



Appeal Decision

Site visit made on 4 February 2025

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2025

Appeal Ref: APP/V1260/W/24/3346854

27 Arcadia Road, Christchurch BH23 2JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Guenter Thierstein against Bournemouth Christchurch and Poole Council.
 - The application Ref is 8/24/0036/OUT.
 - The development proposed is to sever the land and construct a 3 bedroom chalet bungalow with parking and private garden.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal has been made in outline, with all matters reserved for future consideration. Plans that accompanied the application include a proposed layout and details of access arrangements, external appearance, and landscaping. However, as all of these are reserved matters, I have considered the drawings solely on the basis that they have been submitted for illustrative purposes.

Background and Main Issues

3. The appeal arises from the Council's failure to make a decision on the application. The Council has submitted an Officer's Report and a Statement setting out how it would have determined the application. Based on these, and all the evidence before me, I consider that the main issues are:
 - a) The effect of the development on the integrity of the Dorset Heathlands Special Protection Area (the DHSPA) and the Dorset Heaths Special Area of Conservation (the DHSAC);
 - b) The effect of the development on the integrity of the River Avon Special Area of Conservation (the RASAC); and,
 - c) The effect of the development on the protected tree in the front garden of 27 Arcadia Road.

Reasons

Integrity of the DHSPA and the DHSAC

4. Evidence shows that the DHSPA and the DHSAC are under significant pressure from an increase in the level of recreation, and disturbance of bird species, as a result of urban development. The proposal would result in an additional dwelling

within the area of influence of these internationally protected sites. Whilst the impact of the development itself would be small, in cumulation with the 11,290 new homes in the Council's housing trajectory for the period 2020-2025, it has the potential to impact on the integrity of the protected sites, through increased recreational disturbance. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) require that an Appropriate Assessment (AA) be carried out, and that permission may only be granted after having ascertained that development will not affect the integrity of the protected sites. I have carried out my AA on a proportionate basis with regard to the evidence before me.

5. The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (the SPD) sets out that mitigation for the impacts of development will be delivered through a combination of Heathland Infrastructure Projects (HIPs), and Strategic Access Management and Monitoring (SAMM). The HIPs will generally be funded by the Council using Community Infrastructure Levy receipts, whereas SAMM funding will be through individual contributions from all developments that involve an increase in residential accommodation. The Council's statement sets out the level of contribution that would be necessary in this case to accord with the SPD, and indicates that such contributions are normally secured through a legal agreement. However, I have not been provided with any evidence that such an agreement has been completed, or that the financial contribution has been secured in any other way.
6. The appellant has not proposed any alternative avoidance or mitigation measures. Consequently, there is no mechanism in place to ensure that the increased recreational pressure resulting from the development would be mitigated. Following AA and adopting a precautionary approach, I am therefore unable to conclude that the development would not affect the integrity of the protected sites. The proposal would, therefore, be contrary to Policy ME1 of the Christchurch and East Dorset Local Plan Part 1 - Core Strategy (2014) (the Core Strategy), which seeks to protect, maintain and enhance the condition of internationally designated nature conservation sites. The Council also refers to Saved Policy ENV21 of the Borough of Christchurch Local Plan (2001) (the Local Plan) in its putative reason for refusal. However, I see no conflict with this Policy as it relates to landscaping of new development, which is a reserved matter in this case.

Integrity of the RASAC

7. The appeal site is within the catchment of the Christchurch Wastewater Recycling Facility, which discharges enriched water into the RASAC. The River Avon is also designated as a Site of Special Scientific Interest, and the Council's Officer Report indicates that it is in an unfavourable condition due to elevated levels of nutrients. Natural England has advised that the discharge of increased levels of phosphates into the RASAC would have an adverse impact on its integrity. The proposal would result in an additional dwelling, which would discharge wastewater, including phosphates, to the RASAC. Individually, and in cumulation with other residential development in the catchment, the proposal would, therefore, have a likely significant effect on the protected site.
8. As with the first main issue, the Habitat Regulations require an AA to be carried out, and permission may only be granted after having ascertained that the development will not affect the integrity of the protected site. Again, I have carried

out my AA on a proportionate basis with regard to the evidence before me. The appellant has used the River Avon SAC: nutrient neutrality calculator, which demonstrates that the development would generate a total phosphorus load of 1.04kg per year. Some form of mitigation would therefore be required to achieve nutrient neutrality. The appellant has not proposed any direct measures to mitigate the impact of the increased nutrient discharge. Instead, he has pursued the option of purchasing nutrient mitigation credits. Natural England has no objection to this approach, subject to the requisite number of credits being legally secured from an approved provider.

9. The appellant has supplied evidence to show that he has contacted a provider of credits. However, there is nothing before me to confirm that agreement has been reached to purchase the required number of credits. Consequently, there is no mechanism in place to ensure that the increased nutrient discharge resulting from the development would be mitigated.
10. I have considered whether details of mitigation could be dealt with by the imposition of a planning condition, or as part of the reserved matters submission. In either of these scenarios, however, I would be granting planning permission without first ascertaining that the development would not affect the integrity of the protected site. This would conflict with the requirement set out in the Habitat Regulations unless I was certain that measures could be secured that would be effective in mitigating any adverse effect on integrity. In this case, there is little evidence before me on the existence, or otherwise, of approved providers of credits, whether there are sufficient credits, the timescales by which any such credits might become available, or whether they would be at a cost that would be viable for the proposal.
11. Consequently, I do not have certainty, at the decision-making stage, that a planning condition or subsequent application for approval of reserved matters would secure appropriate and timely mitigation. As the competent authority, I am therefore unable to conclude through my AA that the proposal would not affect the integrity of the protected site. Accordingly, I must conclude that, following AA, the development would cause harm to the RASAC without clear and certain mitigation. Therefore, the scheme would conflict with Policy ME1 of the Core Strategy, which seeks to protect, maintain and enhance the condition of internationally designated nature conservation sites.

Impact on protected tree

12. The Council's Officer Report and Statement refer to the potential impact of the development on the root protection area of an oak tree situated in the neighbouring garden on the northwest corner of the site. However, the appellant's evidence indicates that this tree was not protected and has subsequently been removed. I saw no trees of any significance to the northwest of the site at my visit. In any event, despite the Council's comments, the putative reason for refusal on the Officer's Report and Statement refer only to the protected tree in the front garden of the appeal site.
13. The tree is a small Hornbeam, with a columnar form, which was planted in replacement of a previously felled Holm oak. It grows in a narrow bed between the hard-surfaced driveway of 25 Arcadia Road and the tarmac parking area on the appeal site. The submitted layout plan shows the existing access and driveway

being used to serve the proposed bungalow, which would be located in the rear garden. Whilst all matters are reserved, this would be the most likely and feasible manner in which a new dwelling could be provided on the site.

14. The tree would not be directly affected by any of the works shown on the illustrative plans. Apart from the narrow planting bed, the front garden of the appeal site is already entirely covered in hard surfacing. The proposal would not, therefore result in the loss of any rooting environment or the potential for water infiltration. The proposed chalet bungalow would be in the rear garden, behind the host dwelling, so its construction would have no impact on the tree or its future growth potential. Any construction traffic would have to access the rear garden through the gap on the southwest side of the house, so it would not pass close to the tree. As the garden is already hard surfaced, ground compaction would not be a likely problem, and direct harm to the tree would be highly unlikely, bearing in mind its columnar form and its distance from the driveway route to the rear garden.
15. Taking all of these factors into account, the proposal would be most unlikely to result in any harm to the protected tree. A suitable planning condition requiring the provision of protective fencing at a suitable distance would ensure that it could be satisfactorily retained during construction works. It could grow to maturity thereafter without any spatial conflicts with the proposed dwelling. The proposal would, therefore, accord with Policy HE2 of the Local Plan, which seeks, amongst other things, to ensure that new development is compatible in its relationship with trees.

Planning Balance

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission, and therefore appeals, should be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found that the proposal would adversely affect the integrity of protected wildlife sites, so it would be in conflict with Policy ME1 of the Core Strategy.
17. It is not disputed that the Council is unable to demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 78 of the National Planning Policy Framework (the Framework). The evidence indicates that the current supply is 2.7 years, so the shortfall is substantial. However, paragraph 195 of the Framework makes it clear that the presumption in favour of sustainable development does not apply where the proposal is likely to have a significant effect on a habitats site, unless an AA has concluded that the plan or project will not adversely affect its integrity. In the absence of any agreed mitigation, the proposal would harm the integrity of the DHSPA, the DHSAC, and the RASAC. Consequently, the approach to decision-taking described in paragraph 11d) of the Framework does not apply.
18. Nevertheless, the benefits of the proposal should be weighed against the harm that I have identified. Paragraph 61 of the Framework seeks to significantly boost the supply of homes. The development would provide an additional dwelling, which would assist with this aim, and would make a modest contribution to reducing the identified shortfall. The site is in an accessible location that would be suitable, in principle, for residential development. Paragraph 73 of the Framework says great weight should be given to the benefits of using suitable sites within existing

settlements for homes. There would also be benefits to the economy associated with the construction phase of the development, and the future spend by occupants in the local area.

19. However, the Framework makes it clear at paragraph 12, that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Furthermore, paragraph 193 says that if significant harm to biodiversity resulting from a development cannot be avoided, then planning permission should be refused. Overall, therefore, the limited benefits associated with the proposal do not outweigh the conflict that I have found with the development plan policy that seeks to avoid harm to protected wildlife sites.

Conclusion

20. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR