



Appeal Decision

Site visit made on 25 June 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2024

Appeal Ref: APP/D1265/W/23/3331139

Golden Acre Holiday Park, Mount Lane, Eype, Bridport, Dorset DT6 6AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by A. Speed of Wool Limited against the decision of Dorset Council.
 - The application Ref is P/VOC/2022/00049.
 - The applications sought planning permission for
 - A. The laying out of the site and the erection of 20 holiday chalets, administration block and engine room and pump house and the installation of a drainage system without complying with a condition attached to planning permission Ref APP/F1230/C/09/2114344, dated 4 May 2010; and
 - B. Alterations to convert shop area to extension for holiday chalet without complying with a condition attached to planning permission Ref APP/F1230/C/09/2116510, dated 4 May 2020.
 - The conditions in dispute are No 2 on permission A and No 1 on permission B. These are identical conditions and state: 'The holiday accommodation shall not be occupied between the periods 13 November to 21 December and 5 January to 13 February'.
 - The reason given for the conditions is: the impact on the living conditions of local residents, the character of the area and the needs of the business.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against Dorset Council. In addition, an application for costs was made by Dorset Council against the appellant. These applications are the subject of a separate Decision.

Background and Main Issue

3. The appeal seeks to vary the time period for the occupation of the holiday chalets to all year round, save for the period between 31 January and 13 February. There is no dispute between the parties that this would be likely to increase the number of days the holiday units would be occupied and thereby increase recreational pressure on nearby sensitive habitats.
4. The main issue in this appeal therefore is the effect of the appeal proposal on the integrity of the Chesil Beach and the Fleet Special Protection Area (SPA), Chesil and the Fleet Special Area of Conservation (SAC), and Ramsar site.

Reasons

5. The appeal site lies within the identified 5km buffer of the Chesil Beach and the Fleet Special Protection Area (SPA), Chesil and the Fleet Special Area of Conservation (SAC), and Ramsar site. Chesil Beach, a 28km long shingle beach and a coastal lagoon called the Fleet, support extensive populations of eelgrass and tasselweed and a diverse fauna that includes a number of nationally rare and scarce species. The shingle bank provides nesting for internationally important populations of Little Tern and foraging for internationally important populations of Wigeon. Chesil and the Fleet is a designated Ramsar site in recognition of its international importance as a wetland.
6. The trampling of habitats and species and recreational pressure particularly from dog walkers and water sports is having an adverse effect on the internationally important species and habitats of the SPA, SAC and Ramsar. These are now in an unfavourable condition. Increasing the number of days the holiday units could be occupied would result in increased recreational pressure on this ecologically sensitive area and further compromise the integrity of the protected habitats. Accordingly, I am required to carry out an Appropriate Assessment as required by the Habitat Regulations.
7. I am advised that there is currently no adopted strategy, informed by evidence, to address these impacts. As a result, the Council have adopted an 'Interim Strategy'¹. This contains mitigation measures which have been costed and divided by the anticipated housing supply within 5km of the SPA, SAC and Ramsar to provide the level of contribution per new dwelling. I have not been provided with evidence which suggests that I should not afford the Interim Strategy significant weight as a material planning consideration for the purposes of determining this appeal.
8. The Council have calculated that the increase in occupation days would be equivalent to 1.1 additional units and based on the mitigation figure per dwelling in the interim strategy, this would require a payment of £555 to be secured in order to fund the required mitigation.
9. From the evidence before me and in the absence of substantive evidence to the contrary, I am satisfied that such a contribution would comply with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 in that it is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
10. The appellant does not dispute that a financial contribution is required in order to mitigate the effects of the appeal proposal, and nor do they dispute the level of that contribution. Moreover, the appellant has sought to pay the required sum. However, the payment was not accompanied by a planning obligation.
11. Section 106(1) of the Town and Country Planning Act 1990 ('s106 of the TCPA') sets out what a planning obligation may be used for. That is: (a) restricting the development or use of the land in any specified way; (b) requiring specified operations or activities to be carried out in, on, under or over the land; (c) requiring the land to be used in any specified way; and/or (d) requiring a sum

¹ Interim strategy for mitigating the effects of recreational pressure on the Chesil Beach and the Fleet SAC, SPA and Ramsar April 2020

or sums to be paid to the authority on a specified date or dates or periodically. In this instance, the Council say that a s106 obligation would secure the financial contribution required to mitigate the harmful effects of the development, as set out above.

12. I have been provided with two copies of draft planning obligations in the form of unilateral undertakings. I understand that one was provided by the Council to the appellant and the other was a draft provided by the appellant to the Council. Neither are dated, signed or accompanied by details of title. They are both therefore incomplete and accordingly fail to take effect.
13. However, the appellants case is that a planning obligation is not required because they have already taken steps to make the required payment to the Council, thereby mitigating the impact of the development. The appellant has paid the required sum to the Council by cheque on two occasions. Each time, the Council have returned these, advising that they are unable to accept payment without an accompanying planning obligation. The appellant says that the Council have the powers to accept the submitted contribution under Section 111 (1) of the Local Government Act 1972 ('s111 of the LGA') which states that *'a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions'*.
14. However, in respect of this appeal, it is not necessary for me to reach a finding on which is the appropriate mechanism to secure a financial payment to mitigate the effects of the appeal proposal. I say this because in this instance I have no legally binding agreement either under s111 of the LGA or s106 of the TCPA nor the required financial contribution. In their absence, I cannot be certain that the effects on the SAC, SPA and Ramsar can be effectively mitigated.
15. Therefore, the proposed development is likely to contribute to an increase in recreational pressure on the SAC, SPA and Ramsar. In the absence of appropriate mitigation being secured, it would result in an adverse effect upon the integrity of the protected sites. I have considered whether there are any imperative reasons of overriding public interest but there are not.
16. The proposal would cause harm to the Chesil Beach and the Fleet SPA, Chesil and the Fleet SAC, and Ramsar site. Accordingly, the proposal would conflict with Policy ENV2 of the West Dorset, Weymouth and Portland Local Plan 2015 (LP) which seeks to safeguard internationally designated sites from development which could adversely affect them. My conclusion aligns with Paragraph 186 of the National Planning Policy Framework which requires that planning applications are refused if significant harm to biodiversity resulting from a development cannot be adequately mitigated.

Other Matters

17. The appellant has drawn my attention to other councils that accept payments without the requisite legal obligations. Whether this is appropriate or not, is a matter for the courts to decide and does not have any bearing on my determination of this appeal for the reasons set out above.

18. The appellant has stated that in the event that I find that a planning obligation would be necessary, they would like to be afforded the time to prepare and submit one for consideration in this appeal. However, the Procedural Guide² advises that the appellant must ensure that we receive an executed and certified copy of the planning obligation at the time of making their appeal (paragraph 18.2.2) and the Inspector will not delay the issue of a decision to wait for an obligation to be executed unless there are very exceptional circumstances (paragraph 18.2).
19. The fact that I have found in favour of the Council in this instance, does not amount to 'very special circumstances' which mean that delaying the issue of the decision would be justified.
20. The appeal site lies within the Dorset National Landscape (formerly known as the Dorset Area of Outstanding Natural Beauty). Section 245 of the Levelling Up and Regeneration Act 2023 requires that in determining the appeal I must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty. However, as I am dismissing the appeal, there would be no effect on the natural beauty of the area.
21. I have considered other matters raised by interested parties including, but not limited to, highway safety, parking and living conditions of neighbouring occupiers but given that I have identified harm in respect of the main issue, these are not matters on which my decision turns.
22. I note that the appeal proposal had the support of the parish council but this does not override the harm I have found in respect of the main issue.

Conclusion

23. The proposed development is contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal is dismissed.

Alison Fish

INSPECTOR

² Procedural Guide: Planning Appeals - England