
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/20/3253312

63 Boscombe Overcliff Drive, Bournemouth BH5 2EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Westhead of Bayview Developments (Highcliffe) Ltd against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 7-2019-27186-A, dated 29 November 2019, was refused by notice dated 27 January 2020.
 - The application sought planning permission for erection of a block of 7 flats with partial undercroft car parking, modification of vehicular access and formation of parking spaces, without complying with a condition attached to planning permission Ref 7-2019-27186, dated 16 September 2019.
 - The condition in dispute is No 1 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: 2019-04-21 Rev C - Location, Site and Block Plan; 2019-04-22 Rev D - Proposed Lower Ground Floor, Upper Ground Floor and First Floor Plans; 2019-04-23 Rev D - Proposed Second Floor, Third Floor and Roof Plan; 2019-04-24 Rev F - Proposed Elevations and Street Scene; - 2019-04-25 - Existing Floor Plans and Elevations; 2019-04-26 - Bin Store Details; 2019-04-27 Rev A - SUDS Plan.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The development subject of planning permission 7-2019-27186 (the original permission) has already commenced, with substantial excavation having taken place. I have however based my decision on the plans submitted.

Main Issues

3. The main issues are the effects that development without complying with the disputed condition 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; and
 - the living conditions of occupants of 61 Boscombe Overcliff Drive and 4 Rotherfield Road, with particular regard to outlook.

Reasons

European sites

4. 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.
5. The appeal site lies within 5km of the European sites, and therefore within easy travelling distance. 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.
6. The designation of the European sites specifically relates to the range of priority habitats and species they support. Where available, their conservation objectives seek to maintain or restore their integrity, including that of their qualifying features. As increased recreational pressure would be harmful, it would be clearly at odds with these conservation objectives.
7. 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. This is achieved by funding of Site Access Management and Monitoring (SAMM) measures through developer contributions, and through Heathland Infrastructure Projects, which include 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 NE has indicated its support. As such, and in view of the recent date of the SPD, I have not sought any further comment.
8. The amount of accommodation provided by the appeal scheme would be no different to that already approved. The likely effects of the appeal scheme on the integrity of the European sites would therefore be the same. In this regard a Section 106 Agreement (S106) was submitted in relation to the original permission. This set out a commitment to pay a contribution towards SAMM prior to the commencement of development. The Council has confirmed that no payment was made despite the original permission having been commenced. I have not been provided with any confirmation that a payment has been made since.

9. The S106 is clearly drafted in relation to the original permission. As such it would not secure the contribution in relation to the new planning permission that would be granted were the appeal to be allowed.
10. Moreover, the level of contribution specified within the S106 is calculated with reference to the Dorset Heathland Planning Framework 2015-2020 Supplementary Planning Document (DHPF). This document was in force at the time the original permission 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 S106 does not comply with the SPD. Therefore, though the difference would be small, even if the contribution was paid it would be insufficient to achieve the mitigation currently required.
11. The appellant has indicated a willingness to submit a Unilateral Undertaking in relation to the SAMM contribution. However, none has been provided. Consequently, and in view of the above, I cannot be certain that the likely significant effects of the development on the integrity of the European sites would be fully mitigated.
12. 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.
13. In view of my reasons above, I conclude that development without complying with the disputed condition would, in the absence of appropriately secured mitigation, 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

14. The design approved by the original permission would be a flat roofed 3-storey rectilinear form with basement. In this regard it would markedly differ from the more traditional building forms surrounding.
15. As previously approved, the third floor would have a more compact footprint than the floors below, providing an inset form. The appeal scheme would principally entail an increase in the depth of the third floor.
16. The increase in the depth of the third floor would modestly increase the size of its footprint. The third floor would however remain inset and fundamentally of the same shape. As such there would be little difference in architectural character between the 2 schemes.
17. The area within which the third floor would be altered would not be clearly visible from any public vantage point. Viewed from within the public realm, it is therefore unlikely that there would be any discernible difference between the

form, character or size of the building within the appeal scheme and that subject of the original permission.

18. In view of the above, though the change to the third floor would result in a slightly more bulky form than previously approved, this would not have any significant effect on the architectural relationship between the development and surrounding buildings. Indeed, more or less the same differences in character would exist in both cases.
19. The proposed adjustments to windows would again not result in any discernible change to the character of the development as previously approved.
20. I note the Council's additional concern that the materials shown on the appeal plans differ from those shown on the approved plans. In this regard annotation has clearly been added to the appeal plans which is not present on the approved plans. However, the only substantive change otherwise evident from a direct comparison of the plans appears to be in relation to the overall colour scheme. This may be in part due to the fact that the appeal plans have been produced in greyscale, whereas the approved plans are in colour. Here I am satisfied that the specific matters of both colour and materials could be addressed by condition, as within the original permission.
21. For the reasons outlined above I conclude that development without complying with the disputed condition 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; Policy CS6 of the CS, which amongst other things seeks to apply good design principles to new buildings; supporting guidance set out within Residential Development: A Design Guide 2008; and design-related provisions of the Framework.

Living conditions

22. No 61 is a 2-storey dwelling, and No 4 is a bungalow. Each has a hipped roof. As outlined above, the development as previously approved would bear no resemblance to either, and would be far more bulky. It would also have a substantial physical presence when viewed from both. The Council's acceptance of these relationships has already been established by the original permission.
23. As previously approved, the stepping in of the third floor roughly in line with the rear wall of No 61 would have the effect of reducing the overall bulk of the building. However, when viewed from No 61 and No 4 this effect would be limited by the greater rearward projection of the floors below, whose height would exceed that of the eaves at No 61, and the rectilinear form of the building overall.
24. In this context the modest increase in the footprint of the third floor would, as again noted above, result in a slightly more bulky form than previously approved. This would not however be to the extent that the physical or visual presence of the building would fundamentally change when viewed from either No 4 or No 61.
25. The Council states that views of the sky from a ground floor facing window and the rear courtyard No 61 would be lost, and the same concern presumably exists in relation to No 4. However, when taking into account the relationship between the built forms that would exist even without the change, as too the

origin and angle of such views, the extent and effects of any loss or reduction of view would be very limited in both cases. The same would be true in relation to any effect that the changes would have on the levels of light reaching both No 4 and No 61. In view of the foregoing, the development would be neither unacceptably overbearing nor oppressive.

26. Insofar as interested parties have also raised concerns in relation to overlooking of No 4, the scope for this would not appear to be any greater within the appeal scheme than within the original permission.
27. For the reasons outlined above I conclude that development without complying with the disputed condition would not have an unacceptable effect on the living conditions of occupants at No 4 and No 61. 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, including the amenities of neighbouring residents; supporting guidance set out within Residential Development: A Design Guide 2008; and provisions of the Framework related to amenity.

Other Matters

28. The decision notice also cites Policy CS21 of the CS. However, though this contains some provisions related to design and amenity which overlap those set out within Policy CS41, this is within the context of the distribution of new residential development across Bournemouth. As the residential development in question has already been approved by the original permission, Policy CS21 of the CS does not appear to be directly relevant to the proposal in question.
29. The appellant has drawn my attention to a range of paragraphs within the Framework which concern matters such as the supply of housing, the efficient use of land, and conservation. Most however have limited direct relevance to the current appeal, given that it simply concerns design changes to a development which has already been granted planning permission.

Conclusion

30. For the reasons set out above, I find that though the proposal would not cause unacceptable harm in relation to the character and appearance of the area, or living conditions of neighbours, the failure to secure mitigation in relation to the European sites would cause unacceptable harm. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR