



Appeal Decision

Site visit made on 12 March 2025

by R Kent BA (Hons) MTP DipM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2025

Appeal Ref: APP/V1260/W/24/3353071

17-19 Parkstone Road, Poole BH15 2NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by 17-19 PR Ltd against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref APP/24/00101/F was approved on 2 September 2024 and planning permission was granted subject to conditions.
 - The development permitted is Extension to the rear of the existing building, to increase the Number of HMOs from 9 to 16, with covered cycle storage
 - The conditions in dispute is No 6 which states that: *Prior to occupation of the development hereby approved, the rear land shown on the approved plan shall be laid out, in a manner to be used as an outdoor amenity space for the occupiers of the building. This shall be retained as amenity land to the remainder of the site.*
 - The reasons given for the condition is: *The amenity land forms an important part of the layout and environment of the new development, and it is essential that it is retained and in accordance with Policies PP25 and PP27 of the Poole Local Plan (November 2018).*
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Decision

1. The appeal is dismissed

Preliminary Matters

2. The appellant submitted an amended plan reference J.41.2023-09 with the appeal indicating the boundary of the amenity space the appellant considers to be sufficient for future occupants of the development. The Council has had the opportunity to comment on the plan and I have taken it into account in my consideration of the appeal.
3. Under section 73 of the Town and Country Planning Act 1990 if the appeal were allowed it would create a new planning permission. Therefore, although the proposal only involves the amendment of a condition, I am required to consider whether the proposed development as a whole would be likely to have a significant effect on the integrity of the Dorset Heathlands Special Area of Conservation (SAC), and the Dorset Heathlands and Poole Harbour Special Protection Areas (SPAs) and Ramsar sites. If it would, it is necessary to assess the implications of the effect of the proposal on the sites' conservation objectives under an appropriate assessment (AA).
4. A revised National Planning Policy Framework (the Framework) was issued in December 2024 and I have sought the parties comments on the relevance of the revised version to their respective cases. In its response, the Council confirms that it has 2.1 years' housing land supply and I return to this later in my decision. A further amended version of the Framework was published in February 2025 and as

the amendments were relatively limited I did not seek further comments on it from the parties. I have, however, determined the appeal on the basis of the latest version.

Main Issues

5. Planning permission has been granted for the extension of the appeal building to increase the number of rooms in the house of multiple occupation (HMO) from 9 to 16. A S106 agreement was executed prior to the original permission being granted to provide mitigation for the effect of additional recreational activities of occupants of the proposal on the protected sites and the Council has indicated that a payment has been made. The appeal seeks permission to carry out the development with a smaller amenity space than indicated on the approved block plan. Against this background, the main issues are:
 - the effect of the development on the Dorset Heathlands SPA, the Dorset Heathlands Ramsar site, the Dorset Heathlands SAC and the Poole Harbour SPA and Ramsar site; and
 - whether removing or varying the condition would provide acceptable living conditions for future occupiers of the development with regard to amenity space.

Reasons

Effect on protected sites

6. From the evidence before me, the development site is outside 400m but within 5km of the Dorset Heathlands protected sites; within the Poole Harbour SPA 'Recreation Zone'; and within the hydrological catchment of the Poole Harbour SPA. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) requires me to make an AA. I have therefore undertaken an AA.
7. The Dorset Heathlands SPA and SAC and Ramsar site cover an extensive area of South East Dorset fragmented by urban development, forestry, agriculture and other land uses. The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (SPD) 2020 indicates they host protected priority habitats and species including Dartford warblers, nightjars, woodlark, hen harrier, merlin, sand lizards and smooth snakes as well as other typical species of lowland heathland, wetlands and dunes.
8. The Poole Harbour Recreation 2019-2024 SPD 2020 indicates that the Poole Harbour SPA protects rare, vulnerable and migratory birds and in particular the internationally important species of Common Shelduck; Pied Avocet; Black-tailed Godwit; Mediterranean Gull; Common Tern; Little Egret; Eurasian Spoonbill and Sandwich Tern. There is also an internationally important assemblage of waterfowl including Dunlin, Redshank and Brent Goose and supporting habitats for seagrass; shallow inshore waters including coastal lagoons; intertidal sediments; saltmarsh; and reedbeds.
9. The SPDs indicate that the Dorset Heathlands and harbour are under significant pressure from an increasing number of people living nearby. Public access to lowland heathland, from nearby development, has led to an increase in wild fires, damaging recreational uses, the introduction of incompatible plants and animals,

loss of vegetation, soil erosion and disturbance by humans and their pets. Public access in and around the harbour including sailing, walking, exercising dogs and bait digging along the shoreline are all identified as activities which can influence bird's behaviour and survival.

10. The Nitrogen Reduction in Poole Harbour SPD 2017 states that increasing nitrogen levels from sewage and agriculture are contributing to algal mats in the harbour, restricting the growth, distribution and variety of important food available for wading birds, and smothering estuarine habitats.
11. The proximity of the appeal site to the protected sites means that future occupants of the development could contribute to the disturbance of these protected areas. Moreover, the additional housing accommodation could contribute to the nitrogen discharges into the harbour as a result of the further sewage it would generate. The potential for adverse effects is likely to increase with the amount of residential development meaning that the combined effects could be significant and affect the integrity of the protected sites.
12. The SPDs set out an approach to the mitigation of the harmful effects of residential development by seeking a financial contribution to deliver mitigation measures. The Nitrogen Reduction in Poole Harbour SPD indicates that mitigation should be sought through either a S106 agreement or through the Community Infrastructure Levy (CIL) to ensure that the development would be nutrient neutral for the Poole Harbour SPA.
13. The effect of additional disturbance of the protected areas arising from recreational activities, would be mitigated through separate 'Strategic Access Management and Monitoring' (SAMM) and Infrastructure Projects for the Dorset Heathlands and Poole Harbour protected sites. For this appeal, a copy of a S106 agreement dated 6 August 2024 has been provided which secures the payment of a 'Harbour SAMMs Contribution' of £868 and a 'Heathland SAMMs Contribution' of £2436 to provide mitigation for the effect of the proposed development on the protected sites in accordance with the SPDs. However, there is no evidence that the agreement also secures a contribution towards the mitigation of nitrogen entering Poole Harbour. Nor has any evidence been provided that the development would be liable for a CIL payment or, if it were, how the payment made would be used to mitigate the effect of the proposal on nitrogen levels within the Poole Harbour SPA and Ramsar.
14. Therefore, whilst the S106 agreement includes a clause which binds the obligation to all subsequent S73 consents without the need to enter into any subsequent deed of variation or new S106 agreement, in the absence of a contribution towards securing nutrient neutrality, I cannot be satisfied from the evidence before me that the planning obligations it contains are sufficient to make the development acceptable in planning terms.
15. I have consulted Natural England on the proposals. It has confirmed that, whilst financial contributions secured through the S106 are sufficient to avoid adverse impacts on the protected sites from recreational disturbance, the nitrogen discharges to the Poole Harbour catchment should also be considered in combination to have a likely significant effect on the Poole Harbour SPA and Ramsar. Natural England therefore advised that I sought confirmation that the

Council would secure the necessary mitigation contribution to ensure that the development would be nutrient neutral for the Poole Harbour SPA and Ramsar.

16. I consulted the Council on Natural England's comments accordingly and sought its confirmation that the necessary mitigation has been secured to ensure that the appeal proposal would be nutrient neutral for the Poole Harbour SPA and Ramsar. The Council did not provide the required confirmation or demonstrate how the effect of the development would otherwise mitigate the in-combination effect of increased nitrogen on the protected sites. I also sought the appellant's comments on the Council's response but no further evidence of the proposed mitigation has been forthcoming.
17. In the absence of evidence of a suitable legal mechanism to secure appropriate mitigation of the effect of increased nitrogen discharges to the Poole Harbour SPA and Ramsar, I am not convinced that the proposal would not have an adverse effect on the levels of nitrogen in the harbour catchment.
18. As a consequence, adopting a precautionary approach, whilst the size of the development means that the harm it would cause would be likely to be moderate, for the reasons given I cannot conclude that it would not have an adverse effect on the integrity of the Poole Harbour SPA and Ramsar site. The proposal would therefore conflict with the Habitats Regulations and with Poole Local Plan 2018 (PLP) policy PP32 which seeks to protect European and internationally important sites.

Living conditions

19. The appeal site is situated in a central location in the town fronting onto the busy Parkstone Road. It is flanked on either side by a dental practice and salon with a mix of other commercial and residential uses in the vicinity. To the rear, where the extension and amenity space would be located, the site is currently an expansive area of car parking with further large car parks beyond the western and eastern boundaries. A multi storey car park lies beyond the northern boundary. From my site visit, I noted that the site currently has no private useable amenity space.
20. The approved block plan shows an area of patio with 'grass/planting' to the rear of the proposed extension enclosed by a 1.2m high fence on its north side and a 2m close boarded fence on its western boundary. The part of the site between the area of grass/planting and the northern boundary is annotated on the plan as 'amenity space' but with no further detail provided. Condition 6 requires this land to be laid out 'in a manner to be used as amenity space' for the occupiers of the building.
21. Policy PP27 of the PLP requires developments, including extensions to existing buildings, provide, amongst other things, satisfactory external and internal amenity space for both new and existing occupiers. The policy however, does not specify the quantum of amenity space which should be provided and nor does the evidence indicate what would constitute a 'satisfactory' amount for the purposes of the development plan.
22. Whilst the space would be enclosed by fencing, the urban context of the site, and in particular the nearby car parks, means the enjoyment it would offer to future occupiers would be limited by its surroundings. This would be particularly the case with the part of the space nearest the site's northern boundary which would be

dominated by the multi-storey car park. I observed on my visit that the appeal site is located a short walk from Poole Park to the east and the extensive area of outdoor open space it provides. This would provide future occupiers with access to alternative, higher quality recreational space.

23. It is not uncommon for high density town centre residential developments to have limited amounts of external amenity space. In the absence of clear justification for the amount and location of amenity space which condition 6 seeks to secure, I am not convinced that that amount is necessary to enable the development to proceed.
24. The Council's reason for condition 6 also refers to PLP policy PP25. The policy however is a strategic policy seeking the provision of new open space and allotments. The appeal proposal is not a strategic site and therefore the policy's requirement to provide on-site space does not apply to this appeal.
25. An area of space immediately to the rear of the building, as proposed in the appellant's amended plan would be a significant improvement on the existing situation and would provide future occupants with sufficient outdoor space adjacent to the building to enjoy fresh air and daylight. Subject to appropriate hard landscaping and planting within the space to be secured through a revised condition if I were to allow the appeal, this space would be sufficient to satisfy the requirements of PLP policy PP27.
26. For the reasons given, I therefore conclude that with a revised condition to secure the area of amenity space shown on the amended plan, the development would provide acceptable living conditions for future occupiers of the development with regard to amenity space. As a result, it would comply with PLP policy PP27 in so far as it seeks to secure satisfactory external living space for future occupiers

Other Considerations

27. The proposal would have the benefit of providing additional homes in a central location. It would be close to the hospital thereby being a convenient location for hospital staff seeking accommodation. Given the modest size of the proposal this would be a moderate benefit of the development. The development would also generate some employment during the construction stage. However, given the small scale of the development, this benefit would be relatively modest

Planning Balance.

28. Whilst the proposal would be a small contribution to the overall housing supply, the scale of the shortfall in the Council's supply is very substantial. The Framework highlights that small sites such as this can make an important contribution to meeting the housing requirement in the area and are often able to be built out relatively quickly. Therefore, this benefit, whilst small in scale, carries substantial weight. The modest economic benefit would also attract moderate weight in favour of the proposal.
29. In the absence of appropriate mitigation, the development would cause a moderate level of harm to the Poole Harbour SAC and Ramsar site. The Framework recognises that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, protecting sites of

biodiversity value in a manner commensurate with their statutory status. As a consequence, this harm should be given substantial weight in this appeal.

30. Whilst I have not found conflict with the development plan in respect of the effect on the living conditions of future occupiers, the harm that I have identified to the SAC and Ramsar is sufficient to cause conflict with the development plan when read as a whole.
31. The Framework makes clear that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) unless an AA has concluded that the plan or project will not adversely affect the integrity of the habitats sites.
32. Even though the Council can only demonstrate 2.1 years supply of deliverable housing sites, in view of my findings on the first main issue and applying footnote 7 to paragraph 11d) i. of the Framework, the Framework provides a strong reason for dismissing the appeal. Therefore paragraph 11 d) ii. is not engaged and the appeal should be determined in accordance with the development plan unless material considerations indicate otherwise.
33. As the conflict with the Framework provides a strong reason for refusal, this carries substantial weight against the proposal. Although the proposal would have the benefits of adding additional homes to the council's housing supply and providing employment during the construction of the development, the benefits are not sufficient to outweigh the harm to the protected sites. For the reasons given, the presumption in favour of sustainable development in the Framework does not apply in this appeal.

Conclusion

34. The proposal conflicts with the development plan when read as a whole and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

R Kent

INSPECTOR