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# Appeal Decision

Site visit made on 10 December 2018

**by J Ayres BA Hons, Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 January 2019**

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**Appeal Ref: APP/G1250/W/18/3204859**

**Land adjoining Muscliffe House, 75 Muscliffe Lane, Bournemouth BH9 3NF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Charles Julian and Katrina Aris against the decision of Bournemouth Borough Council.
  - The application Ref 7-2018-17404-F, dated 9 February 2018, was refused by notice dated 9 April 2018.
  - The development proposed is construction of a detached dwellinghouse and outbuilding.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are;
  - The effect of the proposal on the setting of the listed building and character and appearance of the area;
  - The effect of the proposal on the ash tree; and
  - Whether the proposal would be adequately drained.

## Reasons

### *Listed building and character and appearance of the area*

3. The appeal site is adjacent to and forms part of the grounds of Muscliffe Farmhouse which is a grade II listed building. Muscliffe Farmhouse is a substantial late 18<sup>th</sup> century farmhouse set within a large plot close to the corner of Granby Road. There are a number of mature trees around the boundary of the site, with gaps within the foliage allowing views of the imposing and interesting building and the generous garden surrounding it. Wider views are possible travelling towards the Farmhouse from Castle Lane, and the current absence of built form greatly enhances the surrounding open setting of the farmhouse, and reinforces its significance.
4. The area has developed, and residential development surrounds much of the wider appeal site and farmhouse. However, this evolution of the wider pattern of development has not detracted from the significance of the asset, partly due to its size and stature, and also due to the relatively modest development surrounding it which contains a mixture of bungalows and two storey dwellings.

5. The proposal would be located approximately on the site of an old dairy building, and taking into account the historical presence of built form the re-introduction of some built form in this location may not automatically result in harm to the setting of the listed building.
6. The proposal would be would introduce a building of considerable scale and mass, with a bulky upper level included to provide additional accommodation. The gable detail would be close to the farmhouse and the width of the dwelling would take up almost the entire width of the site, the overall impact would create a cumbersome and overly dominant building in this location. The dwelling would not sit comfortably in the setting of the farmhouse, its scale and mass being of such intensity, spread across the entirety of the built form, that it would compete with the already imposing farmhouse. This visual intrusion and erosion of openness would result in harm to the setting of the listed building.
7. The scale and mass of the proposal would be more aligned to the scale and mass of the farmhouse. It would be double the width of the adjacent dwelling on Muscliffe Lane, and the height and upper floor accommodation would be entirely out of keeping with the more modest bungalows to the rear of the site and opposite along Cox Avenue. The design would neither fulfil a concept of an ancillary style building which would sit comfortably alongside the farmhouse, or of a more traditional dwelling akin to those along Muscliffe Lane and it would therefore appear completely out of place as part of the street scene. Contrary to appearing as a transitional form of development it would appear as an alien and incompatible concept, which would result in harm to the street scene and the character and appearance of the wider area.
8. The proposal would therefore conflict with policy CS39 of the Bournemouth Local Plan: Core Strategy 2012 (the Core Strategy) which seeks to ensure that a listed building is protected from proposals that would affect its significance, and Policy CS41 of the Core Strategy which requires new development to be well designed and of a high quality.
9. The ancillary dairy building was demolished in the 1990s, and whilst the site has been open for a number of years the principle of some form of built form in this position has an historical link to the farmhouse. I therefore consider that the harm caused by the proposal would be less than substantial. Public benefits in favour of the scheme include the provision of a family dwelling and therefore a contribution to the housing stock. However, taking into account the harm to the setting of the listed building and wider character of the area that would be caused by this particular proposal, the public benefit would not outweigh the harm in order to justify allowing the appeal.
10. Planning permission was granted in 2016 for a 3 bedroom dwelling on the site which followed a similar design to the old dairy building, and this planning permission is a material consideration. The design for the 2016 permission included a smaller gable than that currently proposed, which was located adjacent to the modern development travelling away from the farmhouse. The scale and mass of the 2016 permission would also be more akin to the dairy building. This would retain the openness surrounding Muscliffe Farmhouse and create a subservient, outbuilding development which would be appropriate in the context of the style of buildings historically associated with the farmhouse. The proposal before me is fundamentally different in regards to its excessive

size and scale, and the grant of the previous permission would not justify allowing a scheme that would result in harm to the listed building and character of the area.

#### *Effect on the Ash Tree*

11. To the front of the appeal site is an ash tree which contributes to the setting of the listed building and is subject to a Tree Preservation Order (TPO). The presence of planting at the front of the site is an attractive element which contributes positively to the character of the area.
12. The Arboricultural study submitted with the application identified the tree as a category U, and recommended that, for arboricultural purposes, the tree be felled. The appellant accepts and the Arboricultural study states that these observations are not made in relation to the planning application itself, however Policy 4.25 of the Bournemouth District Wide Local Plan 2002 (the Local Plan) requires that a scheme include at application stage future arrangements for landscaping. This proposal identifies the tree being retained on the plans, and includes root protection measures; however the evidence clearly indicates that the tree would be felled in the future. There is no evidence to suggest when the tree would be replaced if it were to felled, and on the basis of the evidence submitted I find that the proposal would fail to comply with Policy 4.25 of the Local Plan 2002 in this regard.

#### *Effect on Drainage*

13. In order to successfully implement the proposal it would be necessary to utilise soakaways. During the course of the appeal the council has confirmed that this matter could be dealt with by condition. On the basis of the evidence and history of the site I am satisfied that the proposal would, subject to an appropriate condition, be adequately drained.
14. Accordingly the proposal would comply with Policy CS4 of the Core Strategy in respect of incorporating an appropriate sustainable drainage system.

#### *Other matters*

15. The occupation of the dwelling would have the potential to adversely affect the integrity of the Dorset Heaths Special Area of Conservation because the dwelling would be situated within 5km of European designated areas. The appellant has submitted a signed unilateral undertaking securing a financial contribution towards mitigating the effect of the development on the designated sites.
16. With respect to the effect of new development on any European designated site it is necessary to have regard to the judgment of the Court of Justice of the European Union (CJEU) in *People over Wind, Peter Sweetman v Collite Teoranta*, case C-323/17 of 12 April 2018. That judgment has established that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures, referred to in the judgment as measures which are intended to avoid or reduce effects, should be assessed within the framework of an appropriate assessment (AA) 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.

17. It is the decision maker who is the competent authority and must therefore be satisfied that the proposal would comply with the Habitats Directive. The screening opinion and any AA are not before me, and on the basis of the evidence I am unable to ascertain at what stage account was taken of any avoidance or reduction measures in order to comply with the Habitats Directive. As I am dismissing this appeal for other reasons it has not been necessary for me to consider this matter in any further detail. However, it should be noted that had I considered the development acceptable in all other respects, I would have sought to explore the implications of this judgment and the necessity for undertaking an AA.

### **Conclusion**

18. The proposal would fail to comply with the development plan as a whole.
19. The appellant asserts that the proposal would assist in meeting the council's housing need. This proposal would provide a 4 bedroom house for which the council identifies a need within the eastern Dorset Strategic Housing Market Assessment. However, there is greater demand for 3 bedroom properties, which would be provided by the 2016 scheme and would not conflict the development plan.
20. There are no material considerations, including the provision of an additional house as referred to above, which would outweigh the conflict with the development plan. Accordingly for the reasons above, I conclude that the appeal should be dismissed.

*J Ayres*

INSPECTOR