



Appeal Decision

Site visit made on 16 November 2021

by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2022

Appeal Ref: APP/V1260/W/21/3274539

Land at 9 Castle Road, BOURNEMOUTH, BH9 1PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Aspire Property Holdings (Castle) Limited against the decision of Bournemouth Christchurch and Poole Council.
- The application Ref: 7-2021-635-Q, dated 16 December 2020, was refused by notice dated 18 March 2021.
- The application sought planning permission for the erection of 27 dwellinghouses and a 4 storey block of 14 flats with bin and cycle store, formation of vehicular accesses and parking spaces, without complying with conditions attached to planning permission Ref: dated 7-2018-635-N.
- The conditions in dispute are Nos 1 and 14 which state that:
 1. *The development hereby permitted shall be carried out in accordance with the following approved plans: 1365p/200N, 1365p/201, 1365p/202A, 1365p/203A, 1365p/204, 1365p/205, 1365p/206, 1365p/207, 1365p/208C, 1365p/209C, 1365p/210, 1365p/211, 1365p/212B, 1365p/213B, 1365p/215A and 205587-PD01*
 14. *Prior to the commencement of the development hereby approved the specification of the footway and junction realignment shown on Drawing No. 1365p/200n shall be submitted to and approved in writing by the Local Planning Authority. The specification shall include widening and resurfacing the footway on Castle Road and Denmark Road adjacent to the site to 2m minimum in width and relocation of a lamp columns within the area of the proposed footway to the back of the footway, furthest away from the carriageway. Prior to commencement of the footway and junction realignment works the applicant shall enter into an agreement with the Highway Authority and also enter into a deed of dedication to dedicate the footway widening as public highway. Furthermore, and at the same timeframe set out above, the applicant shall make arrangements at its own expense to stop-up the area of highway shown on Drawing No. 1365p/215a and this land will become part of the site. Prior to the occupation of the development the footway and associated works shall be implemented in accordance with the approved details and shall be completed at the applicant's expense, to the satisfaction of the Local Planning Authority.*
- The reasons given for the conditions are:
 1. *For the avoidance of doubt and in the interests of proper planning.*
 14. *In the interests of highway safety and in accordance with Policies CS18 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).*

Decision

1. The appeal is allowed and planning permission is granted for the erection of 27 dwellinghouses and a 4 storey block of 14 flats with bin and cycle store, formation of vehicular accesses and parking spaces at Castle Road,

BOURNEMOUTH, BH9 1PH in accordance with the terms of the application, Ref 7-2021-635-Q, dated 16 December 2020, without complying with conditions Nos 1 and 14 set out in planning permission 7-2018-635-N, granted 26 September 2019 by the Bournemouth Christchurch and Poole Council, but otherwise subject to the conditions set out in the attached schedule.

Preliminary Matters

2. This appeal follows a refusal to vary two conditions on an approval for a major residential development, which would essentially remove the requirement for the widening of a public footpath and the realignment of a highway junction adjacent to the site.
3. During the appeal process it was noticed that the plan submitted reference 1365p/200 Revision O included footpath widening, which the appellant is seeking to remove from the development proposals with this appeal. A revised plan, reference 1365p/200 Revision P has been submitted which accords with the other submitted plans. The alterations with this revised plan are minimal and accord with the submitted evidence from the appellant, both at planning application stage and appeal. The Council has commented on the revised plan. The acceptance of the plan to be considered with this appeal would not prejudice any other interested party.

Main Issue

4. The main issue is whether the conditions requiring increased footway width and junction realignment are necessary and reasonable considering highway safety, particularly for pedestrians.

Reasons

5. Currently under development following the recent planning approval is a residential development adjacent to the junction of Denmark Road and Castle Road, replacing some industrial/commercial units. This is to the east of Wimbourne Road, which is a main thoroughfare through this part of Bournemouth.
6. Condition 14 of the 'outline' permission required that there should be "*widening and resurfacing the footway on Castle Road and Denmark Road adjacent to the site to 2m minimum in width*" together with "*junction realignment*" where these two roads meet. This was to be in the interests of highway safety and based on a submitted and agreed plan.
7. The proposal is now to effectively vary the conditions to reduce the works necessary, with mainly just an improved crossing with tactile paving across Denmark Road remaining from what was originally agreed.
8. From my time on site, I noted that the public footway across the site frontage is narrow, but not to the extent that two people could not pass without stepping into the road. However, I accept that if two people in wheelchairs were passing then this could be difficult as the footway is less than the 2m advised by some current standards.
9. Although less than the 2m width that the Council is seeking as part of the development through condition 14, there is the question of whether this is

reasonable and necessary, as required by paragraph 56 of the National Planning Policy Framework (the Framework). Currently there seems to be many sections of footway in this area that fall short of the 2m width, which whilst considered substandard in some circumstances this is an existing situation which seems to have been the case for many years. I accept that the development would result in an increase in pedestrian trips, especially towards the Wimbourne Road shops and services, together with nearby schools, but this would not likely be a significant increase in trips than what would have existed with the former land uses.

10. In my opinion, the additional pedestrian trips generated by the residential development would not be a significant increase over what existed previously on this site, even with the draw of local shops and schools for example. This would mean there would not be a much greater number of times people would be using the same footpaths at the same time walking in opposite directions. The trips from the site generated may not all be towards the same direction or using the same footpath, which reduces the impact of these additional pedestrian trips. Furthermore, from my observations on site (roughly at mid-morning) the footway across the site frontage did not appear well used, but I accept this was just a 'snapshot' and could be busier at other times of the day. Nonetheless, the additional pedestrian trips generated by the development is likely to be a relatively low number to the extent that it is not reasonable to require the developer to provide footpath widening to address what is a current situation, even when considering boundary treatments and any street furniture obstacles. This is especially as in most cases people should be able to pass on the existing footpaths without stepping onto the road, with there being no substantive evidence of issues with pedestrians or footpath users in the past using these footpaths. Any potential 'conflict' of highway users should be at a low level, even with the development.
11. In terms of the junction of Castle Road and Denmark Road, I did note the wide 'bellmouth' of Denmark Road at this junction. This could be narrowed and realigned to improve for pedestrians crossing this road at this point and also to slow vehicle speeds when turning from Castle Road into Denmark Road. However, as with the footways this is an existing situation which is likely to have been the case for many years. There is no substantive evidence before me that this junction is inherently dangerous for pedestrians, with what appeared to be a good level of visibility available.
12. Vehicles also appeared to drive around the corner into Denmark Street at slow speeds, from my observations. Evidence from the appellant also suggests the junction layout results in likely slow speeds. I have no detailed evidence to suggest speeds are generally higher than this, or that the gradient would result in particularly higher speeds at this junction. Furthermore, the vehicular visibility and the visibility available for pedestrians, from the evidence before me and my observations on site, would be sufficient, given the slower speeds of traffic in this residential area.
13. The appellant is proposing some improvements at this junction with dropped kerbs and tactile paving for example, which could decrease trip hazards, so there would be some improvements, though of a lesser degree than that required by the Council.

14. Overall, I do not regard condition 14 as meeting the tests set out in the Framework as the requirements are neither necessary nor reasonable given the likely pedestrian trip generation from the site. I acknowledge that the works required by the Council would be beneficial. There would also likely be an intensification of the use of the footpaths and vehicular highway, but not to the extent that it would be reasonable to require the developer to complete the highway improvements at their expense. This condition is not necessary to make the residential development acceptable, with there being a lack of evidence that the development would result in an unacceptable impact on highway safety (Framework paragraph 111), especially when considering the current footpaths and junction have been part of the public highway for many years.
15. The development is in an accessible location near services and facilities which could be walked to from the site without any inherent highway safety issues, even without the current requirements of condition 14. The footpaths as existing would not likely dissuade people from walking from the site to their destination.
16. The Council has also recommended a condition to replace No 14 if allowed, but this includes the installation of a pedestrian island at the Castle Road-Denmark Road junction. Whilst there may be some benefits from this, there is not any substantive evidence that this is necessary to make the housing development acceptable, especially considering the limited number of additional pedestrian trips likely across this junction and the lack of incidents previously.
17. Condition 14 as currently drafted is not necessary for the development to be acceptable and in accordance with Policies CS18 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012) or the Framework. The Core Strategy policies require that development be of quality design and to increase opportunities for walking, amongst other things.

Other Matters

18. To accompany this appeal the appellant has submitted a unilateral undertaking legal agreement. This was signed 26 January 2022 and is essentially an update of the original legal agreement that went with the initial planning application for the residential development. It commits to contributing towards the Dorset Heathland Mitigation Strategy and also towards affordable housing depending on the stage of development and in accordance with a Viability Appraisal previously submitted.
19. The Council have accepted the legal agreement and I am satisfied that there is a need for the above contributions/obligations, that they are directly related to the proposal, and they fairly and reasonably relate in scale and kind to the development. The development for housing could have a likely impact on the Heathland through additional recreational pressures, so the contribution towards the strategy is necessary to sufficiently mitigate the impacts, as included with the UU and already paid. As a result, it would pass the statutory tests set out with the Community Infrastructure Levy Regulations, 2010, as amended.

Conditions

20. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
21. It is clear that development has commenced on site and so there is no necessity for the time limit condition. The Council in their suggested conditions reflects those on the earlier permission, which I have therefore included with the attached schedule, though updated based on the Council comments where details have already been submitted and agreed.
22. The appellant states that the condition recommended by the Council relating to the need for a remediation scheme for contaminated land has been discharged. As I have limited information before me about the status of the condition, I have imposed the Council recommended condition. If this condition has in fact been discharged, that is a matter which can be addressed by the parties.
23. Whilst the original Condition No 14 has been deleted, a replacement condition has been imposed, based on the junction improvement works the appellant now proposes, with dropped kerbs with tactile paving as shown on the approved plan reference: 205587/PD01. There is no reference to a pedestrian 'island' for the reasons set out above.
24. I have included a condition for electric vehicle charging points, as this is inline with current standards and beneficial in the interests of sustainable transport.

Conclusion

25. For the reasons given I conclude that the appeal should succeed subject to conditions, which includes replacement conditions for Nos 1 and 14 of the original permission.

Mr S Rennie

INSPECTOR

Schedule – Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1365p/200P, 1365p/201, 1365p/202A, 1365p/203A, 1365p/204, 1365p/205, 1365p/206, 1365p/207, 1365p/208C, 1365p/209C, 1365p/210, 1365p/211, 1365p/212B, 1365p/213B, 1365p/215A and 205587/PD01
- 2) Within one month of the date of this decision, the applicant or their successors in title shall submit for the written approval of the Local Planning Authority (LPA):
 - *A validation report to confirm that the remedial measures set out in the Site Remediation Strategy (SRS) have been completed.*
 - *A validation report confirming whether the site was reduced by 600mm to facilitate cover system placement (removal of source material) or whether levels were raised, and source material remains in-situ.*

If materials are to be reused on site, guidance outlined in the Definition of Waste Code of Practice (DoWCoP) should be adhered to.

- 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) The Method Statement and Construction Management Plan dated 22/09/2019 agreed under reference 7-2018-635-N shall be implemented and complied with, and the obligations within the Statement and Plan shall be adhered to throughout the construction phase of the development
- 5) The drainage works shown on drawing number 1365BR/103a and supplemented by the SUDs statement received 28 October 2020 agreed under reference 7-2018-635-N shall be completed in accordance with the approved details prior to occupation of the development and retained thereafter.
- 6) Any new or replacement hard surfaced areas shall either be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.
- 7) The schedule of external materials, version 1.1 and dated 07/10/2020, to be used on the external surfaces of the proposed development agreed under application reference 7-2018- 635-N shall be carried out in accordance with the approved details and retained thereafter.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargements of

- the dwelling(s) shall be constructed without the grant of further specific planning permission from the Local Planning Authority.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) 2015 (or any order revoking and re-enacting that Order with or without modification), no additional windows shall be installed or dormer windows shall be constructed without the grant of further specific planning permission from the Local Planning Authority
 - 10) The scheme for external pipe work and flues indicated on the submission dated 07/10/2019 together with accompanying plans agreed under application reference 7-2018-635-N shall be carried out strictly in accordance with the approved scheme and retained thereafter.
 - 11) The details of the specification of the access and areas for turning, parking including the marking out of spaces shown on drawing E001 agreed under application reference 7-2018-635-N shall be constructed and surfaced in accordance with the approved details and permanently retained and kept available for occupiers and visitors to the development at all times.
 - 12) Before occupation of the development, pedestrian inter-visibility splays of 2m x 2m shall be provided on both sides of all vehicular accesses. No fence, wall or other obstruction to visibility over 0.6m in height above ground level shall be erected within the area of the splay at any time.
 - 13) Within one month of the date of this decision, full details of the highway works including the dropped kerbs with tactile paving, as shown on the approved plan reference: 205587/PD01, shall be submitted to and agreed in writing by the Local Planning Authority. This shall include a timetable for the implementation of these highway works. The implementation of the highway works shall be as per the timetable agreed with the Local Planning Authority. For avoidance of doubt, the works shall be delivered by way of an agreement with the Highway Authority under Section 278 of the Highways Act 1980 and undertaken at the developer's expense.
 - 14) Before the occupation of any part of the development hereby approved, the cycle stores shall be provided as shown on the approved plans and thereafter retained, maintained and kept available for the occupants of the development at all times.
 - 15) The refuse bin stores agreed under application reference 7-2018-635-N shall be completed prior to the occupation of any of the dwellings and shall be retained and maintained thereafter.
 - 16) The bin collection point hereby approved shall be provided in accordance with the approved details prior to the occupation of the proposed development and shall be retained and maintained for that use thereafter. The bin collection point shall only be used on bin collection days or the preceding day. All bins shall be returned to the respective properties following collection and on the day of collection.
 - 17) The Refuse Management Plan agreed under application reference 7-2018-635-N shall be carried out in accordance with the approved details in perpetuity.

- 18) The energy statement received 21 September 2020 agreed under application reference 7- 2018-635-N shall be implemented in full prior to occupation of the development and retained thereafter.
- 19) The Water Efficiency Statement dated 07/10/2019 agreed under application reference 7- 2018-635-N shall be implemented in accordance with the agreed details and retained thereafter.
- 20) Within one month of the date of this permission, details of the provision of Electric Vehicle Charging Points and associated infrastructure shall be submitted to the Local Planning Authority for approval in writing. Those details shall be in accordance with the BCP Council Parking SPD (adopted 6th January 2021). The approved details shall be implemented and brought into operation prior to the occupation of any residential unit hereby approved, or within one month of the date of the details being approved if the dwelling is already occupied. Thereafter the Electric Vehicle Charging Points shall be permanently retained and available for use at all times.

END OF SCHEDULE