



Appeal Decision

Site visit made on 19 November 2024

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Appeal Ref: APP/V1260/W/24/3340031

75 Uppleby Road, Poole BH12 3DD

- 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 E LaBouchardiere against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref is APP/23/00623/F.
 - The development proposed is described as 'Partial demolition of the building, alterations and conversion of the building to a 1 bedroom dwelling with private garden.'
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Decision

1. The appeal is dismissed.

Applications for Costs

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

Main Issues

3. The main issues are the effect of the proposal on:
 - The integrity of the Dorset Heathland Special Protection Area and Special Area of Conservation and the Poole Harbour Special Protection Area;
 - The character and appearance of the area; and
 - The living conditions of the occupants of 2a Phylton Road and 73 Uppleby Road, having regard to privacy.

Reasons

Protected Habitats

4. The appeal property is in the zone of influence (ZoI) for the Dorset Heathlands Special Protection Area (SPA), Dorset Heaths Special Area of Conservation (SAC) and the Poole Harbour SPA. Natural England has evidence that these protected habitats are in unfavourable conditions resulting from human activities, including vehicle emissions, recreational pressure and increased nutrients in water environments.
5. This proposal would result in a net gain in residential units and likely significant adverse impacts cannot be ruled out. Therefore, as required by the Conservation of Habitats and Species Regulations 2017 an appropriate assessment is necessary.

6. The Heaths SAC qualifying features include dry heaths, moor land, fens and oak dominated woodland, and habitats support damselfly and Great Crested Newts. The Heathland SPA habitats support a range of protected bird species, including the ground nesting Nightjars, Woodlark and Dartford Warbler. Poole Harbour SPA also supports a variety of rare birds including Terns, Egrets, Spoonbills and Black-tailed godwit.
7. The conservation objectives for the Harbour and Heathland SPAs include contributing the aims of the Wild Birds Directive by amongst other matters, restoring and maintaining habitats of the qualifying features. The Heathland SAC conservation objectives include ensuring that the integrity of the site is maintained or restored and that the site contributes to achieving the favourable conservation status of its qualifying features.
8. Evidence shows that the Heaths are under significant pressure from urban development. The potential adverse impact on heathland principally arises from human pressures and damage caused by domestic pets. Natural England's evidence shows that the majority of visitors live within 5km of the protected site. Also, the Dorset Heathlands Interim Air Quality Strategy outlines evidence of harmful nitrogen and ammonia deposition on the Heathland, which derives in part from vehicle emissions. This is another factor undermining the integrity of these habitats.
9. In respect of the Harbour, evidence demonstrates that there are two particular pressures: nitrate pollution and recreational issues. Nitrogen causes the growth of algal mats that restrict the food available for protected birds. The majority of nitrogen is generated by agriculture, but a proportion is generated from human sewage. Recreational pressures can also have a harmful effect on the Harbour habitats. Activities such as boating in the Harbour and dog walking on the shoreline can frighten off protected birds.
10. Any net gain of residential units in the ZoI of these protected habitats would have a significant adverse effect on the qualifying features and risk undermining the conservation objectives of these habitats. This proposal would result in the net gain of one residential unit within 5 km of the protected habitats. Future occupants would likely increase recreational pressures, add to air pollution through vehicle emissions and there would be an increase in wastewater and sewage generated at the property. The proposal in these regards would have a significant adverse effect on the integrity of the protected habitats, either alone or in combination with other plans and projects.
11. Policy PP32 of the Poole Local Plan (Local Plan) requires in respect of the Heathland, that new residential development proposed between 400 metres and 5 km of the site will provide mitigation in accordance with the advice set out in the Dorset Heathlands Planning Framework SPD.
12. For the Harbour habitats, Policy PP32 requires proposals for any net increase in homes will provide mitigation in accordance with the advice set out in The Nitrogen Reduction in Poole Harbour SPD if they are connected to Poole Sewage Treatment Works or within the catchment of the Harbour. Addressing recreational pressures, any net increase in homes will provide a Strategic Access Management and Monitoring (SAMM) contribution for wardens, education and monitoring.

13. The Air Quality Strategy is part of an agreed strategic approach by the Council and Natural England to address sources of airborne nitrogen based pollution in the vicinity of the Heathlands. It outlines interim measures for 2020-2025 with the aim of facilitating projects ahead of the preparation of formal local plan policy. Measures include encouraging modal shift to other forms of transport, reduce vehicle speeds adjacent to heathlands, encourage the use of zero emission vehicles and establishing a monitoring strategy.
14. Natural England has in recent years provided updated advice to local authorities on how to address the adverse impacts of development in respect of nutrient emissions. There is an agreed approach on applying nutrient neutrality as a mitigation measure to enable development to proceed without causing harm to the integrity of those habitats' sites. This includes the measures outlined in the Nitrogen Reduction in Poole Harbour SPD.
15. Other SPDs cited in Local Policy and Council strategies identify mitigation measures that have also been agreed in consultation with Natural England. Local Policy also clarifies that that mitigation will be secured through Community Infrastructure Levy (CIL) or S106 Legal agreements.
16. Phase 2 of the Air Quality Strategy will have an initial budget of £750,000 over 5 years, or £150,000 per year. This is based upon allocating £50 per dwelling from CIL paid by developers.
17. In respect of nutrients, the SPD states that the burden of removing 75% of the nitrogen from wastewater will fall on water companies. The remaining 25% reduction will be achieved by indirect schemes to convert high nitrogen input land uses to low input. Contributions for this mitigation will be sought at the planning permissions stage of residential development. Relevant to this proposal, it is anticipated that windfall development requiring mitigation will pay CIL, and this will be used to deliver the mitigation for those developments.
18. Addressing recreational harms at Poole Harbour, the SPD sets out a 5 year implementation period from 2019-2024 and a two part mitigation strategy. This comprises the SAMM and Poole Harbour Infrastructure Projects (PHIPs).
19. This SAMM pays for the day to day costs of raising awareness of the issues and a warden to manage visitor pressures. It also pays for ongoing monitoring of the effects of new development and whether the strategy is effective. To enable housing development within this ZoI, the Harbour SAMMs charge rate of £140 per house will need to be secured by legal agreement. PHIPs costs will vary and are to be funded from CIL.
20. Mitigation strategy for the Heathland, outlined in the SPD, consists of two mutually dependent mechanisms: restrict development within the 400 metres heathland; and mitigation associated with some types of development within the 400 metres to 5 kilometres zone.
21. Mitigation with the 400 metres to 5 kilometre zone, comprises SAMM and Heathland Infrastructure Projects (HIPs). Heathland SAMMs contributions will secure the day to day costs of helping local people to alter harmful behaviour through raising awareness and pay for the ongoing monitoring. The SAMMs contribution rate of £394 per house is applicable in this district and is to be secured by legal agreement.

22. Regarding this proposal, the officer's report shows a higher figure in respect of the SAMMs contributions than that outlined above; £485 for the Heathland and £172 towards Harbour SAMM. However, the SPDs clarify that charges will be adjusted annually to reflect inflation, to ensure that the appropriate level of SAMM can be delivered over the plan period.
23. A legal agreement, in the form of a unilateral undertaking (UU) has been submitted with this appeal. This obligates those with title to the appeal site to make contributions in respect to the Heathland and Harbour SAMMs if planning permission is granted. However, the UU indicates a payment of £510 for the Heathland and £181 for the Harbour. The discrepancy between the SAMMs payments suggested by the Council and that stated in the UU may be as a result of inflation adjustments, but this has not been clarified in evidence. Without clarification on this matter the obligations in this legal agreement may not satisfy the test set out in Regulations and national guidance.
24. Even if the proposed contributions are correct, the UU is not signed or dated and therefore not complete. The appellant has sought to finalise this agreement during this appeal process. However, without a legally sound agreement there is no certainty that the mitigation measures necessary in this case to make this development acceptable in respect of this matter are secured.
25. I am therefore unable to conclude that this proposal would not have a significant adverse effect on the integrity of the Dorset Heathland Special Protection Area and Special Area of Conservation and the Poole Harbour Special Protection Area. In this regard the proposal would conflict with Policies PP32 and PP39 of the Local Plan.

Character and Appearance

26. The appeal site is an existing shallow pitched roof garage to the rear of 75 Uppleby Road. Dwellings and plots vary in size in this area, but properties are largely set out in a linear pattern, such that dwellings have significant street frontage. This distinct development pattern provides consistency and coherency in a street scene where the built forms vary in appearance. While rear gardens are modest, they are generally of a significant size and this positive feature helps retain some sense of space in this otherwise closeknit urban residential area.
27. There have been some changes to the area, which close to the appeal site include the dwelling at 2a Phylton Road. However, while No 2a is an uncommonly narrow form, the property has a linear plot layout reflective of the prevailing development pattern that characterises this immediate setting. Also, although there is some secondary development behind primary residential frontage in the wider area, these generally comprise cul-de-sacs that also have a linear pattern of development with dwellings addressing those secondary residential roads.
28. The existing garage fills a good portion of No 75's rear garden. However, a significant part of the garden remains relatively free of structures. Moreover, although the garage is sizeable, with its low pitched roof, it clearly reads as an ancillary building that is used incidental to the dwelling. With this current appearance and arrangement, the appeal property is very much in keeping with the character of the area.

29. The proposal would utilise part of the garage to form a detached dwelling. The footprint of the built form would be reduced to create a private garden for the proposed dwelling. However, the new dwelling would be one and half storeys and as such significantly taller than the existing building. Although this would be subordinate in height to the existing properties fronting the street, the proposed relatively steep pitch roof of the new built form would appear distinctly different from ancillary buildings commonly found in rear gardens in this area.
30. The changes at No 2a have already increased the density of development in the vicinity of the appeal site. However, while the proposal makes use of an existing building, the proposed changes to the roof, additional fenestration and the new private outdoor space, would make the resultant development clearly legible as a separate dwelling. There would be an obvious visual loss of a significant section of No 75's garden, and the new dwelling would appear an incongruously cramped development at the rear of existing properties.
31. Moreover, set behind No 75, the new dwelling would have limited street frontage. With these discordant features, and with a narrow separate access onto Uppleby Road, the new dwelling would appear an oddity that would significantly disrupt the existing pattern of development in this immediate setting. The development would not be sensitive to the prevailing character of the area in this regard.
32. Given the limited street frontage, the visual harm to the area would be relatively localised. Nevertheless, the discordant and cramped development would be apparent close to the site. It would also be clearly visible from neighbouring properties, and the harmful change would appear considerable when viewed in this immediate setting.
33. It is asserted that the proposal is innovative. However, conversions of existing buildings is not an uncommon occurrence, and no compelling evidence has been advanced in this particular case that supports this assertion. In any event, as a visually harmful scheme, the proposal would not be 'outstanding' in a positive sense.
34. Attention is drawn to development permitted at the rear of properties on Curtis Road and Granville Road. However, those developments are on different roads in the wider area such that those changes have minimal influence on the character that surrounds the appeal site. Those developments are not directly comparable to this proposal and have not altered my findings for this reason.
35. In light of this, I find that the proposal would significantly harm the character and appearance of the area. In this respect the proposal would conflict with Policies PP27 and PP28 of the Local Plan. These Policies collectively require, amongst other matters, a good standard of design and states that residential proposals involving plot sub-divisions will only be permitted where there is sufficient land to enable a type, scale and layout of development to be accommodated in a manner which would preserve the area's residential character.

Living Conditions

36. The main source of light and outlook for the proposed first floor bedroom of the new dwelling would be from a rooflight. The opening would be set midway

up the roof, and while this would allow some overlooking of rear gardens of 2a Phylton Road and No 73, given the proposed slope of the roof, the outlook from the rooflight would not be direct, but would be tilted towards the sky and space above these neighbouring outdoor spaces.

37. The proposed rooflight would also be modest in size. This factor, combined with the indirect angle of the outlook from the rooflight, would ensure that the amount of privacy that occupants of these neighbouring properties currently enjoy in their outside space would not be unacceptably diminished by this development.
38. Accordingly, I find that the proposal would not have a significant harmful effect on the living conditions of the occupants of 2a Phylton Road and 73 Uppleby Road, having regard to privacy. In this respect the proposal would accord with Policies PP27 and PP28 of the Local Plan. These Policies collectively seek, amongst other matters, development that would not result in a harmful impact upon amenity for local residents.

Other Matters and Planning Balance

39. I have not found harm in respect of neighbours' living conditions. The Council has also not raised concerns about the quality of the accommodation for future users, highways, parking or drainage subject to conditions. However, even if I agree with this, development should be acceptable in these terms and these factors do not therefore alter the planning balance in this case.
40. The existing garden is modest for the family sized house at No 75, and I find no compelling evidence that the existing garage is under-utilised. The proposal would increase the density of dwellings in the area. However, while Policy PP2 of the Local Plan states sites should be optimised, with the aim of meeting or exceeding the minimum indicative densities, the supporting text of that Policy clarifies development should, amongst other matters, respect the character of the locality. This aim is consistent with the provisions of the National Planning Policy Framework (the Framework) which state the desirability of maintaining an area's prevailing character. As outlined above, this proposal would conflict with this local and national policy requirement.
41. The Glossary of the Framework defines previously developed land (PDL). However, land in built-up areas such as residential gardens is excluded from this definition. As such the appeal site is not PDL for the purposes of the Framework and this matter does not attract positive weight in this case.
42. The Council was unable to demonstrate the required housing land supply (HLS) at the time of its original decision. Since that time the HLS has drastically reduced, with the latest position being only 1.6 years against the required 4 years. The most recent monitoring information indicates a shortfall of 8,078 homes. This is a critical position such that proposals helping to address this substantial shortfall should attract considerable weight.
43. A single additional dwelling, while making a small contribution to this dire shortfall, will be a considerable benefit in such circumstances. As a small site, the home could be delivered quickly, and this would add to the mix of critically needed houses in the district. Also, the windfall site is in a built up area close to local services and public transport. I attach great weight to these benefits given the local circumstances.

44. The development would result in economic benefits through the construction phase and future occupants would likely support local services and add to the vibrancy of the community. Also, low carbon and energy efficiency measures could be secured in the development by condition. These benefits also weigh in favour of the proposal.
45. However, while Paragraph 11 d) of the Framework is relevant given the HLS position, the appropriate assessment concludes that without mitigation, this proposal would have significant adverse effects on the integrity of protected habitats. No mechanism has been submitted that provides certainty the mitigation measures necessary to address this harm can be secured.
46. Paragraph 188 of the Framework states that the presumption in favour of sustainable development does not apply where the plans or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans and projects), unless an appropriate assessment has concluded that a plan and project will not adversely affect the integrity of the habitats site.
47. Accordingly, the application of policies in the Framework that protect areas and assets of particular importance provide a clear reason for refusing the development proposed in this case.
48. Attention is drawn to local policies that are not in dispute. However, I have found that this proposal would have significant adverse effects on protected habitats and would result in significant harm to character. Conflict would arise with local policies relevant to these matters. There would be conflict with the development plan when read as a whole, and the material considerations identified do not indicate a decision otherwise than in accordance with the development plan.

Conclusion

49. For the reasons stated above and having regard to the development plan, and material considerations, including the Framework, the appeal should be dismissed.

A J Sutton

INSPECTOR