



Appeal Decision

Site visit made on 16 June 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2021

Appeal Ref: APP/V1260/W/21/3269656

217-221 Old Christchurch Road and land to the rear of, Bournemouth BH1 1JZ

- 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 Blumariin Ltd against Bournemouth, Christchurch and Poole Council.
 - The application Ref 7-2020-1058-AB, is dated 30 June 2020.
 - The development proposed is construction of three storey block of five flats, landscaping, bin and cycle store and the formation of parking spaces.
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Decision

1. The appeal is dismissed and planning permission is refused for construction of three storey block of five flats, landscaping, bin and cycle store and the formation of parking spaces.

Procedural Matters

2. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council's appeal statement sets out the grounds for refusal had it determined the application. These were that the proposed development would provide unsatisfactory living conditions for future occupants, it would harm the living conditions of neighbouring occupiers, it would make inadequate provision for cycle parking and that in the absence of mitigation, it would adversely affect protected habitats sites.
3. On 1 April 2019, Bournemouth Borough Council ceased to exist and became part of a new Unitary Authority known as Bournemouth, Christchurch and Poole 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 Bournemouth Local Plan: Core Strategy 2012 (CS), Bournemouth District Wide Local Plan 2002 (LP) and the Bournemouth Town Centre Area Action Plan 2013 (AAP).
4. During the course of the appeal, a revised National Planning Policy Framework (the Framework) was published. The parties have had an opportunity to comment on the revised Framework in relation to this case during the appeal process. I have proceeded to deal with the appeal accordingly.

5. Since its decision on the planning application, the Council has adopted a new Parking Standards Supplementary Planning Document (Parking Standards SPD). This replaces the Bournemouth Borough Council Parking Supplementary Planning Document 2014 (Bournemouth Parking SPD).
6. The local highway authority considers that the appeal should be determined in relation to the Bournemouth Parking SPD. Its reasons for this are that no amended drawings have been submitted to demonstrate compliance with the Parking Standards SPD. Furthermore, if cycle storage were to be provided in accordance with the higher standard sought by the Parking Standards SPD, this would materially alter the nature of the proposal and has not been subject to consultation with interested parties.
7. I have been provided with no amended drawings showing any alternative site layout, parking arrangements or cycle storage. I must therefore determine the appeal on the submitted plans. However, the Parking Standards SPD is now the current policy document and I have determined the appeal accordingly.
8. During the appeal, the appellant submitted a signed planning obligation by way of a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 9 July 2021. This deals with financial contributions towards mitigation against the impact of development on the protected habitats sites. I will discuss this in more detail later in this decision.

Main Issues

9. The main issues are:
 - the effect of the proposed development on the living and working conditions of future occupiers of the unimplemented development of the Drill Hall with regards to an overbearing form of development; and residents of 217-221 Old Christchurch Road with regard to overlooking;
 - whether the proposed development would provide satisfactory living conditions for future occupiers, with regard to outdoor amenity space, outlook and light; and
 - whether the proposed development makes adequate provision for cycle parking.

Reasons

10. The appeal site is a backland site in a dense urban area. It comprises a courtyard at the rear of 217-221 Old Christchurch Road (Nos 217-221), a terrace of three-storey properties. No 221 has a part two/part three-storey rear addition which appears to be in residential use. A five-storey block of flats, Vitrum, at the rear of Numbers 223-227 faces towards the courtyard. There are significant differences in ground levels between the appeal site and the land to the rear accessed off Lansdown Lane. Due to this, the northern edge of the courtyard is formed of a high retaining wall which extends to over two-storeys in height. The proposed development would erect a three-storey block of flats adjacent to this wall.
11. Planning permission was granted in 2018¹ for a two-storey block of four flats on the appeal site. This occupied a similar footprint to the appeal proposal but

¹ Council Ref: 7-2017-1058-Z

was set slightly further forward of the retaining wall. The appeal scheme would provide five units, it would include a recessed second floor and a small two-storey side projection incorporating windows.

Living conditions - neighbours

12. The Council is concerned that the three storey block would form an overbearing relationship to the Drill Hall. It has also identified that there are a number of flats within Nos 217-221 which it considers would be unacceptably overlooked by the proposal.
13. The Drill Hall site occupies the higher ground to the north of the appeal site which is the equivalent of around two storeys. The proposed building would be very close to the retaining wall with the ground and first floors being lower than the top of the retaining wall. The recessed second floor of the proposed building would extend above the retaining wall. However, it would be stepped back from the rear site boundary apart from a projection which would accommodate the stairwell to the building.
14. The redevelopment of the Drill Hall would provide a mixed commercial and residential development. The ground floor would be at the same level as the second floor of the appeal proposal. This comprises commercial uses as well as space for refuse and cycle storage. Windows in the south elevation face towards the appeal site. Part of the approved building would be positioned on the site boundary above the retaining wall.
15. A commercial space within the ground floor would have a large window hard up against the site boundary. From the details provided, it appears that the proposed second floor of the building would only be set a short distance away from this window and that the stairwell projection would be directly adjacent to it. This projection so close to the window would be oppressive when viewed from this neighbouring development, reducing outlook from it. As such, I find the proposed development would have an overbearing effect when viewed from this commercial space. This would be harmful to future occupiers.
16. Planning permission had been in place for the redevelopment of the Drill Hall at the time of the 2018 approved scheme on the appeal site. However, as the 2018 scheme was only two-storeys it did not extend above the retaining wall and therefore did not affect the Drill Hall scheme in the same way as the scheme before me.
17. The main elevation of the proposed development would face towards Nos 217-221. The spacing between the windows in the proposed development and the windows serving these neighbouring flats is indicated to be around 16 metres. This is less than the recommended 25 metre gap for a three-storey building as set out in the Council's Residential Development: A design guide 2008 (the Design Guide).
18. However, the first and second floor windows within the proposed development are designed as oriel windows, one half of which would be angled away from these neighbours and would not therefore cause any undue loss of privacy. The other half of the oriel windows could potentially give rise to overlooking, but a suitably worded condition could be imposed to require that this be glazed in obscured glass. This would overcome any harm that would arise.

19. The scheme also incorporates additional windows within the side projection. These face towards No 221. However, due to the position of these windows they would be at an angle to the windows within No 221 and would not directly face them. Additionally, in the case of the second floor window its set back from the lower floors would further restrict any overlooking. As such, the proposal would not cause an undue loss of privacy for neighbouring occupiers.
20. I conclude that the proposed development would adversely affect future occupiers of the unimplemented development of the Drill Hall with regards to an overbearing form of development. It would therefore conflict with Policies CS21 and CS41 of the CS, Policy 6.10 of the LP and Policy D4 of the AAP which together require new development to be of a high quality of design that respects the amenities of existing and proposed surrounding uses. It would also not accord with the Framework which seeks developments that provide a high standard of amenity for existing and future users. It would also not accord with Section 3.7 of the Design Guide which requires buildings to not provide an overbearing impact on each other. It would not, however, harm the living conditions of residents of Nos 217-221 with regard to overlooking and I have found no conflict with policies in this regard.

Living conditions – future occupiers

21. The proposal would provide a small amount of communal outdoor amenity space. This would be between the proposed building and Vitrum, with a path running through the centre to access the bicycle store at the rear of the site. This access bisecting the outdoor amenity space would detract from it.
22. Due to its limited size, the external space would not provide a spacious area for sitting out in private or performing a range of outdoor household tasks, especially as it would be shared by five separate households. The reduced size in combination with the increase in the number of households using the space would result in more cramped outdoor space than previously approved. This would not provide future occupants with adequate outdoor amenity space.
23. The Council has raised concerns about the space being overlooked from flats within Vitrum. However, I note that the previous scheme provided amenity space in the same location and was found to be acceptable. I have no reason to disagree with those earlier conclusions.
24. The provision of a narrow strip of defensible space to the front of the ground floor units was previously found acceptable and I have been provided with no substantive reasons why this should not be the case in the scheme before me.
25. The proposed flats would be served by windows to the south elevation looking over the proposed car parking area and the rear elevation of Nos 217-221. In addition, windows would project from the side elevation looking towards the front of the site. There are no windows proposed in the rear elevation adjacent to the retaining site boundary wall.
26. Whilst the outlook would be largely single aspect, it would provide views of the amenity space and areas of landscaping as well as the parking around the building. Whilst not a particularly interesting or open outlook, given the local context of a backland site within a tight knit urban area, the outlook for the proposed flats would be acceptable. In coming to this view, I am mindful that the previously approved scheme that would have had a similar outlook, and

27. Some of the rooms within the rear of the building would not be served by windows. However, these are bathrooms and utility rooms where natural light is not so important. All the principal rooms would be served by good sized, south-facing windows and would ensure the living accommodation would be satisfactorily lit.
28. I conclude that the proposed development would not provide satisfactory living conditions for future occupiers, with regard to outdoor amenity space. It would therefore conflict with Policy CS41 of the CS, Policy D4 of the AAP and the Framework which together require new development to provide a high standard of amenity to meet the day to day requirements of future occupants. It would also not accord with Section 3.7 of the Design Guide which requires communal amenity space to be functional in terms of size and position. I have however found that the proposal would provide satisfactory light and outlook for future occupants.

Cycle parking

29. The Parking Standards SPD takes a zonal approach to parking standards, reflecting the differing accessibility levels in the area. It seeks to encourage a modal shift to non-car alternatives, including walking, cycling and the use of public transport. The appeal site is located within the town centre which falls within Zone A. This is a highly accessible location.
30. Development within Zone A is required to provide secure covered cycle parking on the basis of one space per bedroom. The appeal scheme would provide three 1-bedroom flats and two 2-bedroom flats. It would therefore be required to provide eight cycle spaces, comprising seven residents parking spaces and one additional visitor space.
31. The Parking Standards SPD sets out that cycle storage areas should be conveniently located with level access. It should have a minimum width of 1.2 metres between parked bicycles. Any access door should have a minimum width of 1.2 metres. It should be able to accommodate bicycles of 2.3 metres in length.
32. The appeal proposal provides space for cycle parking within the site. The cycle store is indicated to be 3.2 metres long with cycle parking for six bicycles. The width between parked bicycles and the access door would both be under the minimum requirements set out in the Parking Standards SPD. Furthermore, it would not provide sufficient space for eight bicycles. It would therefore not comply with requirements.
33. The appellant has suggested that the cycle parking requirement could be addressed through a suitably worded condition. However, a larger cycle store may affect both the layout and amount of amenity space within the site and would need to be considered as part of the scheme as a whole. For this reason, I do not consider it appropriate to require these details as part of a planning condition.
34. I conclude that the proposed development would provide inadequate cycle storage. It would therefore conflict with Policies CS16 and CS18 of the CS which requires parking to be provided in accordance with adopted parking standards and for all new development to provide adequate cycle storage.

Other Matter

35. The appeal site is within 5km of the designated Dorset Heathlands Special Protection Area, Ramsar Site and part of the Dorset Heaths candidate Special Area of Conservation. These are habitats that are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the protected sites.
36. The appellant has proposed mitigation against any adverse impacts on the habitats sites arising from the proposed development. However, notwithstanding the submitted UU which could secure this, there is no need for me to consider the implications of the proposal on the protected site because the scheme is unacceptable for other reasons.

Planning Balance and Conclusion

37. The appellant has indicated that the Council does not have a five year supply of deliverable housing land and has failed to meet the housing delivery tests. The Council has not confirmed this.
38. The appeal scheme would provide five residential units in an accessible town centre location. However, in view of the previously approved scheme for four units, it would only provide one additional unit. I therefore give this contribution to housing supply limited weight.
39. Set against this, I have found that the scheme would not make adequate provision for cycle parking. It would not provide adequate outdoor amenity space for future occupiers. Furthermore, the design of the upper floor of the proposed building would be such that it would cause unacceptable harm to the living conditions of future occupants and users of the ground floor commercial unit within the approved building on the Drill Hall site.
40. In the event that the presumption in favour of sustainable development as set out in paragraph 11 should apply, the adverse effects of these harms would significantly and demonstrably outweigh the benefits of providing one additional dwelling.

Conclusion

41. For the reasons set out above, I conclude that the appeal should be dismissed and planning permission refused.

Rachael Pipkin

INSPECTOR