
Appeal Decision

Site visit made on 10 May 2022

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2022

Appeal Ref: APP/V1260/W/21/3289385

11 Blyth Close, Christchurch BH23 2TE

- 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 Mr and Mrs Proudley against the decision of BCP Council.
 - The application Ref 8/21/0319/FUL, dated 29 March 2021, was refused by notice dated 2 September 2021.
 - The development proposed is to enclose land by erection of fence to be used as private residential garden.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I note, and observed during my site visit, that the planning application was submitted retrospectively in part. I have dealt with the appeal accordingly, and on the merits of the appeal scheme.

Main Issues

3. The main issues are the effect of the appeal scheme on:
 - The character and appearance of the area; and
 - Highway safety and convenience.

Reasons

Character and appearance

4. The appeal site comprises a rectangular-shaped grassed and partially-treed area of land adjacent to a detached bungalow at 11 Blyth Close. It lies within an established suburban residential area near the northwest edge of the settlement of Christchurch, known as the St Catherine's Hill estate.
5. The housing estate has a pleasant, spacious and verdant character, predominantly comprising detached, low height bungalows, which are set behind open or low fenced/walled frontages. The layout comprises a series of cul-de-sacs branching off spine roads, with a strong interconnectivity between roads via linking footpaths. Open grassed and treed verges are integral to the character of the estate, and this verdant nature reflects the proximity of the development to open countryside to the north and west.

6. The site lies close to Hillside Drive, which is a main entrance road into the development. It is bounded by paths linking Blyth Close, Whitby Close, Valencia Close and Durlston Crescent with Hillside Drive, and it contributes to the existing verdant setting around the confluence of these paths close to Hillside Drive.
7. Moreover, it comprises part of a larger area of undeveloped green and heavily treed land, which provides a visually significant verdant buffer to the built housing development by extending along both sides of Hillside Drive and along the eastern edge of the B3073 Hurn Road.
8. As such, and notwithstanding that the land is not formally designated as amenity open space or green space for recreational purposes, the site forms part of a wider area of soft landscaped and sylvan land that makes a significant positive contribution to the townscape and visual amenities of the area.
9. The proposal, by enclosing this land by fencing and incorporating the land into the residential garden of no.11, would result in the expansion of built development into, and the loss of a significant amount of this landscaped buffer. This would be contrary to the existing open, green character of this part of the townscape.
10. Although close-boarded fencing exists along some side and rear boundaries of nearby properties, this tends to be set well back from Hillside Road, to the rear of the existing landscaped roadside buffer, appearing visually recessive in relation to frontage soft landscaping, when viewed from the road, or sited deeper within the residential development, where footpaths run between two properties.
11. The proposal would bring the built urban edge closer to the highway, and would assume a greater visual prominence within the public realm, including in views from Hillside Drive, particularly when travelling in a southerly direction or when approaching the road from Foreland Close.
12. Also, the appeal scheme would have a cramped and visually oppressive impact upon users of the three footpaths which converge close to the northwest corner of the appeal site. This would be to the detriment of the open, spacious and green nature of the existing footpath surroundings, which is largely attributable to the green footway verge provided by the appeal site.
13. The above harmful visual impacts arising from the erosion of the open soft-landscaped highway edge would not be sufficiently mitigated by tree screening of the appeal site in views from Hillside Drive when approaching from the south.
14. Mature trees, as well as grassed open areas, form a key characteristic of the green buffer within which the appeal site is located, which includes areas of dense woodland which effectively 'wrap around' the edge of the housing development, in addition to scattered individual trees within grassed highway verges throughout the housing development.
15. During my site visit, I saw no obvious evidence that the three protected trees within the appeal site have been damaged by the fencing works that have already taken place, and I have noted the appellants' confirmation that the post holes have been dug by hand. I must determine the appeal on the basis of the merits of the appeal proposal before me, and the fact that works have

already taken place does not affect my decision. However, in this instance, I am satisfied that the nature of the appeal scheme is such that it is capable of being implemented without resulting in direct adverse impacts on these protected trees, subject to an appropriate tree protection condition.

16. I have noted the Council concerns that the enclosure of the appeal site may lead to future redevelopment proposals that could potentially impact on the protected trees therein. However, I must determine this appeal on the basis of the merits of the appeal scheme before me, and no such proposals are included. Neither do I have any cogent evidence before me that such future development would be likely as a result of the appeal scheme.
17. Neither do I have sufficient evidence before me that the inclusion of the protected trees within the private garden of no.11 would necessarily result in greater pressure for their future pruning or felling, having regard to their distance from the building at no.11.
18. However, notwithstanding the above, the enclosure of these trees would reduce their contribution to the visual amenities of the wider locality as a result of their partial screening. This would be at odds with the prevailing characteristic of the estate of open grass verges containing visually prominent groups of trees. As such, by partially enclosing these trees in views from the public realm, the proposal would detrimentally erode a positive feature of the townscape.
19. The appellants have provided a revised drawing showing part of the new fencing set back behind the site boundary to allow for the planting of a boundary hedge in front of the fence. They have also suggested that other revised boundary treatments, such as fencing with a soft verge in front, or a mesh fence and hedging, could satisfactorily address this first main issue. I have insufficient planting or alternative fencing details to persuade me that such an approach would overcome my concerns.
20. Notwithstanding this, the planning appeals procedural guidance¹ (Annexe M) advises that, if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh planning application. Moreover, if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Accordingly, and having regard to the description of development and the number of third party objections to the appeal scheme, I have determined the appeal on the basis of the scheme which was refused by the council.
21. For the above reasons, I therefore conclude that the appeal scheme would cause significant harm to the character and appearance of the area. As such, it would not accord with Policies KS1, HE2 and HE3 of the *Christchurch and East Dorset Local Plan Part 1 – Core Strategy* (2014) (the Core Strategy) and Saved Policy ENV21 of the *Borough of Christchurch Local Plan* (2001) (the Local Plan). These policies, amongst other things, seek to ensure that development proposals are of a high quality, are compatible with or improve their surroundings in terms of layout, landscaping, visual impact and relationship to mature trees, and protect and seek to enhance the landscape character of the

¹ Procedural Guide. Planning Appeals – England. The Planning Inspectorate August 2019.

area taking account of the character of settlements and their landscape settings.

22. For similar reasons, the proposal would also be contrary to Policies of the *National Planning Policy Framework 2021* (the Framework), which seek to achieve well-designed places as set out in Chapter 12.

Highway safety and convenience

23. The Council's second reason for refusal relates to concerns that the proposal would encroach upon and enclose a public right of way, thereby inconveniencing pedestrians and affecting their safe enjoyment of public highway land.
24. The evidence before me, including my observations during my site visit and third-party representations, is that the footpaths and grass verges within, and including the appeal site, are well-used by local residents for recreational/dog walking, and providing convenient pedestrian and cycle access through the housing development, having regard to the cul-de-sac nature of many of the estate roads.
25. The appeal scheme would not impinge upon the hard surfaced public footpaths linking Blyth Close and Whitby Close to Hillside Drive. As such, the footpath accessibility and permeability for pedestrian and cyclists through this part of the estate would not be relinquished.
26. The evidence before me is that the surface and upper section of the ground underneath the appeal site, comprises public highway, which is maintained by the Council at the public expense, and that the appellants' land ownership interest relates to the ground below this level.
27. As such, the Council has confirmed that the appeal scheme would require approval of a 'Stopping Up Order' under the Highways Act 1980 to remove the land from the public highway. The Highway Authority has confirmed that such a request would not be granted, having regard to the continued need for the land to be used by the public as a more direct and informal route of travel between Blyth Close and Whitby Close than that of the all-weather footpaths adjacent to the site. It is the view of the Local Highway Authority that the enclosure of the appeal site comprises an unlawful obstruction to the preventing public free access over the whole of the highway.
28. The above relates to a matter that would require resolution through other legislation, should the appeal be allowed. However, it is relevant to this appeal in so much as the Framework and the Council's adopted development plan policies promote healthy and safe communities.
29. I have no reason to doubt that local residents would often cut across the grassed area of the appeal site, rather than remaining on the hard surfaced footpath, having regard to the likelihood of using established desire lines of travel and the pleasant, open, verdant nature of the grass verges.
30. Moreover, the installation of solid fencing in the positions proposed would impact on the enjoyment of using the all-weather footpaths by resulting in an oppressive impact along the adjacent stretches of footpath. This would be clearly discernible, albeit the fencing would only be positioned to one side of the paths, as it would significantly reduce the outlook from the paths on one

side, thereby eroding the pleasant, open, spacious and verdant experience of travelling along these parts of the path. There would also be some loss of light to the paths, particularly in relation to the stretch of path where the fencing would abut its southern edge.

31. At present, the appeal site provides a clear line of visibility between the two footpaths linking Blyth Close and Whitby Close to Hillside Drive. By blocking off these sightlines, the proposal could reasonably be expected to impact on the safety of users of these paths when travelling towards Hillside Drive at the point where the two footpaths meet, due to inability to see who else is approaching that corner at the same time, resulting in potential collisions or anticipated fear of crime. In this respect, I note that the footpaths are not lit, thereby increasing the importance I place on this matter.
32. The appellants assert that a planning condition attached to the original planning permission for the estate preventing the enclosure of land in order to retain it to provide for future road improvements, is no longer reasonable, and is no longer required, since no such road improvements have been identified by the Council. However, I am considering an appeal under S78, and I have no evidence before me that the appellants have formally sought the removal or variation of the condition by means of an application under S73, so there is no requirement for me to consider this matter further.
33. There is a difference of opinion between the main parties in respect of whether the appeal proposal would affect the provision and maintenance of statutory undertaker's equipment comprising foul and stormwater drains which are sited within the vicinity of the edge of the appeal site and the hardsurfaced footpath. There is no need for me to pursue this matter, since it is not determinative to the outcome of this appeal.
34. For the above reasons, I therefore conclude that the appeal scheme would materially harm highway safety and convenience. As such, it would not accord with Core Strategy Policies KS1 and HE2, in so much as these policies require development proposals to improve the social conditions in the area and incorporate a high quality design which is compatible with, or improves its surroundings in terms of minimising general disturbance to amenity and incorporating careful design to reduce the risk of crime.
35. For similar reasons, the proposal would also be contrary to Policies of the Framework which seek to promote healthy and safe communities, as set out in Chapter 8, in particular Paragraph 92, which requires planning decisions to aim to achieve healthy, inclusive and safe places.
36. The Council has also referred to Core Strategy Policy HE3. I do not find this policy, which relates to landscape quality, to be directly relevant to this second main issue.

Other Matters

37. I acknowledge the desire of the appellants to make beneficial use of their purchased land as part of their garden. However, this does not justify or outweigh my conclusions on the main issues.

Conclusion

38. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR