



# Appeal Decision

Site visit made on 2 May 2023

**by Juliet Rogers BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 August 2023**

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**Appeal Ref: APP/D1265/W/22/3312576**

**Land West of The Causeway, Hazelbury Bryan DT10 2BH**

- 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 Mr and Mrs Louie Smith against the decision of Dorset Council.
  - The application Ref 2/2018/0958/OUT, dated 10 July 2018, was refused by notice dated 7 June 2022.
  - The development proposed is residential development.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Following the submission of the planning application, North Dorset District Council ceased to exist<sup>1</sup> and was amalgamated with East Dorset District Council and Purbeck District to become Dorset Council. The application was subsequently determined by Dorset Council.
3. The appeal scheme is for outline planning permission with detailed approval sought for access. Matters relating to layout, scale, appearance and landscaping are reserved for future approval. I have treated any details submitted with the application relating to matters reserved for future approval, including on the application plans, as indicative.
4. The appellant has submitted additional information as part of the appeal, including amended plans, ecological, arboricultural and highway reports. As advised by the Procedural Guide to Appeals – England, the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what the Council determined the application upon, and on which interested people's views were sought. Notwithstanding the indicative nature of the amended plans, a different access arrangement is shown which, given that access is not a reserved matter, would materially alter the nature of the proposed development. Furthermore, I cannot be certain that the views of interested parties would not be prejudiced if I were to consider the amended plans, ecological, arboricultural and highway reports as part of my determination of the appeal. As a result, my decision is based on the plans and supporting reports upon which the Council determined the application and I have not taken these additional documents into account.

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<sup>1</sup> At midnight on 31 March 2019

## **Main Issues**

5. The main issues are:

- whether the appeal site would be suitable for open market housing, having regard to local and national planning policies on the location of housing;
- the effect of the proposed development on the character and appearance of the area, with particular reference to hedgerows and trees;
- the effect of the proposed development on the availability of the best and most versatile agricultural land;
- the effect of the proposed development on biodiversity; and
- whether the proposed development would make adequate provision for community benefits, including affordable housing.

## **Reasons**

### *Location*

6. As the appeal site is located outside the settlement boundary of Hazelbury Bryan, in accordance with the spatial strategy set out in Policy 2 of North Dorset Local Plan 2011-2031 (the Local Plan), for the purposes of the development plan, it is referred to as countryside. Whilst Policy 20 of the Local Plan specifies the type of development considered to be appropriate in the countryside, none of these apply to the appeal scheme. Furthermore, it has not been demonstrated that there is an overriding need for the proposed development to be located in the countryside.
7. Although Policy 6 of the Local Plan sets out the cumulative number of new homes to contribute towards meeting identified local and essential rural needs in the countryside, no housing numbers are provided for Hazelbury Bryan. However, Policy HB15 of the Hazelbury Bryan Neighbourhood Plan 2018-2031 (the HBNP) allocates several sites in the Hazelbury Bryan area for housing to meet the projected local needs of the community. Whilst these sites are at various stages in the planning process, as the appeal site is not allocated for housing in Policy HB15, open-market housing development in this location is resisted.
8. Furthermore, as identified by Policy HB13 of the HBNP, the appeal site is located within a defined gap, designated to ensure the distinct hamlets of Partway and Woodrow are respected, and that development does not lead to their coalescence. Whilst the defined gap comprises an area larger than the appeal site nevertheless, the proposed development would result in a significant reduction in its size and, therefore, the distinction between the two settlements would be unacceptably diminished.
9. Within the local area, a good range of services and facilities is present including, amongst other things, a primary school, places of worship, a sports club, public houses, village shop and served by several bus services. Notwithstanding the proximity of the appeal site to these services and facilities or the distance it lies outside the settlement boundary regardless, the site is located where open market housing is resisted.

10. I conclude that the appeal site would not be suitable for open market housing, having regard to local and national planning policies on the location of housing, contrary to policies 2, 6 and 20 of the Local Plan and policies HB13 and HB15 of the HBNP in this regard. I also find conflict with the overarching principles set out in the National Planning Policy Framework (the Framework) which seeks to focus development in locations which reflect local circumstances and needs in rural areas.

#### *Character and appearance*

11. The appeal site is located within the landscape type described by the Council as 'clay vale' which is characterised by flat to undulating landforms with a patchwork of small to medium-sized fields bounded by dense trimmed hedgerows and mature hedgerow oaks. Such characteristics are evident in and surrounding the appeal site, which comprises a flat, rectangular section of a larger grazed field. Along the full length of the frontage with the road known as The Causeway, the boundary is defined by a substantial, dense mature hedgerow.

12. In long views along The Causeway, the hedgerow dominates this side of the road, providing an almost continuous verdant feature from the lane immediately adjacent to the site, extending to where the road becomes The Common, aside from a small number of gateways and access points. Similarly, on the other side of The Causeway, mature hedgerows bound the road from The Red Barn village shop up to The Common. Whilst two dwellings are located opposite the site, these are set back from the road and largely screened by hedgerows. As a result, the character of The Causeway immediately surrounding the site is dominated by the verdant landscape features located on both sides of the road.

13. The proposed development comprises five access points off The Causeway which would necessitate the removal of parts of the mature hedgerow. Whilst some of the hedgerow would be retained, its dominance in the landscape would be diminished given the number of breaks and short sections of hedgerow which would remain. Therefore, any screening of the proposed development provided by the retained hedge would be limited and the undeveloped countryside gap between the two settlements of Partway and Woodrow would be reduced. This would result in a significant change to the character and appearance of The Causeway. As landscaping is a matter reserved for a later date, I have considered any new hedgerow planting as indicative only. Regardless, even if additional screening from new planting would further limit views of the proposed dwellings, this is not a reason in itself to permit otherwise unacceptable development.

14. My attention has been drawn to the existing mature trees located alongside the access lane to the sewage works adjacent to the site which are protected by a Tree Preservation Order (TPO)<sup>2</sup>. No arboricultural impact assessment or tree protection plan was submitted with the application. However, given the appeal scheme is for outline planning permission with all matters except access reserved for future approval, I have considered the plans submitted with the application as illustrative only. Even though the plans show a dwelling sited close to the trees, none of the trees protected by the TPO are located close to the proposed access locations or within the required visibility splays. As such,

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<sup>2</sup> TPO 24//6/98

there is nothing substantive before me to suggest that the delivery of residential development on the site would lead to the loss of or harm to these trees.

15. Nevertheless, I conclude that the proposed development would cause unacceptable harm to the character and appearance of the area, with particular regard to hedgerows, contrary to policies 4 and 24 of the Local Plan. In combination, these policies seek to protect landscape character through the retention of the features that characterise the area and require proposals to demonstrate that important features, such as existing mature trees and hedgerows are incorporated. It would also conflict with policies HB1, HB5 and HB13 of the HBNP which restrict development within defined gaps where it would undermine the rural, undeveloped nature of the countryside or diminish the distinction between settlements and require the existing landscape character to be respected.
16. I also find conflict with paragraph 8 of the Framework which seeks to protect the natural environment and paragraph 130 which requires decisions to be made that ensure development is sympathetic to its landscape setting. Finally, it would conflict with paragraph 174 where contributions to and enhancements of the natural and local environment by recognising the intrinsic character and beauty of the countryside as well as protecting valued landscapes are sought.
17. Although the Council refer to Policy 20 of the Local Plan, as this relates to the principle of development in the countryside, it is not determinative in this main issue.

#### *Agricultural land*

18. Whilst there is no dispute between the main parties that the site is classed as Grade 3 agricultural land and the appellant contends it comprises Grade 3B land, I have no substantive evidence before me demonstrating that this is the case. As such, I am unable to conclude with certainty that the proposed development would not lead to an unacceptable loss of an area of the best and most versatile agricultural land (Grade 3A), nor that it is not viable to be farmed.
19. Therefore, the proposed development would cause unacceptable harm to the availability of the best and most versatile agricultural land, contrary to Policy 4 of the Local Plan which seeks to safeguard such land from permanent loss. It would also conflict with paragraph 174 of the Framework which requires that development contributes to and enhances the natural and local environment by recognising the benefits of the best and most versatile agricultural land.

#### *Biodiversity*

20. Where development involves the loss of a hedgerow (in whole or part) or works involving the development of a greenfield site, Policy HB2 of the HBNP requires development to protect, and wherever practicable, enhance biodiversity. To demonstrate the impact of a development proposal on the biodiversity of a site, a certified Biodiversity Mitigation and Enhancement Plan (BMEP) is required as part of a planning application. However, the Ecological Appraisal Report<sup>3</sup> (EcAR) submitted with the application, did not include a certified BMEP.

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<sup>3</sup> Prepared by Wychwood Environmental Ltd, dated June 2018

21. Whilst the EcAR sets out the implications of the habitat survey results on the proposed development, these are recommendations that could be included as part of the appeal scheme and not firm commitments to the protection or enhancement of biodiversity. Therefore, in the absence of a certified BMEP, I am unable to conclude that the proposed development would protect, or wherever practicable, enhance biodiversity.
22. Consequently, I conclude that the proposed development would unacceptably harm the biodiversity of the site, contrary to Policy 4 of the Local Plan which requires buffers to be provided to environmental assets to improve their biodiversity value. It would also conflict with Policy HB2 of the HBNP in this regard and paragraph 174 of the Framework which requires development to minimise impacts on biodiversity.

*Community benefits including affordable housing*

23. The Council has advised that contributions towards the provision of grey, social and green infrastructure are required, in accordance with policies 13, 14 and 15 of the Local Plan and affordable housing will be required when eleven or more dwellings are proposed, triggering Policy 8. However, notwithstanding the number of dwellings shown on the indicative plans, given the application seeks outline planning permission for residential development, at this stage, the scale of the development, and therefore the number of dwellings proposed, has been reserved for future approval. Although the appellant has confirmed a willingness to provide contributions for community benefits and affordable housing, and that a Unilateral Undertaking will be prepared, I have not been provided with this.
24. Following paragraph 57 of the Framework, planning obligations must only be sought where they meet three tests, namely necessary to make the development acceptable in planning terms, directly related, and fairly and reasonably related in scale and kind to the development. Given the number of dwellings which trigger the provision of affordable housing set out in Policy 8, this benefit would be directly related to the proposed development, and fairly and reasonably related in scale and kind. Overall, the affordable housing obligation would be necessary to make the proposed development acceptable in planning terms.
25. Turning to the level of on-site provision and/or off-site contributions required towards grey, social and green infrastructure, the Council have prepared a guidance note<sup>4</sup> setting out the requirements. However, limited substantive evidence has been provided by the Council justifying these requirements with specific reference to the appeal site and the proposed development. Therefore, it has not been demonstrated that the contributions sought are necessary. Furthermore, the guidance note is not adopted policy and therefore, does not form part of the development plan. As such the lack of contributions towards grey, social and green infrastructure is a neutral matter in the appeal.
26. Notwithstanding the above, given the lack of a mechanism to secure it, I conclude that the proposed development would fail to make adequate provision for affordable housing, contrary to Policy 8 of the Local Plan which seeks contributions to meet local needs by supporting affordable housing. I also find conflict with Policy HB16 of the HBNP which requires developer contributions to

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<sup>4</sup> Grey, Green & Social Infrastructure Note V2 August 2018

support local housing needs. Finally, the proposed development would not meet the planning obligation requirements of paragraph 57 of the Framework.

### **Other Matters**

27. Social benefits would arise from the provision and occupation of new dwellings on the site, regardless of the overall number proposed, and I attach modest weight to this public benefit. Whilst there is a willingness to provide affordable housing, in the absence of an appropriate mechanism to secure such housing to meet rural local needs, no weight can be attached to this benefit.
28. The proposed development would also provide economic benefits through the provision of jobs during the construction of the dwelling, in the short term, and through supporting local services, facilities and businesses in the longer term. From an environmental perspective, enhancements including high standards of energy efficiencies and dwelling design standards are proposed. However, as these are not matters for me to consider as part of the appeal, I attach limited weight to each of these benefits.

### **Planning Balance**

29. The provision of a range of housing for different groups in the community in locations suitable to support services and facilities whilst meeting local needs, including affordable housing, are important aspects of the overarching objectives set out in the Framework. As policies 2, 6 and 20 of the Local Plan and HB13 and HB15 of the HBNP are broadly consistent with the Framework concerning these matters, I give the conflict with these policies significant weight.
30. As recognised by the Framework, the countryside is protected for its intrinsic character and beauty, and development should be sympathetic to the natural landscape. As policies 4 and 24 of the Local Plan and HB1, HB5 and HB13 of the HBNP are broadly consistent with the Framework in this regard, I give the conflict with these policies significant weight.
31. The Framework also sets out the need to protect the most valued landscape. Whilst Policy 4 of the Local Plan sets out circumstances where the permanent loss of such land would be acceptable, going beyond the key aspects set out in paragraph 174 of the Framework, it is, nevertheless, generally consistent with the Framework insofar as it seeks to safeguard the best and most versatile agricultural land. Consequently, the conflict between the proposed development and Policy 4 should also be given significant weight in this appeal.
32. As Policy 4 of the Local Plan and HB2 of the HBNP support the objectives of the Framework to minimise the impacts on biodiversity, the absence of deliverable commitments within the appeal scheme conflicts with the requirements of these policies. The conflict between the proposed development and these policies, therefore, attracts moderate weight.
33. Policy 8 of the Local Plan and Policy HB16 of the HBNP seek the provision of affordable housing, an objective set out in paragraph 63 of the Framework. The lack of a mechanism to deliver affordable housing as part of the proposed development, therefore, results in conflict with these policies, to which I give significant weight.



34. Given the specific requirements of grey, social and green infrastructure are not fully justified, policies 13, 14 and 15 of the Local Plan and HB14 of the HBNP are not entirely consistent with the Framework.
35. Nevertheless, the proposed development conflicts with the development plan as a whole.
36. There is no disagreement between the main parties that the Council is unable to demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 74 of the Framework. The evidence before me indicates that the latest position comprises 4.27 years of deliverable housing sites and the latest Housing Delivery Test<sup>5</sup> results indicate that the delivery of housing has been substantially below the housing requirement over the preceding three years. In these circumstances, Paragraph 11dii of the Framework states that permission should be granted unless policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development or, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. As such, the most important policies for determining the appeal are deemed to be out of date and the presumption in favour of sustainable development is engaged. However, being out of date does not mean that the policies of the Local Plan or the HBNP, even if not recently adopted, carry no weight in decision-making.
37. In circumstances where paragraph 11dii applies but conflict with a neighbourhood plan has been found, paragraph 14 further advises that the adverse impact of allowing development is likely to significantly and demonstrably outweigh the benefits, provided each of four criteria apply. In this case, as the HBNP became part of the development plan more than two years before this decision, the first criterion is not met. As such, the housing supply policies of the HBNP are considered to be out of date.
38. The Framework affirms the Government's objective of boosting the supply of homes and therefore, the provision of additional housing in an area where a shortfall in deliverable housing sites exists would be a public benefit. However, given the lack of certainty regarding the number of dwellings proposed as part of the appeal scheme, I attach moderate weight to this benefit. The lack of a delivery mechanism for affordable housing is a neutral factor in the planning balance. As already identified, I attach limited weight to the economic and environmental benefits which would arise from the proposed development given the limited details of these before me.
39. As described above, the Framework gives significant weight to the importance of protecting valued landscapes, the best and most versatile agricultural land and resisting development which is unsympathetic to local character. The proposed development's conflict with the Framework on these matters, therefore, carries significant weight. Additionally, I attribute moderate weight to the appeal scheme's conflict with the Framework's objectives of minimising the impact of development on biodiversity.
40. Consequently, the identified adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed

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<sup>5</sup> Housing Delivery Test measurement at 2021 for North Dorset was 69% published 22 January 2022

against the policies in the Framework as a whole. As a result, the presumption in favour of sustainable development does not apply.

**Conclusion**

41. The proposed development conflicts with the development plan as a whole and there are no material considerations, either individually or in combination, including the Framework and its presumption in favour of sustainable development, that outweigh this conflict.
42. For the reasons identified above, the appeal is dismissed.

*Juliet Rogers*

INSPECTOR