
Appeal Decision

Site visit made on 25 October 2016

by R J Marshall LLB DipTP MRTPI

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

Decision date: 23 December 2016

Appeal Ref: APP/G1250/W/16/3153934

7 East Overcliff Drive and 29 Grove Road, Bournemouth, Dorset BH1 3AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Westcoast Developments (Sandbanks) Ltd. against the decision of Bournemouth Borough Council.
 - The application Ref 7-2015-11507-V, dated 19 June 2015, was refused by notice dated 7 June 2016.
 - The development proposed is demolition of existing building and erection of block of flats (total 16 flats).
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Decision

1. The appeal is dismissed.

Background/Procedure

2. I have taken the planning application description from the planning application forms. However, prior to the Council's decision the application was amended to be for 14 flats. It is on this basis that the appeal is determined.

Main Issues

3. The main issues in this appeal are: **first**, the effect of the proposed development on the setting of the Miramar Hotel, a non-designated heritage asset, and its effect upon the East Cliff Conservation Area; **second**, its effect on the living conditions of those at Nos. 23 to 27 Grove Road; and **third**, whether the absence of a legal agreement under Section 106 Act on affordable housing and the Dorset Heaths Special Protection Area (SPA) should stand against the proposal.
4. The second issue is not a reason the Council refused permission. However, in light local representations and what I saw it requires consideration.

Reasons

Effect on Miramar Hotel and East Cliff Conservation Area

5. The appeal site faces onto East Overcliff Drive towards its westernmost end. This is a cliff top road running between Bournemouth town centre and Boscombe Chine. That part of this road in the vicinity of the appeal site lies within the East Cliff Conservation Area. As well as covering the cliff top road the Conservation Area also includes roads to the north. In the vicinity of the appeal site that includes Grove Road which runs parallel to the sea front.

6. North of the sea front the Conservation Area's character is largely of wide tree lined roads with substantial houses, including mid to late Victorian Villas. Properties along East Overcliff Drive are in more open grounds and in many cases they are more substantial. This is notably the case in the vicinity of the appeal site where there is a tall block of 1960's style flats one site removed from the appeals site to the west and a tall block of flats, Elizabeth Court of a similar period, directly to the east. Directly to the west of the appeal site is the Miramar Hotel. This building, dating from 1913, with a most attractive frontage to the road appears to draw on its design from the Arts and Crafts movement. It makes a positive contribution to the Conservation Area. Although it is not listed I have no doubt that the Council is correct to regard it as a non-designated Heritage Asset (HA).
7. The appeal site is comprised of 2 plots of land. On the westernmost plot, adjoining the Miramar Hotel, originally stood a large pitched roof 2 storey house. Although not unattractive it had no especial merit. This house was recently demolished and the plot on which it stood remains vacant. The other parcel of land still contains a building. This is a 1960's 2 storey block of flats with a shallow pitched roof and a deep white facia. It is not a particularly attractive building and the Council correctly has no objection to its loss.
8. The proposal is for 2 blocks of flats. Block A would be on the westernmost plot and Block B on the remaining plot. Both would have basement parking. Above that in Block A would be 3 floors of living accommodation and in Block B 4 floors of accommodation. The Council's concern on both blocks is that they would, as a result of their design, fail to accord with their setting in the Conservation Area. And with Block A there is an additional concern that its degree of forward projection would be of further detriment to the setting of the Miramar Hotel.
9. The 2 proposed blocks would be of contemporary design, with white render walls, grey coated aluminium windows and large balconies with stainless steel railings. With the tallest of the proposed blocks to the east, and the lowest to the west, there would be an acceptable gradation in height between Elizabeth Court and the Miramar Hotel. Both new buildings would, with their substantial and lengthy projecting balconies, have a fairly strong horizontal emphasis. I have no objection to this in relation to block B, nor to its contemporary design, given the variety of building styles along East Overcliff Drive. However, Block A would be in close proximity to the side elevation of the Miramar Hotel. With its unrelieved straight lines combined with the prominence and horizontal emphasis of the proposed balconies this block would sit uneasily with this non-designated Heritage Asset with its steeply pitched roofs, extensive detailing, vertical sliding sash small paned widows and large hipped roof dormers.
10. Permission has already been given for a development of flats on the site where block A is proposed. However, it would seem that this incorporated curved bay windows and Art Deco style Crittel windows. This would most likely have resulted in a building of a less severe appearance and with a better visual connection with the Miramar Hotel. Moreover, this building would be set slightly further back on the plot which, in conjunction with a more sympathetic design, would have added to the degree to which it would not intrude upon its neighbour. In so doing it would have opened up slightly more to view some of the rather less attractive elements of the side elevation of the Miramar Hotel, but not to an extent that would be unduly harmful.

11. In arriving at my view above I appreciate that the Miramar Hotel is dominated on one side by a 1960's block of flats to the west. However, this makes it more important to ensure that new development on the other side is more sympathetic to its setting. And although the proposal would result in the loss of an unattractive building, and provide for development on a current unsightly gap, any benefits thereby arising would not outweigh the harm identified.
12. There is some concern locally on the effect of the proposed development on the character and appearance of 3 1930's style houses directly to the north of the site, Nos. 23 to 27 Grove Road. Although it is said that the Council considers them to be Heritage Assets there is no corroborative evidence to that effect, albeit they are attractive dwellings. These houses already appear rather anomalous in Gove Road which generally has far more substantial building fronting and backing onto it. In this context the extent that the proposed flats might be seen in conjunction with these houses would not be detrimental to the character and appearance of the Conservation Area. However, lack of harm in this respect does not make the proposed development acceptable on this issue given the harm previously identified.
13. It is concluded that there would be harm to the setting of the Miramar Hotel, and harm thereby also to the character and appearance of the Conservation Area given the positive contribution this building makes to it. The degree of harm cannot be categorised as substantial in terms of the Planning Policy Guidance (PPG) on Conserving and enhancing the historic environment as the bar to be reached for such harm is such that it may not arise in many cases. However, in this prominent cliff side location considerable weight should be attached to a failure to meet the statutory duty to preserve or enhance the character or appearance of the Conservation Area. As such there would be conflict with Policy 4.4 of the Bournemouth District Wide Local Plan, which reiterates the statutory test for development in Conservation Areas, and with Policy CS 39 of the Council's Core Strategy which seeks the protection of designated Heritage Assets.

Living conditions of those at Nos. 23 to 27 Grove Road

14. Given the distance of the proposed block A from the rear elevation of No. 23 Gove Road, and garden screening, the occupants of this adjoining house would suffer no harm through loss of light, loss of privacy or visual impact. On the impact of plot B on Nos. 25 and 27 Gove Road the same could be said in relation to light and privacy. However, given the additional height of block B it would potentially appear to loom intrusively in views from the rear of these dwellings even with the top floor being inset from other floors. I note references to Council standards being met. However, without a clear visual representation of the relationship between the proposed development and these houses, I am not convinced that harm through over-dominance would not arise.
15. It is concluded that in the absence of further illustrative material harm to the living conditions of those at Nos. 25 and 27 Gove Road though visual impact could not be ruled out. There is the potential, therefore, for conflict with the National Planning Policy Framework (the Framework) which seeks to improve the conditions in which people live.

Absence of legal agreement on affordable housing and Dorset Heathlands Special Protection Area (SPA)

Affordable housing contribution

16. The Council has an Affordable Housing Plan Document (DPD) (2009) which sets out the Council's approach to the delivery of affordable housing. Policy AH1 of this document says that 40% affordable housing provision will be sought from new development in order to meet the Borough target. This may be met by on-site provision or through financial contributions. The Council accepts that the latter means of provision should apply in this case. The appellant does not contest the need for affordable housing to be provided and nor is it suggested that what the Council is seeking is unreasonable or that it would not be viable to provide.

SPA contribution

17. The appeal site lies beyond 400 metres but within 5 kilometres of the Dorset Heathlands Special Protection Area (SPA). Natural England is concerned that development of the type proposed in such proximity to this area would, in combination with other dwellings, have a significant adverse effect on its heathland interests. To overcome this concern the Council has adopted the Dorset Heathlands Planning Framework Supplementary Planning Document. This requires new development beyond 400 metres but within 5 km of protected heathlands to make a financial contribution towards heathland mitigation measures. These measures include provision for Strategic Access Management and Monitoring (SAMM) which need to be made through a legal agreement as it is not covered by CIL contributions. This has become an accepted means of ensuring the protection of the Dorset Heathlands habitats as required by the Habitats Regulations and CS Policy CS33. The appellant does not dispute this.

Measures for ensuring affordable housing and SPA contributions

18. The appellant had intended to provide the above contributions through a Unilateral Undertaking (UU). However, although a draft document has been produced the appellant has to date been unable to obtain all the necessary signatures to it. Thus no signed and dated document exists.
19. It is suggested that to resolve this problem a Grampian condition could be imposed restricting development until the UU in the agreed form has been completed. However, the Planning Practice Guidance (PPG) on conditions says that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. It goes on to say that in exceptional circumstances such conditions may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.
20. In this case, however, I do not consider that the proposed development, given its modest scale and straightforward nature, is the more complex and strategically important development to which the above exception applies. The proposed Grampian condition should not, therefore, be imposed and there is no means of securing the 2 contributions sought.

21. Thus the proposed development would fail to contribute to meeting the Borough's affordable housing needs. And without the required measures in place to mitigate against harm to the Dorset Heathlands Special Protection Area (SPA) I cannot be satisfied that there would be no harm to heathland special features in the SPA.
22. Thus the proposed development would be contrary to Policy AH1 of the Affordable Housing SPD, to CS Policy CS33 and to the Habitats Regulations.

Conclusion

23. In light of the above the absence of a legal agreement under Section 106 of the Town and Country Planning Act relating to affordable housing and the Dorset Heaths Special Protection Area (SPA) should stand against the proposal.

Other matters

Other 3rd party concerns

24. Some 3rd party concerns go beyond those raised by the Council. However, whilst I note concerns on a local landslip the appellant has supplied substantial technical evidence on slope stability, and this has been accepted by the Council. In the absence of technical evidence to the contrary I have no grounds on which to take a contrary view. The orientation of the proposed development and its scale would be such as to prevent harm through visual impact or loss of light to those in neighbouring Elizabeth Court. Vehicular access to both sites would be onto East Overcliff Drive. Hence concerns on increased traffic on Grove Road are unfounded. From what I saw no harm would come to trees of any significance. Turning to alleged harm to the hotel use of the Miramar Hotel the balconies of the proposed block A would, so far as I could ascertain, be located so as to prevent any undue overlooking of the front garden of the hotel or windows in its side elevation. And the proposed porthole windows that would look onto the hotel could be required to be obscure glazed. There would be some impact on views from certain windows in the side elevation of the hotel. However, given the distance of the proposed development from this elevation there would be no unacceptable impact on outlook.
25. However lack of harm on the above grounds does not make the proposal more acceptable given the harm found on the main issues.

5 year housing land supply and benefits put forward by appellant

26. The appellant has put forward a range of economic, social and environmental benefits, in addition to matters considered in the assessment of the main issues, to show that the proposal is a sustainable form of development in the terms of the National Planning Policy Framework (the Framework). However, those benefits are such as would be expected to arise in most new residential developments in an urban setting. With the relatively modest scale of development proposed they do not amount to substantial benefits.
27. Both parties have provided considerable evidence on 5-year housing land supply, with the Council saying that there is such a supply and the appellant contesting this. However, even were I to conclude in the terms of the appellant on 5-year housing land supply the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Seen in the round this would not be sustainable development.

Conclusion

28. For the reasons given above it is concluded that the appeal should be dismissed.

R J Marshall

INSPECTOR