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## 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: 31 January 2020**

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**Appeal Ref: APP/G1250/W/19/3231541**  
**30 Malvern Road, Bournemouth BH9 3AQ**

- 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 L and Mr V Dodd against the decision of Bournemouth Borough Council.
  - The application Ref 7-2019-10063-B, dated 25 January 2019, was refused by notice dated 20 March 2019.
  - The development proposed is erection of a first floor extension to the existing house and the erection of a detached 2 storey dwelling with provision of off road car parking and garden (revised scheme).
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The decision to refuse the application was made by Bournemouth Borough Council. However, I am aware that on 1 April 2019, Bournemouth 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 Bournemouth Local Plan: Core Strategy (2012) (CS) and saved policies of the Bournemouth District Wide Local Plan (February 2002) (LP).
3. During the appeal the appellants have provided a signed and dated Unilateral Undertaking (UU) pursuant to S106 of the Town and Country Planning Act 1990. The UU provides an undertaking to pay a financial contribution towards the Dorset Heathlands Strategic Access Management and Monitoring (SAMM) plus an administrative fee before commencing the development, should permission be granted. In addition, I have been provided a receipt for a financial contribution towards SAMM along with an administrative fee to Bournemouth, Christchurch and Poole Council. I shall return to these later in my Decision.

### Applications for Costs

4. An application for costs was made by Mr L and Mr V Dodd against Bournemouth Borough Council. Subsequently, Bournemouth, Christchurch and Poole Council has also made a costs application against Mr L and Mr V Dodd. These applications are the subject of separate Decisions.

## Main Issues

5. The main issues are the effect of the proposal on: (i) the character and appearance of the area and the setting of any non-designated heritage asset; (ii) the living conditions for future occupants with regard to the quality of the proposed accommodation and amenity space, and the living conditions of the occupants of 28 Malvern Road (No 28) in respect of outlook and daylight; and, (iv) the integrity of the Dorset Heathlands Special Protection Area, Ramsar Site and Dorset Heaths Special Area of Conservation (Dorset Heathlands).

## Reasons

### *Character and appearance*

6. The appeal property is known as 30 Malvern Road (No 30) and is located within a generous plot at the junction of Malvern Road and Redbreast Road. It is a detached two-storey pitched roof dwelling, with a small covered porch to the front and single storey extensions to the side and rear. To the rear and side of the dwelling is its garden and beyond part of the side garden is a parking area, accessed from Redbreast Road.
7. To facilitate the proposal the side extension to No 30 would be demolished and the new one-bed dwelling is to be located on the side garden of the host property. The spacing between the existing and proposed dwellings would be consistent with the range found in the area. The principal elevation of the new dwelling is to have its principal elevation facing Redbreast Road and would achieve a similar setback from the highway relative to other dwellings along this road. Its southern flank elevation would be in-line with the front elevation of No 30. Consequently, the new dwelling would be consistent with the broad pattern of development in the area. Moreover, the scale and design of the proposed dwelling are also compatible with No 30.
8. The Council has identified No 30 as a non-designated heritage asset, because it considers it to be an example of a Moordown Cottage. The cottages represent an early stage of building work in the area (Moordown), marking the period when it changed from an ancient village into a modern suburb. In support of this the Council has provided the consultation response from its Design and Heritage Team and an assessment<sup>1</sup> of the property using Historic England's criteria for assessing non-designated heritage assets.
9. The National Planning Policy Framework ('the Framework')<sup>2</sup> requires that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. Further, although the Framework and Planning Practice Guidance advises that it is important that all non-designated heritage assets are clearly identified as such, the PPG also advises that the local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications<sup>3</sup>.

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<sup>1</sup> Appendix 1 of the Council's Final Comments

<sup>2</sup> Paragraph 190

<sup>3</sup> Paragraph: 040 Reference ID: 18a-040-20190723

10. In light of the above reasons and irrespective of No 30 not being identified on a Council's Local List, in accordance with the Framework and the PPG, it has a degree of significance meriting consideration in this decision.
11. However, No 30 has been subject to alterations and extensions, this includes less sympathetic works such as the installation of modern replacement windows and doors. From the available evidence the original plot to No 30 has also been severed and reduced in size. Therefore, architecturally and historically the identity, integrity and setting of this property have been compromised, and any remaining significance is largely derived from the architecture and overall appearance of the dwelling, which is being retained, albeit subject to some proposed alterations.
12. For the above reasons, I am satisfied that the proposal would not harm the character and appearance of the area or the setting and significance of the non-designated heritage asset. I therefore, find no conflict with the design aims of Policies CS21 and CS41 of the CS and saved Policy 6.8 of the LP, which amongst other matters seek to ensure that development is of high quality and, through scale, character and appearance, be designed to respect the site and its surroundings. Further, it would also sustain a heritage asset in accordance with Policy CS40 of the CS.

#### *Living conditions*

13. In applying the Technical housing standards – nationally described space standards (NDSS) the Council asserts that the proposed dwelling would be 8m<sup>2</sup> (or approx. 14%) below the relevant space standard. However, there is no local planning policy that makes a direct link to these technical standards. They are therefore guidance, and I have applied them accordingly.
14. Despite falling short of the NDSS standard, the proposed internal accommodation would make efficient use of space to create a logical layout with sizeable living areas, that are served by windows, which would afford it adequate levels of natural light and ventilation, resulting in airy and adequate space.
15. As I have not been referred to any specific adopted standards for private amenity space, I have considered this on its merits. According to the appellant's Design and Access Statement the proposed amenity space for the new dwelling would be to the south of it and measure about 20 sqm. This area would be directly accessible from the new dwelling and would be large enough to accommodate a shed for storage, while also retaining sufficient space for seating and other activities associated with a one-bed dwelling.
16. However, at present this area is bound by a low wall and landscaping, along with some trellis fencing. Consequently, in parts it is open to views from the highway, and although there is reference to this being enclosed by a 1.8m fence, this is not shown on the proposed layout plan. Therefore, on the available evidence, I am not satisfied that the proposed dwelling would be afforded private amenity space.
17. Turning to the living conditions of the occupiers of No 28. Irrespective of its design, the proposed first floor extension to No 30 would be in proximity of a side facing first floor window serving No 28. Despite this being the smaller of the three first floor windows along this particular elevation and its orientation,

the proposed extension, due to its siting and size would have a significant enclosing and overbearing effect, which would reduce daylight and harm the outlook from it.

18. The appellants assert that the proposed first floor extension would be more appropriate in design terms than an extension which could be erected under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. However, and notwithstanding the caselaw and appeal decisions cited by the appellants, without a detailed scheme for the fall-back, I am unable to determine this. In any event, in the absence of a Lawful Development Certificate for the fall-back, I attach limited weight to it. The lack of objection from the occupiers of No 28 is a neutral factor in my assessment.
19. For the above reasons, I conclude that the proposal would harm the living conditions of future occupants by failing to demonstrate private outdoor amenity space and would also harm the living conditions of the occupants of No 28 with regard to outlook and daylight. I, therefore, find conflict with Policies CS21 and CS41 of the CS and saved Policy 6.8 of the LP, which do not permit development proposals that would be detrimental to amenity.

#### *Dorset Heathlands*

20. The appeal site lies within 5km of protected heathland. As detailed within the Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document (the Dorset Heathlands SPD), Natural England consider that developments up to 5 kilometres from Dorset Heathlands, either on their own or in conjunction with other proposals, are likely to have a significant adverse effect on the integrity of these protected areas.
21. The Dorset Heathlands SPD therefore requires new development located within 5km of Dorset Heathlands to make a financial contribution towards heathland mitigation measures. SAMM contributions are secured through planning obligations.
22. The Court of Justice of the European Union (CJEU)<sup>4</sup> 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 AA, rather than at the screening stage. This responsibility now falls to me as the competent authority.
23. Although, the appellants have provided a UU, insufficient evidence has been submitted with the appeal to permit me to undertake the AA and assess the adequacy and effectiveness of the proposed mitigation. In particular, although the Dorset Heathlands SPD does list individual projects, none are identified within the submitted UU. As such, I am uncertain that proportionate and relevant projects would be delivered which would directly mitigate the effects of the development on the Dorset Heathlands. Consequently, I cannot be certain that the proposal would not be harmful to the Dorset Heathlands.
24. Had the proposal been acceptable in other respects, the Council would have been invited to submit the necessary evidence in relation to the Dorset Heathlands and its mitigation strategy, and I would have also sought the views of Natural England on this matter.

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<sup>4</sup> People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

25. The direct payment to the Council towards SAMM contributions is not adequately secured and would not bind the Council to spend the contribution towards the delivery of the required mitigation measures.
26. Accordingly, based on the foregoing reasons, I am unable to conclude that the proposal would comply with Policy CS33 of the CS, which states that development will not be permitted unless it can be ascertained that the development will not lead to an adverse effect upon the integrity, directly or indirectly, of the Dorset Heaths international designations.

### **Other Matters**

27. The Council has confirmed that it is currently preparing the annual update to the 5-year supply of deliverable sites required by paragraph 73 of the Framework and that it is unlikely that it will be able to demonstrate a 5-year housing land supply once the assessment is complete. Irrespective of this, as I am unable to conclude that the proposal would not harm a habitats site, this provides a clear reason for refusing the development proposed. As such, this is not a situation where the presumption in favour of sustainable development, as set out in paragraph 11d of the Framework is engaged.
28. Notwithstanding the above, the proposal would deliver a single one-bedroom dwelling in a location close to existing services and facilities, including public transport. However, this would only make a very limited contribution towards housing locally and any other associated benefits would be similarly limited. Together, these factors do not outweigh the harm I have identified in respect of the living conditions of neighbours, future occupants, and the Dorset Heathlands, and the overall conflict with the development plan.

### **Conclusion**

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

*M Aqbal*  
INSPECTOR