
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/G1250/W/16/3159447

70 Broughton Avenue, Bournemouth BH10 6JA

- 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 Mark Smith against the decision of Bournemouth Borough Council.
 - The application Ref 7-2016-26008, dated 26 April 2016, was refused by notice dated 31 August 2016.
 - The development proposed is described on the application form as a 'new family dwelling on land at 70 Broughton Avenue'.
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Decision

1. The appeal is allowed and planning permission is granted for development described as a new family dwelling on land at 70 Broughton Avenue at 70 Broughton Avenue, Bournemouth BH10 6JA in accordance with the terms of the application Ref 7-2016-26008, dated 26 April 2016, subject to the schedule of conditions in this decision.

Preliminary Matters

2. A revised scheme was proposed during the Council's determination of the application. For the avoidance of doubt, I have determined this appeal on the basis of the revised scheme, being that to which the Council's decision notice of 26 April 2016 relates.¹ The revised scheme includes amendments to the design of the dwelling, including the removal of a rear balcony initially proposed.
3. Within their decision notice the Council cited that the proposal would conflict with policy CS21 'Housing distribution across Bournemouth' of the Bournemouth Local Plan Core Strategy adopted on 30 October 2012 (the 'Core Strategy'). However at appeal, and with regard to the location of the appeal site in relation to key transport routes, the Council have clarified that in their view the application instead falls for consideration under policy CS22 'New housing outside the preferred locations'. I am satisfied that this is the case.

Main Issues

4. The main issues in this case are the effects of the proposal on the character and appearance of the area and in relation to the living conditions of occupants of nearby properties, with particular regard to enclosure and privacy.

¹ Plans 001, tdb-41, tdb-41-003-C, tdb-41-004-B, tdb-41-005-B, tdb-41-006-B.

Reasons

Character and appearance

5. No 70 is a semi-detached property of mid-twentieth century design. It falls within a comparatively dense residential area of Bournemouth characterised predominantly by detached properties of similar design which face a broadly rectilinear network of carriageways. Properties are regularly arranged within plots of greater depth than width along a generally consistent building line.
6. Whilst this regular arrangement of properties results in an orderly rhythm to the character of the area, the spaces between properties are not uniform. Various properties nearby, for example, incorporate side extensions which substantially infill spaces between side elevations of adjacent properties (such as Nos 77, 79 Saxonhurst Road nearby and 104 and 108 Saxonhurst Road opposite to a lesser extent).
7. Corner plots are commonly occupied by semi-detached properties facing junctions, as is the nature of that of No 70. The Council acknowledge that a number of such plots nearby have subsequently been infilled via the creation of new dwellings, and during my site visit I was able to view such infill at No 116A Saxonhurst Road and Nos 15A and 1A Deanscroft Road.
8. The proposal is to subdivide the plot of No 70, which shares a common boundary with No 68 Broughton Avenue, to enable the erection of a detached dwelling. I accept that the plot that would be created by the proposed dwelling would be relatively modest in size, and that the dwelling proposed would be slightly greater in width than that of either No 70 or 68.²
9. Nevertheless plan tdb-41-006-B demonstrates that a gap between the side elevation of the proposed dwelling and No 68 of approximately 1.765 metres would be maintained. Whilst this gap is lesser if the chimney breasts of No 68 are taken account of, or if measured between the eaves of Nos 70 and 68, nevertheless this spacing would result in a degree of visual separation between the two properties. This degree of separation would moreover not appear out of keeping with the gaps present elsewhere between properties in the area, particularly taking account of the existing variance therein as noted above.
10. Therefore whilst I acknowledge that the scale of the dwelling proposed relative to its plot is slightly greater than exists elsewhere, I cannot reasonably conclude that this would lead to demonstrable harm. I also accept that the appearance the dwelling proposed would be slightly different to that of other properties nearby. However its height, form, proportions and foremost building line would be essentially consistent with the prevailing character of the area.
11. I therefore conclude that the proposal would not have an unacceptable effect on the character and appearance of the area. Consequently no substantive conflict arises in respect of the relevant provisions of applicable policies of the development plan,³ nor with the guidance within section 4.2 of the Council's

² By approximately 0.85 metres and 1.55 metres respectively, as cited by the Council in paragraph 5.4 of their appeal statement, figures which appear not to be disputed by the appellant.

³ Policies CS22 'New housing outside the preferred Locations' and CS41 'Quality Design' of the Core Strategy, and saved policy 6.8 of the Bournemouth District Wide Local Plan adopted originally in February 2002.

Residential Development, A Design Guide published in September 2008 (the 'Design Guide') which relates to infill development. Likewise in my view the proposal is not unacceptable with reference to the approach in the National Planning Policy Framework (the 'Framework') to requiring good design and reinforcing local distinctiveness.

Living conditions

12. I accept that the proposal would be relatively close to neighbouring No 68 Broughton Avenue and a dwelling in this location would inevitably introduce a built form exceeding that of the existing garage of No 70. However, as identified above, the degree of separation between the side elevations of these properties would not be incongruous with reference to the prevailing pattern of development in the area, and the rear elevation of the proposed dwelling would be broadly in line with that of the rear elevation of No 68 (albeit slightly beyond an element thereof).
13. The dwelling proposed would be comparable in height to that of No 68, would fall to the north of that property, and only one small obscured glazed first floor window is proposed within the side elevation facing that of No 68. For these reasons, and given the comparatively dense residential character of the area, in my view no unacceptable harm would result to the living conditions of the occupants of No 68 in respect of enclosure, privacy or loss of light (either within this dwelling or its garden).⁴ Given that No 66 Broughton Avenue falls at a great distance from the appeal site, I am similarly of the view that no unacceptable effects would result with regard to the occupants thereof.
14. The Council explain that the rear elevation of the dwelling proposed would fall approximately 5.4 metres distant from the plot boundary of No 81 Saxonthurst Road and approximately 8.4 metres distant from that of No 79 Saxonthurst Road. Given the proximity of the dwelling proposed to these boundaries, the proposal will inevitably result in a degree of enclosure and overlooking.
15. However the plot boundaries of Nos 81 and 79 are already demarcated by close boarded fencing and established planting. Being also a corner plot, the rear garden of No 81 tapers to a thin wedge furthest away from the rear elevation thereof. As such the area of the garden of No 81 that would abut the common boundary of the new plot proposed is already narrow and notably enclosed.
16. In this context it is therefore reasonable to assume that the wider area of garden closer to the rear elevation of No 81 is likely to be more frequently used than that adjacent to the appeal site, and I would note that there are views at far closer proximity into this element of the rear garden of No 81 through the first floor rear windows of No 70 Broughton Avenue in any event. Consequently any greater sense of enclosure within the garden of No 81 or loss of privacy would be fractional.
17. I observed that on account of the proximity of No 68 and to a lesser degree No 70, and indeed given the presence of boundary features identified above, the perceived presence of the proposed dwelling from within the rear garden of No 79 in respect of enclosure is likely to be very limited. It further appeared to me

⁴ Having noted the representations made by and the circumstances relevant to the occupants of this property.

that the rear garden of No 79 is already overlooked to a degree as a result of first floor windows within the rear elevations of No 77 Saxonhurst Road and Nos 70 and 68 Broughton Avenue. Whilst there would be views at an oblique angle towards the rear elevation of No 79 through the windows at first floor level within the rear elevation of the dwelling proposed, such intervisibility would in my view not be out of keeping with the prevailing nature of the area.

18. Therefore whilst there would be some effect of the proposal in respect of the living conditions of the occupants of nearby properties in relation to outlook and privacy, for the above reasons I conclude that this would not be materially harmful with reference to the prevailing characteristics of the area. My view here is reinforced by the presence of other corner infill development nearby which appears only marginally different in design and interrelationship with adjacent properties from the proposal before me.⁵
19. I therefore find that no substantive conflict arises in this respect with the relevant provisions of applicable policies of the development plan,⁶ or indeed with relevant elements of the Design Guide or the Framework regarding ensuring a good standard of amenity.

Other Matters

20. The Council cited within their decision notice that at the time the application was made it was not supported by a suitable financial contribution to mitigate the effects of the development proposed on nearby sites protected via European environmental legislation. The appellant has subsequently submitted a signed copy of a unilateral undertaking, dated 25 November 2016, which makes provision for associated non-infrastructure measures in this respect by way of planning obligation (the 'undertaking').
21. The Council have confirmed at appeal that in their view the undertaking brings the proposal into compliance with the relevant requirements of Core Strategy and that it is otherwise fit-for-purpose. Having considered the undertaking and the relevant policy and legislative context, there is nothing in the information before me to lead me to arrive at a different assessment in this respect.
22. Whilst I have considered all representations made in respect of application Ref 7-2016-26008 and in relation to the appeal notification, I would note that a number of comments made by nearby residents relate to the scheme as originally submitted as opposed to the proposal before me.
23. Several nearby residents have expressed concern in relation to the potential effect of the proposal on the wellbeing of a tree located forward of the appeal site. As the information before me in this respect is limited, and notwithstanding that the access and parking area proposed would be some distance from this tree, I have addressed this matter through an associated condition relating to access (in accordance with the duty placed upon me by Section 197 of the Town and Country Planning Act 1990 as amended).

⁵ The Council explain in paragraph 5.14 of their appeal statement that other infill proposals benefits from only 'a couple of metres or more' of additional separation from adjacent properties and their gardens.

⁶ Policies CS22 'New housing outside the preferred Locations' and CS41 'Quality Design' of the Core Strategy, and saved policy 6.8 of the Bournemouth District Wide Local Plan adopted originally in February 2002.

24. I also note the concern raised by nearby residents that the proposal will reduce the availability of on-street parking. However there is no robust evidence before me in relation to existing parking pressures in the area to conclude that adverse effects would arise in this respect, particularly as I observed that many properties nearby benefit from off-street parking. Consequently there is nothing in the evidence before me to conclude that the proposal would be unacceptable in this respect, a finding consistent with that of the Council.
25. I have also take account of the comments of the occupants of No 68 in relation to the constraints that may arise from the dwelling proposed in relation to the maintenance of that property. However from the information before me it appears that the land currently within the ownership of No 70 abuts the side elevation of No 68, and as such maintenance of this area of the property is likely to be reliant on securing consent from the owners of No 70. Maintenance here is also constrained at present by the detached garage of No 70.
26. Given the comparatively dense residential nature of the area, I am not of the view that the noise or disturbance resulting from the proposal would be detrimental. Nor am I of the view, given that it is the particular nature of the development proposed that renders it acceptable and as each proposal must be determined on its particular merits, that my decision here is liable to set an unwarranted precedent. Consequently neither this matter, nor any other, is of sufficient weight to outweigh or alter the considerations that have led to my conclusions in respect of the main issues in this case.

Conclusion

27. For the above reasons, and having taken all other matters raised into account, the proposal complies 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 undertaking proposed and the conditions set out below.

Conditions

28. For the avoidance of doubt and in the interests of proper planning I have imposed a condition requiring compliance with the relevant plans. To ensure that the proposal integrates appropriate with its surroundings it is also necessary to impose conditions requiring that agreed external materials are used, which need necessarily only apply to relevant building operations, and an agreed landscaping scheme implemented. For the same reason, and given the proximity of the dwelling proposed to neighbouring properties and the potential for extensions to detrimentally affect the character and appearance of the area, I am satisfied that it is appropriate in this instance to withdraw certain permitted development rights (with reference to the approach in the Planning Practice Guidance).⁷
29. I have further imposed conditions specifying the times at which building operations may be undertaken in order to safeguard the living conditions of those nearby during construction, and related to securing appropriate access and visibility to avoid adverse highways effects and to address the effect of the

⁷ Reference ID: 21a-017-20140306.

proposal on trees that may be affected by development (the latter must necessarily apply before any development is undertaken given that implementing appropriate access arrangements bears upon both vehicular movements related to construction and residential use). I agree with the Council that in order to avoid adverse effects resulting from surface water run-off that it is necessary to impose further associated conditions, however such conditions need not apply to unrelated construction works.

30. In imposing conditions I have had regard to the tests within the Framework, the Planning Practice Guidance, and relevant statute,⁸ and have accordingly amended the wording of certain conditions proposed by the Council without altering their aim.

Thomas Bristow

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 the following approved plans: tdb-41-003-C, tdb-41-004-B, tdb-41-005-B, tdb-41-006-B.
- 3) No works other than demolition, site preparation and groundworks related to the development hereby permitted shall take place until details or samples of the external materials to be used have been agreed in writing with the local planning authority. Development shall be carried out in accordance with the details and samples thus agreed.
- 4) Within 2 months of the date of the commencement of the development hereby permitted a landscaping scheme shall be submitted in writing to the local planning authority (which shall include details of proposed hard and soft landscaping measures, a schedule of plants, implementation timetable, hardsurfacing, external lighting and boundary treatments, and maintenance arrangements for a minimum period of 5 years). The landscaping scheme agreed in writing by the local planning authority shall be implemented in full before the first occupation of the dwelling hereby permitted, retained as such thereafter, and maintained in accordance with the details thus agreed.
- 5) 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 enlargement of the dwelling hereby permitted shall be undertaken.
- 6) No development hereby permitted shall be undertaken until the access and areas for parking have been provided in line with details agreed in writing by

⁸ Including paragraph 206 of the Framework, Guidance Reference ID: 21a-004-20140306 and Article 35(1)(a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

the local planning authority (which shall include a typical cross section of the surfacing proposed and details of any trees that may be affected). The access and areas of parking thus provided shall be retained thereafter in perpetuity and kept available at all times for the occupants of the dwelling hereby permitted.

- 7) No construction works related to the development hereby permitted shall take place outside of the following hours: 0800 – 1800 Mondays to Fridays and 0800 – 1300 on Saturdays. No construction works related to the development hereby permitted shall take place on Sundays, on public holidays, or on bank holidays.
- 8) Any new or replacement hard surfaced areas related to the development hereby permitted shall either be porous or provision shall be made to direct surface water run-off to a permeable or porous area within the plot of the dwelling hereby permitted.
- 9) No works other than demolition, site preparation and groundworks related to the development hereby permitted shall take place until a scheme for the disposal of surface water run-off has been agreed in writing with the local planning authority (which shall include details of incorporating sustainable urban drainage systems and a timetable for implementation). Development shall be carried out in accordance with the scheme thus agreed.