
Appeal Decision

Site visit made on 21 June 2017

by Andy Harwood CMS MSc MRTPI

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

Decision date: 18 July 2017

Appeal Ref: APP/E1210/W/17/3169057

The Crooked Beam, 2 The Grove, Christchurch BH23 2HA

- 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 K Medley-Jones against the decision of Christchurch Borough Council.
 - The application Ref 8/16/2149, dated 29 September 2016, was refused by notice dated 21 December 2016.
 - The development proposed is described as "demolition of existing building and construction of 5 new dwellings within a single building, following approval for change of use to residential ref:8/15/0428. Proposals to include on-site parking, bin storage and gardens".
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building and construction of 5 new dwellings within a single building to include on-site parking, bin storage and gardens at The Crooked Beam, 2 The Grove, Christchurch BH23 2HA in accordance with the terms of the application, Ref 8/16/2149, dated 29 September 2016, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. I have revised the description of the development to refer just to the acts of development proposed.
3. The Council's decision refers to the need for financial contributions to mitigate for impacts upon biodiversity interests. A Section 106 planning obligation (S106) has now been submitted by the appellants which the Council confirms has overcome the second reason for refusal. I return to that matter below.

Main Issue

4. Whether the proposed development and surrounding area would be kept safe from flooding.

Reasons

5. The appeal site currently includes a large building and surrounding parking area which has previously been in use as a restaurant but which at the time of my visit was not in use and some building work appeared to be underway. The Council refer to the site as being within Flood Zone 3a of their Strategic Flood Risk Assessment (SFRA) which was undertaken in 2009. The extract maps (as

at 2086 and 2126) provided with the Council's statement confirm that much of the appeal site is within Flood Zone 3a.

6. The appellant acknowledges that due to the location of part of the site within Flood Zone 3a that it is necessary to carry out a "sequential test". The National Planning Policy Framework (the Framework) explains that the aim of the sequential test is to steer new development to areas with the lowest probability of flooding and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with lower probability of flooding. The Appellant's site specific Flood Risk assessment (FRA) confirms that the proposed ground floor height of 4.3m (above Ordnance Datum) will be above the 1 in 100 year fluvial and 1 in 200 year tidal extremes that would reach 4.1m.
7. In a previous dismissed appeal on this site relating to a proposal for 10 apartments¹ the Inspector accepted the Council's SFRA as I do. However, given the housing supply position and lack of evidence about alternative sites, the Inspector considered the sequential test would be met. The Council in this case states that a 5 year supply of housing land can be demonstrated and that other sites at less risk from flooding can accommodate the housing proposed in this case. This is not disputed by the appellant. The proposal in this respect would not pass sequential testing and proposes a more vulnerable use than the present use of the building. The advice of the Framework and therefore Policy ME6 of the Core Strategy (CS)² would not be complied with.
8. Planning permission does however exist for the conversion of the ground floor of the building into 4 flats, along with the retention of an existing maisonette on the first and second floors (ref 8/15/0428 approved on 5 May 2016). This would therefore include a total of 5 new dwellings, the same number of units as is proposed in this appeal. The appellant asserts that the extant permission would be implemented and that steps have already been taken to do so, such as the discharging of pre-commencement conditions. If the current appeal were dismissed, it seems highly likely that the appellant would utilise that planning permission rather than go back to the former use or leave the building empty. In reaching this view I have taken account of the stripping out of the former interior that I saw at my site visit.
9. The conversion of the existing building is significantly different from the current proposal and did not have to go through the sequential testing set out in the Framework. However, the presence of an alternative planning permission for the same number of dwellings is a material consideration to be taken into account. In such circumstances it is reasonable to analyse the difference between flood risks for occupants of the site and elsewhere for both schemes. This will enable a view to be taken about how much weight should be afforded to the previous planning permission as a fallback proposal.
10. The ground floor level would be higher than with the previous planning permission. The FRA states that the finished floor level of 4.3m would be safe from flooding for the whole lifetime of the development with a 0.2m 'freeboard'. By 2126, failure of defences could cause flooding to around 0.1m within The Grove affecting the car park which it is suggested would not be dangerous for pedestrians. The proposed sleeping accommodation would be

¹ APP/E1210/A/13/2204087

² Christchurch and East Dorset Local Plan, Part 1 – Core Strategy Version for Council Adoption, April 2014

above first floor level and therefore inherently safer than the ground floor sleeping accommodation approved previously.

11. The Environment Agency consultation response refers to the safe refuge that would be provided (whilst requiring the sequential testing) through this proposal. The current proposal would therefore have some significant advantages over the existing planning permission in terms of the respective flood risks which have been outlined within the FRA and the appellant's statements. I therefore give the extant planning permission substantial weight as it would provide a safer form of development.
12. CS Policy ME6 and the Framework would not be complied. However, the proposal would provide for the same number of dwellings in a safer form than the alternative fallback proposal. In these circumstances, the material consideration in the form of the fallback outweighs the policy considerations in this case. In relation to the main issue, the proposed development and surrounding area would be kept safer from flooding than if planning permission 8/15/0428 were implemented.

Other Matters

13. The proposed building would have a similar floor to ridge height as the existing building although it would be wider at roof level. Due to finished floor level being higher than the existing ground floor, the building would be marginally higher than the existing. The proposal would therefore be higher and bulkier than the nearest residential properties and existing buildings but it would not look out of place given the corner position.
14. The appeal site falls within 5km of the Dorset Heathlands Special Protection Area (SPA), as well as the Dorset Heaths Special Area of Conservation (SAC). The Dorset Heathlands Planning Framework 2015-2020 supplementary planning document (SPD) was adopted in January 2016 and sets out a joint strategy across a number of neighbouring local planning authorities. The strategy seeks payment for avoidance and mitigation due to the impact of residential development on biodiversity in the affected areas. The strategy consists of Heathland Infrastructure Projects (HIPS) and Strategic Access Management and Monitoring (SAMMs). The Council in this case takes the view that HIPS are infrastructure to be paid for through the Community Infrastructure Levy and that SAMMs are not infrastructure and contributions should be raised through planning obligations. Index linked contributions of £241 per house and £164 per flat are required as well as administration fees. In this case, the submitted S106 proposes a SAMP and monitoring contribution of £1041 as well as £75 which does not comply with these figures. I have not been provided with a breakdown of how the total was arrived at but the Council has confirmed that it overcomes their concerns.
15. Harm could result for the development leading to additional population within the SPA and SAC if measures are not put in place. I am satisfied that a financial contribution is therefore necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The S106 would comply with regulation 122(2) of the Community Infrastructure Regulations 2010 and the policy tests within the Framework.

Conditions

16. I have imposed a condition specifying the relevant drawings as this provides certainty that the development will be implemented as proposed. The Council has suggested other conditions. I consider that it is necessary to ensure that the finished floor level specified in the FRA is implemented and I have simplified the suggested condition relating to that. Further details of materials, landscaping and refuse storage are required and I have attached the proposed conditions with some amendment to ensure compliance with the tests for conditions set out in the Framework. I have also reflected current Planning Practice Guidance regarding conditions precedent.

Conclusion

17. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

A Harwood

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 'ASP.15.074.002'; 'ASP.15.074.003 Revision D'; 'ASP.15.074.006 Revision D'; 'ASP.15.074.007 Revision B'; and 'ASP.15.074.008 Revision C'.
- 3) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) by M Frank Tyhurst dated September 2016 in particular the finished floor levels of the dwellings hereby approved shall be set no lower than 4.3m above Ordnance Datum (as shown on plan 'ASP.15.074.003 Revision D') prior to the occupation of any dwelling.
- 4) No development above foundation level shall commence until further details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the occupation of any of the dwellings.
- 5) No development above foundation level shall commence until proposals for the hard landscaping of the site, including full details of surfacing materials and colours, kerbing, bollards, railings, walling and fencing have been submitted to, and approved in writing by, the Local Planning Authority. The approved details shall be completed prior to the first occupation of the development hereby approved and thereafter retained.
- 6) No development above foundation level shall commence until details for the refuse storage shall be submitted to and approved in writing with the Local Planning Authority. The approved details shall be completed prior to the first occupation of the development hereby approved and thereafter retained.