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# Appeal Decision

Site visit made on 17 May 2022

**by Alexander O'Doherty LLB (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 June 2022**

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**Appeal Ref: APP/V1260/W/21/3285385**

**Land r/o 9 & 11 Elizabeth Road, Poole BH15 2DJ**

- 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 HB Holdings Ltd against the decision of Bournemouth Christchurch and Poole Council.
  - The application Ref APP/21/00835/F, dated 26 May 2021, was refused by notice dated 13 August 2021.
  - The development proposed is a new dwelling.
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. The Council has confirmed that following the receipt of an Undertaking given pursuant to section 111 of the Local Government Act 1972 (as amended) and payment of the required and necessary contributions towards Heathland Strategic Access Management and Monitoring and Harbour Recreation Strategic Assess Management and Monitoring during the appeal process, the Council's 2<sup>nd</sup> and 3<sup>rd</sup> reasons for refusal have been overcome. I have no evidence before me to reach a contrary view to the Council in this regard and this is reflected in the main issues, which are set out below.

## Main Issues

3. The main issues are the effect of the proposal on:
  - the character and appearance of the area; and
  - the living conditions of the occupiers of neighbouring properties and the future occupiers of the proposal, with particular reference to privacy.

## Reasons

### *Character and appearance*

4. The appeal site is comprised of the rear gardens of 9 and 11 Elizabeth Road (Nos 9 and 11), and hardstanding which backs onto a rear service lane. These gardens are long and narrow, as are the gardens of many other properties in the vicinity. The local area is of a tight-knit residential character where short terraces and semi-detached properties, often 2-storeys in height, predominate. The gardens to these properties serve to maintain a sense of spaciousness in an otherwise dense urban setting.

5. The rear service lane is populated by mostly modestly-sized garages and outbuildings which are fairly consistent in their overall heights, particularly on the appeal site's side of the lane. Their modest scale in comparison to the surrounding properties contributes to maintaining the sense of spaciousness referred to above.
6. The proposal would create a new plot to the rear of Nos 9 and 11, which would front the lane. The design and materials of the proposed new dwelling would be acceptable in its context and it would not appear out-of-scale with the existing properties at Nos 9 and 11.
7. Nevertheless, due to its scale and massing, the new 2-storey dwelling which is proposed to be introduced within the new plot would unduly conflict with the established rhythm of development, which is primarily formed of the nearby modestly-sized garages and outbuildings along the lane. Its incongruity in its setting would be exacerbated by the fact that the site is located in a prominent position, being at the junction between the lane and Maple Road.
8. Furthermore, the important contribution that the openness of the garden land at the site makes to the area is particularly evident in views from the lane and from near the junction to the lane and Maple Road. The proposed new dwelling would significantly reduce this open aspect, which would unduly diminish the contribution which it currently makes in providing visual relief from the otherwise densely built-up character of the surrounding area.
9. As the proposed new dwelling would appear noticeably out-of-place in its context, the soft landscaping proposed would not off-set the harm which the proposal would cause to the character and appearance of the area, even taking account of the slightly unkempt nature of this particular part of the lane. For the same reasons, the imposition of conditions relating to bicycle storage and an electric vehicle charging point would also not overcome the concerns that I have identified.
10. I have had regard to all the examples of planning permissions referred to by the appellant<sup>1</sup>. I viewed all these sites from public vantage points during my site visit. As the Officer's Reports have not been provided for those examples it is not possible to scrutinise the reasoning and logic applied by the Council in these cases, which limits the comparability of all those examples to the appeal proposal.
11. Moreover, I observed that the site at the rear of 115-119 Tatnam Road is fairly well-screened in views from the adjacent roads by existing buildings and vegetation. I also observed that the Granary Building (Tatnam Farm, Tatnam Road) is set within a cluster of other large buildings. In contrast to both these examples, the appeal site is situated in a far more exposed and prominent position.
12. I saw that the land adjacent to 103 St Marys Road is flanked by a 2-storey building and that other 2-storey properties are present along the same stretch of road, in contrast to the proposed new dwelling which would be primarily seen in the context of the mostly modestly-sized garages and outbuildings along the lane.

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<sup>1</sup> APP/10/01006/F, APP/19/00561/F, 06/03713/043/F, APP/19/00439/F

13. I observed that the 2 dwellings which are now present at what was the land adjacent to 16 Denmark Lane (No 16) are fairly tucked away behind the tall side elevation of No 16, and that their scale and massing is congruent with that of surrounding properties. In visual terms the appeal proposal would contrast with those 2 dwellings in that, as mentioned above, in its particular context it would appear as a notable anomaly in its prominent position adjacent to the lane and sat near modestly-sized garages and outbuildings.
14. Hence, as all those sites are located in materially different contexts, those examples are not directly comparable with the appeal proposal. Additionally, the character of the area is defined by far more properties than the small number of examples highlighted by the appellant, meaning that I am not dissuaded from the view that long and narrow gardens are a distinctive feature of the local area and that accordingly the proposal would result in the creation of uncharacteristically small gardens for the newly-created plot and for Nos 9 and 11. Thus, the examples provided do not change my findings regarding the harm that the proposal would cause to the character and appearance of the area.
15. I therefore find that the proposal would have an unacceptable and harmful effect on the character and appearance of the area. The proposal would conflict with Policies PP27 and PP28 of the Poole Local Plan (adopted 2018) which collectively provide that, amongst other things, development will be permitted provided that it reflects or enhances local patterns of development and neighbouring buildings in terms of scale and massing.

#### *Living conditions*

16. As mentioned on the first main issue, above, the proposal would introduce a new 2-storey dwelling within what is currently the rear gardens of Nos 9 and 11. This would result in Nos 9 and 11 having much shorter gardens than at present.
17. The proposed new dwelling would contain windows to 2 bedrooms at first floor level, facing those gardens. Due to the close proximity of the proposed new dwelling to the gardens of Nos 9 and 11, those gardens would be directly overlooked at close quarters from those windows. It follows that the existing occupiers of Nos 9 and 11 would suffer from a distinct lack of privacy when residing in their gardens. This would make those gardens much less pleasant to use, resulting in harm to the living conditions of the occupiers of Nos 9 and 11.
18. Similarly, users of the rear garden at the proposed new dwelling would be overlooked at close quarters from the windows in the first floor rear projection of No 9. This would make the new rear garden area unpleasant to use, resulting in harm to the living conditions of the future occupiers of the proposal.
19. The rear garden to No 13 Elizabeth Road (No 13) is adjacent to the appeal site. No 13 has a single storey projection which according to the representations before me contains a dining room. I observed that this room has windows and glass doors which lead onto a patio and a decking area.
20. The proposed new dwelling would be positioned a short distance away from those areas and accordingly overlooking to those areas from the aforementioned first floor bedroom windows at the proposed new dwelling

would be possible. This would significantly reduce the sense of privacy which currently exists in the dining room, patio, and decking area to the immediate rear of No 13. Thus, the proposal would make those areas much less pleasant to use, resulting in harm to the living conditions of the occupiers of No 13.

21. The appellant has asserted that the proposed new dwelling would respect all minimum overlooking separation distances, but no figures have been quoted to substantiate this for the specific proposal before me. Accordingly, my findings remain unchanged.
22. I therefore find that the proposal would have an unacceptable and harmful effect on the living conditions of the occupiers of Nos 9, 11, and 13 Elizabeth Road, and the future occupiers of the proposal, with particular reference to privacy. The proposal would conflict with Policy PP27 of the Poole Local Plan (adopted 2018) which provides that, amongst other things, development will be permitted provided that it would not result in a harmful impact upon amenity for both local residents and future occupiers considering levels of privacy.

### **Other Matters**

23. Whilst I note the opinion given in the Council's pre-application advice that it may be that a single dwelling may be able to fit better on the site than the scheme then being considered by the Council, I am not bound to fall in line with any previous decision or opinion of the Council.
24. The appellant has attempted to engage in constructive and pro-active dialogue with the Council, including by way of seeking pre-application advice and attending a site meeting, which has helped to shape the scheme now before me. However, in terms of the planning merits of this appeal, this is a neutral matter, which does not weigh in favour of the proposal. Furthermore, the conduct of the Council during the processing of the planning application is not a matter that I can assess in the context of a planning appeal.
25. No concerns have been raised by the Council in their decision notice with respect to matters relating to access, highway safety, or parking provision. However, even if I were to likewise reason that the proposal would be acceptable in these respects, these would be neutral factors rather than ones which weigh positively in favour of the proposal.
26. It is common ground between the main parties that, as Poole is not meeting its 5-year housing supply, paragraph 11 d) ii. of the National Planning Policy Framework (the Framework) is engaged in relation to this appeal. As such, I would consider the most important policies out-of-date and apply the requirement that planning permission should be granted for the proposal 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.
27. The proposal would provide one new dwelling in an accessible location, in an established residential area where there is an evident need for new housing. In doing so, the proposal would support the Government's objective of significantly boosting the supply of homes, and would contribute to dwelling choice and mix in the local area by way of providing one family-sized dwelling. It is the intention that the new dwelling would be built with good quality

sustainable materials, to a high standard. However, whilst I note that proposals for more than one dwelling have previously been refused at this site, considering the quantum of development proposed in the appeal before me, these matters can only be given limited weight.

28. I note the point made in relation to the potential cumulative effect of a number of refusals of planning permission for single dwellings on the housing supply position in Poole, but such strategic considerations are not directly before me as I must consider this particular appeal on its own merits on the basis of the specific evidence before me.
29. Whilst the proposal would partly develop an under-used area of land, the scale of the proposal overall is such that this matter can only be given limited weight. Moreover, whilst the appellant has referred to the proposed new dwelling likely being attractive to first time buyers and those on the 'Help to Buy' market, no specific mechanism is before me to secure this, which limits the weight that can be given to any benefits in relation to the provision of affordable housing.
30. The proposal would provide the opportunity for soft landscaping to be introduced, which might serve to deter loitering in the lane. However, the evidence does not demonstrate that this is a significant issue in this location. Reference has been made to necessary highway improvements being implemented, but minimal details have been provided to substantiate the scale of any benefits in this regard.
31. Taken together, all the benefits mentioned above offer modest support for the proposal, and collectively I have given them moderate weight.
32. The appeal scheme would give rise to harm in relation to its unacceptable and harmful effects on both the character and appearance of the area and on the living conditions of the occupiers of Nos 9, 11, and 13 Elizabeth Road and the future occupiers of the proposal with particular reference to privacy, in the terms I have described. I ascribe substantial weight to these harms.
33. Setting the substantial weight of these harms against the moderate weight I afford to the benefits I have found, it is clear that the harms would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. The appeal scheme would not therefore be sustainable development for which the presumption in favour applies.
34. For the avoidance of doubt, and further to paragraph 2, above, given that the Council's 2<sup>nd</sup> and 3<sup>rd</sup> reasons for refusal are no longer contested issues between the main parties, and that the appeal is being dismissed for other reasons, it is not necessary to consider the submitted Undertaking in any further detail.

## **Conclusion**

35. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

*Alexander O'Doherty*

INSPECTOR