The Planning Inspectorate

Appeal Decision

Site visit made on 1 February 2021

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 12 May 2021

Appeal Ref: APP/D1265/W/20/3260799
313 New Road, Ferndown BH22 8EJ

- 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 Fox Homes against the decision of Dorset Council.
- The application Ref 3/19/1637/FUL, dated 30 July 2019, was refused by notice dated 6 July 2020.
- The development proposed is erection of a block of 5 flats.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has submitted amended site plans as part of the appeal (Refs. 18/994/023E and 18/994/024E), which reduce the rear car parking area from 10 to 8 spaces, alter the position of a pedestrian access from Chander Close and show slightly different visibility splays. The plans were submitted to the Local Planning Authority (LPA) during the application process but were not accepted and the LPA made its decision based on earlier versions, 023D and 024C. The Planning Inspectorate's Procedural Guide[1] sets out that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the LPA, and on which interested people's views were sought.

3. The application form states that 10 spaces were originally proposed and the previous versions of both plans all show a total of 10 spaces, albeit in different configurations. The amended plans would therefore reduce car parking and increase landscaping and outside amenity space compared to the scheme consulted upon and considered by the LPA. These would be material changes which relate to matters raised by the LPA and interested parties.

4. While there has been some publicity of these plans as part of the appeal, they were not consulted on at application stage. I cannot therefore be certain that all interested parties and consultees who might have wanted to comment would have been aware of the proposed amendment. Consequently, there would be potential for prejudice to interested parties if I were to accept the amended plans. I have therefore determined the appeal based on the drawings listed on the LPA's decision.

[1] Procedural Guide Planning appeals – England, March 2021

5. I have a statutory duty to have regard to the impact of the proposal on protected species and habitats sites. Therefore, although not part of the LPA's reasons for refusal, I deal with these matters in my reasoning below.

Main Issues

6. The main issues are the effect of the proposal on the character and appearance of the area, including trees, and on the living conditions of neighbouring occupiers in respect of privacy; and whether the proposal would provide a satisfactory standard of accommodation and living conditions for future occupiers of the proposed flats.

Reasons

Character and appearance

7. Policy HE2 of the Christchurch and East Dorset Local Plan Core Strategy (CS) requires high quality design that reflects and enhances areas of recognised local distinctiveness. It states that in Special Character Areas (SCA), development must respect the identified features and characteristics. The LPA's Supplementary Planning Guidance (SPG) No 27 describes the characteristics of the SCAs and sets criteria for assessing development within them, including the New Road SCA, which the appeal site sits within. Although it pre-dates the CS, the SPG is nevertheless a useful tool for understanding and assessing the impact of proposals on the local distinctiveness and characteristics of the SCAs.

8. New Road SCA is characterised by detached single or 2-storey dwellings set back from the road in large plots, resulting in low-density development and a sense of spaciousness. Buildings vary in design and form and in terms of their architectural quality. The extensive treescape, particularly along New Road, gives the area a distinctive sylvan character and provides a strong unifying element throughout the area. Blocks of flats are increasingly found in the area and have been integrated with varied success.

9. The existing dwelling on the appeal site is typical of the 20th century dwellings in the area but is of no particular architectural merit, therefore its demolition would not have a significant adverse impact on the character or appearance of the area. Neighbouring properties vary in scale, design and position in their plots, with some set closer to Chander Close at the rear than to New Road. They tend however to be wide but relatively shallow buildings.

10. Chander Close comprises bungalows on the south side, most with in-out driveways, giving a suburban appearance. Well vegetated rear gardens, fences and hedges along the rear boundaries of properties on the northern side of the Close create an enclosed, verdant character broken by only one low-key driveway. There is therefore a distinct difference between the spacious, sylvan character of the SCA and the smaller scale, higher density development opposite.

11. The proposed building would be taller and deeper than the existing and neighbouring dwellings but would follow the broad building lines set by nearby properties. The elevations and roof form would be well articulated, incorporating bay windows, roof overhangs, low eaves and hipped and gabled roofs. Although quite a complex form, the Arts and Crafts style features would draw together the design, giving the proposed building a coherent overall appearance. The front part of the proposed building would be of similar width to neighbouring properties while the rear part would be narrower, allowing a feeling of space and room for landscaping around it.

12. From New Road the simple front elevation and retention of the existing low-key access, with only two parking spaces, would mean the proposed building would not appear dissimilar to a single dwelling. Consequently, despite its overall scale, from that viewpoint the proposed building would not appear excessively large, would reflect the spacing and sense of spaciousness of existing dwellings, and would sit comfortably in relation to neighbouring properties.

13. In contrast, the multiple large windows, double doors and balconies on the rear elevation would make the scale of the proposal far more evident, as well as indicating that the proposed building contained several separate flats. This would be evident from Chander Close, however it would be well set back from that road and there would be space for additional landscaping between it and the proposed rear parking area. Consequently, the impact of the proposed building could be adequately mitigated such that it would not be unduly prominent from Chander Close.

14. The dense group of mature trees along the site frontage, which are subject to a Tree Preservation Order, makes a substantial, positive contribution to the character and appearance of the area. It is proposed to remove 4 trees along the existing access which are in poor or dangerous condition, which would reduce this density and expose more of the site to view. This impact would however be offset by the proposed replacements, which could be secured by an appropriately worded condition.

15. The formation of a footpath from New Road and parking and turning areas within the root protection areas of some of the retained trees could adversely impact their root systems and consequently their health and longevity. The appellant proposes a no-dig construction for these areas, using a cellular confinement system over a membrane laid on the ground. The topographical survey shows undulating ground among the trees, therefore changes in ground levels may be required to provide a safe pedestrian path of appropriate width and gradient, and functional parking and turning areas. There are however no details before me of the proposed ground levels for these areas and the various arboricultural reports submitted do not provide clarity on this matter.

16. Therefore, I cannot be certain that the proposed footpath, parking and turning areas can be constructed without adversely affecting the retained trees. The loss of further tree cover in this location, where there are very limited opportunities for replacements, would have a significant and harmful impact on the distinctive, sylvan character of the street scene of New Road.

17. It is proposed to form an access approximately 5.2 metres wide onto Chander Close to serve a rear parking area. An additional gated pedestrian access is proposed close by, with further hardstanding in the form of a path to a bin/cycle store and beyond to the proposed building. The proposed store would be of similar scale to those in other nearby gardens. It would be partially offset from the pedestrian access and there would be space for additional planting between it and the Close. Consequently, it would not be unduly prominent from Chander Close.

18. The proposal would create a significant expanse of hardstanding across much of the width of the site which, due to the width and number of accesses proposed, would be clearly visible from Chander Close. There would still be room for amenity space and landscaping around the building, and none of the 'fortress' like high walls and gates that the SPG seeks to avoid are proposed. Nonetheless, because of its size and siting the proposed hardstanding would dominate the rear of the site, creating an incongruous urban feature on this side of the Close. The 8 spaces and manoeuvring space proposed would have a considerably greater visual impact than

the domestic scale driveways and parking areas of the bungalows opposite. The hardstanding would be smaller than in a previous scheme dismissed at appeal, however there would be less room for landscaping around it. As such, I share the previous Inspector's concerns that such an urban feature would be significantly at odds with the soft suburban character of the area to the rear of the appeal site.

19. The proposal would also potentially result in the loss of existing vegetation along the rear boundary which, while of relatively poor quality, nevertheless contributes to the verdant character of this side of the road. In the absence of proposed levels or a detailed landscaping scheme it is unclear whether this could be retained as the appellant suggests, given the difference in ground level between the site and the highway and the excavation required to form the accesses. Although this vegetation could be removed at any time its loss would still result in modest harm compared to the existing situation.

20. The appellant has provided some description and images of proposed landscaping which show planting between the Close and the parking area and indicate a replacement fence. This includes planting in the verge between the existing fence and Chander Close, which is outside the red line defining the appeal site and which the LPA advises is highway land. Therefore, I cannot be certain that the appellant would be able to plant or maintain this area. There would also be a narrow strip for planting between the site boundary and the proposed parking area, which would be broken by the two accesses and further constrained by any boundary fencing. Vegetation in that strip would also need to be maintained and managed to avoid encroaching on the parking spaces and path. Given these limitations, there is no compelling evidence before me that the height and density of planting shown in the appellant's illustrations could be achieved.

21. It has not therefore been demonstrated that the layout of the proposal would allow for sufficient landscaping to screen and soften the visual impact of the proposed hardstanding to an acceptable degree. This matter could not therefore be dealt with by a condition. Consequently, despite the area retained for amenity space in the central part of the site, the proposal would significantly and harmfully alter the character of the rear of the site and the street scene of the Close, and would diminish the enclosed and vegetated character of this edge of the SCA.

22. The appellant suggests that a rear access and parking area could be formed without the need for planning permission, however no scheme has been submitted to show such an alternative. Furthermore, as the existing dwelling has access and parking to the front it has not been demonstrated that there is a realistic prospect of such development taking place. Therefore, while in principle an additional access and parking could be formed, I cannot be certain that it would have a comparable impact to that of the appeal proposal. This potential fall-back position therefore carries very limited weight.

23. Accordingly, while the design of the proposed building would be acceptable, the proposed parking areas and paths would harm the character and appearance of the area. The proposal would therefore conflict with CS Policies HE2 and HE3, which require development to be compatible with or improve its surroundings and take into account the character of settlements, their landscape settings and natural features. It would also conflict with the guidance in the SPG in respect of the New Road SCA, and with the National Planning Policy Framework (the Framework) which requires high quality design that adds to the overall quality of the area and is sympathetic to local character, including landscape setting.

24. Other flatted developments have taken place in the area, including at St Katherine's Court on Golf Links Road. That site is set above the road and the

frontage parking area, while large, is partially screened by its siting offset from the driveway and by frontage trees and outbuildings. It is not therefore directly comparable to the scheme before me, which I have considered on its own merits.

Living conditions - neighbouring occupiers

25. The large rear windows of the proposed flats would face 36 Chander Close and would create a perception of overlooking due to their size and number. However, it is already possible to see into the front windows of No 36 from the road, and given the separation distance, the proposal would not result in a significant increase in overlooking of that property. As such, it would not significantly adversely impact on the privacy of the occupiers.

26. The potential for overlooking of Nos 311 and 315 from the proposed ground floor side windows and balconies could be mitigated through use of appropriate boundary treatments and balcony screens. The openings serving the living rooms of flats 4 and 5 would however provide views of the side windows and garden of No 311 which, due to their height and relative positions, would be only partially screened by the extensions to No 311 and existing boundary vegetation. It has not been demonstrated that the cill height of the proposed rooflights would restrict such views. Consequently, due to the number and position of side openings, the proposal would result in actual and perceived overlooking of No 311, to the detriment of the living conditions of the occupiers.

27. A bedroom window of Flat 4, parts of its kitchen/diner windows, and a small window and triple rooflight in the kitchen/living space of Flat 5 would face towards the side dormer of No 315 at first floor and roof levels. This would be a significant increase in openings compared to the existing situation where there is only one bedroom window facing No 315 at first floor level. The kitchen window of flat 5 would also offer elevated and close views over the garden of No 315.

28. It is unclear from the appellant's reports and plans whether existing boundary vegetation adjacent to No 315 is to be retained. Even if it were, it has not been demonstrated that it could be kept at its current height and density given its proximity to a proposed path necessary to provide access from the proposed flats to their parking. In any event, the neighbour's photographs show that it only partially screens views from the side dormer of No 315 to existing side windows in No 313. As such, the vegetation cannot be relied upon to mitigate overlooking from the proposed windows. Consequently, the proposal would result in a significant and harmful increase in actual and perceived overlooking of No 315 compared to the existing situation, to the detriment of the living conditions of the occupiers.

29. This harm due to loss of privacy could be mitigated through obscure glazing of the relevant windows and rooflights in flats 4 and 5. It is however necessary to consider the impact of this on future occupiers of the proposed flats.

Living conditions – future occupiers

30. Flat 4 would have large windows to the rear serving the living area and bedrooms, which would provide adequate light and outlook for these rooms if the secondary side windows were obscure glazed. The kitchen/diner would however be limited to small triangles of clear glazing in the sides of the proposed dormer, with the main windows serving that room obscured. While the room would still achieve adequate light it would have a very limited outlook, which is highly undesirable for a habitable room. Consequently, the need to protect the privacy of neighbours would result in compromised and unsatisfactory living conditions for the future occupiers of flat 4.

31. Flat 5 would also retain large, clear glazed windows to the rear serving the kitchen and dining areas. The open plan layout proposed for the living area of that flat would allow sufficient light and outlook for that habitable space even with the side rooflights and window obscure glazed. The front rooflight proposed for bedroom 2 would also provide an outlook from that room if the side window were obscured. The windows of bedrooms 1 and 3 would not need to be obscure glazed as they would not have direct views of the neighbouring properties. Therefore, even with obscure glazing a good standard of accommodation and living conditions would be achieved for flat 5.

32. Flats 1 and 3 would have internal kitchens with no windows and as such no outlook. While this is not ideal, I have not been directed to any design guidance that requires non-habitable rooms to have outlook. Both flats would have double doors to the living/dining areas which themselves would have large windows to the rear. The internal double doors could be glazed to ensure that the kitchens would receive a reasonable level of borrowed light even with the doors shut. The overall standard of accommodation provided would therefore be satisfactory, and the internal layout of these flats does not warrant refusal.

33. The bedrooms of flat 1 would face onto the communal parking and turning areas at the front of the site. The layout of these would result in vehicles driving past close to the windows, such that drivers could see into bedroom 1, and users of that room would be very aware of outside activity. There is however potential to allocate the front parking spaces to flat 1, which would limit the impacts from vehicles.

34. Nonetheless, all occupiers of the flats would be likely to use the pedestrian path to and from New Road to access local services and facilities, and visitors may also enter from that direction. Users of that path would have clear and close views into the large window of bedroom 1, even if separated from it by a small area of planting as proposed. Therefore, that bedroom would not provide a private space for future occupiers. While they could use curtains or blinds to provide privacy, that would significantly compromise the outlook from that room and the living conditions of the occupiers. In any event, it should not be necessary to take such measures to ensure good living conditions.

Conclusion on living conditions for existing and future occupiers

35. For the reasons set out above, the proposal would harm the living conditions of neighbouring occupiers and would not provide satisfactory living conditions for future occupiers of proposed flat 1 in respect of privacy. While the harm to neighbours could be mitigated by obscure glazing overlooking windows, this would result in substandard accommodation and living conditions, for the future occupiers of flat 4. Accordingly, the proposal would not provide the high standard of amenity for existing and future users required by the Framework.

Protected Species and Habitats Sites

36. The appeal site is within 5km but outside 400m of the Dorset Heathlands Special Protection Area and Dorset Heaths Special Area of Conservation and Ramsar sites. I am aware from other appeals in this authority that these sites 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 urban related pressures such as recreational access, which have the potential to cause ongoing adverse effects on the protected habitats and species.

37. Future occupiers of the proposal are likely to visit the Dorset Heathlands and 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.

38. The LPA has adopted 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). For this part of the authority area, both SAMM and HIPs would be funded through Community Infrastructure Levy (CIL) contributions. I am satisfied that 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 LPA'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 and therefore would not conflict with CS Policy ME2 which requires such mitigation to be provided.

39. The existing dwelling contains a brown long-eared bat roost, which would be lost under this proposal. As such, a European Protected Species (EPS) licence would be required for the proposal. Circular 06/2005 requires that decision makers should have regard to the 3 tests used when such licences are being determined, which reflect the derogation tests set out in the Conservation of Species and Habitats Regulations 2017 (as amended).

40. The proposal would result in a net gain of 4 dwellings within an existing settlement, in an area where the LPA cannot currently deliver a Framework compliant supply of deliverable housing sites. This would be a modest benefit of the proposal which would override the harm resulting from the loss of a small roost. Demolition of the existing dwelling is necessary to achieve the additional dwellings and a Biodiversity Mitigation and Enhancement Plan has been submitted to, and agreed by, the LPA. Therefore, the proposal would not be detrimental to the maintenance of the bat population concerned at a favourable conservation status in their natural range. I therefore have no reason to believe that an EPS licence would not be granted.

41. The proposal also includes other ecological enhancement measures which, combined with a detailed landscaping scheme, are likely to result in a small net gain in biodiversity. As such I find no conflict with CS Policy ME1 which seeks to safeguard biodiversity.

Planning Balance

42. The proposal would comply with CS policies in respect of the location of housing development, parking and biodiversity. I note interested parties' concerns about visibility splays for the proposed rear access however as these would involve land within either the appellant's or the highway authority's control, I have no compelling reason to believe that adequate visibility could not be achieved.

43. The proposal would however conflict with CS policies that seek to achieve high quality design. The Framework sets out that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve, and that good design is a key aspect of sustainable development. Therefore, while it would comply with some parts of the CS, due to the harm I have identified to the character and appearance of the area, the proposal would conflict with the development plan as a whole.

44. The LPA cannot currently demonstrate a 5-year housing land supply, therefore Framework footnote 7 and paragraph 11d) are engaged and the policies most

important for determining the application are out-of-date. Those policies are however highly consistent with Framework policies on design and as such, having regard to Framework paragraph 213, I afford the conflict with them very substantial weight.

45. Neither main party has confirmed the extent of the shortfall in housing supply. Nevertheless, the proposal would contribute to housing supply in a location with good access to services and facilities and where the CS seeks to direct development. Having regard to the Framework I give great weight to the benefit of using a suitable site within a settlement for housing and substantial weight to use of an already partly developed site. There is however no substantive evidence before me that the proposal would meet an identified need for this size and type of housing. The proposal would also result in economic benefits from construction and occupation. Overall, having regard to the small number of dwellings proposed, the benefits of additional housing in this location carry moderate weight.

46. The proposal would be supported by Framework policies which seek to boost housing supply on small windfall sites, but would conflict with the requirements to achieve high-quality design and a high standard of amenity. Paragraph 130 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. This conflict therefore weighs very heavily against the proposal. Accordingly, I find that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

Conclusion

47. Overall, having regard to the Framework and the benefits of the proposed development, there are no material considerations that would justify granting permission for development which is contrary to the development plan. The appeal is therefore dismissed.

L McKay

INSPECTOR