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## Appeal Decisions

Site visit made on 1 February 2021

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 10 June 2021

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### **Appeal A Ref: APP/V1260/W/20/3256919** **57 New Road, Bournemouth BH10 7DP**

- 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 Muspratt against the decision of Bournemouth Christchurch and Poole Council.
  - The application Ref 7-2020-15573-B, dated 9 December 2019, was refused by notice dated 25 February 2020.
  - The development proposed is described as 'Proposed new build'.
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### **Appeal B Ref: APP/V1260/W/20/3256921** **57 New Road, Bournemouth BH10 7DP**

- 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 Muspratt against the decision of Bournemouth Christchurch and Poole Council.
  - The application Ref 7-2020-15573-C, dated 17 April 2020, was refused by notice dated 24 June 2020.
  - The development proposed is described as 'Proposed new build'.
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## **Decisions**

1. Appeals A and B are both dismissed.

## **Procedural Matters**

2. As set out above there are two appeals on this site, which differ in terms of the detail of the siting and design of the proposed dwelling. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
3. The appellant submitted completed s106 agreements for each appeal on 23 April 2021, which the Council has had the opportunity to comment on. These agreements secure financial contributions towards mitigation of impacts of the proposals on the Dorset Heathlands Special Protection Area (SPA), Ramsar Site and Dorset Heaths Special Area of Conservation (SAC) ("the Dorset Heathlands"). I return to this matter below.

## **Main Issues**

4. The main issues for both Appeals A and B are the effect of the proposed development on the character and appearance of the area and the living conditions of the occupiers of neighbouring properties in respect of outlook, privacy and noise disturbance; whether the proposal would provide satisfactory

living conditions for future occupiers in respect of outlook, light and privacy; and the effect of the proposal on the integrity of the Dorset Heathlands.

## **Reasons**

### *Character and appearance*

#### Appeals A and B

5. The appeal site is within an area of suburban estate development mainly comprising detached two storey dwellings in quite large plots on the western side of New Road, with bungalows opposite. Dwellings are set well back from the wide road, creating a sense of spaciousness. In contrast, the housing development to the rear of the site is more close-knit, with semi-detached properties with small gardens.
6. The site is smaller and shallower than other nearby backland developments, and both proposals would result in much smaller gardens for both the proposed and existing dwellings than is characteristic on this side of New Road, resulting in a somewhat cramped appearance. This subdivision of the site would be evident from neighbouring properties due to the layout, fencing and parking arrangements and the scale of the proposed dwelling in each case.
7. There are however a considerable variety of garden sizes in the area and I have not been directed to any policy or guidance setting minimum standards for outside space. Moreover, the garden of No 57 has already been physically separated and there are various outbuildings in both sections, such that it does not appear as a single, undeveloped space. The rear of the site does not therefore make any particular contribution to the character and appearance of the area at present and appears different to the situation identified in the appeal quoted by the Council. There is no compelling evidence to suggest that these structures would be removed and the garden reinstated if these appeals were to fail. I am also conscious that large outbuildings could be erected as permitted development. In these circumstances, therefore, the subdivision of this site would not in itself harm the character and appearance of the area.
8. The front door and entrance path of the proposed Appeal A dwelling would be visible along the existing driveway, despite the existing fencing around the section of garden proposed to be retained for No 57. The visibility of these features, combined with the height and roof form proposed, would make it apparent that the building was a dwelling rather than an outbuilding. However, as it would be largely tucked behind No 57 the visual impact of the proposed dwelling from New Road would be limited.
9. The Appeal B proposal would be set further behind No 57 and be slightly lower in height, and therefore would have even less impact from New Road than the Appeal A scheme.
10. Various outbuildings and extensions are already visible down the driveways of No 57 and its neighbours, along with dwellings on Markham Close which are close to the rear boundary of the site. As such, it would not be unusual to see another dwelling through a gap between properties. Furthermore, the spacious character of the front part of the site would not be affected by either proposal, as it would remain as parking for No 57 only. In this context, neither proposed dwelling would significantly affect the character or appearance of the site or area when seen from New Road.

11. Accordingly, when viewed from neighbouring properties both proposals would change the character of the site and the nature of its use. However, in this context, the backland nature of each proposal, the loss of much of the existing garden and the relatively cramped layout would not have a significant or harmful impact on the character and appearance of the area and would maintain the appearance of the street scene.
12. Therefore, I find that neither Appeal A or B would conflict with Policies CS21 and CS41 of the Bournemouth Local Plan: Core Strategy (CS) or Policy 6.8 of the Bournemouth District Wide Local Plan (LP) insofar as they require development to respect the character of the area. Nor do I find conflict with the Residential Development Design Guide in respect of the guidance for this character area, or with the National Planning Policy Framework (the Framework) insofar as it requires development to be sympathetic to local character.

*Living conditions: neighbouring occupiers*

#### Appeals A and B

13. The outlook from the rear windows and gardens of 17 and 18 Markham Close is limited by the small size of the gardens, the garages within them and, in the case of No 18, a garage in the appeal site. However, No 17 currently has some outlook to the rear across the open part of the site.
14. The roof of the dwelling proposed under Appeal A would be relatively low pitched but nevertheless considerably higher than the boundary fence, and would extend across much of the rear boundary of No 17, including the part which is currently open. As a result, it would appear dominant and prominent in views from the rear of No 17 and would be an intrusive feature in the outlook from that property, to the detriment of the living conditions of the occupiers.
15. The Appeal B dwelling would be sited partly behind the garage of No 17 and further from the boundary. The roof form would be lower and less bulky than the Appeal A scheme, with the lower parts of the roof closest to the rear boundary of the site. As such, while it would be visible from No 17, due to its siting and roof form the Appeal B proposal would not dominate the outlook from the rear of that dwelling and would not significantly adversely affect the living conditions of the occupiers in that respect.
16. The proposed Appeal A dwelling would be clearly visible from the rear of No 18, however it would be seen at an angle and only the lower parts would extend across part of the rear boundary of that property. The impact on the outlook from that property would also be offset by the removal of the existing garage. Therefore overall, the Appeal A proposal would not have a significant adverse effect on the living conditions of the occupiers of No 18 in respect of outlook.
17. The proposed Appeal B scheme would be set away from No 18 and would not extend across its rear boundary. Therefore, due to its scale and siting it would not harmfully affect the outlook from that property.
18. The planting indicated along the rear boundary would only provide screening of either proposed dwelling if it reached a similar height to the proposed dwelling. Even if it could achieve that height, which is far from certain given the very limited space available, the planting itself would then significantly limit the outlook from the rear of Nos 17 and 18, to the detriment of the occupiers'

living conditions. As such, the harm identified in respect of Appeal A could not be addressed through the suggested landscaping.

19. Both proposed dwellings would be set away from the side boundaries of the site with garden areas and parking in between. This separation, combined with the existing boundary fences, would limit the impact of the proposals in views from No 57 and its immediate neighbours either side. As such, neither proposal would have a harmful impact on the outlook from those properties.
20. In both Appeal A and B, the boundary fences would provide significant screening of views from the proposed windows towards neighbouring properties. There is already some mutual overlooking between dwellings, particularly between first-floor windows. In this context, the very limited potential for additional overlooking from either appeal proposal would not significantly adversely affect the living conditions of neighbours in respect of privacy.
21. The proposals would both result in domestic activity and vehicle noise close to the gardens of neighbouring properties, with habitable rooms close to the boundaries. There is however already a garage and parking area at the rear of the site and, as an existing garden, it could be used for domestic activities at any time. Furthermore, outbuildings could potentially be built and used for incidental purposes as permitted development with windows in similar positions. Therefore, while I note the concerns raised, there is no compelling evidence before me that either proposal would introduce a greater level of noise disturbance into this area than could already occur, particularly as both would only be two-bedroom properties. As such it has not been demonstrated that either appeal scheme would harm the living conditions of neighbouring occupiers in this respect.
22. Accordingly, Appeal A would significantly harm the living conditions of the occupiers of No 17 in respect of outlook, but would not result in unacceptable harm to neighbours' living conditions in terms of privacy or noise disturbance. Nevertheless, it would conflict with CS Policies CS21 and CS41, LP Policy 6.8, the Design Guide and the Framework insofar as they require development to respect and enhance the amenities of neighbouring occupiers.
23. Appeal B would not significantly adversely affect the living conditions of neighbouring properties in respect of outlook, privacy or noise disturbance and as such would not conflict with the above policies in these respects.

#### *Living conditions: future occupiers*

##### Appeal A

24. The Design Guide provides guidance on separation distances between 2 and 3 storey buildings but not between single storey buildings and their neighbours. Some overlooking is usual in residential areas, however due to its proximity, the first-floor windows in No 57 would provide direct and close views down into the proposed bedroom and living room windows of the proposed dwelling, resulting in significant and harmful overlooking.
25. Those windows could be obscure glazed, however that would limit the outlook from the rooms. The other windows to those rooms, and indeed all front and rear facing windows, would face the side boundaries of the site at only a few metres separation. Therefore, the proposal would only provide limited outlook

- for future occupiers and obscure glazing the side windows would worsen this situation. It would not therefore be reasonable to require this by condition.
26. The proximity of the proposal to the boundaries would result in a strong sense of enclosure and poor outlook for future residents, significantly compromising their living conditions. The proposed siting and layout of the main living space facing north, close to the fence and proposed boundary planting, would also limit daylight and sunlight reaching that living area.
27. No windows are proposed in the side facing Markham Close and the front and rear windows would only be seen at an angle from Nos 55 and 59, therefore there would be limited overlooking of the proposed dwelling from those properties. However, the garden area proposed to the rear would be overlooked by Nos 57 and 59 and to some extent by the dormer windows in the rear of No 17 Markham Close. The area to the front would be largely hardstanding for turning, and would also be overlooked by neighbouring properties. As such, the proposal would not provide suitable private outside space for future occupiers.
28. Consequently, Appeal A would not provide satisfactory living conditions for future occupiers in terms of outlook, light or privacy. As such, it would conflict with CS Policies CS21 and CS41, LP Policy 6.8, the Design Guide and Framework insofar as they require development to provide a high standard of amenity for future occupiers.

#### Appeal B

29. The siting of the proposed dwelling would allow the proposed living area to receive adequate light and provide a reasonable outlook over a modest but nonetheless useable garden area. The front garden would however be overlooked by neighbouring properties and as such would not provide a private space for future occupiers.
30. Due to the limited separation distance to No 57, the garden space adjacent to proposed bedroom 2 and the window to that room would be significantly and harmfully overlooked by the first-floor windows of the neighbouring property. While obscure glazing the window would overcome the overlooking, it would unacceptably restrict the outlook from that room and as such it would not be reasonable to impose a condition to require such glazing.
31. The garage of No 17 would limit overlooking of the master bedroom window. However, that window would face into a very small courtyard area which would be heavily shaded by boundary fencing, any planting and the proposed dwelling. Consequently, the master bedroom would feel very enclosed and have a constrained and poor outlook, and the amount of daylight and sunlight that could reach it would be significantly restricted. As such, it would provide a poor standard of accommodation for future occupiers.
32. Therefore, overall, Appeal B would not provide satisfactory living conditions for future occupiers in respect of outlook, light and privacy and would conflict with CS Policies CS21 and CS41, LP Policy 6.8, the Design Guide and Framework in relation to amenity for future occupiers.
33. Planning permission has been granted for a dwelling to the rear of 67 New Road relatively close to the boundaries of the plot. However, the living space would have multiple windows with the largest set over 6m from the boundary,

and each bedroom would have a reasonable outlook. The separation distance to neighbours is greater than in either appeal scheme before me, and some private outside space would be provided. As such, that development is significantly different to both of these appeal schemes and does not justify the harm I have identified from either proposal.

### *Dorset Heathlands*

#### Appeals A and B

34. The appeal site lies within 5 kilometres of the Dorset Heathlands, which are 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.
35. Due to the location of the site, the occupiers of both appeal schemes would be likely to visit the Dorset Heathlands. As such, both proposals, either alone or in combination with other development in the area, are 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.
36. To address the impacts of new housing the Council 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). In respect of housing development in this part of the Council area, SAMM is proposed to be secured through a legal agreement and HIPs would be funded by Community Infrastructure Levy (CIL) contributions.
37. The s106 agreements submitted for each appeal would secure financial contributions for SAMM in line with the SPD, and there is no indication that either of the proposed dwellings would not generate CIL contributions. Therefore, measures have been secured to mitigate against harm to the Dorset Heathlands, and neither proposal would adversely affect the integrity of these habitats sites. Both Appeals A and B would therefore accord with CS Policy CS33 which requires residential development to avoid or mitigate adverse effects on the Dorset Heathlands.

### **Planning Balance**

#### Appeals A and B

38. The latest evidence before me is that the Council can only demonstrate a 2.9 year supply of deliverable housing land, therefore the presumption in favour of sustainable development in Framework paragraph 11d) is engaged, and the policies most important for determining the appeals are out-of-date.
39. The proposals would both make efficient use of land and contribute to housing mix and housing supply on a small windfall site in an urban area with good access to facilities, services and sustainable transport options, for which there is development plan and Framework support. As the site is residential garden in a built-up area however, it is excluded from the Framework definition of

previously developed land. Both schemes would result in some economic benefits through construction and occupation, and could be designed to be energy efficient. Each appeal proposal would only contribute one additional dwelling, however given the significant shortfall in housing supply, I afford the benefits of this provision modest weight.

40. Both appeal proposals would comply with CS and LP policies in relation to small family dwellings and biodiversity, and could provide satisfactory parking, access and drainage. I have however found that both proposals would conflict with development plan policies in respect of living conditions, which are an important component of the design and housing policies in the CS and LP. Therefore, I find that both proposals would conflict with the development plan read as a whole. The relevant policies are highly consistent with the Framework, which sets out that good design is a key aspect of sustainable development.
41. Therefore, in respect of Appeal A, I afford the conflict with the development plan very substantial weight. In respect of Appeal B I have found adverse impacts on the living conditions of future occupiers only, however the resulting harm would still be significant, and the conflict with the development plan carries substantial weight.
42. The proposals would benefit from Framework support for boosting the supply of housing in an appropriate location and on a suitable site but would both conflict with its requirement to achieve good design including a high standard of amenity. Consequently, for each appeal scheme the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of that proposal, when assessed against the policies of the Framework taken as a whole.

### **Conclusion**

43. Overall, I find that there are no material considerations, including the Framework and the benefits of the proposals, that would justify granting permission contrary to the development plan. Appeal A and Appeal B are therefore both dismissed.

*L McKay*

INSPECTOR