



Appeal Decisions

Site visit made on 2 March 2022

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Appeal A Ref: APP/D1265/W/21/3280452

Smugglers Hyde, Brook Lane, Corfe Mullen Wimborne, Dorset, BH21 3RD, 398345, 96839

- 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 Mr N Briant against Dorset Council.
 - The application Ref 3/21/0953/FUL, is dated 9 May 2021.
 - The development proposed is demolish remaining section of existing dwelling, garage and erect a replacement dwelling on the northern side of the site. As per attached plans D8044B1-002 to 005 INCLUSIVE.
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Appeal B Ref: APP/D1265/W/21/3280458

Smugglers Hyde, Brook Lane, Corfe Mullen, Wimborne, BH21 3RD, 398345, 96839

- 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 Mr N Briant against Dorset Council.
 - The application Ref 3/21/0603/FUL, is dated 19 March 2021.
 - The development proposed is Demolish remaining section of the Existing Dwelling, the Garage & Erect a New Dwelling on the Northern side of the land
 - Please see: D8044A-002, 003, 004 -005.
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Appeal C Ref: APP/D1265/W/21/3280470

Smugglers Hyde, 47 Brook Lane, Corfe Mullen, Wimborne, Dorset, BH21 3RD, 398345, 96839

- 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 Mr N Briant against Dorset Council.
 - The application Ref 3/21/0830/FUL, is dated 20 April 2021.
 - The development proposed is Demolish remaining section of existing dwelling & erect a Replacement Dwelling.
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Appeal A Decision

1. The appeal is dismissed and planning permission is refused.

Appeal B Decision

2. The appeal is dismissed and planning permission is refused.

Appeal C Decision

3. The appeal is dismissed and planning permission is refused.

Preliminary Matters

4. Appeal A, Appeal B and Appeal C relate to alternative proposals within the same wider site. The issues within the appeals are the same and as such I have dealt with them within the same Decision. I have, however, set out three separate Decisions in the interests of clarity.
5. The appeals relate to planning applications that were not determined by the Council within the prescribed period. The Council have subsequently issued statements for the purposes of these appeals highlighting that it would have refused the applications for planning permission. The Council's concerns are that each of the proposals would cause harm to the character and appearance of the area and would also fail to provide acceptable living conditions for future occupiers. I have had regard to the Council's statements in framing the main issues.
6. A number of planning applications relating to the development of the appeal site have been previously approved but not yet implemented. These permissions include; 3/19/0382 – erect replacement dwelling and garden studio after demolition of existing, 3/18/2946 – erect a new dwelling and garage on the south side of the land, 3/18/2273 – demolish existing dwelling and erect a new dwelling, 3/18/2054 – demolish existing dwelling and erect new dwelling, 3/15/1189 – replacement dwelling. The Council have also resolved to grant permission for application reference 3/20/2260/FUL – sever plot, demolish remaining part of existing dwelling and erect replacement dwelling, subject to a satisfactory legal agreement. I shall turn to these later.

Main Issues

7. The main issues are:
 - the effect of the proposals on the character and appearance of the area; and
 - whether or not the proposals would provide satisfactory living conditions for future occupiers with particular regard to outlook and light.

Reasons

8. The appeal site is part of the land occupied by the dwelling known as Smugglers Hyde. The original dwelling was damaged by fire and has been partially demolished. The appeal site is situated along an un-made section of Brook Lane which, in the vicinity of the appeal site, is a narrow lane lined with mature trees and hedges and characterised by detached dwellings of various designs which are irregularly spaced. Dwellings in surrounding roads are visible from Brook Lane and the range of different orientations is clear. Dwellings along these roads have an apparently tighter urban grain with smaller plot sizes.
9. The scheme under Appeal A is to sever the original plot and to erect a bungalow with a basement which would front and be accessed from Brook Lane.
10. The Appeal B proposal also involves severing the original plot. The scheme would be for a three bedroomed dwelling set over a ground floor, first floor and basement floor. Once again access would be from Brook Lane.

11. The proposal submitted under Appeal C would once again involve the separation of the wider original plot. The proposal is for a two storey plus basement dwelling, accessed from Brook Lane, with three bedrooms and a car port.

Character and appearance Appeal A

12. The proposed dwelling would be single storey in nature and would be broadly rectangular in terms of its built form; the building would have a fairly narrow front elevation with a substantial depth behind it. The proposed materials would be consistent with the palette found within the area and would assimilate well within their context. The proposed dwelling would sit comfortably within its plot and, due to the diversity of design within the area, would appear as a different but sympathetic addition to the Brook Lane street scene.
13. The Council have expressed concern about the cumulative effect of this scheme and the other permissions which have been granted previously for the other side of the site should they be built out together. However, in relation to some of the previous permissions I am not certain that such an occurrence would be possible given their status; I will turn to this matter later. Nevertheless, in my view even if the permitted schemes for the adjacent portion of the site were constructed the proposed dwelling would not appear incongruous or visually jarring. The larger, two-storey, neighbouring dwellings would have a notably more traditional character and appearance and though the designs would undoubtedly be different the use of complementary materials such as soft red multi facing brick would ensure a sense of visual cohesion between the dwellings. Whilst the previously permitted dwellings would indeed be larger and would sit higher than the proposed dwelling in this case, the size of the plots and the layout of the buildings on site is such that the larger building would not appear overly large or dominant when viewed in the context of the proposed dwelling under this appeal.
14. The similarities, along with the fact that the buildings would sit within a context which has a mix of building designs, would ensure that the two dwellings would not appear visually incompatible.
15. For these reasons, I consider that the proposal would not cause harm to the character and appearance of the area. The proposal would, therefore, accord with Policy HE2 of the Christchurch and East Dorset Local Plan Part 1 Core Strategy (CS) which, amongst other things, seeks to ensure that new development is compatible with or improves its surroundings.
16. The development would also meet the expectations of The National Planning Policy Framework (The Framework) which promotes high standards of design and states that developments should be visually attractive and sympathetic to the character of the area.

Character and appearance Appeal B

17. The proposed dwelling would have the appearance of a two-storey building when viewed from the front and, in a similar way to Appeal A would extend significantly into the plot to the rear. The dwelling would have a shallow pitched roof with dormers of varying sizes with equally shallow pitched roofs. The scale and proportions of the roof line and dormers would appear disproportionately compressed.

18. The ground floor level of the front elevation would have a window to one side of the front door with a fairly large expanse of blank, featureless timber cladding to the other. The cladding would cover a single storey front projection which would overhang the side wall of the front elevation. These features would have the combined effect of creating an unbalanced and visually awkward dwelling which would not assimilate well within its context.
19. Should the schemes for the other side of the plot be constructed the incongruous nature of the proposed dwelling under this appeal would be further highlighted.
20. I note that the proposed dwelling would be partially screened by surrounding boundary treatments and planting. However, views of the dwelling would still be possible and the permanence of such boundary treatments cannot be guaranteed. In any event, this is not sufficient justification to permit a design which I consider would be of poor quality and would not mitigate the harm I have identified above.
21. Consequently, I consider that the proposal would cause harm to the character and appearance of the area. The proposal would, therefore, conflict with Policy HE2 of the CS insofar as it seeks to ensure that new development is compatible with or improves its surroundings. The development would also be at odds with The Framework which promotes high standards of design.

Character and appearance Appeal C

22. The proposed dwelling would appear as a two-storey dwelling and would have a traditional character and appearance. I concur with the views of the parties that the proposed dwelling would complement other buildings in the area and would sit comfortably within its context. However, my consideration of the status of previous permissions aside, I also share the concerns expressed by the Council and consider that were the permission granted under application reference 3/19/0382/FUL to be constructed the two dwellings would be sited exceptionally close to one another. As such the two buildings would appear cramped and would have the appearance of one overly large and poorly composed building.
23. Furthermore, the proposed car port would be sited alongside Brook Lane immediately in front of the principal front elevation of the proposed dwelling. The car port would interrupt views towards the proposed dwelling and would detract from and visually compete with the main elevation of the proposed dwelling. I consider that the siting of the car port is such that it would cause harm to the legibility of the proposed dwelling and add unsympathetic visual clutter.
24. The appellant has indicated that under planning permission references 3/18/2946/FUL and 3/18/2273/FUL a double garage is situated to the front of the dwelling which the Council considered acceptable as they held there was a precedent for outbuildings in the area. However, the plans in those schemes indicate that the proposed garage, though it would be set forward of the dwelling, would be offset and would not be sited directly in front of the proposed dwelling as is the case in this scheme.
25. I am also aware that the appellant had received previous advice from the Council regarding a suitable separation distance between a car port and a

proposed dwelling. Nevertheless, in my view the proposal would be harmful and guidance such as this given by a Council is not a determinative factor in my consideration of this appeal.

26. I note the appellant's suggestion that the proposal would be screened by hedging and that the garage would sit at a slightly lower level than the dwelling. However, these considerations are not sufficient to mitigate the harm I have identified.
27. Accordingly, in my view the proposal would cause harm to the character and appearance of the area and would be at odds with Policy HE2 of the CS which seeks to ensure that new development is compatible with or improves its surroundings. The development would also fail to meet the aims of The Framework in this respect.

Living conditions Appeal A

28. The proposed dwelling would be set over two floors with two of the three bedrooms and a bathroom occupying the basement level. One of the bedrooms would be lit by two light wells and would look onto the enclosing walls at extremely close proximity. The other bedroom would have access onto a small sunken terrace area via a door and a window. However, the terrace would be small and the openings would provide views into the terrace and directly towards the surrounding walls. As such, the outlook from these rooms would be seriously compromised and occupants would experience an oppressive sense of enclosure.
29. I note that Daylighting Calculations dated 11/2/21 state that the Average Daylight Factor (ADF) in the proposed bedrooms would be in excess of the 1% suggested for bedrooms by the 2011 Building Research Establishment (BRE) guidance Site Layout Planning for Daylight and Sunlight (SLP). However, for the first bedroom the value would be 1.01% and for the second 2.07%. In my view, though the figures do indeed appear to meet the expectations of the BRE guidance, the percentage of 1.01% is low and hovers around the acceptability threshold. I consider that, the relatively low levels of daylight are a further indication that the proposed dwelling would provide unsatisfactory living conditions for future occupiers.
30. I also note that the report states that the rooms would have a 100% view of the sky. However, for the reasons set out above this would not be sufficient to mitigate the harm I have identified.
31. I accept that the affected rooms at basement level would be bedrooms and the outlook from these rooms would be less important than those from the principal habitable living spaces. However, it is not for the planning system to dictate the way in which residents choose to utilise the accommodation within their homes and, given that two of the three bedrooms would be at this level, I consider that the harm to outlook would be notable.
32. Consequently, the proposal would fail to provide satisfactory living conditions for future occupiers with particular regard to outlook and light and would, thus, also fail to conform with The Framework which states that developments should create a high standard of amenity for existing and future users.

Living conditions Appeal B

33. The proposed dwelling would comprise accommodation over three floors with two bedrooms within the basement area. The layout of the basement floor would be identical to that under Appeal A. Thus the daylighting calculations and my assessment of them and views on the outlook which would be provided remain as per Appeal A.

Living conditions Appeal C

34. The proposed dwelling would have accommodation set out over three floors; a bedroom, two bathrooms and a study to the first floor, a living room, utility, WC and kitchen/dining/family room to the ground floor and a further two bedrooms and two bathrooms to the lower ground floor. Each of the lower ground floor bedrooms would look onto a fairly small sunken courtyard. One of the bedrooms would have an additional two windows into lightwells. The outlook from both of these bedrooms would principally be directly onto the small courtyard and the surrounding walls at fairly close proximity. In my view, this outlook would be dominated by the nearby walls and would be poor. Those occupying the rooms would experience a harmful and overwhelming feeling of enclosure.
35. The Daylighting Calculations report states that this proposed dwelling would receive an ADF of approximately 2.05% and 3.00% for the bedrooms on the lower ground floor. Though I accept that these figures exceed the 1% figure outlined by the BRE SLP and indications are that the rooms would receive a sufficient amount of daylight this would not be sufficient to mitigate the harm I have identified in respect of outlook.
36. Though, as with Appeals A and B, I note that the rooms would have a 100% view of the sky and would be bedrooms, for the reasons set out in relation to the other appeals I do not consider these factors sufficient to overcome the harm I have identified.
37. Consequently, the proposal would not provide satisfactory living conditions for future occupiers with particular regard to outlook and would not, therefore, accord with the expectations set out by The Framework in respect of amenity.

Other Matters and Planning Balance

38. I note the existence of a number of approved schemes on the site for the subdivision of the plot to create new dwellings. Though the appellant's evidence indicates that 3/19/0382/FUL and 3/18/2946/FUL were extant at the time the appeal was lodged it would seem to me that, given an absence of any evidence to the contrary, given the dates of the approvals (2018 and 2019) these permissions would now have expired. With the exception of two applications which I will discuss below, the other applications were approved a number of years earlier and I have not been provided with compelling evidence to indicate that these permissions remain extant.
39. One of the aforementioned exceptions is application reference 3/20/2260/FUL which the Council had resolved to grant permission for subject to a legal agreement at the time this appeal was lodged. However, the evidence before me currently indicates that though permission is intended it has not yet been granted.
40. The parties appear to be in agreement that application reference 3/15/1189/FUL to demolish the existing dwelling and erect a replacement

dwelling has had a number of pre-commencement conditions discharged and can therefore be considered to have commenced. As such, it is suggested that the permission remains extant.

41. However, the evidence before me suggests that these previous permissions have not been implemented due to a restrictive covenant which has been placed on the land. Therefore, I am not convinced, on the basis of the evidence before me, that any of these schemes are yet fully capable of implementation.
42. However, even if the other schemes were capable of being constructed the evidence submitted suggests that they are markedly different to the schemes before me. Several are for large single dwellings spanning the entire site as opposed to severing the plot and all would provide a different design, built form and internal arrangement than is proposed in the schemes before me. Therefore, the approved schemes differ significantly from the proposals before me and would not cause undue harm to the character and appearance of the area or fail to provide satisfactory living conditions for future occupiers with particular regard to outlook and light. Consequently, the existence of alternative planning permissions attracts limited weight as a fallback position.
43. I acknowledge that the dwelling would be in a location well served by existing facilities and infrastructure. I also recognise that each of the proposals would provide some, limited, benefits for example by providing a new dwelling on a windfall site to contribute to the provision of housing in the area and making efficient use of the land. I also acknowledge the economic benefits of engaging local professionals, trades and suppliers and the ongoing benefit of the occupiers of the proposed dwellings utilising local facilities. These benefits are, however, limited by the small scale of each of the proposals and must be considered in that context. Moreover, the examples of previous schemes have made it clear that these benefits could be achieved by other, less harmful, proposals.
44. In Appeal A I have found that the proposal would fail to provide satisfactory living conditions for future occupiers. That harm attracts substantial weight. The benefits of the scheme considered cumulatively attract only moderate weight. Accordingly, they do not outweigh the harm identified
45. Turning to Appeals B and C; I have found harm to the character and appearance of the area which attracts substantial weight. I have also found that the proposals would fail to provide satisfactory living conditions for future occupiers which attracts additional substantial weight. Accordingly it follows that the cumulative benefits of either scheme do not outweigh the harm identified.
46. I have noted a number of other issues raised. However, as each of the proposals is going to be dismissed for other reasons and the other concerns expressed do not have a direct bearing on the main issues, it is not necessary for these to be explored further as part of these appeals.
47. The application site is within the vicinity (within 5 km and beyond 400m) of Dorset Heathlands which is identified as a European Protected Site for the special interest of its heathland habitats and associated plant and animal species. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal,

either alone or in combination with other plans or projects. If I had come to a different conclusion, it would have been necessary for me to undertake an AA and give further consideration to the likely effectiveness of mitigation measures associated with the protected sites. However, as I am dismissing the appeals for other reasons, this has not been necessary.

Conclusion

48. The proposals would not accord with the development plan when it is considered as a whole and I have not identified any material considerations which indicate that any of the appeals should be allowed. For the reasons given above I conclude that the appeals should be dismissed.

L J O'Brien

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/D1265/W/21/3280452	Mr N Briant
Appeal B	APP/D1265/W/21/3280458	Mr N Briant
Appeal C	APP/D1265/W/21/3280470	Mr N Briant