



Appeal Decision

Site visit made on 3 October 2022

by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/V1260/W/21/3289611

10 Carbery Avenue, BOURNEMOUTH, BH6 3LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr S Hassanali against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 7-2021-17708-B, dated 1 July 2021, was refused by notice dated 25 November 2021.
 - The application sought planning permission for the erection of a 2 storey block over 3 floor levels of 4 dwellings and formation of parking spaces, without complying with a condition attached to planning permission Ref 7-2020-17708-A, dated 22 October 2020.
 - The condition in dispute is No 4 which states that:
Notwithstanding the provisions of Class A and C, under Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) there shall be no erection or construction of a gate, fence, wall or other means of enclosure or physical division to delineate separate areas of ownership within the grounds of the application site unless otherwise agreed in writing by the Local Planning Authority.
 - The reason given for the condition is:
In the interests of the visual amenities of the area and in accordance with Policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).
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Decision

1. The appeal is allowed and the planning permission is granted for the erection of a 2 storey block over 3 floor levels of 4 dwellings and formation of parking spaces at 10 Carbery Avenue, BOURNEMOUTH, BH6 3LE, in accordance with the application Ref 7-2021-17708-B dated 1 July 2021, without complying with condition No 4 as imposed by planning permission Ref 7-2020-17708-A, dated 22 October 2020 by Bournemouth Christchurch and Poole Council, but otherwise subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Planning permission reference 7-2020-17708-A approved a residential block with four separate dwellings. The original plans showed an open rear garden which could be used as shared amenity space for occupants of all four dwellings.
3. The proposal is to delete condition 4, which would allow for partitions to be erected under permitted development rights and would have the effect of enabling there to be four separate parcels of garden – one for each dwelling – rather than a shared space.

Main Issues

4. The main issue is whether the restrictions on permitted development rights with the condition in dispute is necessary and reasonable to preserve the character and appearance of the area.

Reasons

5. The area is characterised by mainly detached properties within large plots, often with generous rear garden spaces. To the rear of this development is a large space which can be used as garden/amenity space for future occupiers. It is apparent that originally the rear garden was to be used as a shared space for occupants of all four dwellings.
6. Condition 4 removed permitted development rights to erect gates, fences, walls or other means of enclosure or physical division to delineate separate areas of ownership within the grounds of the application site. However, the appellant is seeking to erect forms of demarcation enclosures so that there can be these separate parcels of garden.
7. These parcels of amenity space would be much smaller than many of the rear gardens within the area, which are mainly open and spacious. However, these parcels of land, even with partitions of landscaping and some fencing, would be clearly set within the larger overall boundary of No 10 Carbery Avenue. Furthermore, this is land to the rear of the main residential building recently built (therefore being mainly an area of the plot not visible nor prominent) and would have no adverse impact to the street scene or wider character of the area when seen from public areas.
8. Smaller private garden spaces are uncommon within this area, though the proposal to create such spaces for this development would not be harmful visually and would preserve the character of the area. There is no evidence that this would result in more outbuildings. Indeed, even with a shared space each household could want separate sheds or other such outbuildings.
9. The parcels would be seen from neighbouring properties, but such an arrangement would not be particularly prominent to such views and would not have a harmful impact to neighbours' outlook or living conditions.
10. The proposal to remove condition 4 is reasonable as it is not necessary for the development to be acceptable. The development, without condition 4, would be in accordance with the provisions of policies CS6, CS21 and CS41 of the Bournemouth Local Plan Core Strategy (2012) and policy 6.8 of the Bournemouth District Wide Local Plan (2002). These policies require that development contributes positively to the character and function of the neighbourhood and be well designed and of a high quality, amongst other things.
11. For the above reasons the proposal to remove condition 4 would not result in a development that would conflict with the Residential Development Design Guide (2008) and National Planning Policy Framework.

Other Matters

12. The appellant has submitted to the Council the set agreement, signed and dated, for the mitigation contribution towards the Dorset Heathland Mitigation

Strategy. The development for housing could have a likely impact on the Heathland through additional recreational pressures, so the contribution towards the strategy is necessary to sufficiently mitigate the impacts, as included with the UU. This has addressed the Council's second reason for refusal by providing the agreement for mitigation.

Conditions

13. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
14. It is clear that development has commenced on site and was some way towards completion at the time of my site visit. As such, there is no necessity for the time limit condition. A revised plans condition has been imposed for clarity, especially as the development did not appear complete.
15. Amended conditions have been suggested by the appellant and agreed by the Council. These conditions have been imposed as suggested.
16. The appellant has also indicated that no other conditions are necessary, other than the ones they have stated. Some conditions from the original consent have been omitted due to the advanced stage of the development on site. However, from the list of conditions on the original permission some of these have required information to be submitted to and agreed by the Council, which I have no clear evidence has been done. Furthermore, some conditions require the agreed details to be implemented and/or retained, and so I consider these should be re-imposed.
17. If there are details required by the original and re-imposed conditions which have in fact been discharged, that is a matter which can be addressed by the parties.
18. I have not imposed a condition to remove permitted development for outbuildings, as recommended by the Council, as there is not sufficient reason for this to be required. There is no substantive evidence that outbuildings constructed under permitted development would be visually harmful or more likely to be necessary as a result of removing condition No 4.
19. The Council has also required a condition for details of screening between the parcels of amenity space. However, the removal of condition 4 simply allows for enclosures to be erected under permitted development rights to delineate these separate areas. I do not consider it necessary for a condition to require details of fencing or other types of screening that would be permitted under permitted development rights. Furthermore, I have reimposed the soft landscaping condition, with it noted that the appellant is seeking to use landscaping and hedgerows, along with 1.2m fences, as part of the enclosures.
20. I have not imposed conditions as suggested by the appellant to include the landscape plan separately, or for there to be details of a patio screen, as the proposal was for the deletion of condition 4 only. The soft landscaping arrangement can be agreed with the Council under the separate landscaping condition. Furthermore, with the deletion of condition 4 there is no restriction on permitted development rights for enclosures within the plot.

21. For the reasons set out in this decision, the original condition No 4 has not been reimposed.

Conclusion

22. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition, although this is still subject to the conditions in the following schedule.

Mr S Rennie

INSPECTOR

Schedule – Conditions

- 1) The development hereby permitted shall be in accordance with the following approved plans: 1538P/100d, 101, 102a, 103b, 104c, 105a, 106a, 107a, 108b, 109a, 110, 111 and 112.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargements of the dwellings, additional windows above single storey level roof lights or roof additions shall be constructed or outbuildings without the grant of further specific planning permission from the Local Planning Authority.
- 3) The proposed rooflights in the side roof planes shall be of high level type (minimum 1.75m internal sill height from finished floor level) and shall be permanently retained as such unless otherwise agreed in writing by the Local Planning Authority.
- 4) Any new or replacement hard surfaced area(s) shall either be made of porous materials, or provision shall be made to direct run- off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.
- 5) The parking and turning areas as shown on plan 1538/100d (as approved in the decision notice 7-2020-17708-A) must be permanently maintained, kept free from obstruction and available for the purposes specified.
- 6) The visibility splay areas as shown on plan 1538P/100d (as approved in the decision notice 7-2020-17708-A) must be maintained and kept free from all obstructions over 0.6 metres in height thereafter unless otherwise agreed in writing by the Local Planning Authority.
- 7) The waste/refuse facilities (as approved in the decision notice 7-2020-17708-A) shall be retained thereafter and kept free from obstruction and available for the purposes specified unless otherwise agreed in writing by the Local Planning Authority.
- 8) Within 1 month of the date of this decision details of biodiversity mitigation measures shall be provided of the number, type, design form and appearance of bat roosts, bird bricks, insect, amphibian and hedgehog friendly development measures. The approved measures shall be provided prior to occupation & once provided thereafter retained unless otherwise agreed in writing by the Local Planning Authority.
- 9) Within 1 month of the date of this decision, unless otherwise agreed in writing by the Local Planning Authority, full details of soft landscape proposals shall be submitted to and approved in writing by the Local Planning Authority. The details should include where appropriate: Planting plans; Schedule of plants including details for tree replanting; Implementation timetable and a maintenance scheme for the development with details for replacement of any dying dead or removed trees/shrubs within a five year period. The approved soft landscape scheme shall be implemented in full prior to occupation or use of the development commencing and permanently retained unless otherwise agreed in writing by the Local Planning Authority.

- 10) Prior to occupation of the development hereby permitted, the vehicular crossover (dropped kerb) at 10 Carbery Avenue shall be widened in accordance with the approved plans, to the specification of the Local Planning Authority. These areas shall be constructed and surfaced in accordance with the approved details prior to commencement of the occupation.
- 11) Within three months of permission hereby granted a scheme showing precise details of the proposed cycle parking facilities shall be submitted to the Local Planning Authority and agreed in writing. The approved details must be constructed before the development is occupied and, thereafter, shall be maintained, kept free from obstruction and available for the purpose specified.

END OF SCHEDULE