
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/17/3175379

1008 Wimborne Road, Bournemouth BH9 2DE

- 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 Juno Developments (Sandbanks) Ltd against the decision of Bournemouth Borough Council.
 - The application Ref 7-2017-3141-U, dated 16 February 2017, was refused by notice dated 13 April 2017.
 - The development proposed is construction of a block of nine apartments with associated parking, access and landscaping.
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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. The appeal was accompanied by a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) in respect of a contribution towards mitigating the effects of the development on the Dorset Heathlands¹. I will discuss this later in this decision.

Main Issues

4. The main issues are:
 - the effect on the living conditions of the occupiers of 11 Marks Road, the recently converted "Coach House" and the proposed development in terms of outlook, light and privacy;
 - whether the proposal would afford adequate living conditions for the occupiers of the proposed development in terms of internal living accommodation and outdoor amenity space;
 - the effect on highway safety; and
 - the effect on the Dorset Heathlands.

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.

Reasons

Background

5. The appeal site is an area of land currently used for car sales. This use is the subject of enforcement action. Previously it was used as the car park for an adjacent public house, but this public house is currently closed. For nomenclature purposes I will refer to this building as “the public house building”. The appeal site is set up slightly from Wimborne Road with residential development behind that accessed through the cul-de-sac of Marks Road from the rear.
6. Development in the surrounding area is mixed through a variety of commercial and residential uses at both two and three storeys. The public house building is a substantial two storey building with additional rooms in the roofspace.
7. In February 2017 a planning appeal² for the redevelopment of the appeal site for ten apartments and associated infrastructure was dismissed. However, the Inspector concluded that the form of development, which was similar to that now proposed, being two and three storey accommodation with dormers, would not be out of keeping with the character and appearance of the area. I concur with that view. My colleague Inspector however, considered that the proposal would have an unacceptable effect on the living conditions of the occupiers of 11 Marks Road and for the proposed occupiers. The appellant considers that the current proposal overcomes these concerns, although the Council considers that the revised form would additionally have an adverse effect of the occupiers of one of the residential units within the Coach House.
8. My colleague also concluded that “in the absence of substantive evidence to the contrary” that there was sufficient parking in the area (paragraph 16) so that as a result of the proposal there would not be an adverse highway safety effect arising from inappropriate parking. The Council now seeks to show that such evidence does exist.
9. The Council has referred to its Supplementary Planning Document entitled “Residential Development – A Design Guide” (the Design Guide). This is designed to, *inter alia*, promote good design and establish clear standards for new residential development. These principles are in line with paragraphs 17 and 64 of the National Planning Policy Framework (the Framework), which seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings, and that development should take opportunities for improving the character and quality of an area. As the Design Guide was adopted following public consultation I am able to give it significant weight.

Living conditions for No 11, the Coach House and proposed occupiers – off-site effects

10. Behind the appeal site is 11 Marks Road. This is a detached two storey dwelling side-on to the appeal site with a single storey rear extension and single storey side extension between the main house and the appeal site. The rear extension has a large window in its side elevation facing towards the appeal site and there is also a window in the side elevation of the main house. The joint boundary with the appeal site is made up of an approximately 1.8 m

² APP/G1250/W/16/3160501

high close boarded fence with an open trellis above. The floor level of No 11 is raised slightly above the appeal site due to changes in topography.

11. It should be noted that the site plan drawing is slightly inaccurate as it shows the side elevation of No 11 parallel with the joint boundary fence when, in fact, it is at a slight angle as shown on the location and block plans. None of these plans show the rear or side extensions of No 11.
12. At the site visit I went inside No 11 and appreciate that these two ground floor windows provide the majority of the light for the room within that elevation, despite the presence of patio doors to the rear. These windows ensure that there is sufficient light so that normal activities can take place during the day without artificial lighting.
13. The proposal would locate the proposed building so that its front elevation would be approximately level with the front elevation of No 11. The closest part of the proposed development would be two storeys in height with a crown roof. The buildings would be separated by the gap between No 11 and the boundary fence and the width of a parking space and its manoeuvring area on the appeal site.
14. Having been inside No 11 I am satisfied that the proposed building in such close proximity to its side elevation would have a harmful adverse effect on the amount of light, both sunlight and daylight, reaching the interior of that property. It would also have a harmful overbearing effect enclosing the property and its garden. As such it would not represent good design.
15. The side elevation of the proposal facing No 11 is made up of two elements, the main section which would have two windows, one on each floor, to a kitchen and bathroom above which could both be obscure glazed, and two windows set further away in Flats 2 and 6 each to bedrooms. The ground floor window in Flat 2 would be clear glazed, but that for Flat 6 would be a 'V' shaped oriel window with the side pane facing No 11 being obscure glazed. Given the separation to No 11, the intervening boundary treatment and the change in level, I am satisfied that this arrangement would ensure that would be no material loss of privacy to the occupiers of No 11.
16. Between the appeal site and the public house building a building described as a Coach House has been extended and converted into two residential units, although at the time of my site visit they did not appear to be occupied. Each has living accommodation on the ground floor with two bedrooms above. There are windows to the smaller bedroom in the more northerly unit in both side and front elevations.
17. The Council is concerned that there would be harmful intervisibility between windows in the northern unit in the Coach House and the appeal property leading to a loss of privacy for the occupiers of both properties. It cites the 15 m distance between the balcony on the front of the appeal proposal and the windows in the side elevation of the Coach House, being less than the 21 m set out for such arrangements in the Design Guide, as showing evidence of this harm.
18. While this distance is less than that set out in the Design Guide, I am satisfied that there would be sufficient separation so that an unacceptable loss of privacy would not occur. The side window is a secondary window and looks out

over a parking area, either for the public house or the car sales area in the event that use occurs at the end of the enforcement process. It is therefore not a private area. While there would be some intervisibility to and from the balcony on the front elevation of the proposed development and the Coach House it would not be to such an extent that it would be harmful.

19. However, the proposal would be harmful to the living conditions of the occupiers of 11 Marks Road. As such it would be contrary to Policies CS6, CS21, and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012) (the CS) which require good design principles to new buildings, only encourages new development outside the preferred housing areas where it would not harm living conditions, and be designed to respect the site and its surroundings. It would also be contrary to Policy 6.10 of the Bournemouth District Wide Local Plan (February 2002) (the LP) in that would not respect the living conditions of the occupiers of buildings in the vicinity. It would also fail to comply with paragraphs 17 and 64 of the Framework as set out above.

Living conditions for the proposed occupiers – on-site effects

20. Although not mentioned in development plan policy the Council, and my colleague Inspector, has referred to the National Technical Housing Standards – nationally described space standard (March 2015). The Standards ensure that dwellings are fit-for-purpose and provide a good standard of accommodation. To assess the potential occupancies of the flats I have used the size of beds shown on the drawings. Using this number of occupants four of the flats (Flats 2, 3, 6 and 7) would fall below the standard and would all be less than this standard by a significant margin. For these flats, therefore there would be inadequate living conditions for the occupiers; this, of itself, would be harmful.
21. In addition, the amenity space provision would be small, being essentially located to the rear of the building in the area to the rear of Flats 1 and 2. This area would be tightly enclosed by the appeal building and the rear extension of 11 Marks Road. Given that all but one of the flats has more than a single bedroom and therefore may well be occupied by families, I am of the view that the proposal would not offer adequate outdoor amenity space.
22. That the amount of amenity space is larger than the previous scheme and there would be less flats now proposed does not mean that the current scheme would be acceptable.
23. I therefore am of the view that the proposal would not afford adequate living conditions for the occupiers of the proposed development in terms of internal living accommodation and outdoor amenity space. It would therefore fail to comply with Policy CS41 of the CS, Policy 6.10 of the LP and paragraph 17 of the Framework as set out above.

Highway safety

24. The Council has adopted a Parking Supplementary Planning Document (the PSPD) to provide guidance on parking standards for new development. As the document follows the guidance on parking standards set out in paragraph 39 of the Framework and it was adopted following public consultation I give this document significant weight in my decision.

25. Using the PSPD the proposal would generate a parking demand of 8 spaces if the spaces were unallocated, but 12 if allocated to flats. The proposal would provide 7 spaces. There is nothing to show that the spaces should be allocated, which is a management choice, and consequently there would be shortfall of a single space against the standard set out in the PSPD.
26. Of more concern to the Council is the loss, as it sees it, of the site for parking for the public house were it to re-open or for any other use within the building should a change of use be permitted. At the time of the earlier appeal permitted development rights allowed the change of use of public houses to other uses (particularly retail), but these rights were removed through changes which came into effect in May 2017. This means that the Council now has greater control as to how the building is used than earlier in the year and thus what parking, if any, is needed to service it. However, the building could re-open as a public house without needing a further planning consent.
27. As I understand it the public house building and the appeal site are now in different ownerships and while enforcement action can be taken against an unauthorised use it can only require that use to cease, not that any previous lawful use shall re-commence. In addition I have not been advised, for example, that there is a condition on any planning permission requiring the appeal site to be only used as a car park for the public house or kept available for that purpose. When in active use as a public house the operator could have closed the car park; that would have been a management decision, but this would have had an economic effect on the business.
28. I note the appeal decision³ further along Wimborne Road where the Inspector in that appeal found that that proposal would have displaced car parking and that displaced parking should be taken into account.
29. The Council has indicated that using the PSPD the use of the public house building as a public house would generate a requirement of 22 spaces. The PSPD figure being based on surveys would have taken into account those who would walk to a public house.
30. Wimborne Road is a District Distributor Road and includes bus routes. Parking on Wimborne Road outside the appeal site is restricted to a maximum of one hour between 10:00 hours and 19:00 hours seven days a week. On the opposite side of Wimborne Road there are double yellow lines preventing parking at all times. Parking would appear to be unrestricted in residential roads nearby, but is used by the residents of and visitors to the dwellings within those streets. Using these spaces for that displaced by the appeal proposal would only create parking stress further away from the appeal site in locations where it currently does not exist.
31. The Council undertook surveys of parking availability in the area, particularly in Comber Road where parking is unrestricted. This shows that in some locations there was already parking taking place in inappropriate locations. Other instances where obstructions from parking have been reported to the Council are cited. This shows that the area is subject to parking stress which it would be undesirable to increase. I saw some issues with parking in the nearby roads at my site visit.

³ APP/G1250/W/3119217

32. Although the shortfall of a single space against the PSDP for the proposed development of itself would not have a material effect on highway safety, the indirect loss of the parking for use by those using the public house building would make a poor situation even worse.
33. As such I am satisfied that the proposal would result in conditions prejudicial to highway safety and the free flow of traffic. Therefore it would not comply with Policy CS16 of the CS and the PSDP which seek to ensure that an adequate level of parking is provided in the interests of highway safety. It would also not comply with paragraph 39 of the Framework as set out above.

Dorset Heathlands

34. 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.
35. The appellant and the Council agree that a contribution is needed towards mitigation of the effects of the development through a Planning Obligation 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.
36. The completed Planning Obligation provides for the necessary contribution towards SAMM and consequently I am satisfied that the proposal would not have an adverse effect on the Dorset Heathlands.

Other matter

37. The Council is of the view that the cycle store is too small to allow it to be used for such a purpose and therefore would not encourage cycling as a non-car borne mode of transport. However, the Council acknowledges that the size does not make it completely unusable. Given that I am minded to dismiss the appeal for other reasons I do not find its small size to be determinative, but this failing to be large enough for full use does add to the other harms identified.

Planning Balance

38. The Council indicates that it is able to demonstrate a five year supply of housing land and the appellant does not dispute this. The appellant makes the point that the proposal would provide economic and social benefits through the provision of the new dwellings and through the expenditure of any new residents. However, these benefits are outweighed by the environmental and social harm to the occupiers of both 11 Marks Road, the occupiers of the

proposed dwellings and to highway safety. As such the proposal would not represent sustainable development.

Conclusion

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

RJ Jackson

INSPECTOR