
Appeal Decision

Site visit made on 9 January 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 2 February 2017

Appeal Ref: APP/Q1255/W/16/3158909

The Drive, Brudenell Avenue, Poole BH13 7NW

- 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 Excellare (Dorset) Ltd. against the decision of Poole Council.
 - The application Ref APP/16/00543/F, dated 7 April 2016, was refused by notice dated 29 June 2016.
 - The development proposed is described on the application form as the 'removal of existing tennis court and construction of a 4 bedroom detached dwelling with integral garage'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Section 319A of the Town and County Planning Act 1990 as amended requires the Secretary of State to determine the procedure for dealing with planning appeals. Annexe K of the Planning Inspectorate's Procedural Guide to planning appeals, dated 5 August 2016, sets out the criteria that will be applied in this regard.
3. Within final comments submitted at appeal on 6 January 2017 the appellant requested that the appeal is dealt with by way of hearing rather than via written representations (as was the procedure established initially for the appeal, with parties notified of this originally on 11 November 2016). In my view the planning issues in this case can be clearly understood from the appeal documents and from a site inspection. As such I am satisfied that the information before me is an appropriate basis upon which to reach a decision.
4. Appended to the appellant's final comments referred to above is an updated version of plan TC1, which is dated 3 January 2017, and an accompanying schedule. The substantive amendment from the versions of these documents contained within the appellant's original Tree Survey,¹ is the inclusion of measurements of the trunk diameters of certain surroundings trees. As the updated versions of these documents relate purely to factual matters there is no reason to discount them from my determination of the appeal.

¹ Tree Survey, Arboricultural Impact Assessment and Method Statement (Heads of Terms) prepared by Treecall consulting Ltd., Ref: DS/77216 dated 6 April 2016.

5. At the time of my site visit three dwellings were being constructed within land immediately adjacent to the appeal site, such development relating to planning permission Ref APP/14/01240/F (the '2014 permission').² The appeal site encompasses part of 'plot 3' of that permission, being land associated with the dwelling under construction falling to the north-west. Therefore in the information before me the appeal site is referred to in this context as 'plot 4'.

Main Issues

6. On the basis of the information before me I consider that the main issues in this appeal are the effect of the proposal on the character and appearance of the area, with particular reference to the wellbeing of trees, and whether or not the dwelling proposed would provide for adequate living conditions for its intended future occupants.

Policy Context

7. Criterion iii of policy PCS 5 'Broad locations for residential development' of the Poole Core Strategy adopted in February 2009 (the 'CS') establishes that 'residential proposals involving plot severance will only be permitted where sufficient land can be assembled to accommodate a type, scale, density and layout of development which preserves or enhances the area's residential character and does not harm the amenities of local residents'. Policy PCS 23 'Local distinctiveness' of the CS sets out various design criteria that must be adhered to order for proposals to secure consent, including that proposals respect the character of the surrounding natural and built environment.
8. Similarly policy DM 1 'Design' of the Poole Site Specific Allocations and Development Management Policies development plan document adopted in April 2012 (the 'DPD') requires that development responds appropriately to its surrounding context, including with regard to landform, natural features and living conditions. Criterion iii thereof sets out that development which would result in 'the loss of protected or unprotected trees that make a significant contribution to the character of the area will be resisted'.
9. The National Planning Policy Framework (the 'Framework') sets out that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. It further establishes how development should respect the natural environment, and that it is appropriate to seek to reinforce local distinctiveness. The Planning Practice Guidance (the 'Guidance') similarly guides as to how development can be designed sensitively in relation to its surroundings, including in respect of trees.³

Reasons

Character and appearance

10. The appeal site is an irregularly shaped plot of land within a larger site in which three further properties are presently under construction. It is accessed via the

² As illustrated on plan 1550 03 supporting application Ref APP/16/00543/F.

³ Including at Reference ID: 26-007-20140306 and 26-020-20140306.

Drive, a narrow and ostensibly private carriageway which connects with Brudenell Avenue. Properties served by the Drive and Brudenell Avenue are typically large individually designed detached dwellings set within spacious plots which commonly host significant numbers of trees.

11. The area around the Drive is densely wooded, with the Luscombe Valley Nature Reserve and Parkstone golf course falling nearby. The topography around the appeal site falls towards the coastline close by, and thus the appeal site is at an elevated position within the landscape, if not particularly visually prominent on account of the well-wooded character of the vicinity.
12. Set centrally within the appeal site is a tennis court in a poor state of repair, the surface of which is visibly damaged and overgrown with the passage of time. The dwelling proposed via application Ref APP/16/00543/F would be located within the footprint of the tennis court, which is bounded by a significant number of trees, many of which are either located very close to its limits.
13. As one would expect the tennis court is level within the changing topography of the land. Closest to the property named Links View the tennis court is slightly sunken into the ground with the land there banked up around it. The tennis court is marginally higher than the natural ground level furthest away from that property. A substantial embankment also delineates the boundary of the appeal site with the golf course.
14. The appeal site extends to approximately 0.33 hectares, which would reduce the extent of the plot associated with plot 3 of the 2014 permission to approximately 0.35 hectares from 0.68 hectares. Nevertheless the overall scale of the plot proposed would exceed that of plot 1 of the 2014 permission, which measures approximately 0.22 hectares, and would be broadly comparable with that of plot 2 which is approximately 0.37 hectares. It did not appear to me that the extent of the plot proposed, or the reduction in plot size resulting to that of plot 3 of the 2014 permission, would result in unduly cramped plots compared to the prevailing pattern of dwellings in the area.
15. However a significant proportion of the appeal site, that furthest from Links View, is a relatively narrow segment of land which is densely wooded. In my view its tapering shape and the presence of trees within it visually reduces the overall apparent scale of the plot. I further observed that the proposed dwelling would be set closer to Links View than appears to be the prevailing separation distance between surrounding properties, which would result in a comparatively cramped inter-relationship. Moreover the significant number of trees within the appeals site and the embankment bounding the golf course mean the site appears highly enclosed, particularly compared with the nature of plots 1, 2 and 3 of the 2014 permission.
16. Therefore, taken as a whole, the plot proposed and the appearance of the dwelling proposed within it would be to some degree incongruous with the prevailing character of the area and appear relatively cramped and confined. Thus the proposal conflicts with criterion iii of policy PCS 5 of the CS, which I note does not specifically limit the term 'sufficient land' to matters of size alone. Nevertheless as the area of the plot proposed would be broadly comparable with those of properties nearby, and as the proposed dwelling

would not be prominent from many public vantage points, I accord the harm arising from conflict with policy PCS 5 limited weight against the proposal.

17. All trees within the appeal site are protected by Tree Preservation Order No 77 of 1997 (the 'TPO'), and certain trees nearby are also protected by Tree Preservation Order No 17 of 1960. At final comments submitted at appeal the appellant acknowledges that the surrounding woodland is 'visible from considerable distance within the golf course and adjacent sites', however contends that the trees near the tennis court 'cannot be seen from beyond the site'. I cannot support the latter statement given that the appeal site shares a common boundary with the golf course and thus certain trees nearby the tennis court are apparent from outside the boundaries of the appeal site.
18. I accept that most trees on site are within the Tree Survey classified as Class C with reference to the approach in British Standard 5837: 2012 Trees in relation to design, demolition and constructions- Recommendations, and that few have the potential to develop into fine mature specimens. However in my view the presence of trees within the appeal site means that it is consistent with the well-wooded character of its environs.
19. Therefore whilst I acknowledge that certain trees within the appeal site are not particularly prominent from public vantage points, the appeal site is visible from outside its confines, and the trees therein nevertheless reinforce the character of the area. It appeared to me from my site visit that the presence of trees in this location is highly important in lending a semi-natural character to this particular area of Poole, which is elsewhere more densely developed. My view here is reinforced by the protection accorded to trees within and surrounding the appeal site via Tree Preservation Orders.
20. The proposal would certainly entail the removal of 3 trees to provide for vehicular access to the appeal site,⁴ the Tree Survey indicates that 4 trees are scheduled for removal, and the access illustrated on revised plan TC1 appears to transgress the illustrated trunk diameter of five trees. Whilst the appellant has explained that, despite tree felling the proposal would leave 'over 30' trees near to the location of the dwelling proposed, it is not disputed that there would be some reduction in tree cover amounting to a not insignificant proportion of those currently present.
21. The theoretical root protection area of various trees bounding the tennis court extends to close to the elevations of the dwelling proposed. Whilst I accept that the presence of the tennis court may have restricted root growth underneath it, it does not appear that there is robust evidence to establish the extent of root growth here. Moreover the information before me in relation to ground levels, foundations, or underground services provision proposed is insufficiently detailed to enable me to conclude that the proposal would not result in substantive harm to trees within the appeal site other than those proposed for felling.
22. I would furthermore note that paragraph 8.14 of the Tree Survey Appeal Statement indicates that 'trees on site will have some growing to do',⁵ which,

⁴ Trees identified as T81, T82 and T83 on plan 1550 03.

⁵ Appeal Statement, prepared by Treecall consulting Ltd., Ref AP/11016, dated 4 September 2016.

allied to the absence of detailed information regarding the approach to construction, indicates that the proposal may restrict the future growth of certain trees on site.

23. Whilst I accept that some pruning of the trees bounding the tennis court would in any event be required to bring it back into active use, in my view such pruning is likely to be more modest than is necessary were a dwelling to be erected here. Some overhanging or nearby tree canopy would not impeded a game of tennis, but would raise maintenance or safety concerns for a dwelling. My view here is reinforced by the topography of the land and the elevated position of the appeal site relative to the coastline which is likely to mean that debris and branches would fall over the footprint of the dwellings on certain occasions.⁶ Such works may be exempt from the protection otherwise accorded by the TPO on safety or nuisance grounds.⁷
24. The proposal would therefore result in an acknowledged direct loss of protected trees. I am furthermore not satisfied on the basis of the information before me that further detriment to the trees within the appeal site would not occur, particularly in respect of development affecting root systems, future growth, and the likelihood of more extensive pruning being required than would likely occur were the tennis court brought back into active use. I am therefore not in a position to mitigate the effects of the proposal via associated conditions given the nature of the evidence before me.
25. Consequently I find that the proposal would fail to adequately safeguard the wellbeing of trees which contribute to the character and appearance of the area. Therefore the proposal conflicts with the relevant provisions of criterion iii of policy DM 1 of the DPD and with relevant elements of the Framework and the Guidance. The harm arising here can, however, fairly be described as relatively limited on account of the number of trees within the appeal site, their quality and their prominence.
26. I therefore conclude for the above reasons that the proposal would result in limited harm in respect of character and appearance with particular reference to the wellbeing of trees. Consequently the proposal conflicts with the relevant provisions of policies PCS 5 and PCS 23 of the CS, policy DM 1 of the DPD and with relevant elements of the Framework and the Guidance.

Living conditions

27. As established above, given that the reduced size of plot 3 of the 2014 permission as a consequence of the proposal would not be inconstant with the size of plots nearby, and as it is generally more open in character than that of the appeal site, I cannot conclude that material harm would arise in relation to living conditions in this respect. I also accept that those electing to reside within the dwelling proposed may place some value on the presence of trees within the appeal site, and that future felling or pruning of trees would remain subject to the provisions of the TPO.⁸

⁶ Taking note of the example of a fallen tree bounding the tennis court brought to my attention by the Council which I viewed during my site visit.

⁷ With reference to Guidance Reference ID: 36-060-20140306.

⁸ There is a distinction here between management of trees related to domestic preferences and in relation to the inherent practicality of locating a dwelling within the appeal site as addressed in paragraph 23 of this decision. My

28. The appellant has submitted a Building Research Establishment Report (the 'BRE Report'),⁹ which finds that within the dwelling proposed the minimum recommended levels of daylight and sunlight would be achieved or exceeded. However the BRE methodology is aspatial, in that it does not take account of the prevailing levels of natural light of surrounding properties.
29. It appeared to me that many nearby properties benefit from substantially greater levels of natural light than would be achieved in this proposal, including those located within plots 1 to 3 of the 2014 permission. Moreover trees would bound the dwelling on all sides in close proximity, with certain branches reaching close to the line of elevations in various places (albeit at slightly greater distance than is the existing inter-relationship of trees to the boundaries of the tennis court). Consequently the quality of light reaching rooms at certain times of day is likely to be dappled and partially screened by tree trunks, branches and leaves. Moreover the proximity of trees would result in significant sense of enclosure within the dwelling proposed. Consequently I cannot accord the BRE report substantial weight in support of the proposal, having considered the particular nature of the appeal site and that of the surrounding area.
30. The Council cite within their officer report, and the appellant appears not to dispute, that the area of the appeal site without canopy cover is only approximately 0.038 hectares. Whilst the appellant sets out that a 48 square metre area of open space would be free of overhanging tree canopy, as set out above it appears that various trees will grow further in the future, and in any event the combination of extensive tree coverage and the topography of the land in my view results in an adverse sense of enclosure within the outside space proposed. Whilst I accept that the circumstances in each of the appeals brought to my attention by the Council in this context within paragraph 6.3 of their appeal statement are different, these appeals nevertheless reaffirm that the quality of outside space provision is a legitimate matter of planning consideration.
31. For the above reasons the levels of light from which the dwelling proposed would benefit, whilst adequate would be lower than that which would reasonably be expected by occupants of properties in this area. Moreover the nature of the appeal site, in respect of the presence of trees and its topography, would result in an adverse sense of enclosure within and outside of the property and affect the quality of natural light within. Considered collectively the proposal therefore conflicts with the relevant provisions of policy DM 1 of the DPD and with relevant elements of the Framework and the Guidance. However given the scale of the plot, as future occupants may place some value on the remaining trees, and given the protections that apply via

approach here is broadly consistent with that of the inspector in respect of appeal Ref APP/Q1255/W/15/3138244, which the appellant has brought to my attention. However I do not consider that direct parallels can be drawn between the circumstances relevant to that appeal and those which apply in this instance. It appears in that case that no trees were proposed for removal, as is the case here. Moreover there is limited information before me in respect of the existing nature of the appeal site in that appeal, particularly the number or proximity of trees to the location of the proposed dwelling.

⁹ BRE Client Report, Daylight and sunlight at Plot 4, Luscombe, 1 the Drive, Poole, report number P103487-1000 Issue: 1, dated 9 March 2015 which compares daylight and sunlight in relation to the dwelling with reference to British Standard BS8206 Part 2: Lighting for Buildings, Code of Practice for Daylighting.

the TPO, the harm arising from this conflict in my view must necessarily be accorded only moderate weight.

Other Matters and Planning Balance

32. It appears to me, in line with the Council's position, that conditions could adequately address any environmental effects that would result in respect of the Luscombe Valley Site of Special Scientific Interest and that other environmental effects of the proposal in respect of Dorset Heathlands could be mitigated via Community Infrastructure Levy Receipts and the unilateral undertaking dated 11 April 2016 put forward by the appellant. However these provisions would render the proposal not unacceptable, rather than weigh positively in its favour. Likewise that the proposal would be appropriate in respect of energy efficiency does not weigh positively in support of it.¹⁰
33. Whilst the proposal would result in the creation of a new home, with reference to my findings in respect of the first two main issues, this would be confined to an incremental numerical addition rather than in terms of quality. I further acknowledge that the proposal would entail some social and economic benefits in supporting employment during construction and as future occupants of the dwelling proposed would make use of nearby services and facilities. However such benefits would inevitably be modest in respect of one new dwelling, and the encouragement given in the Framework to boosting significantly the supply of housing is not at the expense of high quality design.
34. I note that the appellant infers that the Council is unable to demonstrate a five year supply of deliverable homes as is required by paragraph 49 of the Framework with reference to the Council's Strategic Housing Land Availability Assessment interim update of April 2015. However, even if the Council are presently unable to demonstrate a five year supply of deliverable homes, and there is no definitive information before me to settle this question, in my view the harm arising from the proposal considered collectively in respect of character and appearance and living conditions would significantly and demonstrably outweigh the highly qualified benefits that would arise.¹¹

Conclusion

35. For the above reasons, and having taken all other matters raised into account, the proposal conflicts with the development plan taken as a whole and with the approach in the Framework. The proposal does not represent sustainable development and I therefore conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

¹⁰ With reference to the Energy and Resources Statement in Horizon prepared by David James Architects & Associates Ltd.

¹¹ For the avoidance of doubt, and in the eventuality that the Council are not able to demonstrate a five year land supply, I am of the view that the policies cited within this decision notice may nevertheless be accorded substantial weight with reference to the approach in the judgement handed down in *Suffolk Coastal District Council v Hopkins Homes Ltd & Anor* [2016] EWCA Civ 168. These policies are consistent with the approach in the Framework and the Guidance as set out above, and clearly have continued currency with reference to the particular context of the appeal site given my site visit observations as explained throughout this decision.