



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: 11th October 2019

Appeal Ref: APP/G1250/W/19/3222214

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 Messrs A J Developments against the decision of Bournemouth Borough Council.
 - The application Ref 7-2018-2732-Z, dated 30 May 2018, was refused by notice dated 29 August 2018.
 - The development proposed is demolish existing buildings and erect a block of 8 no 2 bed and block of 11 no 2 bedroom flats with parking, cycle and bin storage.
-

Decision

1. The appeal is allowed and planning permission is granted to demolish existing buildings and erect a block of 8 no 2 bed and block of 11 no 2 bedroom flats with parking, cycle and bin storage at 5-7 Clarendon Road, Bournemouth BH4 8AJ in accordance with the terms of the application, Ref 7-2018-2732-Z, dated 30 May 2018, and the plans submitted with it, subject to the conditions in the attached schedule.

Procedural Matter

2. The Bournemouth Borough Council ceased to exist on 1 April 2019, following a merger with Poole 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 Bournemouth Local Plan: Core Strategy, October 2012, (Core Strategy) and the 'saved' provisions of the Bournemouth District Wide Local Plan, February 2002, (Local Plan), have not therefore changed as a result of the merger.
3. The application was made in outline form that, in addition to the principle of the development, sought permission for the access, layout and scale of development. The drawings submitted with the appeal show details pursuant to these matters. An unnumbered Street Scene drawing was also submitted that shows details of the front elevations of the two proposed buildings which would accommodate flats and all of the elevations of outbuildings to be used for cycle and bin storage. Its street scene element is described as being indicative and, in terms of its appearance I have treated it in this regard. However, as the proposal seeks permission for the scale of development, and the drawing is

referred to in relation to this in the Design and Access Statement that accompanied the application, I have used it in this regard.

4. Amongst the Council's reasons for refusal were those relating to vehicle and cycle parking provision. Its appeal submissions show that the issues raised had been overcome and/or can be addressed through the use of conditions, so I need not consider this matter in detail.
5. The Council did not refuse the application on the grounds of the effects that the proposed development would have on the integrity of a European Site of Nature Importance, (ESNI). However, its Officer report made clear that the scheme would be likely to result in harm to an ESNI although this might be mitigated through a financial contribution. The Council's position was clarified in its appeal statement, which made it clear that due to the lack of a contribution it objected to the proposal.
6. Similarly, the Council did not refuse the application on the basis of a lack of provision of affordable housing. However, its Officer report made it clear that there would be a requirement for the provision of affordable housing either on site or off-site, through a financial contribution. The Council's statement also clarifies that it objects to the proposal on the ground of the lack of any affordable housing provision.
7. During the processing of the appeal, an undertaking was submitted that sought to address the effects on the ESNI and the provision of affordable housing. I shall return to this matter later in my decision.

Main Issues

8. The main issues are:

- The effect of the proposed development on the character and appearance of the area;
- The effect of the proposed development on the living conditions of the occupants of 3 Clarendon Road, having particular regard to outlook, and 8 Marlborough Road with regards to privacy;
- Whether acceptable living conditions would be created for future occupants with regards to noise and disturbance;
- The effect of the proposed development on the integrity of European Sites of Nature Importance (ESNI); and
- Whether the proposed development would comply with the Council's policies regarding the provision of affordable housing.

Reasons

Character and Appearance

9. 5 and 7 Clarendon Road are two fairly large, two-storey detached properties, erected after the second world war. It appears that No 5 is used as two flats, whilst No 7 is a single dwellinghouse. They are set back from the highway,

- within generous plots. Their frontages are not enclosed and have areas of hardstanding used for parking.
10. To their southwest is a development of three-storey flats set under flat roofs, and to the northeast is a large, detached period property, 3 Clarendon Road, with accommodation again set over three floors. These properties are also set back from the road, although their road frontages are enclosed by low walls with hedging.
 11. Roads in the area are wide and are flanked by large residential properties, of varying designs, which are used as flats and single houses. They are generally well-spaced and the area has an abundance of trees and soft landscaping, combining to give the area a spacious character and appearance.
 12. The appeal site lies adjacent to the West Cliff and Poole Hill Conservation Area (CA), its boundary with No 3 is also the boundary to the CA. This part of the CA is defined as being within the Marlborough Road Character Area. The CA boundary crosses Clarendon Road before running southwest along the road frontages of properties opposite the site. The CA shares many of the characteristics that I have described, above, as set out in the West Cliff and Poole Hill Conservation Area Appraisal and Management Plan (AMP). The National Planning Policy Framework (2019), (the Framework), states that proposals that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset should be treated favourably.
 13. The demolition of the dwellings, which are of limited architectural interest, would not cause harm to the character and appearance of the area. It is proposed to replace them with a pair of buildings housing a total of 19 flats. Given the spacing of its buildings and the frontage hedges that some have, the building line along this part of Clarendon Road is not strongly defined. Given this, the proposed siting of the buildings, which although slightly forward of others would be set well back from the road and preserve the open nature of the area. This aspect of their siting would not have a harmful effect on the street scene.
 14. This is an area that has a number of very large plots on which one or more large buildings are sited. As such, the creation of a single plot here, involving the removal of the rather indistinct boundary between the two existing properties, would not appear out of keeping or have a harmful effect on the area's character and appearance.
 15. The manner in which the buildings would be set in from the boundaries and separated from one another would be reflective of other buildings in the area. I saw a number of properties in the area with quite extensive areas of hard surfacing to their fronts, as is proposed. Although landscaping is a reserved matter, there seems no obvious reason why the site's front boundary could not be landscaped in a manner similar to others close-by to soften the effects of the hard surface and help screen parked vehicles.
 16. Although large, the footprints of the two buildings would be appropriate to the area. The Street Scene drawing shows that the scale of the blocks would sit comfortably between the flats to the southwest and No 3. It also shows how their massing might be successfully broken up. Subject to their having an appropriate appearance, they need not be overly-dominant in the street scene.

The heights of the proposed buildings would reflect those of neighbouring buildings and would thus be appropriate to the area. In reaching these findings, I have been aware of the comments made by the Council's Design Review Panel and the Civic Society.

17. Given the variety of designs and forms of buildings in the area, I do not find that using a traditional design, along the line that is shown in the Street Scene drawing, would necessarily result in a harmful relationship with No 3. This is described as a 'positive building' in the AMP, and I treat it as a non-designated heritage asset. As appearance is a reserved matter, questions of architectural detailing are not relevant to this proposal.
18. The blocks would feature in views northwards along Clarendon Road into the CA, described as 'key views' by the Council. However, given my above findings in terms of their siting and scale, this would not be harmful.
19. As they would be to the rear of the residential blocks, the bin and cycle stores of the scale and siting shown would not have a harmful effect on the area, subject to their having an appropriate appearance. I have not been provided with evidence to persuade me of the necessity of incorporating them into the residential blocks.
20. For the above reasons, my finding on this main issue is that the proposed development would not have an adverse effect on the character and appearance of the area, and would not adversely affect the setting of the West Cliff and Poole Hill Conservation Area, or harm its significance. The scheme would represent high quality design, in terms of its scale and layout, in accordance with CS Policy CS41, that would protect the setting of the CA as required by CS Policy CS39. It would also comply with LP Policy 6.10 that requires, amongst other things, that flats development will respect and enhance the character and appearance of the area.

Living Conditions – Existing Properties

21. No 3 is set back from its boundary with the appeal site and the two are separated by a high hedge. It has been converted to flats and has a number of openings on its side elevation, at ground and first floor levels, that look directly to the appeal site.
22. The layout shows that the proposed block closest to No 3 would be set close to the boundary. The Council estimates the distance between the two to be just over 7m. This is considerably closer than is the case presently between the side elevation of the main house at No 5 and that of No 3. However, No 5 does have a single storey garage that is built almost to the boundary, which is lower than the dividing hedge and therefore little seen from No 3.
23. Much of the effect of the proposed development on the outlook from No 3 depends on the appearance of the block proposed nearest to it. Appearance is defined¹ as including those aspects of a building or place within the development which determine the visual impression the building makes, including the external built form of the development, its architecture and materials.

¹ As defined in The Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended)

24. Both parties have referred to the submitted drawings with regards to this issue. They give an impression of appearance, but this is a reserved matter and they should not be used in a definitive manner in this regard. However, in terms of scale the Design and Access Statement refers to this drawing and clearly indicates that the drawing should be used in assessment of this matter. It shows the maximum height of the buildings, but the form of the block nearest No 3 might not take the form shown. In the light of the evidence before me and that of my site visit, I am of the view that it would be possible to erect buildings using the proposed siting and scale without harm to the living conditions of the occupants of No 3.
25. Although I did not visit 8 Marlborough Road, I could see that the proposed buildings that would house the flats would face towards its rear garden. However, they would be well away from that area of its garden closest to the house that would be most used. I was able to see that mature planting between the two properties would heavily screen the rear garden of No 8. The degree of overlooking that would result would be expected in urban areas and I find that no significant harm would result in this regard.
26. For the above reasons, I find that the submissions show that there would be an appropriate degree of separation between No 3 and the nearest block. This would allow for the erection of a building of a form that would not affect the living conditions of the occupants of No 3 by reason of outlook. I also find that the scheme would not result in an undue loss of privacy to the occupants of No 8. Therefore, the proposal would accord with those terms of CS Policy CS41 and LP Policy 6.10 that require, amongst other things, that proposals respect and protect the living conditions of neighbouring residents.

Integrity of ESNIs

27. The appeal site lies within 5kms of the Dorset Heaths. These lowland heaths are designated as Special Protection Areas (SPA) and are part of the Dorset Heaths candidate Special Area of Conservation (SAC). They are, therefore, ESNIs and are subject to protection under the Conservation of Habitats and Species Regulations 2010.
28. As such, 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. In 2018 the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage². This is a responsibility that now falls to me as the competent authority.
29. The Council has adopted a supplementary planning document³ (SPD) that identifies the pressures on the SPA arising from, amongst other things, residential development. It shows that the SPA is an important recreational and economic resource that is well frequented by the public. The evidence shows that it is likely that occupants of the proposed development would visit them. In this regard, the evidence before me is clear that the proposal, particularly

² People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

³ The Dorset Heathlands Planning Framework 2015-2020, (January 2016)

when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.

30. Amongst its terms, CS Policy CS33 sets out that proposals for residential development within 5kms of the heathlands should take all necessary steps to mitigate any adverse effects that might arise to them. The required mitigation measures are set out in the SPD and can take the form of access management or the provision of substantial alternative recreation locations to draw users away from the European sites. Here, it has been identified that a contribution of £3759 would be required to mitigate the effects of the proposed development on the Heaths.
31. An undertaking has been submitted, pursuant to S106 of the Town and Country Planning Act 1990. In this, the appellant undertakes to pay the required sum before commencing the development, should permission be granted.
32. Natural England was consulted on this matter. It concluded that the proposal would result in harm to the SPA and SAC, but that, subject to this contribution being secured, this harm would be mitigated. I give its views great weight.
33. In the light of the above, I find that the undertaking would ensure that the required payment would be secured and that this would be used to mitigate the adverse effects of the development that would otherwise arise. Therefore, the proposed development would not harm the integrity of these protected habitats in accordance with the terms of CS Policy CS33 and the SPD.

Affordable Housing

34. Although I have not been provided with a copy of the Council's Policy AH1, I have been provided with a copy of Affordable Housing Development Plan Document, (AHDPD) adopted December 2009. Both relate to the provision of affordable housing, and are referred to in the submissions made by both parties. They agree that proposals for in excess of 10 dwellings would need to contribute to affordable housing in the area. In this case, guidance in the AHDPD requires a contribution of £445,865 towards affordable housing off-site. In the light of the evidence, I am persuaded that there is a need for this contribution.
35. The undertaking that has been submitted includes the assurance that the appellant will pay the required contribution prior to commencing the development, should permission be granted.
36. The Council has raised no objection to the terms of the undertaking and I agree that this would successfully address the question of the affordable housing requirements arising from the scheme.

Other Matters

37. Noise generated during development works is controlled by other legislation. I have no substantive evidence before me to persuade me to find that there would be harm to wildlife or trees on or near the site or that local infrastructure is unable to cater for the proposed development. I note the comments that have been made with regards to highway safety and the cumulative effects of this and other approved developments on on-highway parking. However, I note that the Council agreed that its original reservations relating to highways issues

were overcome and I have no substantive reason to find otherwise. I do not have sufficient evidence to show that there were sufficient flats within the area and that the loss of family housing would be harmful.

38. I note the comments that were made with regards to drafting errors on certain aerial photographs within the Design and Access Statement. However, these have little bearing on my decision and no such comments were made with regards to the drawings that were submitted, and it is on these that my decision is based.
39. The appellant drew my attention to a recent appeal decision for the development of this site⁴, although I was not given full details of this. That appeal was dismissed for reasons related to that scheme's effects on the living conditions of the occupants of No 3 and 11 Clarendon Road. I have taken the decision into account. I have addressed the effects on No 3 in my decision, above. In the case before me, the degree of separation between No 11 and the nearest of the proposed buildings would be acceptable. It would be possible, under the reserved matter of appearance, to design an elevation for the building in which each flat would be provided with fenestration that would not result in significant overlooking of No 11. Therefore, in the scheme before me, the relationship between the proposed development and No 11 would be acceptable.

Conditions

40. The Council submitted a schedule of conditions, in addition to the standard outline conditions, that it asked to be attached if the appeal was allowed. I have assessed these in the light of the Framework.
41. I agree that a condition requiring compliance with the approved plans is necessary in the interests of clarity. Given the site's location in a residential area, an hours of work condition is also required to protect the living conditions of the occupants of neighbouring properties. This, along with reasons of highway safety, is also partly the basis for my use of a condition relating to the submission of a Construction Management Statement.
42. A condition requiring the submission of details regarding the disposal of surface water is necessary to ensure that the scheme is satisfactorily drained. The Council's proposed conditions 6 and 8 are necessary to ensure that trees on the site are protected when the development is undertaken. My condition 9 regarding the submission of foundation details is also necessary in this regard. I have not, however, been provided with evidence to show that the meeting required by proposed condition 7 relating to trees is necessary.
43. Save for a slight alteration to proposed condition 10, as there is no reason to preclude the demolition of the existing buildings before the submission of parking and turning details for the proposed development, I agree that this is necessary to ensure appropriate on-site parking arrangements. Proposed conditions 11 and 13 are necessary in the interests of highway safety. Proposed condition 14, regarding visibility splays, is necessary in the interests of pedestrian safety. I also find it necessary to attach conditions that will

⁴ APP/G1250/W/19/3226349

ensure that adequate cycle parking provision and access to this is delivered, to provide for and promote alternatives to the use of private cars.

44. Proposed conditions 15 and 16 are necessary to ensure that provisions are in place for the collection and disposal of refuse arising from the site. However, I have not been provided with evidence persuading me that the withdrawal of permitted development rights relating to fences, walls and the like is necessary.

Conclusion

45. For the above reasons, and having taken all material considerations into account, the appeal is allowed subject to conditions.

Roy Curnow

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 9025/100, 9025/101, 9025/102, 9025/103A, 9025/104 and, insofar as it relates to the scale of development, 9025/301.
- 5) All on-site working, including demolition and deliveries to and from the site, associated with the implementation of this planning permission shall only be carried out between the hours of 8 a.m. and 6 p.m. Monday - Friday, 8 a.m. and 1 p.m. Saturday and not at all on Sunday, Public and Bank Holidays unless otherwise agreed in writing with the Local Planning Authority.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) methods to minimise noise during construction operations; and
 - v) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 7) Prior to the commencement of any substructure works on site, unless otherwise agreed in writing by the Local Planning Authority, a scheme for the whole site providing for the disposal of surface water run-off and incorporating sustainable urban drainage systems (SUDS), shall be submitted to and approved in writing by the Local Planning Authority. The drainage works shall be completed in accordance with the approved details prior to occupation of the development or in accordance with a timetable to be agreed in writing by the Local Planning Authority. The scheme shall include the following as appropriate:
 - a) A scaled plan indicating the extent, position and type of all proposed hard surfacing (e.g. drives, parking areas, paths, patios) and roofed areas.
 - b) Details of the method of disposal for all areas including means of treatment or interception for potentially polluted run-off.

- c) Scaled drawings, (including cross section), details and where necessary sample materials, to illustrate the construction method and materials to be used for the hard surfacing.
- 8) The tree protection measures as detailed in the arboricultural method statement dated 10.05.2018 and prepared by Gwydion's Tree Consultancy shall be implemented in full and in accordance with the approved timetable and maintained and supervised until completion of the development.
- 9) Prior to the commencement of development, a pile and above ground beam foundation designed by a Structural Engineer shall be submitted to and approved in writing by the Local Authority before the start of any work on site and shall be implemented as agreed.
- 10) Notwithstanding the submitted plans, prior to commencement of the development, amended plans shall be submitted to provide updated details relating to the location of the disabled parking space in order to widen the path to the cycle store to 1.5m. The amended plans, which shall include a 1.5m wide path to the cycle store, shall be submitted to and approved in writing by the Local Planning Authority. Works shall be carried out in accordance with the agreed details and be completed prior to occupation of the development hereby approved. The car parking layout and access route to the bin and cycle stores shall be retained, maintained and kept available permanently thereafter for the residents and visitors of the development.
- 11) Before the commencement of development, save for the demolition of buildings on the site, details of the specification (a typical cross section of the surfacing is required) of the areas for turning and parking, including the marking out of spaces shown on the approved plan shall be submitted to and approved in writing by the Local Planning Authority. These areas shall be constructed and surfaced in accordance with the approved details and permanently retained and kept available for the residents and visitors of the development hereby permitted at all times.
- 12) All car parking spaces shown on the approved plans shall be made available for any resident of the development and those persons visiting residents of the development and shall remain unallocated to any specific resident or residence for the lifetime of the development.
- 13) Prior to occupation of the development the applicant shall arrange the following works at its own expense:
- i) reinstate redundant vehicular crossover with full height kerbs;
 - ii) construct dropped kerbs as shown on the approved plans;
 - iii) amend the traffic regulation order for Clarendon Road to modify double yellow lines and parking bays as set out on the approved plans;
 - iv) painting of double yellow lines and parking bays in respect of (i) above; and
 - v) the provision of a pole and sign indicating the revised on-street parking controls.
- 14) Before the occupation of the development hereby approved the residential cycle store shall be constructed and laid out as shown on the

approved plans except that it shall be accessed by a 1.1m wide single door and thereafter be retained, maintained and kept available for the occupiers of the development at all times.

- 15) A pedestrian inter-visibility splay of 2m x 2m shall be provided on each side of the vehicular accesses, the depth measured from the back of the footway into the development site and the width of the splays measured outwards from the edge of the access. No fence, wall or other obstruction to visibility over 0.6m in height above ground level shall be erected within the area of the splays at any time.
- 16) Before development commences, save for the demolition of buildings on the site, unless agreed in writing by the Local Planning Authority, details of a screened refuse bin store (or equivalent underground storage system) suitable for the housing of one wheeled bin and seven Euro Bins showing the site location, elevations and materials to be used in the construction of the bin store shall be submitted to and approved in writing by the Local Planning Authority. The approved store shall be completed prior to the occupation of any of the units of accommodation granted by this permission and shall be retained and maintained thereafter unless otherwise agreed in writing by the Local Planning Authority.
- 17) The development hereby permitted shall not be occupied until a Refuse Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include: details of the management company to be set up; the employment of a private contractor to collect the refuse; measures to be taken if no private contractor is available at any time in the future (such as the employment of a person or persons to ensure bins are wheeled to the collection point); and that bins will not be stored in the open or at the collection point apart from on the day of collection. The refuse management plan shall be carried out in accordance with the approved details, unless otherwise approved in writing by the Local Planning Authority.

END OF SCHEDULE