



Appeal Decision

Site visit made on 15 November 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2021

Appeal Ref: APP/V1260/W/21/3278166

9 Avenue Road, Christchurch BH23 2BU

- 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 Red Croft Homes Ltd & Bryson (Construction) Ltd against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 8/20/1046/FUL, dated 16 November 2020, was refused by notice dated 23 April 2021.
 - The development proposed is new dwelling on land adjacent of existing house - existing garage to be demolished.
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Decision

1. The appeal is allowed and planning permission is granted for new dwelling on land adjacent of existing house - existing garage to be demolished at 9 Avenue Road, Christchurch BH23 2BU in accordance with the terms of the application, Ref 8/20/1046/FUL, dated 16 November 2020, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. As part of the appeal, the appellants submitted drawing no 1649P/106, which shows the proposed dwelling as it would appear in the street scene. The drawing does not alter the scale, siting, or appearance of the proposed dwelling, on which the Council and other interested parties have had the opportunity to comment. On this basis, no party would be unfairly prejudiced by my consideration of the additional plan in determining this appeal.
3. The Council's second reason for refusal was based on harm to the Dorset Heathland Special Protection Area (SPA) and the Dorset Heaths Special Area of Conservation (SAC). The decision notice indicated that this reason could be overcome, by the submission of a completed legal agreement securing a financial contribution to Strategic Access, Management and Monitoring (SAMM) measures to mitigate the harm. During the appeal, the appellants submitted an Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 (the Undertaking), securing payment of the necessary financial contribution. The Council has confirmed that the Undertaking overcomes the second reason for refusal.

Main Issues

4. The main issues are:
 - a) The effect of the development on the character and appearance of the area; and,

- b) The impact of the development on the integrity of the Dorset Heathlands SPA and the Dorset Heaths SAC (the European Sites).

Reasons

Character and appearance

5. Avenue Road is a relatively quiet residential street, just off the busy A35. It is characterised largely by two-storey houses, set behind enclosed front gardens, most of which have driveway parking. There are street trees on the pavements on both sides, and ornamental planting in the front gardens, giving the street a well-planted suburban feel. Although the houses are generally of traditional form, there is significant variety in their individual designs, and a range of materials. Whilst the houses on the eastern side of the road are arranged on a fairly rigid building line, the prevalence of trees and high hedges, and the variety of building designs and materials means that there is no overriding visual uniformity in the street scene.
6. No 9 occupies a relatively wide plot, and the appeal site comprises the considerable gap between the house and the neighbouring dwelling, No 9a. The site also includes land at the rear that was formerly part of the long back garden of a dwelling fronting Portfield Road. Consequently, the proposed plot is of a depth commensurate with those of the adjacent properties, albeit that there is a pinch point towards the centre, which results in it having an unorthodox shape. The resultant plot, and that of the host dwelling, would be somewhat narrower than those of the houses to either side, but there is a variety of frontage widths in the locality. The narrower sites would be no more noticeable in this varied street scene than the existing, uncharacteristically wide frontage.
7. The gap between the host dwelling and the new house would be narrower than others along this side of the road, but this would only be apparent when viewed from directly in front. In oblique views, the hipped roofs of the houses would result in a significant separation of the buildings, so the proposed house would not appear unduly cramped. The house would be close to the side boundaries of the plot, particularly at the pinch point to the rear, but this would not be discernible from the road. From here, the spaces between the buildings would be evident, and would not appear unusually narrow. In any event, regularity of spacing is not a conspicuous characteristic of the street scene, due to the street trees that curtail long views, and the variety of building designs. The width of the plot, and the resultant spacing between the houses would not, therefore, be visually discordant.
8. The house at No 9a is largely screened by the high conifer hedge on its frontage. Consequently, in most views, the proposed dwelling would be seen in closer association with the houses at Nos 5, 7 and 9. These three houses are built on a common frontage, and have some symmetry in their design, with matching bays, arched doorways, and hipped roofs. The siting and design of the house has been influenced by this group of buildings. Its frontage would align with Nos 5-9, and with the houses from No 11a onwards to the north, so would reinforce the pattern of development along the road. Although it would be located further forward than the house at No 9a, the deeper set-back of this building and No 11b is not characteristic of the rest of the street.

9. The house would be narrower than those at Nos 5-9, so an exact replication of their appearance would not be possible. Instead, a more contemporary approach has been adopted, but reflecting the general form, proportions, and materials of the adjacent buildings. This approach would successfully maintain the rhythm of the street scene, and ensure that the building would assimilate comfortably into its surroundings. It would also accord with the advice at paragraph 130 of the National Planning Policy Framework, which advises that development should be sympathetic to local character, including the surrounding built environment, while not preventing or discouraging appropriate innovation or change (such as increased densities).
10. For these reasons, I conclude that the proposal would not be harmful to the character and appearance of the area. It would, therefore, accord with Policy HE2 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy (2014) (the Core Strategy) and saved Policy H12 of the Borough of Christchurch Local Plan (2001). These policies seek to ensure that development is of a high-quality design that is appropriate in character, scale, design, and materials to the immediate locality.

Integrity of the European Sites

11. The appeal site lies within 5km of the European Sites, which are afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the European Sites, either alone or in combination with other plans and projects. In 2018, the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA), rather than at the screening stage¹. This responsibility now falls to me as the competent authority.
12. Evidence shows that these European Sites are under significant pressure from an increase in the level of recreation, and disturbance of bird and reptile species, as a result of urban development. The proposal would result in an additional dwelling within 5km of the protected sites. Whilst the impact of a single dwelling would be small, in cumulation with the 11,290 new homes identified in the Council's trajectory up to 2025, it has the potential to impact on their integrity, through increased recreational disturbance.
13. The evidence before me shows that public access to lowland heathland, from nearby development, can lead to an increase in wildfires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion. Disturbance by humans and their pets, amongst other factors, has an adverse effect on the heathland ecology. As most visitors to the heathland live within 5km, Natural England has advised that development within this distance would, cumulatively, have such a significant effect that mitigation is required. I therefore conclude that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

14. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the European Sites. As part of my assessment, I must therefore consider whether the impact of the development could be mitigated. The Council, and Dorset Council, have been operating a strategy for the protection of the heathland, which is set out in the Dorset Heathlands Planning Framework 2020–2025 Supplementary Planning Document (the Heathlands SPD), which was adopted in 2020. The strategy involves the provision of mitigation for the impacts of development, through a combination of infrastructure projects and SAMM. The infrastructure projects are funded either by the local authorities, using Community Infrastructure Levy receipts, or directly by developers. SAMM is funded through contributions from all developments that involve an increase in dwellings. The mitigation is delivered strategically across the Council areas, through a joint approach.
15. The Undertaking requires that, before commencing the development, the appellant must pay £394 to the Council towards SAMM measures to mitigate any adverse impacts of the development on the European Sites. This sum has been calculated in accordance with the formula in the Heathlands SPD. Natural England was consulted, and had no objection provided the appropriate contribution was secured, to ensure that the identified adverse effects on the European Sites are mitigated.
16. The evidence before me indicates that the measures set out in the Heathland SPD will ensure that adverse effects are avoided, or reduced to such a level that the integrity of the European Sites is not eroded. Therefore, although the Undertaking does not bind the Council, I am satisfied, based on the specific evidence before me, that it is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Heathland SPD. I therefore conclude through my AA that, with the provided mitigation, the proposal would not harm the integrity of the European Sites. The proposal would therefore accord with Policy ME2 of the Core Strategy, which seeks to protect the Dorset Heathlands.

Other Matters

17. I have considered the representations that have been made in opposition to the proposal, including those relating to traffic and car-parking. I saw that Avenue Road was relatively quiet, with numerous driveway accesses, as well as on-street car-parking. There is no evidence before me to indicate that this is an inherently dangerous environment for road users. The widened access would provide good visibility, and the proposal would provide more off-street car-parking than is required by the Council's adopted policy. There would, therefore, be little impact on existing highway safety and parking conditions.
18. No 9a has windows in its side elevation facing the appeal site, some of which are obscure glazed. The gap between the buildings, and the hipped roof arrangement, would ensure that adequate light would still reach these windows. The main outlook from this neighbouring house is to the front and rear, so occupants would be largely unaffected by the proposed dwelling in this respect. The dwelling would not project beyond the rear building line of No 9a, so would not be an oppressive feature when viewed from the neighbouring rear garden. The only clear-glazed first floor window in the rear elevation would

serve a bedroom, and would not result in a material loss of privacy for any surrounding occupants.

19. Concerns have been raised regarding the presence of Japanese Knotweed on the site. However, the evidence indicates that an eradication plan is already in place, and that construction of the dwelling would not disturb the affected ground.

Conditions

20. In accordance with the legislation, I have imposed a condition limiting the period within which the development must commence. I have also included a condition specifying the relevant plans, as this provides certainty. The Council has submitted a schedule of suggested conditions to cover other matters. I have considered all the suggested conditions against the advice in the Planning Practice Guidance. I have agreed that they are necessary, but have altered them, in the interests of clarity and precision, to better reflect the guidance.
21. A condition requiring the submission of external materials for approval is necessary to protect the character and appearance of the area. In the interests of highway safety and convenience, conditions requiring the provision and retention of the vehicular and pedestrian accesses, and the car and cycle parking, are reasonable and necessary. The need to ensure a net gain for biodiversity justifies a condition requiring provision of bat and bird boxes.

Conclusion

22. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be allowed.

Nick Davies

INSPECTOR

Schedule of Conditions

- 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: 1649P/100e – Proposed Site Plan; 1649P/101a - Block and Location Plan; 1649P/102a - Proposed Floor Plans; 1649P/103a - Proposed Elevations; 1649P/104a – SUDS; 1649P/105a - Existing Garage - Plans and Elevations & Proposed cycle store.
- 3) No development shall proceed above damp-proof course level until details/samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/samples.

- 4) The dwelling hereby permitted shall not be occupied until the access, visibility splays, vehicle parking and cycle storage have been completed in accordance with the approved plans. These facilities shall be permanently retained thereafter, kept free from obstruction, and shall not be used for any other purposes.
- 5) The shared pedestrian access, as hatched green on the approved site plan 1649P/100e, shall be completed prior to the occupation of the dwelling hereby permitted, and shall be permanently retained and kept free from obstruction thereafter.
- 6) The dwelling hereby permitted shall not be occupied until a bat box and bird box have been provided on the dwelling, in accordance with details that have first been submitted to and approved in writing by the local planning authority. The approved bat and bird boxes shall be permanently retained thereafter.