



Appeal Decision

Site visit made on 6 September 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Appeal Ref: APP/D1265/W/23/3318712

Martins Mead, Ferndown Road, Lyme Regis, Dorset DT7 3DN

- 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 Chris Shrubbs against the decision of Dorset Council.
 - The application Ref P/FUL/2022/02705, dated 28 April 2022, was refused by notice dated 18 May 2022.
 - The development proposed is proposed construction of detached dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for proposed construction of detached dwelling at Martins Mead Ferndown Road, Lyme Regis, Dorset DT7 3DN in accordance with the terms of the application, Ref P/FUL/2022/02705, dated 28 April 2022, subject to the conditions set out in the Annex attached to this decision.

Applications for costs

2. An application for costs has been made by Mr Chris Shrubbs against Dorset Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are:
 - The effect of coastal erosion and land stability on the proposal; and
 - The effect of the proposal on the living conditions of neighbouring occupiers, having particular regard to the outlook from the neighbouring property Martins Mead.

Reasons

Coastal Erosion

4. The appeal site is situated in close proximity to the existing coastline and cliff edge and is located in zone 3 of the slope instability guidance map for Lyme Regis, being an area in which there may be severe problems arising from coastal erosion and/or land slipping.
5. LP Policy ENV7(ii) of the West Dorset, Weymouth & Portland Local Plan 2015 (LP) notes that the councils will identify Coastal Change Management Areas (CCMA) through a policy document, and within these areas no new development will be permitted for residential uses. I am informed that the appeal site is located within a proposed CCMA as detailed within the emerging Dorset Council Local Plan (ELP). The ELP is at an early stage of preparation,

with the timeline published on the Council's website indicating that the publication of the draft ELP for comment is not due until December 2024 and Examination in autumn 2025.

6. Although I acknowledge that the proposed CCMA designation is informed by supplementary evidence and guidance such as the Coastal Risk Planning Guidance for West Dorset, Weymouth & Portland 2013 (CRPG) and a Shoreline Management Plan, it remains the case that the appeal site is not within a designated CCMA. Furthermore, given the ELP timetable, it is unlikely to be designated for some time and therefore there is associated uncertainty as to the final outcome. The National Planning Policy Framework (Framework) provides that weight can be afforded to policies in emerging plans according to the stage of preparation of the emerging plan (the more advanced its preparation, the greater weight that may be given); the extent to which there are unresolved objections to relevant policies; and the degree of consistency of the relevant policies in the emerging plan with the Framework. Given the early stage of the ELP, I can only afford this very limited weight.
7. Although not within the Council's reasons for refusal, the Council have stated within their Appeal Statement that the decision notice should have referred to LP Policy ENV7 in its entirety, including the provisions of ENV7(i). As all parties have had the opportunity to comment, they are not prejudiced by this matter. LP Policy ENV7(i) directs new development away from areas vulnerable to coastal erosion and land instability to avoid putting people at risk unless it can be demonstrated that the site is, or could be made, stable, and the development is unlikely to, amongst other things, exacerbate erosion.
8. A Ground Stability Assessment Report prepared by PCRM Consultancy (GSAR) accompanied the application. The GSAR considers the risks of instability in relation to the inherent instability of the materials on the valley side, upon which the proposal is to be built, and also the potential instability as a result of continued movement of the coastal landslide area having taken into account of significant adjacent stabilisation works (The 'SW') which it is stated were carried out in 2014 and post-dates the CRPG. The GSAR notes that a reduction in load could have a detrimental effect on the slope up-hill of the site. It therefore provides a number of recommendations in relation to building method and confirms further ground investigation would be required to provide information for contiguous piling and foundation designs.
9. The Council's Coastal Risk Management Team accept that the proposal is unlikely to exacerbate any ground instability issues, and I note the GSAR states that the long-term change in load would not be detrimental with regard to the stability of the slope in the down-slope directions to the east and south. However, the Council retain concerns that the front garden/access/parking and utilities cannot be guaranteed for long life unless further coastal protection remedial works are undertaken in future.
10. The GSAR refers to High Point Rendel's Landslide Recession Scenarios Report 2009 (HPR LRS), which considered the future landslide risks for the area and the potential benefits of carrying out the, at the time of the report proposed, SW. Whilst not in the evidence before me, I am told the HPR LRS states that the SW increases the 25% chance of complete loss occurrence to 57 years, the 50% chance to 85 years and 95% chance to more than 100 years, with the 'complete loss outcome' being 'possible' as opposed to 'likely'. No substantive

evidence has been provided to me to refute these conclusions. It is further stated that these reduced risks, associated with carrying out the SW, are described as 'acceptable' for the design life timescale of the appeal proposal.

11. Furthermore, the GSAR notes the results from the monitoring of nearby inclinometers, last monitored in August 2021. An inclinometer to the east of the site (811-I) has shown continuing movement of 20mm, although this is described as significant due to its downslope direction. However, Inclinometers to the north and south of the site have shown no significant movement. The GSAR notes that the movement shown at 811-I is related to slight ongoing movement in the main slip area rather than movement of the side scarp adjacent the appeal site itself. No substantive contrary evidence has been provided to indicate otherwise.
12. My attention has also been drawn to the comments of a coastal risk engineer in relation to an application for a differing proposal at a differing site¹. Although no wider details of this proposal have been provided to me, thereby limiting the relevance I can afford it, the response refers to the Shoreland Management Plan SMP2 (SMP) policy, for the coastal area in which the appeal proposal lies, being 'hold the line'. However, I acknowledge that the SMP details that it may be necessary to move towards a 'Managed Realignment' policy in the longer term.
13. The comments also states that the SW has a 50-year design life, with no certainty that beyond that period another scheme would be built, or in what guise. In these circumstances, and if no further stabilisation works were to come forward, taking into account the suggested 60-year design life of the proposal, it is put to me that the design life may well outlast that of the current SW, thereby resulting in uncertainties as to the appeal site stability over the proposals lifetime.
14. However, even if a new stabilisation scheme were not to come forward, LP Policy ENV7 does not require the design life of a proposal to exceed the design life of any SW or require significant wider sustainability benefits. Such requirements are specified, amongst other things, within paragraph 172 of the Framework which concerns itself with development within CCMA's, which this is not. Moreover, whilst I accept there is some uncertainty in relation to future SW, it remains the case, as demonstrated within the GSAR, that the appeal site is currently stable, and the existing SW have resulted in the appeal site likely remaining stable for a significant forthcoming period of time.
15. Consequently, there is some uncertainty in relation to the effects of coastal erosion and land stability at the appeal site in the longer term. Nevertheless, the evidence directs me to conclude that the proposal would not exacerbate erosion subject to the imposition of conditions in relation to building methods. Furthermore, the site is currently stable, and is not within a designated CCMA. The proposal therefore accords with LP Policy ENV7. Given the appeal site is not within a CCMA, paragraph 172 of the Framework is not applicable to the appeal proposal.

¹ Henley's Acre – WD/D/20/001017

Living Conditions

16. The proposal would be set back from Ferndown Road and the neighbouring dwelling Martins Mead. Martins Mead is situated within a spacious plot, with a rear garden rising to the north-west. Due to the position of the proposal within the appeal site, the length of the side elevation of the proposal would be directly adjacent part of the rear garden of Martins Mead.
17. The appellant states that the proposal would be set in from the boundary with Martins Mead by 2.2m, and the Council have not refuted this. In addition, the large garden associated with Martins Mead results in a large part of the upper garden not being directly flanked by the proposal. Whilst the proposal is a three-storey building, it would be set into the hillside and features a flat roof, thereby reducing its height when viewed from adjacent ground level. Furthermore, although the proposal would present a façade with minimal fenestration detail to the garden area of Martins Mead, the articulation of the design, including a mixture of materials and segmented form would successfully break up the bulk and massing.
18. For the above reasons and due to the separation distances of the proposal from other nearby dwellings, including Jan-Marie, I find that whilst the outlook would change from garden areas, the proposal would not be overbearing. Furthermore, the Council have not raised concern in relation to any overlooking of nearby neighbours, although I note concerns from occupiers of neighbouring properties including those to the rear of the site at Aurelia. Although the proposal does feature significant levels of glazing to the east south and ground floor of the north elevation, given the separation distances and spatial relationship with nearby dwellings, and the location of the windows, the proposal would not result in a significant amount of overlooking, and I see no reason to disagree with the Council on this matter.
19. In conclusion, due to a combination of separation distance, design, and scale of the proposal, the proposal would not have an unacceptable effect on the living conditions of neighbouring occupiers and would not have a harmful impact upon the outlook of Martins Mead. The proposal therefore accords with LP Policy ENV16 which, amongst other matters, supports development where it would not have a significant adverse effect on the amenity of the occupiers of properties through overbearing impact. The proposal would also accord with the provisions of the Framework which requires development to ensure a high standard of amenity for existing users.

Other Matters

20. The site is located within the Dorset Area of Outstanding Natural Beauty (AONB). The statutory purpose of AONBs is to conserve and enhance the natural beauty of the area. The Framework attaches great weight to the conservation of landscape and scenic beauty in AONBs. The Council have raised no concerns over the effect of the proposal on the character and appearance of the area or AONB. I observed that although the appeal site is an open area of land, it is visually read in conjunction with surrounding residential development, particularly given the siting of a recent development to the rear of Albany, as opposed to part of an undeveloped coastal landscape.
21. Given the location of the appeal site adjacent existing residential built form, and the differing scales of dwellings and architectural styles in the area

including contemporary designs, I see no reason to disagree with the Council. I find that the character and appearance of the area would not be affected and the landscape and scenic beauty of the AONB would be conserved.

22. Interested parties have raised a number of concerns including in relation to highway safety issues, drainage, light pollution, noise, ecological impact, and the use of the proposal as a primary residence.
23. In terms of highway safety, no objections have been raised by the Highway Officer or Council. Whilst I observed that Ferndown Road is a narrow single track private road, given limited number of movements associated with a single dwelling and the provision of two parking spaces and a turning area, I see no reason to disagree with the Council.
24. It is understood that a surface water drain from the Lyme Regis Phase IV Environmental Improvements scheme runs through the site close to the eastern boundary and the GSAR notes the drain runs through the site and that access to the drain is required for future maintenance. Noting the cantilevered design of the proposal reduces the footprint to the east, no substantive evidence has been presented to me to indicate that the proposal would directly effect this drain.
25. In terms of ecological impact and lighting, a Bat and Protected Species Survey and Bat Emergence Survey accompanied the application and a Biodiversity Plan (BP) submitted, and Certificate of Approval has been issued by the Council. The BP, which can be the subject of a planning condition, provides appropriate ecological mitigation including requiring a lighting plan, planting and net-gain provisions.
26. Whilst noting the areas of glazing, given that the appeal site is adjacent to existing residential built form and the scale of the development, it would not result in significant additional light pollution, although the requirement of a lighting plan within the BP for ecological purposes are noted. Similarly, due to the scale and nature of the proposal as a single dwelling, it would not result in any unacceptable impact on neighbouring occupiers living conditions due to noise, and although there may be some increased disturbance during the construction period, this would be short-term.
27. The proposal before me relates to the erection of an unrestricted residential dwelling and I have considered it on that basis. I have not been provided with any planning policies or other substantive material reasons which would indicate that a planning condition restricting the occupancy of the proposal to that as a primary residence is necessary or reasonable.

Conditions

28. A number of conditions have been suggested by the Council in the event of the appeal being allowed which I have assessed and, where necessary, amended wording with regard to the advice provided in the Planning Practice Guidance (PPG). A condition regarding the approved plans is necessary to provide certainty.
29. Whilst the Council have suggested a condition requiring full compliance with recommendations of the GSAR, for the purposes of precision and enforceability, I have imposed a pre-commencement condition requiring additional information, as well as conditions in relation to surface water drainage,

excavated material, and the restriction of future permitted development in relation to the erection of extensions, garages, sheds or outbuildings in the interests of ground stability. Conditions requiring details of materials of external surfaces and soft and hard landscaping are reasonable and necessary in the interests of the appearance of the development.

30. A planning condition is also necessary to ensure that parking and turning areas are provided and retained in the interests of highway safety. A further condition restricting the insertion of windows in the west elevation is necessary for the protection of neighbouring occupiers living conditions, and in the interests of ecology, a planning condition is necessary to ensure the proposal is carried out in compliance with the submitted Biodiversity Plan.

Conclusion

31. For the reasons given, the proposal complies with the development plan, read as a whole. No material considerations have been shown to have sufficient weight as to warrant a decision otherwise than in accordance with it. Therefore, the appeal is allowed.

S Harrington MA MRTPI

INSPECTOR

Annex

Conditions

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan
 - Proposed Site Plan SP500 Rev 1.3
 - Proposed Floor plan SHRUBBNDPRO2 Rev 1.1
 - Proposed Drawings SHRUBBNDPRO3 Rev 1.1
 - Proposed Elevations SHRUBBNDPRO 1.2
 - Floor Levels SHRUBBNDFLOOSTUD.Rev1.0
 - Roof Levels SHRUBBNDROOFSTUD.Rev1.0

- 3) No development shall take place until the following information shall have been submitted to and approved in writing by the local planning authority:
 - a. Full details of the foundation and contiguous piling design, and associated ground investigation survey;
 - b. full details of the proposed finished floor levels.

Thereafter the development shall be carried out in accordance with the approved details.

- 4) Prior to development above foundation level, details and samples of all external facing materials for the wall(s) and roof(s) shall be submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall proceed in accordance with such materials as have been agreed.
- 5) Prior to the commencement of any development hereby approved above foundation level, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:
 - a. proposed finished levels or contours;
 - b. means of enclosure;
 - c. hard surfacing materials;
 - d. boundary treatments etc);
 - e. proposed and existing functional services above and below ground (eg drainage, power, communications cables, pipelines, etc indicating lines, manholes, supports, etc);
 - f. planting scheme including any trees/plants to be retained and method of protection during construction. The scheme shall include provision for the maintenance and replacement as necessary of the trees and shrubs for a period of not less than 5 years. The approved planting scheme shall be implemented in full during the planting season November - March following commencement of the development or within a timescale to be agreed in writing with the Local Planning

Authority. If within a period of 5 years from the date of the planting of any tree/plant, that tree/plant or any tree/plant planted in replacement for it, is removed, uprooted or destroyed or dies (or becomes in the opinion of the Local Planning Authority seriously damaged or defective) another tree/plant of the same species and size as that originally planted shall be replanted in the first available planting season unless the Local Planning Authority agrees in writing to any variation.

- 6) Before the development is occupied or utilised the manoeuvring and parking shown on the submitted plans must have been constructed. Thereafter, these areas must be permanently maintained, kept free from obstruction and available for the purposes specified.
- 7) Excavated material shall be removed from the site, with no material temporarily stored to depths in excess of 1m or to be used as infill around the development to permanently raise ground levels by more than 0.6m.
- 8) All surface water from the development hereby approved shall be discharged to a piped drainage system and not to a soakaway.
- 9) The Biodiversity Plan dated 07 September 2022 shall be adhered to throughout the construction period of the development and carried out in full prior to the substantial completion, or the first bringing into use of the development hereby approved, whichever is the sooner. The mitigation, compensation and net gain measures shall thereafter be permanently maintained and retained.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) (with or without modification) no enlargement(s) of the dwellinghouse hereby approved, permitted by Class A and Class B of Schedule 2 Part 1 of the 2015 Order, shall be erected or constructed.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) (with or without modification) no garages, sheds or other outbuildings permitted by Class E of Schedule 2 Part 1 of the 2015 Order shall be erected or constructed.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any order revoking and re-enacting that Order with or without modification), no additional window(s) or other opening(s) permitted by Class A of Schedule 2 Part 1 of the 2015 Order shall be constructed in the west elevation of the building(s) hereby approved.

End of Conditions