



Appeal Decision

Site visit made on 3 May 2022

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 26 May 2022

Appeal Ref: APP/V1260/W/21/3281330

Land rear of 150-156 River Way, Christchurch BH23 2QU

- 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 Addis Homes Ltd against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 8/20/1191/FUL, dated 22 December 2020, was refused by notice dated 14 July 2021.
 - The development proposed is the subdivision of the plots and construction of three new homes to the rear of the existing buildings together with associated parking, access and landscaping. (extension at the side of no.150 River Way to be demolished).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - The effect of the proposed development on trees and their contribution to the character and appearance of the surrounding area; and,
 - The effect of the proposed development on protected habitats.

Reasons

Trees

3. The appeal site is located within a residential area and comprises land which forms part of the rear gardens at 150-156 River Way, being detached dwellings of varying scales and designs. The pleasant setting of River Way is enhanced by the presence of soft landscaping features including prominent and mature trees, giving the area a verdant, sylvan character. The site is bounded to the west by established hedgerow providing a backdrop to development within River Way. Whilst not all of the trees within the appeal site are prominent in views from the street scene, the leafy undeveloped nature of these rear gardens and the mature trees therein are visible from within the surrounding area and, in my view, make a significant positive contribution to the verdant character and appearance of the area.
4. The appeal proposal seeks the subdivision of the plots and the construction of three detached two storey dwellings. Access to the proposed dwellings would be created between 150 and 152 River Way. The submissions and plans before me confirm that a number of trees are to be removed from the appeal site in order to facilitate the proposed development. In terms of the removal of trees,

whilst a majority at the site are not protected, the evidence indicates that a mature oak which is protected by a Tree Preservation Order (TPO) would be removed from the site. There is also concern from the Council with regards to the impact of the appeal scheme on several other trees protected by TPOs within the appeal site, which are to be retained and which it is maintained would be adversely affected by the proposal.

5. The trees at the appeal site which are not protected by TPOs include a Cypress hedge and it is not disputed by the Council that, irrespective of the outcome of this appeal, those trees could be removed without permission. Subject to additional landscaping that could be secured by planning condition any harm caused by the loss of those unprotected trees would be sufficiently mitigated and, consequently I find no harm in that regard.
6. Trees at the site which are protected by TPOs, include the abovementioned mature Oak (T4) to be removed and which is located in the rear garden of 150 River Way, as well as two Liquidambar (T12 and T13) and a mature Oak (T7) located in the garden at 154 River Way. Based on observations made on my site visit and for the reasons given above, I consider these protected trees make a significant contribution to the visual amenity and the character and appearance of the area.
7. The planning application was supported by a report produced by a Tree Consultant, and following refusal of that application by the Council, the Appellant's Tree Consultant has supplied additional information in respect of the trees that are potentially affected by the appeal proposal. In that regard, it is noted that the mature Oak (T4) has been assessed and has been found to be in a state of advanced decline, with the conclusion that that tree needs to be felled for safety reasons. The evidence confirms that the Council's Arboriculturist has considered that position and accepts the findings of the Appellant's Tree Consultant. I was able to observe that protected tree at my site visit, and have no reason to disagree with both the Appellant and the Council's view that that tree should be removed and replaced.
8. With regards to the two Liquidambar (T12 and T13) that are to be retained, the Council have put it to me that the proposal would adversely affect the root protection areas (RPA) of these trees and maintains that the spatial relationship between the built form and those trees would likely result in the need to fell or severely prune those trees in order to protect the living conditions of future residents. In terms of the mature Oak (T7) the Council again maintains that the tree building relationship would result in future pressure to fell or severely prune that tree in the interests of future residents' living conditions.
9. The Appellant has put it to me that the proposed driveway would encroach upon the RPA for Liquidambar (T13) by only a very small amount and that, a specialist no-dig cellular confinement system could be used in this area, in an approach similar to that taken in respect of the limited encroachment into the RPA of Oak (T7). Given the minimal intrusion into the root protection areas for both trees, along with the use of measures such as tree protection fencing, no-dig construction and ground protection areas, it is my view that the RPA for both trees will be adequately protected from construction.
10. Notwithstanding the above, there is concern that, given the proximity, height and spread of these protected trees, the living conditions of future residents

would be harmed in respect of light and with regards to safety concerns surrounding falling debris and potential storm damage. The Appellant has put it to me that the separation distance between the protected trees and the proposed units would be sufficient to ensure no harm to future residents and that those trees would be seen as an asset rather than a nuisance to future occupants.

11. As described above, there would be a limited level of encroachment in the RPA of Oak T7. Nonetheless, the canopy of that protected tree would be in very close proximity to the proposed unit 1, and I conclude that the potential for overshadowing, safety and maintenance would be likely to lead to pressure to cut back or remove the tree in the longer term. Similarly, by reason of the height and proximity of the two Liquidambar (T12 and T13) there would be overshadowing of the proposed unit 2, and over time it is likely that there would be pressure to lop, top or remove those trees. The loss of, or work detrimental to, the appearance of those trees, which make a substantial positive contribution, would significantly harm the character and appearance of the area.
12. For the above reasons, the appeal scheme would be likely, in my view, to have an adverse effect on the long term retention of these mature trees which make a significant positive contribution to the character and appearance of the surrounding area. The presence of other trees in close proximity to housing within the surrounding area does not alter my findings on this issue.
13. In light of the above, the appeal scheme would conflict with Policies HE2 and HE3 of the Christchurch and East Dorset Local Plan – Part 1 Core Strategy (2014) which, amongst other matters, requires new development to be of a high quality which reflects and enhances local distinctiveness, and that development would be permitted where, amongst other matters, it is compatible with or improves its surroundings in respect of relationship with mature trees. The proposal would also conflict with Saved Policies H12 and ENV21 of the Borough of Christchurch Local Plan (2001) which permits development provided that, amongst other things, it respects the character of the locality and does not result in the loss of important landscape features such as trees which are part of the character of the area.

Protected Habitats

14. The evidence before me indicates that the site lies within 5km of the Dorset Heathland which is designated as a Site of Special Scientific Interest and as a European wildlife site. The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (the 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.
15. The appeal has been accompanied by a unilateral undertaking which seeks to provide a financial contribution towards Strategic Access Management and Monitoring in line with the DHPF. These monies would be spent on projects to mitigate the adverse impact of the development on the integrity of the Dorset Heathlands European sites.

16. The Unilateral Undertaking would, in all likelihood, deliver the mitigation necessary to address the impact of the additional residents on the nearby protected habitats sites. If I been minded to allow the appeal, an appropriate assessment would have been necessary. However, given my overall conclusions in this appeal, I have not had to consider this matter further and undertake an appropriate assessment in this instance.

Planning Balance

17. The Council is presently unable to demonstrate the required supply of deliverable housing sites, with the evidence before me suggesting that the Council has approximately 3.98 years of housing land supply.
18. Paragraph 11(d) of the National Planning Policy Framework (the Framework) provides that where there are no relevant development plan policies, or the policies most important for determining the application are out-of-date (including housing, where the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites), permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
19. The financial contribution towards the Strategic Access Management and Monitoring would offset the impacts of the proposed development and is of neutral consequence in the planning balance. In terms of the benefits of the scheme, the proposal would assist with the Government's objective to significantly boost the supply of housing and the proposed dwellings would be at a location with convenient access to services and facilities. The site could be developed relatively quickly and therefore add to the housing stock in the near future. There would be economic and social benefits to the area during construction and from subsequent occupation.
20. For the reasons given, I have found that the appeal scheme would significantly harm the visual amenity, character and appearance of the area, and would conflict with the design aims of the relevant development plan policies set out above, matters to which I attach substantial weight in the determination of this appeal. Whilst the benefits of the scheme are materially positive, I attach only moderate weight to them by reason of the scale of development and, in my view, would not be sufficient to outweigh the harm I have identified.
21. The harm set out above would conflict with the environmental objective of sustainable development, and would be sufficient to significantly and demonstrably outweigh the proposed development's benefits when assessed against the Framework as a whole.

Other Matters

22. Interested parties raise several additional objections to the proposal including matters concerning boundary disputes and covenants. However, issues relating to such concerns are civil matters and as such they fall outside the scope of an appeal under Section 78 of the Town and Country Planning Act 1990.
23. Further objections from interested parties to the appeal scheme include overlooking, loss of outlook, highway safety, parking, drainage and flooding. These are all important matters and I have taken into account all of the

evidence before me. However, given my findings in relation to the main issues above, these are not matters that have been critical to my decision.

Conclusion

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

Mr A Spencer-Peet

INSPECTOR