



Appeal Decision

Site visit made on 29 June 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2021

Appeal Ref: APP/V1260/W/21/3271413

Land rear of 64 Irving Road, Bournemouth BH6 5BH

- 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 Amirez Developments Ltd against Bournemouth Christchurch and Poole Council.
 - The application Ref 7-2020-26105-A, is dated 21 December 2020.
 - The development proposed is demolition of existing buildings and erection of 4 dwellinghouses with associated access and parking.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Amirez Developments Ltd against Bournemouth Christchurch and Poole Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - the effects of the proposal on the character and appearance of the area;
 - the effects of the proposal on the living conditions of neighbouring occupiers, with particular regard to loss of outlook, overlooking, noise and disturbance;
 - the suitability of the proposed access, parking and turning arrangements;
 - the effects of the proposal on the Dorset Heathland Protected Sites; and
 - whether adequate surface water drainage measures could be provided.

Reasons

Character and appearance

4. The application site is within the residential area of Southbourne which is characterised by a formal grid layout with mainly two storey dwellings, mostly detached with narrow side gaps. Rear gardens have a direct back-to-back relationship although some blocks are separated by narrow service lanes.
5. The appeal site sits to the rear of No 64 and is formed from a large, overgrown space, enclosed by fencing, albeit dilapidated in places, and occupied by small,

poor quality buildings which are to be demolished. No 64 Irving Road is a vernacular two storey detached dwelling. The service lane providing access to the appeal site runs alongside the southern boundary of No 64. On the other side of the entrance to the service lane is a garage block serving the adjacent three storey block of flats. Facing into the service lane are a number of other domestic garages and workshop buildings, with intervening rear boundaries formed predominantly from timber fencing.

6. The appeal proposal seeks to construct two pairs of semi-detached dwellings on the site, facing into the service lane and with rear gardens backing onto Nos 77 and 79 Fenton Road. The dwellings would be modestly scaled, with the first floor level partially set within the roof, with first floor windows on the front set within a broken eaves line. The front elevations would include the same handed arrangement across the two semi-detached pairs. The proposed palette of materials would include brick, with slate-effect tiled roofs; both of which are common in the area.
7. Though I note that dwellings in the area are predominantly detached, there are plentiful examples of semi-detached pairs and other forms of dwelling, i.e. the nearby block of flats at Barons Court. The more modest scale of the dwellings would indicate a degree of subservience to dwellings on the adjoining primary roads, i.e. Irving Road and Arnewood Road. The design of the dwellings, whilst referred to as austere, would assimilate sufficiently well with the more vernacular dwellings, avoiding a pastiche but yet incorporating a more refined and contemporary elevational treatment to create a pleasantly repetitious streetscene arrangement.
8. However, whilst the linear arrangement of the dwellings would be unobjectionable, the tight arrangement of the dwellings adjacent to the boundaries and with parking spaces cramped either sides and in between dwellings, with very little room for manoeuvring, would indicate a cramped and overly-intensive form of development. The layout would be efficient in the extreme, requiring the frontages to double up as 'passing places' and with the tracking indicating that users would require extreme care to enter and exit parking spaces to avoid damage to vehicles prior to consideration of any passing pedestrians. Similar issues of space constraints would arise in respect of cycle storage, which it is suggested could form a requirement of a condition.
9. In view of the above, the proposal would fail to accord with Policies CS20, CS22 and CS41 of the Bournemouth Local Plan Core Strategy (2012) and Policy 6.8 of the Bournemouth District Wide Local Plan (2002) (BDWLP). Amongst other things, these Policies seek to ensure development complements and respects the character of neighbouring development and delivers small family housing on sites capable and suitable for accommodating such. For similar reasons, the proposal would also fail to adhere to guidance in parts 2.3 & 4.2 of the Residential Development Design Guide (2008) (the Design Guide).

Living conditions of neighbouring occupiers

10. In terms of noise and disturbance, it is alleged that the increased use of the service lane for vehicular access, turning and manoeuvring would give rise to noise and disturbance to existing neighbouring occupiers. Whilst there would be a likely increase in activity and vehicular movements relative to the current limited use of the site, I do not consider that this would be of a magnitude or

so uncharacteristic of the surrounding noise environment that it would be materially harmful to neighbouring occupiers.

11. The proposed dwellings would be at approximately 90 degrees to Nos 64, 66 and 68 Irving Road. Despite measurements provided by the Council, the evidence suggests that the flank wall would be approximately 11.6 metres from the rear of No 64 Irving Road. This is marginally short of the recommended minimum of 12.5 metres set out in the Council's Design Guide. There would be no windows facing towards the rear of No 64. Given the intervening distance and deliberately suppressed height and bulk of the dwelling, I do not consider that there would be any harmful loss of outlook or sense of enclosure for the occupiers of No 64.
12. Less of the flank wall of Plot 4 would extend beyond the rear boundary of Nos 66 and 68, but oblique views of the rear elevation would be visible therefrom. Given that the first floor windows would be set within the roof plane, at a height of more than 1.7 metres above the floors of the room in which they would be installed, and also given the oblique angle of view, there would not be any harmful degree of overlooking of Nos 66 or 68.
13. The proposed dwellings would face the rear elevations and gardens of Nos 114 to 122 Kimberley Road (evens). At ground floor level, this would be less problematic owing to the existence of rear boundary fences along the edge of the service lane. At first floor level, there would be one bedroom window in each dwelling which would have close views over the gardens and towards the rear elevations of dwellings in Kimberley Road.
14. The appellant's evidence suggests that the typical distance between the front elevations and rears of Nos 114 – 122 would be 21 metres, with the exception of No 118 which has a deeper rearward extension. Though the bedroom window in Plot 3 would be slightly offset from the rear windows in No 118, the distance would be far short of the recommended minimum of 21 metres and this relationship could permit a harmful degree of overlooking.
15. Though there are outbuildings in the gardens of, in particular, Nos 116 and 122 that would partially obscure some views towards those gardens, the remainder, including Nos 114, 118 and 120 have gardens that would be overlooked at close quarters given the proximity of the proposed dwellings to the rear garden boundaries. Whilst such effects on occupiers of dwellings in Fenton Road have been designed out at the rear through the use of rooflights and more generous distances from the intervening garden boundaries, the degree of overlooking that would be permitted from the front would be harmful to the occupiers of Nos 114 – 122 Kimberley Road.
16. In view of the above, the proposal would harm the living conditions of neighbouring occupiers with particular regard to loss of privacy, contrary to, in particular, Policy CS41 of the Core Strategy and Policy 6.8 of the BDWLP, which seek to ensure adequate privacy for future and neighbouring occupiers.

Access and parking

17. The site would be accessed via the service lane which is reported as being in the region of 3 metres wide, with some areas narrower still. The service lane is also a Public Right of Way (PROW) designated as a footpath (reference H14). Whilst the use of the lane/footpath by vehicles is questioned, it is clear that a

number of garages are accessed via the same and some of the comments in objection to the scheme indicate some level of use by vehicles.

18. The uncertainty regarding whether or not the appellant has a right of access over the lane would not strictly prevent planning permission being granted. However, it appears that in order to formalise the access, footpath H14 would need to be extinguished. The appeal application form does not indicate that any diversions or extinguishments of the PROW would be necessary and the appeal application does not appear to have been advertised as such by way of site notice or certificate to any potentially interested parties. Upon extinguishment of the footpath, the Highways Authority would require the lane to be provided with a metalled surface for its entirety and to a minimum width which has not been specified.
19. The appeal proposal would inevitably result in the intensification of the use of the lane by vehicles and with many difficult manoeuvres into and out from the constrained tandem parking spaces. Vehicles would need to use the proposed 'passing points' in front of the dwellings, also creating a situation where vehicles would pass in close proximity to the entrances to the dwellings in order to avoid other conflicts with vehicles and pedestrians in the lane.
20. I note the straight alignment of the lane, the length of it that would be most likely to be used by future occupiers to access Irving Road and the speed with which vehicles would be likely to be driven on it. However, none of these factors suggest that the safety of users could be assured and therefore I find harm in respect of the proposal's effects on highway safety. I have reached this finding in the knowledge that other backland developments have occurred in the area involving similarly narrow lanes, but I have no details that the parking layouts and width constraints replicate exactly the scheme before me.
21. Given the appeal site's location within 'Zone D', the provision of 8 spaces to serve two dwellings accords with the Council's recently adopted Parking SPD¹. Though not adopted policy, the latest SPD standards are those to be considered in preference to the superseded version of the same². Consequently, my finding of harm is not strictly in relation to the number of spaces, but their useability in design terms and the effects of their use on the safety of users of the highway.
22. In view of the above, these aspects combine to indicate that the highway aspects of the proposal would be harmful to the safety of highway users. Whilst the Council has cited Core Strategy Policies CS16 and CS18, both of which focus on the requirement to provide parking and cycle parking in accordance with the relevant adopted standards, Framework paragraph 109 states that development should be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe. In the absence of convincing evidence to the contrary, I consider that the proposal would conflict with Framework paragraph 109 insofar as it would generate an unacceptable impact on highway safety.

¹ Bournemouth Christchurch Poole Parking Standards Supplementary Planning Document adopted January 2021

² Bournemouth Parking SPD – adopted 2014

Protected Sites

23. The appeal site is within the 5km Zone of Influence of the Dorset Heathland Protected Sites which comprise a range of heathlands designated under the Habitats Regs³. Developments within 5km of the Protected Sites are likely to have adverse effects on the integrity of the Protected Sites considered either alone or in combination with other similar developments through increased recreational pressures.
24. The adopted Dorset Heathlands Planning Framework Supplementary Planning Document 2020 - 2025 (SPD) sets out the two-pronged approach to dealing with any potential adverse effects on the integrity of the protected sites. Through the Community Infrastructure Levy (CIL) regime, under the CIL Regulations⁴, developer contributions are secured towards the Heathland Infrastructure Projects (HIPs) including the provision of Strategic Alternative Green Spaces (SANGS) to reduce the pressure on the Protected Sites. Additional contributions are also required to be paid through Section 106 Planning Obligations towards Strategic Access Management and Monitoring measures (SAMM) at a rate of £394 per net additional dwelling. SAMM contributions are put towards raising awareness, employing wardens to manage visitor behaviour and monitoring the effectiveness of such measures.
25. The proposal is not required for the management of the Protected Sites and it is accepted by the parties that it would, without mitigation, give rise to adverse effects on the integrity of the same. The appellant has submitted a Unilateral Undertaking (UU) made as a deed under Section 106 of the Town and Country Planning Act 1990. The UU provides for the requisite contribution specified by the SPD which would cover the SAMM element and has been approved by the Council. CIL would be paid separately.
26. Insofar as the UU and assumed CIL liability would secure the necessary mitigation, adverse effects on the integrity of the Protected Sites would not arise and compliance with Core Strategy Policy CS33 and the Habitats Regs would be achieved.

Surface Water Drainage

27. From the evidence, the site lies within an area at low risk of flooding from surface water. Nevertheless, the Council typically requires indicative details of sustainable urban drainage systems to manage surface water run-off (SUDs) to be provided as part of any planning application where such will be required.
28. No details of any indicative surface water drainage scheme was provided with the appeal application, nor any details of the suitability of the ground conditions for a typical SUDs scheme. However, I have no cogent evidence to suggest that there are any particular impediments to providing a SUDs scheme on the site and such could be required by way of planning condition prior to any works commencing on site. Though this approach is inconsistent with the desire for such information 'up front', subject to the recommended condition, compliance with Core Strategy Policy CS4 could be achieved.

³ Conservation of Habitats and Species Regulations 2017, as amended

⁴ Community Infrastructure Levy Regulations 2010, as amended

Other Matters

29. I note the appellant's suggestion that the waste and recycling collection would be undertaken by a private operator by way of waste management condition given the unacceptable drag distances and arrangements for the collection from the end of the service lane. The Council's suggested condition appears to corroborate that such a compromise would be accepted in the event the appeal were allowed.
30. Whilst I note the suggestion that the proposal would fail to accord with Building Regulations in respect of an inadequate access for emergency services, the evidence in this regard is limited. In any event, the duplication of separate legislation is not a matter for this appeal.

Planning balance and conclusion

31. In relation to its effect on the character and appearance of the area and the living conditions of neighbouring occupiers, the proposal would conflict with the development plan, when considered as a whole. Conflict would also arise with the Framework in respect of the impact on the safety of highway users.
32. The appellant highlights that the Council is incapable of demonstrating an adequate five year supply of housing land (5YHLS). In the absence of a 5YHLS, the policies most important for determining a housing proposal are considered to be out-of-date and the tilted balance set out in paragraph 11 d) of the Framework is engaged. The shortfall is alleged to be in the region of 3,500 dwellings, which is a considerable deficit and is not disputed by the Council.
33. I have ascertained that the proposal, subject to mitigation, would not result in harm to the Protected Sites, which footnote 6 of paragraph 11 d) i) explains may indicate that the development should be refused.
34. In terms of the tilted balance, the benefits of the proposal would include the delivery of four dwellings in a sustainable location with the social benefit of increased access to housing. There would be construction phase benefits and longer-term economic benefits through the future occupiers' reliance on local services and facilities.
35. Additional benefits would result from the improvement of the appearance of the site, which is generally run down and where fly tipping commonly occurs. However, I am not convinced that the scheme is the only means of securing such an outcome.
36. Considered in the round, the significant and demonstrable harm from the proposal would not outweigh the benefits outlined above. Consequently, the tilted balance is not a material consideration that indicates that the appeal should be allowed. The appeal is, therefore, dismissed.

Hollie Nicholls

INSPECTOR