
Appeal Decision

Site visit made on 8 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/19/3222113

Jade, 2 Delhi Close, Poole BH14 9NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Park Place Properties Ltd against Borough of Poole Council.
 - The application Ref APP/18/00695/F is dated 20 May 2018.
 - The development proposed is alterations and extension to existing apartments to provide 6 additional 2 bedroom apartments and remodelling of existing apartments 1, 4 and 6.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Procedural Matters

2. 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.
3. After the appeal had been lodged, and the submission of the Council's statement, the appellant submitted additional information relating to the effects of the development on protected habitats in the vicinity of the site. As a result, the Council has informed me that it feels that this information overcomes its fourth and fifth reasons for refusal. I shall return to this matter later in my decision.

Application for costs

4. An application for costs was made by Park Place Properties Ltd against Bournemouth, Christchurch and Poole Unitary Authority. This application will be the subject of a separate Decision.

Main Issues

5. Whilst this is an appeal against the failure of the Council to determine the planning application within the statutory time period, its submissions indicate that the main issues are:
 - (i) the effect of the proposed development on the character and appearance of the area, including on protected trees;
 - (ii) the effect of the development on the living conditions of the occupants of properties in Munster Road, with particular regard to privacy, and future occupants of the proposed development with particular regard to outlook; and
 - (iii) whether the site lies in an accessible location that would provide an alternative to the use of private car transport

Reasons

Character and Appearance

6. The appeal site consists of a large plot on which there is a substantial building containing flats set over three floors, one of which is set into its roof. It lies at the end of Delhi Close, a short cul-de-sac that runs gently uphill from Birchwood Road, to its north. The building lies towards the southern end of the site, close to the boundaries with properties to its north, east and west. Much of the area to the front of the building is open, consisting of a hard-surfaced parking and turning area.
7. The site is visible from Birchwood Road, becoming more clearly seen the closer one is to the upper end of the cul-de-sac. From these public vantage points one can appreciate that the site displays the spacious residential character that is common to the wider area. Much of this is derived from the open frontage. Mature boundary hedges and trees – both on and off the site – give the site and wider area a sylvan appearance.
8. Two of these trees frame the entrance to the site from Delhi Close. Whilst these figure in public views of the road, they do not screen the existing building. These and other trees, both on and off the site, are protected by Tree Preservation Orders¹ ('TPO').
9. There is variety in the built form in the wider area, where original and traditional inter-war buildings sit comfortably with more contemporary ones. Although I was not given a copy of the decision letter, the views attributed to the Inspector in an appeal at 26 Birchwood Road², that the flat roofed design would not be incongruous in this area, has resonance in this appeal. I find likewise that the use of a contemporary flat-roofed design with modern finishes would be appropriate in principle on the site.
10. The removal of the hipped roof of the present building and its replacement with two full floors of accommodation would result in an increase in the scale and massing of this element, bringing the building closer to the east and west boundaries at upper levels. However, its massing would be successfully reduced as a result of a degree of articulation in its elevations and the setting-back of the top floor. Taken alone, this element would have no ill-effect on the character and appearance of the area. However, this would not be the

¹ Munster Road Tree Preservation Order 1969 and 2 (Jade) Delhi Close Tree Preservation Order 15/2005

² APP/Q1225/W/17/3175758

case when taken cumulatively with the proposed three-storey flat-roofed extension.

11. This extension would be erected to the front of the property. It would be subservient to the element created from alterations to the existing building and set back from the site entrance and at an angle to it. I this large addition would be seen from Birchwood Drive, again becoming increasingly prominent as one climbs Delhi Close.
12. It would result in a substantial increase in the amount of built development on the site and the loss of much of the open space to the front of the site. This would lead to an imbalance between buildings and landscaping on the site, in favour of the former, resulting in its overdevelopment. Furthermore, it would significantly and harmfully reduce the openness of the site, to the detriment of the spacious quality of the wider area. As such, I do not find that the scheme would represent good design as promoted in the National Planning Policy Framework and Planning Policy Guidance.
13. My attention was drawn to other developments in the area, including Panorama and that being undertaken at Alipore Heights. Whilst there are some parallels with this scheme, I do not find that they provide justification for allowing this appeal.
14. An Oak and a Birch tree that flank the entrance to the site, marked as T1 and T2 respectively on the plan submitted with the 'Arboricultural Report'³ would soften the impact of the building, they would not, however, negate the visual harm that would result.
15. Work is proposed in the Root Protection Area ('RPA') of each of these trees. Notwithstanding that the health of T1 has declined recently, it still makes a significant contribution to the street scene. I am persuaded by the Council's evidence that the proposed works to create two parking spaces and an extension to the driveway in its RPA would be likely to harm it, leading to further decline.
16. With regards to T2, there is a discrepancy in the appellant's submissions in terms of the size of the new refuse store to be created in its RPA. I note that the Council states that this work might be able to be carried out without significant harm to the tree. However, given its amenity value and on the basis of the evidence before me, a precautionary approach should be taken. Therefore, I find that there is insufficient evidence on the effects of the health of T2 to allow me to support this work.
17. There is some dispute regarding the magnitude of excavation within the RPA to a Leyland cypress, tree T3 in the Arboricultural Report. Having seen the area of the site in the proximity of this tree, I find that the evidence put forward by the appellant to be more compelling. As such, I do not find that the development would cause undue harm to this tree.
18. For the reasons above, my finding on this issue is that the proposal would cause significant harm to the character and appearance of the area, contrary to the terms of PLP Policies PP27 and PP28. The former seeks to ensure a good standard of development including, amongst other things, requiring

³ Arboricultural Impact Assessment and Arboricultural Method Statement – Gwydion's Tree Consultancy 4 June 2018

developments to reflect or enhance local patterns of development in terms of site coverage, bulk and massing. The latter sets out similar requirements in respect of flatted development. Furthermore, the scheme would be likely to adversely affect the health of protected trees on the site contrary to the terms of that part of PLP Policy 27(b) that seeks to protect them.

Living Conditions

19. The proposed scheme would introduce a number of windows and balconies to the property. However, a combination of their positioning, the nature of boundary planting and the use of appropriate screening would mean that the majority of these would have no significant ill-effects on the living conditions of the occupants of neighbouring properties.
20. The exception to this is in the relationship between the proposed development and properties to the south of the site, 17a and 17b Munster Road. There is a significant break in the otherwise substantial vegetation along the boundary between the site and No 17b that allows a largely unobstructed view from the site to the rears of those properties. As a result, windows and balconies at the rear of the existing building already have a view into these properties.
21. The site lies in an elevated position relative to Nos 17a and 17b and the proposed building would lie close to the boundary with them. It would introduce a number of new windows and balconies at second and third floor levels on the south elevation. As the dwellings at Nos 17a and 17b are some distance away, the harm from actual loss of privacy to persons within them would be minimal. However, this would lead to a significantly harmful exacerbation of the degree of overlooking to their rear gardens. This would result in significant harm to the living conditions of their occupants.
22. The proposed three-storey extension would be erected in very close proximity to the existing ground floor flats, numbered 1 and 3 on Drawing PL04 A P1. The former has two windows that have a northerly aspect out onto the proposed parking and turning area. Notwithstanding that these windows serve bedrooms, which might be expected to be used less intensively than some other rooms, the extension would have an oppressive effect when seen from them. This would result in a significant loss of outlook from these rooms.
23. The outcome for the occupants of Flat 3 would be worse. Its living room windows would be affected in a similar manner to the bedrooms in Flat 1. Furthermore, the extension would enclose its kitchen and a bedroom. The outlook from these rooms would be severely compromised and both would be dark, with their users suffering from an almost total reliance on artificial light.
24. Although the proposal would result in additional residential units on the site, each would be provided with an area of external amenity space. These would appear to be suited to the needs of their occupants, and I am not persuaded that tree T3 would have an adverse effect on the users of the proposed balconies nearest to it.
25. In the light of the above, my finding on this issue is that the proposed development would result in a harmful impact upon the living conditions for both local residents and future occupiers contrary to the terms of PLP Policies PP27 and PP37. I do not find that it would be contrary to the terms of PLP Policy 28, as this does not refer to living conditions.

Accessibility

26. The site lies outside the most accessible locations in the Borough, defined in PLP Policy PP2, to which it directs the majority of housing development. However, the policy does not rule out such development outside these areas but provides support where, amongst other things, it demonstrates an alternative to reliance on the use of private car transport.
27. The site is within a very short walk of bus stops on Penn Hill Avenue, from where buses run to the town centre as well as to local shops. These shops are also within walking and cycling distance of the site. Furthermore, the evidence shows that there are good opportunities to cycle to a wide range of services and facilities from the site and, to facilitate this, cycle parking facilities are proposed on the site.
28. The policy makes it clear that its target housing figures should be treated as minima. Therefore, although the proposal would only bring forward 6 new dwellings and might not be the only windfall opportunity to come forward, this does not militate against the development.
29. On this main issue, I find that the site lies in an accessible location. Future occupants of the development would not be reliant on car travel and, therefore, it accords with the terms of PLP Policy PP2.

Other Matters

30. Whilst the scheme would result in 6 new dwellings that would have an appropriate provision of cycle and car parking and refuse storage facilities, this would not outweigh the harm that I have identified. Neither does the fact that the Council does not object on highway safety grounds.
31. The site lies within 5kms of the Dorset Heathlands Special Protection Area, the Dorset Heaths Special Area of Conservation and the Poole Harbour Special Protection Area. 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.
32. In this case, both parties agree that such an effect is likely and I see no reason to find otherwise. In response, following the terms of the Council's adopted Dorset Heathlands Supplementary Planning Document and its Poole Harbour Recreation Interim Planning Framework, the appellant has entered into an undertaking under S111 of the Local Government Act 1972. This would pay sums to be used to mitigate this effect in accordance with the strategies in the Heathland Strategic Access Management and Monitoring document and the Harbour Recreation Strategic Access Management and Monitoring document. Whilst I have taken this and the other evidence in this regard into account, as I am dismissing the appeal on the principle of the development, I do not need to reach a decision on the efficacy of the undertaking.

Conclusion

33. Although I have not found potential planning harm related to the appeal site's location, I have in respect of the character and appearance of the area and living conditions of neighbours and future occupiers. The latter are the

prevailing considerations. Consequently, having had regard to all else raised, I conclude that the appeal should be dismissed.

Roy Curnow

INSPECTOR