
Appeal Decision

Site visit made on 18 December 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 15 January 2021

Appeal Ref: APP/V1260/W/20/3258265

59-61 St Albans Avenue, Bournemouth BH8 9EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 Mhana against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 7-2020-4571-U, dated 14 April 2020, was refused by notice dated 24 June 2020.
 - The application sought planning permission for erection of 2 x 3 storey blocks of 7 flats (14 in total) and formation of parking spaces and cycle store without complying with a condition attached to planning permission Ref 7-2017-4571-T, dated 27 November 2017.
 - The condition in dispute is No 16 which states that: *"Before development commences unless agreed in writing by the Local Planning Authority details of an underground refuse system shall be submitted to and approved in writing by the Local Planning Authority. The approved system shall be completed prior to the occupation of any of the units of accommodation granted by this permission and shall be retained and maintained thereafter unless otherwise agreed in writing by the Local Planning Authority"*.
 - The reason given for the condition is: *"To safeguard the amenities of occupiers of adjoining and nearby residential properties and in accordance with Policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012)"*.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appellant is seeking to remove condition 16 to allow a surface mounted refuse and recycling store to be provided instead of an underground refuse system. At the time of my site visit the flats had been constructed and were largely externally complete, and a new wall had been erected across the site frontage. I saw no evidence however that an underground refuse system had been installed, and the Council has confirmed that the details required by condition 16 have not been approved. As such I have considered the appeal on the basis that development has commenced in breach of the disputed condition.
3. While the disputed condition was originally imposed only in the interests of residential amenity, the Council's reason for refusal also relates to design and the character and appearance of the area. My consideration of this appeal must be based on present circumstances and is not therefore confined to the original reason for imposing the condition.

4. Therefore, the main issues are whether the disputed condition meets the 6 tests for conditions in paragraph 55 of the National Planning Policy Framework (the Framework); and the effect that removing condition 16 would have on the character and appearance of the area and the living conditions of neighbouring occupiers and future occupiers of the flats in respect of outlook and odour.

Reasons

Tests for conditions

5. Refuse and recycling storage is needed for all residential developments to ensure that waste is not left outside where it would harm the character and appearance of the area, or in places where it would result in adverse impacts on the living conditions of residents, such as through odour. Therefore, it was reasonable and necessary to impose a condition requiring refuse and recycling storage to be provided prior to occupation of any of the permitted flats. Furthermore, as the potential impacts of the approved development are planning matters which are addressed by local and national planning policy, the condition is relevant to planning.
6. The approved scheme specifically proposed an underground refuse system and its location was shown on the approved plans. Therefore, the condition was relevant to the development to be permitted. It was reasonable that the Council sought details of an underground system, as had the condition been drafted more broadly to allow for another type of refuse/recycling storage, this would not have accorded with the approved plans.
7. While the appellant now contends that an underground system would be excessively expensive to install and maintain, no viability information has been submitted to support this claim. The need for ongoing maintenance and the associated costs would have been apparent when an underground system was originally proposed. There is no evidence before me that these costs would make the flats unviable to rent or sell, even if they were passed on to residents, for example through a service charge. Therefore, it has not been demonstrated that the requirements of the condition are unreasonable in terms of cost.
8. The disputed condition does not seek to specify the type of underground system to be used, however given the numerous types available there may be more than one system that would work for this site. Therefore, in my view it would have been unreasonable for the Council to seek to impose detailed requirements for the store unless such details had formed part of the original application. As worded, the condition provides some limited flexibility, allowing the appellant to choose a suitable system for their needs, and is therefore reasonable. The condition is also clear about when the details need to be submitted, when the store must be in place, and has ongoing requirements for maintenance and retention. As such, it is precise and enforceable.
9. Accordingly, the disputed condition meets the 6 tests for conditions in Framework paragraph 55. If the condition were to be removed entirely, there would be no requirement to provide refuse/recycling storage, leading to adverse impacts on the character and appearance of the area and the living conditions of residents of the flats. The appellant however proposes an alternative refuse and recycling storage facility, which I consider below.

Character and appearance

10. St Alban's Avenue mainly comprises large, detached dwellings set well back from the road in sizeable plots. Most front boundaries comprise low walls, railings or

hedges which provide a sense of enclosure but allow for views into front gardens and parking areas. Garages are mainly set back alongside or slightly behind the dwellings. As a result, the street has a green and spacious character.

11. Due to its siting, height and scale, the proposed refuse store would be clearly visible from the road, and would be a prominent feature in this street scene where there are no other outbuildings visible to the front of dwellings. It would be significantly taller than the existing side boundary fence and front wall, which is not proposed to be increased in height. While new boundary planting is shown on the submitted plans, I have no details of the species or height proposed, and as such cannot be certain that they would provide any meaningful screening. Even if the planting were tall enough to provide some screening, the proposed store would still be visible through the adjacent pedestrian access and above the side boundary fence. Consequently, despite use of materials to complement the flats, the proposed store would be a prominent and dominant feature in the otherwise open frontage of the site and would erode the spacious character of the area.
12. Moreover, due to the design of the proposed store and the limited width of adjacent paths, it would be difficult to wheel out the large bins past the doors and to a collection vehicle. While the appellant suggests that a collection point could be supplied close to the site entrance, this would not address the issue of the path widths. In any event, no collection point is shown on the submitted plans and as the site frontage is taken up by landscaping, parking and vehicle or pedestrian routes, it has not been demonstrated that one could be provided within the site.
13. The Council's Waste officer suggests that a waste management plan and private collection would address this issue, however it is unclear how anyone would be able to overcome the physical restrictions to manoeuvring the bins, irrespective of whether they were a private or Council collection service. Therefore, in order for the proposed refuse/recycling arrangements to function the landscaping scheme would need to be revised. As I do not have the approved plan before me I do not know whether this would result in less soft landscaping than has previously been approved, as the Council suggests. Nevertheless, there would be less space for soft landscaping and lawn within the site than is currently proposed, resulting in a harder frontage to the site. This would harm the appearance of the site and diminish the green character of the area.
14. The appellant suggests that the approved layout contravenes the Council's guidance on underground refuse stores, however as I have not been provided with the approved site layout I can give this very little weight. In any event, it would not justify approving another scheme which would not function well.
15. Although the area is not subject to any character or heritage designations, the Framework and the development plan emphasise the importance of good design in all locations. For the reasons given above, the proposal would harm the character and appearance of the area. It would therefore conflict with Policies CS6, CS21 and CS41 of the Bournemouth Local Plan Core Strategy (CS) and Policy 6.10 of the Bournemouth District Wide Local Plan (LP), all of which require good design that respects or enhances the character and appearance of the area. It would also conflict with the Council's adopted Residential Development Design Guide which requires a design led approach to refuse facilities, and with the Framework which requires development to function well and add to the overall quality of the area.

Living conditions

16. The proposed store would be sited very close to the front window of the adjacent ground floor flat, which I am advised serves a bedroom. Due to its size and

proximity to that window, the proposed store would be a dominant and overbearing feature that would significantly detract from the outlook from that room.

17. The storage of refuse would also be likely to generate some odour, such that the future occupants of the flat would need to keep the adjacent window closed, reducing their enjoyment of their home. Furthermore, odour would make the outside space in front of the store less attractive to use, reducing the already limited outside space available to residents. Consequently, it would adversely affect the living conditions of the occupants of the ground floor flat.
18. The neighbouring dwelling No 57 is some distance from the appeal site, with garages and a parking area in between. Therefore, while the proposed store would be visible, it would not be a dominant feature in the outlook from that property or appear oppressive. As such, it would not significantly adversely affect the living conditions of the occupiers of No 57.
19. Nevertheless, the proposal would harm the living conditions of future occupiers of the adjacent ground floor flat in respect of outlook and odour. It would therefore conflict with CS Policies CS21 and CS41, LP Policy 6.10 and the Framework insofar as they require development to provide a high standard of amenity.

Other Matters

20. The evidence before me, including examples referenced by the appellant, is that there are different types of underground refuse system available, some of which allow for standard bins to be stored underground and raised and wheeled out for collection, while others are lifted out using a hydraulic arm on a specialist collection vehicle. It has not been demonstrated that the latter type is the only option available for this site, and as such I cannot be certain that the appellant's concerns about arms oversailing the adjacent lawn would be realised. In any case, due to the noise and disturbance of bins being collected, it is unlikely that any residents of the flats using the lawn would want to remain in that outside space during the relatively short collection period. Therefore, there is unlikely to be a health and safety risk.
21. The appellant contends that the underground system previously approved would cause inconvenience through collection vehicles parked on the highway or within the site, however as I have not been provided with the approved site plan I cannot be certain what provision was made for refuse collections. I note however that there is no space within the proposed layout to accommodate a collection vehicle other than in the access, across residents' parking spaces, or at the kerb. Therefore, the proposal does not provide any demonstrable benefit in this respect.
22. There is no substantive evidence before me that collection vehicles would need to park for significantly longer for bins to be retrieved from an underground store than from a surface store, particularly if a system were used where bins are wheeled out rather than lifted with an arm. Moreover, even if a collection point could be provided within the site, as the appellant suggests, bins could be wheeled to it before the collection vehicle arrived, irrespective of whether they were stored underground or on the surface. Therefore, it has not been shown that the proposal would reduce collection time compared to the approved scheme. In any event, it is normal for refuse collection vehicles to park temporarily on the road while collecting bins, and this is an accepted part of everyday life in a residential area. It has not been demonstrated that collection vehicles would have any significant or harmful impact on highway safety or the operation of the highway even if parked for some time.

23. The appellant contends that the underground system approved would not have sufficient capacity for the waste generated by the flats and was not properly considered. It is unclear why the appellant did not design the original scheme with the required capacity for the number of flats proposed. However, even if this is the case, I have not been provided with any plan showing what the appellant now considers would be necessary to provide sufficient underground capacity. Therefore, I cannot be certain that any additional provision required would go beyond what would be allowed by the existing condition. Nor has it been demonstrated that additional underground provision would have adverse implications for the appearance of the site, the living conditions of residents, or would provide less outside space for residents than the appeal scheme, given my findings above on the functionality of the proposed design and layout.
24. While there could be a risk of equipment failure even with appropriate maintenance, it would be for the appellant and future owners of the site to ensure that appropriate measures were in place to ensure timely action to resolve such faults, such as a maintenance contract. Temporary refuse/recycling storage could be provided within the site during such occurrences. Such measures would be covered by the Refuse Management Plan required by condition 17, which the appellant is not seeking to amend as part of this appeal. Therefore, equipment failure is unlikely to result in harm to the character and appearance of the area through the inability to store waste.
25. The installation of an underground refuse store would cause disruption to existing residents, however this would be short-term, and would not result in a significantly greater impact on those residents than construction of the rest of the development.
26. Both underground and surface refuse stores could be made secure and as such there is no obvious advantage from the appeal proposal in this respect. There is also no compelling evidence before me that the store now proposed would be more sustainable in its construction than the approved store, or would use locally sourced materials. As such, it has not been demonstrated that the proposal would result in environmental benefits.
27. Accordingly, it has not been demonstrated that the approved underground refuse system would result in greater harm than the appeal proposal, or that there would be any material benefits from a surface mounted store.

Conclusion

28. I have found that the disputed condition meets the Framework tests and that the alternative proposal before me would result in unacceptable harm to the character and appearance of the area and the living conditions of future occupiers of the adjacent flat. Therefore, as there is no suitable alternative scheme for storage of refuse and recycling before me, the existing condition remains necessary. The appeal is therefore dismissed.

L McKay

INSPECTOR