

Appeal Decisions

Hearing held on 13 - 14 June 2018

Site visits made on 14 June 2018

by H Baugh-Jones BA(Hons) DipLA MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2018

Appeal A Ref: APP/G1250/W/17/3183304 37-41 Westover Road, Bournemouth BH1 2BZ

- 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 Libra Homes Ltd against the decision of Bournemouth Borough Council.
 - The application Ref 7-2016-891-Z, dated 24 November 2016, was refused by notice dated 3 March 2017.
 - The development proposed is approval in principle: retain main façade at three levels of the Westover Road frontage allowing for the demolition of the remaining building structure and re-development with two levels of retail floor space; 84 no. 1, 2 and 3 bedroom apartments; 97 car parking spaces; associated servicing facilities, refuse and cycle storage.
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Appeal B Ref: APP/G1250/W/17/3189580 27-28 Westover Road, Bournemouth BH1 2BZ

- 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 Libra Homes Ltd against the decision of Bournemouth Borough Council.
 - The application Ref 7-2017-1685-L, dated 19 July 2017, was refused by notice dated 18 October 2017.
 - The development proposed is mixed use re-development of the site of the former ABC Cinema with 2 no. commercial units, 62 flats, car parking and associated cycle/bin storage.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Application for costs

3. At the Hearing an application for costs was made by Bournemouth Borough Council against Libra Homes Ltd. This application is the subject of a separate Decision.

Procedural Matters

4. The applications for both appeal schemes are in outline but the Council considered the applications on the basis of the details shown on the submitted plans. At the hearing, the appellant confirmed that the plans generally

represent how the schemes would be built out and the parties agreed that my determination of the appeals should be made on that basis. I have therefore taken the details on the submitted plans into account in reaching my decisions.

5. Prior to the Hearing, the appellant provided a Unilateral Undertaking (UU) for each appeal scheme that, in the event of planning permission being granted, provides for a financial contribution towards Strategic Access Management and Monitoring (SAMM) in relation to the Dorset Heaths Special Protection Area (SPA). However, close to the end of the Hearing, the Council put forward the case that contributions towards highway and public realm improvements should also be addressed by means of planning obligations. I gave the parties the opportunity within a specified period to address this matter. Later on in my decision, I consider the UUs provided since the close of the Hearing and which now also include provision for public realm and highway improvements.
6. In relation to the SPA, prior to the Hearing I invited the parties' views on the judgement of the Court of Justice of the European Union (EU) dated 12 April 2018¹. At the Hearing, the parties jointly addressed this matter, confirming that an Appropriate Assessment had been undertaken and that appropriate mitigation measures are set out in the Dorset Heathlands Planning Framework Supplementary Planning Document (2015) (SPD). I consider this matter later on in my decision.
7. I made unaccompanied site visits before the hearing and on the evening following my first sitting day. I made an accompanied visit to both appeal sites before returning unaccompanied to assess the ABC Cinema proposal from the western end of Hinton Road.
8. Prior to the Hearing, the Council confirmed that its reason for refusal relating to residential amenity having regard to internal noise levels can be addressed by means of a planning condition and also withdrew the reason for refusal relating to affordable housing having considered the available evidence on viability.
9. The appellant has submitted an Affordable Housing Review Viability Appraisal. Although it is marked 'commercially confidential' the appellant confirmed at the Hearing that it can be included in the publicly available appeal documents.
10. Since the Hearing closed, the revised National Planning Policy Framework (the Framework) has been published. The views the parties were sought on any implications of this revised national policy on the determination of the appeal. I have taken these and the revised Framework into account in my decision.

Main Issues

11. The main issues common to both appeals are

- the effect of the proposals on non-designated heritage assets and whether the proposals would preserve or enhance the character or appearance of designated heritage assets
- the effects on the character and appearance of the area more widely
- the effects on the safe and efficient operation of the local highway network
- whether adequate provision would be made for car and cycle parking

¹ People over Wind, Peter Sweetman v Coillte Teoranta (case C-323/17).

- whether adequate provision would be made for comparison goods retail floor space.
12. In addition, the following main issues are particular to each appeal scheme
- whether the proposal forming **appeal A** would make adequate provision for promoting walking and cycling
 - whether the proposal forming **appeal B** would make adequate provision for improvements to the public realm.

Planning policy – Appeals A and B

13. The development plan includes the saved policies of the Bournemouth District Wide Local Plan (2002) (LP), the Bournemouth Core Strategy (2012) (CS) and the Bournemouth Town Centre Area Action Plan (2013) (TCAAP).
14. LP policy 4.3 says that the local planning authority will discourage the demolition of any building on the local list. LP policy 4.3 allows for permission to be granted for the extension or alteration of locally listed buildings unless the proposal would result in an adverse effect on (i) the physical features of the building which are of particular interest or value; (ii) scale, height, density, form, massing, layout, materials, colours, vertical or horizontal emphasis of the building; and (iii) the building's setting and its contribution to the street scene. The policy also requires that the design of any proposed alteration or extension is sympathetic to the principle building.
15. CS policy CS14 requires new development to be served by adequate transport infrastructure in order to mitigate the impacts on the existing transport network. Policy CS15 requires the submission of a Green Travel Plan and a Transport Assessment (TA) as part of planning applications. Policy CS16 requires parking provision for new development to be in accordance with the Council's adopted parking standards. The strategic objective of policy CS18 is to facilitate increasing levels of walking and cycling in the Borough.
16. CS policy CS21 sets out how housing will be distributed across Bournemouth. It says that in order to meet the anticipated housing need of 14,600 dwellings (net) between 2006-2026, in addition to completions between 2006-2011 and outstanding residential planning consents and allocations at April 2011, further provision of 6,438 dwellings (net) will be made within the existing urban area. It goes on to say that the appropriate number of new homes will be reviewed in 2016 and 2021. The anticipated number of dwellings within the boundaries of the Bournemouth TCAAP is 1,500-2,000 between 2011 and 2026.
17. Although not included in the reasons for refusal, a number of interested parties have referred to CS policy CS29, which broadly seeks to protect tourism and cultural facilities. This policy was also referred to by the main parties at the Hearing. Dispute remains over whether the Odeon and ABC buildings still have the potential to accommodate a tourism or cultural use. I therefore consider policy CS29 to be relevant to my consideration of the appeal.
18. CS policies CS39 and CS40 respectively seek to protect designated heritage assets and local heritage assets. In both cases, where a proposal for alteration, extension or demolition is likely to affect such assets or their setting, developers are required to submit an assessment of that asset and indicate the impact of the proposal on the asset. Policy CS41 requires development and

spaces to be of high quality design. Developments, including changes of use are expected to enhance the character, local distinctiveness, cultural identity, amenities of future occupants and neighbouring residents. New developments should also aim to conserve and improve landscape and townscape, biodiversity and habitats. The policy seeks to prevent development that would not meet these objectives.

19. TCAAP policy D4 broadly reflects the objectives of CS policy CS41 and applies them to development in the Town Centre but sets out a more detailed set of criteria against which development proposals will be assessed. The policy says that proposals are expected to accord with the Bournemouth Town Centre Urban Design Supplementary Planning Document (BTCUD SPD). TCAAP policy D5 encourages tall buildings in certain parts of the Town Centre provided they meet a number of design criteria and have a good relationship with the local and wider environment. Both appeal sites lie outside the identified area for tall buildings.
20. Both appeal sites fall within the Primary Shopping Area (PSA) as defined in the TCAAP. Within the PSAs, Policy U5 of the TCAAP permits the development of new retail floor space in order to enhance the role of the Town Centre as an important sub-regional shopping destination. It identifies a need for a minimum of 23,410 square metres (sqm) net additional floor space for comparison goods by 2026 and says that new retail development should be primarily concentrated within the PSA.
21. TCAAP policy A29 is specific to Westover Road and Hinton Road and seeks to permit mixed-use schemes that primarily comprise retail uses. It sets out the minimum requirements for comparison goods retail floor space and says that proposals must also meet a number of other requirements including creating high quality links between the two roads, respecting heritage assets and improving the appearance of Hinton Road in order to positively contribute to local distinctiveness.
22. Although not included in the reasons for refusal, TCAAP policy D7 was referred to at the Hearing. This policy seeks to ensure a high quality public realm and requires, where appropriate, financial contributions towards public realm improvements in association with developments under the provisions of the Community Infrastructure Levy Regulations (CIL Regulations) or via section 106 Agreements. Given the discussion on this topic at the Hearing, policy D7 is relevant to my consideration of the appeal.
23. TCAAP policy T1 is an overarching policy concerned with transport and movement in the area to the south of the A338. It sets out a number of criteria that development should meet where it would alter the road network in this area. Policies T2 and T3 respectively seek to promote walking and cycling and set out priority areas for walking and cycling improvements.
24. There are also a suite of Supplementary Planning Documents (SPDs) and Supplementary Planning Guidance (SPG) variously covering matters of parking, affordable housing and the Dorset Heaths Special Protection Area (SPA). I make reference to these throughout my decision where appropriate.
25. The Framework contains policies that are of relevance to my consideration of the appeals including those that relate to ensuring the vitality of town centres, the historic environment and sustainable transport.

Reasons – Appeal A

Non-designated and designated heritage assets

26. The Odeon is locally listed and I have no reason to disagree with the parties that it is a non-designated heritage asset for the purposes of the development plan and national planning policy. The building would be demolished but its Westover Road façade would be retained. The lower part of the building would be redeveloped for retail use over two storeys with a number of new storeys above to provide residential apartments. The Odeon sits directly opposite the grade II listed Pavilion and is close to the locally listed Premier Inn building a short distance to the east.
27. The Odeon dates from the late 1920s when it was first known as The Regent Theatre and was one of a suite of theatres to bear that name. It was built in an Italian Renaissance style and despite a significant change to the form of its roof along with some minor alterations, the overall character and appearance of the extensive Westover Road façade has not been significantly diluted. Notably, the building has a bold and confident design not least by way of a striking deeply recessed arcaded loggia at first floor level and the combination of red brick and white faience detailing.
28. At either side of the building are walkways accessed through ornamental gates sitting under decorative brick and white faience arches. The rear elevation addresses Hinton Road and although significantly less ornate than the main façade, it is nonetheless well detailed giving it a notable presence in the street scene. It is clear from the presence of front and rear accesses that the building was designed so that cinema goers would exit the building onto both Westover Road and Hinton Road. The attractive design of the Hinton Road elevation is therefore unsurprising.
29. The building's interior is a somewhat different story having been subject to major alterations throughout the years. Whilst the building has retained some internal historic features such as the Cinerama auditorium, remnants of painted murals and areas where decorative plasterwork remains, the overall sense of being inside a historic building has been all but lost.
30. In addition, the replacement of the original roof dome with an unsympathetic expansive timber structure has resulted in a harmful effect on the building's overall character and appearance and which can be experienced from a number of vantage points from around the town. Having said that, the building still makes a valuable contribution to the character of Westover Road and Hinton Road and its juxtaposition with the Pavilion and the nearby ABC cinema creates a distinct sense of a once thriving entertainment district within the town.
31. The proposed part of the building that would sit above the retained façade has been designed in a 'T' shape with the cross of the 'T' spanning the Hinton Road elevation. The narrower projection towards Westover Road would be set back and would have a curved frontage. The new part of the building would contrast sharply with the retained older structure below through its use of modern materials including a substantial amount of glazing. The Council is of the view that this is the wrong approach given the historic importance of the Odeon building and that a design more reflective of the building's existing character would be more appropriate.

32. However, the appellant drew my attention to a number of buildings in various global locations, where contemporary additions have been added to historic buildings. Although the Council sought to argue that these are 'iconic' buildings that cannot be viewed in the same way as the design of the appeal scheme, it seems to me that they clearly demonstrate the principle of what the appellant referred to as "assertive contrast". That is, the deliberately stark contrast between the host building and its later addition. I agree that this approach leaves little room for ambiguity because there is complete clarity between the old and new. I see no reason why such an approach could not be applied to the Odeon building and consider that its legibility in views along and towards Westover Road could be maintained and that the building's historic character would be experienced as a distinct entity from the proposed modern structure above it. In this regard, I consider the proposed addition of a modern apartment block would, if suitably designed, avoid an adverse effect on the appreciation of the retained façade and its contribution to the local historic environment.
33. The Hinton Road elevation would be replaced by a four-storey building peppered with variously sized and spaced windows sitting below a large glazed block. The current character and appearance of the Odeon in views along Hinton Road would be changed completely even though the lower part of the building would be constructed from bricks reclaimed following demolition works. Although the building's Hinton Road elevation does not provide the primary façade, it is nonetheless an important component of the overall building and contributes significantly to its heritage value. Furthermore, it is a striking feature in the Hinton Road street scene. In my view the historic and cultural appreciation of the building does not solely rely on the character and appearance of its primary façade. The effects of the proposal on the non-designated heritage asset should therefore properly be considered in the context of the building as a whole.
34. The proposed changes to the building would be of such magnitude that they would result in an unacceptable diminishing effect on the significance of the non-designated heritage asset and the historic contribution it makes to the local environment. Consequently, I find that the proposal runs counter to CS policy CS40.
35. Although there is a degree of subjectivity in assessing the proposal against the requirements of LP policy 4.3, the addition of a number of storeys above the existing height of the building and the overall proposed scale, mass and change from a horizontal to a vertical emphasis would not meet the requirements of the policy. I therefore find the proposal to be in conflict with it.
36. In addition, the proposal would not accord with the requirement of TCAAP policy A29 to sustain and enhance the significance of heritage assets in Westover Road/Hinton Road.
37. Paragraph 197 of the Framework says that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. For the above reasons, I consider that the proposal would

- result in a serious adverse effect on the significance of the non-designated heritage asset. I weigh this in the planning balance later in my decision.
38. I have also had regard to the proposal's effects on the setting of the locally listed building occupied by the Premier Inn hotel, which dates from around the 1930s and is an attractive and distinctive building in a prominent location close to Westover Road's junction with Bath Road. The building is also a notable feature on the skyline in views from elsewhere nearby including from the pier although in these views, it sits against a backdrop of other tall buildings and reads as part of their general grouping.
39. The proposed development would be of lower height than the Premier Inn building and would sit away from it to the west. Because of its 'T' shaped form, it would appear with a much narrower front elevation than the Premier Inn building and those around it. The proposed building would therefore be of more modest scale and thus, less visually prominent and would not detract from the appreciation of the Premier Inn building in local views. Thus, there would be no harm to the significance of this non-designated heritage asset in the available views. Whilst the rear elevation of the proposed building would appear much more expansive from within Hinton Road, notwithstanding my finding of harm to the Odeon building, the proposal would not be at odds with the overall mix of buildings in this street and would have no material effect on the setting of the other non-designated heritage asset. I now turn to the effects of the proposal on a designated heritage asset.
40. The Odeon's construction is contemporary with that of the grade II listed Pavilion building opposite. The addition to the mass of built form rising above the Odeon's retained façade therefore has the potential to affect the Pavilion's setting.
41. However, there is a large intervening area of open land between the two buildings which is currently used as a car park. Although the Council indicated that this may be subject to more sensitive redevelopment in the future, I do not have any firm proposals for such a scheme before me and the land's current use is the one I have had regard to. I accept that there is a clear cultural relationship between the Pavilion and the Odeon as part of a distinct historic entertainment area within the town. I also note that the two buildings can be seen in the same views, including in particular from within the Lower Pleasure Gardens² and from along Westover Road.
42. Nevertheless, given the retention of the Odeon's façade, the clear definition that would result between the old and new parts of the building and the substantial space between the Odeon and the Pavilion, the proposed development would not dilute the sense of the historic or cultural link between those two buildings. Accordingly, I do not find that the proposal would result in harm to the setting of the designated heritage asset and thus, there is no conflict with CS policy CS39 or the Framework.

Character and appearance

43. Westover Road sits within a valley and there are a number of views from various locations around the town where the proposed development would be visible from.

² Lower Pleasure Gardens form part of the wider Bournemouth Pleasure Gardens which are Grade II Listed in the English Heritage Register of Parks and Gardens

44. From most of these vantage points including from the nearby Pier to the south, the new element of the building, extending to some seven storeys, would be set in the context of a background of comparatively tall buildings rising up the side of the valley. It would appear as part of an array of substantial buildings lining up along Westover Road. Furthermore, taking into account the height of the neighbouring Premier Inn and other surrounding buildings, the proposed building would be in general accordance with building heights along Westover Road and would maintain a gradation in building heights running east to west.
45. However, in more proximate views along Hinton Road and from Upper Hinton Road, which is on much higher land, where the rear of the Premier Inn can be seen, it appears as a building of modest scale height. The taller part of the building sits away from Hinton Road. Consequently, in views to the west from Hinton Road and Upper Hinton Road, the proposed building would appear as an isolated tall building of very substantial scale and mass. This would be particularly pronounced from around the western end of Upper Hinton Road, as the Premier Inn in the background cannot be readily seen. The proposed building would appear closer in the foreground having an overly assertive presence in these views. It would result in similar adverse effects in views from around Hinton Road's junction with Upper Hinton Road. Thus, the proposal would run counter to the design objectives of CS policy CS41 and TCAAP policy D4.
46. In addition, the Odeon is located well-away from the two identified areas where tall buildings are encouraged and supported by TCAAP policy D5. The supporting text to the policy says that tall buildings will only be appropriate in certain areas due to their potential to have a significant impact on the character of the town centre. However, the policy does not place a blanket restriction on tall buildings in other areas. Nevertheless, due to the clear harm I have set out, the proposal would conflict with TCAAP policy D5.
47. Whilst I have had regard to other tall buildings permitted outside the locations identified for them in the TCAAP, I have considered the appeal proposal on its individual merits and the particular environmental and spatial context of the site. The existence of these other permissions does not lead me away from my conclusions on this second main issue.

Walking and cycling

48. At the time of the Hearing, there was no provision within the proposal to provide improvements to the public realm in support of encouraging walking and cycling. However, the appellant confirmed at the Hearing that such improvements could be accommodated at reserved matters stage. Notwithstanding this, the appellant has now provided a UU that includes a financial contribution to public realm improvements and I am able to consider this matter in that context.
49. Accordingly, in respect of this particular main issue, I assess whether the proposal would accord with policies T1, T2 and T3 of the TCAAP in my considerations on planning obligations later on in my decision.

Reasons – Appeal B

Non-designated and designated heritage assets

50. The ABC is not locally listed although I note the views of interested parties who consider it should be. Despite its absence from the local list, the Council considers the building to be a non-designated heritage asset and there is no reason why a building that does not feature on a local list cannot be considered as such. The available evidence indicates that the building's 1930s façade is in-situ behind the cladding added during the 1960s. The evidence contains a number of historic images that show this façade to be a pleasing example of Art Deco design. Furthermore, the other elevations of the building and particularly the rear that faces onto Hinton Road display cohesiveness in the building's overall form and design.
51. All but the building's Westover Road façade would be demolished and would be replaced with a structure of completely different and sharply contrasting design. I have already found in relation to appeal A, that such an approach can be an appropriate design response.
52. The 1960s cladding attached to the ABC's primary façade is a detracting feature in views along Westover Road and from within the Lower Pleasure Gardens opposite. Therefore, revealing the 1930s façade as proposed would result in the building making a more positive contribution to the local environment. Above this façade, the proposed new structure above it would be sufficiently set back ensuring that this contribution would not be diluted. Even if the 1930s façade could not be retained or required some degree of rebuilding, given that the proposal is in outline there is no reason that a satisfactory design could not be achieved and over which the Council would be able to exert control. This would ensure that there would be no harm to the setting of the Lower Pleasure Gardens or the former ice rink building next door to the ABC and their historic significance would be maintained.
53. At the Hearing, the appellant argued that the Hinton Road elevation is plain and makes little if any contribution to the street scene. However, it is constructed from high quality small-unit bricks and although less ornamented than the primary façade, its design quality lies in the overall gracefulness of its well-balanced elevational form rather than any intricate detailing. Moreover, there is some horizontal brick and cream faience banding, a vertical pronounced feature on the building's eastern end that echoes that on the primary (1930s) façade and a curved section at the western end that sits above what appears to be a parapet. To my mind, all of this displays a deftness of touch in the design of the Hinton Road elevation as well as the main one fronting Westover Road. The fenestration in the building's western elevation is pleasingly arrayed and thus, it also makes a positive contribution to the building's overall character and appearance. The building is worthy of consideration as a non-designated heritage asset.
54. The building's heritage value does not rely solely on the primary façade but lies in its appreciation as a whole including the well-designed Hinton Road elevation.
55. The Hinton Road elevation would be replaced with a taller building mostly with a saw-tooth roof and the symmetry of its central section would be unbalanced by the combination of the flat roofed element at its western end and the

asymmetry of the taller mono-pitched roof at the other. Beyond this, a further, taller part of the building would project off-centre above, although it would be set back from the main Hinton Road elevation. In combination, all of this would give the building a discordant appearance that would lack the refined elegance of the building it would replace and which would be readily apparent in views along Hinton Road. Given the magnitude of change proposed, I find that the proposal would result in an unacceptable diminishing effect on the significance of the non-designated heritage asset and the historic contribution it makes to the local environment. Consequently, I find that the proposal runs counter to CS policy CS40.

56. In addition, the proposal would not accord with the requirement of TCAAP policy A29 to sustain and enhance the significance of heritage assets in Westover Road/Hinton Road.
57. Paragraph 197 of the Framework says that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. For the above reasons, I consider that the proposal would result in a serious adverse effect on the significance of the non-designated heritage asset. I turn now to the effects of the proposal on designated heritage assets. I weigh this in the planning balance later in my decision.
58. The ABC building is directly next to the Old Christchurch Road Conservation Area (CA). The CA boundary is under review and The Council considers it likely to result in it including more of Westover Road and thus the ABC would then sit within the CA. However, notwithstanding that none of this would necessarily prevent the redevelopment of the site I must make my decision on the basis of the facts as they currently exist. There is no certainty that the CA will be changed as the Council suggest and consequently, the CA review carries limited weight at this stage.
59. Nevertheless, given the proximity of the CA boundary, which runs broadly alongside the south-western and north-western flanks of the building, the proposal still has the potential to affect the setting of this designated heritage asset. In views towards the site from within the CA from within Westover Road and from where it turns into Gervis Place, given the sweep in the road close to the ABC, the intervening mass of buildings and the set back of the proposed structure above the façade, the proposed development would not be readily perceptible.
60. However, from within the CA where it encompasses Hinton Road, the resulting dramatic change would be widely seen as a prominent and incongruous tall structure that would appear at odds with the more modest scale of the immediately surrounding buildings. There is no clear feature within the CA that defines its boundary along Hinton Road and the ABC building makes an important contribution to the appreciation of the historic environment. The proposal would result in harm to the setting of the CA and thus diminish its significance.
61. Whilst in the parlance of the Framework, this would not reach the high hurdle of substantial harm it would nonetheless result in less than substantial but

nonetheless serious harm that requires clear and convincing justification. I address this later on in my decision.

62. The north-western part of the Lower Pleasure Gardens are well-treed and only very restricted and filtered views of the proposed building would be possible from within them. Given the proposed set-back of the new part of the building, there would be little opportunity for it to be visually experienced in the same views as the open expanses within the Lower Pleasure Gardens.
63. The proposed improved façade would be the dominant feature of the building in Westover Road. This would enhance the visual appreciation of the building on the occasion of it being seen from the within the Lower Pleasure Gardens. The proposal would preserve the significance of the Lower Pleasure Gardens.
64. The proposal also has the potential to affect the setting of the Grade II listed buildings forming nos. 5-7 Westover Road. However, for similar reasons to those already given in my assessment of the proposal's effects on the CA in relation to Westover Road, I do not find that there would be harm to their setting.

Character and appearance

65. Insofar as views from along Westover Road and vantage points from the other side of the valley to the south-west are concerned, I do not draw materially different conclusions in relation to the effects of the ABC in comparison to the Odeon. Accordingly, there would be no unacceptable effects in these views.
66. However, for the reasons already set out in my considerations in relation to the effects on the significance of the building and the CA, the proposal would have an adverse effect on the Hinton Road and Upper Hinton Road street scenes thereby running counter to the design objectives of CS policy CS41 and TCAAP policy D4.
67. In addition, the ABC is located well-away from the two identified areas where tall buildings are encouraged and supported by TCAAP policy D5. Whilst I have had regard to other tall buildings permitted outside the locations identified for them in the TCAAP, I have considered the appeal proposal on its individual merits and the particular environmental and spatial context of the site. The existence of these other permissions does not lead me away from my conclusions on this matter. The proposal would conflict with TCAAP policy D5.

Public realm improvements

68. At the time of the Hearing, there was no provision within the proposal to provide improvements to the public realm. However, the appellant confirmed at the Hearing that such improvements could be accommodated at reserved matters stage. Notwithstanding this, the appellant has now provided a UU that includes a financial contribution to public realm improvements and I am able to consider this matter in that context.
69. Accordingly, I consider whether the proposal would accord with policies T1, T2 and T3 of the TCAAP in my considerations on planning obligations below.

Reasons – Appeals A and B

Local highway network

70. Based on the proposed number of apartments and bedrooms therein, in combination with the retail element of the schemes, the developments have the potential to generate a significant number of vehicle trips and pedestrian movements.
71. Paragraph 108 of the Framework says that in assessing specific applications for development, it should be ensured that: appropriate opportunities to promote sustainable transport modes can be – or have been - taken up given the type of development and its location; safe and suitable access to the site can be achieved for all users; and any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree. The Framework makes clear that development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
72. It seems logical to conclude that cinema usage would mostly take place outside working hours i.e. during the evening and at weekends. Whilst the number of cinema goers could be high particularly given the size of the former venues, this would be a markedly different use pattern to development schemes with such a substantial residential element.
73. The Council suggests that there would be a 60% increase in traffic over and above the background level. The appellant disputes this and suggests the increase would not be significant and referred to the cinemas' occupancy of around 50%. However, it is unclear how this level of occupancy has been arrived at and the Council's evidence suggests that the Odeon operated at around 20% average capacity. It therefore also seems logical to conclude that the ABC saw similar use.
74. The Council has undertaken its own multi-modal analysis of people movements using the TRICS system. As neither the Odeon nor ABC is currently operational, the Council has used comparators from elsewhere in the UK. At the Hearing, the appellant pointed out that the Council's TRICS modelling in terms of the residential scheme used a single-day survey beginning at 1000. For the retail elements, again, a single day survey was used with traffic flows related to just over 5000 sqm at a development in Maidstone which is not directly comparable to the much more modest size of the proposals in this appeal. In terms of the proposed restaurant at the Odeon site, four dates from 2008 have been used which do not reflect the economic downturn that followed the financial crash. In my view, the evidence of neither party provides a definitive picture of the effects of the proposed development in terms of traffic and pedestrian movements relative to those that previously existed.
75. Nevertheless, there is no reason to believe that all of the occupants from the proposed developments would be leaving or arriving at the same time in the AM and PM peak periods. Furthermore, some would leave by car or cycle via Hinton Road whilst those electing to use buses would head towards Westover Road. In addition, the potential for people to work from home also needs to be added into the mix. Whilst on the basis of a technical exercise the number of

people movements could be high, in reality it is unlikely that they would be as high as the Council suggests.

76. Moreover, there is a good level of public transport provision with bus stops next to the building in Westover Road. At my first unaccompanied site visit, I observed that Bournemouth train station is within reasonable walking and cycling distance and that there are cycle racks provided there. Occupiers of the proposed development would therefore have viable alternatives to use of the car for getting around the local area and further afield for access to work. Given the availability of sustainable transport options, it would be reasonable to conclude that many people from the proposed development would opt to use them.
77. Notwithstanding this, I carried out my accompanied site visit during the morning peak traffic period and had previously also spent time in Westover Road and Hinton Road during the PM peak. I did not find a significant volume of traffic or observe any significant queueing of vehicles in either street on either occasion.
78. I accept the necessity for the proposed development's future occupiers to cross Westover Road in order to access the bus services. Although the Council argues that this would be problematic, during my various site visits I was able to cross the street without issue by taking appropriate care. Furthermore, Westover Road is a one-way street so pedestrians are required to look only in one direction when crossing and there is no substantive evidence to indicate that there is an unacceptable accident rate in this part of the town centre. Notwithstanding this, the appellant proposes to provide funding for the provision of a new pedestrian crossing and this is the subject of a UU. I address the specific matter of the UU's provisions later in my decision. However, from the available evidence and from what I observed on site, I do not find that the residual cumulative impacts of the developments either singly or in combination would be severe. Thus, there are no compelling reasons to refuse permission on highway efficiency or safety grounds.
79. The Council also argues that the appeal schemes should be assessed in light of other development or LP site allocations. However, there is no certainty that the site allocations will be built out and in the absence of sufficient evidence that they will be or that any work has taken place to assess the effects of these other potential schemes, this argument attracts little weight.
80. Taking all of this into account, the proposal does not conflict with the Framework.

Car and cycle parking

81. There was general agreement between the parties at the Hearing that the provision for car and cycle parking could be made to function satisfactorily through amendments at reserved matters stage such as tweaking the number of habitable rooms proposed. I see no reason to take an alternative view and do not find any compelling justification for withholding permission in relation to this main issue alone.
82. Accordingly, the proposal is not in overall conflict with the objectives of the Council's Parking SPD (2014) which, amongst other things, provides guidance

on car and cycle parking layout and design. The Proposal also therefore accords with CS policies CS14 and CS16 and with TCAAP policies T1 and T2.

Comparison goods retail floor space

83. The appellant proposes that the retail element of the developments would comprise a comparison retailer (A1 use) and in the case of the Odeon site would include a restaurant as integral to that use. TCAAP policy A29 requires a minimum of 12,000 sqm of comparison goods retail floor space in Westover Road/Hinton Road including at the Odeon, ABC and neighbouring ice-rink building. At the Hearing, the Council explained that it envisages around 4,000 sqm will be provided at each.
84. The proposal would see the creation of 2,000 sqm of retail floor space which therefore falls well below that requirement. However, the appellant pointed out that the policy was conceived in very different economic circumstances to those that exist today. It was recognised by the parties that there has been a significant economic downturn and pressure on the high street from internet shopping.
85. The Council nonetheless remains of the view that Bournemouth has bucked the trend somewhat. However, I still observed a number of empty shops within the town centre. This is reflected within the Council's written evidence³. Also within that evidence are the sales particulars for three units in retail and restaurant use (Maplin, Animal and Ojo Rojo) lying nearby in Commercial Road. Although it is not known at this stage exactly what will happen to the Maplin business, the fact that it recently went into administration goes against the assertion in the sales particulars that the business was at "low risk of failure".
86. I accept that the prospects for the town centre may have more recently improved with the arrival of some big name stores and the development of the West Central leisure scheme that includes the new multi-screen Odeon cinema and a number of eateries.
87. However, the most recent Retail and Leisure Study⁴ (the Study) identifies a number of major comparison goods retailers but I note these include Marks and Spencer and House of Fraser. The former has now closed and the future of the latter remains uncertain. Near to the appeal site, and occupying a prominent position close to Westover Road's junction with Bath Road, I noted that the ChimiChanga restaurant has also recently closed.
88. Taking all of this into account, the retail picture in Bournemouth therefore appears to be rather less buoyant now than the Study suggests. Moreover, it seems evident to me that there remains a significant degree of uncertainty over the economic strength and resilience of the high street and that the town centre is likely to remain under pressure in terms of its retail offering at least in the short to medium term. It is also unclear whether the longer-term growth projections in the Study are truly representative of the current retail picture in Bournemouth.
89. I therefore consider that the rigid application of TCAAP policies A29 and U5 would be likely in the current circumstances, to result in a real risk of a

³ See Appendix SG1 of the Council's appeal statement

⁴ Bournemouth, Christchurch and East Dorset Joint Retail and Leisure Study Volume 2 – Bournemouth 29 August 2017

significant amount of retail space remaining unoccupied within the Odeon site. Moreover, the TCAAP policies were drawn up in light of previous retail studies that do not reflect the current economic circumstances. For the reasons given, a departure from the requirements of policies A29 and U5 is appropriate in these appeals in order to ensure a viable level of comparison goods retail floor space such that it would contribute to enhancing the role of the Town Centre in accordance with the overall thrust of those policies.

90. Having said that, as part of the overall amount of retail space, the ABC proposal would include a second retail unit accessed from Hinton Road. Hinton Road is not a shopping street and does not have the characteristics of one. I do not consider that the Hinton Road frontage would see a large footfall and it is therefore unlikely that an isolated retail unit in this location would be a viable proposition. Although the other proposed unit on the ABC site would have a dual frontage onto Westover Road and Hinton Road, its main frontage would be on the former and therefore along an established shopping street. I acknowledge that the ABC frontage is of limited width but this does not justify the provision of a disjointed and somewhat contrived layout of retail space on the site. Consequently, in this specific regard, the ABC proposal would not make a satisfactory contribution to enhancing the role of the Town Centre as an important sub-regional shopping destination and thus runs counter to TCAAP policy U5.

Planning Obligations - Appeals A and B

91. I have considered the submitted UUs in light of the Framework, Planning Practice Guidance (PPG) and the CIL Regulations.
92. CS Policy CS33 seeks to prevent development that would directly or indirectly adversely affect the integrity of the Dorset Heaths SPA. The appeal sites are within 5km of the SPA. The aforementioned EU Court's judgement is clear that mitigation measures should be assessed within the framework of an appropriate assessment and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage.
93. It has been established that without mitigation measures, development within 5km of the SPA would have a harmful effect on the integrity of that European site. To that end, the Dorset Heathlands SPD sets out the basis for avoidance or reduction measures.
94. Given that the SPD is based on extensive research, I am satisfied that it provides an appropriate basis on which to mitigate the effects of the proposed developments subject to these appeals. Accordingly, they would not result in harmful effects on the integrity of the SPA. In order to provide mitigation measures, the SPD sets out the financial contributions that will be sought in relation to residential developments. The UUs make the necessary provision based on the SPD requirements (£20,328 in the case of the Odeon and £15,004 in the case of the ABC). I am satisfied that the obligations are necessary to make the developments acceptable in planning terms, are directly related to the developments and are fairly and reasonably related to them in scale and kind. The planning obligations with regard to the SPA therefore meet the statutory tests.

95. Dispute remains between the parties over the contributions that would be necessary for the purposes of transport mitigation measures and public realm improvements. The parties each refer to other developments in an attempt to justify their respective stances. The contribution in respect of the Odeon site would provide a financial contribution of £29,750 and in relation to the ABC site the amount would be just over £21,958.
96. The specific UU for each scheme would provide for a pedestrian crossing in Westover Road and it therefore seems to me that the result would be the provision of two such crossings. No clear justification for this has been provided. Furthermore, the contributions would also provide for improvements to the Grand Garden Walk but these are not quantified. Consequently, I cannot be certain how the contributions would be spent and thus they would not meet the Framework tests or comply with CIL Regulation 122.
97. In terms of development plan policy, for the above reasons, the proposals overall, would not accord with policies T1, T2 and T3 of the TCAAP.

Other Matters including the Planning balance – Appeals A and B

98. I am mindful that neither the Odeon or ABC buildings are afforded the level of protection that goes with being statutorily listed but they nonetheless make a very valuable historic contribution to the town centre environment. The development plan seeks to protect non-designated heritage assets from harmful development although I acknowledge that the Framework makes it clear that a balanced judgement is required. In both appeal schemes, the Odeon and ABC buildings would be mostly demolished and whilst their façades would be retained, the overall scale of the loss would be very substantial. As I have found, the appreciation of the buildings' heritage value does not derive solely from their main façades.
99. Consequently, weighing very heavily against the proposals is the conflict with LP policy 4.3 and CS policies CS40 and CS41. The conflict with each of these policies attracts very substantial weight as does the conflict with TCAAP policy D5. In the case of the ABC, there would also be less than substantial harm to the setting of the CA but which I nonetheless consider to be sufficiently serious to attract substantial weight against that proposal.
100. Also weighing against the ABC proposal is the conflict with TCAAP policy U5 and given that the development plan includes the objective of enhancing the role of the Town Centre as an important sub-regional shopping destination, the conflict with policy U5 attracts substantial weight.
101. The likely increase in footfall that would result from the appeal schemes would have a positive effect on the overall economic vibrancy of the town by supporting the retention of local businesses. This view is supported by a large number of local businesses who made representations in the application and appeal processes. However, the weight I afford this is tempered by the ABC proposal's conflict with TCAAP policy U5. The economic benefits of the proposals therefore attract moderate weight.
102. In both appeals we are dealing with buildings that have been unused for some time and there is a large new Odeon cinema close by on the other side of the Lower Pleasure Gardens. At the hearing the parties accepted that a revived cinema use is not a viable option for either the Odeon or ABC. I have already

mentioned that there are a number of empty shops in the town centre. Whilst their number may not be on the scale of empty premises in other parts of the UK, there is a danger in my view, that without some form of development the buildings will remain empty, which would create a general impression of a run-down part of the town centre in a prominent location. Bringing them back into use is therefore a benefit that attracts substantial weight. However, this does not mean that any such development would be acceptable where it would result in harm on the scale I have identified.

103. The proposals would provide a significant number of new homes and although it is common ground between the parties that the provision of affordable homes would be unviable, I accept that some of the smaller units could fall within the realms of being affordable and that there is a need for such homes in Bournemouth. However, there is no legal mechanism before me to secure this. I have considered whether this could be addressed by a suitably worded planning condition but Planning Practice Guidance is clear that this should only be used in exceptional circumstances, which I do not consider exist in either appeal and no arguments have been put to the contrary. The 'affordable' element of the appeal proposal can therefore only be given limited weight.
104. The appellant has not sought to argue that the Council is unable to demonstrate a 5 year supply of housing land (5 year HLS). However, there was discussion at the Hearing with regard to the Strategic Housing Market Assessment (SHMA) and the proposed standard method of calculating objectively assessed need likely to form part of new national planning policy. The standard method requirement is now set out in paragraph 60 of the revised Framework. These matters have also been addressed by the parties in later written submissions.
105. The envisaged review of the LP in 2016 (a necessary step identified by the CS Examining Inspector) has not happened. The intention of the review is to provide the basis on which to set out the appropriate number of homes to be provided in Bournemouth. Given the lack of the review and the advent of the standard method, there is a corresponding lack of clarity on the amount of housing that will be needed in the Borough. However, even in the event of an uplift to the Council's housing requirement being identified, it is not the role of a s78 appeal to carry out the Council's forward planning work or indeed to pre-empt it. Moreover, although the SHMA might indicate a higher level of housing need, it has not been tested and there may be demographic factors that justify a lower requirement than it indicates.
106. The appellant argues that CS policy A29 is out-of-date because there has been no review of the local plan and that it was adopted as part of a CS over 5 years ago. In my view, the policy sets out to do what the Framework requires having regard to what it says about ensuring the vitality of town centres in paragraph 85 and with the objective for protecting the historic environment. I do not find policy A29 to be inconsistent with national policy and having regard to Framework paragraph 213, it can be given very substantial weight. Moreover, I do not consider the other policies at play in this appeal to be inconsistent with the Framework for the various reasons set out and because the Council can demonstrate a 5 year HLS.

107. I have had regard to the other appeal decisions put before me. In the Oxford Road case⁵, the Inspector highlighted the Framework requirement to significantly boost the supply of housing. Although national policy has been revised, that requirement remains and the Framework indicates that it is important that a sufficient amount and variety of land can come forward where it is needed in order to support the objective of significantly boosting the supply of homes.
108. There is no empirical evidence to indicate that the Council's planning policies are not operating to achieve the objective of significantly boosting the supply of homes. Accordingly, although the provision of further homes would result in social benefits through more housing, the weight that can be given to such benefits is moderate.
109. I note the Inspector's findings in two other (linked) appeals⁶. Here, the Inspector found the same as the other Inspector. However, the conclusions of both Inspectors merely confirm that the Council has not undertaken the LP review in as timely a manner as was envisaged. In and of itself, that does not take us much further and I have already concluded that the Council is not falling short of facilitating the building of homes. Consequently, having regard to these factors, paragraph 11 of the Framework is not engaged.
110. I have not found harm in relation to some of the main issues but the absence of harm in these respects is merely a neutral factor and thus adds no weight in favour of either proposal.
111. I have considered the proposed developments against the terms of CS policy CS29. Whilst, I accept that it may be technically possible to convert the buildings into facilities so as to retain their cultural or tourism use, no alternative schemes were put before me. Taking into account the presence of the new Odeon close by and the existing use of the pavilion for shows and performances, I cannot see a compelling argument for refusing planning permission for the proposals on the basis of some as yet undefined cultural or tourism use. Accordingly, there is no conflict with policy CS29 in the case of both appeal schemes.
112. Weighing all of this together leads me to conclude that there are insufficient benefits to outweigh the clear identified harms in both cases and the ensuing policy conflicts. Furthermore, having regard to Framework paragraph 196 and 197, the proposals would not strike an acceptable balance in terms of conserving and enhancing the historic environment. For the reasons set out, there is no reason to take a decision other than in accordance with the development plan.

Conclusion

113. For the above reasons, appeals A and B do not succeed.

Hayden Baugh-Jones

Inspector

⁵ Ref APP/G1250/W/16/3159914

⁶ Refs APP/G1250/W/17/3182472 and APP/G1250/W/17/3192013

APPEARANCES

FOR THE APPELLANT:

Paul Cairnes of Queens Counsel	No5 Chambers, instructed by Goadsby on behalf of Libra Homes Ltd
James Roberts	ABC Architecture Ltd
Bradley Cheer	ABC Architecture Ltd
Duncan Coe HND BA(Hons) CIFA FSA	Cotswold Archaeology Ltd
Philip Caseley IE	JPC Highways Consultants
Peter Atfield B.Tp MRTPI MTCPA	Goadsby Planning and Environment

FOR THE LOCAL PLANNING AUTHORITY:

Simon Gould BA(Hons) DipTP MRTPI	Senior Development Management Officer
Katherine Ashley	Senior Conservation Officer
Mark Axford	Planning Policy Manager
Sophie Leon	Urban Renewal and Design Officer
Trevor Sills	Transportation Development Manager
Steph Howard	WSP

INTRESTED PERSONS:

David Eve	Cinema Theatre Association
Gary Trinder	Cinema Theatre Association
Elena Cowin	Local business owner

DOCUMENTS SUBMITTED AT THE HEARING

- 01 Bournemouth Core Strategy (full document)
- 02 Sustainable Urban Drainage Systems (SUDS) Adopted Planning Guidance Note (2003)
- 03 Bournemouth Public Realm Strategy Guiding Principles SPD (2013)
- 04 Extract from Council's TRICS data
- 05 English Heritage (as then was) Advice Report on the Lower Pleasure Gardens
- 06 Suggested highways conditions
- 07 Conditions
- 08 'The Story of the Regent' and accompanying photographs
- 09 Costs application from the Council

DOCUMENTS SUBMITTED AFTER THE HEARING HAD CLOSED

- 1. Planning Obligation by way of Unilateral Undertaking (Odeon) ref 7-2016-891-Z
- 2. Planning Obligation by way of Unilateral Undertaking (ABC) ref 7-2017-1685-L
- 3. Appellant's comments on the revised Framework
- 4. Council's comments on the revised Framework
- 5. Appellant's final comments on the revised Framework