



Appeal Decision

Site visit made on 6 January 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th February 2020.

Appeal Ref: APP/Q1255/W/19/3238216 67 Kingland Road, Poole BH15 1TN

- 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 Eric Olivia Limited against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref APP/19/00714/F, dated 5 June 2019, was refused by notice dated 31 July 2019.
 - The development proposed is to carryout alterations, extensions and change of use from a C3 dwelling house into an 11 bedroom Sui Generis HMO.
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Decision

1. The appeal is allowed and planning permission is granted to carryout alterations, extensions and change of use from a C3 dwelling house into an 11 bedroom Sui Generis HMO at 67 Kingland Road, Poole BH15 1TN in accordance with the terms of the application, Ref APP/19/00714/F, dated 5 June 2019, subject to the conditions in the attached schedule.

Procedural matters

2. The application was refused for five reasons. Since making its decision, the Council has reviewed 4 of those reasons (Nos. 2-5) that relate to the effect of the development on European Nature Conservation Sites ('European Sites'). In its appeal statement, the Council confirmed that due to the way that mitigation is now provided on a strategic basis by the Council, it no longer wished to defend reasons 4 and 5.
3. Subsequently, the appellant has provided a planning obligation seeking to secure the mitigation referred to in refusal reasons 2 and 3. The Council has confirmed that it considers the mitigation to be satisfactory. Accordingly, I do not consider the effect on European Sites to be a main issue, but as competent authority in respect of the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'), I consider this matter in greater detail later in my decision.
4. Correspondence between the appellant and the Council revealed that an incorrect ownership certificate may have been completed with the application and appeal forms. The appellant has subsequently served notice on the registered owner and the time for representations to be made has passed. I am, therefore, satisfied that no injustice would occur and the appeal can proceed.

5. The appellant has provided amended plans with the appeal documentation. Having considered the principles outlined in *Bernard Wheatcroft Ltd v SSE [JPL, 1982,p37]* the appellant notified interested parties of the amendment. The Council has also had the opportunity to comment through its appeal statement. As such, all interested parties have had the opportunity to consider the amended plans.
6. However, whilst *Bernard Wheatcroft Ltd* sets out that the main criterion on which judgement should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation, that is not the only matter. In this case, the nature of the amendment also causes certain practical difficulties. In particular, the description of development is for 11 bedrooms and the amended plans are for 10. Furthermore, the submitted planning obligation would make contributions based upon the provision of an 11 bedroom scheme and so those obligations would not relate directly to the development or be fairly related in scale if I were to accept the amended plans.
7. For these reasons, I have determined the appeal on the basis of the original submission made to the Council.

Main Issue

8. With regard to the above, the main issues are the effect on the living conditions of No.47a Mount Pleasant Road with particular regard to privacy, and the effect of the future occupiers of the site with regard to outlook.

Reasons

9. The proposals include rear extensions that at the time of my site visit had been partially carried out. The extensions have brought the rear face of the dwelling closer to the boundary with No.47a Mount Pleasant Road. Windows are proposed (and have been partially provided) at first floor level facing towards No.47a and further rooflights have been proposed in the same elevation. During my site visit, I was able to stand in the first floor room labelled on the application plans as Bedroom 7 and also in the second floor room at the rear of the building.
10. No.47a is not correctly shown on the appellant's location plans. Nevertheless, I saw that it is a two-storey dwelling with first floor accommodation within the roofspace, served by dormer windows. Those windows facing the appeal site appeared to me to be obscure glazed and so protected from direct views from the proposed first floor accommodation.
11. However, there is an area of private garden space for No.47a between the rear face of the dwelling and the boundary with the appeal site. Given the proximity of the extended rear face of the appeal building to the boundary, a conventional-scale boundary fence is unable to protect the privacy of the rear garden from the first floor rear windows of the appeal site. I was not able to obtain a clear view to this rear garden from the second floor rooflights.
12. In light of the above, the appeal proposals would result in a loss of privacy to No.47a. However, permission has been previously granted¹ for the conversion

¹ LPA Ref: APP/17/00855/F

of the appeal site to two semi-detached dwellings, including extensions that would have equivalent effects on light and the outlook of neighbouring properties by reason of its size, mass and bulk. That proposal would also provide rear windows in comparable locations. This is a fall-back position to which I give considerable weight.

13. The Council contends that the proposal to use the site as a House in Multiple Occupation (HMO) would result in a greater loss of privacy to No.47a than the two dwelling scheme. Indeed, bedrooms in an HMO are likely to be used more intensively than those in a dwelling due to the lack of other sizable rooms for day-to-day activities and the lack of privacy that those shared spaces would provide.
14. However, the relationship whereby the rear garden of No.47a would cease to be private has already been permitted. Whilst it would not be possible to control the internal arrangement of a room in an HMO and occupants may place their sitting areas close to the window, there is equally no control over the way that rooms in a conventionally occupied dwelling are used. There is no substantive evidence, therefore, that the use as an HMO would result in significantly less privacy for No.47a than has already been permitted by the Council. With regard to the planning history and fallback position, therefore, I find the proposal acceptable in terms of the effect on the living conditions of No.47a.
15. Turning to future occupiers of the site, the Council is concerned about the living conditions in the second floor rear room. However, from my own observations standing in this space, it appeared to me that adequate daylight would enter the space. Furthermore, the cill heights of the rooflights are low enough to afford some outlook when standing and a tangible connection to the surrounding environment, in addition to sky. I, therefore, find the living conditions within this room to be adequate to meet the needs of future occupiers.
16. The Council has also suggested that the use of the site for such a large HMO would put pressure on the limited rear garden space, which has previously been reduced in size to allow construction of No.47a, especially given the need for refuse and cycle storage. However, given the proximity to Poole Park, the Council has not objected to the proposal with specific reference to this matter. From my own observations, I consider that the remaining garden is large enough to be used for some casual sitting out if desired and given the proximity of nearby public open space, there is no compelling evidence that it would not meet the needs of future occupants.
17. The first reason for refusal suggests that the proposal would result in an over-intensification of the use of the site. The Council's appeal statement clarifies that the alleged harm in this regard would stem from the harm to living conditions of neighbours and future occupiers of the site, which I have considered above. Furthermore, permission has previously been granted for a 9-bedroom HMO at the site² which was considered an appropriate intensity by the Council. There is no substantive evidence as to why additional residents would cause materially greater harm to other residents of the HMO in terms of noise disturbance, including at anti-social hours, when compared to the 9-bedroom scheme.

² LPA Ref: APP/189/00777/F

18. I understand that in the past, some residents at the appeal site have leant out of upper floor windows to smoke, causing disturbance to neighbouring residents and looking directly towards No.47a. However, whilst they would be closer to the boundary than in the unextended dwelling, this could also occur in the permitted scheme for 2 dwellings and, with less direct views but at relatively close range in the scheme for a 9-bedroom HMO. Therefore, I attribute this matter limited weight.
19. I also understand that smoking has occurred outside the main entrance door to the property, in close proximity to No.69 Kingland Road, causing disturbance. However, there is no substantive evidence as to why 11 bedrooms would have a significantly greater effect in this regard than the previously permitted 9-bedroom scheme.
20. Whilst there may well be a tipping point at which the number of bedrooms becomes excessive for a site, I have found in this case that there would be no unacceptable harm to living conditions for neighbours or future occupiers. Therefore, whilst local residents have advised me that HMOs have caused problems in other parts of the Council area, this development would not be over-intensive for this site.
21. With regard to the above, I find that the proposal is acceptable in terms of its effect on the living conditions of both No.47a and the future occupiers of the site. Therefore, there would be no conflict with Policy PP27 of the Poole Local Plan or those parts of the National Planning Policy Framework ('the Framework') that seek to ensure that a good standard of amenity is provided for existing and future residents.

Other matters

22. The proposal would provide only two parking spaces which is below the Council's guidelines. However, given the highly accessible location of the site, the Council, as local highway authority, has raised no objection. There is no compelling evidence that leads me to disagree with this assessment.
23. The site is within Poole Park conservation area. Whilst the proposal would alter the external appearance and introduce a use with a different character to a single dwelling, the Council does not consider that harm would arise to the character and appearance of the conservation area or its significance. With regard to the planning history, there is no substantive evidence to lead me away from this position.

European Sites

24. There is no dispute that the proposal, in combination with other development, could lead to significant adverse effects on the integrity of the Poole Harbour European Sites³, and the Dorset Heathlands European Sites⁴. Appropriate Assessment is, therefore, required under the Habitats Regulations which I have conducted on a proportionate basis with regard to the evidence provided by the Council.

³ Including the Poole Harbour Special Protection Area (SPA) and Ramsar site.

⁴ Including the Dorset Heathlands SPA, Dorset Heathlands Ramsar, Dorset Heaths Special Area of Conservation (SAC), and Dorset Heaths (Purbeck & Wareham) & Studland Dunes SAC.

25. The Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document (2016) ('DHPF') indicates that the protected species for which the Dorset Heathlands European Sites are designated are at risk from the intensification of residential development in the area. In particular, public access to lowland heathland has led to an increase in wild fires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion and disturbance by humans and their pets.
26. The local planning authorities in the area, through the DHPF seek to mitigate the adverse effects by bringing forward Heathland Infrastructure Projects ('HIPs'), such as suitable alternative natural greenspaces, measures to divert recreational pressure away from heathland, access management measures ('SAMM') and resources to enable these measures to be implemented.
27. The DHPF indicates that HIPs and the like would be delivered through the Community Infrastructure Levy ('CIL'). Whilst the Council has indicated that this development would not itself be liable to pay CIL, the CIL receipts from other development would adequately cover the associated mitigation costs. SAMM would be delivered via individual planning obligations. The Council's evidence confirms that the obligation provided in this case is sufficient and would make an appropriate contribution proportional to the likely increase in population.
28. Turning to the Poole Harbour European Sites, the Nitrogen Reduction in Poole Harbour Supplementary Planning Document (2017) ('NRPH') indicates that increasing nitrogen levels from sewage and agriculture are contributing to the growth of algal mats in the Harbour, restricting the growth, distribution and variety of important foods available for wading birds that are features of interest of the European Sites.
29. The NRPH sets out measures to ensure that new development in the affected area is nitrogen neutral, including through converting high nitrogen input land uses to low input uses and improvements to sewage treatment works. Such strategic mitigation measures would be funded by CIL. As with the Dorset Heathlands European Sites the Council has indicated that the CIL receipts from other development would adequately cover the associated mitigation costs.
30. The Poole Harbour European Sites are also at risk from increased recreational pressure resulting in greater disturbance to important birds and other species. A supplementary planning document is currently being prepared, but due to the time period involved, the Council has introduced an interim SAMM payment scheme to ensure that permission can still be granted. Such is set out in the Poole Harbour Recreation Mitigation Interim Scheme (2019). The scheme would deliver survey and monitoring work, SAMM projects, an access management plan and a co-ordinator and warden. The Council has confirmed that planning obligation provides an appropriate contribution proportional to the likely increase in population.
31. In respect of all of these European Sites, I have undertaken consultation with Natural England as Statutory Nature Conservation Body. Natural England have confirmed that the mitigation measures that would be secured via CIL and the planning obligation are sufficient to avoid likely adverse effects on the integrity of the sites.

32. Having regard to the governance measures outlined in the supplementary planning documents, with regard to the comments of Natural England and following appropriate assessment, I too conclude that significant adverse effects will be avoided.

Conditions

33. A condition is required specifying the approved plans in the interests of certainty. In the interests of preserving the character and appearance of the conservation area a condition is required to secure appropriate external materials for the extended building.
34. A condition requiring the obscure glazing of various windows is required in the interests of the privacy of neighbouring residents. In that regard, the Council has noted various discrepancies between the submitted floor plans and elevations albeit that those discrepancies would not materially alter the effect on the privacy of neighbouring properties. To avoid any uncertainty, I have referred to the windows more generically in my condition. I have not required the obscure glazing of a first floor kitchen window as the Council considers such would be unreasonable and the officer report indicates that the nature of the facing elevation in the adjacent flats is such that a detrimental loss of privacy would not result.
35. In the interests of reducing carbon emissions and reducing reliance on centralised energy supply in accordance with LP Policy PP27, a condition is required securing details of an on-site renewable energy scheme. In the interests of highway safety conditions are required to secure provision of the access and visibility splays and to promote travel by non-car means, cycle parking facilities must be provided.
36. To ensure that there is no unacceptable surface water run-off, a condition is required to ensure that new hard surfaces are permeable or surface water is appropriately directed to permeable or porous areas. I have made some revisions to the Council's suggested conditions in the interests of consistency and clarity.

Conclusion

37. With regard to the above, I conclude that the appeal should be allowed.

M Bale

INSPECTOR

Schedule

- 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: Site Location Plan; J.94.2016-02; J.94.2016-03; J.94.2016-05B; J.94.2016-10.C; and J.94.2016-11B.
- 3) The materials to be used for the external walls and roofs of the extensions and alterations, hereby approved, shall be similar in colour and texture to the existing building.
- 4) The rooflight indicated on the south east elevation drawing, the first floor en-suite bathroom window and rooflights indicated on the north west elevation drawing hereby permitted shall be glazed with obscure glass in a form sufficient to prevent external views and shall either be a fixed light or hung in such a way as to prevent the effect of obscure glazing being negated by reason of opening. The obscure glazing shall be installed prior to the occupation of the house in multiple occupation hereby permitted and shall thereafter be maintained as such.
- 5) Details of the use of on-site renewable energy sources to meet a minimum of 10% of predicted energy use of the development, hereby approved, shall be submitted to and approved in writing by the Local Planning Authority and shall subsequently be implemented prior to the first occupation of any of the bedrooms of the house in multiple occupation, hereby approved, and shall thereafter be maintained as such.
- 6) Prior to the first occupation of any of the bedrooms of the house in multiple occupation hereby approved, the access and parking spaces shown on the approved plan shall be constructed and made available for use, and these shall thereafter be retained and kept available for those purposes at all times.
- 7) Prior to the first occupation of any of the bedrooms of the house in multiple occupation, hereby approved, and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any order revoking and re-enacting that Order with or without modification, the land designated as pedestrian visibility splays as indicated on the approved plans shall be cleared of all obstructions over 0.6 metres above the level of the adjoining highway, including the reduction in level of the land if necessary, and nothing over that height shall be permitted to remain, be placed, built, planted or grown on the land so designated at any time.
- 8) Prior to the first occupation of any of the bedrooms of the house in multiple occupation, hereby approved, details of a secure and sheltered cycle store to include a minimum of 6 no. Sheffield stands or similar to provide 11 no. cycle parking spaces, shall be submitted to, and approved in writing by, the Local Planning Authority. The cycle parking facility shall subsequently be erected in accordance with the approved details and made available for use prior to the first occupation of any of the bedrooms of the house in multiple occupation and shall thereafter be maintained, retained and kept available for use as such at all times.
- 9) All ground hard surfaces shall either be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a

permeable or porous area or surface within the site. The hard surface and associated drainage shall thereafter be retained as such.