



Appeal Decision

Site visit made on 15 August 2024

by H Faulkner BSc(Hons) MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2024

Appeal Ref: APP/D1265/W/23/3334691

Land South of Motcombe Road, Motcombe, Dorset SP7 9NX

- 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 Mr R Seewooruthun of Amirez Developments Ltd against the decision of Dorset Council.
- The application Ref is P/FUL/2022/06095.
- The development proposed is to erect 12 no. dwellings, form vehicular access from Motcombe Road and carry out other associated works.

Decision

1. The appeal is allowed and planning permission is granted to erect 12 no. dwellings, form vehicular access from Motcombe Road and carry out other associated works at Land South of Motcombe Road, Motcombe, Dorset SP7 9NX in accordance with the terms of the application, Ref P/FUL/2022/06095, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Amirez Developments Limited against Dorset Council. This application is the subject of a separate decision.

Preliminary Matters

3. A signed planning obligation made in accordance with section 106 of the Town and Country Planning Act 1990 has been submitted. The need for the obligations is not in dispute between the parties. I shall return to the compliance of this agreement with the relevant provisions of the National Planning Policy Framework (the Framework) and the provisions of the Community Infrastructure Levy Regulations later in this decision.

Main Issues

4. The main issues are:
 - the effect of the development on the character and appearance of the surrounding area; and
 - whether the development would adequately deal with flooding and drainage.

Reasons

Character and appearance

5. The appeal site is rectangular in shape and runs parallel with the road. It has been allocated for housing in the Motcombe Neighbourhood Plan (MNP). The site has an extant outline permission¹ for the erection of up to twelve dwellings which was granted in 2022.
6. The site is towards the edge of the village where houses are generally arranged in a linear form with most properties fronting onto the road. Houses in the area are mixed in style, scale and materials. Hedges form boundaries to the site and other properties in the area which contributes to the rural character.
7. MNP Policy MOT11 defines a list of requirements for the site's development. In reference to design and layout part (b) states that the layout of the development respects the linear pattern of roadside development. The proposed layout shows nine houses fronting an internal road and three turned at right angles.
8. The proposed layout follows a generally linear pattern in a similar manner to other housing in the area. Having one block of housing at a different angle also reflects the positioning of other properties in the area, such as 'One Oak' the house to the east of the site. Whilst there is some uniformity in the siting of the proposed houses, variation in their style and the irregular spacing loosens this to some degree. The overall layout would not be out of character with the rural area.
9. In accordance with Policy MOT17 the density of the development is low and reflects the surrounding area. The policy requires for building lines and a degree of set back to be respected with sufficient space for planting which is also achieved. It also promotes properties being clustered in small pockets showing variety in plot size and building types. The proposed scheme includes a mix of detached and terraced housing with differences in their form. Whilst each house is not completely unique there would be sufficient variation between properties. There is also spacing between the houses so that the countryside beyond can be appreciated.
10. Within their statement the Council raises concerns that the internal access arrangement with parking and turning gives the scheme a suburban style and this uniformity has led to the landscaping proposed. I agree that the access road leads to some uniformity in the layout however the interspersed landscaping and the materials proposed for the hard landscaping would help to soften the overall appearance. Furthermore, the retention of the hedgerow at the front of the site means that the soft edge to the road would remain in keeping with the rural character.
11. With further regard to the landscaping the uniformity of the layout of the trees is criticised. Whilst there is some pattern to the arrangement, there is also planting in groups and native species are mixed throughout. I do not find the landscaping proposed to be overly formal or harmful to the character of the area.

¹ Ref 2/2019/1603/OUT

12. The materials proposed include a mix of brick and timber cladding both of which are cited within the MNP as being used in the local area. The reason for refusal specifically refers to the over-use of uncharacteristic timber cladding. Timber cladding is often used in traditional rural buildings such as barns. As well as being referenced in the MNP examples of timber cladding can be seen within the vicinity of the site, including four buildings opposite and on other buildings within the village. The cladding may cover more of the buildings than other examples however this reflects the architectural design of the buildings proposed which have been designed to appear as modern barn conversions which would be in keeping with the rural character of the area.
13. The use of cladding is more concentrated than in other parts of the village, however, it is not uncharacteristic as a material and would give this development its own sense of place without detracting from the character of the wider area. Whilst the cladding will appear as a darker material this does not make it out of character with the surrounding area where there are a mix of materials and colours including red brick alongside lighter natural stone and render.
14. To conclude, I find that the proposals would form a linear development which would be consistent with the pattern of development in the area and also the aims of the MNP. The layout and design along with the landscaping would be sufficiently varied to not cause harm to the character and appearance of the rural area. The proposals are not therefore found to conflict with policy MOT11 of the Motcombe Neighbourhood Plan, Policy 24 of the North Dorset Plan Part 1 or the Framework.

Flooding and Drainage

15. To support the proposal the application was submitted with a drainage strategy providing details of how surface water could be dealt with, with the final details to be agreed as part of a condition.
16. The application was refused on the basis that it had not been demonstrated that the proposal would not exacerbate existing flood risk and sewage problems in the area.
17. The scheme's drainage strategy was submitted by a drainage specialist. This was then reviewed by the Lead Local Flood Authority (LLFA) who confirmed that there was sufficient detail to demonstrate that a deliverable surface water management scheme could be designed and that subject to further conditions the scheme was acceptable. In coming to this conclusion they had been supplied with the information submitted as well as the comments and photos from interested parties.
18. The concerns raised locally are noted, however, it is necessary to consider the views of the relevant experts in this instance. No evidence has been provided by any other qualified professionals to demonstrate that the drainage approach proposed would lead to harm.
19. It is argued that the drainage strategy was the same as the one submitted and accepted for the outline application and that this did not take into consideration the flooding event which happened after this consent was granted. However, the LLFA were aware of this information and did not raise any concerns regarding the suitability of the strategy provided when reconsidering the new application.

20. The planning committee raised concerns about the approach of the drainage strategy and the various options available, however, the approach is supported by professionals in drainage and no specific evidence has been provided to demonstrate that the measures are not capable of dealing with the issue.
21. With regard to foul drainage the Committee report states that Wessex Water have confirmed that there is sufficient capacity in the existing foul sewage network to receive flows from the site. No further evidence or explanation was included within the Statement of Case to demonstrate why the scheme was unacceptable in this regard. The Parish Council and other interested parties raise concerns about the capacity of the system but without any objection from experts or Wessex Water this can only be afforded limited weight.
22. A conditioned approach for drainage was accepted for the outline application and the same approach can be used for this appeal. The final details would be confirmed at the condition stage and the development would not be able to proceed without the Council's agreement on this matter. The LLFA would need to be satisfied that an appropriate solution was presented.
23. To conclude, the development has presented a scheme that adequately deals with surface water and foul drainage subject to the approval of suitable conditions and therefore complies with Policies MOT2 and MOT11 of the Motcombe Neighbourhood Plan and Policies 3 and 13 of the North Dorset Local Plan Part 1 and the Framework.

Other Matters

24. A number of concerns have been raised by interested parties, a proportion of which relate to the matters covered above.
25. Unlike the Outline approval the scheme does not include any affordable housing. The appellant presented a viability argument that was accepted by the Council so the matter has been sufficiently addressed in accordance with local and national policy which allows for this approach.
26. Increased traffic and risk of accidents was noted. Visibility splays can be conditioned to ensure that vehicles leaving the site have clear views and therefore a safe access from the site. The scheme includes a footway link through the site which provides a safer option for those living on the site as well as those in the surrounding area as there is no pavement. This also provides a link to the Public Right of Way adjacent to the site. Whilst there would be an increase in vehicular movements there was no objection from the Highways department on this basis and the previous outline scheme was also accepted in highways terms.
27. Pressures on schools and infrastructure were raised by interested parties. The site is allocated for housing and therefore a development of this scale has been accepted in principle in this location. The S106 agreement, discussed further below, also includes contributions towards education and healthcare amongst other things, which will help address the additional need. Furthermore, there has been no objection to the scheme from the Local Education Authority and the number of children living within the development would likely be spread across year groups.
28. Neighbouring properties have raised concerns about overshadowing and loss of privacy. There are good separation distances at either end of the site which are

sufficient to ensure that privacy for neighbouring properties and future occupiers would be maintained and overshadowing would not be harmful.

Planning Obligations

29. The Framework at paragraph 57 and the Community Infrastructure Levy Regulations (CIL) 2010 at section 122 require that planning obligations must meet all of the following tests: necessary to make the development acceptable in planning terms; directly relate to the development; and fairly and reasonably related in scale and kind to the development.
30. The contributions would address planning policy requirements arising from additional housing numbers, while overcoming potential impacts and addressing needs associated with housing growth. The financial contributions necessarily follow the evidence and methodological approach outlined within the development plan and are proportionate to the scale of the development in this case.
31. The completed planning obligation sets out requirements for a financial contribution to the following: education, library, public rights of way, off-site public open space, formal outdoor sports facilities, destination play facilities, compensatory habitat and healthcare. Further provisions relate to securing the green space on the site and its management and maintenance.
32. I have taken account of these obligations in reaching my decision and conclude that they would mitigate adverse effects that could arise to local infrastructure and secure onsite open space. They are necessary to make the development acceptable in planning terms and relate directly to it. The contributions are reasonable in terms of their scale and kind.

Conditions

33. The Council has suggested planning conditions in the event that the appeal is allowed. Some of those conditions are pre-commencement conditions. I have sought and obtained the written consent of the appellant for the pre-commencement conditions which I have imposed.
34. In addition to the standard time condition (Condition 1), it is necessary for a condition to list the approved plans (Condition 2) in the interest of certainty. I have also included documents in this list to ensure that their provisions are adhered to as part of the construction process.
35. As discussed above conditions relating to details of the surface water management scheme for the site, along with details of maintenance and a Surface Water Construction Plan are necessary to ensure surface water is appropriately dealt with (Conditions 3, 4 and 5). It is reasonable for this to be agreed prior to work commencing on site in the interests of certainty.
36. A pre-commencement condition (Condition 6) in relation to a Construction and Environment Method Statement (CEMS) is necessary to minimise the impact of construction traffic on the highway.
37. An Arboricultural Method Statement is needed prior to commencement to ensure that trees on the site are adequately protected during the construction (Condition 7).

38. A condition regarding materials is reasonable to ensure that the appearance of the houses is suitable (Condition 8).
39. The approval of details relating to the surfacing of the access is necessary to ensure that loose material is not deposited on the highway, and in relation to the parking, turning and access to secure this work is completed prior to occupation. As is a condition relating to ensuring visibility splays are in place and retained (Conditions 9, 10 and 11).
40. The Council's suggested condition regarding the provision of cycle storage is deemed necessary to ensure adequate facilities are retained in perpetuity and reduce reliance on private car transport (Condition 12).
41. Details of the footway need to be submitted, approved and the work carried out in accordance with these details (Condition 13). This is to ensure that this part of the development is completed as a pedestrian access is necessary.
42. A landscaping condition (Condition 14) is necessary to ensure that the landscaping is carried out in accordance with the approved plans and maintained for five years.
43. A condition (Condition 15) to secure the development is carried out in accordance with the Biodiversity Mitigation Enhancement Plan and Certificate of Approval is reasonable to ensure the impacts on biodiversity are minimised and biodiversity is enhanced.
44. In respect of unexpected contamination a condition (Condition 16) is reasonable to ensure that future occupants are not at risk from contaminated soil.
45. Finally, a condition (Condition 17) to restrict gates to the access is necessary to ensure that there is continuous free movement into and out of the site.

Conclusion

46. I find that the proposed development has been suitably designed and would not have a harmful impact on the character and appearance of the area. On the basis of the evidence provided and subject to appropriate conditions matters in relation to drainage can be adequately dealt with. Therefore, the development conforms with the development plan. There are no material considerations that have been shown to carry sufficient weight to indicate a different conclusion should be reached. I therefore conclude that the appeal should be allowed, and planning permission granted subject to the conditions set out in the attached Schedule.

H Faulkner

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos:
 - 9642/100 - Site Location and Block Plan
 - 9642/101D - Proposed Site Plan
 - 9642/102C - Proposed Plot 1 Plans and Elevations
 - 9642/103C - Proposed Plots 2, 3 and 4 Plans and Elevations
 - 9642/104C - Proposed Plot 5 Plans and Elevations
 - 9642/105C - Proposed Plot 6 Plans and Elevations
 - 9642/106C - Proposed Plots 7, 8 and 9 Plans and Elevations
 - 9642/107C - Proposed Plots 10,11 and 12 Plans and Elevations
 - 6942/108C – Proposed Garages – Plans and Elevations
 - 9642/109A - Proposed street scene and indicative SuDS
 - 338-1-R6 - Landscape Plan
 - 338-2-R4 - Planting Plan
 - 338-3 – Landscape Management Plan
 - 19106-4 Tree Protection Plan
 - W554/02E – Preliminary Drainage Strategy
 - W554/05B – Proposed Site Access Arrangements
 - Drainage Strategy – February 2020
 - Phase 1: Geotechnical and Contamination Assessment Report - June 2019
 - Arboricultural Assessment and Method Statement February - 2020
 - Ecological Assessment Report – October 2023
 - Dorset Council Biodiversity Plan – October 2023
 - Dorset Council Biodiversity Plan – Certificate of Approval – October 2023
- 3) No development shall take place until a detailed and finalised surface water management scheme for the site, based upon the hydrological and hydrogeological context of the development, has been submitted to, and approved in writing by the local planning authority. The surface water scheme shall be implemented in accordance with the approved details before the development is completed.
- 4) No development shall take place until details of maintenance and management of both the surface water sustainable drainage scheme and any receiving system have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. These shall include a plan for the lifetime of the development, the

arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime.

- 5) No development shall take place until a Surface Water Construction Management Plan, which shall include measures to prevent turbid run-off from the construction site reaching the road and/or discharging into the public sewer system, has been submitted and approved, in writing, by the Local Planning Authority. The agreed measures shall be implemented and maintained throughout the construction phase of the development.
- 6) Before the development hereby approved commences a Construction and Environment Method Statement (CEMS) must be submitted to and approved in writing by the Planning Authority. The CEMS must include:
 - Details for the access and parking of vehicles of site operatives and visitors
 - Details of loading and unloading of plant and materials
 - Details of the storage of plant and materials to be used in constructing the development
 - Confirmation that construction and delivery hours will be limited to Monday – Friday 0700 – 1900 Saturday 0800 – 1300
 - Confirmation there will be no noisy activity on Sundays or Bank Holidays during construction
 - Confirmation that there will be no bonfires on site at any time during construction

The approved Construction and Environment Method Statement shall be adhered to throughout the construction period for the development.

- 7) Prior to the commencement of any development hereby approved, an Arboricultural Method Statement (AMS) prepared by a qualified tree specialist providing comprehensive details of construction works in relation to trees that have the potential to be affected by the development must be submitted to, and approved in writing by the Council. All works must be carried out in accordance with the approved details. In particular, the method statement must provide the following:
 - a) a specification for protective fencing to trees and hedges during both demolition and construction phases which complies with BS5837 (2012) and a plan indicating the alignment of the protective fencing;
 - b) a schedule of tree work conforming to BS3998;
 - c) details of the area for storage of materials, concrete mixing and any bonfires;

d) details of the supervision to be carried out by the developer's tree specialist.

- 8) Prior to development above damp proof course level, details and samples of all external facing materials for the wall(s) and roof(s) shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall proceed in accordance with such materials as have been approved.
- 9) Before the development is occupied or utilised the first 15.00 metres of the vehicle access, measured from the rear edge of the highway (excluding the vehicle crossing), must be laid out and constructed to a specification submitted to and approved in writing by the Local Planning Authority and thereafter retained.
- 10) Before the development is occupied or utilised the access, geometric highway layout, turning and parking areas shown on Drawing Number 9642/100 must be constructed. Thereafter, these must be maintained, kept free from obstruction and available for the purposes specified.
- 11) Before the development hereby approved is occupied or utilised the visibility splay areas as shown on Drawing Number W554/05 Rev B must be cleared/excavated to a level not exceeding 0.60 metres above the relative level of the adjacent carriageway. The splay areas must thereafter be maintained accordingly and kept free from all obstructions.
- 12) The development hereby permitted must not be occupied or utilised until a scheme showing precise details of the proposed cycle parking facilities is submitted to and approved by the Planning Authority. The approved scheme must be constructed before the development is occupied and, thereafter, must be maintained, kept free from obstruction and available for the purpose specified.
- 13) Before the development hereby approved is occupied details of the construction of a footway within the site, running parallel with Motcombe Road, as shown on Dwg No W554/05 Rev B (or similar scheme) shall have been submitted to and agreed in writing with the Planning Authority. Thereafter the footpath shall be constructed and retained in accordance with the approved details.
- 14) All hard and soft landscape works shall be carried out in accordance with the approved Landscape Plan number 338-1-R6 and Planting Plan number 338-2-R4, both dated 11.10.2023. No part of the development shall be occupied until work has been completed in accordance with the approved details. Any trees or plants that within a period of five years after planting are removed, die, or become, in the opinion of the Local Planning Authority, seriously damaged or defective shall be replaced as soon as it is reasonably practical with others of species, size and number as originally approved and in accordance with the approved Landscape Management plan number 338-3 dated 31/01/2023.

- 15) The development hereby approved shall be carried out in full accordance with the approved Biodiversity Mitigation and Enhancement Plan and Certificate of Approval dated 10th October 2023.
- 16) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be submitted to and approved by the Local Planning Authority. Following completion of measures identified in the approved risk assessment, a remediation scheme shall be undertaken and a verification report shall be submitted to and approved in writing by the Local Planning Authority.
- 17) There must be no gates hung so as to form obstruction to the vehicular access serving the site.

Richborough



Costs Decision

Site visit made on 15 August 2024

by H Faulkner BSc(Hons) MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2024

Costs application in relation to Appeal Ref: APP/D1265/W/23/3334691
Land South of Motcombe Road, Bittles Green, Motcombe, Dorset, SP7 9NX

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr R Seewooruthun of Amirez Developments Ltd for a full award of costs against Dorset Council.
 - The appeal was against the refusal of planning permission to erect 12 no. dwellings, form vehicular access from Motcombe Road and carry out other associated works.
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Decision

1. The application for a full award of costs is refused but a partial award is allowed.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Unreasonable behaviour on the part of a local planning authority may include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, or not determining similar cases in a consistent manner.
4. The applicant contends that both in respect of refusal reasons 1 and 2 the Council acted unreasonably in reaching their assessment of the proposals.

Refusal Reason 1

5. The applicant considers that the Council were vague and generalised in their decision and that the development followed the design guidelines. The scheme was assessed to be acceptable in design terms by the Planning Officer yet the Planning Committee disregarded their advice and guidance in the Neighbourhood Plan.
6. Additionally, in coming to their decision the Council failed to give weight to Paragraph 134 of the National Planning Policy Framework (The Framework) which requires significant weight to be given to development which reflects local design policies and government guidance on design.
7. In my determination of the appeal I have reviewed the reason for refusal and I did not find it to be vague or generalised. The Council's concerns in respect of the impact on the rural character were substantiated by clearly expressed

reasons which identified the proposal's effect by virtue of the layout, landscaping and materials. Moreover, they indicated how those concerns would conflict with the requirements of the Local Plan, Neighbourhood Plan and the Framework.

8. In considering the assessment of the Neighbourhood Plan I reached the conclusion in my decision that the proposals met the requirements set out in this policy. However, for the committee members and therefore the Council to reach a different conclusion on this basis was not an unreasonable action. Whilst paragraph 134 of the Framework may not have been specifically mentioned the Council obviously did not agree that this criteria was met, despite my findings.
9. It is noted that the committee members appear not to have specifically discussed the merits of Policy MOT11 of the Neighbourhood Plan and it would have perhaps made their reasoning clearer had they done so. The committee were entitled to consider the design of the scheme before them. The term 'over-use' in the reason for refusal suggests that the use of timber is more than they considered to be acceptable. However, to refer to the use of timber cladding in itself as uncharacteristic did fail to recognise the fact that it is found in the locality of the site and referenced in the Neighbourhood Plan.
10. On this matter I find that whilst the reference to timber cladding being uncharacteristic was unreasonable in this instance, I accept that the Council were not irrational in reaching a different conclusion to the case officer, in respect of the layout of the scheme. As a result, an appeal would have been necessary in any event.

Refusal Reason 2

11. The applicant is of the view that matters in respect of the drainage strategy had been supported when the separate outline application had been determined. The Lead Local Flood Authority (LLFA) had no objection to the development subject to conditions. They believe the Committee's position to be unsubstantiated by technical evidence and failed to take into consideration the outline application which resulted in unreasonable behaviour.
12. The officer's report to the committee contains the LLFA's lack of objection to the scheme, stating that the proposal provided adequate detail to demonstrate that a viable and deliverable surface water management scheme could be designed for the development. The committee report also states that the LLFA had also been presented with the information on recent flooding events provided by residents. Councillors would have been aware of this when reaching their decision.
13. The Council claim that members were not content to rely on a conditional approach to drainage. I find this action to be unreasonable given that they had done so previously in issuing the outline consent. At this time they had also followed the advice of the LLFA. Whilst there may be local flooding issues these are reported to have been raised to the LLFA during the application process who did not find it necessary to reach a different conclusion.
14. The members may have had concerns about the approach taken in the Drainage Strategy but without any expert advice to the contrary it was unreasonable of them to conclude that the solutions presented were unacceptable and refuse the application on this basis. Whilst local knowledge

can be important, it needs to be carefully considered alongside expert evidence.

15. On this matter I find that the Council failed to act in a consistent manner, given the previous approval on the site and failed to consider the appropriate use of conditions. This unreasonable behaviour caused the applicant to incur unnecessary expense. This included countering the Council's concerns on this matter as part of this appeal within the appeal statement.

Conclusion

16. I have accepted the Council's position in respect of refusal reason 1. However, I am of the view that unreasonable behaviour as described in the PPG has been demonstrated on the part of the Council in respect of the matter of drainage. This resulted in the applicant's unnecessary expense in contesting this part of the appeal.

Costs Order

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that The City Council shall pay to applicant the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the second of the Council's reasons for refusal, which concerned alleged conflict with Policies MOT2 and MOT11 of the Motcombe Neighbourhood Plan and Policies 3 and 13 of the North Dorset Local Plan Part 1 in respect of flooding and drainage.
18. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

H Faulkner

INSPECTOR