
Appeal Decision

Site visit made on 12 October 2020

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2020

Appeal Ref: APP/D1265/W/20/3255404

Land adjacent to The Bothy, 63 Avon Castle Drive, Ashley Heath, Dorset BH24 2BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Taylor Grey Homes Ltd against the decision of Dorset Council.
 - The application Ref 3/19/1900/OUT, dated 10 September 2019, was refused by notice dated 5 June 2020.
 - The development proposed is the erection of a single dwelling house.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal seeks outline permission with all matters reserved except for access and layout. In so far as the submitted plans and drawings show details of matters other than the access and layout, I have treated those as being purely illustrative.

Main Issues

3. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - The effect of the proposal on the character and appearance of the area, including protected trees at the site.
 - The effect of the development on international and national ecology designations/sites.

Reasons

Green Belt

4. The Framework sets out the categories of development which may be regarded as not inappropriate in the Green Belt. The construction of new buildings within the Green Belt is inappropriate development, unless the development falls within one of a number of stated exceptions, which includes limited infilling in villages. The term limited infilling is not defined in the Framework.

5. To qualify for this exception the proposal must be both 'limited infilling' and in a 'village'. Firstly, the site is one where it is on the southern edge of this settlement known as Avon Castle. There are other dwellings to the north, south and west. The host dwelling, 'The Bothy' is to the east or south-east. Whilst the site may be outside of the defined urban area and settlement boundary this is not a determinative factor in this case for establishing whether the plot is within a village for Green Belt purposes. To my mind, when viewed on the ground and also on plan view, the site is within a village.
6. With regards to being limited, this is a single dwelling proposed which is not indicated to be of a particularly large scale, and so I conclude that this is a limited form of development. However, the question which is at the heart of this dispute is whether this is an infill plot. It should also be noted that the characteristics of the area which would receive development are a material factor in considering whether the proposal would constitute infilling. The wider context of the development form and pattern of adjoining development should inform the assessment of whether the proposal would be limited infilling. The space within which the development would take place is also an important factor.
7. This is an area characterised by large dwellings set within spacious and verdant plots. This character is evident within Chapel Rise, although this street has a varied layout with differing plot sizes. It does not have a regular or uniform row of dwellings fronting the highway. As such, building on this plot as proposed would not be a typical form of infill development. Nonetheless, it is essentially the filling of a plot which would have direct access off Chapel Rise, set between the plots of other dwellings. It would fill a space in much the same way as the other dwellings have done along this street. As such, in the context of this street and taking into account its prevailing character, I would consider this a form of infill development.
8. As such, I would regard the proposal as a form of limited infill in a village. The proposed development would therefore meet with the exception set out in paragraph 145(e) of the Framework and would not amount to inappropriate development in the Green Belt.

Character and Appearance

9. The site is located to the southern end of this residential area, on what is part of the extensive curtilage of the Bothy. This is a verdant area characterised by detached dwellings of various design approaches, set within extensive landscaped curtilages. As set out by the Council, the site lies outside the defined urban area, though within an Area of Great Landscape Value (AGLV). The site lies just outside the Avon Castle Special Character Area (SCA)
10. The proposal is in outline, but layout is not reserved. The submitted plans illustrate a single detached dwelling of modern design in a crescent shape with also a garage and smaller detached ancillary sun house. The dwelling would be to the higher ground level part of the site near the access. The dwelling would likely be visible from both the access and from longer range views from the west past the River Avon.
11. Whilst visible, the proposed dwelling is indicated to be a low profile building, utilising a grass covered pitch roof. Although appearance is a reserved matter,

the indicative detail does demonstrate an approach to developing a dwelling at this site which would have minimal visual impact.

12. In any case, from the west the dwelling would be seen to the rear of The Bothy and set within the context of other dwellings. It would not appear incongruous also when viewed from the access or if seen over the boundary wall, as it would be a detached dwelling within what is a residential area. Furthermore, the dwelling as shown on the layout drawings would appear suitably spacious within its plot, even though there would be some inevitable loss of spaciousness, thereby being in keeping with the character of the area.
13. The proposal would result in some blocking of existing views from the access across the site to the countryside beyond, although I do not consider these as being particularly important views. Nonetheless, the proposals include a gap in the indicative feature wall allowing some views through the site, albeit limited.
14. The proposed dwelling would be set near some of the trees (particularly oak and beech) within the site (some of which are protected under a Tree Preservation Order SL/286), but the appellant states that all trees are to remain. Subject to a tree protection condition or similar, whilst there would likely be some significant works to levels I see no reason why trees would have to be felled to accommodate the proposed development. Furthermore, details of landscaping is a reserved matter, but further landscaping is indicated which could enhance the site also. In appropriately safeguarding these trees there should be no impact to any ecology or habitat that these trees may contribute towards.
15. Overall, the proposal would not be harmful to the character and appearance of this area or result in adverse visual clutter within the landscape. The proposal would be, based on the outline details, sympathetic to the AGLV and the adjacent SCA, which would not be harmed by the proposal. It should also be fully achievable that important trees be safeguarded appropriately. The proposal is therefore in accordance with policies HE2, HE3 and ME1 of the Christchurch and East Dorset Core Strategy, which require development to be of a high quality design and to protect and enhance the landscape, and to safeguarding biodiversity, amongst other things. Furthermore, I would regard the layout and design of the proposal, based on the evidence before me at this outline stage, to be in general accordance with the design aims of the Framework.

Internationally Designated Ecology Sites – River Avon

16. As described by the third reason for refusal of the planning application, there is an issue where phosphates are adversely affecting the River Avon Special Area of Conservation (SAC) Avon Valley SPA, Avon Valley Ramsar and Avon Valley (Bickton to Christchurch) SSSI, as set out by Natural England (NE). The site is within the catchment of the River Avon, with the wastewater connecting with this river via the Ringwood Waste Water Treatment Works (if connected to the mains sewer system, which is understood to be available). NE has concerns with additional development which will give rise to increased levels of phosphate entering the River Avon catchment system.
17. The SAC is designated for its important and diverse species of wildlife that depend on the good water quality that is typical of chalk rivers such as the Avon. This SAC is particularly vulnerable to the effects of pollutants including

phosphate and nitrogen which may enter the river at sewage treatment works. In this case, the development of even a single dwelling could, through sewage discharge, have the effect of deterioration of the quality of River Avon waters. The increase in dwellings could result in more pollutants into this river which would adversely affect its quality which is important to wildlife species.

18. An appropriate assessment must be undertaken to ensure there is no reasonable scientific doubt as to the effects of the proposal, in combination with other developments. Natural England advise that all new residential developments, including those of a smaller scale, within the catchment should achieve 'nutrient/phosphate neutrality'. If they do not, then additional phosphate loads could enter the water environment causing significant adverse effects on the River Avon SAC.
19. Whilst a relatively minor development in scale, without mitigation there could be significant adverse effects on the integrity of the River Avon habitat which could arise in combination with other plans or projects. As the proposal would be a net increase of one dwelling on this site there could be an increase in phosphate.
20. The appellant is suggesting the use of a 'Grampian' condition requiring a mitigation package addressing the additional nutrient output arising from the development. However, there is no certainty at this stage over the course of mitigation that would be taken. NE have made it clear that Dorset Council have not signed into the 'Interim Avoidance and Mitigation Package' and there is no substantive evidence of mitigation that could adequately address this issue if there is a mains connection for foul drainage.
21. The appellant has suggested the possibility of a bespoke package treatments works which could prevent nutrients connecting with the River Avon, but there is no detailed plan of this. Furthermore, as a mains connection is available NE point out that this may result in an objection from the Environment Agency as they would likely require a main sewer connection where possible. As such, I have significant doubts that this would be a likely course of action that could overcome this issue.
22. Without detail of a mitigation package at this stage or any other evidence that could persuade me that the development would not affect the River Avon, then there is a considerable amount of uncertainty remaining. Therefore, whilst a Grampian condition could potentially prevent development occurring until suitable mitigation was confirmed, an appropriate assessment must consider detailed mitigation proposals at this decision stage which is not before me.
23. Whilst this is a small scale development proposed, there are currently no firm detailed proposals for mitigation before me and as such, I cannot conclude with any clear certainty that, following the conclusions of this appropriate assessment, the adverse effects on the integrity of this SAC and other designations would not arise from the development, in combination with other developments within the River Avon catchment area. As this substantial uncertainty remains, it would not be reasonable or adequate to use a 'Grampian' style condition to try to address this issue as it would not provide sufficient assurance for me, as the competent authority, that the proposal would not adversely affect the integrity of this valuable habitat arising from the development.

24. For this reason, the proposal would therefore conflict with policy ME1 of the Christchurch and East Dorset Core Strategy, which requires that development protect, maintain and enhance internationally designated sites such as the SAC, amongst other things.

Internationally Designated Ecology Sites – Dorset Heathland

25. The application site also lies within 5km but beyond 400m of Dorset Heathland which is designated as a Site of Special Scientific Interest and as a European wildlife site. There could be an adverse impact to this important ecological area through increased housing in the area and recreational pressures, in combination with other plans and projects. These have resulted in an implementation plan to mitigate the impact of new housing development upon the Dorset Heathlands.
26. It is permissible for me, at this stage, to have regard to any proposed avoidance or mitigation measures. A legal agreement provides for the appropriate contribution to be made in accordance with the Mitigation Strategy. With this in place, I conclude that the effects of this proposal on the protected areas would be sufficiently mitigated so that no harm to their integrity would result. The Council has accepted and signed the legal agreement under Section 106 of the Town and Country Planning Act 1990 as it would ensure that the financial contributions would be paid before the commencement of development.
27. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with the CIL Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.
28. As competent authority for the purposes of the Habitats Regulations, I am satisfied that the proposal would not have an adverse effect on the integrity of the Dorset Heathlands. Consequently, the proposed development would not adversely affect the Dorset Heathland and would not conflict with the Framework or policy ME2 of the Christchurch and East Dorset Core Strategy in this regard. However, whilst I have concluded that the potential adverse effect to the Dorset Heathland has been satisfactorily addressed, I have not reached this conclusion with regards the River Avon.

Planning Balance

29. The appellant state that the Council cannot demonstrate a sufficient housing land supply. If this is the case then paragraph 11 of the Framework states that plans and decisions should apply a presumption in favour of sustainable development. In respect of paragraph 11 d) of the Framework with regard to decision-making, this means that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (including applications involving housing where the Council cannot demonstrate a five year housing land supply), permission should be granted.
30. However, paragraph 177 of the Framework states:
- "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 appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.”

31. Furthermore, paragraph 11 d) of the Framework states that planning permission should be granted, unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. As detailed within footnote 6, these areas and assets of particular importance including irreplaceable habitat sites.
32. Therefore, even if there is a lack of sufficient housing land supply in the area, as the proposal would have a harmful impact to a habitat site, the Framework in paragraphs 11 and 177 makes clear that the ‘tilted balance’ in favour of the development does not apply.
33. Nonetheless, the proposal would result in the provision of a dwelling towards the local housing supply. There would be economic benefits from the construction of the dwellings and from spending by future occupants in local businesses. This development could be considered an efficient use of the site. These benefits, amongst other potential benefits as raised by the appellant, would be limited as only a single dwelling is proposed. Therefore, such cumulative benefits would be significantly and demonstrably outweighed by the harm to the River Avon as a SAC, wildlife habitat and valuable ecological site.

Conclusion

34. For the reasons given above, having regard to all matters raised, the appeal should be dismissed due to the potential adverse impacts to the international/national nature conservation site of the River Avon.

Steven Rennie

INSPECTOR