



Appeal Decision

Site visit made on 26 March 2019

by Steven Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2019

Appeal Ref: APP/G1250/W/18/3211147

7 East Overcliff Drive, Bournemouth, Dorset BH1 3AD

- 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 Westcoast Developments (Sandbanks) Ltd against the decision of Bournemouth Borough Council.
 - The application Ref 7-2018-11507-Y, dated 15 February 2018, was refused by notice dated 21 May 2018.
 - The development proposed is the erection of block of 7 flats and formation of vehicular access with surface and underground parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the development on the character and appearance of the area, including the East Cliff Conservation Area and the setting of the Miramar Hotel.
 - The effect of the development on the designated European Sites.

Reasons

Character and Appearance

3. The site is within the East Cliff Conservation Area. The site's frontage faces across the road to the coast. East Overcliff Drive is made up of a variety of buildings, including hotels and blocks of flats. There is the Miramar Hotel, which is a building of a high standard of design and architecture, especially to the front elevation, immediately to the west of the site. The Council consider this building a non-designated heritage asset.
4. I am aware of the previous proposal for 16 flats dismissed at appeal, though this was a very different scale proposal to this current appeal scheme. I am also aware of a previous consent for 6 flats (reference 7-2017-11507-X) which is extant. There are many similarities between that approved development and this proposed alternative, which is for 7 flats including a basement level with parking. As there is a recent extant permission for a similar building I have focussed on the differences between the approved and proposed buildings for this site.

5. Firstly, the overall height above existing ground levels would be similar to that of the extant permission. The proposed dwelling is on a similar section of the site as previously approved, being set back from the road, in keeping with many of the other buildings in the street scene, including the Miramar Hotel. Furthermore, the overall scale and massing is similar to that approved under application 7-2017-11507-X and is regarded as appropriate to its setting and would not overdevelop this large plot.
6. There is the inclusion of the undercroft basement parking and a ground floor apartment which is set partially beneath existing ground levels. This allows for the development to include the additional flat without being significantly higher above existing ground levels than the approved scheme. Whilst undercroft parking and excavated lower storeys may not be a common feature within this street scene, I do not regard this aspect of the proposed development as a prominent feature. It would mostly be screened by the front boundary wall and there would only be limited views through the access, for example. As such, I do not regard this feature of the proposal as having an adverse effect on the character and appearance of the area. It could also be regarded as an efficient use of the site, providing an additional dwelling over that approved.
7. There would need to be some retaining walls as part of the development, but these walls would not be substantial features that would be prominent parts of the appearance of the development. The gates shown on the CGI images are not shown on the formal plans, but in any case, these details can be required by condition for later approval by the Council.
8. It appears that the main access to the proposed flats would be through the undercroft parking area, to communal stairs or lift. Whilst this may be unconventional and 'less welcoming' than a standard front elevation door access this would not result in a significant adverse effect to the character of the building or the appearance of the front elevation and would not be particularly apparent from outside of the site.
9. The site is adjacent to the Miramar Hotel, which is regarded as a non-designated heritage asset. Paragraph 197 of the National Planning Policy Framework (the Framework) states that "*In weighing applications that directly or indirectly affect 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.*"
10. In this case, although the proposed building would be larger than the previous approved development, it would still be subservient to the much larger Miramar Hotel. Furthermore, there would be a clear gap between the side of the proposed building and the side of the hotel, whilst also being partially set back from its frontage. It would also be of a similar height to the ridge of the hotel roof. On this basis the proposed building would not harm or result in the loss of the significance of this heritage asset and would not visually compete with this neighbouring hotel.
11. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas in the exercise of planning functions.

12. The site is vacant at present and does not offer any significant positive effect to the Conservation Area. However, the proposed building is of a good quality design which would be an improvement over the vacant plot. It may be that this revised proposal has omitted some of the characteristic features of the approved scheme, but it remains a good quality design with some positive features. The building would also be set in a street scene which is varied and would not appear incongruous in its overall appearance. In this regard, the proposal enhances the Conservation Area by providing a well-designed building of suitable scale on a vacant plot.
13. Overall, the proposed flat development does not harm the character and appearance of the Conservation Area, the setting of the Miramar Hotel or the street scene. The proposal, in this regard, is in accordance with Policies 4.4 of the District Wide Local Plan; CS39 and CS41 of the Bournemouth Local Plan: Core Strategy; and D4 of the Town Centre Area Action Plan. These policies seek to, amongst other things, protect heritage assets from proposals that would affect their significance, require development to be of high quality design and respect its setting, and preserve or enhance the character of Conservation Areas.

European Sites

14. My findings in respect of the above issues suggest that the development ought to be permitted. However, the application site is located within 5km of the Dorset Heathlands, which are covered by several international designations including the Dorset Heathlands SPA (Special Protection Area), Ramsar Site and Dorset Heaths SAC (Special Area of Conservation). This is due to the international significance of these wildlife areas.
15. Natural England is concerned at the intensification of residential development in and around these heathland areas and the pressures placed upon them by additional people who occupy these new dwellings near these protected areas. The proposal is not directly connected with or necessary to the management of the Dorset Heathlands European Sites. The evidence submitted indicates the potential for damage to the Dorset Heathlands European Sites arises from the likelihood of increased recreational disturbance (including dog walking), such as trampling and disturbance to breeding birds for example, because of residential development and increased local population.
16. The proposal comprises of a block of flats in Bournemouth. I note that there are local areas of public open space close to the site. However, the site's distance to the Dorset Heathlands European Sites means that there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of the development. Although this may have a minimal effect in itself, a more significant effect would occur when considered in combination with other new residential development in the surrounding area. There is an anticipated circa 14,600 dwellings included in the Bournemouth Development Plan, for instance, plus more within neighbouring authorities.
17. In these circumstances, the Conservation of Habitats and Species Regulations ("Habitats Regulations") requires that an Appropriate Assessment is carried out.
18. As detailed within the Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document (the Dorset Heathlands SPD), Natural

England consider that additional residential developments up to 5 kilometres from Dorset Heathlands, either on their own or in conjunction with other proposals, are likely to have a significant adverse effect on the integrity of these protected areas, for the reasons given above. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European site.

19. The Dorset Heathland SPD sets out that the provision of Heathland Infrastructure Projects, funded through the Community Infrastructure Levy, and Strategic Access Management and Monitoring (SAMM) funded through individual planning obligations, can mitigate the adverse effects. A planning obligation to make the required payment to the Council, commensurate with the scale of development, has been provided.
20. As the process of securing mitigation set out in the SPD has been drawn up in consultation with Natural England, I am satisfied that, theoretically, a planning obligation could meet the necessary SAMM requirements to avoid significant adverse effects on the European Sites. However, the obligation that is before me is a Unilateral Undertaking (UU). As such, the obligation does not bind the Council to spend the SAMM contribution on the SAMM measures set out in the SPD.
21. I note that the Council has been using UUs and that such a mechanism is suggested in the SPD. The precise mechanics for handling the contributions has not been set out, but the appellant has suggested that this provides suitable control that the contributions are spent on projects which will mitigate the impact of the development of the Dorset Heathlands SPA. There is limited information before me from the Council in this regard, such as that set out in the SPD that the payments are passed to Dorset County Council to fund the strategic teams and that the SAMM fund is pooled between the Local Authorities for the most efficient spending on mitigation, for example.
22. I recognise that any payments related to this development that would be provided would be a relatively small component of the overall heathland mitigation strategy. However, whilst I am not suggesting that the Council would not spend the contribution in the manner intended, the UU does little more than oblige the appellant to make the payment.
23. I acknowledge that the Council as local planning authority making a planning decision, being then the competent authority under the Habitats Regulations, can satisfy itself that the required mitigation would occur. However, I am the competent authority in respect of this appeal and am therefore removed from the mitigation process. Taking a precautionary approach, on the basis of the evidence before me, I cannot be satisfied that the obligation provided will ensure that significant adverse effects are avoided.
24. The Habitats Regulations requires me to consider whether there are any alternative solutions. However, no detailed alternative solutions have been put forward for my consideration. I must also consider whether there are any imperative reasons of overriding public interest in these circumstances. In this case the development involves the provision of seven dwellings. It would fulfil a housing demand and is in the town centre near services and public transport links. However, these considerations are not, even cumulatively, sufficient to amount to an 'imperative reason of overriding public interest'. Consequently,

having regard to the Habitats Regulations, permission must not be granted for the development proposed.

25. For the above reasons, I therefore conclude that the proposed development would result in harm to the integrity of the Dorset Heathland European Sites, having an adverse effect on this European site without any mitigation. I find this proposal to be in conflict with Policy CS33 of the Bournemouth Local Plan: Core Strategy which requires that adequate mitigation is provided to ensure that any adverse effects upon the heathland sites integrity are avoided. The proposal would also be contrary to the National Planning Framework which sets out the need to safeguard sites of important biodiversity (paragraph 175, for example).

Other Matters

26. The Council has stated it can demonstrate a deliverable sufficient housing land supply. However, even if it could not, paragraph 11 of the Framework, in setting out the presumption in favour of sustainable development, is clear that where specific policies in the Framework, including those relating to designated habitat sites, indicate that development should be refused, that the “tilted balance” is not engaged.

Conclusion

27. I have found that the proposal would not harm the character and appearance of the area or its heritage assets. However, my findings in respect of European Sites are decisive as they are compelling reasons to dismiss the appeal.
28. Therefore, the appeal is dismissed.

Steven Rennie

INSPECTOR