



Appeal Decision

Hearing held on 20 June 2018

Site visit made on 20 June 2018

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2018

Appeal Ref: APP/B1225/W/17/3189495

Purbeck Centre, Northbrook Road, Swanage, Dorset BH19 1QE

- 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 Alexander Hensher of Welfare Dwellings Residential Care Ltd against the decision of Purbeck District Council.
 - The application Ref 6/2016/0753, dated 9 December 2016, was refused by notice dated 31 May 2017.
 - The development proposed is demolition of the former Swanage Grammar School and ancillary buildings and erection of 39 new dwellings with associated infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with approval sought for access. However, the parties confirmed that access had been deleted by mutual agreement. I have therefore dealt with the appeal on the basis that the application is for outline planning permission with all matters reserved.
3. The Swanage Local Plan (SLP) was adopted in June 2017, after the Council's decision. This document forms part of the statutory development plan.
4. My site inspection was followed by unaccompanied visits to the heathland, as per the map locations agreed between the parties, the Suitable Alternative Natural Greenspace (SANG) at Holme Lane and Upton Country Park.
5. A completed S106 agreement was provided prior to the hearing. The Council confirmed that this had satisfactorily addressed its concerns regarding the delivery of affordable housing. The second reason for refusal was withdrawn.
6. The parties were given the opportunity to comment on the judgment of the Court of Justice of the European Union in the case of People over Wind, Peter Sweetman v Coillte Teoranta. My approach to this appeal has regard to the findings of the court in relation to the interpretation of Article 6(3) of the Habitats Directive.

Main Issue

7. The main issue in this case is whether, on the basis of the available evidence, it can be shown that the proposal would not adversely affect the integrity of the Dorset Heathlands European sites.

Reasons

Background

8. The appeal site lies approximately 2.1 km to the south of an area of heathland that is designated as the Studland and Godlingston Heaths Site of Special Scientific Interest (SSSI). The SSSI is a constituent part of the Dorset Heathlands Special Protection Area (SPA) and Dorset Heaths (Purbeck and Wareham) and Studland Dunes Special Area of Conservation (SAC) on account of the nature, rarity and diversity of the habitat types and species present. The heaths are also a component of the Dorset Heathlands Ramsar site¹.
9. The proposal is not directly connected with or necessary to the management of the SPA or SAC. It is therefore necessary to consider whether the development is likely to have a significant effect on the internationally important interest features on the site, either alone or in combination with other plans or projects. If the answer to this question is yes, then appropriate assessment will be required under the Conservation of Habitats and Species Regulations 2017.
10. There is a considerable body of research which indicates that residential and other urban development within the vicinity of the heathlands has an adverse effect on the special interest features of the European sites. There is no credible evidence to demonstrate that the proposed development would not give rise to these impacts, either on its own or in combination with other housing schemes. Given the relatively short distance between the appeal site and the heathlands, which equates to less than 5 minutes by car, there is a high probability that occupiers of the proposed development would visit the heathland.
11. The Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document (SPD) sets out a strategy for mitigating the harmful effects of new housing development on the European sites, where development is proposed in the zone between 400 metres and 5 km of the boundary. The SPD sets out a range of Heathland Infrastructure Projects that will provide facilities to attract people away from protected heathland sites. Of these projects, SANGs are most significant.

Detailed assessment

12. The appeal site comprises the main buildings of the old Swanage Grammar School. The former playing field has been partially developed with a new primary school but the remainder was granted outline planning permission for a scheme of 52 dwellings in June 2014. Permission in that case was reliant upon an executed Undertaking which secured the provision of a SANG on the west side of Northbrook Road. The change of use of this land to public open space had been approved some two years prior.
13. Natural England did not object to the SANG provision under that application but advises that it would not be deemed acceptable had it been proposed now, given the changes in guidance and thinking since 2012. The debate over whether or not the SANG is deficient by current standards is academic; the 52 unit permission remains extant and is capable of being implemented now that the reserved matters have been approved.

¹ Under the Convention on Wetlands of International Importance (the Ramsar Convention)

14. SLP Policy SS allocates the Old Grammar School site for approximately 90 dwellings. Further settlement extensions are proposed on land at Northbrook Road West and Prospect Farm. The policy requires each settlement extension to deliver appropriate new public open space (SANG) or other appropriate mitigation to avoid negative impacts on nearby heathland at Studland and Godlingston. Guidelines for the establishment of SANG are set out within Appendix 5 of the Purbeck Local Plan 1 (2012) (PLP1) although more up-to-date advice is set out within the SPD.
15. The proposal is to provide an enhanced recreational facility using the SANG land for the approved 52 unit scheme. This would include an all-weather path, perimeter fencing with gates and activity trail elements suitable for dog exercise and agility training. There would also be benches and bins, together with a notice board and a small car park off Northbrook Road with two spaces.
16. The improvements are not being promoted as a SANG *per se*, but as 'other appropriate mitigation' under Policy SS. To an extent, the terminology used is irrelevant. The new facility would tick some of the boxes for SANG in terms of providing facilities for dog walkers and links with the existing public rights of way network for extended circular walks. However, at only 1 ha in area, the site falls well short of Natural England's recommended size standard. It would lack the wild and natural feel which is sought under the SANG guidance, due to the limited size and the density of infrastructure for dog walkers.
17. It is put to me that the facility would deliver appropriate mitigation regardless of whether or not it qualifies as a SANG, by providing an area within walking distance of the development where dog owners can let their animals off the lead safely. Given the high proportion of heathland visitors who bring dogs and the adverse impacts that arise from disturbance to ground nesting birds and enrichment from dog faeces, this is contended to be a significant benefit.
18. For the appellant's argument to hold, the facility would need to be large enough to meet the needs of the proposed development, in addition to the 52 unit scheme which was permitted on the basis of the SANG being provided. National data indicates that around one in four households have a dog; consequently, the enhanced SANG land would need to serve upwards of 22 dogs.
19. Dog walking takes place throughout the day, but is concentrated at peak times before and after work when multiple owners are likely to be exercising their animals simultaneously. I cannot be confident, on the evidence presented, that there would be capacity within the site for the number of users anticipated. To my mind, the dimensions of the site are not conducive to providing the space for more than a small handful of dogs to spread out for exercise off the lead. In my opinion, there is a high probability of some owners – particularly those whose dogs are nervous of, or aggressive towards, people or animals – being deterred from utilising the area.
20. Even if I am wrong on this point, the proposal would not adequately mitigate for the other harmful impacts which can arise from increased human activity on the heathland. SANGs are intended to divert visitors away from the sensitive ecology of the protected areas but in order to do this they must meet a range of recreational needs. The appeal scheme is so heavily biased towards catering for dog walkers that it would have nothing to offer other types of user. Indeed, the density of dog-related features being proposed within a small area would detract from the purpose of the SANG for other users.

21. The SLP identifies a much larger parcel of land to the west of the appellant's SANG land. This area is being promoted as public open space in connection with the proposed Northbrook Road West settlement extension. The Council indicated that delivery of this SANG would enable the Old Grammar School site to be developed. Despite its inclusion in the local plan and the existence of a live planning application, there can be no certainty over its provision. I cannot be confident that mitigation is secure and therefore it would not be reasonable to impose a condition restricting development until the larger SANG is provided.
22. It is contended that the current use of the site as C2 residential field studies and holiday letting units has an impact on the heathland. The Council disputes the appellant's description of the lawful use, advising at the hearing that there is a Lawful Development Certificate for D2 use. Whatever the actual position, the building is presently vacant and there is insufficient information on which to quantify the impacts of any re-use. Therefore I have attached the fallback argument limited weight.
23. Pulling the threads together, it is clear that the proposal is likely to have a significant effect on the interest features on the European sites, without mitigation being in place. Appropriate assessment is required. Notwithstanding the bespoke enhancements being proposed to the SANG land, it is probable that at least some of the residents of the proposed development would make trips to the heathland for recreational and other purposes. Despite attempts to persuade me to the contrary, I am not convinced that the adverse impact would be offset by a reduction in the number of trips by existing residents, due to the provision of a new off lead dog walking facility on their doorstep.
24. ODPM Circular 06/2005 explains that in the Waddenzee judgment², the European Court of Justice ruled that a plan or project may be authorised only if a competent authority has made certain that the plan or project will not adversely affect the integrity of the protected site: "That is the case where no reasonable scientific doubt remains as to the absence of such effects". Acting as the competent authority for the purposes of the regulations, I must be convinced that there will not be an adverse effect and where doubt remains as to the absence of adverse effects, the plan or project must not be authorised, unless there are imperative reasons of overriding public interest.
25. I cannot be certain, on the evidence presented, that the proposal would not adversely affect the integrity of the Dorset Heathlands European sites, even with the proposed mitigation measures in place. In the absence of any imperative reasons of overriding public interest, the appeal must fail. The proposal therefore conflicts with PLP1 Policies DH and BIO and SLP Policies SE and SS insofar as they seek to protect the internationally important biodiversity of the Dorset Heathlands.

Other Matters

26. Concerns have been raised that the appearance of the enhanced SANG would be overly formalised to the detriment of the character of the site and the landscape and scenic beauty of the Dorset Area of Outstanding Natural Beauty. The parties were agreed that adjustments could be made to the detailed design, without materially changing the nature of the application, to reduce the visual impact of the furniture/equipment on the AONB. I have no reason to take a different view.

² ECJ Case C-127/02

Conclusion

27. I conclude that the proposal would have an unacceptable impact on biodiversity interests. Given my duties under the Habitats Directive, I am obliged to dismiss this appeal. The contribution of the scheme to the supply of housing and provision of 5 affordable dwellings does not outweigh the harm.
28. For the reasons given above, and having regard to all other matters before me, including the S106 agreement which would properly secure the enhanced SANG and its future management, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Alexander Hensher	Appellant
Stephen Jenkinson	Access and Countryside Management Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Anthony Bird	Purbeck District Council
Nick Squirrell	Natural England

INTERESTED PERSONS:

Caroline Finch	Councillor
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DOCUMENTS SUBMITTED AT HEARING

- 1) Extracts from Purbeck Local Plan Part 1 (2012): Policy SE1 and Appendix 5
- 2) Appeal decision Ref: APP/B1225/A/13/2209425
- 3) Map for the purposes of unaccompanied site visit