



Appeal Decisions

Site visit made on 23 July 2019

by **I Bowen BA(Hons) BTP(Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 September 2019

Appeal A: Ref: APP/G1250/W/19/3226694 **Bellona, 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 Development Ltd against the decision of Bournemouth Borough Council.
 - The application Ref 7-2018-557-Z, dated 30 August 2018, was refused by notice dated 25 October 2018.
 - The application sought planning permission for the demolition of the existing building and erection of a block of flats with parking spaces without complying with conditions attached to planning permission Ref 7-2017-557-T, dated 30 May 2017.
 - The conditions in dispute are Nos 2 and 17 which state that: "2. *The development hereby permitted shall be carried out in accordance with the following approved plans: 8702/500, 8702/501*"; and "17. *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: "2. *For the avoidance of doubt and in the interests of proper planning*"; and "17. *To preserve the visual amenities of the locality in accordance with Policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012)*".
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Appeal B: Ref: APP/G1250/W/19/3226687 **Bellona, 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 Development Ltd against the decision of Bournemouth Borough Council.
 - The application Ref 7-2018-557-AA, dated 30 August 2018, was refused by notice dated 25 October 2018.
 - The application sought planning permission for the demolition of the existing building and erection of a block of flats with parking spaces without complying with conditions attached to planning permission Ref 7-2017-557-T, dated 30 May 2017.
 - The conditions in dispute are Nos 2 and 17 which state that: "2. *The development hereby permitted shall be carried out in accordance with the following approved plans: 8702/500, 8702/501*"; and "17. *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: "2. *For the avoidance of doubt and in the interests of proper planning*"; and "17. *To preserve the visual amenities of the locality in accordance with Policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012)*".
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Decision: Appeal A

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 Bellona, 2 West Hill Road, Bournemouth BH2 5PG in accordance with the application Ref. 7-2018-557-Z made on 30 August 2018 without complying with conditions Nos. 2 and 17 as set out in planning permission Ref. 7-2017-557-T granted on 30 May 2017 by Bournemouth Borough Council, and subject to the conditions in the attached Schedule.

Decision: Appeal B

2. The appeal is dismissed.

Procedural Matters

3. As set out above there are two appeals on this site. They differ in respect of the location of the proposed refuse bin storage at the property. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
4. The effect of both appeal proposals would be to authorise a minor material amendment to plans permitted under reference 7-2017-557-T. However, that permission was itself a "variation" of an earlier permission and the description of the development above reflects that originally permitted under reference 7-2016-557-Q.
5. The appeal development appears to have been largely completed and at least part-occupied. I saw on my site visit that refuse bins, together with a cycle store, fences and gates have already been accommodated to the rear of the appeal property. However, whilst the cycle store and bin storage area appear to accord with the submitted plan for Appeal A, the fences/gates do not.
6. For the avoidance of doubt, therefore, I proceed to determine both Appeal A and Appeal B on the basis of the submitted plans rather than what I observed on site.
7. During the appeal, my attention was drawn to a recent appeal decision (the previous appeal) for an apparently similar proposal to Appeal A. Although I do not have full details of that case, including the plans, I have had regard to it insofar as it appears relevant to the proposal before me.

Main Issues

8. The main issues are:

Appeal A only:

- whether the proposal would preserve or enhance the character or appearance of the West Cliff and Poole Hill Conservation Area (the CA), including any effects on protected trees; and
- the effect of the proposal on the living conditions of occupiers of the appeal property having regard to adequacy of outdoor amenity space.

and;

Appeal B only:

- the effect of the design and siting of the proposed refuse storage on the operation of the highway and highway safety.

Reasons

Background

9. As originally consented¹, the refuse bins were to be incorporated into the appeal building. However, that area has in fact been incorporated into the building as habitable space associated with Flat 2. I understand the reasons for the scheme not having been implemented as originally approved are both practical, in terms of pulling distance to the highway, and also for reasons of amenity on occupiers of Flat 2.
10. The previous appeal Inspector concluded that an integral storage area would be significantly harmful to the occupiers of Flat 2. On the basis of the evidence and what I saw on site, I see no good reason to disagree. In this regard, the previous appeal decision is a material consideration in this respect to which I must have regard.
11. I now therefore turn to consider the main issues as they relate to the two respective appeals.

Conservation Area (Appeal A only)

12. As the appeal site lies within the CA, I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
13. The area is of a mixed commercial/shopping and residential nature. The concentration of Victorian properties, together with a preponderance of large dwellings and other residential uses in generous plots, contributes to the significance of the CA.
14. The extant permission² permitted a sizeable cycle store to be sited to the rear of the plot close to the northern boundary. In contrast, the plan before me seeks permission to relocate the cycle store towards the centre of the plot and, in so doing, accommodate the bin storage alongside the cycle store.
15. Given the generous dimensions of the rear area, I find that whilst the space would be more intensively used through the addition of the bin storage and paving, it would remain essentially domestic in character and would not appear excessively cluttered.
16. Moreover, the plans also appear to show it is proposed to erect gates to the rear of the property segregating the bin storage and related elements from the private rear amenity space attached to the building and in the paved footpath running alongside the building. Given the distance of the rear garden from the road, and the narrowness of the footpath, these means of enclosure would ensure that any glimpses would, at most, be fleeting and that no harm to the character or appearance of the CA would arise.

¹ Under planning permission Ref. 7-2016-557-Q

² Ref. 7-2017-557-T

17. The refusal notice indicates that inadequate information has been submitted to enable an assessment to be made of the effects on protected trees. I further note the officer's report appears to indicate that the relocation of the cycle store would potentially encroach onto the root protection area of a protected tree.
18. However, the Council's submitted evidence does not identify any specific tree at risk and appears to show that the nearest protected trees are to the north of the appeal site. On this basis, the relocation of the cycle store would not affect any protected trees. Furthermore, given the extent of hard paving already permitted and provided along the edge of the property, I have no reason to conclude that the configuration of the development as now laid out would have any materially increased effect on protected trees.
19. I therefore conclude on this main issue that the proposal would not result in a cluttered appearance or the loss of a protected tree. It would not therefore fail to preserve or enhance the character or appearance of the CA. As such I find no conflict with Policy CS39 or Policy CS41 of the adopted Bournemouth Local Plan: Core Strategy (October 2012) (the BCS), Policy 4.4 of the Bournemouth District Wide Local Plan (February 2002) (the BLP) or Policy D4 of the Bournemouth Local Plan: Town Centre Area Action Plan (March 2013) (the AAP). These Policies require well designed, high quality developments and spaces, ensuring any bin and/or cycle storage does not affect the street scene. Along with Section 16 of the National Planning Policy Framework (the Framework), the Policies also require the protection of designated heritage assets.

Living conditions (Appeal A only)

20. The area to the rear of the building contains grassed and paved areas for the outdoor enjoyment and recreation of the occupiers of the flats. This area has been reduced as a result of the works already undertaken including the erection of fences, and would also be reduced by the current proposal, albeit no such fencing is shown on the submitted plan.
21. Nevertheless, I am unaware of any local standards having been adopted which would govern the amount of outdoor space required to serve such development. In any event, it appeared to me that the retained space would comfortably meet the reasonable needs of the residents of the property. I am also satisfied in this respect that the relocation of the cycle store, the bin storage and the gates would not materially diminish the attractiveness of the space for use as a garden.
22. I therefore conclude that no harm would arise in respect of this main issue and the proposal would therefore accord with BCS Policy CS41 and AAP Policy D4 which requires new development to provide a high standard of amenity to meet the day to day requirements of future occupants. Whilst the Council also cited the 'Residential Development: A Design Guide (September 2008), it has not been explained how the proposal would conflict with it. I therefore attach very little weight to any conflict with that document.

Design and effect on the highway (Appeal B only)

23. This appeal proposal is for the incorporation of refuse collection bins to the front of the property. It is evident from the submitted evidence that a system

of underground storage is being proposed. Such an arrangement is generally supported by the Council.

24. Whilst I have been provided with some details of possible subterranean waste storage solutions, as set out in the Council's 'Waste and Recycling Services: Planning Guidance Note' (the note), it seems to me that all of the alternatives require easy and efficient access to the refuse receptacles. In particular, the document advises that access to the bins should not be obstructed by other vehicles.
25. The submitted plans show that the bins would be sited immediately beyond existing parking spaces on the right hand side of the property, on land which is currently landscaped. Access to the bins would not be gained directly from the highway as a result of the existing front boundary wall of the property. It is therefore likely that access to the bins would be impeded by parked cars.
26. Consequently, the bins would need to be transported along a proposed narrow, paved path around two sides of the rank of three parking spaces before reaching the main circulation space for the car park. This appears to me to be an awkward and inefficient arrangement.
27. More fundamentally, I note the Council's waste and recycling department have advised that the "M4 system" would not provide sufficient capacity to serve the flats and the "Equinord" system would require the removal of two car parking spaces.
28. Whilst the Council's note provides me with some indication as to the various systems available, I have not been provided with any substantive information to demonstrate how, or if, any such system would work in practice within the tight constraints of proposed location of the bin storage. Indeed, on the basis of the Council's submissions, there is considerable doubt that such a system could be efficiently introduced. Accordingly, if I were to allow the appeal, I could not be certain that it could in practice be implemented, even if I were to attach a condition requiring details to be approved by the Council.
29. West Hill Road is a narrow street with parking permitted on one side of the highway. From what I saw, although not necessarily representative at all times of day, it appears to be a fairly busy road and is located close to a junction with the main Poole Road/Poole Hill. Whilst there are double yellow lines on one side of the road, which restricts double-parking, the width of the road is such that a stationary refuse vehicle, even if part-mounted on the pavement, would at least partially obstruct traffic and pedestrian movements in this busy urban area.
30. I recognise that a measure of disruption to the highway is likely, irrespective of the location of the bins and the arrangements for collection within the site. Furthermore, a private contractor would not necessarily be collecting at peak times.
31. Nevertheless, given the absence of detail before me, I cannot for the above reasons make any meaningful assessment of the likely effect of the proposal on the highway. As such, I cannot therefore be certain that the proposed arrangement would not be so convoluted as to lead to disproportionately extended collection times with the attendant impact on the operation of the highway. Whilst this may not be severe, there would, given the restricted

nature of West Hill Road and its proximity to the junction with the main roads, be the potential for an unacceptably increased risk to highway safety.

32. I therefore conclude that the proposal represents poor design which could adversely affect highway safety and would therefore conflict with the adopted Bournemouth Local Plan: Core Strategy (October 2012) (the BCS) Policy CS41. That Policy requires, amongst other considerations, development and spaces to be well designed and high quality and that its layout should contribute positively to the safety of the public realm. The Council also cited BCS Policy CS16. That Policy refers to residential parking standards, although the details of any local standards have not been provided. In any event, as the removal of car parking is not being proposed, I find no conflict with that Policy. Nevertheless, for the reasons stated above, the proposal would not accord with the Framework which states that planning decisions should create places that are safe, inclusive and accessible and that development should be prevented if there would be an unacceptable impact on highway safety.

Other Matters

Appeal A only

33. I have carefully considered the effects of the siting of the bin store to the rear of Bellona on the living conditions of neighbouring occupiers in terms of noise and disturbance. However, it is not uncommon for bins to be accommodated to the rear of properties in a built-up area and I note that their proposed siting is away from any habitable rooms of the adjoining properties. Whilst general concerns have been expressed over noise and disturbance associated with early morning collections in the area, I am mindful that collections would be taking place at the appeal address in any event, albeit from a different part of the property. The recent appeal decision which permitted storage of bins to the rear of the property is also a material consideration in this respect to which I have had regard. This matter is therefore not determinative in my decision.

Appeal B only

34. Whilst the effect of the proposal on the significance of the Conservation Area was not a reason for refusal, I have nonetheless considered any likely effects given the importance of the statutory duty. Having done so, I concur with the main parties that, had the appeal been allowed, the proposed bin system could have been conditioned so as to be adequately screened. I therefore find that the proposal would not fail to preserve or enhance the character or appearance of the CA.

Conditions (Appeal A only)

35. Given my conclusions above, I shall grant a new planning permission for Appeal A with a condition specifying, in the interests of certainty, the approved plans.
36. The Planning Practice Guidance (PPG) makes clear that planning permissions granted under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have not been provided with full details of status of the other conditions imposed on the original planning permission. I shall therefore impose all those which appear to me to remain relevant to the development, where appropriate with revisions to reflect the fact the development has been largely carried out,

including combining some where appropriate. Similarly, I shall omit any conditions which already appear to have been discharged or are no longer relevant.

37. The Council has also suggested additional conditions which would, in its view, be necessary in the event of the appeal being allowed. I consider these below having regard to Paragraph 55 of the Framework and the advice of the PPG.
38. It is necessary to impose a condition requiring any new or replacement hard surfaced areas to be porous in the interest of sustainable drainage. It is also necessary, in the interests of highway safety to require all access, turning and car parking areas to be permanently retained and kept available for residents and their visitors, and for the parking spaces to remain unallocated to specific residents or residences.
39. Also in the interests of highway and pedestrian safety, is a condition to prohibit the construction of any fence, wall or other obstruction to visibility over 0.6m in height within the pedestrian inter-visibility splays at the existing access.
40. In the interests of sustainable travel, I shall impose a condition requiring the cycle store to be retained, maintained and kept available for occupiers of the development.
41. I have also considered the need for a condition requiring arrangements to be made for the collection of waste. Given the appellant has indicated that this would need to be provided by a private contractor, I shall require a refuse management plan to be prepared and submitted to the Council for its approval within two months of the date of this decision. This is in the interest of proper waste management in order to safeguard the living conditions of existing and future occupiers of the appeal property and neighbouring occupiers, the character and appearance of the area and highway safety. In this regard, based on the information before me, I consider the appellant's suggested condition, as worded, to be insufficiently enforceable or precise. I also consider the Council's suggested condition in this regard to be unduly prescriptive as such details can be agreed as part of the management plan. I have therefore amended the suggested condition accordingly.
42. I have omitted the Council's suggested condition requiring tree protection measures as I have been provided with no evidence that the root protection areas of any important trees would be harmed by the development. I have similarly omitted a requirement for details of a bin store to be submitted for approval as no such store is being proposed.

Overall Conclusions

43. For the reasons given above, Appeal A should succeed and Appeal B should be dismissed.

Ian Bowen

INSPECTOR

Appeal A - Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plan: 8702/2000;
2. Any new or replacement hard surfaced area(s) shall either be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property;
3. The access and areas for turning and parking shown on the approved plan shall be permanently retained and kept available for the residents or visitors of the development hereby permitted at all times. The parking areas shall remain unallocated to any specific resident or residence for the lifetime of the development;
4. No fence, wall or other obstruction to visibility over 0.6m in height above ground level shall be erected within the area of the pedestrian inter-visibility splays to the highway at any time;
5. The cycle store as shown on the approved plan shall be retained, maintained and kept available for the occupants of the development at all times;
6. Within two months of the date of this decision, a Refuse Management Plan shall be submitted to the Local Planning Authority for written approval. The Plan shall detail how residential waste is to be removed from the site and include any necessary restrictions on the duration when bins may be stored in locations other than that shown on the approved plan. The collection and management of waste shall be carried out in accordance with approved Refuse Management Plan.