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## Appeal Decision

Site visit made on 17 September 2024

**by M Aqbal BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 December 2024**

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**Appeal Ref: APP/V1260/W/24/3336807**

**90 Smugglers Lane North, Christchurch BH23 4NL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr M Stevens, HB Holdings Ltd against the decision of Bournemouth Christchurch and Poole Council.
  - The application Ref is 8/23/0755/FUL.
  - The development proposed is described as: 'Sever the land at 90 Smugglers Lane North and construct a new 3 bedroom detached dwelling with integral garage and gardens to the front of the site, existing access to remain in situ for existing property with minor alterations, new access to be created for the new dwelling. (This application follows the previously refused scheme application reference: 8/23/0287/FUL).'
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - i) The effect of the proposal on the character and appearance of the area.
  - ii) The effect of the proposed dwelling on the living conditions of its occupiers.
  - iii) The effect of the proposal on retained trees.
  - iv) Whether the development would be likely to have a significant effect on the integrity of the Dorset Heathlands Special Protection Area, Dorset Heaths Special Area of Conservation, and Dorset Heathlands Ramsar sites ('the Dorset Heathlands').
  - v) Whether the development would be likely to have a significant effect on the integrity of the River Avon Special Area of Conservation ('SAC'), with particular regard to nutrient neutrality.

### Reasons

#### *Character and appearance*

3. The appeal site comprises 90 Smugglers Lane North, which is a detached dwellinghouse occupying a generous plot. Along Smugglers Lane North, dwellings are distinctly arranged in a linear formation to this road. Most notably, the appeal property and those to its immediate south are appreciably

set back from the road behind generous frontages which incorporate mature planting, including trees and hedgerows.

4. The layout and frontages of these properties contribute to the verdant and spacious character of this part of Smugglers Lane North. Indeed, because of its particularly generous and landscaped frontage, the appeal site positively contributes to the areas character and appearance.
5. In contrast, the proposal would introduce a detached and sizeable dwelling along the frontage of the appeal property. This tandem arrangement and proximity of dwellings to each other would be inconsistent and uncharacteristic of the prevailing pattern of development in the area.
6. Furthermore, the siting of the proposed dwelling, along with the creation of a new access and driveway for this, would lead to the loss of some soft landscaping at the appeal site. This would have an appreciable and permanent erosive effect on the spacious and verdant character of the appeal property and this part of the road. This adverse impact would be apparent from along parts of Smugglers Lane North, the host property and neighbouring properties.
7. I am mindful that buildings north of the appeal site are closer to the road than those to the south. Additionally, the appellant advises that there are no number 88 or 92 Smugglers Lane North and that a gap in house numbers is an indication that the density of development on the site is less than what was originally intended.
8. However, and although the proposed dwelling would not sit further forward of the properties to the north, in my view, the properties to the north are of a similar style and occupy less spacious and verdant plots relative to the appeal site and those to the immediate south of this. Moreover, the layout of the dwellings to the north and gap in house numbers, would not address my concerns about the introduction of a tandem form of development to the area and loss of landscaping and spaciousness arising from the proposal.
9. For the above reasons, the proposal would harm the character and appearance of the area and fails to accord with Policy HE2 of the Christchurch and East Dorset Local Plan Part 1 - Core Strategy (2014) ('CS') which amongst other matters seeks to secure high quality developments that are compatible with or improve its surroundings in terms of layout, site coverage, landscaping and visual impact. The proposal would also be contrary to saved Policy H12 of Consolidated Borough of Christchurch Local Plan Adopted March 2001, modified September 2007 ('LP') which says that developments need to be appropriate in character of the immediate locality, and Policy HWNP11 of the Highcliffe and Walkford Neighbourhood Plan (dated January 2023) ('NP') which amongst other things requires that proposals reflect and enhance an areas' distinctiveness.
10. The National Planning Policy Framework ('the Framework') also promotes the desirability of maintaining an area's prevailing character and setting (including residential gardens).

#### *Living conditions*

11. The proposed dwelling would incorporate an external amenity area which wraps around the front, side and rear of this property. The amenity area to the side would be located adjacent to the shared boundary with the neighbouring property 86 Smugglers Lane North ('No. 86'). In particular, the amenity area to

the side would be served directly off the main living area for the dwelling via a set of patio doors. As such, this amenity area would be convenient and accessible and therefore more likely to be used by its occupiers.

12. However, the amenity area to the side, would be overlooked from a first-floor window along the front of No. 86. Whilst I acknowledge that there is some degree of mutual overlooking between gardens in a suburban location, in this case most of the proposed amenity area would be overlooked.
13. Therefore, the layout would significantly undermine the privacy and quality of the proposed amenity area to the detriment of the living conditions of the occupiers of the proposed dwelling.
14. As such, the proposal would be contrary to saved Policy H12 of the LP and Policy HE2 of the CS. Amongst other things, these policies seek to safeguard the living conditions of existing and future occupiers.
15. The aims of the above policies are consistent with the Framework, which amongst other things seeks to create places which promote health and well-being, with a high standard of amenity for existing and future users.
16. Although the Council's reason for refusal in respect of this main issue also refers to Policy HWNP11 of the NP, this mainly relates to local character and therefore is not directly relevant to living conditions.

### *Trees*

17. Along the frontage of the appeal site are two English Oak trees (T1 which is to the south of the existing access and T2 which is to the north of the access). Both trees are the subject of Tree Preservation Order. These trees are prominent in the street scene and make a positive contribution to the local landscape and area's verdant character.
18. The proposed dwelling and its associated built form along with its access driveway would be in proximity of T1 and T2 which are to be retained.
19. Based on the submitted Arboricultural Impact Assessment and Method Statement ('Tree Report'), the alteration to the existing driveway would require some excavation within the root protection area (RPA) of T2. The affected area amounts to about 6% of the open ground within the RPA. As such, the impact on T2 would not be significant, subject to any excavation works being undertaken in accordance with the guidance set out in the Tree Report.
20. The new driveway would be just within the RPA of T2, whilst abutting the RPA of T1. The Tree report advises that the installation of the hard surfacing would not have a significant detrimental impact on either tree but to reduce the degree of change for T2 and maintain an effective rooting environment for both trees for the future, it would be beneficial to use a cellular confinement system in this area to maintain water percolation and aeration to underlying roots. This could be secured by a condition if the appeal succeeds. Based on the evidence before me, the services and drainage for the new dwelling would be located outside the RPAs of T1 and T2.
21. As such, the proposed development is unlikely to have any direct impact on the longevity of T1 and T2.

22. I have taken account of the layout of the proposed dwelling and the orientation of rooms and placement of windows associated with this. Despite the proximity and orientation of the proposed dwelling relative to T1, the new arrangement would not result in any unacceptable indirect impact on T1 and T2.
23. For the above reasons, the proposal would not have any adverse impact on the long-term longevity and wellbeing of T1 and T2. Therefore, in so far as the protected trees are concerned, the proposal would accord with the aims of Policy HE2 of the CS, which amongst other matters seeks to secure high quality developments that are compatible with or improve its surroundings in terms of relationship to mature trees, and Policy HE3 of the Christchurch and East Dorset Local Plan, which says that development will need to protect and seek to enhance the landscape character of the area.

#### *The Dorset Heathlands*

24. The appeal site is situated between 400 metres and 5km of the Dorset Heathlands. These sites host protected priority habitats and species. In combination with other residential development in the area, development would be likely to have a significant effect on these sites without mitigation.
25. CS Policy ME2, requires mitigation measures to be provided as part of residential development proposals. The Dorset Heathlands Planning Framework 2015-2020 - Supplementary Planning Document ('SPD') provides further detail, setting out the Council's approach to the mitigation of harmful effects on the designated sites. It requires all new residential development between 400 metres to 5km of the protected heathlands to be subject to a financial contribution towards mitigation measures in order to avoid adverse effects on the integrity of the designated sites.
26. The appellant has provided a Unilateral Undertaking ('UU') securing a contribution towards the mitigation measures identified in the SPD.
27. However, as I have found harm in relation to other main issues and would be dismissing the appeal for other reasons, it is not necessary for me to undertake an Appropriate Assessment and give further consideration to the likely effectiveness of mitigation and avoidance measures. In doing so I would have had regard to the UU.

#### *River Avon SAC*

28. The appeal site falls within the catchment of the River Avon SAC, which is a large, lowland river system supporting various aquatic species. There is a known issue with nutrients entering the river and adversely affecting environmental conditions for the qualifying species. Residential development will contribute to an increase in phosphates due to foul water discharge.
29. Policy ME1 of the CS requires that development protect, maintain and enhance internationally designated sites such as the SAC, amongst other things.
30. The appeal site, by reason of its location, would result in foul water generated by the new residential development creating an additional phosphate load in the River Avon, which could harm the water quality of the River Avon SAC, a European Designated Site. There would be a Likely Significant Effect from the proposed development and in the absence of mitigation, it would not be

possible to conclude that there would not be an adverse effect on the integrity of the River Avon SAC.

31. The Council's document 'Phosphorous in the River Avon-latest position' dated 22 April 2024, sets out the Council's latest approach in respect of the River Avon SAC in consultation with Natural England. In summary, the Council acknowledges there is an adverse effect upon the River Avon SAC. Further, the Council suggests that applicants can choose to deliver direct mitigation or offset their impact through the purchase of phosphate credits to achieve nutrient neutrality. This would prevent a scheme from giving rise to adverse effects on the River Avon SAC.
32. The appellant advises that when the appeal was lodged there was no available scheme to achieve nutrient neutrality in this area, but that has now changed and there is an offsite offsetting scheme available that will allow nutrient neutrality for phosphorus to be achieved in the Christchurch area. The appellant also advises that the Council has therefore started to attach a specific condition to planning permissions for new homes in the affected area. This is in the form of a pre-commencement condition requiring proposals for the mitigation or offsetting of the impact of phosphorus arising from the development on the River Avon SAC.
33. Irrespective, and as already stated because I have found harm in relation to other main issues and would be dismissing the appeal for other reasons, it is not necessary for me to undertake an Appropriate Assessment and give further consideration to the likely effectiveness of any mitigation measures. In doing so I would have had regard to the appellant's suggested planning condition.

### **Other Matters**

34. The appellant has reduced the scale of the proposed dwelling following a previous refusal of planning permission. I also acknowledge that as a standalone building, the design of the proposed dwelling is acceptable given the range of building designs in the area. Based on the submissions before me, I am also mindful that most new housing development in the area is likely to come through the infilling and redevelopment of plots. Nevertheless, I have still found the proposed scheme to be unacceptable for the reasons set out above.

### *Other considerations*

35. Based on the appellant's evidence, the Council cannot demonstrate the supply of deliverable housing sites as required by the Framework. The information before me is that the undersupply is acute, comprising of about 1.6 years of deliverable housing land supply. As such, Paragraph 11 d) of the Framework applies. This says that where relevant policies 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.
36. The development would provide an additional dwelling. This would accord with the aims of the Framework of making use of a small windfall site and boosting significantly the supply of homes. There would also be some benefits as a result of the proposal. Given the Council's acute housing land supply position these considerations are of significant importance in favour of the

development. Even so, having regard to the modest scale of the proposal (a single additional dwelling), I afford this limited weight.

37. The Framework, says that decisions should support development that makes efficient use of land, taking into account: the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it; local market conditions and viability. However, this also needs to take in to account the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use and the desirability of maintaining an area’s prevailing character and setting, along with the importance of securing well-designed and beautiful, attractive and healthy places. Based on my findings on the main issues, the proposal fails to achieve some of these objectives.

### **Planning Balance**

38. The development would provide an additional dwelling and associated benefits to which I attach limited weight.
39. I have found no harm in respect of protected trees. In terms of the planning balance, the lack of identified harm is a neutral factor. To this end, if I had concluded that the proposal would not harm the integrity of the Dorset Heathlands and River Avon SAC, this would also be a neutral factor in the planning balance.
40. Nonetheless, such neutral factors would not diminish the harm to the character and appearance of the area and the living conditions of occupiers, which I have already identified. These harms are also contrary to the aims of the Framework and attract substantial weight.
41. As a result, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the conflict with the development plan is not outweighed by other considerations including the Framework.

### **Conclusion**

42. For the reasons above, I conclude that the appeal should be dismissed.

*M Aqbal*

INSPECTOR