



Appeal Decision

Site visit made on 24 June 2019

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal Ref: APP/G1250/W/18/3219148

2 Midland Road, Bournemouth BH9 1PA

- 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 GT Homes against the decision of Bournemouth Borough Council.
 - The application Ref 7-2018-12806-D, dated 20 March 2018, was refused by notice dated 20 August 2018.
 - The development proposed is the erection of a 2/3 storey block of 8 flats with associated parking, cycle and bin stores.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The decision to refuse the application was made by Bournemouth Borough Council. On 1 April 2019, the Council ceased to exist, and the Council area now forms part of the new Bournemouth, Christchurch and Poole Authority. In accordance with the provisions within the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008, the status of the Bournemouth Local Plan Core Strategy (adopted 2012) (the Core Strategy) has not changed as a result of the formation of the new Council.
3. One part of the reason for refusal references harm to the designated Dorset Heaths Special Area of Conservation (SAC), Ramsar site and the Dorset Heathlands Special Protection Area (SPA) that would result from the proposal. A signed and dated Unilateral Undertaking (UU) has been submitted to provide mitigation and the Council has confirmed that this meets their requirements. I consider this matter later.
4. The reason for refusal identified harm to the residential amenities of 2d Midland Road. The Council statement, however, also makes a case that there would be harm to the occupiers of 4 Midland Road. The appellant has commented on the relationship of the development to both properties and therefore would not be prejudiced if I consider the same.

Main Issues

5. The main issues are:
 - whether the proposal would provide acceptable living conditions for the occupiers of 2d and 4 Midland Road, with particular regard to overbearing impact,

- whether the proposal would provide adequate on-site parking and the effect on highway safety.
- whether the loss of the employment site would comply with the development plan and, if not, whether other considerations would indicate that the loss would be justified.

Reasons

Living conditions

6. 2d Midland Road adjoins the appeal site and has a reasonably small rear garden which is confined by fencing to the sides and, at the rear, by the fairly tall brick wall of the adjoining property. This garden area is accessed by rear patio doors and has an enclosed feel that is, to some extent, relieved by the more open aspects to the sides, above the boundary fences.
7. The scheme would involve the construction of a 2 storey building, with additional accommodation in the roof, that would be reasonably close to the boundary and project about half way along the rear garden area of No 2d. The extent and position of built development in this location would have a dominant and conspicuous presence for the occupiers of this adjoining property when viewed from their reasonably small garden area. The adverse impact would not be compensated for by the removal of the outbuilding along the rear boundary of the appeal site. I have noted the submissions made regarding the 45 degree rule, however, in the circumstances of this site, the extent of the flank wall extending beyond the rear wall of No 2d would have a harmful and overbearing effect on the living conditions of this adjoining occupier, in particular from their garden area.
8. The new building would not materially affect natural light, cause overshadowing, or have windows that would cause overlooking to the neighbouring property at No 2d. Nevertheless, this does not alter my findings on the overbearing impact that would result.
9. As a consequence, the erection of the building in such proximity to the neighbour would not accord with the National Planning Policy Framework (the Framework) requirement to create places with a high standard of amenity for existing and future users.
10. I have taken into account the aerial photograph identifying other sites in the road where, it is argued, two storey extensions sit substantially behind the rear wall of the neighbouring property and that this does not cause harm, being an entirely common suburban relationship. I am not satisfied, on the limited evidence available, that these situations provide a good standard of amenity for the adjoining neighbours and that this, in the particular circumstances of this case, would justify the proposal which I have examined on its merits and I have found would be harmful in relation to No 2d. I therefore attribute these other sites limited weight.
11. In relation to the impact on 4 Midland Road, the living conditions of this property are already influenced by the long flank wall of the storage building at the side which abuts the boundary. This would be removed as part of the scheme and therefore reduce the sense of enclosure that this structure presently has on the adjoining property. The replacement building would be set in from the boundary. No 4 has a reasonably sized garden and there is a

garage to the side of this property that separates it from the appeal site. Taking all these factors into account, the proposal would not have an overbearing presence on the living conditions of the occupiers of No 4.

12. In the light of the above analysis, I conclude that the proposal would not provide acceptable living conditions for the occupiers of No 2d because of the overbearing impact and therefore would conflict with Policy CS41 of the Core Strategy and the Framework which seeks, amongst other things, to ensure that new developments enhance amenities of future occupants and neighbouring residents.

Parking

13. The ground floor of the main building is in office use with ancillary storage buildings and the first floor is residential. There are 5 parking spaces available to the premises at the front and a driveway to the side that accesses the rear storage areas.
14. Policy CS16 of the Core Strategy requires that parking provision for new development shall be in accordance with the adopted parking standards. The Parking Supplementary Planning Document (adopted July 2014) (the Parking SPD) sets out the parking requirements. Applying the standards to the proposal, this would require 7 unallocated spaces. As only 5 spaces are proposed there is, consequently, an under delivery and thereby a conflict with Policy CS16.
15. However, the existing building in its mixed use generates a requirement for about 10 spaces. There is, therefore, less of a deficit with the residential proposal and it is argued that there would be parking benefits overall resulting from the scheme. However, parking requirements would vary with the type of use through the day and week. In broad terms, in my view, car parking requirements for a residential use are likely to be greater in the evening and during weekends than during the day, whereas an office use may typically be likely to generate more demand during the normal working week.
16. In relation to the circumstances of this case and the way that the site is operated, I have carefully considered the submission from the Operations Director of the company setting out the times when the site is in use and the offices are operating. This advises on the 24 hours a day, 7 days of the week nature of the business. However, these comments do not include survey data to provide me with detailed evidence of the demand and use of spaces on site and in the vicinity at various times of the day in connection with the site, in particular the evenings and weekends. Consequently, as this information is general in its nature, I attach moderate weight to it in the considerations.
17. Parts of Midland Road are subject to parking restrictions and a significant number of dropped kerbs provide access to curtilage parking which also reduces the opportunities for on-street car parking. The evidence indicates that some streets in the locality also have some parking restrictions, including limited waiting times, which restrict the ability of local residents and businesses to park vehicles.
18. The Highway Authority has undertaken a stress test of parking in the area. This was on a single occasion and for a short period; however, I do not have substantive evidence that the results would not be representative of the

situation on other occasions. The information was gathered at about 8pm and therefore is, in my view, reasonably representative of the car parking situation at a time when there is likely to be a higher level of demand from residents wishing to park. The survey shows that parking in the roads were beyond the capacity of the road side spaces available and that some vehicles were parked across dropped kerbs and a vehicle on the footway. This is up to date and quantified evidence that I place substantial weight upon.

19. The obstructions reported to the Police do not provide very recent data, they, nevertheless, build a picture which supports the conclusion that there is parking stress in the area.
20. The site is located close to a district centre with shops, services and access to local bus services. The site can be considered to be a generally sustainable location, although to be able to access a wider range of employment sites and services, in all likelihood, some future occupiers would be required to use a private vehicle and need to park on site or nearby. Indeed, the parking requirement is based on the site being within Zone 2.
21. The operating hours of the office on site are 7am to 7pm every day of the week which is likely to overlap with residential parking demands in the area. The loss of the office accommodation would in all likelihood free up road side spaces during these operating hours, although I have little documentary evidence of the precise numbers. At other times the residential use is likely to place a greater demand on road side parking.
22. Taking all matters into account and based on the extent of evidence that is before me, I consider that the likelihood is that the parking requirements would increase in the evenings and at times during the weekends with the 8 flat proposal compared to the situation with the present commercial and residential use of the building. These are some of the times when the evidence indicates that parking stress occurs. In these circumstances, I am not satisfied that the existing use of the site would form a clear justification for allowing a reduction in the adopted parking standards for the residential scheme.
23. The proposal would fall short of the adopted standard by 2 spaces. The provision of the development without the required number of spaces would, in all likelihood, lead to increased requirements for on-street parking in evenings and weekends. Given the parking stress in the surrounding area at those times, this is likely to increase inconsiderate and unauthorised parking which in the evidence of the Highway Authority may then interfere with the junction visibility splays, hinder pedestrians accessing dropped kerbs and cause a safety hazard on footways. I agree. While the residual cumulative impacts on the road network would not be severe, the result would be likely to make the use of the highway network for pedestrians and drivers more hazardous. In this way, the scheme would contribute to an unacceptable impact on highway safety contrary to paragraph 109 of the Framework.
24. In the light of the above analysis, I conclude that the proposal would not provide adequate on-site parking and therefore would lead to an adverse effect on highway safety. This would conflict with Policies CS16 and CS41 of the Core Strategy and the Framework which seek, amongst other things, that parking provision for new developments shall be in accordance with adopted parking standards and contribute positively to the safety of the public realm.

Employment site

25. The ground floor of the main building and the ancillary buildings are in commercial use. The redevelopment of the site with wholly residential use would therefore be contrary to Policy CS27 of the Core Strategy which seeks to protect unallocated employment sites.
26. The first floor of the building was previously office space and this has been converted to residential following the grant of prior approval in December 2016¹. Prior approval has also been granted for the ground floor to be converted to 2 flats in May 2017². The effect of this approval, if implemented, would be for the whole of the site to be in residential use with the resultant loss of the employment land.
27. Based on the evidence before me, there is a real prospect that the conversion of the ground floor to residential accommodation would take place and, therefore, the prior approval is a genuine fall-back, having regard to the case law that has been drawn to my attention³. I attribute this fall-back position substantial weight.
28. Taking all these matters into account, I conclude that the approval for residential use of the ground floor, and the associated fall-back position, provide material planning considerations that outweigh the conflict with Policy CS27 of the Core Strategy that seeks to protect unallocated employment sites. In these circumstances, the loss of the employment land would not be preventable and in planning terms withholding approval on this ground is not justified.

Other Matters

29. The Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document sets out a strategy that seeks to mitigate the impacts on the heathland arising from recreational pressure from residents of new dwellings. The appellant has submitted a signed and dated UU to provide the necessary mitigation. If I was minded to allow the appeal, I would need to undertake an appropriate assessment, however, in the light of my conclusions below, I do not need to consider this matter further.

Planning Balance and Conclusion

30. The scheme would deliver 8 units of accommodation making efficient use of previously developed land. This would provide a worthwhile boost to housing supply in a generally sustainable location. There would also be economic and social benefits to the local area during construction, and in subsequent occupation. These matters accord with the Framework policy approach in these respects. However, these benefits afford moderate weight given the scale of the proposal.
31. The scheme would involve the loss of the employment land which, while not objectionable for the reasons explained, I consider is not a benefit in the overall planning balance.

¹ Council Reference 7-2016-12806-B

² Council Reference 7-2017-12806-C

³ *R. (on the application of Zurich Assurance Ltd (t/a Threadneedle Property Investments)) v North Lincolnshire Council* [2012] EWHC 3708 (Admin) and *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314

32. I have found that the scheme would cause an overbearing impact on the living conditions of the adjoining occupiers of No 2d. The proposal would not provide adequate car parking on site and this would lead to harm to highway safety. These matters afford substantial weight and the related policies which seek to protect living conditions and provide appropriate car parking and safety are consistent with the Framework.
33. The appellant makes the case that the Council cannot demonstrate a 5 year supply of deliverable housing sites and therefore the presumption in favour of sustainable development, as set out in paragraph 11d of the Framework, is engaged. Even if that would be the case, given my findings of the harm I have identified above, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
34. The scheme is, therefore, not sustainable development in terms of the Framework. The proposal would not accord with the development plan when considered as a whole and the evidence does not indicate a departure from the development plan would be justified. Accordingly, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR