

PLANNING COMMITTEE



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| Application Address | Land North of A35 and South of Milhams Common |
| Proposal | Formation of pedestrian access from classified public highway; installation of surfaced pathway, gate and handrails. |
| Application Number | 8/19/1376/FUL |
| Applicant | Aster Homes Limited |
| Agent | Mr Robin Henderson |
| Date Application Valid | 5 November 2019 |
| Decision Due Date | 31 December 2019 |
| Extension of Time Date (if applicable) | |
| Ward | Christchurch Town |
| Report status | Public |
| Meeting date | 02 April 2020 |
| Recommendation | Grant permission subject to the conditions set out in the recommendation, which are subject to alterations / additions by the Head of Planning provided any alteration / addition does not go to the core of the decision. |
| Reason for Referral to Planning Committee | Cllr Hall has referred the application to Committee for the following reasons; 'This highway land is adjacent to the established grazing land and Milhams North. The proposed gate is not suitable for disabled persons. The adjacent grazing land severely floods. The proposed steps are not suitable. |
| Case Officer | Sophie Mawdsley |

Description of Development

1. Formation of pedestrian access from classified public highway; installation of surfaced pathway, gate and handrails. However, it must be noted that the only element that needs planning permission is the new pedestrian access off the A35. The operational works associated with the path and gates can be constructed under permitted development rights for Local Authorities (Part 12 of the GPDO 2015).
2. The proposal is to facilitate the Heathland Infrastructure Project at Millhams Common which is part of the Heathland Mitigation Projects (HIP) for the re-development of the former Police Station which Committee resolved to approve at Planning Committee on 20th February subject to the completion of a S106 agreement.

Key Issues

3. Highway safety
4. Accessibility
5. Biodiversity
6. Housing Delivery

Planning Policies

7. Development Plan:
 - KS1 Presumption in favour of sustainable development
 - KS11 Transport and Development
 - HE2 Design of new development
 - HE3 Landscape Quality
 - ME1 Safeguarding Biodiversity and Geodiversity
 - ME6 Flood Management, Mitigation and Defence
8. T16 (Saved policy) Access for those with impaired mobility

Relevant Planning Applications and Appeals

9. 8/18/3263 - Erection of 130 residential dwellings, 39 units of age-restricted sheltered accommodation (C3), and 612 m2 of flexible commercial/community space (A1, A2, A3, A4, B1, D1 (Museum only) use classes), new road between Bargates and Barrack Road, new vehicular access from Barrack Road (to serve sheltered accommodation only), new private and semi-private gardens, public open space, hard and soft landscaping, surface vehicular parking and residential garages, following the demolition of the Police Station and Magistrates' Court, nos. 23 and 41 Barrack Road, former Goose and Timber public house, and ancillary buildings and structures.

Resolution to Approve at Planning Committee Feb. 2020 subject to completion of a S106 agreement.

Representations

10.13 objections have been received raising the following issues;

- Creating an additional pedestrian access would compromise the security of the animals grazing within the Mead.
- Impact of dogs on grazing animals, nesting swans and other birds
- Increased litter
- Path is of a short length and of little use. Path would become flooded.
- Be a scar on the natural 15m wide natural barrier separating the bypass from the Common. Loss of habitat and biodiversity.
- No need for path as there is an existing path to east
- Common underwater for most of winter - watermeadow
- Building works will dislodge the top soil and with regular flooding, soil will get into the river.
- Duty to ensure access to the Common is unhindered and inclusive
- Maintenance costs to BCP and taxpayer
- Saved policy T16 – Access for those with impaired mobility

Consultations

- **Natural England**

11. The application is adjacent to the common land known as Millhams North and proposes a new pedestrian route onto the common land from the A35 Eastbound carriageway. Paragraphs 91 and 98 of the NPPF highlights the importance of public rights of way and access. Natural England support this application as it will provide improved access to the common land at Millhams North. The current pedestrian access via the right of way off Beaconsfield Road is often underwater in the winter months and may not be a suitable route of access to the common land for those with reduced mobility.

12. Natural England is of the understanding that this footpath will be maintained by BCP Council as part of the proposal for Heathland Infrastructure Projects (HIPs) associated with application 8/18/3263/FUL, currently under consideration by your authority.

- **Christchurch Town Council**

OBJECTION RAISED due to:

13. The kissing gate design and stepped access does not allow for wheelchair users to gain access to the site. Planning permission would allow the public sector equality duty at section 149 of the Equality Act 2010 to be breached and as such equates to a material consideration of such weight which must be considered in the planning balance to outweigh the development plan considerations;
14. The proposed scheme does not accord with policy ME1 of the Christchurch and East Dorset Local Plan -Part 1 Core Strategy and the Dorset Heathlands Planning Framework 2015-2020 SPD – as the site is not suitable in principle for Heathland Infrastructure Provision given that the site floods frequently and is rendered unusable for a proportion of the year which has not been accounted for.

- **Environment Agency**

15. We have no objection to the proposed development subject to the following informatives being included in any planning permission granted.

Flood Risk

16. We have no objection in principle based on submitted drawings SK011 Rev. A and SK010B Rev. B and subject to the following comments:

Biodiversity

17. We note that there are no protected or priority species recorded where the applicant is upgrading access to Common Land. Please note there is a number of designations on land adjacent to or near to the site namely Avon Valley (SPA), Avon Valley (Bickton to Christchurch SSSI), River Avon System (SSSI) and River Avon SAC, contrary to the 'no' on the Application Form. For this reason Natural England should also be lead on any comments relating to impact on the designations / watercourse.
18. We note that the common land adjacent to the site has been identified through other planning applications as potentially future Suitably Alternative Natural Greenspace. As it is already accessible as common land, and there are other ancillary works as part of this application, we have no further comment to make.

- **Highways England**

19. We have received the attached consultation for a footpath across highway land, north of the A35 and south of Milhams Common. Highways England is responsible for operating, maintaining and improving the strategic road network which in this location does not comprise the A35 (only the section between Honiton and Bere Regis forms part of the SRN). Therefore you will need to seek advice from your local highways colleagues in this instance, if you haven't already done so.

- **BCP Countryside Management**

20. None received

- **BCP Highways**

21. It is unclear from the details submitted who will maintain this path link in the future, especially should it fall into disrepair. It should be noted that this is not a pathway that will be adopted by the Local Highway Authority.

Constraints

- Conservation Area
- Medium Pressure Pipeline
- Agricultural Land Classification
- SSSI Impact Risk Zone
- Flood Zone 2
- Flood zone 3
- Highways Inspected Network
- Green Belt
- Heathland 5km Consultation Area
- Airport Safeguarding
- Wessex Water Sewer Flooding
- Dorset Minerals Consultation Area

Planning Assessment

Site and Surroundings

22. The application site is on the edge of the area of open space adjacent to the A35 and the Bypass car park. It is bounded on the north by the river and is designated as Common Land and Open Access land.

23. The proposed access and path actually lies outside of the Common land and within Highway Land. The land is within the ownership of BCP Council.

Key Issues

Principle of development

24. The proposed access, new footpath and gate leads to an existing area of open access land. There is an existing pedestrian entrance at the end of Beaconsfield Road which runs through the wooded area and across a bridge into the parcel of land. There are currently no defined paths for visitors to Millhams Common.

25. The new access would provide enhanced access to the land and allow a greater number of people to use this land as an alternative to accessing protected heathland elsewhere in the vicinity. The use of Millhams North for enhanced access to mitigate the impact on Heathland was resolved to be approved by the Planning Committee in February subject to the completion of the S106. The principle of this HIPs package has therefore already been established and the proposed new access subject of this application facilitates this.

26. The HIPS Management package and S106 aims to secure the financial contribution towards the proposed works and maintenance of this parcel of land which will remain in the ownership of BCP. Natural England provided comments on the use of this parcel of land in their consultation response to the application 8/18/3263;

'The Register of Common Land and Village Greens held by Dorset Council details who has rights to use it, and what those rights are. Natural England advise that the proposals for the enhancement of public access to the Millhams North as complementary to its designation as Common Land by enabling better access for the local people of Christchurch to the Common Land at Millhams North. There is no doubt that this is a high quality area of countryside which is little used by local people. No changes are proposed which would restrict access to the commoners to access and graze the land in line with their rights. Natural England is also aware of the natural function of the land as part of the River Avon floodplain, particularly affecting the site in winter. We do not consider that this would act as a barrier to its effectiveness as a HIP. The proposal for the stepped access will improve the access route onto the Common, providing an alternative to the regularly flooded right of way off Beaconsfield Road'.

27. Concerns have been raised about the lack of disability access given the proposed steps and kissing gate.

28. The Dorset Heathlands Planning Framework 2015-2020 sets out guidance on the provision of HIPs and in particular SANGS. Whilst Millhams North would not be designated as a SANG, the guidance and principles set out are considered appropriate and relevant to the enhanced access to this parcel of land. The guidelines relate specifically to the means to provide mitigation for development of a residential nature within or close to 5km of the Dorset Heathlands. The document does state that they do not address nor preclude the other functions of green space (e.g. provision of disabled access). Other functions may be provided within SANGs, as long as this does not conflict with the specific function of mitigating visitor impacts on the Dorset Heathlands.

29. The guidance states; 'Paths must be easily used and well maintained but most should remain unsurfaced to avoid the site becoming too urban in feel'. The proposals for the HIP only involve the provision of a mown circular path for visitors to retain a natural character to the site and also not to conflict with the statutory responsibilities for the Common which is used for grazing.

30. The existing open access land is not easily accessible and there are no paths within the site. This scheme will enhance access and whilst it is fully appreciated that it is not suitable for people with reduced mobility, it is considered fully reasonable in this particular case given the reasons for providing this new access which is to reduce pressure on the protected Heathlands.
31. Careful consideration has been given to the Equalities Act 2010 and the Public Sector Equality Duty at s149 of the Act. Section 20 of the Act refers to the requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage. Saved policy T16 of the Christchurch Local Plan refers to improvement for access and other facilities for mobility impaired people will be included within highway improvement and traffic management schemes and in any new development proposals.
32. This path and the proposed kissing gate will put disabled people at a disadvantage from accessing the site. However, the HIP itself will not be laid out to provide adequate surfaces for wheelchairs to use. Given the sensitivity of this land with the adjacent designations, it is not appropriate to create a more formal layout with hard surfaced paths. Notwithstanding the fact that planning permission is not considered to be required for the ramp, steps and gate, it is considered the new access provides an improved access for as many people as possible and is reasonable in the context of Section 20 as referred to above. Furthermore, any proposed improvements to Milhams North would be contrary to its use as Common and would require SoS approval for works on the Common to 'improve it'.
33. Representations have questioned why the existing gated access further along the side of the A35 was not enhanced to accommodate this new pedestrian access. This area is the first part to get flooded and as such would minimise access onto the Common. The new access, path and gate is on higher ground to ensure improved access to the site for a longer period of time over the whole year. The south west section of the site does not get flooded so frequently during the winter months so it is still possible to access the land.

Highway safety

34. The provision of a new access point off the existing public footpath which runs alongside the A35 is not considered to result in highway safety dangers for pedestrians, vehicles or cyclists. The existing barrier will remain and the new access will be at the point it stops. BCP Highways have raised no concerns about the proposal.

Biodiversity

35. The construction of the new steps down the slope onto the Common will impact on some of the vegetation and biodiversity along this part of the bank between the Common and the highway. This is noted, however it has been balanced

against the need for the access to facilitate the access to the Common which mitigates the harm to the protected heathlands and also the fact that enhancing the existing access for pedestrian purposes was not appropriate given the flood levels on that part of the site.

36. Natural England have not raised any concerns about biodiversity and the Environment Agency have referred to the fact there are no Priority or Protected Species within the area of the proposed steps and gate.

Summary and Planning Balance

37. The proposed new access is considered to be acceptable and facilitates the enhanced access to the proposed Heathland Infrastructure Project associated with the development at the former Police site in the town centre. The enhanced access to this parcel of land is to mitigate the impact on our protected Heathlands and encourage visitors and in particular dog walkers to use an alternative space. The HIP is well-sited in relation to the associated development, being a short walk from the site and well placed to capture the recreational requirements of occupiers in preference to the internationally designated heaths further away.
38. The concerns about the lack of disabled access to the land with the provision of the stepped ramp and kissing gate are clearly recognised; however in this particular case the planning benefits of providing this access point outweigh those concerns. BCP Council will be carrying out the works with funds secured through the S106 associated with the Police site application and therefore further investigation into the ramp and gate may take place outside of the planning system and this application. There will be a continuing need for the Council to balance the impacts of further residential development within the most sustainable locations within the urban area with continued pressure on the urban heaths. Such projects will continue to be needed in order to address the under supply of housing delivery within the Christchurch Local Plan area.

RECOMMENDATION

39. Grant, with the conditions below, which are subject to alterations/additions by the Head of Planning provided any alteration/addition does not go to the core of the decision.

Conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.

Reason: This condition is required to be imposed by Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan received 22/10/2019

Site Plan received 22/10/2019

Reason: For the avoidance of doubt and in the interests of proper planning.

And the following informatives;

1. The proposed footpath at its western extent would fall approximately 2m from the Mill Race which is classified as a Main River. In addition to any other permission(s) that may have already been obtained, e.g. planning permission, an Environmental Permit for flood risk activities will be required to carry out work in, under, over or near (within 8m of) a main river (including where the river is in a culvert), on or near (within 8m of) a flood defence on a main river, and in the floodplain of a main river.
2. Further to the above, there is a non-Environment Agency asset in the form of a small embankment that runs adjacent to the Mill Stream, between the Mill Stream and the western end of the proposed footpath. This is shown on the submitted cross sections at Chainage 22.000 on drawing SK010B Rev. B. The applicant must ensure that the owner/operator of any infrastructure that may be affected by this proposal is fully consulted on the proposals.
3. Additionally, there is an ordinary watercourse believed to fall beneath the footprint of the proposed footpath. We advise therefore that the Lead Local Flood Authority should be consulted on the proposals. An application for Land Drainage Consent may be required.
4. Bio-security precautions should be undertaken when working on sites with water bodies on them. You can view some general advice through the following link: [Bio-security](#)
5. Safeguards should be implemented during the construction phase to minimise the risks of pollution and detrimental effects to the water interests in and around the site. Such safeguards should cover the use of plant and machinery, oils/chemicals and materials; the use and routing of heavy plant and vehicles; the location and form of work and storage areas and compounds and the control and removal of spoil and wastes. We recommend

the applicant refer to our Pollution Prevention Guidelines, which can be found at:

<https://www.gov.uk/guidance/pollution-prevention-for-businesses>

6. If any controlled waste is to be removed off site, then site operator must ensure a registered waste carrier is used to convey the waste material off site to a suitably authorised facility. If the applicant require more specific guidance it is available on our website <https://www.gov.uk/how-to-classify-different-types-of-waste>

Background Papers