

Appeal Decision

Hearing Held on 7 June 2022

Site visit made on 8 June 2022

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 July 2022

Appeal Ref: APP/V1260/W/21/3281410

**22 and land rear of 18, 20 and 24 Avenue Road, Walkford Christchurch
BH23 5QH**

- 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 Caleb Development against the decision of BCP Council.
 - The application Ref 8/19/1029/FUL, dated 26 June 2019, was refused by notice dated 13 April 2021.
 - The development proposed is replacement dwelling (No.22) and erection of 3 detached bungalows with associated access and parking.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs, made by Caleb Developments against BCP Council, was subsequently withdrawn during the appeal Hearing. As such, there is no need for me to consider this matter further.

Procedural Matters

3. The description of development in the heading above is taken from the decision notice and appeal form, since it more precisely describes the appeal scheme than that on the application form.
4. Since the refusal of the planning application, a revised version of the *National Planning Policy Framework* (the Framework) was published on 20 July 2021. I have taken the revised Framework into account where relevant to my decision.
5. On 23 February 2021, prior to the determination of the planning application, in response to the Council's concerns in respect of arboricultural impacts, the appellant submitted the following amended plans and report to the Council: Site, Block and Location Plan 9170/100RevG; Unit 3 Floor Plans and Elevations 9170/103RevD and Arboricultural Impact Assessment and Tree Protection Plan JH/AIA/20/068/Rev3.
6. The Council did not take these amendments into consideration in refusing the application, and has confirmed that it did not carry out third party consultation in respect of these plans and report.

7. In considering which proposal is before me for determination, I am mindful of the planning appeals procedural guidance¹ which advises that, 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.
8. With the above in mind, and having regard to the number of third party representations in respect of the refused scheme, and the nature of the changes introduced through these amended plans which includes the repositioning of the dwelling on Plot 3 closer to third party land, I am not satisfied that, in accepting these amendments, it would not cause prejudice or injustice to any interested party.
9. I have, therefore, as discussed at the Hearing, determined this appeal on the basis of the plans and tree report that formed the basis of the Council's reasons for refusal. For clarity, these include: Site, Block and Location Plan 9170/100RevF; Unit 3 Floor Plans and Elevations 9170/103RevC and Arboricultural Impact Assessment and Tree Protection Plan JH/AIA/20/068/Rev2, which were submitted during the course of the determination of the planning application.

Main Issue

10. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

11. The appeal site lies on the southeast side of Avenue Road in an established residential area within the designated settlement boundary. The T-shaped site is occupied by a detached two-storey dwelling, which forms part of a line of street-facing dwellings on this side of the road, as well as land to the rear of the house and rear gardens of Nos. 18, 20 and 24 Avenue Road, which is given over to a mix of trees, overgrown soft landscaping, and grass (rear of No.18).
12. Boundaries are defined by hedging and fencing, and whilst none of the trees on the site are protected, there are a number of mature trees within the rear garden of 14 Chewton Farm Road which make a positive contribution to the visual amenities of the site, including a large Monterey Pine, referred to as T11 on the submitted Site Block and Location Plan Ref 9170/100 Rev F.
13. The site is located within a roughly triangular-shaped area, known as the Chewton Farm Estate, which is bounded by Avenue Road, Seaview Road and Chewton Farm Road, and is identified in Saved Policy H9 of the *Borough of Christchurch Local Plan* (2001) (the Local Plan) as having a special character and amenity which is worthy of protection and at risk from residential infill development, including subdivision of existing garden land to form building plots.
14. This area is described as consisting of mainly of substantial residential properties set in large plots and providing a form of large family accommodation which is not in abundance throughout the remainder of the Plan area. The Council has confirmed that this is the only area identified for

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

such protection within the entire Local Plan area, and the special character of this residential enclave is also emphasised within the Council's adopted *Christchurch Borough-Wide Character Assessment* (2003), where it is described as a small estate of large houses characterised by more generous garden plots and a small-scale private roadway.

15. Avenue Road has grass verges to both sides, many hedged or treed frontages, and mature trees interspersed amongst the built development. These include within rear gardens, where they provide a green backdrop to frontage dwellings, which is visible from the public realm of the street. At its western end, the road leads into the un-made lane of Seaview Road which abuts the wooded Chewton Common SNCI, thereby discouraging through traffic and adding to the quiet, semi-rural character of the road.
16. Chewton Farm Road has an even greater rural character. It has no pavements and residential development is mainly restricted to one side of the road, where it is set back behind grassed highway verges and hedged and treed frontages, with open countryside on the opposite side of the road. As such, the area has a verdant, spacious, and tranquil, semi-rural character.
17. Dwellings are historically generally set within spacious plots and have large rear gardens. Those along both sides of Avenue Road tend to have fairly regular front building lines and long plots. The properties close to both ends of the road and within the adjoining Seaview Road and Chewton Farm Road tend to be sited within wider plots and include a greater variety of building positioning in relation to the street.
18. The substantial amount of soft-landscaped and treed undeveloped rear garden land between the frontage properties of the three roads, makes a significant positive contribution to the spacious, verdant and tranquil character of the area, and has, in the main, remained undeveloped, and where visible from the street scene between properties, provides a green backdrop to the townscape.
19. The existing layout of development on the appeal site comprising built development fronting the road and a large undeveloped and vegetated area of land to the rear, is wholly in keeping with, and makes a positive contribution to the character and appearance of the Chewton Farm Estate development.
20. The Council has raised no objection to the proposed two-storey dwelling to replace No.22. On the basis of the evidence before me, including my observations during my site visit, the previous appeal² Inspector's acceptance of a replacement dwelling of the same scale, design and siting as that currently proposed, and the subsequent planning approval³ for such development, I have no reason to disagree with the Council's view in respect of this element of the appeal scheme.
21. The proposal would necessitate a significant loss of garden area and soft landscaping, including 22 trees, and their replacement with a substantial amount of built site coverage, comprising three dwellings and their carports and hard surfaced parking, vehicular access and footpaths. This intensity of built development within the undeveloped back garden area would be contrary to the spacious prevailing pattern of development within the Chewton Farm Estate.

² APP/E1210/A/14/2212343

³ Ref 8/16/2503/FUL

22. Whilst trees on the appeal site are not protected by a TPO, and much of the on-site vegetation is overgrown, the proposed loss of such a significant amount of on-site vegetation would be harmful to the verdant character of the area, and it would be noticeable from surrounding properties and in some views from the street, through gaps within the frontage development.
23. I am not persuaded, on the basis of the evidence before me, that there would be sufficient space on site to provide suitable replacement planting of soft landscaping and trees that would appropriately compensate for those lost to the development, particularly in respect of proposed Plot 2, and noting that only a small amount of tree replanting is proposed as part of the proposal.
24. Whilst the current appeal scheme incorporates additional land to the rear of No.18 Avenue Road over and above that proposed in respect of the previous dismissed appeal scheme, it also includes an additional residential unit within the rear back garden area. As such, and having regard to the built footprint of the proposed bungalows, whilst the current scheme has overcome some of the previous Inspector's concerns in respect of the scale and height of the rear dwellings, I am not persuaded that their objection in respect of the resulting amount of built site coverage has been satisfactorily addressed.
25. Moreover, it is not unreasonable to expect that the harm arising from the loss of green undeveloped land would be exacerbated by the future introduction of further intensification of site coverage with built development in association with the future residential occupation of each property, such as outbuildings, sheds, decking and patios in connection with each individual plot.
26. Having regard to their combined footprints and positioning on site, the proposed layout of the three bungalows would also result in an uncharacteristically cramped form of built development within this rear back garden area, having regard to the proximity of the properties to their plot boundaries and each other. The compact and regular arrangement of the dwellings on Plots 3 and 4 in particular, and their proposed formally laid out position perpendicular to the orientation of the neighbouring properties fronting Avenue Road, would be at odds with the spacious and more sporadic placement of dwellings that is typical of Chewton Farm Road and existing dwellings which are sited to the rear of road frontage properties.
27. The latter include 28 Avenue Road and 8 Chewton Farm Road, which, on the basis of the evidence before me, formed part of the historic development of the area, rather than later infill developments. I also acknowledge the, now lapsed, 2017 planning permission⁴ for a detached chalet-style house to the rear of 20 - 24 Avenue Road. I find that these developments are not directly comparable with the appeal scheme, in that they comprise more spacious loose-knit arrangements of built development which enable the retention of sufficient garden space and trees and shrubs around them, so as not to conflict with, or detract from, the overall prevailing character which distinguishes the Chewton Farm Estate.
28. My attention has been drawn to a recent planning permission⁵ for the erection of an apartment building at 20 Chewton Farm Road. I do not find this to be directly comparable to the appeal scheme, in that it does not involve back-land

⁴ 8/16/2503/FUL

⁵ 8/20/0752/OUT

plot redevelopment and it comprises the replacement of a large dwelling with a single building of a domestic height and scale, whilst retaining space around the building and the retention of high amenity value trees, so that the prevailing spacious and green character of the area would not be harmfully eroded. Whilst a family house would be replaced by higher density flatted development, notwithstanding the supporting text to Policy H9, there are other existing buildings which are occupied as flats within the Chewton Farm Estate, and the form of development in this instance is such that it would not harm the prevailing character of large properties set in large verdant plots.

29. Having regard to the above, notwithstanding the time which has elapsed since the adoption of the Local Plan, and the presence of some new built development during the intervening time, I find that the overall prevailing character of Chewton Farm Estate has been retained.
30. Whilst there are some road-fronting properties within the area which have shorter and smaller plots, including Nos 2,4 and 6 Chewton Farm Road and three properties at the northwest corner of Seaview Road and Avenue Road, the evidence before me is that these sites represent the historic development of the area prior to the adoption of Policy H9. I find that they are reflective of the frontage built development which typifies the area, and that they do not involve rear infill development. Moreover, large plots and dwellings still remain the prevailing layout of development, so that the overall character of the Chewton Farm Estate has not been unduly compromised by these examples of smaller than average plots.
31. In addition to the impact on trees on the appeal site, I share the concerns of the Council and the previous appeal Inspector in respect of the potential impact of the residential redevelopment of the appeal site on the health of the Monterey Pine, T11. This sizeable tree is of high visual amenity value, and combined with other trees close to the appeal site boundary, provides a verdant backdrop to the appeal site. Due to its height and canopy spread, the tree is visually prominent in views from surrounding properties and from a number of locations within the three roads which surround the Chewton Farm Estate. As such it makes a significant positive contribution to the visual amenities and character and appearance of the area.
32. The southernmost corner of the dwelling on Plot 3, and the carport, parking and turning area for this dwelling would encroach into the Root Protection Area (RPA) of T11, and the tree canopy overhangs this part of the appeal site. The appellant's supporting Arboricultural Impact Assessment (the AIA) asserts that, at 2.27%, the degree of overlap of the building into the notional RPA would be negligible, given the good condition of the tree and the lack of impact on its extensive root system in other directions. The AIA also considers that appropriate construction measures could be undertaken to protect the tree root system in respect of the car port and driveway construction and to protect the tree during building works.
33. However, the tree appears to be healthy, and it will continue to grow, and as such, given its potential increasing future dominance over this part of the proposed development, I consider that there is a strong possibility that future occupiers would want to undertake pruning or similar works to the tree, which have the potential to prejudice its long-term health and amenity value.

34. In coming to this view, I have had regard to the nature of the tree, which has a thick canopy, having the potential to block out sunlight to the adjacent site and an abundance of large cones, which I observed during my site inspection, are fairly heavy and prone to dropping. These nuisance factors for occupiers of the new development, together with the potential for falling debris or branch fall due to storm damage, has the potential to result in inconvenience or fear of damage or danger to future occupants of the appeal scheme and their vehicles which would be parked within the root protection area, as a result of shading, an overbearing presence, and cone, debris or branch fall.
35. Although the tree is protected and is within the ownership of the neighbouring property owners, the Council may struggle to refuse subsequent tree work applications for felling or lopping the tree on safety or damage grounds due to its proximity to the proposed development on Plot 3. As such, with the precautionary principle in mind, and having regard to the importance attributed to trees to the character and quality of urban environments in Paragraph 131 of the Framework, I find that the potential for future damage to the tree arising directly from the appeal proposal would conflict with the Council's confirmed intention to protect this tree, and would present a credible threat of risk to the long-term health and survival of the tree which would cause harm to the visual amenities and character and appearance of the area.
36. For the above reasons, I conclude that the proposal would have a detrimental impact on the character and appearance of the area. As such, the appeal scheme would be contrary to Local Plan Saved Policies H9 and H12 and Policies HE2 and HE3 of the *Christchurch and East Dorset Local Plan Part 1 – Core Strategy* (2014) (the Core Strategy). These policies, amongst other aims, seek to ensure that new development is of a high quality design, which reflects and enhances areas of recognised local distinctiveness, including protecting the special character and amenity of the established residential area in Chewton Farm Estate, is compatible with or improves its surroundings in terms of layout, site coverage, landscaping and relationship to mature trees, and does not result in the loss of important environmental features such as open space or trees which is part of the character of the area.
37. For similar reasons, the proposal would also be contrary to Policies of the Framework which seek to achieve well-designed places, as set out in Chapter 12.

Other matters

European Protected Sites

38. The appeal site lies within the zone of influence of the Dorset Heathlands EPS. The appellant has submitted a completed unilateral undertaking (UU), pursuant to section 106 of the Town and Country Planning Act 1990, in respect of the payment of a Strategic Access Management and Monitoring Contribution to mitigate against 'in-combination' effects from new residential development upon the EPS due to increased recreational disturbance to the protected habitats and species of the lowland heath.
39. The Council is satisfied that this mitigation accords with the Council's adopted *Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document* (April 2020) and Core Strategy Policy ME2, and this matter does not constitute a reason for refusal.

40. In addition, during the course of the appeal, Natural England (NE) issued updated guidance concerning nutrient pollution adversely affecting Habitats Sites across England. This includes the Poole Harbour SPA/Ramsar and the River Avon SAC European Sites, the integrity of which have the potential to be harmfully affected by the in-combination effects of new residential development within the Council's area, due to increased levels of nitrogen and/or phosphorus entering the water from waste-water from residential development, resulting in eutrophication affecting the nutrient water quality of the EPS.
41. At the time of writing this decision, Natural England's comments are still awaited, and prior to the appeal Hearing, the Council confirmed that, to date, Natural England has not objected to the granting of further planning permissions for new residential development within the Council's area. As such, the Council has not raised an objection in respect of this matter.
42. However, whilst the above issues do not constitute a basis of the Council's reasons for refusal, the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) apply. Within the context of the appeal, the responsibility for assessing the effects of the proposal on the European designated sites falls to me as the competent authority. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine this matter further, and to undertake an Appropriate Assessment (AA) of the implications of the appeal scheme for the European designated site, including ascertaining the views of Natural England in respect of the matter of nutrient neutrality.
43. However, as the first main issue provides a clear reason for dismissing the appeal, the outcome of any such AA would have no bearing on the overall outcome of this appeal. Therefore, I do not need to consider this matter any further as part of my decision.
44. I acknowledge that the proposal represents an amended scheme from the developments which were the subject of two previously refused applications⁶, the latter of which was dismissed at appeal⁷, including changes to the design and number and/or layout of the dwellings, and the incorporation of an additional area of land to the rear of no. 18 Avenue Road. I also note that amended plans and supporting arboricultural information were submitted during the course of the current appeal planning application, in response to the initial comments of the Council's Tree Officer. However, this does not alter my findings with respect to the appeal proposal, which I must determine on the merits of the current scheme.
45. The appellant has referred to the time taken for the Council to determine the planning application and the procedures undertaken in doing so. These are not matters for consideration as part of the determination of this appeal.

Planning Balance

46. The Council is unable to demonstrate a five-year supply of deliverable housing sites. At the Hearing, the Council confirmed that it has 2.7 years of housing supply. As such, Paragraph 11 of the Framework applies, which states that

⁶ 8/12/0351 and 8/13/0319

⁷ APP/E1210/A/14/2212343

relevant policies for the supply of housing should not be considered up to date where a five-year housing land supply cannot be demonstrated. Paragraph 11 states that where relevant policies are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, provides a clear reason for refusing the development proposed, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.

47. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be within a designated settlement boundary, where access to facilities and public transport connections is likely to be greatest.
48. The 3 additional dwellings would make a small contribution towards the Council's housing supply, including providing sizes of dwellings which meet local needs. The development could also be built out relatively quickly, having regard to Paragraph 69 of the Framework. There would be economic benefits as a result of the construction of the dwellings and economic and social benefits as a result of their future occupation. By providing single storey units, which could suit elderly downsizers or mobility-impaired occupants, the proposal would also contribute to the Framework objective of creating mixed and balanced communities. These considerations weigh in favour of the development, and I afford them moderate weight.
49. However, whilst the Council's supply of deliverable housing is very low, three additional dwellings would make a very modest contribution towards addressing the housing supply deficit. Moreover, a high standard of design is also a key aspect of sustainable development. The harm I have identified to the character and appearance of the area would be significant. As a result, the social objective of sustainable development of fostering well-designed and beautiful places, would not be achieved.
50. Whilst the Framework encourages the effective use of land in meeting the need for homes and requires the Council to approach decisions in a positive and creative way, these matters are not unqualified and would not address or outweigh the aforementioned harm that I have identified to the character and appearance of the area
51. The Council has raised no objection to the appeal scheme in respect of matters including the principle of residential development, highway safety, access and parking, the living conditions of the occupiers of the appeal scheme and neighbouring properties, on-site biodiversity and flood risk/drainage. In terms of the planning balance, the lack of identified harm is a neutral factor that does not diminish the significant harm that would arise from the proposal in respect of the impact on the character and appearance of the area.
52. Therefore, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits, and the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

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

S Leonard

INSPECTOR

APPEARANCES:

For the appellant:

- Mr Neil McKeon MA, MRUP, MRTPI - Pure Town Planning
- Mr Andy Green – Director, Caleb Development

For the Local Planning Authority:

- Mr David Hodges BSc (Hons) DipTP MRTPI – Team Leader, Development Management
- Ms Charlotte Haines – Planning Officer
- Ms Bea Ridley ND Arb NCH Arb PTI – Arboricultural Officer

Others:

- Mr and Mrs James and Eva McDonald
- Mr and Mrs Peter and Anne Watson Lee