



Appeal Decision

Site visit made on 4 July 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 22 September 2022

Appeal Ref: APP/V1260/W/21/3285630

37 – 39 Mudeford, Christchurch BH23 3NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Appletree Developments (Poole) Ltd against Bournemouth Christchurch and Poole Council.
 - The application Ref 8/21/0170/FUL, is dated 15 February 2021.
 - The development proposed is to demolish the existing buildings and replace with a new building to accommodate 10 flats, together with the provision of on-site car parking and covered cycle parking spaces, residents amenity space and landscaping.
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Decision

1. The appeal is dismissed and planning permission to demolish the existing buildings and replace with a new building to accommodate 10 flats, together with the provision of on-site car parking and covered cycle parking spaces, residents amenity space and landscaping, is refused.

Preliminary Matters

2. I have taken the address from the appeal form, as this more comprehensively describes the appeal property.
3. Since submission of the planning application, the 2019 iteration of the National Planning Policy Framework (Framework) has been superseded. I am satisfied that the updates to the Framework do not materially affect its content insofar as it is relevant to the main issues of this appeal. I have therefore determined this appeal with regard to the current version, published in July 2021.
4. Planning Practice Guidance (PPG) relating to flood risk was also updated in August 2022. As above, I am satisfied that the updates do not materially affect its content insofar as it is relevant to this appeal. In turn, I have determined this appeal with regard to the latest version of the PPG.
5. As an appeal against non-determination, the Council did not issue a decision. Nonetheless, the Council submitted its proposed reasons for refusal (had the appeal application been determined) during the course of the appeal, so these have informed the main issues.
6. One of the Council's proposed reasons for refusal concerned the impact of the development on the amenity of occupiers of the neighbouring bungalow (37 Mudeford). This reason appears to have been included in error, as the bungalow is included within the appeal site, and would be demolished as part of the development. I have therefore not considered this issue further.

Main Issues

7. The main issues are:

- whether the proposal has adequately addressed flood risk;
- the effect of the development on the integrity of the Dorset Heathlands;
- the effect of the development on existing trees; and
- whether the development makes adequate provision for on-site parking.

Reasons

Flood Risk

8. The appeal site is located within Flood Zone 3a, as set out in the Christchurch Strategic Flood Risk Assessment, Level 2 (2019). This means the development would be located in an area with a high probability of flooding. In areas at risk of flooding, Policy ME6 of the Council's Local Plan¹ (Local Plan) says that development proposals will be subject to the sequential and exception tests, in accordance with the provisions of the Framework. The Framework is clear that the objective of these tests is to avoid inappropriate development in areas at risk of flooding *"by directing development away from areas at highest risk"*.
9. Whilst some types of minor development and changes of use are exempt from the requirement for a sequential and exception test, the development would not fall within these exceptions. Indeed, the PPG classifies new dwellings as *"more vulnerable"* development, and is explicit that such development within Flood Zone 3a would be subject to these tests. The development would therefore need to pass both the sequential and exception tests, before it would be consistent with Policy ME6 of the Local Plan, the Framework and guidance in the PPG.
10. Notwithstanding any fall-back, the appellant contends that the search area for the purposes of the sequential test should be limited to the appeal site alone. I do not accept this position. The PPG says that the search area for alternative sites will be defined by local circumstances, and will relate to the catchment area for the type of development proposed. In this instance, the demand for housing extends across Christchurch and elsewhere in the Council's area. It would therefore be unreasonable to limit consideration of alternative sites to the appeal site alone.
11. The appellant further alleges that if the search area for alternative sites were to be wider, there would be no available sites within Christchurch in any event. However, the search undertaken appears limited to the Council's list of available sites to inform its housing land supply calculation, and fails to demonstrate whether any alternative sites beyond this list have been considered (for example windfall sites). It therefore falls short of the test requirements.
12. Given that the appellant has failed to demonstrate that the sequential test has been properly carried out and passed, I cannot determine whether or not there would be any other more suitable alternative sites for the development, where there would be a lesser degree of flood risk. The development would therefore

¹ Christchurch and East Dorset Local Plan, Part 1 – Core Strategy (April 2014)

conflict with the requirements of Policy ME6 of the Local Plan, the flood risk provisions in the Framework and guidance in the PPG.

13. Notwithstanding the policy position, the appeal site does already benefit from planning permission for a change of use to 9 flats², which appears to have been implemented. The appellant suggests that the proposed development would provide improved flood resilience measures when compared to this fall-back position, and therefore contends that any requirement to satisfy the sequential test should be negated. This is because the proposed scheme would amount to an improved situation when compared to the fall-back. Several examples of this approach being adopted by decision-makers in respect of development with a legitimate fall-back have been cited by the appellant to support this position.
14. Whilst I agree that the fall-back is pertinent to the appeal application, there are significant differences between the two in this instance. The internal floorspace of the proposed development would be substantially greater, which means its potential occupancy would also be higher. Indeed, the fall-back scheme provides consent for 5 x studios, 3 x 1-bedroom flats and 1 x 2-bedroom flat (notwithstanding the existing bungalow), whereas the proposed development would include 8 flats with at least 2 bedrooms, and an additional 2 flats with 3 bedrooms.
15. As a result of the greater level of occupancy and correlated increased intensity of use, the impact of the proposed development would conceivably be materially different to the fall-back scheme with regard to flood risk. The current proposal therefore warrants proper and comprehensive analysis of any associated flood risk in its own right, which would necessitate a proper application of both the sequential and exception tests. In turn, whilst the fall-back does carry weight, it would not be sufficient to outweigh the policy conflicts with regards to flood risk requirements in this instance.

Protected Sites

16. The appeal site is within 5km of the Dorset Heathlands Special Protection Area, Special Area of Conservation, Site of Special Scientific Interest and Ramsar Site (collectively referred to as the Dorset Heathlands). The Dorset Heathlands are an extensive network of lowland heath within south-east Dorset, which are recognised for their national and international importance for nature conservation.
17. The proposed development has the potential to lead to increased recreational use of the Dorset Heathlands, owing to the proposed additional residential units. In combination with other similar small-scale development, this means the proposal could result in increased disturbance to the protected habitats and species found in these protected areas. As a result, it is not possible to rule out likely significant effects on the Dorset Heathlands.
18. Nonetheless, the Dorset Heathlands Planning Framework (2015 - 2020) sets out measures to help mitigate against the potential effects from new housing. This mitigation is achieved through financial contributions towards Strategic Access Management and Monitoring (SAMM). The primary objective of SAMM is to raise awareness of relevant issues, through the employment of project

² Application reference 8/15/0362

coordinators and wardens to manage visitor pressures on the respective protected areas, and to monitor the effects of new development.

19. The appellant has provided a completed unilateral undertaking (UU) to secure payments towards SAMM. Whilst there are pages missing from the UU, it is clear that its purpose is to secure mitigation against any potential impact on the Dorset Heathlands. Whilst I could have requested the missing pages from the appellant during the course of this appeal to properly assess whether appropriate mitigation would be achieved, as I am dismissing the appeal on other grounds, further consideration of this factor, including an appropriate assessment under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended), is not required. I have therefore not discussed this matter further.

Trees

20. The development would be located in close proximity to a number of protected trees on the wider site, which include a Scots Pine and two Oaks to the west of the proposed development (labelled T9, T10 and T13 respectively on the Tree Protection Plan). Nonetheless, there would be a sufficient gap between the western elevation of the development and the tree canopies and root protection areas (RPAs) of these trees, to ensure no undue risk of interference between the two. Subject to ongoing and regular maintenance of these tree canopies, which could be secured and controlled by condition, these gaps could be adequately retained going forwards.
21. Although the parking spaces would be sited within the RPAs of a number of other trees on the site, this would not be substantively different to the existing arrangement, where there are already extensive areas of hardstanding to facilitate on-site parking. Moreover, the Arboricultural Impact Assessment and Method Statement details comprehensive measures to protect these areas during development, which could be secured by condition. Such measures should adequately overcome any risk to trees on the site arising from the larger parking area. In terms of the trees to be felled to facilitate the development, these are mostly in poor condition, and their loss should not unduly impact on the overarching verdancy of the site. The proposed landscaping would also help mitigate against their loss, which could again be secured by condition.
22. On account of these factors, I am satisfied that the proposed development would not cause undue harm to trees on site. The development would be consistent with Policies HE2 and HE3 of the Local Plan, which together promote high quality landscaping as part of the new development, alongside protecting existing green infrastructure where appropriate.

Parking Provision

23. The appeal site is located within Parking Zone D, as set out in the Council's Parking SPD³ (Parking SPD). For flats within Parking Zone D, the Parking SPD prescribes that one parking space should be provided for each dwelling with 3 habitable rooms (equivalent to a 2-bedroom flat), and 2 parking spaces should be provided for any flats with 4 or more habitable rooms (equivalent to a 3+ bedroom flat).

³ Parking Standards Supplementary Planning Document (January 2021)

24. Whilst the 2-bedroom flats do each include a separate office, these rooms would not meet the minimum size requirements for an additional bedroom (as prescribed by the Nationally Described Space Standards). As such, only one parking space would need to be provided for each of the 2-bedroom flats. This would give a total requirement of 12 parking spaces to serve the development.
25. The proposal would provide 12 allocated on-site parking spaces, and one additional visitor parking space. On this basis, the development would provide sufficient levels of parking, which reflect the objectives of Policies KS11 and KS12 of the Local Plan, as well as the requirements set out in the Parking SPD.

Other Matters

26. The Council cannot demonstrate a five-year supply of deliverable housing land. In certain circumstances, this could engage the tilted balance under paragraph 11(d) of the Framework. Nonetheless, in this instance, paragraph 167 of the Framework is clear that development should only be allowed in areas at risk of flooding, where certain flood risk criteria have been met. This should be evidenced through application of the sequential and exception tests. Given these tests have not been properly carried out as part of the appeal application, the policies set out in the Framework give a clear reason for refusal of the application⁴. The tilted balance is therefore not engaged.
27. Whilst the proposed development would contribute to the Council's housing stock, there would be no net increase in the number of dwellings when compared to the fall-back scheme (and the existing bungalow). This benefit therefore only carries limited weight in my decision. For similar reasons, any benefit associated with optimising the use of a brownfield site would only carry a similar level of weight.
28. In terms of any enhancement with regard to flood risk when compared to the fall-back scheme, this would need to be considered as part of the exception test, but only once the sequential test had been passed, or where other material considerations indicated that permission could be granted contrary to the requirements of this test.

Conclusion

29. The development would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, that would outweigh this finding. Therefore, and for the reasons given, the appeal is dismissed and planning permission is refused.

James Blackwell

INSPECTOR

⁴ Footnote 7, Framework