

Appeal Decisions

Site visit made on 24 January 2017

by R J Jackson BA MPhil DMS MRTPI MCMi

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

Decision date: 22 February 2017

Appeal A

Ref: APP/G1250/W/16/3161568

Norfolk House, 2 Walpole Road, Bournemouth BH1 4EZ

- 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 Mr Hodgson, Rathley Ltd against the decision of Bournemouth Borough Council.
 - The application Ref 7-2016-5584-D, dated 22 April 2016, was refused by notice dated 8 July 2016.
 - The development proposed is demolition of 3 lock up garages and construction of a 2 bedroom dwelling house with surface car parking, shed for 2 bicycles, rear garden with patio, washing line area and bin storage area.
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Appeal B

Ref: APP/G1250/W/16/3164023

Norfolk House, 2 Walpole Road, Bournemouth BH1 4EZ

- 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 Mr Hodgson, Rathley Ltd against the decision of Bournemouth Borough Council.
 - The application Ref 7-2016-5584-E, dated 17 August 2016, was refused by notice dated 5 October 2016.
 - The development proposed is demolition of 3 lock up garages and construction of a 1 bedroom single storey dwelling house with surface car parking, shed for 2 bicycles, rear garden with patio, washing line area and bin storage area.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary matters

3. These two appeals relate to the same site and are alternative designs, with Appeal A proposing to a two storey house and Appeal B proposing a bungalow. The issues are similar in each appeal, although the effects of the developments would be different.
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4. In Appeal A the Council, among other reasons, refused the application because of its alleged effect on the Dorset Heathlands¹ but this did not form part of the reasoning for the refusal of Appeal B. Upon seeking clarification the Council confirmed the application that became Appeal B should have also been refused because of those alleged effects.
5. In light of this the appellant was given the opportunity to make further representations and responded that this "is probably not material to the Inspectors [sic] consideration of the Appeals."
6. Through the appeal process I am the competent authority under the terms of the Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations) and need to be satisfied that the proposed development, either on its own or in combination with other plans or projects, would not have a significant adverse effect on the integrity of the Dorset Heathlands.

Main Issues

7. The main issues are the effect on:
 - the Dorset Heathlands;
 - the character and appearance of the area, including on the setting of the Boscombe Spa Conservation Area (the BSCA); and
 - the living conditions on the occupiers of Norfolk House, 1 and 1A Grosvenor Gardens and the proposed properties in terms of privacy and outlook.

Reasons

Dorset Heathlands

8. The site lies beyond 400m but within 5km of the Dorset Heathlands. Natural England, the Government's specialist advisor, indicates that in this location, in the absence of suitable mitigation, additional residential development will have, in combination, a significant adverse impact on the integrity of the sites. This is taken through in Policy CS33 of the BCS. In addition the relevant Councils have published "The Dorset Heathlands Planning Framework 2015 - 2020 Supplementary Planning Document" (the SPA SPD) to provide a mechanism of providing mitigation through a range of measures which are identified in the document.
9. The appellant and the Council agree that a contribution is needed towards mitigation of the effects of the developments through a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) or other legal agreement providing contributions towards Strategic Access Management and Monitoring (SAMM). In order to protect the Dorset Heathlands I concur that an appropriate contribution is necessary, and as set out in the SPA SPD, would be directly related to the development and fairly and reasonably related in scale and kind to the development. As I understand it SAMM does not represent 'infrastructure' within the terms of the Community Infrastructure Levy Regulations 2010 (as amended) and thus Regulation 123 is not engaged.

¹ Dorset Heathlands Special Protection Area, Dorset Heathlands Ramsar Site, Dorset Heathlands Special Area of Conservation and Dorset Heathlands Special Area of Conservation (Purbeck and Wareham) and Studland Dunes.

10. The officer report on the application that is Appeal A states "A signed legal agreement has been drafted to provide this contribution". I therefore reverted to the parties on this and was provided with various documents but none of these was a completed legal document which would make provision for the necessary mitigation. In the absence of such mitigation I am not able to agree to the proposal².
11. On the basis of the information in front of me, there is a failure to deliver appropriate mitigation for the effects of the developments on the Dorset Heathlands which means that the proposals would be harmful to the integrity of the Dorset Heathlands. As such the proposals would be contrary to Policy CS33 of the BCS and the SPA SPD. It would also be contrary to the terms of the Habitats Regulations and contrary to paragraph 118 of the Framework which seeks adequate mitigation for European sites.

Character and appearance

12. The appeal site lies to the rear of Norfolk House which has been divided into six flats. It currently forms the area of a block of three flat roofed garages and a tarmacked area to the rear which forms part of the garden space of one of the ground floor flats, upon which are located two small sheds. The garages face onto Walpole Lane, a single track cul-de-sac that provides access to the rear of the properties on either side.
13. Opposite the site to the south of Walpole Lane are further blocks of garages, and beyond them is The Crescent, which consists of a four storey terrace with rooms in the roof and forms an imposing feature in the area. The southern side of Walpole Lane marks the northern extent of this part of the BSCA.
14. To the north of the appeal site is a flat roofed two storey building known as 1A Grosvenor Gardens. This has three obscure glazed windows in the main part of the first floor elevation and a fourth, clear glazed window set slightly further back on the eastern side. The adjacent property to that to the east, 1 Grosvenor Gardens, has four windows in the side elevation at first floor level beyond the rear elevation of No 1A.
15. The overall character of the area is highly urban with buildings in very close proximity one to another. The main pattern of development is of frontage development. The garden areas, where they exist, are very small. Walpole Lane is an enclosed area providing a servicing function to the properties on either side.
16. The Council has published a guidance document 'Residential Development: A Design Guide' (the Design Guide). This sets out specific considerations for infill development. These include respecting established patterns of development, having an appropriate scale, mass and bulk, ensuring sufficient spacing to existing properties. As the Design Guide was adopted following public consultation and seeks to deliver high quality design, an objective found in national planning policy, I give this document significant weight.

Appeal A

17. This appeal proposes the demolition of the existing garages and the two small garden sheds, and the construction of a two storey two bedroom detached

² See Regulation 61(5) of the Habitats Regulations

house on the eastern two thirds of the site with a parking space to the side. Most of the tarmacked area would become the garden for this property, and consequently the garden for the ground floor flat in Norfolk House would be reduced in size. The eaves of the proposed dwelling would be at a similar height to those on Norfolk House and 1A Grosvenor Gardens.

18. The proposal, when compared with other development in the immediate area, would be a relatively narrow building. However, it would be in keeping with the tight urban grain of development in the area; spacing between buildings in the area is already limited and the proposal would not appear unduly cramped. It would be of a scale and mass that is in keeping with development in the area.
19. As noted above Walpole Lane principally provides a rear servicing function to development on either side and to that extent the development would be out of keeping with the pattern of development in the area. However, I am satisfied that the development would create a street presence when seen from the junction of Walpole Road with Walpole Lane and would thus satisfactorily relate to the wider locality.
20. Walpole Lane and the land to the north provide part of the setting of the BSCA. The introduction of an additional small residential unit would preserve the character of the BSCA and by replacing a set of concrete garages with a purpose built structure of appropriate design would enhance the setting of the BSCA and thereby enhance its significance.
21. As such the proposal would be in keeping with the character and appearance of the area and the setting of the BSCA. It would therefore comply with Policies CS6, CS21 and CS41 of the Bournemouth Local Plan: Core Strategy (the BCS) which seeks to enhance local identity by applying good design principles to new buildings, contribute positively to the character of a neighbourhood, maintain and enhance the quality of the street scene, and to ensure that all development and spaces are well designed and respect the site and its surroundings. It would also comply with Policy 6.9 of the Bournemouth District Wide Local Plan (the BDWLP) which seeks development to complement the character of neighbouring development. It would also comply with the Design Guide as set out above. Finally, it would comply with paragraphs 58, 64 and 131 of the National Planning Policy Framework (the Framework) which seeks that development responds to local character and history, establishes a strong sense of place and takes account of the desirability of new development making a positive contribution to local character and distinctiveness.

Appeal B

22. In this case, following the demolition of the existing buildings, the proposal is for a bungalow covering a similar floor area to the Appeal A proposal. As with Appeal A it would be in keeping with the tight urban grain of development in the area. However, as a small single storey building it would lack the presence of the two storey house proposed in Appeal A, and would not be of a scale (height) that would respect the other residential buildings in the area. It would thus appear out of keeping with established pattern of development and would not have an appropriate scale, mass and bulk.
23. As with Appeal A the introduction of an additional small residential unit would preserve the character of the BSCA. However, as a small structure replacing

the single storey garages it would only also preserve the setting of the BSCA rather than enhancing it.

24. Overall, the proposal would be out of keeping with the character and appearance of the area, but would preserve the setting of the BSCA. It would therefore be contrary to Policies CS6, CS21 and CS41 of the BCS, Policy 6.9 of the BDWLP, the Design Guide and paragraphs 58, 64 and 131 of the Framework all as set out above.

Living conditions

25. The Design Guide sets out minimum distances between properties indicating that a distance of 21 m should be maintained back to back between two or three storey dwellings and 12.5 m should be maintained between the back and side of such properties in order to ensure that existing residents are not adversely affected by new development and that a suitable standard of amenity is provided for future occupiers. As with all guidance this should not be followed blindly and should be considered in the light of the particular circumstances of a site and proposal.

Appeal A

26. Subject to appropriate boundary treatments the ground floor windows of the proposal would not have an adverse effect on the living conditions of the occupiers of any other adjoining properties; this can be secured by condition. However, there would be a window to Bedroom 2 at first floor level which would look out to the north.
27. To the rear 1A Grosvenor Gardens is in close proximity to the property with a back-to-back dimension given by the Council at 10 m, a distance significantly less than that set out in the Design Guide. A single storey rear extension of No 1A is close to the boundary fence and this fence would ensure that there was no overlooking of the ground floor or its garden space.
28. Opposite the first floor rear window there would be the first floor windows described above. Because the three windows on rear elevation of No 1A are obscure glazed there would be no direct overlooking into these windows. I am therefore satisfied that from these windows there would not be an unacceptable loss of privacy for the occupiers of No 1A and that the rear garden for the proposed property would not be overlooked.
29. The fourth window in the rear elevation of No 1A is set to one side and the distance is slightly further but still below the distance set out in the Design Guide. The proposed rear elevation does not have any windows to habitable rooms directly opposite this fourth window and the one window in the rear elevation would be to light a staircase so requiring this to be obscure glazed by condition would be necessary and acceptable. Subject to this condition I am therefore satisfied that no unacceptable loss of privacy would occur.
30. There are four windows in the side elevation of 1 Grosvenor Gardens, two larger ones just behind the rear elevation of No 1A and two smaller ones further away. There would not be any direct overlooking between the existing and proposed properties and I am satisfied that while there would be some overlooking of the rear garden of the proposed property, given this is currently a garden area so that the situation would not change, any overlooking would not be at an unacceptable level.

31. Although to the south of Nos 1A and 1 the proposed development would be sufficiently separate from these properties not to lead to an overbearing effect on the occupiers of those properties or lead to an unacceptable loss of light. In the case of Norfolk House I am satisfied that there is sufficient separation to the proposed building to prevent any overbearing effect, particularly as there are no windows in the east elevation of that property at ground floor. Equally, although this property would have less garden space than at present it would still have an appropriate level of space for a property in this location.
32. As such the proposal would comply with Policy CS21 of the BCS which seeks development to respect residents' amenities and Policy 6.8 of the BDWLP which expects that development will ensure adequate privacy for the occupants of the building and adjacent residential properties. It would also comply with paragraph 17 of the Framework which seeks a good standard of amenity for all existing and future occupants of land and buildings.

Appeal B

33. As a single storey property the proposal would have less of an effect on the living conditions of adjoining properties than would be the case in Appeal A. There would be no loss of privacy as there would be no first floor windows and as a smaller structure would not result in an overbearing effect for the occupiers of adjoining properties.
34. Consequently the proposal would comply with Policy CS21 of the BCS, Policy 6.8 of the BDWLP and paragraph 17 of the Framework, all as set out above.

Other matters

35. A local resident has written concerned about safety and noise and disturbance during the construction period if permission were to be granted, particularly due to the narrow nature of Walpole Lane. I am satisfied that subject to the development taking place in accordance with a Construction Management Plan, including hours when construction operations and deliveries could take place, which could be secured by condition, that the development would not have an adverse effect on public, including highway, safety and the living conditions of the occupiers of neighbouring properties.

Conclusions

36. I am satisfied that neither proposal would have an adverse effect on the living conditions of adjoining occupiers, and Appeal A would be in keeping with the character and appearance of the area and enhance the setting of the BSCA. However, Appeal B would be harmful to the character and appearance of the area and neither proposal makes adequate provision of the mitigation of the effects on the Dorset Heathlands.
37. For the reasons given above I conclude that the appeals should be dismissed.

RJ Jackson

INSPECTOR