies HE2 and HE3 of the CEDLP, which together amongst other things, seek to ensure development is compatible in relationship to mature trees and protects natural features such as trees. The appeal scheme would not conflict with the provisions of the National Planning Policy Framework 2021 (Framework) insofar as it aims to conserve and enhance the natural environment.

Poole Harbour SPA

22. The Conservation of Habitats and Species Regulations 2017 (as amended) (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 SPA. The evidence indicates that the appeal site lies within the catchment of the Poole Harbour SPA, which is designated for its internationally important populations of regularly occurring species and migratory species, including Common Shelduck, Pied Avocet, Black-tailed Godwit, Mediterranean Gull, Common Tern, Little Egret and Eurasian Spoonbill. There are also supporting habitats for seagrass, coastal lagoons, intertidal sediments, saltmarsh and reedbeds. Increased levels of nitrogen and phosphorus entering the harbour via surface water and groundwater threaten these habitats and species through eutrophication, leading to algal blooms which disrupt normal ecosystem function. These algal blooms result in reduced levels of oxygen within the water, which in turn can lead to the death of many aquatic organisms.
23. Following the advice of Natural England subsequent to the Council's refusal of planning permission, the Council has advised that it is unable to rely upon the

² APP/V1260/W/21/3268901

mitigation identified in the Nitrogen Reduction in Poole Harbour Supplementary Planning Document 2017, because Natural England has advised that additional phosphorous loads will result in harm. Natural England advocates that any development that leads to an increase in nutrient loading within the harbour catchment, should be nutrient neutral for both phosphorus and nitrogen. This would result in no net increase in the levels of both nutrients, arising from development, entering the harbour via wastewater recycling centres and via surface water flows.

24. The proposed dwelling would lead to an increase in nutrient loading within the harbour catchment, so would need to be nutrient neutral to avoid harm to the integrity of the SPA. The proposal does not include any details of how this would be achieved.
25. The Habitats Regulations require me to consider whether there are any alternative solutions. However, no such solutions have been put forward for my consideration. I must also consider whether there are any imperative reasons of overriding public interest. The provision of a single dwelling is not sufficient to amount to such overriding public interest, given the modest scale of development proposed relative to the importance of protecting such significant natural habitat.
26. It follows that I am unable to conclude the proposal, either alone or in combination with other schemes, would not have a significant and adverse effect on the integrity of the SPA through additional nutrient loading within the harbour catchment that cannot be mitigated. As a result, I am not sufficiently satisfied that the adverse effects on the integrity of the SPA can be excluded. In these circumstances, I conclude that Regulation 63(5) of the Habitats Regulations precludes the proposal from proceeding. There would also be conflict with Policy ME1 of the CEDLP insofar as it seeks to ensure that there are no adverse effects upon the integrity of the SPA. It would also be contrary to the Framework's objectives for the protection of biodiversity and the conservation of the natural environment.

Other Matters

27. I am satisfied the details of the appeal scheme as shown on the plans and details in the written evidence allow a reasonable assessment of the development sought.
28. The appeal site also lies within 5km of the Dorset Heathlands Special Protection Area and Dorset Heaths Special Area of Conservation which supports protected 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. As such, mitigation measures would be required to address the adverse effects of recreational pressure on the protected site. However, given my findings on the main issues, there is no need to consider this further.
29. Moreover, the proposed development has the potential to lead to increased recreation use of Poole Harbour, owing to the proposed additional residential unit. In combination with other similar small-scale development, this means the proposal could result in increased disturbance to the protected habitat and species found in the SPA. Whilst the Council suggest that mitigation for recreational impacts within the Poole Harbour Recreation 2019-2024

Supplementary Planning Document in the form of payments secured via Community Infrastructure Levy could be relied upon, given my findings above, there is no need to consider this further.

Planning Balance

30. The Council confirms that it is not able to demonstrate a five-year supply of deliverable housing sites at present. 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 habitat sites. In light of the above reasoning with respect to the likely significant effects on the SPA, the presumption in favour of sustainable development under paragraph 11.d) of the Framework does not apply.
31. Paragraph 69 of the Framework indicates that small and medium sized sites can make an important contribution in delivering homes and that the development of windfall sites should be supported, especially within existing settlements. The contribution of one new house, whilst a small contribution, would still be a benefit to 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 would comply with the strategy for the delivery of housing across the development plan area.
32. The development would not result in harm to the character and appearance of the surrounding area, with particular regard to the effect on the long-term health and vitality of trees. However, this is an ordinary requirement for new development, and this does not represent a positive benefit that weighs in favour of the development.
33. On the other hand, I have been unable to conclude that the proposal, either alone or in combination with other schemes, would not have a significant and adverse impact on the integrity of the SPA. The appeal scheme would therefore not comply with the requirements of the Habitats Regulations. This is a legislative matter which means that I am unable to conclude that the scheme would be acceptable, and this harm is of such significance that it would outweigh the benefits even if I was to attribute them significant weight. Moreover, policies within the Framework relating to habitats sites would in this case provide a clear reason for refusing the development, and the presumption in favour of sustainable development at paragraph 11 of the Framework would not apply.

Conclusion

34. For the reasons given above, I conclude the appeal should be dismissed.

J White

INSPECTOR