



Appeal Decision

Site visit made on 18 June 2019

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2019

Appeal Ref: APP/G1250/W/19/3225324
12 Foxholes Road, Bournemouth BH6 3AS

- 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 AJ Developments against the decision of Bournemouth Borough Council.
 - The application Ref 7-2018-2325-B, dated 24 August 2018, was refused by notice dated 28 January 2019.
 - The development proposed is described as '*Demolish existing building and erect 1 house and 6 flats with parking, cycle and bin storage (revised scheme)*'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on:
 - the living conditions of the occupants of No 24 Douglas Road, with regard to privacy;
 - the living conditions of its potential future occupants with regard to outlook, privacy and space;
 - the integrity of the Dorset Heathlands Special Protection Area (the SPA);
 - the character and appearance of the area; and,
 - whether the proposal should provide small family dwellinghouses.

Reasons

Neighbouring occupants

3. No 12 Foxholes Road is a detached single storey dwelling with added accommodation within its roof, served by a wide, rear dormer window that allows first floor overlooking through boundary vegetation towards No 24 Douglas Road's garden and side elevation, which are directly behind the site. No 24 is also overlooked to an extent by the flatted development at Nos 1-8 Foxholes Road, but this is limited by the oblique relationship between the two buildings. The current degree of overlooking between the properties constitutes a relationship I observed to be typical within this residential environment.
4. The rear elevation of the proposal would be notably closer to the shared boundary and would have five openings across the length of its first-floor, three of which would be full height with associated Juliette balconies. The openings would relate to three separate properties and would all serve bedrooms. I am

not persuaded by the appellant's view that bedrooms would only be used at night, particularly considering the small size of the units, and this could not be controlled in any event. In addition, the proposed plans indicate that the highly vegetated boundary, which currently provides a degree of screening, will be removed and new trees planted in a more open arrangement.

5. Given these circumstances, I consider that the proposal would cause a significant and unacceptable intensification of elevated overlooking towards the rear garden, conservatory and the windows within the side elevation of No 24 Douglas Road. I therefore conclude that the proposed development would have an unacceptable effect on the living conditions of the occupants of No 24 Douglas Road, with regard to privacy. The proposal would conflict with Policies 6.8 and 6.10 of the Bournemouth District Wide Local Plan (adopted 2002) (BDWLP), Policy CS41 of the Bournemouth Local Plan Core Strategy (adopted 2012) (CS) and the National Planning Policy Framework (the Framework) insofar as they seek development to satisfactorily protect the amenity of neighbouring residents.

Future occupants

6. Whilst I acknowledge that the proposed flats would be small in terms of floor area, I also note that they would have a dual aspect, with all bedrooms and living areas served by windows which allow outlook with an adequate distance to site boundaries. In addition, the proposed layout minimises unusable areas, such as passageways, and therefore makes the best use of available space. As such, I am satisfied that the layout, design and size of the flats would provide an acceptable standard of outlook and space for future occupants.
7. However, due to the comprehensive use of the front area of the site for parking and turning, residents would be dependent on the area to the rear for all other outdoor activity. Given the potential number of people living at the site, this would be an inadequately sized communal recreational space. Users of the area would also be within close proximity to rear windows serving private spaces at ground floor level. I therefore consider that use of the communal rear garden area would unacceptably impinge upon the privacy of occupants of the ground floor flats and the ground floor of the three-bedroom dwelling house.
8. Furthermore, considering the small size of the house and its expected occupation by a family, there would be an emphasised need for it to be provided with safe and secure private areas for outdoor recreation. As there is none within the scheme, and occupants would be reliant on the inadequate communal areas, it is my view that the living conditions of future occupants of the house would be unacceptably limited with regard to space. Further, bedroom 3, which would likely be for a child, would be isolated from the rest of the house enclosed within the roof and served by a single rooflight. As such, I consider that the house would not provide adequate outlook for all of its residents.
9. I therefore find that the proposed development would have an unacceptable effect on the living conditions of its future occupants with regard to outlook, privacy and space. The proposal would conflict with Policies 6.8 and 6.10 of the BDWLP, Policy CS41 of the CS and the Framework insofar as they seek development to achieve a high standard of amenity for future users. As the development plan does not prescribe minimum internal floor areas or utilise the DCLG Technical Standards document, the document's guidance has had very limited weight in my assessment.

Special Protection Area

10. Last year the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage¹.
11. The site is within 5km of the Dorset Heathlands SPA which is notified as a Site of Special Scientific Interest for the special interest of its heathland habitats and associated plant and animal species. The area is used for recreation and there is no dispute between the parties or Natural England that the proposal, when considered alone or cumulatively with other schemes, could not be ruled out to have significant effects on the features of interest of the SPA due to the increased recreational use. I have no reason to disagree with this conclusion.
12. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European site. I may consider any restrictions which could secure mitigation and provide certainty that the proposal would not harm the SPAs. The Council has indicated that there is a strategic solution to mitigate the effects, in the form of the Council's mitigation strategy contained within the Dorset Heathlands Planning Framework 2015-2020 SPD (the SPD), which includes Heathland Infrastructure Projects (HIPs) and Strategic Access Management and Monitoring (SAMM).
13. Although the Council's SPD does list individual projects, none are identified within the signed and dated Unilateral Undertaking (UU) which has been supplied. As such, I am uncertain that proportionate and relevant projects would be delivered which would directly mitigate the effects of the development on the SPA.
14. I therefore cannot rule out that the proposal would cause harm to the integrity of the Dorset Heathlands SPA without clear and certain mitigation. Consequently, I find that the proposal would conflict with Policy CS33 of the CS and, having regard to the Habitat Regulations, permission must not be granted.

Character and appearance

15. Foxholes Road features a variety of building styles and sizes. However, although the Council identifies that there is a predominance of houses in the area, there is a clear concentration of flatted development at the southern end of Foxholes Road, in the vicinity of the appeal site. In many instances the large buildings are served by areas of significant hardstanding with limited landscaping. There are blocks of flats directly to the south of the appeal site and on the opposite side of the road, in addition to a large building to its north. The diminutive size and location of No 12 amongst these large buildings leads it to make a somewhat anomalous contribution to the street scene. Its appearance is unremarkable, and there is no evidence before me that it is individually worthy of retention.
16. The proposed building would maintain a degree of subservience to the buildings which surround it, and would incorporate materials and detailing, such as the apex glazing, which exist within the area. Despite its larger size, it would be further away from the neighbouring buildings than the existing dwelling and would not appear cramped. Landscaping at the front boundary would soften the

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

impact of the parking area and associated bin/cycle store. For these reasons, I consider that the design of the proposal would be more harmonious with the existing character and appearance of the built environment within this section of Foxholes Road.

17. I therefore conclude that the proposal would have an acceptable effect on the character and appearance of the area. It would accord with Policies 6.8 and 6.10 of the Bournemouth District Wide Local Plan and CS41 of the BCS. I find no conflict with the aims of the Design Guide SPD.

Small family homes

18. Policy CS20 of the CS encourages the redevelopment of sites to provide small family housing. Although I note the content of its supporting text, to my mind the wording of the policy does not obligate the provision of small family housing in instances where it would be compatible with the character and appearance of the area, but rather applies a presumption in favour of schemes which seek to deliver it.
19. In addition, the supporting text also notes that there may be instances where flatted development is more suitable, such as in an area characterised by large buildings. Given that the surrounding environment is defined as such, and as I consider that the proposal would contribute positively to the character and appearance of the area, the proposal does not have to provide small family houses. Consequently, I find no conflict with Policy CS20 of the BCS.

Other Matters

20. I have taken into account representations about the living conditions of occupants of No 14 Foxholes Road/No 26 Douglas Road, access and parking, but these matters have not altered my findings against the main issues.

Planning Balance

21. I have found that the proposal would not harmfully affect the character and appearance of the area nor should it provide small family homes. However, it would be unacceptably harmful to the living conditions of neighbouring and future occupants, and it has not been established that significant affects to the SPA can be appropriately mitigated. These are matters to which I attribute significant weight, and which, both alone and together, outweigh the social and economic benefits of the proposal. I therefore find that the proposal would conflict with the development plan when read as a whole. There are no other considerations, including the Framework, that outweigh the conflict.

Conclusion

22. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

Matthew Jones

INSPECTOR