
Appeal Decision

Site visit made on 15 August 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: 05 September 2017

Appeal Ref: APP/G1250/W/17/3177501

45A - 47A Branksome Wood Road, Bournemouth BH4 9JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr A Thompson against the decision of Bournemouth Borough Council.
 - The application Ref 7-2016-8340-M, dated 21 August 2016, was refused by notice dated 9 December 2016.
 - The development proposed is outline application for the erection 14 apartments with associated parking, cycle and bin storage.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was made in outline with access, appearance, layout and scale for consideration at this stage and only landscaping 'reserved' for later determination. I have considered the appeal in similar terms.
3. During the course of the consideration of the application by the Council amended plans were submitted. These amended plans were those upon which the Council made its decision. I will use them also in my decision.
4. The appellant submitted a revised site layout plan at the appeal stage¹ proposing, when compared to the determined version of the plan, to remove a parking space and increasing the landscaped area in front of the building. However, this plan has not been the subject of formal consultation and third parties may wish to make comment upon it. I therefore have not taken this plan into account in my decision.
5. The Council refused the application for, in effect, four reasons. One of these partially related to the effect of the loss of a Lawson Cypress tree. This tree has subsequently been felled. Unlike some others on the appeal site, this tree was not covered by a Tree Preservation Order (TPO). In its Statement of Case the Council acknowledged that this felling had taken place and that this part of the reason for refusal no longer applied.

Main Issues

6. The main issues are:

¹ Drawing 155055/005 revision H

- the effect on the character and appearance of the area;
- the effect on the living conditions of the occupiers of 11 Branksome Hill Road and the proposed dwellings in terms of privacy, and the occupiers of 47 Branksome Wood Road and the proposed dwellings in terms of noise and disturbance;
- whether there is sufficient information to allow it to be concluded that there would be no adverse effect on the health and longevity of protected trees; and
- the effect on the Dorset Heathlands².

Reasons

Character and appearance

7. The appeal site lies on the northeast side of Branksome Wood Road and slopes up away from the road. The area is made up of residential properties being a mixture of dwellings and flats, although the appeal properties are the end of a series of two storey detached dwellings. The adjoining property to the west, No 47, consists of a block of flats, being two storeys in main form but with rooms in the roof. This property was granted in permission on appeal³ in June 2008. In this appeal decision my colleague Inspector agreed with the Council's then description of the area as "characterised by detached two storey dwellings set in spacious plots with attractive tree/hedge screening to the boundaries and set well back from the road frontage". I concur with this description of the overall character of the area and it is this which makes the area locally distinctive.
8. The proposal is to demolish the two dwellings and construct a single building which would consist of 14 apartments on three floors. The building form would cover the majority of the width of the appeal site, but would be divided up so that there would be a central glazed, entrance and circulation, section. The building form would be unashamedly contemporary with a flat roof, although the uppermost storey would be set back slightly from the front façade. Parking would be provided in front of the building with an in/out access arrangement with vegetation purportedly to be retained between these points.
9. As I have noted above the overall character of the area is spacious, meaning that there are significant gaps between the individual buildings. This would be achieved at either end of this building. However, the overall width of this building would be considerably wider than those in the immediate vicinity on this side of Branksome Wood Road. I appreciate that there are large buildings, such as the two terraces that make up Elm Road a short distance to the west, but these are perpendicular to Branksome Wood Road and do not address the street scene in the same way. Others are more screened from the road by existing vegetation meaning that even glimpsed views are rare. Development on the opposite side of Branksome Wood Road has a different character.
10. The design would feature a central, glazed section, which would be set back slightly from the front elevation. However, this would not appear as a recessed

² 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.

³ APP/G1250/A/08/2066871

element. This would be due to the distance from the road meaning that the difference would not be marked through foreshortening, and this section would be lit at night, at least when used, emphasising its presence. The architecture, therefore, would not be successful in breaking up the overall width of the proposed building.

11. Furthermore, the form of building would be horizontal across the whole width of the site. While in absolute terms the top of the building would be lower than the two ridges of the existing properties, the overall extent of the built form would appear higher, particularly to No 45 where the top of the first floor would be markedly above the eaves of that property. The overall bulk of the building with its large flat roof would also mean that the height of the building would not recess as is the case with a pitched roof, particularly as it would be located at a higher level than the street to take account of the topography of the area.
12. Taken together the overall width of the proposed building, the height and the horizontal nature of the architecture would mean that the building would appear bulky. This would mean that the scale of the building would be harmfully out of keeping with the character and appearance of the wider area and would not reinforce local distinctiveness. While the National Planning Policy Framework (the Framework) in paragraph 60 indicates that there planning decisions should not attempt to impose architectural styles it does indicate that it is proper to promote or reinforce local distinctiveness.
13. To this harm should be added the harm to the character and appearance of the area I find below in respect of the potential adverse effects on the trees towards the front of the appeal site from the lack of information to ensure their health and longevity.
14. Therefore the proposal would be harmful to the character and appearance of the area. As such it would be contrary to Policies CS21 and CS41 of the Bournemouth Local Plan: Core Strategy (2012) (the CS) in that it would not contribute positively to the character and function of the neighbourhood nor would it enhance the quality of the street scene, and through its scale and appearance would not respect the site and its surroundings. It would also be contrary to Policy 6.10 of the Bournemouth District Wide Local Plan (2002) (the LP) in that it would not respect the character of the area or retain urban spaces which make a material contribution to the character of the area. It would also be contrary to paragraphs 60 and 64 of the Framework as set out above and, as it would not improve the character of an area, should be refused.

Living conditions

15. The Council has published a Supplementary Planning Document entitled "Residential Development – A Design Guide" (the Design Guide) to promote and ensure good quality design in all new residential development in the Borough. It sets out physical and visual standards for new development on urban sites, including distances to ensure overlooking does not lead to a loss of privacy. Given this is in accordance with paragraph 17 of the Framework, which indicates planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and building, I am able to give the Design Guide significant weight. The Design Guide does, however, indicate that it is not intended to be prescriptive and therefore it is clear that its guidance needs to be interpreted to the individual case.

16. Behind the site of the existing buildings the landform rises quite sharply to the rear with some vegetation in the area between the existing dwellings and the properties at the rear in Branksome Hill Road. The vegetation provides some screening between the properties, but this is not complete. The difference in levels is such that the first floor of the proposed building would be approximately equivalent to the ground floor of the existing properties in Branksome Hill Road.
17. The Design Guide indicates that the minimum back to back distance between parallel 2 or 3 storey buildings (with rear facing windows but no living room windows on upper floors) should be 21 m and for 3 storey buildings with rear facing living room windows on upper floors this should be 25 m. This being to ensure acceptable living conditions for the respective occupants. The effect of the level change is that the equivalent height of the proposal would be similar to a 2 storey building in Branksome Hill Road. There is no distance given in the Design Guide for 2 storey buildings with living rooms the upper floor. The proposal involves living accommodation in the rear elevation as well as balconies at both upper two floors.
18. The appellant has provided a drawing showing the horizontal distances from the windows in the rear elevation of the proposal at second floor level to the windows in the facing elevation of 11 Branksome Hill Road. These indicate that the distances are greater than 21 m but less than 25 m. The distances from the outer edges of the balconies and from the windows on the first (and ground) floors would be less.
19. Most of the views between the relevant windows are at angles and any angle will reduce actual and the perception of overlooking, although the windows in the northern corner of the proposed building are nearly square on. The window in No 11 which is square on to a window in the proposed building is to a landing. There is also some existing landscaping in the area which would also reduce actual and the perception of overlooking, although some of this would be likely to be removed to allow the construction of the proposed bicycle store. Taking all the factors into account, including the level change, I am satisfied that the proposal would not give rise to an unacceptable loss of privacy for the occupiers of No 11 or the proposed occupiers of the proposed flats at the rear of the building.
20. The parking area for the property would be located essentially adjacent to the boundary fences, although on the side adjacent to No 45 Branksome Wood Road there would be a small strip of landscaping. Currently the boundary treatment with No 47 is an approximately 1.8 m close boarded fence. Parking for No 47 is also at the front of the property, with two spaces between the joint fence and the forward projection of No 47.
21. Currently there is a driveway for No 47a along the boundary with No 47 which results in some noise and disturbance from vehicles moving along it. The proposal would increase the amount of vehicles moving within this area by an order of magnitude, but each space is only likely to be subject to the number of manoeuvres associated with a single dwelling, even if they were to be unallocated to individual dwellings. Given the existing arrangements, and thus vehicle manoeuvring within the area in front of Nos 47 and 47a, I am satisfied that the proposal would not result in an unacceptable increase in noise and disturbance to the occupiers of No 47.

22. The Council is also concerned that the parking in close proximity to the front of the building would lead to unacceptable noise and disturbance to the occupiers of the proposed ground floor flats. The plans show that both living rooms and bedrooms would be located on this frontage, although there would be small private amenity spaces in front of the bedrooms. While there would be some noise and disturbance from the manoeuvring of vehicles and the closing of vehicle doors, this would be very similar to that at No 47 and as the ground floor level would be set up slightly from the parking area I consider that this would not be unacceptable.
23. As such the proposal would not have an unacceptable effect on the living conditions of the occupiers of neighbouring or proposed properties. As such it would be comply with Policies CS38 and CS41 of the CS and Policy 6.10 of the LP which both require the amenities of neighbouring residents to be respected and potential pollution from noise minimised. It would also comply with the Design Guide and the Framework as set out above.

Trees

24. Four trees within the area in front of the existing dwelling are protected by a TPO⁴. The application was accompanied by an Arboricultural Method Statement (the AMS) which also included an assessment as to the quality of the trees on site in line with British Standard 5837:2012⁵ (the BS). This categorised these four trees, along with a fifth (a Beech), as 'B1' under the BS system, that is trees of moderate quality with an estimated remaining life expectancy of at least 20 years being categorised for their arboricultural qualities.
25. The BS reminds that the default position should be that structures, and this would include hardsurfaced areas, should be located outside Root Protection Areas (RPAs) of trees to be retained. It goes on to state where there is an overriding justification for construction within a RPA technical solutions might be available that prevent damage to the trees.
26. The AMS indicates RPAs for the trees and that a cellular confinement system needs to be installed on both sides. To do otherwise could lead to the unnecessary effects on the health and longevity of protected and other beneficial trees. As noted above the ground level rises from Branksome Wood Road and the five trees are on a slightly raised bed. It not clear from the information forming the application what works, if any, are required to ground levels to allow the parking spaces to be accessible. This means that it has not been demonstrated whether a technical solution can be delivered, even if it was justified. It would not be appropriate to leave this to a planning condition as I cannot be satisfied that a technical solution can be achieved without harm to the health and longevity of the protected trees.
27. As such the proposal does not provide sufficient information to show that there would be no adverse effect on the health and longevity of protected trees. Not only would the loss of the trees be harmful in itself, but would also add to the harm to the character and appearance of the area. As such the proposal would be contrary to Policy CS41 of the CS in that it would not be designed to respect the public realm. It would also be contrary to Policies 4.25 and 6.10 of the LP as it has not been demonstrated that development proposals include sufficient

⁴ Tree Preservation Order 1027/2015

⁵ 'Trees in relation to design, demolition and construction - Recommendations'

land for planting and landscaping and that it does not appropriately take account of important trees. It would also be contrary to paragraph 58 of the Framework in that it would not be visually attractive as it would not have appropriate landscaping.

Dorset Heathlands

28. The site lies beyond 400 m but within 5 km 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 CS. 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.
29. The appellant and the Council agree that a contribution is needed towards mitigation of the effects of the development through a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) 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.
30. However, despite the appellant indicating that Planning Obligation by way of Unilateral Undertaking is to be submitted I have not been provided with a copy of such a document. I can therefore only conclude that the proposal does not make adequate provision for such mitigation. As such the proposal is contrary to Policy CS33 as set out above, paragraph 118 of the Framework, which indicates that biodiversity should be conserved and enhanced, and the requirements of the Conservation of Species and Habitats Regulations 2010 (as amended).

Other matters

31. The appeal site is located adjacent to but outside Meyrick Park and Talbot Woods Conservation Area with the rear boundary of the appeal site marking the perimeter of the Conservation Area. The proposal would not have a harmful effect on the setting of the Conservation Area as its harmful effects relate to the area outside the Conservation Area rather than to the north and the Conservation Area itself.
32. The appellant refers to having made an application for a Certificate of Lawful Development or Use under Section 192 of the 1990 Act relating to a potential dormer in the rear of No 47a. I have not been provided with any details of this or whether a Certificate has been granted. I therefore am unable to give this any significant weight in my decision making.

Conclusion

33. For the reasons given above I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR