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## Appeal Decision

Site visit made on 24 July 2019

**by Nick Davies BSc(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22<sup>nd</sup> October 2019**

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**Appeal Ref: APP/G1250/W/19/3221929**

**42 Fernside Road, Bournemouth BH9 2LB**

- 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 Mr P Kane against the decision of Bournemouth Borough Council.
  - The application Ref 7-2018-14042-E, dated 13 July 2018, was refused by notice dated 22 November 2018.
  - The development proposed is erection of a dwelling for use as a House in Multiple Occupation (Use Class C4) for up to 6 beds.
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### Decision

1. The appeal is allowed and planning permission is granted for erection of a dwelling for use as a House in Multiple Occupation (Use Class C4) for up to 6 beds at 42 Fernside Road, Bournemouth BH9 2LB in accordance with the terms of the application, Ref 7-2018-14042-E, dated 13 July 2018, and the plans submitted with it, subject to the conditions in the attached schedule.

### Application for costs

2. An application for costs was made by Mr P Kane against Bournemouth Borough Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The decision to refuse planning permission was made by Bournemouth Borough Council, which ceased to exist on 1 April 2019, following a merger with Christchurch Borough Council and Borough of Poole 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 (2012) (the Core Strategy) has not therefore changed as a result of the merger.
4. The original application submitted to the Council proposed the erection of a dwelling for use as a House in Multiple Occupation (Sui Generis) for up to 7-beds. However, during the application process, the amended description set out above was agreed between the parties. The application was considered by the Council on this basis and the appellant has used the amended description in Part E of the appeal form. Accordingly, I have considered the appeal on the basis of the amended description.

## **Main Issues**

5. During the course of the appeal, the appellant submitted a Unilateral Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (the S106 obligation). The S106 obligation requires the payment of a financial contribution to the Council towards measures to mitigate any adverse impacts of the development on the Dorset Heathlands Special Protection Area (the SPA). The Council has confirmed that the S106 obligation satisfies the requirement in terms of mitigation of the impact of the development on the SPA. Nevertheless, it is incumbent upon me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA. It is therefore still necessary to consider this matter as a main issue.
6. Therefore, the main issues in this appeal are:
  - a) The effect of the development on the character and appearance of the area;
  - b) The effect of vehicle movements associated with the development on the living conditions of the occupants of the existing and proposed dwellings;
  - c) Whether the development would lead to an increase in on-street parking that would be harmful to highway safety;
  - d) Whether the development would lead to an over-concentration of House in Multiple Occupation (HMO) uses in the area that would be harmful to its character and/or the living conditions of the occupants of surrounding residential properties; and,
  - e) The effect of the development on the integrity of the SPA.

## **Reasons**

### *Character and appearance*

7. The appeal site lies in a residential area that is characterised by detached two-storey houses, set back from both sides of the road, on fairly regular building lines. The materials are generally a mixture of brick and render, with tiled or slate roofs. There are certain design features, such as decorated gables and tile-hung bay windows, that are common to many of the buildings, and which give the area a coherent character. However, there is significant variation between the individual designs of the dwellings. Consequently, the overall character of the area is derived from the comparable scale, form, materials and layout of the houses, rather than a uniformity of detailed design.
8. 42 Fernside Road is larger than most other houses in the row, and it has an unusually wide plot. As a result, there is an uncharacteristically large gap between the building and the house at No 44. Planning permission has been granted<sup>1</sup> for the erection of a dwellinghouse and formation of a parking space on the site. The appeal proposal is for a house of a different design, to be used as an HMO.

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<sup>1</sup> Local Planning Authority reference: 7-2016-14042-D

9. The general scale, form, materials and siting of the proposed dwelling would be compatible with the surrounding development, and similar in most respects to the previously approved house. The slightly narrower width of the dwelling now proposed would not significantly alter its overall proportions. Its roof would be lower than that of 42 and 44, but the form and pitch would be comparable, and it would be no lower than the previously approved dwelling. The gaps between the houses on either side would be in keeping with the prevalent spacing of buildings in the rest of the road. The use of red brick on the lower portion of the building, with render on the upper parts, and a tiled roof, would be coherent with its surroundings.
10. Unlike most other houses in the road, the proposed dwelling would not have a bay window. Partly as a result of this, the window pattern would have a less horizontal emphasis than most of the surrounding houses. However, there is not a uniformity of detailed design amongst houses in the area that would be harmed by this departure. Whilst bays are characteristic, they are not readily visible as a repeated feature in most street views, due to pavement trees and hedges in front gardens. The differences in the individual designs of the houses also reduces the unifying impact of the repeated bays. Consequently, the lack of a bay window would not result in the proposed dwelling appearing incongruous in the streetscene.
11. The proposed dwelling would be set a little further back from the road than Nos 42 and 44. However, this would not be very noticeable in the streetscene. Whilst there is some uniformity to the alignment of the front facades of the buildings in the road, this is masked by boundary treatments, garden planting and single storey lean-to extensions. The prevalent bay windows also break up the regularity of the frontage. There would be a greater set-back at first-floor level, but overall the proposed siting would be similar to the dwelling that has already been approved. Consequently, the slight set-back of the front elevation would not be harmful to the character of the area.
12. The development would not therefore result in harm to the character or appearance of the area. Consequently, the proposals would accord with Policy CS41 of the Core Strategy which seeks, amongst other things, to ensure that the scale, density, layout, siting, character and appearance of development respects the site and its surroundings.

#### *Living conditions*

13. The proposed layout would provide a total of four car-parking spaces to serve the proposed dwelling and the existing house at No 42, which is in use as an HMO. Two of the spaces would be located, in a tandem arrangement, between the proposed and existing buildings. These spaces would be used by the occupants of the existing HMO. As they could not be used independently, some shuffling of cars would be necessary, from time to time, to allow a car parked in the furthest space to leave the site. The layout and operation of these two spaces is very similar to the approved plans for a dwelling on the site. The impact on the living conditions of the occupants of No 42 would, therefore, be no different to the permitted scheme.
14. The other two parking spaces would be in front of the proposed building, and they would be capable of independent use. There would be two bedrooms on the ground floor at the front of the proposed dwelling, both of which would have a window looking out onto these two parking spaces. As these spaces

would serve the proposed dwelling, they could be used by the occupants of the ground floor bedrooms, in which case they would not result in any harm to living conditions. However, if the spaces were used by other residents, it is possible that there may be some disturbance to the occupants of the bedrooms, due to the noise of vehicle movements and the slamming of car doors. Nevertheless, these disturbances would be occasional and of short duration.

15. The occupants of the ground floor rooms would have access to the communal areas of the house and garden for day to day activities and relaxation. It is therefore likely that they would primarily occupy the bedrooms at times when the windows are shut, and curtains closed. There is the potential for an additional vehicle to park in front of the two tandem spaces, preventing the independent use of one of the spaces at the front of the house. However, even allowing for this, the resultant vehicle movements would be unlikely to be so frequent or noisy as to result in significant harm to the occupants of the proposed dwelling.
16. The vehicle movements associated with the development would not therefore be likely to have a harmful impact on the living conditions of the occupants of the existing or proposed dwellings. The proposals would therefore accord with Policy CS41 of the Core Strategy, insofar as it seeks to provide a high standard of amenity for future occupants and neighbouring residents.

#### *Parking and highway safety*

17. The appeal site is served by a straight road that has footways on either side. The carriageway is wide enough to allow two vehicles to pass safely with cars parked on one side of the road. There was plenty of available on-street parking at the time of my visit, as restrictions on parking during daytime working hours constrains commuter parking. I saw that traffic was light and that vehicle speeds were low. The evidence before me indicates that highway conditions in this location are inherently safe.
18. The Council's Parking Supplementary Planning Document (2014) (the Parking SPD) indicates that the proposed use, and the existing HMO at No 42, would each require 1.5 off-street car-parking spaces. The proposed layout provides a total of four car-parking spaces, which accords with the quantum advised by the Parking SPD. Although the two tandem spaces would be adjacent to the new building, there would be circulation space on the other side, which would allow for car doors to be opened. The dimensions of the parking spaces therefore generally accord with the Parking SPD guidance.
19. Parking spaces 1 and 2 would be capable of independent use, although the use of space 2 would require some careful manoeuvring. While the tandem parking arrangement for the other two spaces would not always be convenient, this is not an unusual arrangement in a suburban environment. Access to the bin storage area may, occasionally, conflict with cars seeking to access spaces 3 and 4, but this would be more of an occasional inconvenience than a regular impediment to their use. So, although the parking arrangements would not always be entirely convenient, they would not be so constrained that occupants would regularly choose to park on the road, particularly given the parking restrictions that are in place.

20. It is, nevertheless, possible that there will be occasional on-street parking as a result of the proposed development. As there is available capacity in the road for on-street parking, this would not result in significant pressure for available spaces. There is no evidence before me to suggest that the modest increase in on-street parking that may result from the development would lead to dangerous highway conditions. In view of the low volume and speed of traffic in the area, and the straight alignment of the road, some increase in on-street parking could be accommodated without any harm to highway safety.
21. In conclusion, the proposals would provide off-street car-parking in general accordance with the Parking SPD guidance. Any overspill on-street parking could be accommodated without harm to highway safety. The proposals would therefore accord with Policy CS16 of the Core Strategy, which aims to ensure that parking provision for new development is in accordance with the Council's adopted parking standards.

#### *Concentration of HMO uses*

22. The legislation usually allows the change of use of dwellinghouses (Use Class C3) to and from small HMOs (Use Class C4) without planning permission. However, in response to concerns that over-concentrations of HMO uses in some areas is having a detrimental effect on their character, and on the living conditions of local residents, the Council has introduced an Article 4 direction across its administrative area. The direction prevents such changes of use without planning permission. The Council is therefore able to exercise control over concentrations of HMO uses. Policy CS24 of the Core Strategy sets out how this control will be applied. In order to encourage mixed and balanced communities, change of use from a dwellinghouse to an HMO will only be permitted where no more than 10% of dwellings in the area are used as HMOs.
23. The appeal scheme is for the erection of a dwelling for use as an HMO, rather than the change of use of an existing dwelling. Policy CS24 is not, therefore, strictly applicable. Nevertheless, in considering the potential impact of the development on the character of the area and the living conditions of residents, it provides a useful indication of the point at which the Council considers that harmful impacts may occur.
24. The Council's assessment of the current level of HMO use, based on the methodology set out in Policy CS24, identifies that, out of a total of 39 existing properties within 100m of the appeal site, two have a current HMO use. Thus, the current concentration is 5.1%. Implementation of the appeal scheme would result in a concentration of about 7.5%, which would still be below the level at which Policy CS24 would prohibit further changes of use.
25. One of the two other HMO uses in the locality is at the adjacent property, 42 Fernside Road. I saw that, externally, the use of this building as an HMO had no obvious impact on the residential character of the area. The Council has not provided details of the other HMO, and I was unable to identify it at the time of my visit. The area, including the two HMOs, retains a suburban residential character. The proposed building would reinforce this character, by filling an uncharacteristic gap in the frontage, with a detached house of similar proportions and external appearance to surrounding dwellings. Its use as an HMO would not be readily evident from external viewpoints. There would therefore be no visible harm to the character of the area.

26. Although the Council does not dispute that the 10% threshold has not been reached, it raises concern that the development would result in two HMOs alongside each other, resulting in an over-intensive cluster. The linked use of the two properties could, it is argued, lead to noise and disturbance to neighbours from social gatherings on the terrace or rear gardens, or from an increase in comings and goings from the site. However, No 42 already has an approved use as an HMO, and a dwelling has already been permitted on the appeal site. Therefore, any increase in comings and goings would be limited to the use of the proposed development as an HMO, rather than as a dwelling.
27. The dwelling would accommodate six potentially unrelated adults. It is therefore likely that it would attract more visitors and deliveries than a family household containing the same number of people. The degree of difference would depend on the particular composition of the group of people. However, the noise generated by the additional comings and goings from one additional HMO would not be likely to have a significant effect on the character of the area as a whole, or the general living conditions of the occupants of surrounding properties.
28. Although the two HMOs would be in the same ownership, they would be separate buildings accommodating separate households. Consequently, the suggestion that the occupants may combine for social gatherings is purely speculative. Any social gatherings would, in any event, be sporadic in frequency, and most likely to take place inside the building. The external terrace at the rear of the proposed building is not large enough to accommodate many people, so is unlikely to be a source of significant noise.
29. The actual impact of the use on the immediate neighbours will depend on the particular group of occupants in residence at any one time, so is difficult to predict. However, the use of the building as an HMO would not, inevitably, result in noise or disturbance that would be any greater than that associated with a dwelling in family use. The potential for localised harmful impacts would be reduced through the submitted Management Plan, which would ensure, amongst other things, that the garden is kept tidy, bins are returned to their storage area, the property is regularly inspected and the Agent's contact details and an out of hours Noise Abatement number are provided to neighbours. I have therefore imposed a condition requiring implementation of the Management Plan.
30. The cumulative impact of a concentration of HMO uses could result in harm to the character of the area and the living conditions of the occupants of surrounding properties. However, the evidence before me indicates that such a level would not be reached as a result of the proposed development. I therefore conclude that the proposed HMO would not, by itself, have such harmful impacts. The development would therefore comply with Policy CS41 of the Core Strategy, which seeks, amongst other things, to ensure that developments enhance character, local distinctiveness, cultural identity and the amenities of future occupants and neighbouring residents.

#### *Integrity of the SPA*

31. The appeal site lies within 5km of the Dorset Heathlands SPA, Ramsar Site and Special Area of Conservation. These are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). The Habitats Regulations impose a duty

on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA, 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 stage<sup>2</sup>. This responsibility now falls to me as the competent authority.

32. Evidence shows that these protected sites are under significant pressure from an increase in the level of recreation, and disturbance of bird and reptile species, as a result of urban development. The proposal would result in an additional dwelling within 5km of the SPA. Whilst the impact of a single dwelling would be small, in cumulation with the 14,600 new homes identified in the Core Strategy up to 2026, it has the potential to impact on the integrity of the SPA, through increased recreational disturbance.
33. The evidence before me shows that public access to lowland heathland, from nearby development, can lead to an increase in wildfires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion. Disturbance by humans and their pets, amongst other factors, has an adverse effect on the heathland ecology. As most visitors to the heathland live within 5km, Natural England has advised that development within this distance would, cumulatively, have such a significant effect that mitigation is required. I therefore conclude that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.
34. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the SPA. As part of my assessment, I must therefore consider whether the impact of the development could be mitigated. The Council, and other authorities in Dorset, have been operating a strategy for the protection of the heathland, which is set out in the Dorset Heathlands Planning Framework 2015 – 20 Supplementary Planning Document (the Heathlands SPD), which was adopted in 2016. The strategy involves the provision of mitigation for the impacts of development, through a combination of infrastructure projects, such as Suitable Alternative Natural Greenspace, and Strategic Access Management and Monitoring (SAMM). The infrastructure projects are funded either by local authorities, using Community Infrastructure Levy receipts, or directly by developers. SAMM is funded through contributions from all developments that involve an increase in dwellings. The mitigation is delivered strategically across the Council areas, through a joint approach administered by the Urban Heaths Partnership.
35. The S106 obligation requires that, before commencing the development, the appellant must pay £355 to the Council towards SAMM measures to mitigate any adverse impacts of the development on the SPA. This sum has been calculated in accordance with the formula in the Heathlands SPD. Natural England was consulted, and the evidence before me indicates that the measures set out in the Heathland SPD are being delivered in a timely and locationally appropriate manner, such that adverse effects are being avoided or reduced to such a level that the integrity of the SPA is not being eroded.

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<sup>2</sup> People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

Therefore, although the S106 obligation does not bind the Council, I am satisfied, based on the specific evidence before me, that it is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Heathland SPD. I therefore conclude through my AA that, with the provided mitigation, the proposal would not harm the integrity of the SPA. The proposal would therefore accord with Policy CS33 of the Core Strategy, which seeks to avoid adverse effects from development on the Dorset Heaths international designations.

### **Conditions**

36. In accordance with the legislation, I have imposed a condition limiting the period within which the development must commence. I have also included a condition specifying the relevant plans, as this provides certainty. The Council has submitted a schedule of suggested conditions to cover other matters. I have considered these against the advice in the Planning Practice Guidance and have agreed that they are necessary. In the interests of clarity and precision, I have altered some of them to better reflect the guidance.
37. In order to ensure that the development maintains the character and appearance of the area, conditions are necessary to ensure that appropriate materials are used, and that landscaping is provided. A condition requiring approval of details of the proposed means of surface water drainage for the site is necessary to ensure that there is no impact on surrounding properties from increased run-off. As there do not appear to be any particular circumstances that would affect the feasibility of providing a satisfactory drainage system, I have amended the Council's wording to avoid it being, effectively, a pre-commencement condition.
38. To ensure that any increase in on-street parking is minimised, a condition requiring the approved off-street car-parking spaces to be provided and retained is needed. To protect the living conditions of surrounding residents during the construction phase, I have imposed a condition limiting the hours of demolition and building works. In the interests of the residential character of the area, and to protect the living conditions of nearby residents in the longer term, I agree that a condition is necessary to ensure that the HMO operates in accordance with the submitted Management Plan.

### **Conclusion**

39. For the reasons given above, I conclude that the appeal should be allowed.

*Nick Davies*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 8459/200 Rev.I; 8459/201 Rev.G; 8459/202 Rev.H.
- 3) Prior to building works proceeding above damp-proof course level, details or samples of the bricks and tiles to be used on the external surfaces of the building shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to building works proceeding above damp-proof course level, details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. The hard landscape details shall include all new hard surfacing and external lighting and shall provide for a low front boundary wall between the vehicular access points. The soft landscape details shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate, and an implementation timetable. The landscaping works shall be carried out in accordance with the approved details and in accordance with the agreed implementation timetable.
- 5) Before the development is first occupied, a schedule of landscape maintenance for a period of 5 years shall be submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Maintenance shall be carried out in accordance with the approved schedule.
- 6) Prior to building works proceeding above damp-proof course level, details of a scheme for the provision of surface water management for the whole site shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the occupation of the dwelling, and permanently maintained thereafter.
- 7) Prior to occupation of the development hereby permitted, the proposed access and parking areas, including the area incorporated within the visibility splay, shall be constructed of a bound material and laid out in accordance with drawing no. 8459/200 Rev.I and thereafter permanently retained, with parking spaces numbered 1 and 2 made available to the residents/visitors of the proposed dwelling, and parking spaces numbered 3 and 4 made available for residents/visitors of No 42 Fernside Road.
- 8) Demolition or construction works shall take place only between 08:00 and 18:00 Monday - Friday, 08:00 and 13:00 Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 9) The Management Plan dated September 2018 shall be implemented and adhered to at all times and for as long as the building is in use as a shared household.