



Appeal Decision

Virtual Hearing Held on 7 September 2021

Site visit made on 8 September 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2021

Appeal Ref: APP/V1260/W/21/3268890

55 Somerford Road, Somerford, Christchurch BH23 3PL

- 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 Limited against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 8/19/1588/FUL, dated 17 December 2019, was refused by notice dated 13 November 2020.
 - The development proposed is demolition of existing and erection of 5 dwelling houses.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Fox Homes Limited against Bournemouth Christchurch and Poole Council. This application is the subject of a separate Decision.

Procedural Matters

3. On 1 April 2019, Christchurch 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 adopted Christchurch and East Dorset Local Plan Part 1 – Core Strategy 2014 (the Core Strategy).
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 implications of the revised Framework during the appeal process. I have had regard to comments received and determined the appeal in accordance with the revised Framework.
5. Since the appeal was lodged, the Council has adopted a new Parking Standards Supplementary Planning Document (SPD). This replaces the adopted Parking SPD in place at the time the Council made its decision. I have determined the appeal in accordance with the new Parking Standards SPD.

6. At the hearing, the Council confirmed it made its decision on the submitted site plan, ref 19-1049-004 revision D. The evidence indicates that this plan was further amended and revision F was submitted on 14 September 2020. Revision F updated the site plan with an outline of the previous appeal layout both with and without trees and taking into account the emerging Parking Standards SPD. Two additional plans, 'Proposed site plan extract model', reference 19-1049-D and E, were also submitted during the course of the planning application. These provided additional details of reduced parking on site, alterations to the on-site turning area and illustrated the visibility splays.
7. The appellant has provided a chronology that indicates the plans were submitted to both the planning officer and the highway authority. Whilst there appears to have been correspondence on 25 September 2020 between the case officer and the appellant about these plans, the Council has suggested the revision F was not formally submitted. Due to staff changes since the decision was made, it was not possible to confirm at the hearing the extent to which these plans had been considered.
8. Notwithstanding that the highway authority have advised that they were not formally consulted on the revised plans, it is evident from its statement of case that they have seen and commented on these plans. Furthermore, there is evidence that the Council's tree officer has commented on changes to the proposed parking levels. I am therefore satisfied that the Council has had the opportunity to consider these drawings and the amendments and additional information they included. I have therefore taken these into account accordingly.
9. Following the hearing, 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 8 September 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

10. The main issues are:

- the effect of the proposed development on the use of the existing access on the safety of pedestrians, cyclists and drivers using Somerford Road;
- the effect of the proposed development on protected trees;
- whether the proposed development would provide satisfactory living conditions for future occupants of the bungalow, with particular regard to privacy and outlook; and
- the effect of the proposed development on the integrity of protected habitats sites.

Reasons

Highway safety

11. The appeal site occupies a sizeable plot near the corner of Somerford Road and Somerford Way. It is occupied by a vacant, detached building. This has historically been used as a doctor's surgery but recent history suggests it was

- last used as a dwelling. The property sits in an elevated position to the street which is accessed via a sloping driveway, positioned between an embankment forming part of the adjacent property at Number 57 Somerford Road (No 57) and a treed bank forming the front boundary to the appeal site.
12. Somerford Road is subject to a 40mph speed limit and is a primary route within the local highway network. It supports a mix of residential, commercial and leisure uses along its length including a sizeable industrial area. During the late morning, at the time of my site visit, I observed the road to be busy and well used by buses and HGVs.
 13. The proposal would demolish the existing building and replace it with four three-bedroom dwellings and a two-bedroom bungalow. Parking would be provided on site and the existing access on Somerford Road would be widened to allow for two vehicles to enter and exit at the same time. The parties dispute that the widened access onto Somerford Road would have a satisfactory visibility splay to enable cars to exit the site without harm to highway safety.
 14. Manual for Streets (MfS) advises that the visibility splay at a junction ensures there is adequate inter-visibility between vehicles on the major and minor arms. It recommends using a measurement set back 2.4 metres from the 'give way' line. This is the X distance. It sets out that the Y distance is measured along the nearside kerb line of the main arm although it notes that vehicles will normally be travelling away from the kerb line. The Y distance should be based on the stopping sight distance (SSD). This is the distance within which drivers need to be able to see ahead and stop from a given speed. It is calculated from the speed of the vehicle, the time required for a driver to identify a hazard and then begin to brake and the vehicle's rate of deceleration.
 15. The MfS explains that for existing streets for calculating speeds and the SSD, the 85th percentile wet-weather speed is used. It was agreed at the hearing that no such adjustment for wet weather should be made in accordance with advice set out in updated guidance¹.
 16. The appellant undertook two weekday speed surveys. These both indicated an 85th percentile speed of 28 mph for leading traffic and 30 mph for trailing traffic. Based on these speeds, a SSD of 39 metres for leading traffic and 43 metres for trailing traffic would be required. Therefore a visibility splay from 2.4 metres back with unobstructed views of 39 metre to the right hand side and 43 metres to the left would be required.
 17. The submitted site plan shows a 20 metre right hand visibility splay can be provided within land controlled by the appellant. However, this is to a point 1 metre into the carriageway from the edge of the kerb. If measured to the back edge of the kerb, as sought by the Council, the visibility splay to the right would be less than 20 metres. Consequently, the required visibility splay of 39 metres to the right could not be achieved. To do so, would require visibility across No 57's garden and land outside the appellant's ownership.
 18. Due to the sloping nature of the driveway, the driver position when emerging from the appeal site would be below the top of the bank and retaining wall to No 57. The bank, rather than the vegetation atop the bank, therefore restricts views to the right. Furthermore, whilst there was no vegetation on the bank at

¹ CA 185 Vehicle Speed Measurements

the time of my site visit, there is evidence that at times it has been overgrown which would further restrict visibility in this direction. Even if the required visibility could be achieved beyond the bank, if it were to become overgrown this could not be controlled by condition as it is not in the appellant's ownership. I appreciate that under section 154 of the Highways Act 1980 the Council may require vegetation overhanging the highway to be cut back. However, growth on this bank may not be so extensive as to require action under section 154 but it could restrict visibility for vehicles emerging from this private driveway.

19. Whilst the appellant may have a good relationship with the neighbour at No 57, properties do not always remain in the same ownership and there is no guarantee that future occupants would be willing for this type of maintenance work to be undertaken. I therefore give this very limited weight.
20. The appellant has argued that the visibility splay should be measured to driver position rather than the back edge of the kerb as sought by the Council. This would recognise that driver position is closer to the centre of the road. This is put forward on the basis of the advice set out in Manual for Streets 2 (MfS2) which advises that a more accurate assessment of the visibility splay is made by measuring to the nearside edge of the vehicle track.
21. I acknowledge the approach supported in MfS2 as set out above and the driver to driver visibility advocated by the appellant. The appeal site is located close to a number of hazards including a junction serving a side road, a ghost island for right turners into the side road and a pedestrian refuge. In these circumstances, and especially if there are queues of traffic waiting to turn right into Somerford Way, it seems to me that drivers, particularly of larger vehicles such as buses and HGVs, are likely to travel closer to the kerb. My observations on site, although not measured, support this view. This leads me to conclude that measuring the visibility splay to a point within the carriageway would not be appropriate in these circumstances.
22. For the same reason, I do not consider that a driver edging out onto the carriageway to gain a clear view to the right hand side would be either appropriate or safe in this location.
23. I appreciate that the visibility splay is based on SSDs for drivers travelling along the road and that they would see cars emerging from some distance back and certainly before emerging drivers would see them. There is evidence as set out in MfS that drivers in such environments will be anticipating drivers pulling out of various access points and will drive accordingly. Nevertheless, with the number of hazards and distractions so close to this driveway including parking along the road just beyond the driveway, I am not satisfied that safe access could be achieved.
24. There is no evidence of any collisions or traffic accidents within the vicinity of the appeal site. However, this does not justify a lower standard of visibility. Whilst the previous use of the site as a doctor's surgery has been referenced in association with higher numbers of vehicle movements, I have been provided with no information about this. From what I heard, it appears this use was some years ago when traffic volumes and the various uses along Somerford Road may have been quite different. I give this limited weight.

25. The proposed development would increase the number of dwellings on the site from one to five and would represent a more intensive use of the access. Based on the Parking Standards SPD, the appeal site is located within Zone B which is within 400 metres of a district centre and a good level of services. In such locations, the parking requirement is for one dwelling per unit with a special justification required for any provision which exceeds this amount.
26. Whilst the overall parking associated with the proposal would be relatively low, there would still be a number of comings and goings associated with the domestic use of the site including deliveries and services. It therefore seems to me that the proposed use with five separate households would be significantly more intensive than the existing.
27. I note that the Council did not raise highways concerns in relation to the previously refused scheme on this site for a larger number of properties. It was also not an issue in the subsequently dismissed appeal². From the evidence submitted, it appears that the local highway authority at that time raised no objection to the principle of the proposed access, subject to the imposition of conditions to secure the details of the access. However, the details indicate that the proposed development would also have been served by a second access onto Stroud Park Avenue rather than a single access onto Somerford Way as in the scheme before me. The schemes are materially different in this regard.
28. Moreover, the appeal scheme was considered by the local highway authority, which following the merging of local authorities, is BCP Council and a different highway authority to the one who advised on the earlier scheme. The Council has suggested that the requirement for a condition to secure these details suggests that these matters may not have been fully considered at that stage by the previous highway authority. In view of the highway concerns raised within the appeal before me, I find that I agree with the Council on this point.
29. With no specific objection raised on highway safety grounds and given the previous appeal was being dismissed for other reasons, there was no requirement on that Inspector to consider highways matters further. In these circumstances, the absence of such considerations does not necessarily confer approval of the scheme from a highway safety perspective. Whilst I appreciate this must be frustrating for the appellant, I must consider the planning merits of the scheme before me which I have done.
30. Taking all these factors together, this leads me to conclude that the proposed development would not have safe access onto the highway due to inadequate visibility to the right.
31. I therefore conclude that the proposed development would significantly intensify the use of the existing access which has restricted visibility. Consequently, the proposal would lead to an increased risk of collisions between pedestrians, cyclists and drivers using Somerford Road. Thus the proposal would significantly harm highway safety. It would therefore not comply with Policy KS11 of the Core Strategy which requires development to be designed to provide safe access onto the existing transport network.

² APP/E1210/W/19/3227280

Trees

32. A number of mature trees are growing in an embanked area at the front of the site. These are tall specimens, visible in long distance views along Somerford Road. Their height, form and structure together contribute to the verdant and sylvan character along this section of Somerford Road, adding a softening element to the urban landscape and making a positive contribution to the visual amenity of the area. Due to their value, the trees are protected by an Area Tree Preservation Order.
33. In order to widen the existing access onto Somerford Road the bank in which the trees are growing would need to be cut back. This would encroach into the root protection area (RPA) of three Monterey pine trees, T8, T9 and T10 which form part of the larger group of protected trees.
34. The appellant submitted an Arboricultural Impact Assessment and Method Statement report which included a tree survey. This categorised trees based on guidance in British Standards³. It identified the trees affected by the drive widening as category B trees and of moderate quality in the case of T8 and T9 and a category C tree and of low quality in the case of T10. Together the trees contribute to the visual amenity of the area, although in the case of T10, due to its lower quality, its contribution is largely derived from its belonging to the wider group of trees.
35. The appellant has advised that the works to the bank would be within the critical root plate radius of T10 and would be likely to destabilise the tree. It would therefore need to be removed due to its position adjacent to the highway and close to development. The removal of tree T10 to accommodate the driveway would have a limited effect on the visual amenity of the area provided a substantial group of trees including trees of higher quality than this one would be retained.
36. The Council has raised a concern that the removal of this tree would expose tree T9 and cause damage to its rooting system as they will be intertwined. Notwithstanding that the stump to T10 would be retained, the rooting system of both T8 and T9 would be disturbed by excavation and the reduction of the bank which is within their RPAs. Whilst the extent of the works may only be small in terms of area, they would be centrally located within the RPA, especially for T9, and potentially therefore more intrusive.
37. The RPA extends beyond the bank, and in the case of T9 to the far side of the drive. In order to physically cut back the bank to widen the drive, it seems to me that a number of roots would be likely to be severed. This would either expose them at the new edge to the bank or potentially disconnect them from their wider rooting system. The submitted details do not set out how such works could be undertaken without damaging these trees. In the absence of which, I cannot be satisfied that the works would not undermine the long term health of these trees.
38. I appreciate that the Inspector for the outline scheme found that certain alterations would be necessary to facilitate the driveway. However, from the submitted drawings and my reading of that appeal decision, there is no indication that the driveway to Somerford Road was to be widened in the same

³ BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations

way and with as much impact on the protected trees as proposed in the appeal before me. I do not find that the previous scheme justifies the works proposed as part of the appeal before me.

39. The proposed dwelling, Unit 1, would encroach into the RPA of T9. However, the submitted drawings indicate that this would be just one per cent of the RPA. As such a small amount and only intruding into the edge of the RPA, this would not be likely to cause harm to the tree nor undermine its long term health.
40. The amount of parking proposed has been reduced in accordance with the Parking Standards SPD. Consequently, there are only two parking spaces that would be proposed partially within the RPAs of some of the protected trees as well as areas of hard surfacing to the front of the houses. Much of this area is already hard surfaced, comprising compacted stone and gravel.
41. The proposed construction methods would include using a cellular confinement system which would both mitigate the impact on the trees' rooting environments and also lead to some improvement over the existing conditions. This, in combination with the limited encroachment into the RPA of these trees and within the limits recommended in the British Standards, means any harm to the long-term health of these trees would be very limited. Had I been minded to allow the appeal, I would have imposed a suitably worded condition to secure the protection of these trees during construction.
42. The proposed houses would be positioned towards the front of the site. They would be set back further from the front boundary trees than the existing building is. These trees are significantly taller than the existing building and would similarly be taller than the proposed houses. Their considerable height and proximity to the proposed houses could give rise to future occupants having concerns about their safety. However, this would be no more than could occur should the existing building on the site be brought back into residential use. I therefore give this limited weight.
43. Potential nuisance arising from leaf or other tree litter drop has been raised in connection with the proposed car parking. The appellant has stated that the area has been previously used for informal parking and the presence of hard surfacing in this area supports that view. Whilst some nuisance may arise due to the proximity of the trees, there would be no parking spaces directly beneath the tree canopies and any nuisance arising from this would be limited. I appreciate that future occupants may nevertheless seek to remove, thin or prune trees causing them nuisance. However, given that nuisance would be limited, it would be possible for the Council to either resist or severely limit the extent of any works in this regard.
44. In the previous appeal on this site, I note that the buildings were set slightly forward of the proposed development in the scheme before me. As such, they would have been even closer to these trees than the proposed houses in the appeal scheme. The Inspector only referred to pressure to fell as a consequence of daylight to a single-aspect property rather than the proximity of the trees to the proposed houses causing safety and nuisance concerns. This adds weight to my view that the proximity of the trees would not be unacceptable.

45. I appreciate that as part of previous tree works applications that replacement planting has been agreed. This would mitigate for the loss of trees as part of those approved works. The appeal scheme would cause additional harm to the group of protected trees and their amenity value. In any event, any replacement tree planting would take time to establish and in the short to medium terms would compromise the contribution of the protected trees to the quality and character of the area.
46. The harm to the protected trees is not outweighed by the benefits of the reuse of previously developed land. It seems to me that this benefit could be realised through a less harmful scheme.
47. I conclude that the proposed development would harm the protected trees. It would therefore conflict with Policies HE2 and HE3 of the Core Strategy which together require development to be compatible with its surroundings in relationship to mature trees and to protect the landscape character and visual amenity of the area.

Living conditions

48. The proposed bungalow would be positioned towards the rear of the site behind Unit 1. Part of its garden boundary would be shared with Units 1, 2 and 3. The first floor bedroom windows to these properties would face towards the bungalow and its garden, separated from it by less than 10 metres. The main area of private garden space serving the bungalow is to the rear and to the side which would be accessed directly from its kitchen. This side garden would have a south-westerly aspect and would be likely well used by future occupants.
49. Due to the proximity of the first floor windows serving Unit 2 and to a less extents Units 1 and 3, the side garden would be directly overlooked. This would cause a significant loss of privacy for future occupants using the side garden. This would adversely affect their living conditions.
50. I accept that within urban environments such as this, there is often a degree of mutual overlooking. However, the proposed arrangement of properties would enable direct overlooking of what would be an important area of the garden, close to the house where occupants would expect to enjoy a good degree of privacy. The scheme would not provide this.
51. The appellant has suggested that a combination of new tree planting and a garden shed would provide screening of the garden space. However, in order to be effective in preventing overlooking it seems to me that this boundary vegetation would need to be quite tall. This could subsequently impact on light and outlook for the proposed houses and their garden space as this would be along the south eastern boundaries of relatively short rear gardens.
52. The first floor rear bedroom windows of Unit 1 would face towards the front elevation of the proposed bungalow. Whilst almost directly facing a study window, views into this room would be restricted by the boundary fence or other means of enclosure, which would necessarily be relatively tall in order to provide privacy between the two properties. This room would therefore not be directly overlooked.
53. A projecting bay window serving a bedroom would be less enclosed by boundary fencing and some views into this window would be possible from the

first floor windows of Unit 1. There would be some loss of privacy to future occupants arising from this, although due to these windows being at an angle to each other rather than directly facing, this would not be significant.

54. Due to the height of the boundary fencing and the narrow space between it and the study window, this room would have very limited outlook. However, as it would not be one of the primary living rooms serving the bungalow, it would have a limited adverse effect on the living conditions of future occupants. As such, it would not in itself be so harmful as to warrant the dismissal of this appeal.
55. I conclude that the proposed would not provide satisfactory living conditions for future occupants of the bungalow with particular regard to privacy. It would therefore conflict with Policies HE2 and LN1 of the Core Strategy which together require new development to be a high quality of design in terms of its relationship with nearby properties and for new housing to be built to meet minimum living space standards for external areas. It would also not accord with the Framework which seeks to create places that promote health and well-being with a high standard of amenity for future users.

Habitats sites

56. 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 sites 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. I am the competent authority for the purposes of this appeal.
57. The Council has advised that had it been minded to grant planning permission it would have to carry out an appropriate assessment of the proposal. As I am the competent authority for the purposes of this appeal, that duty now falls to me.
58. Natural England has advised that the proposed development would in combination with other plans and projects within close proximity to the heathland and in the absence of any form of acceptable mitigation be likely to have an adverse effect on the habitats sites and their special features.
59. The appellant has proposed mitigation against any adverse impacts on the habitats sites arising from the proposed development in accordance with the draft Dorset Heathlands Planning Framework 2020-2025 SPD. 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 sites because the scheme is unacceptable for other reasons.

Planning Balance

60. The Council cannot demonstrate a five year supply of deliverable housing sites. Although merged, the Council continues to calculate its five year supply separately for the three local plan areas. For the Christchurch area the Council can demonstrate 3.98 years housing supply as of April 2019. Consequently, the development plan policies relating to the supply of housing are out of date and paragraph 11(d) of the Framework would apply.

61. The proposed development would provide five houses in an accessible location where future occupants would have access to services and facilities without reliance on the private car. There would be economic and social benefits associated with the provision of additional housing. These carry moderate weight in favour of the proposal.
62. However, the proposal would cause significant harm to highway safety, would adversely affect protected trees and would not provide satisfactory living conditions for future occupants of the bungalow. These factors weigh significantly against the development.
63. 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

64. 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.
65. For this reason, I conclude the appeal should be dismissed.

Rachael Pipkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Ken Parke	Planning Consultant, Ken Parke Planning Consultants
Mr Phil Caseley	Highway Consultant, JPC Highway Consultants
Mr Andrew Cleaves	Arboricultural Consultant, Treecall Consulting Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Emma Wachiuri	Senior Planning Officer
Mr Steve Stace	Highway Officer
Miss Bea Ridley	Tree & Landscape Officer

HEARING DOCUMENTS

HD1 Costs application on behalf of the Appellant

POST-HEARING DOCUMENTS

PHD1	Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 dated 8 September 2021
PHD2	Arboricultural Impact Assessment & Method Statement, Ref DS/95221/AC, dated 6 September 2021
PHD3	Tree Protection Plan & Arboricultural Method Statement (Demolition), Ref DS/95221/AC, dated 6 September 2021
PHD4	Tree Protection Plan & Arboricultural Method Statement (Construction), Ref DS/95221/AC, dated 6 September 2021
PHD5	Tree and Landscape Officer's Statement dated 10 September 2021 including agreed tree conditions