
Appeal Decision

Site visit made on 6 November 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 03 December 2019

Appeal Ref: APP/V1260/W/19/3236211

20 Grove Road East, Christchurch, Dorset BH23 2DQ

- 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 Martin White against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 8/18/3551/FUL, dated 13 March 2019, was refused by notice dated 18 June 2019.
 - The development proposed is described as sever land and erect 1 no. 2 bedroom dwelling to the rear of the garden with associated access and parking.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. For purposes of clarity, the description of development above is that used by the Council, as the description on the application form does not make sense when read in isolation. I note that the appellant has also used the Council's description on the appeal form.
3. Shortly after the application was submitted, the Council merged with other local planning authorities to form Bournemouth, Christchurch and Poole Council. Until such time as they are replaced, the development plan continues to be that provides by the Christchurch and East Dorset Local Plan Part 1 – Core Strategy 2014 (the CS), and saved policies from the Borough of Christchurch Local Plan 2001 (the LP).

Main Issues

4. The main issues are the effect of the development on:
 - the integrity of the Dorset Heathlands Special Protection Area, Dorset Heaths Special Area of Conservation, and Dorset Heathlands Ramsar sites (the European sites);
 - the character and appearance of the area; and
 - the living conditions of future occupants of the dwelling with regard to privacy, and the occupants of neighbouring and other dwellings in Portfield Close and Grove Road East, with regard to privacy, outlook, and parking.

Reasons

European sites

5. Considered alone and in combination with other plans or projects, likely significant effects on the integrity of the European Sites as a result of increased recreational pressure arising from the proposed development, cannot be ruled out.
6. In accordance with the Conservation of Habitats and Species Regulations 2017 (the 2017 Habitats Regulations), an Appropriate Assessment (AA) of the scheme's potential effects on the European Sites has been undertaken by the Council. The AA refers to the Habitats Regulations Assessments made with regard to the development plan, and the Dorset Heathlands Planning Framework 2015 - 2020 Supplementary Planning Document Adopted 2017 (the HPF). The HPF sets out the ways in which mitigation for recreational impacts on the Dorset Heathlands can be provided. This is principally through heathland infrastructure projects, funded via the Community Infrastructure Levy, and through provision of site access management and monitoring measures, funded via developer contributions.
7. Natural England was consulted in relation to the application and confirmed that contributions secured in accordance with the HPF would provide mitigation for the identified likely significant effects. In view of the above I am satisfied that a need for the identified mitigatory contributions in respect of the European sites has been demonstrated by the AA.
8. I note that the recommendation to approve the application within the officer report to the Council's Committee was made subject to mitigatory contributions being secured. A draft reason for refusal was also provided in the event that they were not. The draft reason was not attached to the decision notice, presumably because the application was ultimately refused by the Committee for other reasons. Whether or not required contributions would be secured however remains a matter for determination in the context of this appeal.
9. In this regard 2 unilateral undertakings (UUs) have been set before me. One of these is dated 29 November 2018, and thus pre-dates the planning application. This UU is not referenced in the officer report, but has nonetheless been identified in the Council's appeal statement, within which it is described as 'suitable'. The UU however makes reference planning application '8182928 FUL', which is not the number of the planning application subject of this appeal. The UU otherwise references Christchurch Borough Council, which no longer exists, and it is incomplete given that the plans are missing. As the UU would clearly not be effective in securing contributions in relation to the appeal scheme, I cannot accord it any weight.
10. The second UU is differently drafted, and bears a Council receipt stamp of 6 June 2019. This pre-dates the Council's decision. However, this UU is not referenced in the Council's submissions, and is again incomplete. Significant omissions include the lack of a date and names, planning application and title reference numbers, absence of a plan, and the amount of the contribution has been left blank. Again therefore, this UU would not be effective in securing contributions in relation to the appeal scheme, and thus I cannot accord it any weight.

11. Given that no means of securing mitigatory contributions has been provided, and given that no other appropriate mechanism exists, I find that the development would fail to mitigate its likely significant effect on the integrity of European Sites. Consequently, allowing the appeal would contravene the 2017 Habitats Regulations, and would conflict with Policy ME2 of the CS, and supporting guidance in the HPF, which seek to secure mitigation in relation to the Dorset Heathlands.

Character and appearance

12. Grove Road East is characterised by substantial detached and semi-detached dwellings with long back gardens. The development would take place within the rear half of the garden of 20 Grove Road East, which, together with neighbouring gardens, directly backs onto the end of Portfield Close.
13. Portfield Close is a short straight cul-de-sac, the sides of which are, for the most part, lined by closely spaced blocks of terraced houses. As such, the end of Portfield Close contrasts with the sides, given that whilst the sides present a dense 2-storey developed frontage, the end is predominantly open. This contrast, and the views which thus exist towards the backs of houses facing onto Grove Road East, provides the layout of Portfield Close with an unfinished appearance. This is accentuated by the varied collection of outbuildings visible in the gardens backing onto the end of Portfield Close, which appear at odds with the character of the main street frontages along the sides of the street.
14. Considered in the above context, the development would provide a point of visual termination, helping to draw both sides of Portfield Close together within the view. Though openness would be reduced, the visual benefits would outweigh any harm, and space would otherwise continue to exist either side of the dwelling. As such the dwelling would not be perceived as representing 'over development'.
15. The proposed dwelling would be more modest in scale, and different in design to other dwellings located along Portfield Close. In this regard whilst I acknowledge that the design of most of the terraced blocks along Portfield Close would have originally matched, some variation now exists between individual dwellings as a result of alterations. Furthermore, 2 other detached dwellings of individual design already form established components of the streetscene. Therefore, whilst the proposed dwelling would be viewed as individually distinct, given the scope for this which already exists within the streetscene, it would not appear incongruous.
16. The Council has raised concern with regard to the height of the proposed dwelling. However, this would not appear to be at odds with that of other dwellings within Portfield Close.
17. Interested parties indicate that past infilling of gardens to the rear of 4, 8 and 10 Grove Road East with bungalows represents a pattern with which the development would be at odds. However, the type and context of these developments clearly differs from that proposed. Indeed, though the developments in question occupy former garden space, they lack any distinct presence within a main street frontage. 41 Portfield Close, which itself stands to the rear of properties facing Grove Road East, otherwise provides an established, alternative point of reference. The fact that the appeal scheme

would differ from bungalow developments elsewhere in Grove Road East, therefore has little bearing on its merits.

18. Insofar as interested parties claim that the side elevations of the proposed dwelling would be blank, the east elevation would in fact contain 2 windows. It would thus be less blank the elevation of No 41 facing it. Though the west elevation would not contain any openings, it would be neighboured by a garage. In neither regard would the treatment of these elevations have any adverse visual effect.
19. For the reasons outlined above I conclude that the development would not cause unacceptable harm to the character and appearance of the area. It would therefore comply with Policy HE2 of the CS, which indicates that development will be permitted if it is compatible with or improves its surroundings, and saved Policy H12 of the LP, which amongst other things states that proposals for private residential development will be permitted provided that they are appropriate in character, scale and design to the immediate locality.

Living conditions

20. Given the height and reasonably close spacing of dwellings along Grove Road East, extensive mutual overlooking of adjoining garden spaces currently occurs. In this regard, the garden of the proposed dwelling would be no more overlooked than the same space would be if it continued as part of the garden of No 20.
21. Mutual overlooking between the proposed dwelling and No 20 would involve first floor bedroom windows. Given the normal pattern of bedroom use, the likely frequency with which overlooking actually occurred would be low. Though perceived overlooking might nonetheless arise, as noted above, this is already an established feature of garden spaces to the rear of the Grove Road East frontage. A reasonable separation distance would otherwise exist between the rear elevations of the proposed dwelling and No 20, whose length would be similar to back-back distances seen elsewhere within the immediate locality. For these reasons, there would not be an unacceptable loss of privacy for occupants of No 20, or an unacceptable lack of privacy for future occupants of the proposed development. The same would be similarly true with regard to mutual overlooking between the proposed dwelling and other dwellings in Grove Road East.
22. No 41 is located to the east of the site. As noted above, this occupies a similar position to that proposed in relation to dwellings in Grove Road East. The proposed dwelling would however extend further back from the Portfield Road frontage, and would be 2-storeys, whereas No 41 contains single storey elements. The 2 dwellings would however be separated by a combination of the garden of 18 Grove Road East, and parking space to its rear. In addition to this, various outbuildings within the gardens of both No 18 and No 41, would provide a further sense of separation. For these reasons, and also taking into account the relatively large size of the garden attached to No 41, and the absence of windows within the elevation of No 41 facing the appeal site, the outlook of occupants at No 41 would not be adversely affected by the development.
23. The decision notice refers to an adverse effect on 'visual amenity' to 18 and 22 Grove Road East. The specific meaning of this is unclear, as too is the reason

- why Nos 18 and 22 are singled out. In view of my findings above, including my consideration of character and appearance, the development would not have an unacceptable visual effect when viewed from Nos 18 and 22.
24. Interested parties have also made reference to loss of light with regard to 40 Portfield Close, and No 41. However, in view of their relative positions, and fact that No 40 lies to the south west of the appeal site, no obvious scope for shading or obstruction of daylight would arise. Small glazed panels set in the door within the elevation of No 41 facing the dwelling may receive less light as a result of the development. However, given their size, it appears unlikely that these provide any meaningful lighting to the interior at present. As such, no unacceptable harm would arise.
25. Unrestricted on-street parking exists along Grove Road East and along Portfield Close. Though space was available for parking on-street within both streets during my daytime visit, I accept that the situation might change at other times of the day, and on other days of the week. Indeed, as is typical in these situations, some competition for space may exist, meaning that residents might not always be able to park immediately outside their houses.
26. The development would result in loss of the existing off-street parking space and garage located off Portfield Close, which serve No 20. Occupants of No 20 can however also freely and reasonably park on-street within Grove Road East. In this regard, the frequency and extent to which the occupants of No 20 have relied on parking off-road in the past, as opposed to parking on-street, is unclear. As such, whilst parking capacity would clearly be reduced as a result of the development, it is not possible for me to conclude with any certainty that parking would actually be displaced. Consequently, and in the absence of any evidence to the contrary, it is also not possible for me to conclude that if the occupants of No 20 were to park solely within Grove Road East, this would cause any demonstrable change, or indeed harm to the living conditions of other occupants of Grove Road East as a result of increased competition for space.
27. As No 20 would not be directly accessible from Portfield Close, it is highly unlikely that the occupants of No 20 would compete with residents of the street to park there. Again therefore, no harm would be caused.
28. Whilst a requirement exists within the Bournemouth Poole and Dorset Residential Car Parking Study Supplementary Planning Document 2011 (the SPD) to provide 0.2 visitor spaces per dwelling, the Council has not sought provision of visitor parking in this instance. Indeed, in the absence of any clearly evidenced justification of need, rounding the impossibly small 0.2 space requirement up to 1 space would appear unreasonable. Whilst I note that 2 parking spaces have been provided in relation to some other developments in the area, the specific need presumably differed in relation to these sites. Consequently, I have little reason to believe that an absence of dedicated visitor parking would be likely to generate harmful competition for space within the locality.
29. For the reasons outlined above I conclude that the development would not have an unacceptable effect on the living conditions of future occupants of the development, or occupants of neighbouring and other dwellings in Portfield Close and Grove Road East. It would therefore comply with Policy HE2 of the CS, which amongst other things indicates that development will be permitted if

it is compatible with or improves its surroundings, including with regard to its relationship with nearby properties; saved Policy H12 of the LP which amongst other things states that proposals for private residential development will be permitted provided that the residential amenities of existing and future occupiers of dwellings are not adversely affected by loss of privacy; Policy KS12 of the CS, which requires the provision of adequate vehicle and cycle parking facilities; and supporting guidance in the SPD.

Other Matters

30. Interested parties have raised concern that any additional parking in Portfield Close could place the safety of children or other users of the public highway at risk. How such risk would manifest itself is however unclear, and is at odds with the view otherwise expressed by interested parties that no such additional space for parking exists. Whilst my attention has been drawn to parking on the broad area of pavement immediately outside the site, the legitimacy of such use is unclear. Furthermore, this appears to be an issue which exist already, as opposed to one which would be created by the development. I therefore have little reason to believe that the safety of children or other users of the public highway would be harmed as a result of the development.
31. The Council accepts that it does not have a 5-year supply of deliverable housing sites, and so policies most important for determining the application are out-of-date. Under paragraph 11 of the Framework, planning permission should therefore be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, or if specific policies within the Framework that protect areas or assets of particular importance provide clear reasons for refusal.
32. With reference to paragraph 175(a) of the Framework, the absence of a means to secure mitigation for likely significant effects on the European Sites provides a clear reason for refusal. Furthermore, given that the conclusion of the Council's AA that there 'will be no adverse effect' was subject to mitigation being secured, paragraph 177 of the Framework indicates that the presumption of sustainable development does not apply. As such the 'tilted balance', and advice to grant planning permission found in paragraph 11 also does not apply.
33. The development would nonetheless provide a single dwelling which would both make better use of the site, and make a limited contribution to the local housing stock. In each regard however, any benefits would be decisively outweighed by the adverse effect of the development on the European Sites.

Conclusion

34. For the reasons set out above, I conclude that whilst the development would be acceptable with regard to the character and appearance of the area, and the living conditions of both future occupants of the development, and other occupants of dwellings in Portfield Close and Grove Road East, it would nonetheless have an unacceptable effect on the integrity of the European Sites. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR