



Appeal Decision

Site Visit made on 15 September 2021

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2021

Appeal Ref: APP/V1260/W/21/3274130

12 Foxholes Road, Bournemouth BH6 3AS

- 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 Ms P Mellor against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 7-2020-2325-D, dated 28 November 2020, was refused by notice dated 23 April 2021.
 - The development proposed is to demolish existing dwelling and erect block of six apartments.
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Decision

1. The appeal is allowed and planning permission is granted to demolish existing dwelling and erect block of six apartments at 12 Foxholes Road, Bournemouth BH6 3AS in accordance with the terms of the application, Ref 7-2020-2325-D, dated 30 November 2020, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Ms Pauline Mellor against Bournemouth Christchurch and Poole Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - (a) The effect on the living conditions of the occupiers of No.24 Douglas Avenue, and Flats 2 and 3 at No.26 Douglas Avenue;
 - (b) The effect on the living conditions of future occupiers of the proposed upper floor flats, with regard to the provision of external space;
 - (c) The effect on local housing mix, with regard to the provision of family housing; and
 - (d) The effect on housing supply.

Reasons

Neighbouring residents

4. No.24 is positioned side on to the rear of the site, and its garden extends along the site boundary. A conservatory projects into its garden from the back of the dwelling. The existing dwelling at the appeal site has a large first floor window

facing towards No.24 that, in the absence of any boundary vegetation, would afford views into this neighbouring land and conservatory.

5. The proposal would result in first floor bedroom windows of two flats facing No.24. However, they would not be large openings and, while closer than the existing window at the site, would be of similar relationship to many other medium-density urban environments.
6. Although a previous appeal for development of the site was dismissed, partly due to the loss of privacy to No.24, that proposal was vastly different in terms of the extent and configuration of glazing proposed. With regard to the existing situation, I find that this proposal would cause no significant loss of privacy to No.24.
7. The building would clearly be more visible from the garden and conservatory of No.24 than the existing small-scale dwelling. However, the site is within a clearly built-up area and other buildings are visible. The main outlook from No.24 and its conservatory would be across its own garden and the distance of the proposal from the boundary would be sufficient to avoid a harmful overbearing presence on the garden. No.22 is further away and would experience less effect.
8. No.26 lies alongside the site and flats 2 and 3 have windows facing towards the site. The representations indicate that the affected window in flat 2 serves an open plan room that is also lit from elsewhere. I understand that the overhang of a balcony affects the amount of light penetrating from that other source, but I saw that the side window is at least partially obscured so its contribution to light and outlook would be reduced. Therefore, although the effects may be appreciable to the occupants and the relationship to this specific window may not meet Building Research Establishment guidelines, I find that the effect on living conditions within flat 2 would not be harmful.
9. Flat 3 has more windows facing across the site and would look towards the roof of the proposal. The representations indicate that the most noticeable effects would be felt within the kitchen where outward views would be of little more than the new roof. The living room is said to be affected too and I saw that the rearmost window is large. Views from here would also be interrupted by the roof. However, some views past the corner of the roof would likely be available, the roof would slope away from the window and in from the rear elevation significantly reducing the bulk and massing as perceived from within flat 3. Thus, while outlook and views would be reduced the proposal would not have a harmfully overbearing presence.
10. Moreover, the Council's evidence indicates that permission has not been refused due to effects on the flats at No.26 in this or the previous two applications at the site for structures closer to No.26 than the current proposal. This supports my analysis that harmful living conditions would not arise. I, therefore, find that the effects on outlook of these neighbouring residents to be within an acceptable tolerance and not result in harmful living conditions.
11. In respect of all neighbouring properties, the Council has confirmed that the top floor roof lights have been designed at a height to avoid overlooking. While it may always be possible to see out of the windows if standing on a stool, for example, this is unlikely to be a regular activity. Casual overlooking would be avoided from the upper floor windows and so, even if the windows could be

seen by the neighbours, the use of these top floor flats would not harm privacy.

12. The bin stores would be close to 14 Foxholes Road. However, given the scale of development, their use is likely to be intermittent and would not cause significant disturbance to neighbouring residents. The car park would also be close to No.14 which may increase noise and pollution in the immediate vicinity, particularly on cold mornings. However, the existing driveway for the property is positioned alongside this boundary, and the car park would also be sited alongside the road. The additional effect on this adjoining occupier is, therefore, likely to be very small.
13. Given the angles from proposed windows to the external areas of No.14, there would not be any significant overlooking from the proposed windows. There would be views toward some windows and the car park associated with Foxglove Court on the opposite side of the road, but this is already open to the road and the distances across the road are sufficient to avoid any harm.
14. For the reasons given, the development would not result in significant harm to the living conditions of neighbouring residents. There would be no conflict with those parts of Policies 6.8 and 6.10 of the Bournemouth District Wide Local Plan 2002 that seek to respect the amenities of neighbouring residents. Policy CS41 of the Bournemouth Core Strategy 2012 (CS) states that development should enhance the amenities of neighbouring residents. While this goal would not be met, it only seeks to prevent development that would cause harm. Read as a whole, I find no conflict with the development plan in respect of this first main issue.

Future residents

15. Although the ground floor flats would be allocated private garden spaces, no external space would be available to the occupiers of the upper floor flats. There are local parks and the beach within walking distance of the site, but given the distance to them, these would not perform the same function as casual sitting out space at, or very close to, the site.
16. CS Policy CS41 requires new development to provide a high standard of amenity to meet the day to day requirements of future occupants. The lack of meaningful outdoor space available to these future residents would not meet this standard. There would, therefore, be a conflict with this policy in respect of this main issue.

Housing mix

17. CS Policy CS19 seeks to prevent the loss of small family sized dwellinghouses, defined in the policy as having an original gross external floorspace of less than 140 square metres. This is intended to secure a continued provision of family homes in an area that has a higher than average number of flats.
18. While the existing dwelling may be over 190 square metres, the policy refers to the original dwelling. The Council's estimate, from historic records, that this dwelling was under the 140 square metre threshold is not disputed. I, therefore, find that there would be some harm to the local housing mix and a conflict with CS Policy CS19.

Housing supply

19. The Council has confirmed that it is currently unable to demonstrate a 5 year supply of deliverable housing land. The scheme would contribute a net increase of 5 dwellings to the housing supply which, even if the shortfall were not great, would be of significant benefit, given the lack of demonstrable supply.

Other Matters

20. There is widespread local concern about traffic conditions in the area. I understand that the use of the surrounding road network as connections to schools and shops results in substantial pedestrian footfall. Parking, in association with school trips and overspill from residential properties that provide insufficient capacity within their sites, means that on street parking spaces are in high demand. Their number is limited by individual accesses, traffic management measures and a cycle lane.
21. Nevertheless, the Council has confirmed that adequate parking, with regard to the site's accessibility, would be provided in accordance with its adopted parking standards. I, therefore, have no substantive evidence to suggest that significant pressure on the local road network would result from the proposed development.
22. There is some suggestion that plans and statements submitted in support of the proposal are inaccurate or misleading. However, the scale and position of the proposed building relative to its surroundings can be seen and understood from the detailed drawings and a site visit.
23. The proposal would be noticeably larger than the existing dwelling, however, it would not appear incongruous alongside the fairly large buildings either side. The architecture, with pitched roofs and projecting gables would also reflect a number of other buildings in the locality. I, therefore, have no reason to deviate from the Council's conclusions that there would be no harm to the character and appearance of the area.
24. Additional or replacement tree planting and soft landscaping can be secured via planning conditions. As part of this, it may be possible to retain some of the existing boundary vegetation, to the benefit of the appearance of the area. The evidence indicates that biodiversity interests would not be harmed.

Appropriate assessment

25. The site is within 5km of the Dorset Heathlands Special Protection Area (SPA) and Ramsar site, and the Dorset Heaths Special Area of Conservation (the European sites). The European sites host protected priority habitats and species. Qualifying features include Dartford Warbler, Nightjar, Woodlark, Hen harrier and Merlin as well as other typical species of lowland heathland, wetlands and dunes.
26. The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (DHPF), indicates that the associated increases in population, in combination with other development, are likely to place increased pressure upon the protected heathland, including through increases in wild fires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion, and disturbance by humans and their pets.

27. The DHPF sets out that mitigation measures can be achieved through the delivery of Heathland Infrastructure Projects, paid for through the Community Infrastructure Levy (CIL), and Strategic Access Management and Monitoring Measures (SAMMs), funded by developer contributions in respect of individual planning applications.
28. Having sought the views of Natural England, I find that the mitigation set out above would be suitable. A planning obligation would secure the necessary SAMMs contribution to allow mitigation in line with the DHPF. Therefore, following appropriate assessment under the Conservation of Habitats and Species Regulations 2017, I am satisfied that adverse effects on the integrity of the European sites would be avoided.

Planning balance

29. I have found that there would be conflict with the development plan in respect of the effect on living conditions for future residents and housing mix. In light of the housing supply situation, though, I attach only moderate weight to the conflict with CS Policy CS19, given that the scheme would increase housing provision overall and two of the two-bedroom flats would be provided with private gardens, which may suit some families. There would, nevertheless, be a conflict with the development plan read as a whole.
30. The housing supply situation means that Paragraph 11(d) of the National Planning Policy Framework falls to be considered. This indicates that permission should be granted unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits when considered against the policies of the Framework taken as a whole.
31. While the living conditions provided for some future residents would not be of the highest quality, there is a clear need for additional housing, which can be met, at least in part, through the intensification of existing urban land such as this. The locality is not devoid of recreation opportunities and so the efficient use of such land as part of the Framework's desire to significantly boost the supply of housing outweighs the lack of on-site garden space for some of the future residents in this case.
32. The adverse impacts of granting permission would not, therefore, outweigh the benefits when considered against the policies of the Framework, taken as a whole. Accordingly, the proposal benefits from the presumption in favour of sustainable development set out at Framework Paragraph 11.
33. The Framework, as Government policy, carries substantial weight. In light of my earlier findings over the relative weight to be attached to the identified harms and policy conflict, material considerations in this case dictate that the decision should be taken otherwise than in accordance with the development plan and permission should be granted.

Conditions

34. A plans condition is required in the interests of certainty. To protect the living conditions of neighbouring residents, hours of working should be controlled and a method statement detailing parking arrangements, noise reduction measures, siting of equipment and materials should be prepared.

35. In the interests of highway safety, the parking and turning areas and pedestrian visibility splays must be provided and further details of the access, together with closure of the existing one, should be submitted. To promote travel by low-carbon means, electric vehicle charging points and a cycle store should be provided. There is no reason to find the cycle storage facilities proposed to be unacceptable, so I have not required further details to be submitted.
36. The retained on and off-site trees should be protected during the build and a hard and soft landscaping scheme, together with a management plan, submitted in order to protect the character and appearance of the area. For the same reason, external facing materials should be submitted for approval.
37. To prevent any increase in flood risk and ensure that any inadequacies in the local drainage network are not exacerbated, a drainage scheme should be submitted. To ensure adequate facilities exist for future residents, a bin store needs to be provided.
38. The Council has suggested conditions relating to the glazing, opening arrangements and siting of the rooflights, but they are specified on the plans as appropriately positioned to avoid overlooking. Therefore, the only required condition to protect living conditions is to secure the obscure glazing of various side elevation windows. This is needed as the type of glazing is not adequately specified.
39. Some of the Council's conditions provide lists of required information. However, I have not followed this approach so that the parties can agree the necessary information relevant to this specific site and based on applicable guidance at the time that the conditions are discharged. I have made some revisions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Framework.

Conclusion

40. With regard to the above, I conclude that the appeal should be allowed.

M Bale

INSPECTOR

Schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P01; P02; P03; P04; P05; P06; P07; P08; P09; P10; P11; P12; P13; P14; P15; P16.
- 3) All on-site working, including demolition and deliveries to and from the site, associated with the implementation of this planning permission shall only be carried out between the hours of 8 a.m. and 6 p.m. Monday - Friday, 8 a.m. and 1 p.m. Saturday and not at all on Sunday, Public and Bank Holidays unless otherwise agreed in writing with the Local Planning Authority.
- 4) No site clearance or development work shall commence until there has been submitted to and approved in writing by the Local Planning Authority a Method Statement detailing
 - a) parking arrangements for operatives and construction vehicles working on-site;
 - b) noise reduction measures; and
 - c) details and siting of equipment, machinery and surplus materials on the site.

The parking arrangements for operatives and construction vehicles shall be implemented prior to development commencing and remain in place for the duration of the construction of the development, and the development shall otherwise be carried out in accordance with the approved details.
- 5) Prior to occupation of the development hereby permitted, the proposed parking and turning areas shall be constructed and laid out in accordance with the approved plans and thereafter shall be permanently retained and kept available for the residents of the development hereby permitted.
- 6) Prior to the occupation of the development hereby permitted, details of the provision of Electric Vehicle Charging Points and associated infrastructure shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented and brought into operation prior to the occupation of any residential unit hereby permitted and shall thereafter be permanently retained and available for use at all times.
- 7) Prior to its construction, details and specifications of the lowering of the kerb and footway at the proposed access and the reinstatement of full height kerbs at the existing vehicular crossover of the highway shall be submitted to and approved in writing by the Local Planning Authority. These areas shall be constructed and laid out in accordance with the approved details prior to the occupation of the development and shall thereafter be maintained as such.
- 8) Prior to the occupation of the development hereby permitted, the pedestrian visibility splays as shown on the approved plans shall be

- cleared of all obstructions over 0.6m in height above ground level and shall thereafter be kept free from any obstruction over 0.6m in height.
- 9) Prior to the occupation of the development hereby permitted, the cycle store, providing storage for 6 cycles, and associated access path shall be completed and thereafter be retained, maintained and kept available for the occupants and visitors of the development at all times.
 - 10) The tree protection measures as detailed in the Arboricultural Impact Assessment and Method Statement dated 08/01/2021 and prepared by Gwydion's Tree Consultancy ref: GH2026.1 shall be implemented in full. Tree Protection Fencing shown on the Tree Protection Plan shall be installed prior to any works within the protected area and shall be retained for the duration of construction activities at the site.
 - 11) Prior to the construction of the new building, a scheme for the whole site providing for the disposal of surface water run-off incorporating any viable sustainable urban drainage systems (SUDS) and a maintenance scheme for the lifetime of the development, shall be submitted to and approved in writing by the Local Planning Authority. The drainage works shall be completed in accordance with the approved details prior to occupation of the development and thereafter maintained in accordance with the approved scheme.
 - 12) Prior to the occupation of the development hereby permitted, full details of soft & hard landscape works, together with an ongoing landscape management plan shall be submitted to and approved in writing by the Local Planning Authority. The approved hard & soft landscape scheme shall be implemented in full prior to the occupation of the development, and shall thereafter be maintained in accordance with the management plan unless otherwise agreed in writing by the Local Planning Authority.
 - 13) Prior to their use within the development hereby permitted, details/samples of the bricks and tiles to be used on the external surfaces of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The details shall be implemented prior to the occupation of the development and shall thereafter be maintained as such.
 - 14) Prior to the occupation of the building hereby permitted, the side elevation windows at ground and first floor level shall be glazed with obscure glass of a type that shall first have been agreed in writing by the Local Planning Authority and shall thereafter be maintained as such.
 - 15) The bin stores hereby approved shall be constructed in accordance with the approved details prior to the occupation of the proposed development and shall thereafter be retained and maintained for that use.