



Appeal Decision

Site visit made on 9 October 2019

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2019

Appeal Ref: APP/G1250/W/19/3230236

2 The Broadway, Northbourne, Bournemouth BH10 7EY

- 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 Michael He against the decision of Bournemouth Borough Council.
 - The application Ref 7-2018-27219, dated 25 September 2018, was refused by notice dated 10 December 2018.
 - The development proposed is new build bungalow on severed land at 2 The Broadway.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on: the character and appearance of the area; the living conditions of future occupants; and, the Dorset Heathlands Special Protection Area, Site of Special Scientific Interest and Ramsar Site (Dorset Heathlands SPA/SSSI and Ramsar Site), and the Dorset Heaths candidate Special Area of Conservation (Dorset Heaths SAC).

Reasons

Character and appearance

3. The appeal site comprises 2 The Broadway (No 2) a detached bungalow and its associated generous plot located on the corner of The Broadway and Kinson Park Avenue. Due to its location and proximity to the junction with Markham Avenue, the site is prominent within the streetscene.
4. Despite No 2 adhering to the building line along The Broadway, it is also set-back from Kinson Park Road, behind a generous and partly landscaped garden, this is broadly consistent with the arrangement of other dwellings along this road, giving this part of the area a distinguishable pattern of development. Moreover, these landscaped frontages which includes the mature hedges at the site, contribute to the open, spacious and verdant character and appearance of the site and area.
5. To facilitate the proposal the existing plot would be sub-divided into two plots. The resultant plot for the new dwelling would be triangular in floor plan and smaller compared to the generally larger and rectangular plots found in the area.

6. The new dwelling would be of traditional form and in materials which are informed by the local vernacular. It would also be of a similar height to No 2 and consistent with the building line along The Broadway. However, despite its smaller footprint compared to No 2, due to its overall height and in the context of its constrained plot, the new dwelling would appear sizeable. In introducing development of this scale into a constrained area that is currently free of any development, the proposal would erode the open and spacious character and quality of the area. The replacement of a large section of the existing hedge with fencing along Kinson Park Road would further erode part of the verdant quality of the site.
7. Notwithstanding its landscaped garden and separation from No 2, the new dwelling would be appreciably closer to Kinson Park Road than the neighbouring bungalows. This combination of siting and scale would create an intensive, cramped and incongruous form of development that would appear contrived and at odds with the established pattern of development here. Furthermore, the prominent location of the site would amplify the incongruous effect noted above, particularly in views along Kinson Park Road and from Markham Avenue.
8. For the above reasons, the proposed development would unacceptably harm the character and appearance of the area. This would be contrary to the design aims of policies CS22 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012) (CS), saved policy 6.8 of the Bournemouth District Wide Local Plan (February 2002) (LP), and the Council's 'Residential Development Design Guide' (Design Guide). Amongst other things, these seek to secure high quality developments which respect existing layouts and street patterns, and preserve and enhance the character and appearance of the area.

Living conditions

9. In applying the Technical housing standards – nationally described space standards (NDSS) the main parties agree that the proposed dwelling would not meet the NDSS requirements for gross internal areas. However, I have not been referred to any local planning policy that makes a direct link to these technical standards. They are therefore useful guidance, and I have applied them accordingly. Based on the figures available to me the gross internal area of the new dwelling of approximate 65.26 sqm would fall significantly below the NDSS minimum gross internal area requirement of 86 sqm for this type of dwelling.
10. Furthermore, and irrespective of its overall area and enclosure for privacy, the triangular floor plan of the proposed amenity space would limit its flexibility of use. Also, although the main living spaces for the new dwelling would be dual aspect, some of the windows serving these would be in proximity of boundary treatments, resulting in a restricted outlook.
11. Drawing on the above reasons, the appeal scheme results in a family dwelling with a limited internal area on a restricted plot, which would compromise the quality of its amenity space and outlook. The proposal therefore fails to secure satisfactory living conditions for future occupants, in conflict with CS policy 41 and the Council's Design Guide. Along with other matters, these require new developments through siting and layout to provide a high standard of amenity to meet the day to day requirements of future occupants.

Dorset Heathlands SPA/SSSI and Ramsar site and Dorset Heaths SAC

12. The site is within 5km of the Dorset Heathlands SPA/SSSI and Ramsar site and Dorset Heaths SAC. These sites are protected by the Conservation of Habitats and Species Regulations 2010 (as amended). In order for development to be acceptable, these regulations require it to demonstrate that it will have no likely significant effect on such sites, either alone or in combination with other proposals. If it cannot, measures must be proposed to remove the impact, or the proposal should be refused. This is broadly consistent with the requirement of policy CS33 of the CS.
13. From the information available to me, it would appear that the Council concluded that the development without mitigation would result in an adverse effect on the integrity of the Dorset Heathlands SPA/SSSI and Ramsar site, in respect of its bird and reptile habitats.
14. The Court of Justice of the European Union (CJEU)¹ held that the decision maker must consider mitigation measures intended to avoid or reduce the harmful effects on a protected site within the framework of an Appropriate Assessment, rather than at the screening stage. This responsibility now falls to me as the competent authority. The application does not include any mitigation measures. Instead the appellant advises that such measures could be secured by condition.
15. However, the Planning Practice Guidance² states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Further, that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes), which is not the case here.
16. Consequently, in the absence of any mitigation measures, it has not been shown that the proposed development would not have any significant effect on the Dorset Heathlands SPA/SSSI. Accordingly, I find conflict with CS policy CS33.

Conclusion

17. For the reasons given above, I conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

² Paragraph: 010 Reference ID: 21a-010-20190723