



Appeal Decision

Site visit made on 22 January 2021

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 3 March 2021

Appeal Ref: APP/V1260/W/20/3261173 66 Twemlow Avenue, Poole BH14 8AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Robin Guy Homes against Bournemouth Christchurch and Poole Council.
 - The application Ref APP/20/00502/F, is dated 11 May 2020.
 - The development proposed is demolition of existing two flats and the erection of a pair of detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing two flats and the erection of a pair of detached dwellings at 66 Twemlow Avenue, Poole BH14 8AN in accordance with the terms of the application, APP/20/00502/F, dated 11 May 2020 and the plans submitted with it, subject to the conditions set out in the following Schedule.

Procedural Matters

2. Amended plans were submitted during the application process and accepted by the Council. The amendments reduce the ridge and eaves heights of the proposed dwellings, increase soffit overhangs and add frontage planting and a boundary wall. They therefore reduce the scale of the proposal overall. Consequently, although it is unclear whether these plans were subject to public consultation before the appeal was lodged, I do not consider that any party would be prejudiced by my taking them into account. Therefore, I have determined the appeal on the basis of the amended plans.
3. During the appeal the appellant submitted an agreement under s111 of the Local Government Act 1972 to secure financial contributions towards Strategic Access Management and Monitoring (SAMM) for the Dorset Heathlands Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site ("the Dorset Heathlands") and the Poole Harbour SPA and Site of Special Scientific Interest ("the Poole Harbour European Site"). The Council has had the opportunity to comment on the agreement. I return to this matter below.

Main Issues

4. The Council advises that if it had been in a position to determine the application it would have refused permission for reasons relating to design and the impact of the proposal on the setting of Poole Park, a Conservation Area (CA) and registered park and garden (RPG), and on the European sites.

5. Therefore, the main issues are the effect of the proposed development on: the character and appearance of the area and the setting of Poole Park CA and RPG; and the integrity of the Dorset Heathlands and Poole Harbour European sites.

Reasons

Character and appearance and designated heritage assets

6. Poole Park is a large parkland open space provided as a 'Peoples Park and Recreation Ground' as a result of a gift of land from Lord Wimborne in 1885, which opened in 1890. The Park's special interest derives from the substantial area of public open space and boating lake, its historic buildings, structures, formal entrances and circuit of drives and walks, and its relationship to Poole Harbour, from which it is separated by a railway line. While the RPG designation is limited to the Park itself, the CA is drawn more broadly, including a number of dwellings around the outskirts of the Park. The Council's Supplementary Planning Guidance (SPG) for the CA identifies these dwellings as being generally 2 storeys in height, sometimes with a third storey of accommodation in the roof, with steeply pitched roofs with deep eaves and presenting strong gables or bays to the road. This close residential setting also contributes to the significance of the Park.
7. Twemlow Avenue and surrounding roads generally comprise large detached residential properties, some divided into flats, set in spacious plots. Although there is some variety in design, most are 2 storey dwellings of similar age, with hipped roofs and bay windows, modest front gardens and parking areas, and low walls along the front boundary. The existing property shares some of these characteristics, however its siting towards the rear of the plot creates a noticeable gap in the street scene along Twemlow Avenue. As such, it is something of an anomaly in the prevailing pattern of development. The existing building is of no particular architectural merit and due to its siting, does not contribute positively to the setting of the heritage assets. Its demolition would not therefore harm the character and appearance of the area or the setting of the CA and RPG.
8. The form and design of the proposed dwellings, in particular the gabled roofs with large gable windows, deep eaves overhang and use of cladding would be similar to No 47 opposite, and would also share features with 68 Twemlow Avenue and 105 Orchard Avenue. These dwellings, and others around the junction of these roads, have either been replaced or significantly altered to have a more contemporary appearance, featuring large gables and windows, horizontal cladding and balconies. While these were apparently approved before the adoption of the current LP, nevertheless they have significantly altered the character of this junction, which is now different to that of the rest of these roads.
9. Although an indication of the proposed materials is shown on the proposed plans no specific details are given of the colour or finish proposed, or of the windows. Such details could however be secured by condition, to ensure that they sit comfortably with the variety of materials in the area, which include render, brick and cladding. The roof materials proposed would be different to the prevailing slate and clay tile, however with careful detailing and appropriate colour it would not stand out in the street-scene.

10. Due to the land levels the proposed dwellings would be set slightly higher than the road, however the ridge and eaves heights would be similar to those of No 64 and not significantly higher than No 68, taking into account the slope of the road. The main part of the dwellings would be set back a similar distance from the road to neighbouring properties, with only the garages projecting slightly forward. While front projecting garages are not generally found in the area, integral garages are common and single storey front projections providing porches and balconies are found all along Twemlow Avenue. Furthermore, many dwellings in Orchard Avenue have large garages fronting Whitecliff Road. The proposed balconies would be relatively small, and would not appear out of keeping given the other examples in the immediate area.
11. The proposal would not increase the number of dwellings on the site, however the proposed dwellings would occupy a larger proportion of it than the existing property. The plots would be significantly narrower than most others along this road, however it is already evident that the site has been split, due to the separate driveways, property numbers and the central hedge dividing the front garden. The proposal for detached dwellings with a relatively narrow gap between them would make this subdivision more obvious than at present, and more so than with the previously approved scheme for semi-detached dwellings. There is however considerable variation in plot size and building widths around the junction, with relatively narrow buildings at 47 Twemlow Avenue and 109-111 Orchard Avenue, and a much wider building on a wide plot at No 68. Furthermore, many dwellings locally occupy much of the width of their plots, and gaps between properties vary significantly.
12. Consequently, the width and spacing of the proposed dwellings and the narrow plots would not be incongruous in this location, and they would not appear cramped. Overall, the siting, scale, height, bulk and massing of the proposed dwellings would not make them appear unduly prominent or dominant from Orchard Avenue. Subject to appropriate materials, the contemporary design proposed would reflect the mixed character of development at this road junction.
13. The proposed dwellings would extend further to the rear than neighbouring properties and as such would be visible from the Park, however the existing property is already seen in a similar position. It would be evident that there were two dwellings rather than the single existing building, however given the variety of development surrounding the Park, this would not in itself be harmful. The proposed rear gables would reflect those on the side of 68 Twemlow Avenue and 105 Orchard Avenue, which are clearly visible from the Park. Moreover, this design would reflect the features of other residential properties in the CA described in the SPG. Therefore, in this context, the design and siting of the proposed dwellings would not appear incongruous when viewed from the Park.
14. Front gardens in this area generally comprise areas of parking with vegetation alongside. The proposal would result in the loss of the existing vegetation in the front garden, however the layout would allow for planting to soften the appearance of the plots, and a low wall across the frontage. Given my findings regarding the design of the proposed dwellings, it would not be necessary to screen them with vegetation. Furthermore, while I appreciate the Council's desire not to replicate less successful schemes in the area, I note that the proposed layout would provide for a similar amount of frontage landscaping as

in the previously approved scheme. Consequently, with appropriate hard and soft landscaping, which could be secured by planning condition, the proposed frontages would respect the character of the area.

15. The rear garden of the existing property is relatively small and screened from view from the Park by a timber fence. The gardens of the proposed dwellings could be just as well screened by a fence or other appropriate boundary treatment. Therefore, although some terracing and hard landscaping is proposed at the rear of the site, this would not be apparent from the Park. There was no planting visible along the rear boundary at the time of my visit and there is no compelling evidence before me that the proposal would result in the loss of any significant vegetation. Details of proposed planting could be secured by condition, which would help to soften the existing hard edge to the site and allow it to integrate into the green, semi-natural space behind. As such, the proposed rear gardens would not adversely affect the setting of the Park or views from it.
16. Accordingly, while the proposed dwellings would increase built development on the site, they would respect the pattern and form of development around this junction, which differs from the surrounding area, and would not appear incongruous in the street scene. They would reflect the form of other residential properties around the Park and would not be significantly more prominent in views from the Park than the existing property or other contemporary dwellings in the area. As such, the proposal would not harm the character and appearance of the area or detract from features and views which contribute to the setting of the CA and RPG. It would therefore preserve the significance of the designated heritage assets.
17. Therefore, I find no conflict with Policy PP28 of the Poole Local Plan (LP), which permits plot subdivision where it would preserve or enhance the residential character of the area; Policy PP27 which requires a good standard of design which reflects or enhances local patterns of development and neighbouring buildings; or with Policy PP2 which encourages housing densities which optimise the potential of a site. Nor do I find any conflict with Policy PP30 which supports proposals which preserve or enhance the historic, architectural and archaeological significance of heritage assets, and their settings.
18. Furthermore, the proposal would comply with the provisions of the National Planning Policy Framework (the Framework) which requires high quality design and emphasises the desirability of sustaining and enhancing heritage assets, and of new development making a positive contribution to local character and distinctiveness.

Dorset Heathlands

19. The appeal site is within 5km but beyond 400m from the Dorset Heathlands, which comprise an extensive network of lowland heath, recognised for their national and international importance for nature conservation. The Dorset Heathlands are under significant pressure from urbanising impacts, damage caused by domestic pets and recreational use, which have the potential to cause ongoing adverse effects on the protected habitats and species.
20. The proposal would not increase the number of dwellings on the site, however it would replace flats with larger houses and as such would increase the likely number of occupants of the site, who are likely to visit the Dorset Heathlands.

As such, the proposal, particularly combined with other development in the area, is likely to have a significant effect on the integrity of the Dorset Heathlands due to increased disturbance through recreational activity. It is therefore necessary for me, as the competent authority, to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the Dorset Heathlands.

21. The main parties have agreed a financial sum in accordance with the Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (SPD), which has been drawn up with advice from Natural England. The SPD sets out a mitigation strategy consisting of Strategic Access Management and Monitoring (SAMM) and Heathland Infrastructure Projects (HIPs). LP Policies PP32 and PP39 allow for mitigation to be secured by means of S106 or S111 agreements and through the Community Infrastructure Levy (CIL). The appellant's financial contribution would be put towards SAMM, and the CIL generated by the proposal would contribute towards HIPs. Accordingly, there is an agreed project that would address the effects associated with the proposed development and relieve pressure on the Dorset Heathlands.
22. I am satisfied that the S111 agreement dated 11 January 2021 and associated payment made to the Council on 22 January 2021, together with the CIL generated by the proposal, would enable the delivery of mitigation sufficient to address the level of harm likely to be caused by the proposed development and would be pursuant to the Council's adopted strategy. I therefore find that, subject to the proposed mitigation, the proposal would not result in a significant harmful effect on the integrity of the Dorset Heathlands.

Poole Harbour European Site

23. The site is also within the zone of influence of the Poole Harbour European Site, designated due to the important bird species that inhabit the area, including internationally important populations of regularly occurring species and migratory species, and an internationally important assemblage of waterfowl. The Sites also include supporting habitats for seagrass, shallow inshore waters including coastal lagoons, intertidal sediments, saltmarsh and reedbeds.
24. The evidence before me is that public access in and around the harbour and various forms of recreational activities can disturb the SPA birds in the harbour, adversely affecting the protected habitats and species. Furthermore, 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 food available for protected birds.
25. The proposal would increase the likely number of occupants of the site, who would be likely to use the harbour for recreation given its very close proximity to the site. Furthermore, it would be likely to result in an increase in sewage discharge. Both alone and in combination with other development around the harbour the proposal is likely to have a significant effect on the integrity of the Poole Harbour European Site due to increased disturbance through recreational activity and increased nitrogen from sewage. It is therefore necessary for me, as the competent authority, to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of that Site.
26. The main parties have agreed a financial sum in accordance with the Poole Harbour Recreation 2019-2024 SPD, which has been drawn up with advice

from Natural England. The SPD sets out a mitigation strategy consisting of SAMM and Poole Harbour Infrastructure Projects (PHIP). The appellant's financial contribution would be put towards SAMM, while the CIL generated by the proposal would contribute towards PHIPs.

27. The Council has also adopted the Nitrogen Reduction in Poole Harbour SPD, which has been drawn up in conjunction with other local Councils, the Environment Agency and Natural England. The SPD sets out how the Councils will ensure that new development is nitrogen neutral through direct nitrogen reduction measures and indirect measures such as nitrogen offsetting. The CIL generated by the proposal would contribute towards securing projects to provide nitrogen neutrality.
28. There are therefore agreed projects that would address the effects of the proposed development on the Poole Harbour European Site both in terms of recreational pressure and nitrogen. I am satisfied that the S111 agreement and associated payment, and the CIL generated by the proposal would enable the delivery of mitigation sufficient to address the level of harm likely to be caused by the proposed development and would be pursuant to the Council's adopted strategies. Therefore, subject to the proposed mitigation, the proposal would not result in a significant harmful effect on the integrity of the Poole Harbour European Site.
29. Accordingly, I find no conflict with LP Policy PP32, which permits development only where it would not lead to an adverse effect on the integrity of these European sites.

Other Matters

30. There is potential for overlooking within the site and towards neighbouring properties from the side windows and rear balconies of the proposed dwellings. This could be addressed by planning conditions to require screens on the balconies, obscure glazed and fixed windows at first floor, and boundary treatments of appropriate height and design to screen views from ground floor windows. The angled window proposed for Plot 1 would provide views towards the end of the garden of No 68, however this area is already overlooked by other windows, including in the existing building. Therefore, the proposal would not result in a harmful increase in overlooking of that outside space, and would not significantly affect the living conditions of the occupiers of the flats in No 68. The proposed front roof terraces would overlook the frontages of neighbouring properties, however these are already visible from the public realm and as such these would not significantly affect the privacy of neighbouring occupiers.
31. An interested party has raised concerns about the position of the boundary between the front of the site and its neighbour, however this is a civil matter which falls outside of my remit in determining this appeal. In any event, any change to the boundary position would be within the area shown as landscaping and as such would not prevent delivery of the development proposed.
32. The Council advises that bats are known to use the area and that there is a roost in a neighbouring property, but that due to its construction and condition, there is a low likelihood of the existing building being used for bats. Therefore, it is unlikely that the demolition of the existing building would harm bats or

their habitats. Consequently, a planning condition requiring a bat survey is not necessary.

Conditions

33. In addition to the conditions discussed above, a condition is necessary to require compliance with the approved plans, in the interests of certainty. Details of windows and soft landscaping are necessary in the interests of the character and appearance of the area, as referred to by the main parties in their submissions. Details of boundary treatments are needed to safeguard the privacy of neighbours and the character and appearance of the area. For highway safety reasons, each dwelling needs to be provided with adequate access and parking before it is occupied, including visibility splays for each of the new accesses, and stopping up of the existing accesses.
34. Provision is needed for management of surface water in order to reduce flood risk on and off site. A minimum finished floor level is required to mitigate against the identified risk of future tidal flooding. Furthermore, a condition is needed to require 10% of the predicted energy consumption of each proposed dwelling to be achieved through renewable energy sources, as required by LP Policy PP37 and in the interests of tackling climate change.
35. The Council recommends provision of bat bricks/tiles to secure biodiversity enhancements as required by LP Policy PP33 and the Framework. Natural England recommends House Martin nests however. The reason for this difference is unclear, therefore it would be more reasonable to require details of biodiversity enhancements to be submitted by the appellant and agreed by the Council. I have amended the suggested condition accordingly.
36. The Council suggests a condition to remove permitted development rights for terraces, dormers or windows on the side of the proposed dwellings at first and second floor levels to preserve the privacy of neighbours. However, to be permitted development, new upper floor windows in the side wall or roof slope of a dwelling must be obscure glazed and fixed, which would safeguard the privacy of neighbouring properties. Balconies, verandahs and raised platforms such as terraces are excluded from permitted development for dwellinghouses. Therefore, as the condition is not necessary, I have not imposed it.
37. Where necessary I have altered the wording of the parties' suggested conditions to ensure that they meet the Framework tests for conditions, and to allow for details to be submitted for each dwelling individually, in case they are developed separately.

Conclusion

38. For the reasons given above, the appeal is allowed.

L McKay

INSPECTOR

Schedule of conditions

- 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: 01, 03B, 04B, 05, 06B, 07, 07B
- 3) The internal finished floor level of the ground floor of the dwellings hereby approved shall be set at a minimum of 3.6 metres above ordnance datum, as shown on the approved plan 07B.
- 4) No construction works shall take place above the ground floor slab level of any dwelling hereby approved until details of the use of on-site renewable energy sources to meet a minimum of 10% of predicted energy use of that dwelling have been submitted to, and approved in writing by, the Local Planning Authority. The approved renewable energy sources shall be implemented before occupation of that dwelling, and thereafter retained and maintained.
- 5) Details and samples of all external facing and roofing materials to be used on the dwellings hereby permitted shall be submitted to, and approved in writing by, the Local Planning Authority prior to their installation on site. The development shall thereafter be carried out in accordance with the approved details.
- 6) Details of the materials, colour, finish, profile and reveals of the windows to be installed in each of the dwellings hereby permitted shall be submitted to, and approved in writing by, the Local Planning Authority prior to their installation. The development shall thereafter be carried out in accordance with the approved details.
- 7) Both in the first instance and upon all subsequent occasions, the first floor side windows of the dwellings hereby permitted (including those serving bathrooms, hallways and being secondary to habitable rooms) shall be glazed in glass which conforms to or exceeds Pilkington Texture Glass Privacy Level 3 or equivalent, 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. These shall be installed prior to the first occupation of the dwellings hereby permitted and shall thereafter be retained at all times.
- 8) No dwelling hereby permitted shall be occupied until obscure glazed screens of at least 1.8 metres in height have been erected along both sides of the first-floor rear balcony of that dwelling. The screens shall thereafter be permanently retained as such.
- 9) No dwelling hereby permitted shall be occupied until biodiversity enhancement measures have been installed on or in the dwelling or within its plot in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. The biodiversity enhancement measures shall thereafter be retained.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any subsequent re-enactment thereof, no dwelling hereby permitted shall be occupied until the land designated as visibility splays on the approved plan 03B has been provided clear of all obstructions over 0.6 metres

above the level of the adjoining highway, including the reduction in level of the land if necessary. Nothing over that height shall be permitted to remain, be placed, built, planted or grown on the land so designated at any time thereafter.

- 11) No dwelling hereby permitted shall be occupied until the access and vehicle parking for that dwelling have been constructed as shown on the approved plan and made available for use, including stopping up of the existing access. These areas shall thereafter be retained and kept available for those purposes at all times.
- 12) No dwelling hereby permitted shall be occupied until hard and soft landscaping has been completed in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. These details shall include the positions, design, materials and type of boundary treatment to be erected, including the boundary between the approved dwellings to the front; and planting plans, written specifications and schedules of plants. All planting shall be carried out in accordance with British Standards, including regard for plant storage and ground conditions at the time of planting. The scheme shall be properly maintained for a period of 5 years and any plants (including those retained as part of the scheme) which die, are removed or become damaged or diseased within this period shall be replaced in the next planting season with others of a similar size and the same species, unless the Local Planning Authority gives written consent to any variation. All boundary treatments shall be maintained for a period of five years and thereafter retained.
- 13) 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 surfaces shall thereafter be retained as such.