
Appeal Decision

Site visit made on 16 August 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2023

Appeal Ref: APP/D1265/W/22/3308906

Sunrise and Denton, Dorchester Road, Wool BH20 6EQ

- 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 Addis Homes Ltd against the decision of Dorset Council.
 - The application Ref 6/2021/0240, dated 27 April 2021, was refused by notice dated 12 September 2022.
 - The development proposed is the erection of 2 detached bungalows with formation of vehicular access and parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the site provides an appropriate location for additional housing having regard to flood risk, and;
 - The effect of the proposal on the Poole Harbour Special Protection Area and Ramsar site having regard to nutrient impacts and water quality.

Reasons

Flood Risk

3. Paragraph 159 of the National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. However, if development is necessary in such areas, then it should be made safe for its lifetime without increasing flood risk elsewhere.
4. Planning Practice Guidance (PPG) provides further explanation of the Government's general approach to planning and flood risk and includes the following steps. Firstly, to assess the flood risk, and then avoid higher risks by taking a sequential approach. Only where development needs to be in locations where there is a risk of flooding, as alternative sites are not available, does it become necessary to ensure that the development is safe and resilient to flooding and will not increase flood risk overall.
5. Policy FR of the Purbeck Local Plan: Part 1, November 2012 (LP) states that the impact of flooding will be managed by locating development in accordance with Purbeck's Strategic Flood Risk Assessment (SFRA). The SFRA dated January

2018 reinforces the sequential approach and, amongst other things, states¹ that the Council will take account of the risks from all sources of flooding when applying the sequential approach when assessing planning applications. Hence, it generally aligns with national flood risk policy.

6. The appeal site lies within Flood Zone 1² of the Environment Agency's flood maps and at low risk of flooding from rivers and seas. However, PPG³ confirms areas at risk of flooding are those at risk from any source, now or in the future. This is relevant for the purposes of applying the relevant policy in the Framework. The SFRA identifies several settlements⁴, including Wool, where people are particularly affected by surface water flooding.
7. The submitted Flood Risk Assessment (FRA) considers Environment Agency (EA) data for surface water flooding as well as a site specific Tuflow model. Although there are some differences, both analyses indicate some surface water flooding to the rear of Denton for the medium risk scenario (1 in 100 year return period) and that notable areas of the site would be affected by flooding in the low risk scenario (1 in 1000 year event), albeit that the depth and velocity of flooding would be relatively low.
8. Furthermore, the representations from the parish council and nearby resident suggest that surface water flooding problems have occurred in the vicinity of the appeal site. Overall, the balance of evidence shows that flood risk is a relevant consideration for the development proposed.
9. PPG⁵ outlines the process to be followed in these circumstances and states that in decision-making, where necessary, planning authorities should apply the sequential test. The parties disagree as to whether it is necessary for the proposal to apply the sequential test as part of the sequential approach.
10. Paragraph 162 of the Framework states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Moreover, the SFRA will provide the basis for applying the test. It explicitly stipulates that the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.
11. In addition, there is a paragraph in the PPG⁶ entitled 'How should the Sequential Test be applied to planning applications?'. This carries considerable weight given its direct relevance to the area of disagreement between the parties. It confirms that the sequential test should be applied to major and non-major development proposed in areas at risk of flooding, save for three specified circumstances.
12. These are firstly that the site has been allocated for development and subject to the sequential test at the plan making stage. Secondly, the site is in an area at low risk from all sources of flooding, unless the SFRA, or other information, indicates there may be a risk of flooding in the future. Or thirdly, the application is for a development type that is exempt from the test, as specified in footnote 56 of the Framework. The latter would include for example, householder development. The evidence before me does not convincingly show

¹ Paragraph 21

² Figure 2, Flood Risk Assessment, C1963 Rev B dated 21.8.22 prepared by CGS Civils

³ Paragraph 001 Reference ID: 7-001-20220825

⁴ Paragraph 28

⁵ Paragraph: 004 Reference ID: 7-004-20220825

⁶ Paragraph: 027 Reference ID: 7-027-20220825

that the proposal would fall within any of the exceptions specified and therefore, the clear advice in the PPG is that the sequential test should apply in this case.

13. The appellants rely upon⁷ Table 2 and paragraph 1.17 of their submitted FRA to contend that the full application of the sequential test is not necessary. Table 2 in the FRA is similar to 'Table 2: Flood risk vulnerability and flood zone 'incompatibility'' found in paragraph: 079 Reference ID: 7-079-20220825 of the PPG. The notes to that table state that it does not show the application of the sequential test, which should be applied first to guide development to the lowest flood risk areas. They also confirm that it does not reflect the need to avoid flood risk from sources other than rivers and the sea. Accordingly, I cannot agree with the appellants' conclusions in this respect as they would contradict the PPG.
14. The evidence before me does not show that the appellants have carried out a sequential test in relation to the proposed dwellings. Therefore, the existence of reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding cannot be ruled out. It follows that the proposal fails to follow the sequential approach advocated in local and national planning policy in relation to flood risk. In these circumstances paragraph 162 of the Framework expressly indicates that development should not be permitted.
15. The appellants point to the submitted foul and surface water drainage report which concludes that suitable means of drainage could be achieved. Moreover, they contend that flood mitigation measures could make the development safe for its lifetime, taking account of climate change impacts. However, consistent with the general approach to flood risk already outlined, establishing the flood safety of the development is only requisite once the sequential test is passed. Consequently, it is not necessary for me to reach a finding on this point as it would not be determinative to my finding on the main issue.
16. Accordingly, I find that the site would not be an appropriate location for additional housing having regard to flood risk as it would fail the sequential, risk-based approach to the location of development. Therefore, it would conflict with policy FR of the LP.

Poole Harbour Special Protection Area and Ramsar site

17. There is no dispute that the appeal site falls within the nutrient catchment area of Poole Harbour. The harbour is protected by several international designations which I shall refer to collectively as European habitat sites, and they are recognised under the Conservation of Habitats and Species Regulations 2017 (the Regulations). The area is also a Site of Special Scientific Interest. These designations reflect the importance of marine, saltmarsh and mudflat habitats around Poole Harbour and coastline which provide important feeding grounds for internationally protected populations of overwintering waders and wildfowl.
18. Increasing nutrient levels from discharges and sewage associated with development is contributing to the growth of algal mats in the European habitat sites. Such eutrophication is having a harmful impact on the growth, distribution and variety of important food available for protected birds. Advice

⁷ Paragraph 6.5, Appellants' Appeal Statement

from Natural England (NE)⁸ indicates that the water quality of the European habitat sites is in an unfavourable condition due to excessive nitrogen and phosphorus levels.

19. The proposed development would introduce two three bedroom properties, which it is intended to connect to the mains foul drainage system. Accordingly, this would add to existing levels of waste water discharge. In the absence of any mitigation, the generation of waste water draining from the site would be likely to exacerbate the unfavourable condition of the European sites by increasing the level of nutrients and thereby harming water quality. I am required under the Regulations to consider the effect of the proposal both individually and in combination with other projects. As such, there is a risk of a significant effect on the internationally important interest features of the European habitat sites. This is acknowledged by the appellants⁹.
20. No nitrogen or phosphate budget calculations have been provided for the existing use of the site in comparison with the proposed development. It follows that this does not accord with NE advice¹⁰ for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites. That guidance includes a national generic Nutrient Neutrality Methodology as well as catchment specific nutrient neutrality calculators. Given the expertise of NE, this guidance has a significant bearing on my determination. Accordingly, it has not been clearly shown what the nutrient loading arising from the development would be.
21. Furthermore, no specific mitigation measures are advanced to demonstrate that any increases would be offset. Instead, the appellants seek to rely upon a national nutrient mitigation scheme, the details of which remain to be established. Under such a scheme, it is intended that developers would be able to purchase 'nutrient credits' to secure sufficient and certain mitigation to address the harm arising from their development.
22. The appellants contend that it is realistic to presume that the scheme described in Government announcements would be in place at the time of my determination. On that basis, they consider a Grampian style condition requiring accordance with the Government's nutrient mitigation scheme would suffice.
23. However, the evidence before me does not clearly show that such a nutrient mitigation scheme is operational for the Poole Harbour catchment area. Moreover, a successful appropriate assessment under the Regulations must contain complete, precise and definitive findings which are capable of removing all reasonable scientific doubt as to the absence of adverse effects on the integrity of the site¹¹. These are matters of such import that they must be established at the point of any decision to permit development and consequently, cannot be deferred to a later stage in the anticipation that a suitable resolution will be found. In these circumstances, the suggested condition falls short of providing the necessary precision and certainty required to show nutrient neutrality. Therefore, I am unable to discount an adverse

⁸ Letter dated 16 March 2022

⁹ Paragraph 6.11, Appellants' Appeal Statement

¹⁰ Dated 16 March 2022

¹¹ PPG, Paragraph: 003 Reference ID: 65-003-20190722

significant effect arising from the development to the water quality of the European habitat sites, which are already in an unfavourable condition.

24. Furthermore, based on the evidence before me I am unable to rule out that no alternative solutions exist, nor is it demonstrated that there are any imperative reasons of overriding public interest that would justify the development in the absence of those.
25. In these circumstances the Regulations indicate that permission must not be granted. Moreover, paragraph 180a of the Framework confirms that if significant harm to biodiversity cannot be avoided, adequately mitigated or compensated for, then planning permission should be refused.
26. For these reasons, I find that the proposal conflicts with policies BIO and PH of the LP as it would be likely to have an adverse significant effect on the water quality of European habitat sites already in an unfavourable condition. Amongst other things, these policies require development that does not compromise the integrity of the European protected sites at Poole Harbour.

Other Matters

27. The Council states that it currently has a supply of deliverable housing sites equivalent to 1.23 years supply¹². As such, it is unable to demonstrate a five year supply of such sites, and the shortfall is substantial.
28. In these circumstances footnote 8 of paragraph 11 of the Framework deems that the policies which are most important for determining the application are out-of-date. Paragraph 11 d) i) states that 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 confirms that the Framework policies relating to areas at risk of flooding and habitats sites would provide a clear reason for refusing the proposal. Paragraph 182 of the Framework reinforces that in the absence of a positive appropriate assessment, the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site. Given my findings in these regards, the presumption in favour of sustainable development does not apply in this case.
29. In making my determination I have taken account of the letter in support which refers to the enhanced character of the area, and the provision of accessible accommodation against the backdrop of increasing need from an aging population. Local and national policies require new development to be well designed, and therefore I consider this to be a neutral factor rather than a benefit. However, the increase in housing that would be suitable for a wide range of occupants would be a notable benefit especially given the substantial shortfall in housing provision. As such, although the proposal would provide only two additional units, this attracts moderate favourable weight.

Conclusion

30. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations

¹² Council's Officer Report

indicate otherwise¹³. The provisions of the Framework and Habitats Regulations reinforce the clear reasons for refusing the development. The benefits provided by the proposal do not attract sufficient weight to justify my determining the development other than in accordance with the adopted development plan.

31. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹³ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.