
Appeal Decision

Site visit made on 13 March 2025

by **A J Sutton BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 May 2025

Appeal Ref: APP/V1260/W/24/3348717

17 Markham Avenue, Bournemouth BH10 7HL

- 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 Maiva Ltd against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref is 7-2024-29159.
 - The development proposed is described as 'Proposed new 1no. bed dwelling on land to rear of 17 Markham Avenue, to include dropped kerb for 1no. parking space, proposed amenity space and cycle store.'
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. A fence panel which appears to subdivide the appeal property was in place at the time of the site visit.

Main Issues

3. The main issues are the effect of the proposal on:
 - the integrity of the New Forest protected habitats;
 - the integrity of the Dorset Heaths protected habitats;
 - the character and appearance of the area;
 - the living conditions of occupants of 17 Markham Avenue and 38 Markham Close regarding outlook; and
 - Whether the proposed dwelling would provide suitable living conditions for future occupants, having regard to outside space.

Reasons

New Forest Protected Habitats

4. Through this appeal process Natural England(NE) highlighted that the appeal property is within the zone of influence (ZoI) of the New Forest protected habitats. As this issue was not raised during the application process, comments have been sought from the main parties in this appeal process. Their submissions on this matter are addressed below.
5. Evidence indicates that likely significant adverse impacts cannot be ruled out where there is a proposed net gain in dwellings, as a result of recreational pressures. In accordance with the Conservation of Habitats and Species Regulations 2017 an appropriate assessment is therefore necessary.

6. The qualifying features of the New Forest Special Area of Conservation (SAC) include nutrient poor shallow waters, lakes, heathlands and meadows, bogs and fens, supporting such species as Great Crested Newt, Stag Beetles and damselfly. The key conservation objective of the SAC is to ensure that the integrity of the site is maintained or restored as appropriate and ensure that it contributes to achieving the favourable conservation status of its qualifying features.
7. The New Forest Special Protection Area (SPA) qualifying features include Honey Buzzards and Hen Harriers and a host of ground nesting birds. The conservation objective of the SPA is to ensure that the integrity of the site is maintained or restored, ensuring it contributes to achieving the aims of the Wild Birds Directive.
8. In the 13.8km Zol of the SAC and SPA, evidence shows that any net increase in residential units may have a likely significant adverse effect on these qualifying features through increased recreational impacts (including disturbance, trampling and eutrophication). This proposal would result in an additional residential unit in the Zol and future occupants of this dwelling would likely visit the protected habitats and contribute to the harmful recreational impacts outlined above. As such, the development would have likely significant adverse effects on the integrity of the protected habitats either alone or in combination with other plans and projects.
9. The Council confirms that the current development plan for this administrative area does not have a policy dealing with this matter and with regards mitigation, there is no mechanism to collect and distribute contributions to the New Forest at the present time. Also, while the emerging plan sought to address this omission, it is understood that that emerging plan is likely to be withdrawn. Even if this was not the case, as this is an emerging policy, there may be matters yet to be resolved and this lessens the weight that it would attract.
10. The appellant has drawn attention to an email from the Council referencing a draft New Forest Access Management & Monitoring Strategy (SAMM) which is asserted to set out suitable mitigation that will be implemented through the collection of SAMMs payments for residential development in the Zol in this district. However, this is a draft strategy. Moreover, although dated October 2024, no timetable for adopting this strategy has been presented in this appeal.
11. Related to this draft strategy, the Council suggests that the SAMM contribution of £300.00 should be secured by a planning condition. Planning Practice Guidance (PPG) states that no payment of money can be positively required when granting planning permission. However, where the 6 tests [for conditions] will be met, it may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken.
12. However, PPG cautions that such conditions are unlikely to be appropriate in the majority of cases. It goes on to clarify that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed.
13. Moreover, while national guidance does not preclude negatively worded conditions, they should be used in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). In such cases the 6 tests should also be met.
14. This proposal is for minor development. Furthermore, given the circumstances outlined above I have not been presented with any certainty that if payments were made these would be

used for the purpose intended. Indeed, as there appears no adopted strategy, policy or guidance identifying evidence based mitigation, there remains uncertainty about the details of the necessary mitigation and/or whether contributions in respect of any mitigation would be used to address the harm to the habitats arising from the development. I am not satisfied that the condition proposed would meet the tests set out in national guidance.

15. The Council also suggests a pre-commencement condition requiring full details of the mitigation of impact on New Forest habitats to be approved in writing by Council. However, in such a scenario the mitigation measures are still unclear. Without this detail, I am unable to conclude that this proposal would not have a significant adverse impact on the habitats in question. Again, this would fail the tests for conditions.
16. It is stated that financial contributions could be collected through a legal agreement in accordance with the mitigation strategies of the New Forest National Park and New Forest District Council. Regarding this I am directed to the New Forest District Council local plan policy and the website that contains guidance on habitat impacts. However, Bournemouth, Christchurch and Poole Council has stated that it does not currently have an arrangement with this neighbouring authority to collect contributions for that particular mitigation strategy.
17. In any event, while the New Forest District Council's mitigation strategy covers areas outside the National Park, that strategy is informed by a Habitat Regulation Assessment underpinning the New Forest District development plan and the planned growth in that administrative area. This is also the case with regards the New Forest National Park's adopted strategy.
18. The mitigation identified in those documents is therefore specific to those other districts and development within them. Applying that mitigation to development outside those administrative boundaries, may not be relevant, reasonable or directly related to the development proposed. Indeed, the financial contributions stated in the strategies adopted by neighbouring authorities exceeds that indicated in the Council's draft strategy. A legal agreement with the requirement based on these other authorities' strategies would not satisfy the relevant national tests and regulations governing this matter.
19. Without clarity as to the appropriate mitigation and how this would be secured, I cannot be certain that this proposal would be acceptable in terms of this planning matter. In light of these circumstances, I therefore find that the proposal would have a significant adverse effect on the integrity of the New Forest protected habitats.

Dorset Protected Habitats

20. The appeal property is also in the ZOI for the Dorset Heathlands SPA and Heaths SAC. NE 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.
21. Similar to the New Forest habitats, likely significant adverse impacts cannot be ruled out for a proposed net gain of one dwelling in this area and an appropriate assessment is necessary.
22. 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, some of which are ground nesting. The conservation objectives for the 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.

23. Evidence shows that the Heaths are under significant pressure from urban development, principally from human pressures and damage caused by domestic pets. 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.
24. As such, 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. Future occupants of the new dwelling in this ZOI, 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.
25. Policy CS33 of the Core Strategy requires, in the zone of 5 kilometres of a heathland, that residential development will be required to take all necessary steps on site to avoid or mitigate any adverse effects upon the heathland site's integrity, or, where this cannot be achieved within the development, make provision for mitigation measures designed to avoid such adverse effects taking place.
26. The Air Quality Strategy is part of an agreed strategic approach by the Council and NE 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.
27. Council SPDs and strategies identify mitigation measures that have been agreed in consultation with NE. Local Policy also clarifies that mitigation will be secured through Community Infrastructure Levy (CIL) or S106 Legal agreements.
28. 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.
29. The mitigation strategy for the Heathland relevant in this case, 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.
30. Regarding this proposal, the officer's report shows a higher figure of £510, in respect of the SAMMs contributions than that outlined above. However, the SPD clarifies that charges will be adjusted annually to reflect inflation, to ensure that the appropriate level of SAMM can be delivered over the plan period.
31. The appellant has submitted a planning obligation in the form of a Unilateral Undertaking (UU). This deed obligates those with an interest in land (and their successors) to pay the Dorset Heathlands Mitigation (SAMM) sum of £510 plus administrative fees, prior to the commencement of development.
32. In this respect, the contributions directly relate to the development and fairly and reasonably relate in kind to the proposal in this case. Furthermore, for the reasons outlined previously this obligation is necessary to make the development acceptable regarding this planning

matter. Accordingly, this UU satisfies Regulations and national guidance relevant to planning obligations.

33. The UU is made by the executors of the property owner who is now deceased. The signed and dated UU is a legal deed made under the Town and Country Planning Act and has specific reference to the appeal site and the application reference. Evidence of title to the land in question, including Grant of Probate and the Will, has been submitted and the UU binds those with title and their successors to the above obligations. This agreement is therefore complete and legally sound. Consequently, I am satisfied that the measures necessary to mitigate and avoid significant adverse effects on the integrity of protected habitats resulting from this new dwelling are secured in this case.
34. With this mitigation in place, I find that the proposal would not have a significant adverse effect on the integrity of the Dorset Heaths protected habitats. In this regard the proposal would accord with Policies CS32, CS33 and CS34 of the Bournemouth Local Plan: Core Strategy (Core Strategy).

Character and Appearance

35. The appeal property is a modest bungalow in a good sized plot. It is first in a cul-de-sac of bungalows that have a distinct mid twentieth century suburban style. Although some of the dwellings have been extended and altered, the style and layout of built form provides a pleasing and coherent character.
36. Markham Close curves to the rear Markham Avenue and the appeal property. The Close comprises a mix of properties that include dormer bungalows and a block of terraced dwellings. Also, the immediate neighbour to the appeal plot has been infilled with a bungalow. With a mix of styles, infill development, varied plot sizes and the curvature of the road, the pattern of development on this neighbouring street lacks the sense of rhythm and consistency that positively characterises Markham Avenue.
37. The proposal would result in the rear garden of No 17 being subdivided to form a separate dwelling. The new dwelling would be a small bungalow addressing Markham Close. As such the rear garden of No 17 would be reduced. However, the retained outside space at this host property would not be considerably smaller than that which exists at the neighbouring dwellings at 19 and 19a on that road. Moreover, this host dwelling has a good amount of outside space to the front and there is additional space at the shared side boundaries. With the changes to the plot largely confined to the rear, the development would not harmfully disrupt the rhythm of built form or sense of space when viewed from Markham Avenue.
38. The proposed hipped roof, bungalow style would be in keeping with the immediate neighbouring property, at No 38, and would appear well designed in this regard. The newly formed plot would be small, but it would not be considerably smaller than that neighbouring plot.
39. Although the space would be limited in the new plot, the property would nonetheless have some outside space proportionate to the small dwelling proposed on this site. The resulting proportions of built form and space would not be at odds with the varied character in this immediate part of the street scene. Moreover, with some space retained at the rear of No 17 and around the new dwelling, the development would not appear incongruously cramped in this secondary road setting.
40. There is concern about the proposed building line of the new dwelling. However, given the existing ad hoc nature of development on Markham Close, there appears to be no common

building line. That said, this proposal would result in a staggered building line with No 38, and consistent with the advice in the Council's Residential Development Design Guide, in this regard it would respect the local context. Also, this arrangement would reflect the staggered duo of bungalows that exist on the opposite side of the road.

41. In light of the above, I find that the proposal would not have a harmful effect on the character and appearance of the area. In this regard the proposal would accord with Policies CS21 and CS41 of the Core Strategy. These Policies collectively seek to ensure that all development and spaces are well designed and of a high quality.

Living Conditions - Neighbours

42. The new dwelling would be positioned 1.5m from the shared boundary with No 17. However, as already stated, some rear garden would be retained at the host property such that there would be over 8m of space separating the existing and new dwellings. The proposed bike shed would be set at this shared boundary. Although this would protrude above the boundary fence, this would only affect less than half of the shared boundary. In any event, the submitted plans show that this flat roofed structure, at 2.3m, would not be considerably higher than boundary fences common in this area.
43. The Council is concerned that limited information has been provided about boundary treatments. However, this is a matter which can be addressed by condition.
44. The outlook from the rear of No 17 would change with the built form brought closer to that existing dwelling. However, with a reasonable amount of separation between the new and the existing, and given the diminutive scale of the proposed dwelling, the addition would not appear harmfully oppressive when occupants of No 17 are using rear habitable rooms or in their rear garden.
45. As already outlined the rear garden of No 17 would be reduced in size. While the space to the rear of this dwelling would be small, No 17 is a modest sized dwelling. Moreover, the retained area would be a regular shape, with a south eastly aspect, such that it could function well as a small relatively private outside space for occupants of this dwelling. Furthermore, while it may not be private, there is considerable outside space to the front of No 17 which contributes significantly to the sense of space and pleasant outlook for this dwelling's occupants, and this would be unaffected by the development.
46. The proposed dwelling would result in new built form closer to No 38. However, this would be at the side boundary of that existing dwelling and there would be separation, in excess of 5m, between the new dwelling and the side of No 38. Moreover, openings are limited on the effected side elevation of No 38 to a small obscured glazed window, such that the development would not harmfully alter the existing outlook and quality of living conditions currently enjoyed by the occupants of that dwelling.
47. Accordingly, I find that the proposal would not have a harmful effect on the living conditions of occupants of 17 Markham Avenue and 38 Markham Close regarding outlook. In this respect the proposal would accord with Policy CS41 of the Core Strategy with regards the amenity.

Living Conditions – Future Occupants

48. The private garden of the new dwelling would be largely confined to the side of the property, and this space would be small. However, this would be proportionate to the small one bedroom dwelling proposed in this case. Moreover, this outside space would be accessed directly from the French doors of the proposed dining room, and convenient and pleasant for future occupants in this regard.

49. Also, even though the shared rear boundary line with No 17 would need to wrap around the existing garage at that property, the side garden for new dwelling would be a reasonably regular shape that could accommodate a seating area, with additional space to hang washing. Moreover, with a southeast orientation, the space would have a good aspect such that it would be a pleasant garden for future occupants to sit and use.
50. This side garden would need to be enclosed by a boundary treatment to ensure a reasonable sense of privacy for future occupants. However, as already stated, this is a matter which could be addressed by condition.
51. Concern has been raised about the garage at No 17 appearing an overbearing feature. However, this is a modest single storey structure such that it would not appear a harmfully oppressive feature for future occupants of this new dwelling.
52. Therefore, I find that the proposed dwelling would provide suitable living conditions for future occupants, having regard to outside space. In this respect the proposal would accord with Policy CS41 of the Core Strategy. This Policy, amongst other matters, states development which by virtue of its design would be detrimental to amenity of the Borough will not be permitted.

Other Matters

53. The housing land supply(HLS) in this district is less than half that required, amounting to a shortfall of 4,862 dwellings. With this critically low HLS, one dwelling would make a significant contribution to the mix and supply of homes in the area. Also, the home would be in a built up area reasonably well served by public transport, consistent with the aims of Core Strategy Policy CS21. These matters attract considerable weight.
54. The dwelling could be made energy efficient through condition. There would be economic benefits during the construction phase and future occupants would likely support local services. These social, environmental and economic benefits would be small given the scale of the development, but nonetheless they weigh in favour of the proposal.
55. The provisions set out in paragraph 11 of the National Planning Policy Framework (the Framework) are relevant as the Council is unable to demonstrate a five year HLS. Also, the most recently published Housing Delivery Test indicates the delivery of housing was substantially below the housing requirement over the previous three years. However, I have found that the applications of policies in the Framework that protect areas of particular importance, in this case the New Forest habitat sites, provides a strong reason for refusing the development proposed. The benefits identified would not outweigh this matter and the presumption in favour of sustainable development is therefore not applicable.
56. Reference is made to Policy 6.6 of the Bournemouth District Wide Local Plan. However, this relates to affordable housing and is therefore not relevant in this case.

Conclusion

57. Having regard to the development plan, the Framework and other material considerations, the appeal is dismissed.

A J Sutton

INSPECTOR