



Appeal Decision

Site visit made on 16 January 2024

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2024

Appeal Ref: APP/V1260/W/23/3321847
89B Bargates, Christchurch BH23 1QQ

- 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 Cutler against the decision of BCP Council.
 - The application Ref 8/22/1003/FUL, dated 15 November 2022, was refused by notice dated 18 January 2023.
 - The development proposed is alterations and conversion of outbuilding into a residential dwelling (retrospective).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the Council determined the original application the Levelling Up and Regeneration Act (2023) has come into force and a revised version of the National Planning Policy Framework (the Framework) has been published. I have sought the comments of the main parties concerning this Act and revised policy and have had regard to those made in reaching my decision.
3. The second and third reasons for refusal were concerned with the impact of the proposal upon nationally and internationally important habitat sites. The application site is within 5km of the Dorset Heathlands Site of Special Scientific Interest (SSSI), the Dorset Heathlands Special Protection Area (SPA) and Ramsar site, and the Dorset Heaths Special Area of Conservation (SAC). The site is also within the catchment of the River Avon, which is an SSSI and SAC. The Council considered the scheme failed to demonstrate that it would not have an adverse effect upon the protected heathlands and river catchment and in the absence of any form of acceptable mitigation the development would be likely to have an adverse effect on the special features of these habitat sites. During the appeal process the appellants provided a draft Unilateral Undertaking to address some of these concerns. I shall return to these matters later.
4. At my site inspection I saw that the appeal property was being occupied as a dwelling. Tall walls had been erected to enclose a courtyard garden within which there was a small shed and a cycle stand. For the avoidance of doubt, my determination of the appeal is based on the drawings as submitted.

Main Issues

5. The main issues in this case are:

- Whether the dwelling provides adequate living conditions for occupiers having particular regard to internal space and privacy; and
- the impact of the proposal upon the integrity of the Dorset Heathlands and upon the River Avon habitat sites.

Reasons

Living Conditions

6. The appeal property is a two storey dwelling positioned to the rear of a short terrace of houses and commercial properties that are to one side of Bargates. The dwelling was formerly the garage and outbuilding to 89 Bargates (No 89), and there is a gated walkway from Bargates road that provides pedestrian access to the appeal property. The house also has a front door onto the parking area of the Centenary House apartments complex.
7. Policy LN1 of the Council's Core Strategy (2014) (CS) requires all new housing to be in accordance with the standards in the Housing Quality Indicators (HQIs). However, these standards have been withdrawn, and the Council have not yet produced a Supplementary Planning Document to provide bespoke standards to support this policy. The Nationally Described Space Standards (NDSS) set out the internal space standards for dwellings, albeit government guidance makes it clear that compliance with these standards can only be justified when adopted policies are in place. Notwithstanding this, the thrust of this LP policy is to ensure new homes provide sufficient space for everyday activities. Such an objective is consistent with the requirement of the Framework that there should be a high standard of amenity for existing and future users, and also with objectives of the National Design Guide (2021) that requires well-designed homes with a good quality of internal space.
8. The dwelling is of a high standard, carefully designed to maximise both internal and external space. The ground floor is open plan, providing an under-stairs office space, dining and living areas and a kitchen, along with circulation space to provide for the use of the doors and the stairs. The open plan nature of the ground floor creates a layout which accommodates ample living space, including circulation space, and there are numerous kitchen cupboards providing storage along with other bespoke units. The ground floor has been carefully designed to maximise space and storage, and provides a well-considered layout for day-to-day needs. Ceiling heights do not restrict use, and the large windows and doors provide natural light and an outlook onto the courtyard garden. The occupiers of the dwelling have the use of an area of private outdoor space that in itself is also well designed and functional, including providing external storage.
9. The upper floor is also carefully considered, although as the dwelling is occupied by two people, the dimensions of the bedroom are such that there is little circulation space either side of the double bed. This room and the bathroom have been planned with regard to the available space, but even with this consideration the circulation areas around the bed are severely limited. Whilst lower than the recommended heights, the ceilings on the first floor are sufficient to allow unconstrained day-to-day use, and the presence of rooflights

in the bathroom and bedroom provides natural light as well as relieving the ceiling heights. However, whilst there is natural light, there is limited outlook for users of the bedroom as the windows of the door have been obscured to provide privacy. Notwithstanding the ground floor, the constraints of the upper floor are such that the occupation of the dwelling by two people results in an unacceptably cramped and tightly constrained bedroom with users having a limited outlook.

10. Given the position of the dwelling close to the rear elevations of the nearby buildings, both the house and the garden are overlooked by the occupiers and users of the upper floors of No 89 and 91 Bargates. The latter property is currently vacant office space, albeit it could at some point become occupied again. Mutual overlooking is often encountered in tightly grained urban areas, as currently occurs between the rear windows of Nos 89 and 91, and as apparent at 20A Avon Buildings (App ref: APP/E1210/A/10/2126219). However, most of the windows and doors of the dwelling look towards the courtyard and this, combined with the close proximity of the dwelling to the windows of nearby properties is such that there are direct views into each other's rooms. A tall tree provides some degree of screening, but neither this nor the recently planted landscaping can be relied upon to screen the development for its lifetime.
11. High walls surround the garden, and they serve to provide an enclosed private space as they screen the courtyard from views of the conservatory of No 89, and also from much of the available views between the first floor rooms of this property and those of No 91. Nevertheless, the walls do not completely screen the garden nor the windows, and the appellants have provided an obscured finish to some of the ground floor glazing and also to the bedroom door to prevent direct overlooking. Such glazing and the prevention of the use of the flat-roof could be conditioned, albeit with regard to the latter the presence of the door would make such a condition unreasonable to enforce, whilst obscure glazing to the bedroom prevents users of this room from having an outlook. Existing local residents may have no objection to the presence of the dwelling, but it does not follow that future occupiers of any of the properties would be so minded. On balance, the scheme results in an unacceptable level of privacy for the occupiers of the appeal property and for nearby residents.
12. The Council have also raised concerns with regard to a doorway deriving directly from the car park for the nearby apartments. The parking spaces are laid out and aligned along the southern boundary of the car park, away from the door. Furthermore, close to one side of the door is a high wall alongside which there is no parking provision. Whilst the dwelling would not accord with the guidance in the Council's Parking Standards Supplementary Planning Document (2021) as it would be directly adjacent to a parking area, given the particular circumstances of this case, including the layout of the car park, occupiers of the property would be sufficiently distanced from any parking spaces so as not to experience undue disturbance.
13. Although the dwelling would provide a carefully designed home it would fail to provide sufficient internal space for more than one occupier, nor would it secure adequate levels of privacy for existing, future and nearby occupiers. This would be contrary to the requirements of CS Policies KS1 and HE2, and also to those of Policy H12 of the Christchurch Local Plan (2001) (LP). These policies seek, amongst other things, sustainable development that is

compatible with its surroundings in relation to nearby properties, and not to adversely affect the amenity of existing and future occupiers, thereby reflecting objectives of the Framework.

Habitat Sites

14. The appeal site is within 5km of the Dorset Heathlands, which are an extensive network of lowland heaths nationally and internationally recognised. These heathlands host priority habitats and species, including birds, lizards and snakes as well as other species typical of lowland heathland, wetlands and dunes. In addition, the site is also within the catchment of the River Avon, which is a lowland river nationally and internationally important for aquatic ranunculus, snails, lamprey, wildfowl and wading birds. The heathlands are under significant pressure from public access and use, and a net increase in the number of dwellings and occupiers in the area would increase the pressure upon these important sites, whilst the River Avon catchment is experiencing high levels of phosphates including from waste water from residential development.
15. The Council have produced a Supplementary Planning Document (SPD) (the Dorset Heathlands Planning Framework SPD (2020)), which details a strategy for avoidance and mitigation of impacts for new residential development upon the heathlands. These require that a contribution is made towards mitigating the impact of additional residents upon the heathlands, including measures to control access, monitoring, and mitigation of the sites, reflecting the objectives of CS Policies ME1 and ME2 which seek amongst other things, to maintain and enhance nature conservation sites, and that appropriate avoidance and mitigation measures are provided.
16. Given the location of the dwelling, future occupiers would be likely to impact upon the sites having a significant effect upon the integrity of the heathlands. The Conservation of Habitats and Species Regulations (2017) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority.
17. The appellants have provided a unilateral undertaking (UU) setting out financial contributions for mitigation measures for the heathlands. However, the UU has not been dated nor signed, and there is no accompanying plan. The UU is therefore flawed and cannot be relied upon to provide mitigation. In the absence of any mechanism to mitigate the harm to the heathlands, the scheme would have an adverse impact upon the integrity of these habitat sites.
18. As regards the impact of the scheme upon the River Avon catchment, following advice from Natural England the Council require all new developments to be nutrient neutral, with the onus upon applicants to demonstrate they have secured phosphate mitigation measures. The appellants would make a contribution to offsetting, and point out that the dwelling has been constructed as an eco-home. Notwithstanding this, the scheme has not been accompanied by measures demonstrating nutrient neutrality, nor does the UU include mitigation measures for the River Avon catchment. Having regard to this, the scheme would have an adverse impact upon the integrity of this habitat site.
19. In the absence of any mechanisms to mitigate the harm to the heathlands and River Avon catchment, the proposal would adversely affect the integrity of

these sites. This would be contrary to objectives of the Framework and to the above referenced CS Policies and supporting SPD.

Other Matters

20. The appellants have referred to the building having been used as a dwelling for a number of years. Neither of the main parties has provided evidence of a Certificate of Lawfulness of Existing Use, and it is not the role of the appeal process for the consideration of a planning application to conduct an exercise as to the lawful use or operation of a site. The building appears to have been extensively renovated and I have limited evidence before me to assess what it was like before these works, including whether it has been extended. As such I have considered the scheme on the basis of the evidence before me, and the weight I can attribute to the possibility of such a fallback is limited.
21. There is local support for the scheme, including at the application stage, and the appellants are concerned that the application was not considered by the Council's committee. However, concerns regarding the Council's handling of the application relate to procedural matters and have no bearing on my consideration of the planning merits of the case.

Planning Balance and Conclusion

22. The Council acknowledges that it cannot demonstrate a five year supply of deliverable housing sites. Consequently, Paragraph 11 of the Framework is engaged, whereby planning permission should be granted unless the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.
23. The provision of an additional high-quality dwelling that incorporates renewable energy and water efficiency measures provides modest social and environmental benefits. There would also be a small, ongoing environmental and economic benefit arising from occupiers of the dwelling being close to a variety of services and facilities and contributing to the local economy.
24. Weighing against these benefits would be the significant harms arising from the scheme. Occupiers of the dwelling would experience unacceptable living conditions, and the absence of conclusive and effective mechanisms to protect the integrity of the habitat sites is a significant harm that weighs heavily against the proposal, and one which provides a clear reason for refusing the development.
25. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. The policies referred to above are broadly consistent with those of the Framework. The significant adverse social and environmental harms in this case amount to cumulative harms which carry substantial weight, and this thereby significantly and demonstrably outweighs the modest benefits, when assessed against the policies in the Framework as a whole. Irrespective of the Council's housing land supply position, the application of policies in the Framework that protect areas of particular importance also provide clear reasons for refusing the scheme. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans INSPECTOR