



Appeal Decision

Site visit made on 4 July 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2019

Appeal Ref: APP/Q1255/W/18/3215409

41 Kings Avenue, Poole BH14 9QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mrs Angela Hillier against the decision of Poole Council.
 - The application Ref APP/18/00714/F, dated 24 May 2018, was refused by notice dated 23 July 2018.
 - The development proposed is described on the application form as to 'demolish existing dwelling and erect four dwellings'.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. On 1 April 2019 the former Councils of Bournemouth, Christchurch and Poole combined to form a single Authority. Nevertheless, until superseded, the existing development plan documents of the former Councils remain extant.
3. Of central importance to this case are planning permissions Ref APP/15/01583/F (for a replacement dwelling, the '2016 permission') and, in particular, planning permission Ref APP/17/00927/F (for a pair of semi-detached properties, the '2017 permission'). The appellant contends that the proposal before me for four homes would be broadly comparable with those previous schemes. There is no indication that the latter would not be implemented, regardless of the outcome of this appeal.¹
4. There is some further planning history to the site, including an unsuccessful appeal for a pair of semi-detached properties in 2015 (Ref APP/Q1255/W/14/3000102, the 'previous appeal').² However each proposal must be determined on its merits in accordance with the development plan, unless material considerations indicate otherwise.
5. In this instance the development plan includes policies of the Poole Local Plan (adopted 13 November 2018, the 'LP'), superseding the former Core Strategy (adopted 19 February 2009, the 'CS'). Since the Council's decision notice the National Planning Policy Framework has been updated (the latest iteration being published on 19 February 2019, the 'NPPF'). I have also had regard to various other material considerations including the Planning Practice Guidance

¹ Notwithstanding that the 2016 permission appears to have now lapsed.

² In addition to an unsuccessful appeal in 2009 (APP/Q1255/A/08/2093046), and an unsuccessful application for four attached houses in 2018 (Ref 17/01768).

(‘PPG’). The appeal process has accorded suitable opportunity for comment on the above context, in so far as is relevant and necessary.

6. An appeal should not be used to evolve a proposal. Nevertheless the appellant has submitted a Daylight Report related to the scheme.³ That recommends certain revisions to the design of the proposed dwellings to improve natural lighting (by implication an acceptance of the Council’s initial position in that regard).⁴ Not unreasonably the Daylight Report and consequential revisions seek to overcome the Council’s third reason for refusing permission, with resultant changes to the scheme being relatively minor. As such there is no reason, on grounds of procedural fairness, to discount them from my assessment of the scheme.

Main issues

7. Somewhat interconnected as a result of the appellant’s central argument reflected in paragraph 3 above, the main issues are the effects of the proposal (i) on local character and appearance, (ii) to the living conditions of those nearby and in relation to the living conditions for future occupants. In the event that I find that harm would result, I will gauge whether other material considerations in favour of the scheme nevertheless justify allowing the appeal.

Policy context

8. It has not been put to me by the main parties that there are substantial differences between the relevant provisions of the LP and CS that have a significant bearing on the acceptability of the scheme. Nor have such arguments been made in respect of the revised and updated NPPF, with the exception of matters regarding housing supply (to which I will return). I have approached the appeal in that context.
9. LP and NPPF policies pull in different directions. On the one hand there is support, via LP policy PP2 and NPPF paragraphs 68, 122 and 123 under certain circumstances, for the development of smaller sites and for increasing or optimising residential density (alongside general support for provision of new housing). However such support is not unqualified. And no one development plan policy, nor element of the NPPF, automatically outweighs any other.
10. LP policy PP27 requires a good standard of design, setting out both that development should reflect or enhance local patterns and characteristics of development and be compatible with its surroundings in respect of amenity. Similarly LP policy PP28 explains that plot subdivision ‘will only be permitted where there is sufficient land to enable a type, scale and layout of development including parking and usable amenity space to be accommodated in a manner which would preserve or enhance the area’s residential character’. Accordingly, LP policy PP2 explains that higher densities will need to be considered on a case by case basis.
11. Being sympathetic to local character and securing a ‘high standard’ of amenity for all are principles aligned with NPPF paragraph 127 and reiterated in the PPG (in particular regarding the layout of, inter-relationship between, and local

³ HDS Greentech Ltd., document No 20381.R01, dated 24 October 2018.

⁴ Reducing the ground floor overhang, increasing the size of the plot 1 kitchen window, adding a window to the kitchen in plot 2, and introducing a skylight to bedroom two in plot 2 (shown on associated drawing No 01.3.A).

distinctiveness of buildings).⁵ LP policy PP32 seeks to address strategic effects on protected ecological sites, with LP policy PP33 focussing on safeguarding ecology on-site. Their aims align with NPPF paragraph 170, which details how planning should contribute to and enhance the natural environment, including by way of minimising impacts on biodiversity.

Reasons

Character and appearance

12. The proposal is to demolish No 41 and to erect four dwellings arranged as a single building. Each house would share two party walls with another; the appellant terming that arrangement 'cluster homes'. No 41 is presently a detached bungalow. It appears of interwar origin, with properties along Kings Avenue nearby predominantly dating from around that era, albeit there is some variety in that respect and in terms of design. It is set within a relatively generous corner plot by Kings Avenue and Boulnois Avenue, which are perpendicular to one another. Frankland Crescent cuts to the rear of the plot at an acute angle.
13. Aside from the area around vehicular access by the junction of Frankland Crescent and Boulnois Avenue, the plot of No 41 is bounded by established planting such that the property is largely hidden from view. Although the policy context and development proposed have evolved since 2015, nevertheless my observations in respect of the nature of the appeal site and its surroundings essentially align with those of the inspector who determined the previous appeal (albeit that they are arrived at independently). A notable exception is that No 41 is now occupied.
14. Kings Avenue is relatively wide and primarily characterised by good-sized detached properties regularly arranged in relatively spacious plots, mostly of greater depth than width. Those features, combined with the prevailing generous set-back of properties from the pavement, alongside well-established gardens typically demarcated by hedges and dotted with mature trees, give the area an ordered, relaxed, spacious and verdant character. The appeal site is encompassed by a Tree Preservation Order dating from 1993 ('TPO'). That is notwithstanding some variety in the design of properties, modern additions, and some more intensive residential uses in the wider area.
15. The inspector who determined the previous appeal commented that the spaciousness of the plots associated with Nos 39 and 41 provide an attractive landscape buffer. I agree with that observation. At present the arrangement of No 41 relative to its plot and the presence of established planting is consistent with and reinforces the prevailing pattern of development and the harmonious character of its surroundings. Properties along Boulnois Avenue and Frankland Close are typically more modest and recent. However that change is not particularly marked; those properties are similarly principally detached and sit comfortably within relatively spacious plots.
16. I acknowledge that some subdivision of formerly more extensive plots has occurred. That is the case at No 30A Kings Avenue nearby and also at No 1A Boulnois Avenue opposite. The plot of No 1 Boulnois Avenue appears

⁵ Including Reference ID: 26-023-20140306 and 26-020-20140306.

particularly limited, atypically so. The development proposed would maintain the building line here. Viewed as a single building it would broadly reflect in scale, form and detailing its surroundings. In overall height and bulk the proposal would be comparable with development previously permitted via the 2016 and 2017 permissions, and landscaping and boundary features would limit visual effects to some extent (which could be secured via appropriately-worded conditions were the scheme otherwise acceptable).

17. The Council describe the cluster arrangement of properties as 'bizarre.' I acknowledge they have been arranged so as to emulate a pair of semi-detached properties. It is also not out of the ordinary to subdivide larger properties into smaller residential units in various ways. Nevertheless I was unable to see comparable examples of 'cluster homes' nearby. Such a model is, moreover, far from a standard arrangement. Whilst no floorspace standard has been brought to my attention, nevertheless the dwellings proposed would be markedly smaller than that which is typical of nearby properties and would inevitably have comparably limited outlook.
18. The outside spaces proposed vary between 38 and 66 square metres. That is modest in absolute terms, and again substantially smaller than the prevailing size and spaciousness of plots in the area. I saw how the footprint of No 41 at present relative to its plot size is broadly comparable to the prevailing plot ratio in the vicinity. Therefore, on a crude estimation, the resultant dwellings and plots would be roughly a quarter of that which typifies the area and contributes towards the ordered and spacious character here (or less given off-street parking spaces are proposed). That is significant.
19. Meaningful outside space would also only be available beyond one elevation of each dwelling, an arrangement inconsistently intense for this location. I accept that there is outdoor space provision nearby and that people will make an informed choice as to where to live relative to their preferences. However, although no guidelines as to indicative plot sizes are before me, I do not accept the appellant's premise that plot sizes should be 'left to market forces to determine'. That argument may equally be levelled at planning as a concept, yet it exists. Moreover the PPG reiterates how buildings and the spaces between them may be considered in addressing design.⁶
20. The appellant further argues that the resultant residential density of 52 dwellings per hectare ('dph') would be 'wholly consistent' with development plan policies. That is not the case, notwithstanding that density is an approximation for impact. LP policy PP2 advocates an indicative residential density exceeding 50 dph only in sustainable transport corridors, district and local centres, and in Poole Town Centre (notwithstanding the proviso in that policy that 'housing densities will be considered on a case by case basis'). The appeal site is not located in any such area, and as reasoned above the density that would result would be substantially in excess of the prevailing layout.
21. The character of an area is also more than visual. By virtue of the limited scale of the dwellings proposed, their plots, and the density that would result, the proposal would result in a significant increase in intensity of use. That is likely to be readily apparent by virtue of comings and goings, car parking and

⁶ PPG Reference ID: 26-024-20140306 in particular.

manoeuvring, deliveries, noise resulting from use of outside spaces, domestic paraphernalia (over which planning may reasonably exert limited control, and would be more prevalent linked with four homes than in connection with one or two). Those effects of the scheme would likely be readily apparent both visually and perceptively on account of the location of the appeal site at a junction of residential streets. Combined with the inevitable increase in built development within the appeal site and the excessively confined plots associated with dwellings, the proposal would be discordant with, and clearly detrimental to, the prevailing harmonious character of the area as described above.

22. It is therefore the combination of the form proposed and the incongruous level of intensity of use that would result that renders the proposal unacceptable. Conditions and the TPO may accord some control over the natural character of the site. Nevertheless it is, in my view, highly likely that four dwellings would result in increased pressure for pruning or reduction of planting and trees for practical and aesthetic reasons (such as minimising maintenance or improving natural light reaching gardens and properties). I therefore conclude that the proposal would have a significant adverse effect on the character and appearance of the area in conflict with the relevant provisions of LP policies PP2, PP27, PP28 and NPPF paragraph 127.

Living conditions, neighbours and future occupants

23. The design of the building proposed would be broadly consistent with others nearby and previous permissions. The appellant explains how 'primary' habitable accommodation is intended to be at ground floor level. That arrangement which would moderate effects on the privacy of those nearby, by virtue of boundary features impeding views to an extent. The spacious and verdant character of the area would also limit resultant effects to the living conditions of those nearby. Being an established residential area, there is inevitably a baseline level of inter-visibility between properties and gardens and general noise. I have noted above that individuals will make an informed choice as to their accommodation. The Daylight Report summarises that all rooms would meet the recommended requirement in British Standard 8206-2-2008, subject to certain amendments listed earlier.⁷
24. However it does not stand to reason that the use of a building as four homes would entail no greater potential effects to those nearby than its use as one or two houses.⁸ At any one time, rooms, balconies and garden space is more likely to be occupied. That increases the potential for overlooking towards neighbouring properties and for noise and disturbance, as in the latter respect does an increase in comings-and-goings. In my view, given the arrangement of dwellings proposed and their limited size, outlook, and outside space, there is likely to be significantly greater pressure to make use of first-floor balconies.
25. That has clear potential to reduce the privacy from which neighbouring properties benefit, and the quiet enjoyment of their outside spaces. As set out above there is a characteristic ordered and spacious character in this location. That entails a commensurate levels of privacy and low levels of noise and disturbance. It is legitimate to ensure that is respected. Even relatively minor changes may have a significant effect on the perception of privacy. As such,

⁷ Albeit now superseded by BS EN 17037:2018.

⁸ Appellant statement of case, paragraphs 6.26 and 6.27.

given the proposal would result in an undue level of density, the proposal would be liable to noticeably reduce the privacy and tranquillity that nearby residents currently benefit from. That would be particularly the case of No 1A Boulnois Avenue given the proximity of first floor windows, but also in respect of the garden of No 39 Kings Avenue, with some potential for effects to result to the occupants of No 2 Frankland Crescent and No 38 Kings Avenue (albeit moderated on account of greater physical separation in those instances and intervening planting and trees).⁹

26. I have noted above that there are no applicable internal or external space standards before me. As set out in the Daylight Report, amendments to the scheme could render internal light levels acceptable. However the acceptability of the scale of dwellings and their outside space is inevitably a matter of planning judgement and context specific (rather than one that can be settled with reference to exact metrics). In both respects the proposal would result in atypically constrained development, well below that enjoyed by the majority of local residents and which is characteristic of the area. The LP and NPPF seek to ensure 'good' or 'high standards' of amenity respectively. By consequence of my reasoning above, that cannot be said to be the case here. I therefore conclude that the development proposed would have an adverse effect on the living conditions of those nearby and fail to provide suitable living conditions for future occupants, in conflict with the approach in the relevant provisions of LP policy PP27 and NPPF paragraph 170.

Ecology

27. The Council's fourth reason for refusal was that, in the absence of an appropriate contribution towards mitigating effects on ecology resulting from increased recreational pressure and potential for disturbance to the Dorset Heathlands Special Protection Area, and subsequently the Poole Harbour Special Protection Area ('SPAs'),¹⁰ a likely significant adverse effect in that respect could not be ruled out. The appeal site falls within the five kilometre zones of influence of the SPAs, with reference to the Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document (adopted January 2016, the 'SPD') and also via the Poole Harbour Interim Scheme (published 2 January 2019, pending adoption of a formal planning document).
28. The potential for adverse effects to ecology and habitats, the protection of which is the purpose for which the SPAs are designated, increases in line with the number of dwellings nearby. Birds can be disturbed by recreational activities, predation from domestic pets, and from habitats being unavailable from time to time by consequence. In the abstract, avoidance or mitigation of effects to the SPAs would be achieved by site-specific measures and off-site provision, including by way of Suitable Alternative Natural Greenspace ('SANG'), to redirect those who would have made use of the SPAs, or via contributions towards Strategic Access Management and Monitoring arrangements ('SAMM').

⁹ There is reference to the potential of an acoustic fence along the common boundary with No 39 in the Council's officer report associated with the application. However details of that, or assessment of the extent to which it would attenuate any noise arising, are not before me (nor does it appear that such an arrangement is part of the current iteration of the scheme).

¹⁰ Which overlap a number of other environmental designations also.

29. There is no contribution towards mitigation before me, via deed or otherwise. The PPG guides that, only in exceptional circumstances would a negatively worded condition requiring a planning obligation or other agreement be appropriate in the case of 'more complex and strategically important development...'.¹¹ That cannot be said to be the case of the development proposed here. That brings the proposal presently into conflict with the relevant provisions of LP policy PP32 and NPPF paragraph 170. In summary, and amongst other things, those policies seek to ensure that development appropriately safeguards the natural environment.
30. Nevertheless that is not critical; paragraph 6.41 of the appellant's statement of case explains that the need to pay 'the necessary financial contribution' towards SAMM provision in support of the heathland policy is accepted. Such a contribution in compliance with the SPD and Interim Scheme could, theoretically, have been sourced had the development proposed been otherwise acceptable. Subject to that being in place, given the scale and nature of the proposal relative to the established residential character of the area which is not specifically protected on account of its ecological value, there is nothing substantive to indicate that the proposal could not have been made acceptable in respect of ecology.
31. That is notwithstanding that, following recent case law, likely significant effects to sites designated under European legislation may only be ruled out, where mitigation is proposed, via the mechanism of appropriate assessment.¹² However even were no likely significant effects to ecology to result in line with LP policies PP32 and PP33 and NPPF paragraph 170, that would be neutral in the planning balance rather than representing a positive factor weighing in favour of allowing the appeal. As such, although the proposal presently would not provide appropriate safeguards, that has not influenced my decision. The reasoning in respect of this main issue is therefore principally explanatory.

Other matters

32. Notwithstanding intricacies with Housing Delivery Test data applied via the implementation arrangements in NPPF paragraph 215, with regard to NPPF paragraphs 67 and 73 the Council explain that they are presently able to demonstrate a five year land supply of deliverable housing sites relative to needs ('5YLS'). The appellant notes that the current position is around 5.4 years' worth of supply. There is no substantive evidence before me to the contrary, albeit that the LP represents an uplift in intended housing provision relative to the CS, and there is the pressing need to boost significantly the supply of homes in general terms.
33. The proposal would have certain benefits including resulting in an addition to housing stock, in supporting employment during construction, and as future occupants would bring trade to nearby services and facilities. However the benefits of three new homes (net) would inevitably be modest, particularly relative to the stepped housing target in the LP which varies from 500 to 815 homes annually over the plan period. Moreover neither the support for new

¹¹ Reference ID: 21a-010-20140306.

¹² People Over Wind and Sweetman v Coillte Teoranta, Environment – Conservation of natural habitats [2018] EUECJ C-323/17, with regard to the application of Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017.

housing in the LP nor NPPF is at the expense of ensuring that all integrates appropriately with its surroundings. Consequently no other matters are sufficient to justify allowing the appeal.¹³

34. This case is the third appeal, amongst various refusals of planning permission, for the intensification of the site. It is the general principal that parties to planning appeals meet their own costs. However there is provision for an award of costs if unreasonable behaviour has occurred directly resulting in another party incurring unnecessary expense at appeal, including at the initiative of inspectors.¹⁴ Examples of potential types of behaviour that may give rise to a substantive award are set out in the PPG.¹⁵ In the event that potential future development is considered here, those proposing it may wish to be cognisant of that context.

Conclusion

35. For the above reasons, having had regard to the development plan as a whole, the approach in the NPPF, and to all other relevant matters including the representations of those nearby, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

¹³ Inherent in that reasoning is that the adverse effects of the proposal would significantly and demonstrably outweigh the benefits (notwithstanding that the most important policies in this instance related to design and living conditions align with the approach in the NPPF).

¹⁴ PPG Reference ID: 16-036-20140306.

¹⁵ Including at PPG Reference ID: 16-053-20140306.