
Appeal Decision

Site visit made on 8 September 2022

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Appeal Ref: APP/V1260/W/22/3291430

Car park at the junction of Purewell with Stony Lane South, Christchurch BH23 1EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Amirez Ltd against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref 8/21/0761/OUT, dated 28 July 2021, was refused by notice dated 12 November 2021.
 - The development proposed is ground-floor office space with 4 x 1-bed apartments above.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with landscaping reserved for future determination. Insofar as any details of landscaping have been provided on the submitted plans, I have treated these as indicative.
3. The appeal site is a car park. This stands adjacent to a property which is given both as 'The Starre Inn' and the 'Smugglers Run' on the application form. It is however currently an Italian restaurant named 'La Mamma'. For avoidance of doubt, I have therefore identified the site with reference to the junction adjacent to which it is located.
4. The appeal was accompanied by a number of revised plans which the appellant states were submitted before the Council made its decision. As the Council has not sought to dispute this, I have based my assessment on the revised plans.
5. The application was partly refused on grounds of a risk to highway safety arising from the lack of a waste management plan. The Council has however confirmed that the issue can be addressed by condition. The Council has additionally opted not defend its objection relating to the privacy of future occupants. I shall therefore consider these matters no further.

Main Issues

6. The main issues are:
 - whether the development would provide acceptable living conditions for future occupants in relation to internal floor space;

- the acceptability of the development in relation to flood risk; and
- the effect of the development on designated heritage assets, including whether it would preserve the setting of a Grade II listed building, and whether it would preserve or enhance the character or appearance of Purewell Conservation Area (the Conservation Area).

Reasons

Living conditions

7. Policy LN1 of the Christchurch and East Dorset Local Plan 2014 (the LP) states that all new housing will be required to be built to meet minimum living space standards. In this regard the Written Ministerial Statement issued in March 2015, directs that Local Plan policies relating to internal spaces should be interpreted by reference to the nearest equivalent new national technical standard. In view of its date, Policy LN1 should therefore be interpreted in relation to the nationally described space standard (NDSS).
8. The development would provide 4 first floor flats, which fall to be considered as single storey dwellings for the purposes of the NDSS. Indeed, the related stairwells, and ground floor bin and cycle stores would not form part of the internal floor areas of the flats.
9. The plans show that each flat would have one double bed space. The flats could each therefore accommodate 2 persons. The minimum gross internal floor areas and built-in storage for a 1-bed 2-person 1-storey dwelling set out within the NDSS is 50m². As the plans state that the 2 flats in Block A would provide 41.2m², and the 2 flats in Block B would provide 40.7m², all would fall significantly below the standard. The provision of dwellings providing a substandard level of internal floorspace would result in cramped living conditions for future occupants. It is likely that this would be further exacerbated in relation to Block A, where the provision of a curved external wall would limit practical use of the internal space.
10. Though the effect that the proximity of the 'pub' would have on future occupants of the dwellings was also included within the reasons for refusal, the Council's appeal statement omits any reference to this. I am however satisfied that mitigation of noise could be addressed within the construction of the dwellings and secured by condition.
11. For the reasons outlined above I conclude that the development would provide unacceptably cramped living conditions for future occupants. The development would therefore conflict with Policy LN1 of the LP as interpreted with reference to the NDSS.

Flood risk

12. The site is located within Flood Zone 3, in an area at risk of fluvial and tidal flooding. The Environment Agency estimates that within its lifetime the development may see flood depths of 1.3-1.5 metres, resulting in the ground floor being submerged by up to 1.22 metres. Flows would only be required to reach 0.1m/s to elevate such a flood event from a 'Danger to Most' to a 'Danger to All'.

13. The Planning Practice Guidance (PPG) indicates that where developments contain different elements of vulnerability the highest vulnerability category should be used unless the development is considered in its component parts.
14. Though the appellant states that the office and residential components of the development would be linked, the uses would not be functionally related. They would however be provided within the same buildings. Moreover, the residential use would be spread across the ground and first floors of Blocks A and B. As such, even though the office accommodation would be individually 'less vulnerable' to flooding, the ground floors of Blocks A and B would also contain elements 'more vulnerable' to flooding. This would notably include the external points of access to the flats and related stairwells, which, if flooded, could result in occupants becoming trapped. The development would thus as a whole be more vulnerable to flooding. It is therefore necessary for the proposal to pass both the Sequential and Exception Tests as set out within the National Planning Policy Framework (the Framework) and PPG.
15. Here the parties dispute the appropriateness of disaggregation of the development in consideration of alternative reasonably available sites. Whilst I note reference to other appeal decisions, their relevance is limited insofar as developments and the site-specific circumstances differ. In the current case, given the lack of any functional relationship between the proposed residential and office uses, there is no particular reason why they need to be provided together. The PPG otherwise confirms that reasonably available sites could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development.
16. The appellant acknowledges that reasonably available sites exist for residential development at Portfield Road and Moorcroft Avenue. Several other sites identified by the Council have also only been discounted by the appellant on the basis of their unsuitability for office provision. That being so, based on the evidence before me, alternative reasonably available sites exist for the residential component of the development.
17. An outline planning permission for office space of more than sufficient size has recently been granted in relation to The Emporium nearby. Though the site is apparently also located within Flood Zone 3, the development has permission, was allocated for such use within the LP, and has already been subject of testing. It is therefore sequentially preferable. Though the permission is in outline, so too is the application subject of this appeal. Again therefore, based on the evidence set before me, The Emporium site could accommodate the office component of the appeal scheme. The Sequential Test is therefore failed.
18. The appellant states that considerations such as the absence of a demonstrable 5-year supply of deliverable housing sites (5YHLS) can be overriding factors where the Sequential Test is failed, and again refers to a past appeal held to support this argument. However, the PPG makes clear that 5YHLS is not a relevant consideration when applying the Sequential Test. That being so, insofar as any subsequent balancing exercise is concerned, 5YHLS cannot logically exist as a consideration capable of outweighing failure of the Sequential Test.
19. The PPG does however set out limited scope to apply the Exception Test, if, accounting for wider sustainable development objectives, the application of relevant local and national policies would provide a clear reason for refusing

development in any alternative location. In this case the alternative sites considered all already have planning permissions in place, their suitability for development has already been demonstrated. There are therefore no grounds to apply the Exception Test. The Framework as such states that development should not be permitted.

20. For the reasons set out above I conclude that the development would be unacceptable in relation to flood risk. It would therefore conflict with Policy ME6 of the LP which broadly reflects national policy in relation to flood risk.

Heritage assets

21. The restaurant immediately adjacent to the site is housed within a building listed at Grade II as 9 Purewell. The site is also located within the Conservation Area. Each are designated heritage assets. Whilst the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the desirability of both preserving the settings of listed buildings, and of preserving or enhancing the character or appearance of conservation areas, paragraph 199 of the Framework makes clear that great weight should be given to the conservation of designated heritage assets.
22. Insofar as it is relevant to this appeal the special interest and significance of the listed building resides in its early C19th date, simple form and details, and its spatial and visual relationship with other similar buildings within the streetscene. This in turn forms a basis for its positive contribution to the significance of the Conservation Area. The latter is a linear designation which chiefly covers historic development either side of Purewell, which forms a key route on the approach to Christchurch town centre. Within this context the townscape contains various building types, but the majority are domestic and characterised by their modest scale, simple details and pitched or hipped roof forms. The latter mostly feature chimney stacks and clay tile or slate roofs.
23. The car park is a space of reasonably modern origin across which the side elevation and rear components of the listed building can be viewed. Though it thus provides a context within which the significance of the listed building can be appreciated, the site itself makes no obvious or direct contribution to the significance of the listed building.
24. The car park is otherwise prominently located adjacent to a road junction at the west end of Purewell, which in turn forms part of the western edge of the Conservation Area. Though within this context it again serves to expose the historic buildings adjacent to it, viewed relative to the broader historic townscape, the openness of the car park is perceived as somewhat intrusive. An opportunity therefore clearly exists for new development to enhance or better reveal the significance of both the listed building and Conservation Area.
25. The appellant has responded by proposing building designs which seek to embody attributes of traditional form, scale and detail. However, though the roof plans show conventional hipped and pitched forms with central ridges, the elevations indicate that the roof of each Block would in fact be flat topped. This would be clearly appreciable within the street scene, and particularly within gable end views of Block A. The design would be at odds with the prevailing pattern within the Conservation Area, as is indeed exemplified by the adjacent listed building. Whilst incongruous in itself, the use of flat roofing would also facilitate the provision of relatively deep and bulky building forms, which would

undermine any suggestion of modesty otherwise provided within the designs. The resulting failure to integrate would be accentuated by the use of artificial tiles, which, though not unique, would appear conspicuous in eastward views of the roofscape along the southern side of Purewell.

26. Blocks A and B would furthermore relate poorly to one another given their dissimilar forms and spacing. In combination with the shortcomings identified above, this would represent a missed opportunity to provide a strong, cohesive, and distinct point of entry to the Conservation Area.
27. Insofar as the listed building draws some significance from its relationship with other buildings within the streetscene, and insofar as it would be viewed directly in relation to Block A in particular, the development would modestly detract from appreciation of its significance, thus failing to preserve its setting. In both this regard, and given the broader deficiencies of the design, the development would also fail to preserve or enhance the character or appearance of the Conservation Area as a whole. The harm caused to the significance of each heritage asset would be less than substantial. Such harm attracts considerable importance and weight. In accordance with paragraph 202 of the Framework it is necessary to weigh this harm against the public benefits of the scheme.
28. The development would provide 4 additional dwellings in a location with good access to services and facilities. Considered in purely numerical terms this would inevitably make a positive contribution to the broader supply of housing. To what extent this would help to address a pronounced shortfall in the Council's 5YHLS, with supply currently stated to fall at around 2.7 years, is however unclear as the deliverability of the scheme has not been demonstrated. The flats would in any case be unacceptably located in relation to flood risk and would provide unacceptable living conditions. As the provision of such dwellings cannot be considered publicly beneficial, claimed benefits related to their provision cannot attract weight in favour of the scheme.
29. The development would also provide 4 small office units. However, having again established that the development would be unacceptably located in relation to flood risk, claimed benefits related to their provision again do not attract weight in favour of the scheme.
30. The development would make use of brownfield land, as is encouraged by the Framework. However, insofar as the site is not suitable for the development proposed, this is not a consideration which attracts weight.
31. The development has been promoted as providing enhancement, including soft landscaping and removal of signage. This is notwithstanding the fact that landscaping is a reserved matter. Landscaping and removal of signage would otherwise have little bearing on the overall visual effects of the scheme, which I have already established would be negative.
32. Insofar as soft landscaping has also been equated with a biodiversity gain, some relative scope for this would exist in parts of the site currently covered by hard surfaces. However, it is improbable that the small areas of soft landscaping shown on the plans would have any significant biodiversity value, particularly given their likely intensive use as amenity spaces. I therefore attach negligible weight to the claimed benefit. The harm caused by the development would not therefore be outweighed by public benefits.

33. For the reasons outlined above I conclude that the development would have an unacceptable effect on designated heritage assets, failing to preserve the setting of a Grade II listed building and failing to preserve or enhance the character or appearance of the Conservation Area. The development would therefore conflict with Policy HE1 of the LP, which states that the significance of all heritage assets and their settings will be protected and enhanced; saved Policy BE15 of the Borough of Christchurch Local Plan 2001 (the SLP) which supports the operation of statutory duties in relation to the settings of listed buildings; and saved Policy BE4 of the SLP which seeks to secure development whose design respects and complements existing buildings and spaces in conservation areas.

Other Matters

34. The scheme would conflict with the development plan taken as a whole. As noted above however, the Council currently lacks a 5YHLS. Consequently, the Framework indicates that for the purposes of decision making the policies most important for determining the application are 'out-of-date'.

35. Even so, and despite the fact that the development plan relates to a defunct district, I am satisfied that the policies against which I have identified conflict are broadly consistent with those relating to amenity, design, flooding and heritage set out within the Framework. I have furthermore established above that when assessed against the Framework itself, my findings in relation to flooding and heritage in each case provide clear reasons for refusing planning permission. The 'tilted balance' is not applicable in this context.

36. The site lies within 5km of the Dorset Heathlands Special Protection Area, and the Dorset Heaths Special Area of Conservation and Ramsar sites (the habitats sites). Considered in combination with other plans or projects the development would have a likely significant effect on the integrity of the habitats sites due to the increased population that the additional dwellings would support, and the associated generation of recreational activity. To this end the appellant has sought to secure mitigation for the scheme within a submitted Unilateral Undertaking. Had I been minded to allow the appeal and the circumstances existed in which planning permission could be granted it would have been necessary to examine this matter in further detail. However, as I am dismissing the appeal for other reasons no further consideration is required.

Conclusion

37. For the reasons set out above the development would provide unacceptable living conditions, would be unacceptably located in relation to flood risk, and would cause unacceptable harm to designated heritage assets, giving rise to conflict with the development plan. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR