



Appeal Decision

Site visit made on 24 July 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Appeal Ref: APP/V1260/W/23/3315559

6 Dean Swift Crescent, Poole BH14 8LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
- The appeal is made by Mr P. Briant on behalf of Brownseabuild Ltd against the decision of Bournemouth Christchurch and Poole Council.
- The application Ref APP/22/00553/F, dated 26 April 2022, was refused by notice dated 9 August 2022.
- The development proposed is to sever land and erect detached zero carbon bungalow.

Decision

1. The appeal is allowed and planning permission is granted to sever land and erect a detached zero carbon bungalow at 6 Dean Swift Crescent, Poole BH14 8LE in accordance with the terms of the application, Ref APP/22/00553/F, dated 26 April 2022, subject to the conditions listed at the end of this Decision.

Preliminary Matters

2. A planning obligation by way of Unilateral Undertaking (the UU) pursuant to Section 106 of the Act is before me. This is dated 28 June 2023 and signed by the relevant landowner and mortgagees. The UU secures the payment of Strategic Access Management and Monitoring (SAMM) contributions intended to mitigate recreational pressures placed upon Poole Harbour¹ and the Dorset Heathlands². I shall return to the UU later in this decision.
3. An additional plan³ has been submitted at appeal stage, which indicates the suggested siting of replacement Holly trees. As this plan does not materially alter the development proposal that is before me, I am able to accept it for information purposes and am content that no party with a potential interest in the outcome of the appeal is prejudiced by me doing so.

Main Issues

4. The main issues are:
 - The effect of the proposal upon the character and appearance of the area, having particular regard to the effect upon protected trees; and
 - The effect of the proposal upon European sites⁴.

¹ designated as a Special Protection Area (SPA) and Ramsar site, as well as a Site of Special Scientific Interest

² relevant designations: Dorset Heathlands SPA; Dorset Heathlands Ramsar site; Dorset Heaths Special Area of Conservation (SAC)

³ ref: 2019-01-29

⁴ as defined at regulation 8 of The Conservation of Habitats and Species Regulations 2017 (as amended)

Reasons

Character and appearance – protected trees

5. The site is located off Dean Swift Crescent, which serves an eclectic mix of differently designed properties that typically occupy spacious and well-vegetated individual plots. Consistent with the local area's well-planted composition, Tree Preservation Orders⁵ cover a range of individual trees and tree groups. These include various specimens upon and immediately adjacent to the appeal site itself which, despite any separately approved works to reduce or remove trees in recent times, retains a distinctly verdant appearance heavily influenced by established tree cover.
6. The proposal is centred upon the erection of a flat-roofed bungalow of inherently modern design in proximity to the north-western boundary of the site. Noting the variety of properties that exists locally, and that the National Planning Policy Framework (July 2021) (the Framework) seeks not to prevent or discourage appropriate innovation or change, I have no reason to resist the design approach that has been taken. Nevertheless, the scheme would directly necessitate the removal of a single group of trees (the tree group). The tree group includes several closely spaced Holly trees afforded protection by the TPO and has been surveyed⁶ to comprise trees of low quality with a limited estimated remaining life expectancy. Upon inspection, I experienced the tree group to be comprised of a dense amalgamation of planting not limited to the protected Holly trees.
7. Consistent with the survey work contained within the AIA, I was unable to identify any individual specimen of especially high quality or prominence. Further, the tree group is much exceeded in height when compared to the tallest/most mature trees in the locality and occupies a discreet location not widely visible from publicly accessible vantage points. Even so, the tree group, considered as a whole, offers a meaningful screen of vegetation to the rear of the site, is readily visible to a range of local residents, and makes a valid contribution to the verdant and sylvan qualities of the area. As any planned replacement planting would necessarily take time to properly establish, the tree group's removal would result in some limited harm being caused to the character and appearance of the area.
8. However, importantly, the proposal has been formulated in the interests of protecting and retaining all other tree specimens existing upon or adjacent to the site. For example, screw pile foundations are intended and, as set out in the AIA, a cellular confinement system would be used for the new driveway where falling within the calculated root protection area (RPA) of a large Oak that is approximately centrally positioned within the site. This Oak has been the subject of recently approved⁷ maintenance works that included a crown lift such that no substantive further pruning of its lower branches would be required to provide ample driveway clearance. To the east of the site, no significant or noticeable excursion within the RPA of any other protected Oak would be necessitated and, during construction, excavation by hand would be undertaken at sensitive locations and temporary ground protection would be utilised.

⁵ including Tree Preservation Order 37/1997 (the TPO), which relates to Nos 1-8 Dean Swift Crescent

⁶ via an Arboricultural Impact Assessment and Method Statement (the AIA), dated 8 April 2022

⁷ ref: TP/22/00460/X

9. Whilst the new dwelling would be situated in proximity to established tree cover in various directions, it would also sit alongside areas of open land (including to the south). Indeed, the main internal living space would be south-facing and served by large expanses of glazing to promote access to light. Further, submitted shadow analysis illustrates that not insignificant portions of the newly severed domestic curtilage would, at different times of the year, be free from shading. I am satisfied that the shading cast by existing trees would be unlikely to lead to undue future pressures materialising from future occupiers to undertake severe pruning or tree removal works. It is also relevant that any proposed future works to a protected tree would be subject to an application and consent process.
10. Given the specific locations of tree canopies relative to where the proposed dwelling would be sited, I am satisfied that falling tree debris would not be fairly anticipated to give rise to undue property maintenance concerns or pruning pressures post-occupation. Further, any fears that the installation of utility apparatus or drainage infrastructure would necessitate widespread groundworks and associated damage to trees has not been robustly substantiated. In any event, surface water drainage details could be suitably secured via planning condition should the appeal be successful.
11. For the above reasons, a significant adverse effect upon the character and appearance of the area would be avoided and the sylvan qualities of the area would not be unacceptably eroded. Nevertheless, the proposal, which involves the removal of a protected tree group, would cause some localised/limited harm to the character and appearance of the area. There is thus some conflict with Policy PP27 of the Poole Local Plan (November 2018) (the Local Plan) in so far as this policy requires development to respond to natural features on the site and not to result in the loss of trees that make a significant contribution, either individually or cumulatively, to the character and local climate of the area.

European sites

12. The site lies in proximity to both Poole Harbour and the Dorset Heathlands, such that I must have regard to The Conservation of Habitats and Species Regulations 2017 (as amended). These regulations require that, where the project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives. For the purposes of this appeal, I am the competent authority.
13. Poole Harbour is a natural harbour that accommodates various important, rare, vulnerable and migratory birds, including Common Shelduck, Pied Avocet, Black-tailed Godwit, Mediterranean Gulls, and Common Terns. The Dorset Heathlands comprise an extensive network of lowland heath that host various protected species including Dartford warblers, nightjars, woodlarks, hen harriers, sand lizards and smooth snakes. A threat to the integrity of both Poole Harbour and the Dorset Heathlands is public access and recreational activities associated to additional development. A Poole Harbour Recreation Zone, which the site falls within, sets out where, based on visitor survey information collected, new residential and tourist development will have a likely significant effect. Similarly, as advised by Natural England, residential

development between 400m and 5km of the Dorset Heathlands is likely to have a significant effect.

14. Mitigation strategies are embedded in both the Poole Harbour Recreation 2019-2024 Supplementary Planning Document (the PHSPD) (April 2020) and The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (the DHSPD) (April 2020). These seek to address the adverse effects of people visiting Poole Harbour or the Dorset Heathlands through securing payments towards SAMM as well as Poole Harbour Infrastructure Projects (PHIPs) or Heathland Infrastructure Projects (HIPs). SAMM is to be secured on a costed per-dwelling basis, whilst PHIPs and HIPs are funded through Community Infrastructure Levy (CIL) monies. The UU secures SAMM contributions and associated administration fees in accordance with rates that recently increased from those set out in the PHSPD and DHSPD respectively. The Council has had the opportunity to comment upon the UU but has not provided observations.
15. The statutory nature conservation body (Natural England) has provided comments⁸ at appeal stage and has confirmed that the UU demonstrates that mitigation contributions are secured such that a finding of no adverse effect upon the integrity of European sites could be found. They have also confirmed that mitigation to support nutrient neutrality in Poole Harbour is satisfactorily secured via CIL monies. Moreover, given the adopted and comprehensive nature of the mitigation strategies under implementation and the UU securing that development shall not commence until the relevant payments have been made, I am sufficiently satisfied that proportionate mitigation would be delivered in an expedient manner should the proposal be implemented. I thus find that the scheme would not adversely affect the integrity of any European site at either Poole Harbour or the Dorset Heathlands.
16. The scheme accords with Policies PP32 and PP39 of the Local Plan, the PHSPD and the DHSPD in so far as these policies and guidance require development not to lead to an adverse effect upon the integrity, either alone or in combination, directly or indirectly, on nationally, European and internationally important sites.

Other Matters

17. I have noted concerns raised by interested parties that the intended removal of trees could lead to the destabilisation of land, reduced rainfall absorption, and an impacted water table. However, such concerns have not been rigorously or clearly substantiated. Further, the group of trees earmarked for removal is not extensive and does not contain any individual specimen of especially large size. Notwithstanding the geology of the area and the changing land levels that apply in the vicinity of the northwest boundary of the site, there is no clear reason to consider that issues related to land stability, reduced rainfall absorption, or an affected water table would be caused or exacerbated by the proposal. I also note that a scheme to secure the effective management of surface water on-site could be secured via condition in the interests of ensuring sound surface water management and guarding against any possible increased flood risk in the locality.

⁸ dated 29 June and 24 July 2023

18. It has been suggested that the new dwelling would lead to losses of privacy for the occupiers of neighbouring Anthonys Avenue properties to the rear. However, a single storey dwelling with a flat roof is proposed such that outlook from vantage points above ground floor level would not be possible. Whilst changing land levels could promote the availability of some rearward views of a constrained nature above intervening boundary treatments, newly intended openings would be orientated and positioned in a manner that would not promote the creation of highly sensitive direct overlooking opportunities. It is also the case that full details of the intended treatment of plot boundaries could be secured via condition should the appeal be successful. This would be in the interests of securing the provision of robust screening and associated privacy protection for existing and future residential occupiers, most pertinently those located beyond the rear edge of the site. On this basis, I am satisfied that no undue loss of privacy for neighbouring occupiers would result from the scheme.
19. The introduction of a single additional residential dwelling (with associated driveway and car port) to this spacious plot would not be anticipated to give rise to excessive noise and disturbances to the detriment of neighbouring living conditions. I am satisfied that the newly proposed vehicular access and driveway would be fit-for-purpose. It is also the case that no undue loss of light would be experienced by any neighbouring occupier by virtue of the introduction of proposed bungalow.
20. Concerns have also been raised with respect to the potential effect of the proposal upon wildlife, including nesting birds. However, any suggestion that the tree group provides a rich or extensive source of habitat for wildlife has not been clearly substantiated and was not obviously apparent upon inspection. I note that a scheme of replacement planting could be secured via condition and that, as specified within the Arboricultural Method Statement appended to the AIA, all works must take account of relevant wildlife legislation which dictates it would be a criminal offence to disturb nesting birds or protected species. As such, I am satisfied that the scheme would have an acceptable effect upon wildlife.

Planning Balance

21. As indicated at Paragraph 11 of the Framework, the presumption in favour of sustainable development is engaged in circumstances that encompass where the policies most important for determining a scheme are deemed out-of-date. This includes, with respect to proposals for housing, where the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites.
22. It is my understanding that a supply shortfall exists, and the Council has not asserted otherwise. As such, the presumption in favour of sustainable development is engaged. For decision making this means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies taken as a whole.
23. I have identified some conflict with Policy PP27 of the Local Plan. This policy is consistent with the Framework in so far as it recognises that trees make an important contribution to the character and quality of urban environments. Nevertheless, for reasons set out above, I apportion limited weight to the harm that would be caused to the character and appearance of the area by virtue of the loss of protected trees.

24. Turning to the scheme's benefits, it would deliver an additional residential unit in an accessible location where there is currently a shortfall in housing land supply. This represents a valuable contribution in such circumstances. Indeed, small-sized sites can make an important contribution to meeting the housing requirement of an area. Whilst the delivery of only one additional unit of accommodation would not make a clear or noticeable difference to the overall housing land supply position, I apportion moderate weight to this benefit of the scheme.
25. The scheme would also generate jobs and investment during the construction phase, and expenditure in the local economy and support for local community facilities in the area once occupied. These are benefits that attract limited weight given the modest scale of development under consideration.
26. Having considered the benefits and adverse impacts of the scheme that is before me, I conclude that the harm and associated policy conflict that I have identified would not significantly and demonstrably outweigh the proposal's benefits when assessed against the Framework's policies taken as a whole. The presumption in favour of sustainable development, as set out in the Framework, applies therefore. Whilst I have identified conflict with Policy PP27, there are other material considerations, including the Framework, that indicate that the proposal should be determined otherwise than in accordance with the development plan in this case.

Conditions

27. The Council has suggested several conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have made amendments for consistency and clarity purposes and have added further conditions related to surface water drainage, soft landscaping, boundary treatments and cycle storage. In the interests of certainty, a condition specifying the approved plans is required.
28. In the interests of protecting the character and appearance of the area, a condition to secure the use of external-facing materials as depicted upon the approved plans is reasonable and necessary. For the same reason, and to promote biodiversity, the submission and implementation of a detailed scheme of soft landscaping is necessary to condition. Additionally for the same reason, as well as to ensure that protected trees (and any nesting wildlife) are suitably protected during the construction phase, a condition to ensure full compliance with the submitted Arboricultural Method Statement is also reasonable and necessary to impose. In the interests of promoting biodiversity, a condition to secure full details of at least 1no swift box to be installed is reasonable to impose.
29. In the interests of promoting the sound management of surface water disposal and guarding against flood risk, conditions requiring the submission, implementation, and ongoing maintenance of a surface water drainage scheme as well as the installation of either porous surface materials or a mechanism to direct run off to a porous area within the site are reasonable and necessary to impose.
30. In the interests of achieving sustainable construction and compliance with Policy PP37 of the Local Plan, a condition is reasonable and necessary that

secures full details of the on-site renewable energy sources to be utilised to meet a minimum of 10% of future energy use and subsequent implementation in accordance with these details.

31. In the interests of promoting sustainable travel choices and compliance with the Parking Standards Supplementary Planning Document (January 2021), the installation of an Electric Vehicle Charging Point is reasonable and necessary to condition. For the same reason, full details of secure cycle parking provision are reasonable to secure. Meanwhile, in the interests of highway and pedestrian safety, a condition is reasonable and necessary that secures the implementation and subsequent retention of the approved access, turning area and parking spaces.

Conclusion

32. For the above reasons, the appeal is allowed and planning permission is granted subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2019-01-21A; 2019-01-22; 2019-01-23; 2019-01-24; 2019-01-25; 2019-01-26; 2019-01-27; 2019-01-28.
- 3) No development shall take place until such time as a surface water drainage scheme, to include details of its intended maintenance, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of the development and thereafter maintained in accordance with the approved details.
- 4) Prior to the commencement of any construction works above the ground floor slab level of the dwelling hereby permitted, details of the measures to be implemented to meet a minimum of 10% of the predicted future energy use of the dwelling from the use of on-site renewable energy sources shall be submitted to and approved in writing by the Local Planning Authority. These measures shall be implemented in accordance with the approved details prior to the first occupation of the dwelling and shall thereafter be retained and maintained.

- 5) Prior to the first occupation of the dwelling hereby permitted, at least one Electric Vehicle Charging Point and associated infrastructure shall be brought into operation in accordance with details to have first been submitted to and approved in writing by the Local Planning Authority, and shall thereafter be retained for use at all times.
- 6) Prior to the first occupation of the dwelling hereby permitted, a detailed scheme of soft landscaping, to include replacement tree planting, shall be submitted to and approved in writing. The development shall be carried out in accordance with the approved details. All planting, seeding or turfing and soil preparation comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following first occupation of the development or the completion of the development (whichever is the sooner), and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) Prior to the first occupation of the dwelling hereby permitted, a minimum of 1no swift box shall be installed on the front elevation of the dwelling in accordance with full details to have first been submitted to and approved in writing by the Local Planning Authority.
- 8) Prior to the first occupation of the dwelling hereby permitted, secure cycle parking shall be provided in accordance with a scheme to have first been submitted to and approved in writing by the Local Planning Authority, and the facilities to be installed shall thereafter be retained.
- 9) Prior to the first occupation of the dwelling hereby permitted, full details of intended boundary treatments, including a schedule of base levels and heights, shall be submitted to and approved in writing by the Local Planning Authority, and the approved details shall be implemented in full prior to the first occupation of the dwelling and retained thereafter.
- 10) All works relating to ground clearance, tree works, demolition and development with implications for trees shall be carried out as specified on the Arboricultural Method Statement appended to the submitted Arboricultural Impact Assessment and Method Statement (dated 8 April 2022), and, wherever highlighted to be required, shall be supervised by an arboriculturist holding a nationally recognised arboricultural qualification.
- 11) Any new or replacement hard surfaced area(s) to be installed shall be constructed of porous materials, or provision shall alternatively be made to direct run-off water from any new hard surface to a permeable or porous area/surface on-site in accordance with the surface water drainage scheme to be agreed under Condition 3.
- 12) The dwelling hereby permitted shall not be occupied until the access, turning area and parking bays shown on approved plan Ref 2019-01-21A have been constructed, and these features shall thereafter be retained and kept available for such purposes at all times.
- 13) The materials and finishes to be employed on the external faces of the development hereby permitted shall be as specified on approved plans Ref 2019-01-23 and 2019-01-28.

-----END OF SCHEDULE-----