



Appeal Decision

Site visit made on 3 March 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th March 2021

Appeal Ref: APP/D1265/W/20/3261541

Car park to the rear of 68-84 Victoria Road, Ferndown BH22 9JA

- 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 Mr Tom Smith of Haysport Properties against the decision of Dorset Council.
 - The application Ref 3/19/2147/FUL, dated 15 October 2019, was refused by notice dated 24 April 2020.
 - The development proposed is development of a 3 storey building providing 8 apartments, including landscaping, cycle park provision and access works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 1 April 2019, East Dorset District Council ceased to exist and became part of a new Unitary Authority known as Dorset Council. The development plans for the merged Local Planning Authorities will remain in place for the area within the new Unitary Authority they relate to until such time as they are revoked or replaced. I shall therefore determine the appeal having regard to the policies of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy 2014 (Local Plan).
3. The appellant has referred to an amended set of plans which have been submitted to the Council for determination as a resubmission of the appeal scheme. The appellant's statement refers to these as addressing the previous criticisms of the scheme. It also suggests, but does not explicitly request, that I take these amended plans into account in my decision.
4. I have considered whether this would be appropriate. I have had regard to the 'Wheatcroft' principles including whether amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity.
5. The amended plans appear to have the same numbers as those originally submitted with no revision number. They are, however, dated June 2020. The changes appear to include rearrangement of internal layouts, repositioning and removal of windows, use of obscured glazing, reconfiguration of amenity space and changes to the position of the building in relation to a protected tree.

6. Given the substantial differences between the revised drawings and the drawings that were before the Council when they made their decision and on which locally interested parties had been notified, I am not satisfied that the amendments would not materially alter the scheme nor that the interests of those parties would not be prejudiced if I were to take the revised drawings into account. I am therefore considering the appeal on the basis of the same plans the Council used to make their decision.

Main Issues

7. The main issues are:
- the effect of the proposed development on living conditions of occupants of Homelands House, with particular regard to outlook and privacy;
 - whether satisfactory living conditions would be created for future occupiers, with particular regard to outlook and privacy; and
 - the effect of the proposed development on a protected tree.

Reasons

8. The appeal site is an area of car parking located to the north of Homelands House, a part two/part three-storey block of sheltered retirement housing. It is set in a short distance from the southern boundary of the appeal site. Multiple windows, serving one-bedroom flats, within the north facing elevation of Homelands House face towards the appeal site.
9. The proposed development would be a three-storey building. It would have two-storey rear projections at either end of its southern elevation and a centrally positioned, single-storey rear projection with a first floor roof terrace above. It would be positioned parallel to the northern wing of Homelands House, a short distance from the rear elevation of this building.

Living conditions – Homelands House

10. The distance between the rear elevation of Homelands House and the proposed development is indicated to be around 13.5 metres from the rear projections and 17 metres from the main rear elevation. The height and length of the proposed building in combination with its proximity to the windows in Homelands House would significantly reduce outlook from these windows for these occupants. It would also appear overbearing when viewed from windows in the lower floors of Homelands House. The stepped down design of the proposed building, whilst visually breaking up its bulk, would not overcome the significant adverse effect on the outlook of these adjoining neighbours.
11. There is no minimum separation distance between facing windows set out in any of the Council's policies. Nevertheless, the gap between the rear elevation of the proposed building would not be sufficiently wide enough to prevent occupants of the proposed development from overlooking the windows in Homelands House. Even with the first floor windows within the rear elevations of the proposed two-storey projections being obscurely glazed, overlooking would nevertheless arise from the windows in the main rear elevation. With large windows serving main living areas, overlooking would be likely to occur throughout the day, leading to an unacceptable loss of privacy for these neighbouring occupants.

12. Due to the nature of the occupancy of this sheltered accommodation, residents are likely to spend a large amount of time in their flats facing towards the appeal site. The effect of the proposal on these occupants' living conditions would therefore be significant.
13. There are some small trees on the boundary between the appeal site and Homelands House. In addition, new trees and planting are proposed as part of the landscaping scheme for the proposed development. However, due to the time it would take for these trees to reach a size whereby they would provide screening, this would not mitigate the harms I have identified.
14. I conclude that the proposed development would harm the living conditions of occupiers of Homelands House with particular regard to outlook and privacy. It would therefore conflict with Policy HE2 of the Local Plan. This policy requires new development to be high quality, compatible with its surroundings and in relation to nearby properties, include minimising general disturbance to amenity. It would also not accord with the National Planning Policy Framework (the Framework) which seeks well-designed places with a high standard of amenity for existing and future users.

Living conditions – future occupiers

15. Homelands House is a long and reasonably tall building, extending the full length of the site. The relationship between Homelands House and the proposed flats would, as a result of the proximity of facing windows, have a similar adverse affect on the living conditions of future occupiers as it would have on occupiers of Homelands House, in respect of outlook and overlooking. The proposed roof terrace, despite being screened, would also be likely to be overlooked by nearby windows in the top floor of Homelands House. As such the living conditions of future occupiers would be unsatisfactory.
16. Whilst there are circumstances where higher density development will necessitate development being closer together, the design of this proposed scheme in the context of Homelands House opposite does not achieve a satisfactory relationship to protect the privacy and outlook of either occupiers.
17. I conclude that the proposed development would not provide satisfactory living conditions for future occupiers, with particular regard to outlook and privacy. This would therefore conflict with Policy HE2 of the Local Plan and the Framework as referred to above.

Effect on a protected tree

18. To the east of the proposed building and beyond the site boundary there is a mature Oak tree which is subject to a Tree Preservation Order. This is a large tree which has a significant canopy spread that overhangs the appeal site. As one of the largest trees in the immediate area, it is prominent from the surrounding development and parking areas, providing visual relief from the hard landscaping and buildings. As such it makes a positive contribution to the visual amenity of the area.
19. The submitted drawings indicate that the proposed building would be very close to the canopy of the protected tree. Ground and first floor kitchen windows within the eastern elevation of the proposed building would face towards the protected tree. The close proximity of the tree to the proposed building and these kitchen windows would reduce, and potentially block, light to and outlook

- from these rooms. Its proximity to the proposed building may also raise concerns about it potentially damaging the building. Furthermore, during windy weather it would be likely to knock against these windows causing inconvenience and potential concern to occupiers. As such, the proposed building would have an unsatisfactory relationship with the protected tree.
20. In these circumstances, it seems to me that if the tree were to cause unacceptable harm to the living conditions of future occupants it would be difficult for a request to cut back the tree to be resisted. This would potentially reduce the visual amenity of the tree.
21. The appellant submitted an Arboricultural Impact Assessment (AIA) based on the revised scheme in which the building line would be set further away from the protected tree and the windows in the eastern elevation would be removed. The AIA confirms that in these circumstances the tree would require pruning. I have no assessment of the impact of the appeal scheme on the protected tree. However, it appears that the appeal scheme would, as a minimum, require more extensive pruning to accommodate the construction works as well as to provide separation from the proposed flats. This would reduce the tree's contribution to the visual amenity of the area.
22. I accept that if pruning is carried out in accordance with the recommendations set out in the British Standard¹ the health of the tree should not be unduly harmed. Nevertheless, for the reasons I have set out above, this would not justify the pruning of the crown required to accommodate the proposal.
23. I conclude that the proposed development would adversely affect a protected tree. It would therefore conflict with Policy HE2 of the Local Plan. This requires new development to be high quality, compatible with or improving of its surroundings in relation to mature trees.

Other Matter

24. I appreciate that under permitted development extensions that increase the number of storeys of dwellings and blocks of flats are allowed in certain circumstances. However, the scheme before me is seeking planning permission for a new development which I must consider against the development plan policies which I have done.

Planning Balance

25. The Council cannot demonstrate a five year supply of deliverable housing sites. Consequently, paragraph 11 d) of the Framework is engaged.
26. The scheme, in providing eight flats would make a moderate contribution to housing supply delivering social and economic benefits. It would also make of previously developed land within an urban area with good accessibility to services and facilities by means other than the private car. These are positive aspects of the scheme that weigh in its favour.
27. However, the proposed development would significantly harm the living conditions of neighbouring occupiers and would fail to provide satisfactory living conditions for future occupants. In addition, it would adversely affect a protected tree. These factors weigh significantly against the proposal.

¹ BS3998:2010 – Tree Work

28. This leads me to the view that the adverse effects would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development therefore does not apply.

Conclusion

29. I have found that the proposal conflicts with the development plan and there are no other considerations, including the advice of the Framework, that outweigh that conflict.

30. For this reason, I conclude the appeal should be dismissed.

Rachael Pipkin

INSPECTOR