
Appeal Decision

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: 02 October 2019

Appeal Ref: APP/G1250/W/19/3225549

47 Viking Court, Southbourne Overcliff Drive, Bournemouth BH6 3NJ

- 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 Harlequin Homes against the decision of Bournemouth Borough Council.
 - The application Ref 7-2018-376-I, dated 27 July 2018, was refused by notice dated 25 February 2019
 - The development proposed is the erection of a 4 storey block of 10 flats with bin and cycle stores and formation of vehicular access and parking spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's refusal notice identified that the development would be harmful to the designated Dorset Heaths Special Protection Area, Ramsar Site and Dorset Heathlands Special Area of Conservation. During the appeal, the appellant submitted an executed Unilateral Undertaking (UU) which would make provision for mitigation measures in this regard. I return to this matter later in my decision.
3. The appellant's appeal statement included a request that I consider, along with the plans submitted with the appeal upon which the Council made its decision, the acceptability of an alternative set of drawings. I understand the alternative drawings had initially been submitted during the application process, but were subsequently superseded. Whilst, in certain circumstances, a proposal can exceptionally be amended through revised plans during an appeal, it is important that what is considered by the Inspector is essentially what was considered by the local planning authority. It is not the purpose of the appeal process to evolve a scheme or consider more than one proposal. In any event I have not been provided with the alternative plans. For the avoidance of doubt, therefore, I have determined the appeal on the basis of the plans upon which the Council formally determined the application.
4. The description of development cited on the refusal notice and the appeal form differs from that on the original application. I have not been provided with confirmation that the amendment was agreed between the main parties. Nevertheless, I have used the former in the above banner as it more accurately describes the development being proposed and I do not consider the interests of any parties would be prejudiced in my doing so.

Main Issues

5. The main issues are:

- the effect of the proposal on the living conditions of neighbouring occupiers of (i) 30 Clifton Road with respect to privacy, sunlight, noise and disturbance; and (ii) 49 Southbourne Overcliff Drive with respect to privacy and outlook;
- The effect of the proposal on the character and appearance of the area; and
- whether the proposal would make suitable provision for waste and recycling collection having regard to highway safety.

Reasons

6. The proposed development is for the demolition of an existing two storey flatted development and its replacement with a four-storey development of 10 flats.

Living conditions

Effect on 30 Clifton Road

7. No 30 lies immediately to the north of the appeal site and is a substantial dwelling with a number of south-facing windows at ground, first and second floor. Of most significance are bay windows positioned on the south western and south eastern corners of the building at first floor level and a further window positioned approximately midway along the southern flank wall. There are also dormer openings within the roof. The submitted evidence and my own observations of the building, which I was able to view from the first floor of No 47 on my site visit, confirm that most of these windows serve habitable rooms.
8. As a result of the proposed development, the built form would be sited substantially closer to the southern elevation of No 30 than the existing. Proposed flats 4, 7 and 10 would incorporate glazing which, at their closest point would be approximately 17.5m away from the nearest habitable windows according to the Council's evidence.
9. Furthermore, Units 4, 7 and 9 would have glazed balconies serving living rooms and bedrooms. The Council indicates that these would, at their closest, be some 14.5m from the nearest habitable windows on No 30. The balconies do not, in the main, directly face the windows of No 30 but views towards them would nevertheless be gained.
10. Although the development would satisfy Council's adopted Residential Design Guide¹ (RDG) which advises an indicative minimum distance of 12.5m from a proposed window to the side elevation of an existing dwelling, I am mindful in this case that that guidance assumes there are no existing habitable windows. Moreover, I consider the scope for overlooking and the perception of overlooking is increased in any event through the introduction of the balconies.
11. Given the urban context of the proposal and the distances involved, I do not consider any unacceptable level of overshadowing would occur. Nonetheless,

¹ Residential Development: A Design Guide (September 2008)

for the above reasons, I find that the proposal would be unacceptably harmful with respect to loss of privacy.

12. Turning to matters of noise and disturbance, the existing garages to the rear of the appeal plot would be replaced with part undercroft car parking and integrated cycle storage. Whilst the car parking would be focused towards the northern boundary close to No 30, the adjoining land is itself given over to a driveway. To my mind, the proposed car parking would not be excessively close to any habitable windows, even taking into account the increased activity on site, given the built-up nature of the area.
13. I appreciate the Highway Authority raised concerns in relation to the layout of the proposed car parking spaces and that this would be likely to require multiple manoeuvres in respect of one such space. However, the application was not refused on that basis and I have no substantive evidence to indicate that any additional manoeuvring associated with a single parking space would give rise to undue noise and disturbance. I therefore find that the proposed development would not result in unacceptable level of noise and disturbance to occupiers of No 30.

Effect on 49 Southbourne Overcliff Drive

14. No 49 is a contemporary three-storey dwelling lying immediately to the east of the appeal site. A number of the proposed flats would have habitable windows facing eastwards towards openings at No 49. Where the proposed windows would serve en-suite facilities, or would be high level, I am satisfied that any potential effects could be addressed through a suitable planning condition.
15. The plans shows the windows on the western elevation of No 49 serve bedrooms and a lounge area on the ground and first floors, together with an en-suite bathroom at second storey level. However, I saw that the windows at ground and first floor level are particularly narrow and are evidently secondary lights serving their respective rooms.
16. The proposed flats 5 and 8 would contain bedrooms served by windows which would be angled in such a way that it appears the only outlook would be towards the slender lounge window towards the front of No 49. Bedroom 2 in proposed flat 10 would also have an angled outlook but this would be positioned further towards the rear of the building where there would be greater scope for overlooking other windows on No 49's western flank. However, given their secondary nature and narrow design, there would not, in my judgement, be any materially harmful effect on the privacy of occupiers of that dwelling. Whilst the Council is also concerned over proximity of that window to the window at second floor level to No 49, the latter is not a habitable room and no significant harm with respect to privacy would arise.
17. The front, southern elevation of No 49 contains roof terraces at first and second floor levels. There would be potential for some overlooking from the proposed balcony to proposed upper floor flat. However, the extent of any such overlooking would be limited as the view would be oblique and, in any event, the glass screening to the balcony could be conditioned so as to be obscure glazed thereby ensuring a higher degree of privacy.
18. I have also had regard to the potential for overlooking of the rear garden to No 49 from the north-facing balconies and windows. However, the balconies

would wrap around the western edge of the rear elevation only and any views across the garden of No 49 would be peripheral. Furthermore, the glazed balcony screens on the eastern edge could be conditioned so as to further mitigate the likelihood of overlooking. Views would be possible from the rear bedroom windows of flats 4, 7 and 10. However, I saw on my site visit that the garden is already significantly overlooked by the existing rear window at first floor level at the appeal property, and by others on the side elevation of No 30. I therefore find that no unacceptable loss of garden privacy would result.

19. Furthermore, whilst the proposed building would be a significantly taller feature when viewed from the rear of No 49, expansive views of the sky would be retained and the structure would not have an excessively enclosing effect. No unacceptable loss of outlook would therefore occur either from the garden or from within the dwelling itself.
20. In conclusion on this main issue therefore, I find for the aforementioned reasons, that the proposal would not give rise to any unacceptable harm in respect of privacy or outlook to No 49. Furthermore, the proposal would not be significantly harmful to occupiers of No 30 with respect to noise and disturbance or sunlight. However, there would be an unacceptable loss of privacy for occupiers of south-facing habitable rooms above ground level at No 30. As such, the proposal would conflict with Policy 6.2 of the adopted Bournemouth District Wide Local Plan (February 2002) (the BLP) and Policies CS21 and CS41 of the adopted Bournemouth Local Plan: Core Strategy (October 2012) (the BCS). In combination these Policies require new development to respect the amenities of neighbouring residents. For the same reasons, I find conflict with the National Planning Policy Framework (the Framework) which seeks to create places with a high standard of amenity for existing and future users. It would further conflict with Paragraph 3.7 of the RDG.

Character and appearance

21. Southbourne Overcliff Drive is an extensive road skirting the cliff edge in Bournemouth. To the north of the road are blocks of suburban development comprising mainly large detached and semi-detached residential properties arranged on straight or gently curving streets. Whilst there is a wide variation in the type and design of dwellings, the buildings tend to conform to largely uniform building lines set back a short distance from the highway edges behind gardens and hard surfaced parking areas.
22. The dwellings in the area are commonly of two-storey brick construction with pitched roofs, reflecting the Edwardian origins of this part of the built-up area. This is a pattern reflected on the eastern side of Clifton Road. However, a large amount of infill and purpose-built flatted developments and individual dwellings have taken place over the years. Notably, these include a number of three and four storey flatted blocks which are a particular feature on the western side of Clifton Road and individual dwellings on Southbourne Overcliff Drive.
23. The existing appeal building occupies a corner plot and comprises a flat roofed two-storey block of flats with single-storey garage extension to the rear. The overall plot is fairly generous and the existing building is surrounded on two sides by a broad grassy buffer.

24. The proposed development would be four storeys with strong horizontal articulation provided by a flat roof and glazed balconies. Its strong contemporary character would be derived from the use of white render, black engineering bricks and aluminium windows and doors.
25. The building would represent a substantial increase in the bulk of built development relative to the existing structure. Moreover, its western elevation would protrude somewhat beyond the prevailing building line on Clifton Road, and it would be taller than the adjoining modern three-storey development at adjoining 49 Southbourne Overcliff Drive; some 1.3m according to the appellant's evidence.
26. The character and appearance of the building would therefore contrast strongly with the dwellings both on Clifton Road and on Southbourne Overcliff Drive.
27. However, there are several other corner plot developments in the vicinity of the appeal site which have been redeveloped with contemporary four-storey or part four-storey residential apartment blocks. At the appellant's request, I took the opportunity to view those developments from public vantage points on my site visit and I saw that they are substantial developments, with no consistent design. In particular, they are clearly distinct in terms of their design, scale and massing, often although not always, departing from the prevailing building line of their neighbouring properties. A defining characteristic is that they appear as dominant landmark buildings marking key junctions on the Southbourne Overcliff Drive frontage.
28. Whilst I have not been provided with full details of those cases, including the circumstances which led to their approval, they are clearly not isolated examples. Furthermore, whilst the vast majority of the examples lie to the west of Clifton Road, they nevertheless form part and parcel of, and contribute positively to, the established and emerging mixed character of the area, including that in the vicinity of the appeal site. In this regard, contrary to the submissions of the Council and third parties, I do not concur that the area immediately to the east of Clifton Road is more traditional in character than that to the west.
29. In this context, whilst I do not regard the proposed design as being particularly outstanding or innovative in line with Paragraph 131 of the Framework, the proposal would nevertheless be reflective of the wide variety of corner plot treatments with large contemporary developments. Significantly, although the building would breach the prevailing building line on Clifton Road, it would nonetheless be set back from the highway and its recessed articulation would serve to provide a stepped transition to the building line. Moreover, the height of the building would not be disproportionately at odds with those of the immediately adjoining buildings and it would retain an open, landscaped strip as the development turns the corner into Clifton Road, albeit at a reduced depth.
30. Similarly, the extensive use of glazing and modern materials would in my judgement be appropriate to the mixed character of this coastal strip. In this regard, whilst I note that submissions from interested parties suggest that rigorous standards of design in terms of height have been previously required by the Council in relation to other proposals, I have assessed the proposal before me based on the individual merits of the scheme.

31. Overall, therefore, I conclude on this main issue that the proposal reflects good design and would make effective use of the site in a way which would not be harmful to the street scene or be contrary to the established layout, pattern character and appearance of the area as a whole. As such I find no conflict with Policy 6.10 of the BLP or Policy CS21 and CS41 of the BCS. These Policies require all developments to be well designed and respect the site and its surroundings. The proposal would also not fail to accord with Paragraph 4.2 of the RDG which requires replacement dwellings to be achieved without damaging the character of the area.

Refuse, Recycling and highway safety

32. The appellant proposes to install an underground bin storage facility close to the western boundary of the property. The evidence suggests that this would employ the 'Equinord' underground system as set out in the Council's waste and recycling guidance note². This would generally reflect the RDG which highlights the importance of making space for domestic waste storage in designing new residential developments. In particular, the waste and recycling guidance note recognises the benefits of the deployment of such underground systems.
33. However, in view of the advice of the Council's technical consultee, it appears that the proposed system would not be appropriate for the site although the reasons for this are not entirely clear from the submitted material. Moreover, the Council is concerned that it has not been demonstrated how such an underground refuse storage system would provide a safe and practical solution, with the risk of prolonged disruption to the local road network and highway safety.
34. At the time of my site visit, I observed that there is very little on-street parking available in the vicinity of Clifton Road/Southbourne Overcliff Drive as a result of parking restrictions on the latter. Consequently, it would be reasonable to expect that unnecessary disruption resulting from a protracted period of refuse vehicles impeding the highway could lead to localised congestion and safety concerns.
35. I accept that there is, on the basis of the submitted plans, uncertainty as to how collection would take place and the level of delay and disruption to the highway network this may cause. Nevertheless, it is inevitable that some form of refuse and recycling collection service would be necessary for any form of redevelopment on this site and, presumably, this already takes place albeit to a lesser extent. Given the size of the curtilage, I see no reason why an appropriate storage and collection solution could not be devised and agreed with the Council through the imposition of a suitable planning condition. In this regard, minor amendments to the space around the building could also, if necessary, be made to that end as part of an agreed scheme.
36. I therefore conclude on this main issue that the proposal would not result in increased stopping duration for refuse vehicles on Clifton Road in such a way as to harmfully affect the flow of the highway or cause unacceptable risk to highway safety. As such I find no conflict with BCS Policy CS41 which, amongst other matters, requires development to be laid out such as to contribute positively to the safety of the public realm. Similarly, I find no conflict with the

² Waste and Recycling Services: Planning Guidance Note (November 2017)

Framework which states that development should only be refused on highway grounds if there would be unacceptable impact on highway safety or if impacts on the network would be severe.

Planning Balance

37. There is no dispute between the main parties that the Council is currently unable to demonstrate a five-year housing land supply (5YHLS). Although no definitive figure has been suggested by either party, the Council's evidence indicates that, as a result of the application of the standard methodology and the Housing Delivery Test, an annual land supply target of around 1,700 dwellings per annum (dpa) arises, compared to a residual target of around 640 dpa based on the Core Strategy requirement. Moreover, having regard to the appellant's submissions, a shortfall of over 4,300 dwellings currently exists for the next five-year period. On the strength of the submitted evidence and pending the Council's forthcoming annual monitoring review, I therefore conclude that there is a shortfall in 5YHLS and this is potentially significant.
38. Consequently, paragraph 11 of the Framework indicates that planning permission should be granted unless specified policies in the Framework provide a clear reason for refusing development or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole.
39. The development would make effective re-use of previously developed land which the evidence shows is in an established built-up area with good access to services, facilities and public transport. I have also already described in the main issues above that, in my judgement, the scheme would represent good design and it could also be constructed to a high standard of energy efficiency.
40. Moreover, the scheme would make a contribution to meeting a specifically identified need for two and three-bedroom units in an area otherwise subject to Green Belt constraints. There would also be economic benefits both during the construction phase and in terms of supporting local shops and services.
41. Whilst the above economic, social and environmental sustainability benefits are not significant given the relatively modest number of dwellings to be provided, I nonetheless attach moderate weight to those matters in favour of the scheme.
42. Nevertheless, safeguarding the living conditions of existing occupiers is also an important element of sustainable development and this is reflected in the Framework. The harm arising would significantly and demonstrably outweigh the benefits identified above. Consequently, I conclude the appeal scheme is not a sustainable development for which there is a presumption in favour.

Other Matters

43. As noted above, the likelihood of harm to designated sites was a reason for refusal. The submitted UU undertakes to make a financial contribution which aims to fully mitigate that harm. Whilst the Council has not commented on the acceptability of the UU, it would make appropriate provision in line with a protocol agreed between the Council, Natural England and other parties for delivering Strategic Access and Management Measures. However, as the appeal is to be dismissed for other reasons, it has not been necessary for me to consider this matter further.

44. I have had careful regard to a wide range of other matters raised by interested parties including sunlight, noise and disturbance from a more intensive use of the site, drainage, land stability, parking provision and property values. However, those considerations would not lead me to a different conclusion on the outcome of the appeal and they have not therefore been determinative in my decision.

Conclusion

45. For the reasons given, the appeal should be dismissed.

Ian Bowen

INSPECTOR