

Appeal Decision

Site visit made on 30 August 2016

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 01 November 2016

Appeal Ref: APP/G1250/W/16/3152074

17 Clowes Avenue, Bournemouth BH6 4ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Ashwood Homes Ltd against the decision of Bournemouth Borough Council.
 - The application Ref 7-2015-25299-B, dated 1 December 2015, was refused by notice dated 26 May 2016.
 - The application sought planning permission for the erection of a dwellinghouse and access to severed property without complying with a condition attached to planning permission Ref 7-2014-25299-A, dated 7 January 2014.
 - The condition in dispute is No 1 which states that:
'The development hereby permitted shall be carried out in accordance with the following approved plans: 121P03, 201P03, 301P03, 302P02, 303P02, 501P02, 502P02 & 401P01 dated 05 March 2014 and 101 P02 dated 29 January 2014.'
 - The reason given for the condition is:
'For the avoidance of doubt and in the interests of proper planning'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwellinghouse and access to severed property without complying with condition No 1 attached to planning permission Ref 7-2014-25299-A in accordance with the terms of the application, Ref 7-2015-25299-B, dated 1 December 2015. This new permission is subject to an amended version of condition 1 and the other conditions set out in the attached schedule.

Application for Costs

2. An application for costs was made by Ashwood Homes Ltd against Bournemouth Borough Council which is the subject of a separate decision.

Procedural Matters

3. Application Ref 7-2015-25299-B sought permission for a dwelling illustrated on an alternative set of plans to those listed in condition 1 as reproduced in the
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banner heading above.¹ The Council's sole reason for refusal was that in their view this proposal did not represent a minor material amendment. At the time of my site visit a building on site was partially constructed, however no elements above ground floor level were present pending the outcome of this appeal.²

4. Briefly summarised the proposal before me, referred to hereafter as 'the proposal', is to extend the maximum ridge height of the proposed dwelling from 5.5 metres to 13 metres in length. As a consequence a gable end of the dwelling would face Clowes Avenue as opposed to the permitted front roof slope and half-hipped dormer window. Changes to the glazing and design of all elevations are proposed, as is a flat-roofed rear element as opposed to the pitched design permitted.
5. Nevertheless the revised proposal remains for a dwelling of no greater floorspace set in the same location within the appeal site, and which would reach a maximum height no higher than that permitted. There is no definition in planning legislation or elsewhere of what constitutes a minor material amendment, and consequently nothing to expressly limit applications made via Section 73 of *The Town and Country Planning Act 1990* as amended (the '1990 Act') in this respect.
6. For the above reasons the development proposed via the amended set of plans cannot reasonably in my view be described as significantly different development from that permitted.³ I have therefore considered the substantive merits of the proposal in this appeal.

Main Issues

7. Application Ref 7-2015-25299-B, the proposal, is intrinsically linked to its predecessor, application Ref 7-2014-25299-A, the 'original permission', indeed correspondence from the Council to the appellant dated 7 January 2016 explains that in their view the proposal would '*reinstate the amendments that were originally secured [via the original permission]*'.
8. The amendments originally secured, as explained within the Council's officer report supporting application Ref 7-2014-25299-A, relate chiefly to matters of character and appearance and to the living conditions of neighbours. On this basis, the main issues in this appeal are therefore the effects of the proposal on the character and appearance of the area, and in respect of the living conditions of the occupants of neighbouring properties.

Reasons

Character and appearance

¹ Plans entitled 'Location Plan 001 rev 10-11-2015', 'Block Plan 002 rev 10-11-15', 'Proposed vs Approved Elevations 004', 'Proposed vs Approved Elevations 005 rev 10-11-15' and 'Proposed vs Approved Street Scene 006 rev 10-11-15'.

² As noted by the appellant in paragraph 3.2 of their appeal statement.

³ With reference to *Planning Practice Guidance* Reference ID: 21a-012-20140306.

9. The appeal site falls within a suburban area of Bournemouth between Nos 15a and 17 Clowes Avenue. Properties nearby are detached dwellings arranged regularly within comparatively spacious plots along a broadly consistent building line. Aside from a uniform layout, however, there is considerable variety in the appearance of surrounding properties, with many appearing to have been individually designed.
10. There is little consistency to the roof form of properties along Clowes Avenue. Although dormers of various designs within front roof slopes are commonplace, such as at Nos 12, 15a and 16, gable-ended elements of properties frequently face the carriageway, including at Nos 9, 14 and 17. Properties nearby tend to either comprise a single or two storeys, where in the case of the latter first floor accommodation is typically provided for within roof slopes which limits the overall scale of dwellings, such as at Nos 9, 11 and 20.
11. As noted within the Council's officer report related to the original permission, various properties nearby have been extended and altered from their original form. It further appears that several more recent properties have been created within plots previously associated with other dwellings. Consequently properties vary from turn-of-the-century designs to contemporary buildings employing modern materials. The varied form and design of properties nearby lends the area a lively mixed architectural character.
12. Policy CS41 '*Quality Design*' of the *Bournemouth Local Plan: Core Strategy* adopted in October 2012 (the 'Core Strategy') sets out how all development should respect the site and its surroundings. Similarly *The National Planning Policy Framework* (the 'Framework') establishes that planning should always seek to secure high quality design, and that decisions should aim to ensure that developments will function well and add to the overall quality of the area.
13. The Council's *Residential Extensions: a Design Guide for Householders* adopted on 9 September 2008 (the 'Design Guide') provides further guidance as to how development can be brought forward appropriately. Whilst not part of the development plan, the approach in the Design Guide nevertheless accords with the design principles within the Framework and the *Planning Practice Guidance*, which guides in particular as to how new development can respond appropriately to the existing layout of buildings, streets and spaces.⁴ As such I accord due weight to the Design Guide in this decision.
14. The Council do not object to the footprint of the proposal, to the location of the dwelling within its plot, nor to the maximum ridge height that would be achieved. Indeed the foremost elevation of the dwelling proposed would maintain the broadly consistent building line of properties nearby, and its maximum height would be comparable with that of its neighbours.⁵
15. Whilst the proposal would increase the overall bulk of the property by virtue of a gable-ended element thereof facing the carriageway as opposed to the half-hipped roof form and front dormer previously proposed, in my view this would

⁴ Reference ID: 25-024-20140306.

⁵ I note in this context that No 17 benefits from permission, Ref 7-2013-25299, to raise the existing roofline of the property.

not be out of keeping with the design of many nearby properties and consequently not unduly dominant in the streetscene.

16. Similarly although the principal elevation of the dwelling is of a different design featuring more extensive glazing compared to the development permitted, given the varying design of nearby properties this would not, in my view be incongruous or harmful. The extended ridgeline to the rear would moreover not be readily apparent from public vantage points given that views of it would be largely obscured by the form of neighbouring properties.
17. For the above reasons I find that the proposal would have an acceptable effect on the character and appearance of the area, and that it therefore complies with the relevant provisions of policy CS41 of the Core Strategy and with relevant elements of the Design Guide, the Framework and the Guidance.

Living conditions

18. Policy CS41 of the Core Strategy further establishes that development must provide a high standard of amenity, and the Design Guide details how proposals can be designed to respect the living conditions of those nearby. Likewise the Framework sets out that planning should always seek to achieve a good standard of amenity for all occupants of buildings and that planning should contribute positively to making places better for people.
19. The proposed dwelling is separated from its neighbours by a distance commensurate with the spacing between properties nearby. As a consequence, and as the boundary of the appeal site is demarcated by planting and substantial close-boarded fencing, neither its presence nor the windows and doors proposed at ground floor level would result in effects upon the living conditions of the occupants of neighbouring properties that would be significantly out of keeping with the prevailing nature of the built environment.
20. However, the proposal entails the installation of a total of three roof lights within the northern and southern roof slopes of the property facing Nos 15a and 17. There is one roof light within the facing roof slope of No 15a, and although no roof light is present within the facing roof slope of No 17 presently I understand that one is proposed via planning permission Ref 7-2013-25299.
21. The extent to which views through the proposed roof lights would compromise the privacy from which the occupants of neighbouring properties benefit is tempered by the main windows serving first floor accommodation within the proposal being within the front and rear elevations.⁶ Moreover, subject to an associated condition, the roof lights could be installed at an appropriate height such that views through them are not readily possible from eye-level.
22. The proposal would maintain a broadly consistent front and rear building line with neighbouring properties,⁷ and, as indicated above, would reach a

⁶ The Council's officer report associated with application Ref 7-2014-25299-A confirms that the separation distance between the windows within the front and rear elevations and those of nearby properties exceeds the minimum requirements of the Design Guide.

⁷ As explained within the Council's officer report associated with application Ref 7-2014-25299-A.

maximum height broadly similar to those nearby. Consequently the amended roof form proposed would not in this context result in undue overshadowing or an overbearing presence to the occupants of neighbouring properties. I would further note that the additional bulk of the roof proposed is modest compared with the development permitted, and is partly off-set by the proposed flat-roof profile of an element of the property to the rear compared to the permitted half hipped form.

23. Whilst it is not intended that the flat-roofed element of the property is used as a balcony, it appears that it could readily be used as such without significant alterations to the proposed dwelling. Were this the case the privacy of neighbours would be compromised given that there would be elevated views from this location at close proximity into the gardens and towards the rear elevations of neighbouring properties. In my view it is consequently necessary to impose a condition preventing the use of the roof of the property as a balcony.
24. I therefore find, subject to appropriate conditions, that the proposal would not unacceptably affect the living conditions of the occupants of neighbouring properties, and that in this respect the proposal complies with the relevant provisions of policy CS41 of the Core Strategy and with relevant elements of the Framework and the Design Guide.

Conclusion

25. For the above reasons, and taking all other matters into account including the representations made by nearby residents, the proposal accords with the development plan taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be allowed subject to the schedule of conditions below.

Conditions

26. The Guidance sets out that decision notices for the grant of planning permission under Section 73 of the 1990 Act should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.⁸ As the development has been commenced, it is therefore unnecessary to reimpose condition a) of the original permission. There is no information before me about the status of the other conditions applying to the original permission, and I shall therefore impose all that I consider remain relevant. If some have in fact been discharged, that is a matter which can be addressed by the parties.
27. In this context it is necessary to impose a condition requiring compliance with the relevant drawings supporting the application to which this appeal relates for the avoidance of doubt and in the interests of proper planning. In order to safeguard the living conditions of those nearby during construction it is also necessary to specify the hours during which building operations may take place. It is further necessary to impose a condition requiring adherence to an

⁸ Reference ID: 21a-031-20140306.

agreed surface water drainage scheme in order to avoid adverse effects resulting from surface water run-off as a consequence of the development. Such a condition must necessarily apply before any development is undertaken given that any development may affect the drainage capacity of the site, and I have therefore reimposed the relevant condition from the original permission.

28. In order to avoid adverse highways effects or in relation to pedestrians using the pavement that would be crossed by the vehicular access to the property, it is further necessary to impose conditions such that the proposed dwelling shall not be occupied until its access and parking provision have been provided, including with appropriate pedestrian visibility. Given that the proposed dwelling would be set in relatively close proximity to its neighbours, and as a consequence the potential for alterations or extensions to the dwelling to affect the living conditions of the occupants of those properties or the character and appearance of the area, it is necessary to withdraw certain permitted development rights via condition (as the Council imposed in respect of application Ref 7-2014-25299-A).
29. Furthermore, in order to protect the privacy from which neighbouring occupants currently benefit it is necessary to impose conditions ensuring that the roof lights proposed are installed at a high level, that an agreed boundary treatment scheme is implemented, and that no element of the roof of the dwelling shall be used as a balcony. I have amended the wording of some conditions to ensure they meet the relevant tests, without changing their overall aim.

Thomas Bristow

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following drawings supporting application Ref 7-2015-25299-B: 'Location Plan 001 rev 10-11-2015', 'Block Plan 002 rev 10-11-15', 'Proposed vs Approved Elevations 004', 'Proposed vs Approved Elevations 005 rev 10-11-15' and 'Proposed vs Approved Street Scene 006 rev 10-11-15'.
- 2) All on-site working and deliveries to and from the site associated with the undertaking of the development hereby permitted shall only be carried out between the hours of 0800 to 1800 Mondays to Fridays and 0800 to 1300 on Saturdays. No such activities shall be carried out on Sundays, public holidays or bank holidays unless otherwise agreed in writing with the local planning authority.
- 3) No development shall take place until a surface water drainage scheme has been submitted to and approved in writing with the local planning authority and agreed in conjunction with Wessex Water. Development shall be carried

out in accordance with the approved scheme unless otherwise agreed in writing with the local planning authority.

- 4) Before the dwelling hereby permitted is first occupied, the access and areas for parking, including the marking out of spaces, as illustrated on drawing No 201 rev. no.: P.03 associated with planning application Ref 7-2014-25299-A, shall be provided. The access and areas for parking shall be permanently retained and kept available for the residents of the dwelling hereby permitted at all times.
- 5) Before the dwelling hereby permitted is first occupied a pedestrian inter-visibility splay of 2 metres by 2 metres shall be provided on each side of the access illustrated on drawing 201 re.no.: P.03 associated with planning application Ref 7-2014-25299-A, the depth thereof measured from the back of the footway into the development site and the width of the splays measured outwards from the edge of the access. No fence, wall or other obstruction to visibility over 0.6 metres in height above grounds level shall exist within the area of the splays at any time.
- 6) The internal sills of the roof lights within the southern and northern roof slopes of the development hereby permitted shall be a minimum of 1.75 metres above the finished floor level of the room that they serve, provided as such before the dwelling hereby permitted is first occupied, and thereafter retained as such in perpetuity unless otherwise agreed in writing with the local planning authority.
- 7) Before the dwelling hereby permitted is first occupied, boundary screening arrangements including details of the design form, height and material construction and finish of the boundary features to be provided/ retained along all boundaries of the site (including any screens, fences and walls) shall be agreed in writing with the local planning authority. The agreed boundary screening arrangements shall be implemented in accordance with the details thus approved and retained as such thereafter unless otherwise agreed in writing by the local planning authority.
- 8) Notwithstanding the provisions of the *Town and Country Planning (General Permitted Development) (England) Order 2015* (or any order revoking, re-enacting or modifying that Order), no additional windows or dormer windows shall be installed, or outbuildings or extensions constructed, in relation to the dwelling hereby permitted without the prior written consent of the local planning authority.
- 9) No element of the roof of the dwelling hereby permitted shall be used as a balcony.