
Appeal Decision

Site visit made on 11 March 2020

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2020

Appeal Ref: APP/V1260/W/19/3242245

No.13 and land rear of 15-19, Berkeley Avenue, Poole BH12 4HZ

- 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 Stonehaven Berkeley Avenue Ltd against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref APP/19/00980/F, dated 30 July 2019, was refused by notice dated 24 October 2019.
 - The development proposed is demolition of no. 13 Berkeley Avenue and construction of five homes on land at the rear of nos. 13-19 Berkeley Avenue with associated parking, access and landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The Council's fourth and fifth reasons for refusal related to harm to the Dorset Heathland and Poole Harbour Special Protection Areas. The decision notice indicated that these reasons could be overcome, by completion of an agreement securing the payment of financial contributions towards mitigating measures. During the appeal, a financial contribution has been paid to the Council by the appellant under Section 111 of the Local Government Act 1972. The Council has confirmed that the payment overcomes these reasons for refusal. As I am dismissing the appeal, it is not necessary for me to consider the proposal any further in respect of the Conservation of Habitats and Species Regulations 2017.
3. Therefore, the main issues are the effect of the development on:
 - a) the character and appearance of the area;
 - b) the living conditions of the future occupiers of the proposed dwellings with regard to the proximity of the trees to the north; and,
 - c) protected species, specifically badgers.

Reasons

Character and appearance

4. Berkeley Avenue is a long, straight cul de sac, lined on both sides by detached dwellings that are mainly single storey. The dwellings are set back from the road on a regular building line behind enclosed front gardens, pavements and grass verges, giving the street a spacious, suburban character. The properties

all have long rear gardens that back onto the woodland that encircles the entire cul de sac. The regular gaps between the detached dwellings allow views through to the land and trees behind. As nearly all the dwellings are single storey, and have hips or gables facing the road, the woodland setting of the street can be appreciated through the wide spaces between the roofs.

5. The proposal would introduce five houses into the area behind the frontage dwellings, through the demolition of 13 Berkeley Avenue and the severance and amalgamation of the rear gardens of Nos 15 – 19. The proposal seeks to overcome the concerns raised in a previous appeal decision¹ relating to a scheme for seven dwellings on the same site. The reduction in the number of houses to five means that the resultant plot widths accord more closely to those of the surrounding dwellings, so would be less disruptive to the existing pattern of development.
6. However, the houses would span virtually the entire site, with only three narrow gaps separating them. The appellant contends that these gaps would be consistent with the established street scene in Berkeley Avenue, but I observed that the spaces between the existing dwellings is generally appreciably greater, allowing views through to the gardens and trees to the rear. Furthermore, unlike the dwellings facing Berkeley Avenue, the ridges of the roofs would run parallel to the frontage, so that the gables of the houses would be side by side. As a result of these factors, the houses would give the impression of a continuous block of development across the entire site, giving a cramped appearance that would be discordant with the spacious character of the surrounding development.
7. Although the houses would be lower than those proposed in the previous scheme, they would still be readily visible through the wide access drive created by the demolition of No 13. The drive and car-parking area could be softened through landscaping, so that they would not, in themselves, cause harm. However, in combination with the uncharacteristically close spacing of the houses, the overall appearance would be of a dense urban form of development, that would not respect the spacious suburban character of its surroundings.
8. The proposal would accord with the government's aims in Sections 5 and 11 of the National Planning Policy Framework (the Framework), to deliver a sufficient supply of homes and make effective use of land. The site also lies within a sustainable transport corridor, where Policy PP2 of the Poole Local Plan Adopted November 2018 (the Local Plan) indicates that the aim should be to achieve a housing density of 50 dwellings per hectare. However, the supporting text does clarify that there will be occasions where achieving such a density will not be possible, including where it is necessary to ensure that the development respects the character of the locality. In this case, I have found that the proposal would not be in keeping with surrounding development.
9. Policy PP28 of the Local Plan addresses plot severance, and the supporting text identifies that such proposals offer opportunities for windfall development near sustainable transport corridors. However, it is also noted that intensification of development can erode existing character. The policy therefore aims to ensure that higher density development is carefully managed, through sensitive design. The cramped nature of the proposal would harm the existing character

¹ Appeal Decision APP/V1260/W/19/3232655

and appearance of the area and would, therefore, be contrary to Policies PP27 and PP28 of the Local Plan. These policies seek to ensure that development reflects and enhances local patterns of development and preserves, or enhances, the area's residential character.

Living conditions

10. The rear gardens of the houses would be larger than those proposed under the previous scheme for seven houses. Purely in terms of their size, they would provide sufficient outdoor amenity space for the occupants of the houses. However, the enlarged garden sizes are mainly due to their increased width, rather than length. The houses would still, therefore, be close to the belt of trees to the north of the site. The canopies of some of these trees are quite low and overhang the area of the proposed rear gardens to a considerable extent. Therefore, despite the increase in their width, significant areas of most of the gardens would be under the canopies of the trees.
11. The houses would be a storey lower than those previously proposed, so their shading impact on the rear gardens would be reduced. Nevertheless, the orientation of the site is such that, for a considerable part of the year, the areas of the rear gardens closest to the houses would be in shade for much of the day. The parts of the gardens further from the houses would be under the canopies of the trees. Consequently, only small parts of the gardens would be unaffected by either shade from the houses, or the canopies of the trees. As a result, they would not provide satisfactory external amenity space for occupiers.
12. Under these circumstances, future occupants would be likely to seek an improvement in their outdoor living conditions. This could be by significantly pruning unprotected trees within their property boundaries, or by exerting pressure on the Council to have protected trees, or trees within the Council's ownership lopped or felled. In view of the significant impact that the trees would have on the living conditions of future occupants, this pressure would be difficult for the Council to reasonably resist. The substantial reduction, or loss, of the trees would cause further harm to the character and appearance of the area, which would therefore add to my finding of harm under the first main issue.
13. I am mindful that the houses face south, so light levels within them would be acceptable. However, this does not alter my conclusion that the combined effects of the orientation of the houses, and the presence of the trees, would result in the rear gardens providing unsuitable outdoor amenity space for future occupants. The proposal would therefore be contrary to Policy PP27 of the Local Plan, which seeks to ensure that developments provide satisfactory external amenity space for new occupiers.

Protected species

14. The application was accompanied by a Badger Survey, which concluded that there were two badgers regularly using a sett within the site. As one was an adult and the other appeared to be a young cub, this suggested that it was a breeding sett for a single female. The sett would be lost through the development, and there would not be space to provide for replacement accommodation within the site. The survey also included a search of the surrounding area, and concluded that there was good access to foraging

- habitat and opportunities to construct new setts, or reside in disused setts, within the adjacent woodland and nature reserve. It was therefore proposed to close the sett under licence from Natural England.
15. However, other evidence before me indicates that the adjacent woodland to the north is wet, with a high water table and areas liable to flooding. The area also includes a footpath which is popular with dog walkers. It does not, therefore, provide an ideal environment for the relocation of the badgers. Under these circumstances, reliance solely on the licencing regime to allow for the closure of the setts would not be a satisfactory mechanism for ensuring that the proposal does not result in harm to the protected species.
16. A Mitigation and Enhancement plan was submitted with the appeal, which includes details of wider ranging survey work, taking account of the shortcomings of the woodland to the north. The additional survey work identified better habitat, to the east, in dry woodland, including an inactive old sett with several burrows. However, I have not been provided with details of the location of this habitat, so cannot assess the likelihood that it would be a suitable alternative for the badgers using the appeal site. Furthermore, whilst it is proposed that the existing sett should be closed under licence, no positive measures are put forward to demonstrate how this loss would be compensated, or how the relocation of the badgers to an alternative site would be managed.
17. Therefore, the evidence does not demonstrate that there would be no harm to the protected species. I am not aware of any special circumstances that would justify the loss of the habitat without adequate mitigation or compensation being provided. Consequently, the proposal would be contrary to Policy PP33 of the Local Plan, which requires proposals for development to demonstrate how any features of biodiversity interest are to be protected and managed to prevent any adverse impact.

Conclusion

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

Nick Davies

INSPECTOR