



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: 3rd October 2019.

Appeal Ref: APP/G1250/W/19/3226349

5-7 Clarendon Road, Bournemouth BH4 8AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by AJ Developments against the decision of Bournemouth Borough Council.
 - The application Ref 7-2018-2732-AA, dated 6 November 2018, was refused by notice dated 15 February 2019.
 - The development proposed is to demolish existing buildings and erect a block of 18 no 2 bed and 1 no 1 bedroom flats with parking, cycle and bin storage. Total 19 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development cited on the refusal notice and the appeal form differs from that on the original application. The main parties have not confirmed that the amendment was formally agreed. Nevertheless, I have used the description from the refusal notice in the above banner as it more accurately describes the development being proposed.
3. During the course of the appeal, the appellant submitted revised plans with the intention of addressing in particular the concerns of the Highway Authority as regards the layout of parking spaces. In summary, the changes would reduce the number of units to 18 flats; relocate the proposed bin store to be integral to the building along with cycle parking; reduce the proposed number of parking spaces by one, together with other reconfigurations of the parking and turning areas; increase the width and alignment of footpaths; re-site a lamp column; incorporate more extensive landscaping; and reinstate existing dropped kerbs which would become redundant.
4. Whilst amendments can exceptionally be accepted in line with the Wheatcroft principles¹, I am mindful that the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. In this vein, if an appellant thinks that amending their application proposals will overcome the reasons for refusal, they should normally make a fresh application².

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

² 'Procedural Guide – Planning Appeals – England', Planning Inspectorate.

5. Having carefully considered the scale of the changes proposed, however, I am satisfied in this case that they seek to marginally reduce the scale of the scheme and alter the internal configuration of the proposed parking and circulation areas. Whilst such changes would, in my judgement be highly unlikely to prejudice any interested parties, they would nonetheless address the key concerns of the local highway authority in particular, together with other concerns of the Council.
6. For the avoidance of doubt, therefore, I am minded to proceed on the basis of the revised plans³ and am satisfied the interests of no parties would be prejudiced in my doing so.
7. The application was made in outline, with matters of appearance and landscaping reserved for subsequent consideration. Consequently, whilst drawings have been submitted which helpfully indicate the likely appearance of the building and landscaping, I have treated such matters as being indicative only. Details pertaining to access, layout and scale are not reserved and I have therefore treated them as being definitive in determining the appeal.
8. During the appeal, the appellant submitted an executed Unilateral Undertaking (UU) committing to financial contributions towards mitigation of effects on the Dorset Heathlands Special Protection Area, Ramsar Site and Dorset Heathlands Special Area of Conservation. The UU also undertakes to make financial contributions towards affordable housing. I consider these matters later in my decision.

Main Issues

9. The main issues are:
 - The effect of the proposal on the living conditions of occupiers of neighbouring properties with particular regard to privacy;
 - Whether the proposal would provide acceptable living conditions for future occupiers of the development with particular regard to outlook, privacy, adequacy of internal space and provision of outdoor amenity space;
 - The effect of the proposal on the character and appearance of the area having particular regard to the setting of the West Cliff and Poole Hill Conservation Area (WCPA); and
 - Whether the proposed layout of car parking spaces would be satisfactory having regard to highway safety.

Reasons

Living conditions – neighbouring occupiers

10. The proposal would replace two detached residential buildings with a single three storey block of flats between 3 and 11 Clarendon Road. The Council's evidence indicates that No 3, a large Victorian villa, has at some time been sub-divided into flats. That property has a number of habitable windows, together with a balcony/terrace at first floor level on its northern elevation.

³ Plan Refs 9025/200 Rev D; 9025/201 Rev C.

11. The proposed development would include north-facing windows and these would serve four bedrooms at first and upper floor levels. The openings would face directly towards those of No 3 from a distance, according to the Council's assessment, of between 13.5 to 15 metres. These separation distances are disputed by the appellant who also indicates that one of the existing windows is recessed slightly behind the main elevation. I am further mindful that No 5 already has windows at first floor level facing towards No 3.
12. Nevertheless, at least some of those windows on No 5 are obscure glazed. Moreover, the development of a three-storey building with windows at all floors would, in my judgement lead to an unacceptable level of overlooking of No 3, particularly bearing in mind the presence of a balcony which occupiers of No 3 would reasonably expect to enjoy in relative privacy. As the proposed windows would be the sole source of light and outlook for three of the proposed bedrooms, it would not be appropriate to require the glazing to be obscured through a planning condition.
13. I appreciate that the Council's Residential Design Guidance⁴ (the RDG) does not set out definitive advice on minimum distances between windows on flank elevations. However, it indicates that whilst in most urban areas a degree of overlooking is inevitable, new proposals should not cause an increase in harmful overlooking.
14. In this case, although the proposed windows would be located somewhat further away than the existing, I consider the increased height and principal nature of most of those windows would be unacceptably harmful to the privacy of occupiers of No 3.
15. Turning to the relationship with the three-storey No 11 to the south, there would be a minimum separation distance between the buildings of 11.8 metres. No 11 has a number of windows which, although located towards the centre and north eastern corner of the building, I saw are large plate glass openings.
16. A kitchen/diner serving Flat 7 at first floor level would have a window facing habitable windows at No 11 at a fairly oblique angle. However, a further six south-facing windows serving a total of five bedrooms in flats 7, 8 and 15 would face more directly towards No 11 at first and second floors.
17. Given their distance, number, function and elevation which, in the main, would be the sole openings for those rooms, I find this would lead to an unacceptable loss of privacy for occupiers of No 11. In this regard, I disagree with the appellant's contention that the harm would be limited as bedrooms would only be likely to be occupied at evening and morning times. Whilst no definition of a habitable room is given in the Council's guidance, it seems to me that bedrooms can frequently be expected to be used at all times of day for a range of domestic purposes.
18. The rear of the proposed building would face towards the rear garden of 8 Marlborough Road which is orientated at right angles to it. However, the development would be positioned in a largely offset position towards its southern boundary and well away from the area of the garden which is most intimately linked to the house.

⁴ Residential Development: A Design Guide (September 2008)

19. Moreover, I took the opportunity to view No 8 from an existing first floor room at the appeal site and I saw that any such views are, in any event, heavily screened by existing mature boundary planting and a particularly large specimen would be retained as part of the scheme.
20. Consequently, any overlooking from proposed flats 11, 12 and 18 in particular would be largely screened and towards the periphery of the garden. Given an element of overlooking of gardens is to be expected in urban areas, I therefore find no undue harm would arise in this regard.
21. In conclusion on this main issue, I find that whilst no loss of garden privacy would result on 8 Marlborough Road, there would be unacceptable harm in terms of loss of privacy for occupiers of No 3 and No 11 Clarendon Road. The proposal would therefore conflict with Policies CS21 and CS41 of the adopted Bournemouth Local Plan: Core Strategy (October 2012) (the BCS). It would also conflict with Policy 6.10 of the adopted Bournemouth District Wide Local Plan (February 2002) (the BLP). Together, those Policies require new development, including flats specifically, to respect the living conditions and amenities of neighbouring residents.

Living Conditions - future occupiers

22. As a result of the revised plans, formerly proposed Flat 1 has been omitted from the scheme. This would appear to address the Council's concerns with respect to poor outlook and privacy for future occupiers and I see no reason to disagree.
23. Turning to the remainder of the proposed development, whilst there is no dispute between the main parties that the one bedroom flats would provide adequate habitable space, the Council submits that the two bedroom units would not and would fail to comply with nationally prescribed space standards.
24. However, the Planning Practice Guidance states that where a local planning authority wishes to require an internal space standard, they should only do so by reference in their local plan to the standard, taking into account need, viability and timing. The Council has confirmed that the standard has not been adopted locally in Bournemouth and so does not apply in this case.
25. On the basis of the submitted plans, the units would undoubtedly be small and could be occupied by a greater number of people than indicated on the drawings. Nevertheless, they would have some storage space, outlook and access to daylight. Whilst not all of the units would have access to private amenity space in the form of a balcony, I am not aware of any local or national planning policy basis for requiring this in every case. In this case, I also note there is convenient pedestrian access to the beach a short distance to the south.
26. I therefore conclude on this main issue that the proposal would provide an acceptable standard of accommodation for future occupiers and I find no conflict with BCS Policies CS6 or CS41. In combination, those Policies require new development to be well designed and provide a high standard of amenity to meet the day-to-day requirements of future occupants. Whilst the Council also cited BCS Policy CS21 and BLP Policy 6.10, those Policies do not appear to be relevant as they do not refer to future occupiers of buildings. I have also had regard to the RDG. However, I note it refers in this regard to national

planning policies which were cancelled a considerable period of time ago which limits the weight I attach to it. In this respect, the proposal would accord with the National Planning Policy Framework (the Framework) which requires the creation of places with a high standard of amenity for future users.

Character and appearance

27. The appeal site lies immediately adjacent to the boundary of the Marlborough Road Character Area (MRCA) on the north western edge of the WCPA which incorporates No 3 immediately adjoining the site to the north. Thereafter, the boundary cuts across Clarendon Road to include the properties on the eastern side of the street opposite the appeal site.
28. The WCPA Appraisal and Management Plan (the draft Character Appraisal) provides context to the significance of the area. Whilst that document is evidently in draft form, it is nonetheless a material consideration to which I have had regard.
29. The WCPA covers a fairly extensive area towards the western side of Bournemouth's urban area. It derives its significance in large part from its historical origins which developed in the second half of the 19th century. It encompasses a wide range of development types and densities including tightly packed commercial areas and dense terraced properties and, more pertinently to the appeal site, larger villas and hotels set in generous grounds. The area is characterised by a large number of listed and other important buildings, as well as significant mature landscaping which affords the area a verdant feel.
30. More specifically to the MRCA, this part of Clarendon Road contributes to the significance of the WCPA in being one of a number of straight tree-lined avenues laid out in a grid pattern, characterised by large, detached and semi-detached buildings in spacious grounds set back well back from the road. In the immediate vicinity of the site, there is, in addition to No 3, a mix of traditional large detached dwellings and three-storey post-war blocks of flats.
31. Whilst matters of appearance are reserved for subsequent consideration, the proposal would be a three-storey structure with extensive glazing and balconies giving the development a contemporary design with a horizontal emphasis.
32. The height of the building would be comparable to the existing post-war flatted development at No 11 to the south and would be marginally lower than the ridge heights of the dwellings to be replaced. Furthermore, it would be lower than the maximum ridge height of No 3. Other than the single point of vehicular access, the frontage of the property would be largely landscaped with additional tree planting and parking accommodated to the rear.
33. A sizeable gap would be retained between the southern elevation of the building and the flats beyond, whilst to the north, the separation distance to the boundary would be comparable to that which currently exists between the main built element of No 5 and No 3. The submitted plans also show that the footprint of the building would not occupy a disproportionate area of the overall plot. As a result, whilst the width of the frontage would exceed those of other buildings in the area and the building would be bulkier in the street scene compared to the existing dwellings, it would not, in my judgement, appear cramped or otherwise notably out of step with the density of built up development in the area.

34. Consequently, the scheme would respect the essential characteristics of the area which are important to the setting of the WCPA. Whilst I acknowledge views currently gained through the gap between the existing dwellings to trees beyond would be foreclosed, tree-lined vistas would not be obscured and no important views recognised in the draft Character Appraisal into or out from the WCPA would be adversely affected.
35. Whilst the design and style of the development would be starkly at odds with No 3, which is identified as a 'Positive Building' in the WCHCA, the degree of separation would, in the context of the mixed character of development in the area, be such that neither that building, nor the character or appearance of the WCHCA would be harmed. I note that the draft Character Appraisal encourages buildings of exemplary modern design in the MRCA where appropriate in scale and, subject to detailed matters of appearance, I find no conflict in that regard.
36. I therefore conclude that the scale, bulk and footprint of the proposal would not be harmful to the character or appearance of the setting of the designated WCHCA and I find no conflict with BCS Policies CS21, CS39 and CS41 or BLP Policy 6.10. Those Policies require all developments to protect designated heritage assets and be well designed to respect the site and its surroundings.

Highway safety

37. The Highway Authority has confirmed that, as a result of the revised plans, earlier objections could be overcome subject to suitable planning conditions. Of most significance, the proposal makes provision for on-site turning facilities and an appropriate layout of parking spaces. Having considered the revised plans, I concur that the proposed layout would suitably accommodate access and car parking. Consequently, I have no reason to doubt that any harmful displacement of car parking onto the public highway would occur as a result of the development.
38. I therefore conclude that the development would not give rise to unacceptable risk to highway safety and would accord with BCS Policies CS16 and CS41 which requires the design of new development to contribute positively to the safety of the public realm. The Council also cited BCS Policies CS16 but this merely refers to parking standards which have not been provided and which, in any event, do not appear to be a matter of dispute.

Planning Balance

39. 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.
40. 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.

41. The development would make effective and appropriate re-use of land in providing 18 flats in a location with good accessibility to shops, services and other facilities. The location is also served by high frequency bus routes to Bournemouth, Poole and Christchurch and connecting to national rail services.
42. Furthermore, the appellant's executed UU makes provision for developer contributions towards affordable housing. Whilst the Council has not commented on the UU, the financial contribution of £303,563 accords with the sum judged necessary in the officer's report. Having regard to Policy AH1 of the adopted Affordable Housing Development Plan Document (December 2009) and the adopted Affordable Housing Supplementary Planning Document: Replacement Advice Notes for Developers (November 2011), I agree that affordable housing provision would be necessary. In this regard, the Council do not dispute that a financial contribution, equivalent to 40% provision, towards off-site provision would be appropriate. It also confirms that such monies would be deployed to specific schemes in the local area including a committed scheme at Palmerston Road.
43. The UU has been properly executed. However, it would make contributions on the basis of the originally appealed scheme (for 19 dwellings). The proposal, as revised during the appeal, would require a lesser sum to make the development acceptable in Development Plan terms. I have, nonetheless, had regard to the benefits of providing affordable housing and this weighs in favour of the scheme in the planning balance.
44. The scheme would also be beneficial in promoting an energy efficient form of development, important trees would be protected and there could be ecological gains.
45. The economic, social and environmental sustainability benefits are consistent with the policies of the Framework and, given the scale of the scheme, I attach moderate overall weight to those considerations.
46. Nevertheless, safeguarding the living conditions of existing occupiers is also an important element of sustainable development. In this case, harm would arise to a number of neighbouring occupiers as a result of the layout and design of the scheme. In my judgement, this would significantly and demonstrably outweigh the benefits identified above when assessed against the policies of the Framework taken as a whole. Consequently, having applied the so-called tilted balance, I conclude the appeal scheme is not sustainable development within the terms of the Framework.

Other Matters

47. As noted above, the likelihood of harm to internationally designated habitats 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.

48. A range of other matters have been raised by interested parties including the absence of electric charging points and loss of family housing. Whilst I have had regard to those considerations, they do not alter my overall conclusion on the outcome of the appeal and I have not therefore considered them further in this decision.

Conclusion

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

Ian Bowen

INSPECTOR