



Appeal Decision

Site visit made on 9 May 2019

by Roy Curnow MA BSC(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th August 2019

Appeal Ref: APP/Q1255/W/19/3222145

Rear of 45 Old Farm Road, Poole, Dorset BH15 3LL

- 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 Mr Alan Ward against the decision of Poole Council.
 - The application Ref APP/18/01357/F, dated 12 October 2018, was refused by notice dated 11 December 2018.
 - The development proposed is to sever rear garden and form building plot to erect 2 bedroom chalet bungalow.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The decision to refuse planning permission was made by the Borough of Poole Council, which ceased to exist on 1 April 2019, following a merger with Bournemouth Borough Council and Christchurch Borough Council to form the new Bournemouth, Christchurch and Poole Unitary Authority. Provisions within the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008 allow for any "plan, scheme, statement, or strategy" prepared by one of the merging authorities to be treated as if "it had been prepared and, if so required, published by the single tier council for the whole or such part of its area as corresponds to the area to which the particular plan, scheme, statement or strategy relates". The status of the Poole Local Plan, 2018 ('PLP') has not therefore changed as a result of the merger.

Main Issues

3. The main issues are:
 - (i) the effect of the development on the character and appearance of the area;
 - (ii) the effect of the development effect on the living conditions of future occupants, having particular outlook, daylight and privacy, and those of existing residents with regards to outlook.
 - (ii) effect on the ecology of protected habitats: the Dorset Heathland, Special Protection Area which is part of the Dorset Heaths Special Area of Conservation, and the Poole Harbour Special Protection Area; and
 - (iv) whether the proposed dwelling would be served by a safe means of access.

Reasons

(i) Character and Appearance

4. The appeal site lies in a line of detached dwellings, of a variety of designs, on the south side of Old Farm Road. They run eastwards from a footpath that links this road with Cobbs Lane. Most of these dwellings, including 45 Old Farm Road, are set closer to that road with relatively long back gardens. The properties that flank No 45, 6 and 8 Cobbs Lane, are exceptions to this form.
5. Their dwellings are set closer to Cobbs Lane, with their longer gardens running to Old Farm Road. Despite having accesses from both Old Farm Road and Cobbs Lane, they read in the context of the development along this stretch of Old Farm Road. The proposed dwelling, which would be sited between Nos 6 and 8, would also be read in this context. Notwithstanding the differences in design and siting, development here is characterised by detached dwellings set in fairly generous plots.
6. The site would be seen as a windfall site that lies in a location close to services, shops and a bus route. It is a sustainable location, where the terms of the Poole Local Plan, November 2018, (PLP) lend support to the principle of the proposal. Detailed guidance on plot sub-division of this type is given in PLP Policy PP28(2). Amongst its requirements is that which requires development proposals to preserve or enhance an area's residential character.
7. Although the proposed dwelling would be sited within the longer, rear garden to No 45, its plot would be significantly smaller than any of the others with which it would be read. Furthermore, the proposed dwelling would be considerably smaller than others here. The development would have a cramped appearance that would be at odds with, and cause harm to, the prevailing relatively spacious character and appearance of this area.
8. In reaching this conclusion, I took other nearby developments into account. Whilst the dwelling at 41a Old Farm Road is set well towards its rear boundary, it is within a plot that is considerably larger than the appeal site. In this regard, it accords with the character and appearance of development on Old Farm Road.
9. The dwellings that have been built in the rear gardens of 3, 5, 7 and 9 Enfield Road are not seen in the context of development in Old Farm Road. They are well-separated from the appeal site, on land at a lower level where there are intervening mature trees. They are seen in the context of the lower part of Cobbs Lane, to the west of the footpath, where development is more varied ranging from detached dwellings to blocks of purpose-built flats.
10. Neither of these schemes present justification for the development proposed in this appeal.
11. Therefore, for the above reasons I find that the proposed development would cause significant harm to the character and appearance of the area contrary to PLP Policy PP28.

(ii) Living Conditions

12. Amongst its terms, PLP Policy 27 seeks to preclude development that would result in a harmful impact on the amenity of local residents and future

occupiers by way of levels of sunlight and daylight, lack of privacy and oppressive and overbearing effects.

13. The land at No 45 falls from Old Farm Road to Cobbs Lane. The proposed dwelling would lie at the lower level. Its rear private amenity space would, therefore, lie below that which would serve No 45 and would be overlooked from it. To overcome this, screening would have to be put in place.
14. To be effective this screen would have to be fairly high. This, together with the flank walls to Nos 6 and 8 and the rear wall of the proposed dwelling, would very largely enclose the proposed garden. They would have an overbearing and oppressive effect on its users. These features, allied to its northerly aspect, would mean that this garden would receive very little sunlight. It would be a gloomy and unattractive space that would lack a suitable outlook.
15. Although there is some debate about the type of room it serves, there is a window in the flank wall of No 8 that would overlook this garden. The proposed garden would have no privacy as a result. Although the window presently overlooks the rear garden to No 45, given the size of this garden there are a number of places in it that are not overlooked and remain private.
16. Although there would be a garden area to the front of the dwelling, onto Cobbs Lane, this would be very small and lack the privacy of a rear garden. The proposed dwelling would, therefore, lack an appropriate garden area which, in addition to being to the detriment of the living conditions of future residents also reinforces my findings on the cramped nature of the development.
17. Notwithstanding its northerly aspect to the rear garden, the window serving the proposed kitchen would, together with 'borrowed light from the front of the building, provide adequate levels of daylight. Its users would not be unduly reliant on artificial light. The dual aspect of the proposed living room would ensure it received adequate sunlight and daylight. Therefore, the proposed dwelling would provide suitable living conditions for future residents and accord with the terms of PLP Policy PP37 relating to minimising the need for artificial light.
18. Given the oblique relationship that would result, the degree that the proposed house would project towards Cobbs Lane, beyond the end of No 8, would not have a significantly harmful effect on the outlook for the residents of No 8.
19. As the area between No 8 and the lane is used for parking, the effect of the proposed dwelling would have little effect on the outlook from there. Whilst the development would cast a shadow across this area at certain times of the day, this would not cause significant harm to the living conditions of that property's occupants.
20. For the above reasons, my finding on this main issue is that the garden area that would serve the proposed dwelling would have a very poor outlook and would lack sunlight and privacy. This would be result in significant harm to the living conditions of its future occupants, contrary to the terms of PLP Policy 27. Although the dwelling would provide suitable internal accommodation and the living conditions of the occupants of neighbouring properties would not be materially affected, these do not outweigh the harm that I have identified.

(iii) Protected Habitats

21. The appeal site lies within 5kms of the Dorset Heathlands Special Protection Area ('SPA'), which is also part of the Dorset Heaths Special Area of Conservation ('SAC'). These are European Sites of Nature Importance and are subject to protection under the Conservation of Habitats and Species Regulations 2010. Regulation 61(5) imposes a duty on me, as the 'competent authority', to consider whether any proposal may have a significant effect on such areas, either alone or in combination with other plans and projects.
22. Policy PP32 of the PLP requires that housing developments within this distance of the heathland will provide adequate measures are put in place to avoid or mitigate any potential such effects. A single dwelling or unit of holiday accommodation may cause this effect, based on its cumulative impact when taken with other developments.
23. The Council has adopted a Supplementary Planning Document¹ ('SPD') that provides a strategy to mitigate the adverse effects of development proposals on the SPA. This requires contributions to be made to the Council to be used in its two-pronged mitigation approach. This consists of the provision of Suitable Alternative Greenspaces, to attract people away from the heathlands, or Strategic Management and Monitoring, to mitigate the effects of people visiting the heathlands.
24. The appellant does not dispute that harm would arise and that a contribution would be required to mitigate this. He has indicated, including through the submission of a 'heads of terms' document to the Council, that he would make the contribution. However, the mitigation for harm to this protected habitat must be in place at the time of the decision being made.
25. I am not aware that there is a suitable mechanism in place to secure the mitigating contribution. In its absence, and in line with the guidance in the SPD, I have to conclude that there would be harm to the Dorset Heathlands SPA, contrary to PLP Policy PP32.
26. Policy PP32 also refers to the effects that development proposals can have on Poole Harbour, another SPA. These relate to water quality and the pressures arising from recreational activities. The policy's parts (2)(a) and (b) set out that proposals should provide mitigation of these effects and that a further SPD will be introduced to provide detailed guidance.
27. Whilst the effects on Poole Harbour were not referred to in the Council's reasons for refusal, they were referred to in the Council's statement. It states that it has brought forward Interim Guidance, pending the introduction of the SPD. Amongst its terms is a charging schedule, detailing the contributions that will be required to mitigate the adverse effects of development on the Poole Harbour SPA. The Council is able to make this late representation and I have the authority, under Rule 16(1) of the Written Representations Procedure Regulations 2009, to choose whether or not to accept it. In the circumstances, and given the duty imposed on me, I find that it is reasonable and necessary to take it into account.
28. Although I have not been given information as to the status of this Interim Guidance, as the evidence shows that the development would have an adverse

¹ The Dorset Heathlands Planning Framework 2015-2020, January 2016

effect on the Poole Harbour SPA, and in the absence of any form of mitigation, I have to find that the proposed development would be contrary to PLP Policy 32 (2)(a) and (b).

(iv) Highway safety

29. Unlike nearby dwellings in this area, the proposed dwelling would only be accessible from the unadopted Cobbs Lane. Amongst its terms, PLP Policy PP35 requires new developments to provide safe and convenient routes for pedestrians and cyclists that are attractive to their users.
30. Whilst not perfect, I did not find that the surface of the lane in the vicinity of the appeal site would present undue difficulties to the majority of people accessing the house. From what I saw, it would be likely to be slightly easier to negotiate for those in wheelchairs or pushing prams than the unbound gravel stretch in front of the dwellings approved by the Council to the rear of 3, 5, 7 and 9 Enfield Road. Below that stretch, as the lane has footways and lighting and appears to be of an adoptable standard it would be entirely acceptable.
31. Above that stretch of Cobbs Lane to the appeal site there are no streetlights or footways. As the Council approved that development to the rear of Enfield Road, it must have found that the lack of these did not make for an unsafe access. Although pedestrians from the proposed dwelling would have a slightly longer walk on the lane, I find likewise here. Furthermore, they would have the benefit of a streetlight on the footpath that would provide some light on that stretch of lane. This footpath would also provide an alternative route to and from the dwelling, avoiding its stretch of loose gravel.
32. I have not been provided with accident information relating to conflict between vehicles and pedestrians on Cobbs Lane. Near the appeal site, it serves very few properties and traffic here would be light and slow-moving. Below this, where it serves more properties and there would be more vehicle movements, low traffic speeds and increased width would allow for safe pedestrian usage.
33. Overall, for the above reasons, I find that the lane would provide a safe and convenient pedestrian and cycle access for occupants of the proposed dwelling. It would, therefore, accord with the terms of PLP Policy 35.

Planning Balance

34. I have found that the proposed dwelling would be provided with a safe means of access, that the dwelling's internal layout would provide adequate living conditions for its occupants and the living conditions of No 8 would not be significantly adversely affected. However, these do not outweigh the harm that I have identified with regards to the area's character and appearance, the proposed dwelling's external space and the ecology of protected habitats.

Conclusions

35. For the above reasons, and having taken all other matters into account, I dismiss the appeal.

Roy Curnow

INSPECTOR