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## Appeal Decision

Site visit made on 25 November 2024

an Inspector appointed by the Secretary of State

Decision date: 31 January 2025

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### **Appeal Ref: APP/V1260/W/24/3343769**

### **Knighton Lodge, Wheelers Lane, Bournemouth, BH11 9QJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Mr Mark Batchelor of Chapman Lily Planning Ltd against the decision of BCP Council.
  - The application Ref is APP/22/01078/P.
  - The development proposed is the demolition of existing property and erect 14 dwellings with associated access.
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### **Decision**

1. The appeal is dismissed.

### **Procedural Matters**

2. The original application was for outline planning permission, with matters of access, appearance, layout, and scale to be considered at that stage. For the avoidance of doubt the appeal has been considered on this basis.
3. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. Comments of the main parties were sought, with consideration made to those received in reaching the appeal decision.
4. The scheme would impact upon the nationally and internationally important habitat sites of the Dorset Heathlands Site of Special Scientific Interest (SSSI), Special Protection Area (SPA), Ramsar, and Special Area of Conservation (SAC), and those of Poole Harbour SSSI, SPA, and Ramsar. Two reasons for refusal of the original application were that the impact upon these habitat sites had not been adequately mitigated. Another reason for refusal was the absence of on-site affordable housing provision. To address these matters during the appeal the appellant submitted a S106 legal agreement (LA) to provide contributions for avoidance, mitigation, and monitoring measures for the habitat sites, and also to secure a financial contribution for off-site affordable housing provision. The Council have stated that the LA has addressed these reasons for refusal. Consequently, the appeal turns on the main issues identified below, albeit the matters of the affordable housing contribution and habitat sites will be returned to later.

### **Main Issues**

5. The main issues in this case are:-
  - the effect of the scheme upon the safety of users of Wheelers Lane; and

- whether the scheme would result in an unacceptable flood risk.

## **Reasons**

### *Highway Safety*

6. Positioned to one side of Wheelers Lane, the appeal site comprises a detached dwelling within a generous garden. Apart from Bearwood Primary and Nursery Schools, the surrounding area is mostly residential. There are detached houses and bungalows of a mix of ages and styles along Wheelers Lane, and beyond these are large housing estates. To the north of Magna Road there is a large housing allocation, along with employment land and community facilities.
7. Wheelers Lane is a single lane road that provides a shared pedestrian / cyclist link between Magna Road and the open countryside of Canford Heath. Despite being a no-through route for vehicular traffic from Magna Road or Barons Road, the lane provides vehicular access for the residential properties along it. The lane is part of a wider pedestrian / cyclist network that links the existing residential estates to those underway to the north of Magna Road. Wheelers Lane forms an important element of the Council's planned pedestrian and cycling links in the area, providing sustainable access not just to the school, but also to Canford Park greenspace and to the local centre and employment locations to the north of Magna Road.
8. 28 parking spaces for the 14 houses have been proposed, with the appellant estimating an additional 98 daily movements occurring along the lane. It might be that home working and the proximity of future occupiers to nearby services, facilities and employment would reduce vehicular movements at peak times, but there would be other concentrated periods when the lane would be busy with pedestrians and cyclists accessing the school and nursery. There are around 20 houses along the lane, and consequently the provision of an additional 14 homes would result in a significant increase in vehicular movements along a shared use road. Drivers may be alert and conciliatory, but the lane is narrow, with no formal passing places. It follows that the increased number of movements associated with the development would increase the potential for conflict of users of the lane.
9. Furthermore, the lane has no footways with private land to one side and a verge to the other in which there is a ditch that would preclude use by pedestrians or cyclists. There are several pinch points along the lane, and anyone meeting a vehicle would need to move off the road onto private land to avoid vehicular traffic. As the lane provides a route to the schools this would be particularly problematic for those with young children and using pushchairs. Although the lane is lit, many of the lamps are within the canopies of tall hedges and trees, and the sinuously curved nature of the lane restricts forward vision, as do the trees and hedges.
10. Future occupiers would have to travel around 180m to reach the wider section of Wheelers Lane, but despite this distance, the scheme would significantly increase the number of vehicular movements occurring. Irrespective of Traffic Regulation Orders to provide mitigation, there are already parking restrictions present. The potential for conflict between all users of the lane would increase, and particularly so in the future with the additional users from the residential estates to the north of Magna Road.

11. For these reasons the scheme would unacceptably impact upon the safety of existing and future users of Wheelers Lane, and the suggested conditions and mitigation measures would not overcome this significant harm. The Framework requires that development should be refused if there would be an unacceptable impact upon highway safety, and this includes consideration of future scenarios. It also requires the creation of safe places that minimise the scope for conflicts with pedestrians, cyclists and vehicles. Given the circumstances of this case, these objectives have not been met. There would also be conflict with Policy PP35 of the Poole Local Plan (2018)(LP), which seeks amongst other things, the creation of safe and accessible places, including safe and convenient pedestrian and cycling routes, and improved access to local services and facilities by foot and cycle.

### *Drainage*

12. The site is in an area of low risk of flooding from rivers, the sea, and from surface water flooding. Notwithstanding this, there is only limited potential for on-site infiltration and soakaway, especially for significant rain events, and surface water from the site would be discharged into the ditch along Wheelers Lane. Excess surface water would be attenuated below ground with permeable paved areas, wide water pipe trenches, and an attenuation tank.
13. The particular circumstances of this case are that a number of uncertainties remain, and it is unclear whether these issues could be satisfactorily addressed through reserved matters and conditions. Whatever the discharge rate into the ditch, the appellant's Surface Water Drainage Strategy and Flood Risk Assessments make it clear that a full site investigation would need to be undertaken to confirm the depth and permeability of the ground. This uncertainty is of concern as the Council has pointed out that there is no sewer or even a combined sewer in the area to provide an alternative. Furthermore, details of the management and maintenance of the drainage system, and who would undertake it, has not been secured.
14. Sections of the ditch are culverted, and local residents have reported that it overflows and floods the area. In addition, the Council has referred to the ditch not being contiguous all the way to Knighton Stream, and nor has it been demonstrated that the ditch or stream could accommodate additional capacity. Such circumstances and uncertainties do not provide security that the site could be adequately drained and not increase flood risk elsewhere.
15. Given these unresolved issues, it cannot be assumed that the proposed approach would be adequate to deal with surface water run-off on-site and not cause flooding. This is a significant harm that weighs heavily against the scheme. There would be conflict with the Framework and its requirements to ensure that flood risk is not increased elsewhere, and that sustainable drainage systems should have maintenance arrangements in place to ensure operation for the lifetime of the development. There would also be conflict with LP Policy PP38, as this policy requires amongst other things, that drainage schemes should be appropriate to the location and designed to manage surface water runoff.
16. LP Policy PP37 has been referenced by the Council. However, this policy requires new homes to tackle climate change through sustainable design and energy measures rather than dealing with drainage, and as such has not had a bearing on this main issue.

## Other Matters

17. *Affordable Housing*. LP Policy PP11 requires the maximisation of affordable housing from housing schemes, with sites of 11-20 units either providing on-site provision or a financial contribution equivalent to that. In this case, the policy requirement for on-site provision would equate to 5 affordable homes. The appellant's Affordable Housing Viability Report (2022) has established that the development would be able to comfortably support a policy compliant financial contribution equivalent to on-site provision, that would include land, build and servicing costs. Although not on-site provision, the Council have stated that the LA addresses the reason for refusal. The contribution would therefore be an important benefit weighing in favour of the scheme.
18. *Habitat Sites*. The appeal site is within 5km of the Dorset Heathlands, which are an extensive network of heaths nationally and internationally recognised and protected, as they host priority habitats and species, including birds, lizards and snakes as well as other species typical of lowland heathland, wetlands and dunes. The Poole Harbour habitat sites are nationally and internationally important for rare, vulnerable, and migratory birds, and their supporting habitats of seagrass, shallow inshore waters, intertidal sediments, saltmarsh, and reedbeds. The heathlands and harbour are under significant pressure from increased public access and use, and the harbour sites are also experiencing nitrate pollution, which results in algal mats that restrict the food available for protected birds. A net increase in the number of residents in the area would therefore have an adverse effect upon these important habitat sites and species.
19. Given the location of the houses, future occupiers could visit the habitat sites, and nutrients in wastewater would impact upon the nutrient levels in the harbour, all of which would have a significant adverse effect upon the integrity of these protected sites. The Conservation of Habitats and Species Regulations (2017) require the decision maker to undertake an Appropriate Assessment (AA) where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls for consideration with the appeal.
20. The Council has produced Supplementary Planning Documents (SPD) to support LP Policies PP32 and PP39 (ie the Dorset Heathlands Planning Framework SPD (2020), the Poole Harbour Recreation SPD (2020), and Nitrogen Reduction in Poole Harbour SPD (2017)). They detail strategies for the avoidance and mitigation of impacts of residential development upon these important sites, and require contributions towards mitigation, access measures and monitoring. The Council has stated that the executed LA would secure these measures. The matter of undertaking AAs for the appeal will be returned to later.
21. *Other Matters*. Local residents have raised a number of other matters, including the scheme not being in keeping with the area, air quality concerns, increased crime, loss of trees and biodiversity, and the effect upon house prices. The latter concern is not directly connected with the planning considerations of the scheme, and of those that are, following the findings on the main issues there is no need to consider them further.

## **Planning Balance**

22. With a housing land supply of 2.1 years the Council has an acute shortfall of supply. In such a context the provision of 14 homes would be an important benefit of the scheme that would weigh heavily in its favour, as would the contribution to provide for off-site affordable homes. The Framework supports the development of windfall sites and the use of under-utilised land, with great weight occurring from the use of a site within an existing settlement. Future occupiers would make a modest contribution to supporting local services and facilities, and there would be a modest, time-limited economic benefit arising from the construction of the homes.
23. Weighing against these benefits would be the significant harms deriving from the increased vehicular use of Wheelers Lane, and the uncertainties of the drainage strategy. These weigh very heavily against the proposal, as LP Policies PP35 and PP38 are broadly consistent with the Framework, as the Framework also requires the provision of safe places that minimise conflicts between all users of the highway and the management of surface water run-off so as not to increase flood risk.
24. 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 adverse impacts in this case amount to cumulative harm that significantly and demonstrably outweighs the modest social and economic benefits that arise from the scheme, and also the great weight from the provision of an affordable housing contribution and that from 14 homes that make an effective use of land in a sustainable location, when assessed against the policies in the Framework as a whole. It follows that the presumption in favour of sustainable development does not apply.
25. If the appeal was to be allowed, it would have been necessary to undertake AAs and give further consideration to the likely effectiveness of mitigation and avoidance measures for the Dorset Heathlands and the Poole Harbour habitat sites. In doing so the provisions of the LA would have to be scrutinised to ensure that the integrity of the habitat sites would not be adversely affected. However, as the appeal is being dismissed for other reasons, this has not been necessary.

## **Conclusion**

26. The scheme would conflict with the development plan when considered as a whole, and the suggested conditions would not overcome this conflict. There are no other considerations, including the requirements of the Framework, that outweigh this finding. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

*J J Evans*

INSPECTOR