



Appeal Decisions

Site visit made on 22 January 2024

by Neil Pope BA (HONS) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2024

Appeal A Ref: APP/D1265/W/23/3323170

19a Knighton Lane, Broadmayne, Dorset, DT2 8PH.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr. James Meaden against the decision of Dorset Council (the LPA).
- The application ref. P/OUT/2022/05903, dated 21 September 2022, was refused by notice dated 16 March 2023.
- The development proposed is 4 detached bungalows.

Appeal B Ref: APP/D1265/W/23/3331775

19a Knighton Lane, Broadmayne, Dorset, DT2 8PH.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr. James Meaden against the decision of Dorset Council (the LPA).
- The application ref. P/OUT/2023/02031, dated 4 April 2023, was refused by notice dated 13 October 2023.
- The development proposed is for up to 3 detached bungalows.

Decisions

1. Appeal A is dismissed and Appeal B is allowed.
2. Outline planning permission is granted for up to three detached bungalows at 19a Knighton Lane, Broadmayne, Dorset, DT2 8PH. Permission is granted in accordance with the terms of the application ref. P/OUT/2023/02031, dated 4 April 2023, and subject to the conditions in the attached Schedule.

Preliminary Matters

3. All matters of detail have been reserved for subsequent consideration. I have treated the proposed site plans as being illustrative only.
4. In September 2021, the LPA certified/issued a Certificate of Lawful Existing Use or Development (CLEUD) for the "*siting of caravans for residential purposes*" on the appeal site (ref. P/CLE/2021/02004). During my visit, four caravans were stationed on the site. These comprised three static caravans (two appeared to be occupied, with the third in a rather poor condition and currently in use for storage purposes) and a touring caravan which, if not currently occupied, appeared to have been used for residential purposes in the recent past. I note from the planning history that the number of caravans on the appeal site has fluctuated over the years.
5. The appellant, with reference, amongst other things, to the rulings in John Childs v The First Secretary of State and Test Valley Borough Council CO/2689/2005, Brooks and Burton Ltd v Secretary of State for the Environment [1977] 1 WLR 1294 and Mansell v Tonbridge & Malling Borough Council [2017] EWCA Civ 1314 has argued that the appeal site is a caravan site and there is no planning restriction on the number of caravans that could be

stationed on the land. The LPA has argued that the siting of more than two residential mobile homes on the site would likely require a reorganisation of the site, which would have the potential to give rise to a material change of use by changing the character of the site's use from a relatively discrete and low intensity site to a much more intensive site with greater prominence.

6. I am not a lawyer and I suspect that if such professionals were asked to consider this matter they may not all reach agreement as to what the fallback position is. Ultimately, it would be a matter for the courts. However, the fallback position available to the appellant was considered in the recent (2023) appeal decision for six dwellings on the site (ref. APP/D1265/W/22/3305966).
7. The Inspector appointed to determine the appeal in 2023, agreed with the appellant that there are no planning controls on the number of caravans that could be located within the site. Moreover, he saw no reason to doubt that the installation of further caravans was a realistic fallback position. This is an important material consideration that should be given much weight in the determination of these appeals.
8. No cogent evidence has been submitted by the LPA to substantiate its argument in respect of a different (lesser) fallback position or to set aside the previous Inspector's finding on this matter. On the basis of all the information before me, there is nothing of substance to justify reaching a different finding to my colleague on the fallback position available to the appellant.
9. As part of the appeals, the appellant has submitted a Nutrient Neutrality Assessment and Mitigation Strategy in an attempt to address the LPA's concerns regarding the impact upon the Poole Harbour Site of Special Scientific Interest, Special Protection Area (SPA) and Ramsar Site. This Strategy would allow for the provision of greywater recycling systems within the site and the removal of the existing on-site septic tanks. The appellant has submitted planning obligations, in the form of unilateral undertakings (UU), under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended), to ensure the implementation of this Strategy.
10. The LPA has been afforded the opportunity of commenting upon the Strategy and the UUs. In this regard, I am mindful of the procedural guides that have been drawn to my attention, as well as the Wheatcroft principles¹. I consider that the appeal proposals are substantially the same as the applications that were considered by the LPA, and the Strategy and UU's submitted by the appellant would be unlikely to prejudice the interests of any party.
11. The LPA has informed me that it has in excess of five years housing land supply². In response, the appellant's agent has informed me that his client does not have the financial capability to test the LPA's assessment and accepts that housing land supply is not a determinative factor in these appeals. I agree with the appellant's agent that the existence of a five-year supply of land available for housing is not a 'ceiling' to the provision of additional housing.
12. I note the comments made by some interested parties in respect of the postcode of the appeal site. I have used the one specified in application forms, appeal forms and the LPA's decision notices. Nothing turns on this matter.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another [1980].

² I note the contents of the Council's West Dorset, Weymouth and Portland Five-Year Housing Land Supply April 2023 document that was published in November 2023.

13. Applications for awards of partial costs have been made by the appellant against the LPA. These applications are the subject of separate decisions.

Main Issues

14. There are two main issues that are common to both appeals and a third main issue that relates to appeal A only. These are: firstly, whether the proposal accords with development plan policies for the provision of housing and, if not, whether there are any material considerations sufficient to outweigh any conflict (both appeals); secondly, the likely effect on Poole Harbour SPA and Ramsar Site arising from any increase in phosphate loads (both appeals) and; thirdly, the effect upon the character and appearance of the area (A only).

Reasons

Planning Policy

15. The development plan includes the West Dorset, Weymouth and Portland Local Plan 2015 (LP). The most important policies to the determination of these appeals are SUS2 (distribution of development), HOU6 (residential development outside defined development boundaries), ENV2 (wildlife habitats), ENV10 (landscape and townscape setting), ENV12 (design and positioning of buildings) and ENV15 (efficient and appropriate use of land). I understand that the appeal site is adjacent to, but outside, the defined development boundary for Broadmayne and West Knighton.
16. My attention has also been drawn to the LPA's Design and Sustainable Development Planning Guidelines Supplementary Planning Document (SPD) 2009. Whilst I have also been provided with a copy of the LPA's Nitrogen Reduction in Poole Harbour SPD Consultation Draft 2015, the relevance of this document to these appeals has not been explained.

First Main Issue – Provision of Housing (Appeals A & B)

17. The LPA has informed me that the residential development of the appeal site is acceptable when considering the established residential use. However, it objects to the quantum of housing proposed on a site that lies outside the defined development boundary and where the development plan provides strict control over new development. In this regard, I note (and agree with) the findings of the Inspector who determined the appeal in 2023, that new residential development on the appeal site (other than one-for-one replacement dwellings) would conflict with LP policies SUS2 and HOU6.
18. However, Broadmayne and West Knighton are not insubstantial in size and although some services appear to have closed since the previous appeal, other services remain, including the school and a limited bus service. These services would be available to occupiers of the proposed dwellings and have the potential to limit the number of trips that would need to be made using private motor vehicles. There is nothing before me to demonstrate that the proposals would result in any significant increase in trips by use of private motor vehicle.
19. In addition to the above, the established residential use of the appeal site, including the ancillary utility/day room buildings, domestic paraphernalia, hard standings and entrance driveways, has a very different character to the unspoilt open qualities of the countryside that surrounds Broadmayne and West Knighton. Accordingly, I also agree with the previous Inspector that the

proposals would not undermine development plan or national planning policies for the protection of the countryside/rural areas.

20. I conclude on the first main issue that although the appeal schemes conflict with development plan policies for the provision of housing, the fallback position is such that the proposals would not undermine the objectives of these policies (or set a precedent). This outweighs the conflict that I have identified.

Second Main Issue – Poole Harbour (Appeals A & B)

21. The appeal site lies within the 'zone of influence' for the Poole Harbour SPA and Ramsar Site. Following published research/advice from Natural England, it is widely recognised and accepted that phosphate loads from sewage effluent (arising from new residential development) which is discharged from water treatment works within this zone, is likely (in combination with other developments) to have a significant effect upon the qualifying features of the SPA³. To prevent such adverse effects, LP policy ENV2 includes a requirement for development to secure effective mitigation.
22. As the 'competent authority' it would be incumbent upon me to undertake an Appropriate Assessment (AA) under the Habitats Regulations if I was to find that the appeal schemes, alone or in combination with other developments, would be likely to result in a significant adverse effect upon the SPA. However, before reaching that stage, I must take into account the fallback position that is available to the appellant.
23. After considering the fallback, I find that there is greater force in the appellant's argument that neither of the appeal schemes would be likely (alone or in combination with other development) to increase the phosphate load into the hydrological or fluvial catchment of the SPA. In this instance therefore, an AA is unnecessary, and the proposals would not conflict with LP policy ENV2.
24. The appellant's Nutrient Neutrality Assessment and Mitigation Strategy demonstrates how the proposals could achieve nutrient neutrality without taking into account the fallback position. Whilst mitigation cannot be considered before undertaking an AA (I have already explained why an AA is unnecessary) implementing this Strategy would, in any event, be a sensible way to proceed. This would secure the removal of the existing septic tanks (resulting in a nutrient reduction) and reduce the wastewater output from the site, thereby assisting in securing a sustainable form of development.
25. I conclude on the second main issue that the proposals would not have any significant adverse effect on Poole Harbour SPA and Ramsar Site.

Third Main Issue – Character (Appeal A only)

26. The appeal site comprises a narrow tract of land that sits towards the highest part, and at about the mid-point, of Knighton Lane. It is the only site in residential use on the western side of this section of the lane. I agree with the LPA that the site occupies a prominent position within the street, although much of this 0.1 ha parcel of land is screened by tall boundary planting/vegetation. As I noted during my visit, there is variety in the size,

³ I am also mindful of the Written Ministerial Statement dated 20 July 2022, 'Statement on Improving Water Quality and Tackling Nutrient Pollution' by the Secretary of State for Environment, Food and Rural Affairs.

style and design of the dwellings on the eastern side of the lane, with some properties served off small residential estates/cul-de-sacs.

27. In all likelihood, the proposed bungalows would be larger and of a more substantial (bulky) form/scale than the caravans that are (or which could be) stationed on the site. Incoming residents would need a reasonable-sized private amenity space/garden in which to relax. They would also require adequate space for the parking of vehicles, as well as accommodating the inevitable garden sheds and domestic paraphernalia. Much, if not all, of the existing roadside trees/shrubs would need to be removed⁴ to accommodate the bungalows and the necessary footway and visibility splays.
28. Whilst three well-designed and modest-sized bungalows could, on balance, be satisfactorily accommodated with the site, four such properties would be likely to result in a rather cramped form of development, with buildings set close to the edge of the highway and with rather constrained and inadequate garden spaces. Over time, it could also reasonably be expected that some residents would wish to extend their bungalows, further reducing the space around the buildings. This would further accentuate the cramped nature of this proposal.
29. Four bungalows on the appeal site, as opposed to three bungalows, would entail a more efficient use of land. However, this quantum of development, on such a narrow and rather prominent site, would sit uncomfortably within the street scene of this part of Knighton Lane and would compromise the quality of the local environment. This would be at odds with the aims and objectives of LP policies ENV10, ENV12, ENV15 and the 2009 SPD, as well as national planning policy which, amongst other things, seeks the creation of high quality, beautiful and sustainable buildings and places. This harm weighs heavily against granting planning permission.
30. Mindful of the fallback position, I consider it most unlikely that the roadside vegetation would be removed to accommodate four or more caravans. I have noted above that four caravans are already stationed on site and presume that the roadside vegetation was planted (and now maintained) to afford occupiers a degree of seclusion/privacy. Its removal as part of the fallback would be unnecessary and somewhat illogical. However, even if it was to be removed, the impact upon the street scene is unlikely to be as adverse as that arising from four bungalows. The fallback position does not assist the appellant here.
31. I conclude on the third main issue that the proposed development would detract from the character and appearance of the area.

Other Matters

32. The proposed developments would add to the supply of housing within this part of Dorset and would increase the choice and range of residential accommodation available to prospective purchasers. During the construction phase there would also be some limited economic benefit, including support for the construction industry. These matters add some limited weight to the arguments for granting planning permission.
33. The appeal site lies within 'Flood Zone 1' (low risk of flooding), and no land drainage objections were raised by the LPA. The layout and appearance of the bungalows, including window arrangements, would be considered at reserved

⁴ In itself, the loss of this vegetation would not harm the street scene.

matters stage. The bungalows could be sited and designed so as to avoid any significant adverse effect upon neighbouring residents.

Planning Conditions and the UU (Appeal B only)

34. In addition to the 'standard' conditions requiring the submission of the reserved matters and the commencement of development, for the avoidance of doubt it would be necessary to attach conditions specifying the approved plan and limiting the number of residential units on the site to no more than three.
35. To safeguard the character and appearance of the area, including views from the well-used public right of way through the fields to the west of the site, conditions would be necessary limiting the height of the dwellings to single storey and requiring the landscaping to include some boundary/screen planting. In the interests of highway safety, conditions would be necessary requiring the vehicular accesses to be laid out before the bungalows are occupied and requiring the provision of a footway along the site frontage.
36. Given my findings above in respect of the appellant's Nutrient Neutrality Assessment and Mitigation Strategy, the UU satisfies the provisions of relevant national planning policy⁵ in respect of planning obligations.

Overall Conclusions

37. Given my findings above in respect of appeal B, this appeal should succeed. When my findings in respect of appeal A are weighed together, including the 'other matters' above, I find, on balance, that there is greater force in the argument for withholding permission. Appeal A should not therefore succeed.

Neil Pope

Inspector

SCHEDULE OF PLANNING CONDITIONS – APPEAL B

1. No part of the development hereby approved shall commence until details of all reserved matters (access, appearance, landscaping, layout and scale) have been submitted to and approved in writing by the Local Planning Authority.
2. An application for approval of any reserved matter must be made not later than the expiration of three years from the date of this decision.
3. The development hereby approved must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. The development hereby approved relates to the following approved plan: 1:1,250 scale location plan and 1:500 scale block plan ref. 20/42/D3.
5. The dwellings hereby permitted shall be single storey in height.
6. The landscaping details required by condition No.1 above, shall include details

⁵ Paragraph 57 of the National Planning Policy Framework.

of all those trees to be retained and the type, number, size and location of trees/shrubs/plants to be planted, as well as a scheme for screen planting along the western boundary of the site and a timetable for planting. The development shall be undertaken in accordance with the approved details / scheme / timetable and any trees, shrubs or plants that are removed, damaged or die within five years of planting shall be replaced with trees, shrubs, plants of a similar size and species.

7. The total number of residential units (dwellings and/or caravans) shall not exceed 3.
8. No bungalow shall be occupied or utilised until the first five metres of all vehicle accesses, measured from the rear edge of the highway, have been laid out and constructed in accordance with details previously submitted to and approved in writing by the Local Planning Authority.
9. No bungalow shall be occupied or utilised until a footway, running the length of the site frontage, has been provided in accordance with details previously submitted to and approved in writing by the Local Planning Authority.