
Appeal Decision

Site visit made on 31 October 2023

by Adrian Hunter BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 February 2024

Appeal Ref: APP/V1260/W/22/3310118

The garage between 22 Banks Road and 1 Panorama Road

- 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 Mullins against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref APP/22/00103/F, dated 20 January 2022, was refused by notice dated 20 October 2022.
 - The development proposed is conversion and vertical extension of existing domestic garage to create two flats.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Mullins against Bournemouth, Christchurch and Poole Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are:
 - Whether the proposed development would comply with national and local planning policy which seeks to steer new development away from areas at the highest risk of flooding, and to ensure that the development is flood resilient for its lifetime; and
 - The effect of the proposed development on nationally and internationally designated sites.

Reasons

Flood Risk

4. The appeal site, whilst identified as being within Flood Zone 1, falls within an area of future flood risk within the Poole Strategic Flood Risk Assessment (SFRA) (2017). Within these locations, proposed development is considered to be at risk from coastal flooding and surface water flooding. The National Planning Policy Framework (the Framework) identifies that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, which includes future risks.

5. Whilst the proposal is classed as being minor, for the purposes of flood risk, conformity with the Sequential Test is still required, as the development would result in a net increase in the number of dwellings at the site. As a result, it is therefore necessary for the proposal to pass both the Sequential and Exception Tests as set out within the Framework and the Planning Practice Guidance (PPG). The aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source, and if this is not possible, then the Exception Test may have to be applied.
6. The appellant's Flood Risk Sequential Test (July 2022), along with the further information submitted during the consideration of the appeal application, concluded that there were no alternative sites that were identified as being suitable, available, deliverable and developable and that, in their opinion, the Sequential Test was passed. In response, the Council do not consider that the Sequential Test has been passed on the basis that, in their view, there are alternative, sequentially better sites available.
7. In terms of identifying sites which are reasonably available, the PPG identifies that they are those sites, in a suitable location for the type of development, with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.
8. It is the appellant's position that the appeal site is available now and is deliverable and developable in a short period, should consent be granted, and that the sequential search should consider sites which are developable within a similar timescale, in this case within a 12-month period.
9. In this respect, the PPG does not provide a definition of the term available. It is however defined within Annex 2 of the Framework where it identifies that *"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years."* On that basis, I consider it is reasonable for the sequential test to consider sites that may be delivered within a 5-year period. Furthermore, whilst I acknowledge the limited scale and nature of the proposed development, I have not been presented with any substantial evidence to demonstrate that the proposed development would be delivered within the timeframe put forward. Therefore, I do not accept it is appropriate, in this instance, to discount sites by virtue of the fact that they would not be deliverable within a 12-month period.
10. The PPG also clearly identifies that reasonable available could also include a series of smaller sites and/or part of a larger site, none of which needs to be owned by the appellant. In this case, the proposed dwellings are individual properties, with no apparent functional link between the two. As such there is nothing to suggest that they could not be delivered separately. On this basis, I therefore find that the appellant's approach of only searching for sites that could accommodate two dwellings, as opposed to the delivery of the proposed development over two separate sites, potentially excludes sequentially better locations where the proposed development could be delivered.
11. For the above reasons, I find that the proposed development fails to satisfy the Sequential Test. The Framework as such states that development should not be permitted.

12. The Exception Test should only be applied following the application of the Sequential Test where it has been demonstrated that it is not possible for development to be located in areas with a lower risk of flooding. Given my conclusions in relation to the failure of the proposed development to satisfy the Sequential Test, there is no need for me to consider the exception test.
13. I have been referred to a number of instances where, in their view, the Council have been inconsistent in their application of flood risk policy. The Council accept this to be the case. Whilst I have been provided with some level of detail on a number of these cases, I am required to determine the appeal on the basis of current national policy and guidance. As such, in this instance, given the existence of clear national policy and guidance in relation to flood matters, I do not consider that these cases provide any justification or precedents for allowing the appeal.
14. I have been referred to the fact that the proposed development would retain the existing garage on the appeal site and would therefore result in no increase in the footprint of development, along with the adoption of a flood resilient design approach. Whilst this may be the case, the proposed development would introduce new residential use into a location that has been identified to be at a future risk from flooding. It is recognised that even low levels of flooding can pose a risk to people. Furthermore, given their internal layout, there is nothing to prevent the ground floor of the units being easily adapted and used as habitable space. Neither is there any flood warning and evacuation plan for all future occupants before me. I also do not consider that the expected lifespan of the proposed building to provide any justification for departing from national policy.
15. For the reasons set out above, I conclude that the development would be unacceptable in relation to flood risk. It would therefore conflict with Policy PP38 of the Poole Local Plan and the Framework.

SSSI and European Sites

16. The appeal site lies within 5km of the internationally protected Dorset Heathland SSSI, which is also part of the designated Dorset Heathlands Special Protection Area (SPA) and Ramsar Site, and also the Dorset Heaths Special Area of Conservation (SAC). It is also within close proximity to Poole Harbour, which is a SPA, SSSI and Ramsar Site.
17. The appeal site is not within these designations. However, the potential for adverse effects upon the designations increases with the number of dwellings nearby, including within a wide zone of influence, and therefore the aggregate, or in-combination implications of a number of smaller developments may be significant.
18. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the designations. Due to the nature of the proposed development and the constraints of the appeal site, there appears to be no scope for the provision for on-site mitigation. To mitigate the impact of the scheme upon the designated sites, the appellant has provided evidence that measures, in the form of a payment of a financial contribution towards the Strategic Access Management and Monitoring (SAMM) have been made to the Council. However, from the evidence before me, the

contributions relate to a different application number than the one which is the subject to this appeal.

19. Although a payment has been made, the Council has confirmed it has not received a Unilateral Undertaking (UU). Measures to mitigate the impact of the proposal on the habitat sites need to be binding and secure. Therefore, without an associated UU there is no legal guarantee that the contribution would be used for its intended purpose.
20. Without a suitable mechanism in place, I cannot be satisfied that the scheme would deliver adequate measures to avoid or mitigate potential adverse effects on the integrity of nearby European designated sites. Whilst I am not suggesting that the Council may not use the contribution in the manner intended, as the competent authority in the determination of this appeal, I have no substantive evidence to demonstrate that the appellant's contributions will ensure that significant adverse effects are avoided, or whether or not the amount that is said to have been paid is sufficient for that matter.
21. Therefore, having regard to the above and taking a precautionary approach, I therefore conclude that significant adverse effects to the European nature conservation sites would arise from the development. The proposal would therefore conflict with Policies PP32 and PP39 of the Poole Local Plan. These Policies, amongst other things seek to ensure development respects the integrity of the designated sites and that appropriate mitigation measures are delivered.

Other Matters

22. I have been referred to the positive response to the submitted pre-application enquiry. Whilst I appreciate that the pre-application advice differs from the decision on the appeal application, pre-application advice is offered without prejudice to the formal decision on any subsequent planning application. Accordingly, issues relating to the pre-application advice have not had any material bearing on my assessment of the planning issues in this appeal.

Planning Balance

23. It is acknowledged by the Council that, at this moment in time, they are unable to demonstrate a 5-year supply of housing land. On the basis of the information before me, I see no reason to disagree with this position and I have therefore determined the appeal on this basis.
24. Paragraph 11 d) of The Framework states that where the policies which are most important are out of date, permission should be granted, unless any adverse impacts of doing so, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or, where specific policies in the Framework, provide a clear reason for refusing the development proposed.
25. The proposed development would contribute two additional dwellings towards the existing housing stock. Their development would also support local services and facilities and provide investment during their construction. These are considered to be benefits of the proposed development and weigh in its favour in the overall balance. Given the limited nature of the scheme, I have given these benefits limited weight.

26. On the other side of the balance, the proposal would involve the development of new dwellings within an area at risk of future flooding, resulting in the provision of a more vulnerable use with associated environmental and social harms. Given the national policy towards seeking to avoid areas subject to flooding, this harm weighs significantly against the proposed development. Furthermore, the absence of an appropriate mechanism to protect the integrity of the designated habitat sites also weighs significantly against the proposal.
27. The development would make use of brownfield land, as is encouraged by the Framework. However, insofar as it has not been demonstrated that the site is sequentially suitable for the development proposed, this is not a consideration which attracts weight.
28. I note the Council raised no issues in relation to parking, access, design or impact on trees, amongst other things. However, as these are requirements of policy and legislation, the absence of harm in respect of these matters are neutral factors that weigh neither for nor against the development.
29. Overall, whilst the proposal would deliver benefits, principally in the form of new homes, these benefits are not considered to significantly and demonstrably outweigh the substantial harm caused through the identified conflict with the development plan and the Framework.

Conclusion

30. For the above reasons and having considered all matters, I conclude that the appeal should be dismissed.

Adrian Hunter

INSPECTOR