



Appeal Decision

Site visit made on 15 October 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2019

Appeal Ref: APP/V1260/W/19/3232382

16 Hoburne Gardens, Christchurch BH23 4PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Blue Homes Ltd against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref 8/19/0023/FUL, dated 18 December 2018, was refused by notice dated 5 June 2019.
 - The development proposed is described as 'remove existing conservatory from 16 Hoburne Gardens, sever land and erect a new detached 4-bedroom house with associated parking'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. On 1 April 2019, Christchurch Borough Council ceased to exist and became part of a new Unitary Authority known as Bournemouth, Christchurch and Poole Council. The development plans for the merged Local Planning Authorities will remain in place for the area within the new Unitary Authority they relate to until such time as they are revoked or replaced. I shall therefore determine the appeal having regard to the policies of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy¹ (CS) and saved policies of the Christchurch Borough Council Local Plan (2001).

Main Issues

3. The main issues are:
 - The effect of the proposal upon the character and appearance of the area, with particular regard to the impact on trees that are the subject of a Tree Preservation Order; and
 - The effect of the proposal on the Dorset Heathlands Special Protection Area, Dorset Heaths Special Area of Conservation and Ramsar.

Reasons

Character and appearance

4. The appeal site comprises a two-storey detached property located within an established residential area, which includes dwellings of a similar size and appearance. The mature trees which are situated at the end of the cul-de-sac

¹ Adopted April 2014.

- are protected by a Tree Preservation Order² (TPO). Many of these trees are substantial in size and widely visible within the street scene. Consequently, they provide the area with a pleasant sylvan setting and make a significant contribution to the character and appearance of the locality.
5. As detailed within the Tree Survey, Arboricultural Impact Assessment, Method Statement and Tree Protection Plan³ prepared by Hayden's Arboricultural Consultants, 8 Category C trees would need to be felled to facilitate the proposed development, in addition to the trees and landscape features required to be removed for health and safety reasons.
 6. The appeal scheme would be constructed with minor incursions within the root protection areas of several beech trees (T001, T029 and T030) and, having regard to the evidence before me, I am satisfied that the proposal could be built without causing harm to the protected trees. Nevertheless, the new dwelling would be located within close proximity to many protected trees and despite its orientation, a substantial part of the garden area would be shaded by the trees located within the appeal site and the adjacent plot. Whilst the appellant argues that the amenity area would enjoy direct sunlight during the morning, this is not substantiated by a daylight/sunlight analysis carried out by a suitably qualified professional.
 7. Trees can be perceived as a nuisance, notably by reason of the obstruction of light, and falling leaves and debris. I note that the Council would retain a degree of control over any proposed tree works by reason of the protection afforded by the TPO, but applications based on health and safety grounds, for example, would be difficult to resist. The proposal would subject some of the protected trees to additional pressure for pruning works or even felling, in order to bring more sunlight into the garden area of the new plot. The issue would only become more acute as many of these trees would continue to grow before reaching their optimum height which, in all likelihood, would compromise the longevity of specimens such as beech trees in particular, which do not respond well to recurrent tree works.
 8. According to the Schedule of Trees submitted by the appellant, many of these trees would be expected to live for many more years, and their premature loss would therefore be particularly regrettable. In addition to the specimens which would need to be felled for other reasons, the loss of protected trees would significantly erode the visual contribution of this wooded area to the sylvan and verdant setting of the locality.
 9. I understand that the appellant sought pre-application advice, which included a meeting with the Council's Tree Officer. Pre-application advice is however provided informally and is not binding on the Council when it comes to making its formal decision. My attention has also been drawn to an appeal decision⁴, which was allowed despite the proximity of the proposed dwelling to protected trees. Having regard to the limited information before me, I cannot however be certain that the circumstances of this particular scheme represent a direct parallel to the proposal before me which, in any event, I am required to determine on its individual merits.

² Council reference: TPO 1967 No.229.

³ Project No.6922, Report dated 13 December 2018.

⁴ APP/U1240/A/12/2176770.

10. I conclude that the proposed development would prejudice the long term longevity and wellbeing of the protected trees, to the detriment of the character and appearance of the area. It would therefore conflict with Policies HE2 and HE3 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy (CS) which, amongst other things, require development proposals to secure a compatible relationship with mature trees and protect the landscape character of the area.

Dorset Heathlands

11. The appeal site lies within proximity to Christchurch Harbour Site of Special Scientific Interest (SSSI), which forms part of the Dorset Heathlands Special Protection Area (SPA), Dorset Heaths Special Area of Conservation (SAC) and Ramsar. Natural England has confirmed that the proposal would have, in combination with other plans and projects, a likely significant effect on these European and International wildlife sites, by reason of the increased recreational pressure which additional residential development places on these sensitive areas.
12. The Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document (SPD) which has been agreed by all local authorities in South East Dorset, sets out the detailed approach to the avoidance and mitigation of the adverse effects of development on the Dorset Heathlands. The SPD requires new residential developments located between 400m and 5km of the Dorset Heathlands to make a financial contribution towards mitigation measures, which are normally secured through the completion of a planning obligation.
13. The appellant has indicated that a Unilateral Undertaking would be submitted to secure this contribution, but no such planning obligation is before me. I note that the appellant has provided evidence of a direct payment to the Council towards Heathlands Mitigation Strategic Access Management and Monitoring. However, this payment would not be adequately secured, and would not bind the Council to spend the contribution towards the delivery of the required mitigation measures.
14. Accordingly, and in the absence of adequately secured mitigation measures, I am unable to complete the Appropriate Assessment required by the Habitats Regulation and cannot therefore be certain that the proposal would not prejudice the integrity of the Dorset Heathlands SPAs. Consequently, there would be conflict with CS Policy ME2 which, amongst other things, requires mitigation measures to be provided as part of residential development proposals. The appeal scheme would additionally fail to accord with the Dorset Heathlands SPD and the Habitats Regulations.

Other Matters

15. Various concerns have been raised by interested parties, including reservations regarding the effect of the proposal on the living conditions of neighbouring residents, which I have noted. However, as this appeal is being dismissed on other grounds, it is not necessary for me to consider these matters further.
16. Both parties agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. In such circumstances, paragraph 11d) of the Framework, as directed by Footnote 7, indicates that the policies

which are most important for determining the application should be considered out-of-date and that permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

17. The erection of a dwelling would support the local economy to some degree, through the creation of work opportunities and demand for materials during the construction phase. Beyond that, future occupants may use local services and facilities. It can be argued that social benefits would to some extent be fulfilled as the proposal would support housing supply and choice. However, although smaller developments may have a cumulative value, the contribution made by a four-bedroom dwelling would remain relatively limited. Against that, I have notably found harm relating to the effect of the proposal on the character and appearance of the area. This subsequently means that the environmental objective would not be fulfilled.
18. Consequently, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the modest benefits resulting from the proposal. Taken as a whole, the proposal does not constitute sustainable development which the Framework carries a presumption in favour of. There are no other material considerations which indicate that the proposal should be determined other than in accordance with the development plan, which I have already identified conflict with.

Conclusion

19. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR