
Appeal Decision

Site visit made on 18 August 2020

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

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal Ref: APP/V1260/W/20/3252784

46 and 48 Dalmeny Road, Bournemouth BH6 4BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Dalmeny Ltd against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref 7-2019-2567-K, dated 13 May 2019, was refused by notice dated 28 November 2019.
 - The development proposed is described as two storey link extension between 46 – 48 Dalmeny Road. Remodel of roof with addition of gable and remodel of dormer to no 46. Demolition of garages of 46 and 48 and new build house to the rear of the land, fronting Harbour Road.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site is given as 48 Dalmeny Road on the application form. The site however consists of both No 48 and 46 Dalmeny Road. This is acknowledged on the appeal form. I have therefore amended the site address in the banner heading above accordingly.
3. The application was made in outline with landscaping solely reserved for future determination. Therefore, where details of landscaping have been shown on the submitted plans, I have treated them as indicative.
4. The appellant has submitted amended plans as part of the appeal. Aside from where these serve to improve legibility, the plans show some minor adjustments to the building designs. These consist of a reduction in size and the obscure glazing of a window in the rear elevation of the new build house; a reduction in the sizes of gable windows in the elevation of Nos 46-48 facing Dalmeny Road; and removal of associated balconies. Though the Council has offered no comment, these changes appear unlikely to be contentious. I am therefore satisfied that the interests of no party would be prejudiced by my determining the appeal on the basis of the amended plans.
5. An application for costs was made by Dalmeny Ltd against Bournemouth Christchurch and Poole Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues are the effects that development would have on:

- the integrity of the Dorset Heathland Special Protection Area and Ramsar site, and Dorset Heaths Special Area of Conservation (the European sites);
- the character and appearance of the area;
- the living conditions of occupants of 44 Dalmeny Road with regard to privacy; and future occupants of the development with regard to privacy and the provision of outdoor amenity space.

Reasons

European sites

7. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) states that before deciding to grant planning permission for a project which is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and is not directly connected with or necessary to the management of that site, a competent authority must make an Appropriate Assessment (AA) of the implications of the plan or project for that site, in view of that site's conservation objectives. In this context, paragraph 176 of the National Planning Policy Framework (the Framework) states that listed Ramsar sites should be given the same protection as habitats sites.
8. The appeal site lies within 5km of the European sites, and thus within easy travelling distance. Indeed, Hengistbury Head, which is the closest designated part, can be reached by walking from the site. In this context the potential for the development to have likely significant effects on the integrity of the European sites, both alone, and in combination with other plans or projects, arises both due to the increase in population it would support, and the fact that future occupants would be likely to access areas included within the European sites for leisure purposes. Any increase in recreational pressure could be ecologically harmful due to the degradation of habitats, and disturbance of species which may result. As likely significant effects on the integrity of the European sites cannot be ruled out, an AA is required.
9. The designation of the European sites specifically relates to the range of priority habitats and species, including birds and reptiles, that they support. Where available, conservation objectives seek to maintain or restore integrity, including that of qualifying features. As increased recreational pressure would be harmful, it would be clearly at odds with these conservation objectives.
10. The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document April 2020 (the SPD) sets out an approach to mitigate and avoid the effects of increased recreational pressure on the European sites. Mitigation is achieved by funding of Site Access Management and Monitoring (SAMM) measures through developer contributions, and through Heathland Infrastructure Projects, including provision of Sites of Alternative Natural Green Space (SANGSs), through the Community Infrastructure Levy. SAMM contributions are calculated on the basis of the strategic costs of delivering SAMM, set against the anticipated housing trajectory over the 2020-2025 period. The strategy set out within the SPD has been produced on the advice of Natural England (NE), and has received its support. As such, and in view of the recent date of the SPD, I have not sought any further comment.

11. A Unilateral Undertaking (UU) has been submitted by the appellant during the appeal. This sets out a commitment to pay a SAMM contribution prior to the commencement of development. The level of contribution has been calculated with reference to the Dorset Heathland Planning Framework 2015-2020 Supplementary Planning Document (the DHPF). This document was in force at the time the application was determined, however it has subsequently been replaced by the SPD. The contributions set out in the SPD are higher than those set out in the DHPF. Consequently, the amount specified within the UU would not comply with the SPD. Therefore, though the difference would be small, the contribution would be insufficient to achieve the required mitigation.
12. The Council has nonetheless indicated its willingness to accept a contribution in line with the requirements in force at the time the application was determined. In view of the specific justification for the contribution, as too the precautionary approach to be taken in AA, this would not be appropriate. In any case, a determination should be made on the basis of the plan in place at the time it is made, and in this case the relevant determination is the one to be made in relation to this appeal. I therefore provided the parties with an opportunity to comment on my use of the SPD rather than the DHPF to determine the appeal. No comments were received.
13. In view of the above I find that the UU does not pass the tests set out paragraph 56 of the Framework, and Regulation 122 of the Community Infrastructure Levy Regulation 2010 (as amended), and therefore cannot be taken into account. I additionally note that the UU has not been signed by the named mortgagees, and has not therefore been entered into by all parties with an interest in the land. This creates some additional uncertainty with regard to the legal soundness of the UU.
14. Alternative solutions that would have a lesser impact on the integrity of the European sites clearly exist. Indeed, this would be the case in relation to the appeal scheme were the required contribution to be properly secured. As such, and given the failure of the appeal scheme in this regard, allowing the appeal would be contrary to the Habitats Regulations. It would also be contrary to advice in paragraph 175(a) of the Framework, which states that planning permission should be refused if significant harm to biodiversity cannot be avoided, mitigated, or as a last resort, compensated for.
15. In view of my reasons above, I conclude that in the absence of adequate mitigation the development would have a likely adverse effect on the integrity of the European sites due to increased recreational pressure. The development would therefore conflict with Policy CS33 of the Bournemouth Local Plan: Core Strategy 2012 (the CS) which states that development will not be permitted unless it can be ascertained that it will not lead to an adverse effect upon the integrity of the Dorset Heaths; the SPD; and the Framework.

Character and appearance

16. The appeal site consists of Nos 46 and 48, 2 2-storey buildings with attic space accommodation. These are located toward the coastal edge of an extensive area of suburban housing. As No 48 is positioned on the junction of Dalmeny Road with Harbour Road, it has a moderate degree of prominence within the streetscenes of each.

17. Development within the broader area chiefly consists of detached dwellings, including a mix of houses, bungalows and a scattering of flats. Many dwellings appear to be of inter-war origin, however their form and design varies considerably. Though modifications, remodelling, redevelopment and infilling have all clearly played a part, this does not alter the fact that variation in character both currently exists, and is likely to have also existed in the past.
18. The proposed roof form of Nos 46 and 48, would differ from the existing principally insofar as the roofs would be linked. The ridge height and gabled arrangement would, for the most part, otherwise directly reflect that of the existing buildings. Indeed, only one existing hip would be replaced with a gable, and this with the benefit of providing a degree of symmetry across the elevation facing Dalmeny Road.
19. Though dwellings with hipped roofs are more common than dwellings with gabled fronts in the surrounding area, a mix of both nonetheless occurs. As such the loss of the hip would not be harmful.
20. The form of the new dwelling would be generally similar to other gable fronted dwellings within the street. Therefore, it would not be exceptional.
21. Gabled fronted dwellings in the area often feature large windows within the gables. Nos 46 and 48 each themselves currently feature gable windows. Regardless of size, gable windows are generally perceived as serving living space accommodated within the roof. The same would be true of the gable windows proposed within the appeal scheme. The development would not therefore be perceived as being 3-storeys in height, or in this regard atypical in terms its height or scale.
22. The broad gap in the Harbour Road frontage provided by the back garden of No 48 is an unusual feature. It is not repeated at the other four corners of the block formed by Dalmeny Road, Harbour Road, Cellars Farm Road, and Hengistbury Road, of which the appeal site forms part. Harbour Road itself otherwise features a fairly dense frontage within which the gaps left between dwellings are often very small. Gaps between dwellings are generally larger along the section of Dalmeny Road between Harbour Road and Cellars Farm Road in which Nos 46 and 48 are located. However, in neither case are extensive views of back garden spaces generally possible from the street, and in this context there is little broader appreciation of plot size or variation thereof.
23. The development would see infilling of the back garden of No 48, and the provision of plot sizes that would be smaller than those of adjoining dwellings. However, the gap between Nos 46 and 48 and the new dwelling would remain somewhat larger than is typical. For this and the above reasons, the development would not be perceived as producing a layout at odds with the broader pattern, one which entailed any harmful loss of spaciousness, or indeed, one which constituted 'overdevelopment'.
24. The amalgamation of Nos 46 and 48 would produce a building form of greater width and thus overall mass than otherwise occurs along the stretch of Dalmeny Road between Harbour Road and Cellars Farm Road. In view of the spacing between dwellings noted above, and which would be lost, this would not be consistent with the general grain of development along this part of the road. The character, mass, frontage width and scale of development within the

broader streetscene, including along both Harbour Road, and within other sections of Dalmeny Road, is however more varied, and sufficiently so that the inconsistency would be absorbed without undue harm or intrusion. This would be particularly true in key views of the development from Southbourne Coast Road, which features other buildings of greater scale and mass.

25. The new dwelling would be of greater height than the neighbouring bungalow. There is however significant existing variation in building height along the side of Harbour Road on which it would be located. In this regard the broader streetscene is not generally characterised by a 'stepping down' in the height of dwellings adjacent to corner plots. Thus, whilst this has been identified by the Council adjacent to the site, there is little sense that it reflects an overall design vision, especially as the buildings in question are of clearly different age. As such, the 'stepping up' of the new dwelling relative to its neighbour would again cause no harm.
26. Existing dwellings which exhibit at least some degree of 'contemporary' styling, as expressed in terms of the provision of large areas of glazing and/or 'minimalist' detailing, are not uncommon within the broader streetscene. In this regard the proposed styling would sit somewhere towards the upper end of the local spectrum. The styling would however be applied to buildings whose form, scale, massing and layout would either fit the general pattern or appear acceptable in context. With this in mind, and given that finer details such as the specific colour and texture of finishes could be subject of future agreement by condition, I am satisfied that any perceived scope for visual conflict as a result of stylistic contrast would be limited.
27. An objection has also been raised to the amount and visibility of proposed hardstanding, and the lack of enclosure of communal areas. However, even as shown indicatively, the overall area of hardstanding would appear no greater than at present, and would be better distributed. As landscaping is in any case reserved for future consideration, I am satisfied that scope exists to agree a scheme of hard and soft landscaping, including boundary treatments, that would complement, if not enhance, the general appearance of the streetscene.
28. For the reasons outlined above I conclude that the development would not harm the character and appearance of the area. It would therefore comply with Policy CS41 of the CS, which amongst other things seeks to secure development which is designed to respect the site and its surroundings; applicable parts of Policy CS22 of the CS, which allows new housing outside preferred locations where the scale, appearance, and density is in keeping with the surrounding area, and the type and layout preserves the area's residential character; supporting guidance set out within Residential Development: A Design Guide 2008 (the DG); and applicable design-related provisions of the Framework.

Living Conditions

29. Two first floor windows in the rear elevation of the new dwelling would face towards the back garden of No 44. One of these windows would be obscure glazed and thus no views out would be possible. The second, serving the kitchen, would be clear glazed. Views from this window would be towards the very end of the garden of No 44. The potential for more extensive views, including towards the rear elevation of No 44 itself, would be very limited. This would be due to the oblique nature of these views and the impracticality of

achieving them when taking into account the likely internal fittings of the kitchen in question. The intervening presence of an outbuilding is also of note. The latter would also serve to obstruct what limited view might be possible from the balcony. When also taking into account the high degree of mutual overlooking of adjoining plots within the surrounding townscape, no unacceptable harm would be caused to the living conditions of occupants of No 44 by the slight reduction in privacy that would result from the development. The same would be even more true in relation to 42 Dalmeny Road which lies beyond.

30. A feature of the contemporary designs proposed, as of similar schemes, is the provision of extensive glazing. This does not inherently promote the privacy of occupants. Privacy can however be simply provided by the provision of window hangings, tinted glass or other features where desired. Inter-visibility between some of the flats and new dwelling could be addressed by installation of a privacy screen on the balcony of the new dwelling, as has been proposed by the appellant. Suitably worded conditions would be required.
31. In raising objection to the amount of outdoor amenity space provided by the development, the Council has not referenced any adopted standards. Only general guidance is provided within the DG. Together with boundary treatments, the laying out or provision of gardens and courts, and the provision of other amenity features all otherwise fall within the scope of the reserved matter of landscaping.
32. The appellant has explained that outdoor space could be attached to the proposed ground floor flats, and that occupants of flats on the floor above could make use of their balconies. This appears to be generally in line with advice within the DG, albeit the dimensions of balconies might constrain their use. Occupants of the one bed flats in the roof would not have balconies, and it appears unlikely that they could make use of outdoor space within the site without adverse effects on the privacy of occupants of the ground floor flats.
33. Notwithstanding the above, it is clearly the case all future occupants of the flats, whether provided with on-site space or not, would also have direct, free and easy access to many miles of open space along the coast, including extensive beaches and open green space. Each can be reached within a few minutes' walk of the site. It is reasonable to assume that these resources would be highly attractive to future occupants of the flats, and particularly those with families. In my view, this would adequately compensate for any limitation in the amount of private or communal outdoor amenity space that would be available within the site.
34. The above would also apply to future occupants of the new dwelling, who would not therefore be wholly reliant on their back garden to meet their leisure needs. In this context it is unclear why garden space sufficient to provide an 'allotment' or 'garage facility' should be considered essential, why a small storage structure could not be accommodated if required, or a washing line, should the occupants choose to dry their clothes in this way. I therefore identify no harm in these regards.
35. I accept that access into the garden of the new dwelling would be indirect. However, the short walk around the dwelling would be no more than a minor inconvenience, and not one sufficient to be considered unacceptable. Disturbance of occupants of ground floor bedroom adjacent to the garden

- would itself simply be avoided by not using the garden at times when the bedrooms were in use. In this regard the dwelling would also be provided with a balcony.
36. As noted above, given that overlooking garden space is not uncommon within the surrounding townscape, the fact that some overlooking of the back garden of the new dwelling by the flats would arise, would not be unacceptably harmful. It could also be mitigated by boundary treatments.
37. The Council has additionally expressed concern in relation to the provision of communal clothes drying areas for the flats. Though scope again exists to address this through clearance of the reserved matter, the desirability of and necessity for such a facility is questionable. Indeed, only occupants of the roof flats would be likely to lack outdoor or balcony space that could be used for clothes drying. In this case the most practical solution, even if not the most environmentally friendly, would be the installation of energy efficient washer-driers.
38. Interested parties have additionally raised concern in relation to possible additional shading of adjacent dwellings. However, having regard to the relative orientations of buildings, and the amount of development already present on the site, such additional shading would be minor. It would not therefore cause unacceptable harm.
39. For the reasons outlined above I conclude that the development would not cause any unacceptable harm to the living conditions of occupants at No 44, and that it would provide acceptable living conditions for its future occupants. It would therefore comply with Policy CS41 of the CS which amongst other things seeks to secure a high standard of amenity for future occupants; remaining provisions of Policy CS22 of the CS not covered above, which allows new housing outside preferred locations where it would not harm local amenity or living conditions; supporting guidance in the DG; and provisions relating to amenity within the Framework.

Other Matters

40. A range of additional objections have been raised by interested parties. These include highways safety concerns related to the level of parking provision, proximity to a junction, and traffic generation; loss of family homes; potential use as holiday homes; impact on local services; drainage; and precedent. These concerns are not shared by the Council. Given that the scheme would accord with the requirements of the Highways Authority; that some of the proposed dwellings are large enough to be occupied by families; that use of these or any other dwellings as second homes is not subject of general control; that the conurbation is clearly capable of absorbing a modest increase in population; that drainage could be addressed by condition; and that I have considered the appeal scheme on its own merits, as would be necessary in relation to any future proposal on another site; I see no reason to reach a different view.
41. The appellant notes that the Council lacks a demonstrable 5-year supply of deliverable housing sites (5YHLS), and this is acknowledged by the Council. In view of my findings in relation to the AA, paragraph 177 of the Framework indicates that in this case the presumption in favour of sustainable development does not apply. Footnote 6 further indicates that the harm I have

identified in relation to habitats sites forms a clear reason for refusal of permission. Consequently the 'tilted balance' set out in paragraph 11 of the Framework is not applicable in this instance.

42. The development would lead to a small increase in the number of dwellings on the site, making a limited contribution to local supply. In this regard even if the shortfall in 5YHLS was as large as claimed, I am satisfied that the limited social and related economic benefits generated by the development would be outweighed by the potential environmental harm it would cause.

Conclusion

43. I have found above that the development would be acceptable with regard to its effect on the character and appearance of the area, the living conditions of future occupants, and the living conditions of occupants at No 44. I have however been unable to conclude that the development would not adversely effect the integrity of the European sites, and on this basis the development would be unacceptable. Therefore, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR