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## Appeal Decision

Site visit made on 6 June 2019

**Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 July 2019

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**Appeal Ref: G1250/W/18/3207447**

**2 West Hill Road, Bournemouth BH2 5PG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Juno Developments Ltd against the decision of Bournemouth Borough Council.
  - The application, Ref. 7-2018-557-Y, dated 21 May 2018, was refused by notice dated 16 July 2018.
  - The application sought planning permission for a minor material amendment to vary condition No. 1 of 7-2016-5557-Q to vary plans without complying with conditions attached to planning permission Ref. 7-2017-557-T dated 30 May 2017.
  - The conditions in dispute are Nos. 2 & 17. Condition No. 2 states that: *'The development hereby permitted shall be carried out in accordance with the following approved plans: 8702/500, 8702/501'*. Condition No. 17 states that: *'The integral bin store hereby approved shall be provided in accordance with the approved details prior to the occupation of the proposed development and shall be retained and maintained for that use thereafter'*.
  - The reasons given for the conditions are: No. 2. *'For the avoidance of doubt and in the interests of proper planning'*; No. 17: *'To preserve the visual amenities of the locality in accordance with Policy CS41 of the Bournemouth Borough Local Plan (October 2012)'*.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing building and erection of a block of 8 flats with parking spaces at 2 West Hill Road, Bournemouth in accordance with the application Ref. 7-2018-557-Y made on 21 May 2018 without complying with conditions Nos. 2 & 17 as set out in planning permission Ref. 7-2017-557-T granted 30 May 2017 by the Bournemouth Borough Council, but otherwise subject to the conditions in the attached Schedule.

### Procedural Matter

2. The 'original permission' in this case is cited as the permission for a subsequent minor material amendment to the development previously approved under reference 7-2016-557-Q for the demolition of the existing building and erection of a block of 8 flats with parking spaces. I have therefore referred to the description of the original substantive development in my decision to allow the appeal so as to provide the appropriate context for the new permission.

## **Main Issue**

3. The main issue is the effect of varying the conditions to permit an external rather than internal bin storage area on the character or appearance of the West Cliff Conservation Area; the long term health of a protected tree; the living conditions for existing and future occupiers of the flats, and the ease of use of the covered cycle store.

## **Reasons**

4. The development of the block of 8 flats has been completed and for the most part occupied. In the evolution of the appeal scheme the original proposal was for the bins to be to the rear of the building, then to the front and finally, at the Council's request, as an integral part of the block near the proposed Flat 2 on the north west flank of the building.
5. Whilst this arrangement would have had the advantage of reducing the potential for clutter on the site it proved to be impracticable, partly because it would not be within the requisite 'pulling distance' for a municipal collection and partly because the sale of Flat 2 was blighted by its proximity to the refuse store. (In response to the Council's comments it is very common to sell flats 'off plan', so I do not regard it as significant that the refuse store was not actually built in the agreed position).
6. For the sales resistance reason, the appellant relocated the refuse storage area to the rear of the site as originally planned and increased the size of the bedroom to Flat 2, albeit without the Council's consent.
7. From my visit to the now completed and at least part occupied building I formed the view that an integral refuse storage area in the position shown would have had a significantly harmful effect on the living conditions for the occupiers of Flat 2. This would be due to a combination of (i) noise and disturbance from residents depositing their bags of rubbish and when the bags were collected by the appointed operator for their disposal; (ii) the likely dirt and dust that would affect the windows of the flat; (iii) the loss of privacy because of the visits of other residents and the operator, and (iv) the potential for unpleasant odours to permeate the flat.
8. The location of the collection bins to an outside storage area to the rear of the block of flats has in my opinion not justified the Council's fears. I do not know whether the planning officer has visited the site since the revised arrangements were made, or alternatively reached his decision solely from the submitted plans. However, in my view a visit is essential to properly consider the relevant issues.
9. Indeed, from my own assessment I was able to reach a number of conclusions. Firstly, there is a pleasant part grassed /part patio area of a reasonable size and certainly in my view entirely adequate for sitting out by residents of the flats in suitable weather. Secondly, this area is separated from the cycle store and bin store areas by a good quality close boarded fence and the outlook towards this and neighbouring mature trees and hedges is entirely satisfactory.
10. Thirdly, the refuse bins have been positioned in an area between the side boundary fence and the cycle storage building and accessed by the brick path alongside the full length of the building and continuing via a pedestrian gate in the fence to provide the base of the storage area for the bins. Contrary to the

submitted plan 8702 /1000 Rev. A submitted with this appeal, the cycle storage building has been pulled away from the boundary fence to provide adequate room for the bins and the manoeuvring needed to remove and replace them. This is a significant departure from the submitted plans and weighs strongly in the appellant's favour.

11. With this arrangement, the bins cannot be seen by users of the garden and are entirely benign in their visual impact. They therefore have no adverse effect at all, either on the site itself or on the character and appearance of the conservation area. Nor do they in any way obstruct access to the cycle storage shed which has its door on a different side of the building and can be approached without any actual or perceived obstruction from the bins.
12. As regards the effect on tree roots of protected trees, there appear to be two trees in the Group TPO that are close by, but in both cases the brick paving of the access path and bin storage area would have no more effect on their roots than the other amenity paving within the curtilage of the site or indeed the concrete slab of the cycle store building.
13. Overall, the development of the outside areas has been carried out to a high standard and the layout is well balanced between the functional needs of the flats, the need to provide a good standard of living conditions for the residents, and the requirement to preserve the character and appearance of the conservation area.
14. There would therefore be no conflict with Policy 4.4 of the Bournemouth District Wide Local Plan 2002; Policies CS39 & CS41 of the Bournemouth Local Plan: Core Strategy 2012; the Council's Residential Development: Design Guide 2008, and Section 12: 'Achieving Well-Designed Places' of the National Planning Policy Framework 2019.
15. I shall therefore allow the appeal. In so doing, I shall impose a condition requiring Drawing No. 8702 /1000 Rev. A to be amended to show the development as built and the retention of the external bin storage and cycle storage areas. This is necessary for the avoidance of doubt and in the interests of proper planning.
16. Most of the conditions on the original permission are no longer relevant given that the development has been completed, albeit that there are some elements of these that remain reasonable and necessary as significant ongoing restrictions on this new permission. Accordingly, a refuse bin storage condition will safeguard the visual amenities of the area and the amenities of the occupiers of the flats, whilst a cycle storage condition will encourage this sustainable form of transport. Finally, a condition in respect of parking and access will maintain highway safety and convenience.

*Martin Andrews*

INSPECTOR

### **Schedule of Conditions**

- 1) Within three months of the date of this Decision, Drawing No. 8702 /1000 Rev. A shall be re-drawn to accurately record the development as built and submitted for the approval of the Local Planning Authority. The bin storage area as shown shall be made available at all times for the occupiers of the flatted development at No. 2 West Hill Road. Collection of the refuse shall be managed by the management company of No. 2 West Hill Road, removed from the site and disposed of in a sustainable and responsible manner by a private refuse collection firm, in perpetuity;
- 2) The cycle store as shown on the revised approved plan shall be retained, maintained and kept available for the occupants of the development at all times;
- 3) The access and areas for turning and parking shown on the revised approved plan shall be permanently retained and kept available for the residents or visitors of the development hereby permitted at all times and shall remain unallocated to any specific resident or residence for the lifetime of the development.