
Appeal Decision

Site visit made on 21 February 2023

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th March 2023

Appeal Ref: APP/V1260/W/22/3305827
39 Nelson Road, Poole BH12 1ES

- 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 Axis 51 Developments Ltd against the decision of BCP Council.
 - The application Ref APP/22/00205/F, dated 14 February 2022, was refused by notice dated 22 April 2022.
 - The development proposed is plot severance, demolition of garage and erection of detached dwelling with associated access and parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site is within the Brunstead Road Conservation Area. As required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have paid special regard to preserving or enhancing the character or appearance of a conservation area.
3. The Council's decision notice cited two reasons for refusal, numbered 3 and 4, and these were concerned with the impact of the proposal upon nationally and internationally important habitat sites. However, the Council's officer report also referred to other reasons for refusal. One was concerned with the impact of the proposal upon the character and appearance of the area in that the scheme was considered to neither reflect nor enhance the local patterns of development, and would fail to reveal the significance of the Brunstead Road Conservation Area. The other reason was that the proposal had failed to mitigate harm to nearby trees. At the appeal stage both local residents and the appellant commented on the impact of the proposal upon the character and appearance of the area, including the impact on the conservation area and upon trees. Having regard to the circumstances in this case, including that I have a statutory duty to assess the effects of the proposal on the conservation area, I have considered these matters as a main issue.
4. The reasons for refusal numbered 3 and 4 were based upon the harm to the Dorset Heathlands and to Poole Harbour habitat sites. The former is

an extensive network of lowland heaths nationally and internationally protected as a Site of Special Scientific Interest (SSSI), as a Special Protection Area (SPA), Ramsar, and Special Area of Conservation (SAC). The appeal site is also within the zone of influence of the Poole Harbour SSSI, SPA and Ramsar, protected for birds and habitats. The Council indicated that these reasons for refusal could be overcome by the payment of financial contributions for avoidance and mitigation measures for these habitat sites. During the appeal process the appellant provided a Unilateral Undertaking (UU) securing payment of the required financial contributions, which the Council have approved. Having regard to this, the appeal turns on the matters of character and appearance.

Main Issue

5. Consequently, the main issue in this case is the effect of the development upon the character and appearance of the area, having particular regard to whether the proposal would preserve or enhance the character or appearance of the Brunstead Road Conservation Area.

Reasons

Character and Appearance

6. The appeal site comprises part of the rear garden of 39 Nelson Road (No 39), which is a large detached house that has been converted into flats. This house is positioned within a generous plot, and the deep rear garden extends steeply downhill towards Brunstead Road. A tall fence on top of a high retaining wall has been erected to separate the appeal site from No 39. Along Brunstead Road there is a mature laurel hedge and a gated vehicular access leads onto a short drive to the existing garage. There are tall trees within the garden and there is a network of pathways and terraces, with parts of the garden being used for miscellaneous storage, including for building materials.
7. A distinct feature of the area is the presence of large, detached houses within generous plots that contain numerous trees. The houses are mostly two storeys, some with rooms in the roofs, with Arts and Crafts and Voysey styles being prevalent. This, and the repeated palettes of materials creates a high quality, cohesive appearance to the area. In addition, the generous plot sizes and the presence of numerous tall trees and the mature hedgerows that define many of the property boundaries, including along the public footways, creates a spacious, verdant appearance. There is a bosky nature to this residential area, with the trees and hedges providing a sense of enclosure and privacy to the houses as well as delineating the public and private realms. These qualities are all part of the significance of the conservation area.
8. The proposed dwelling would be positioned close to Brunstead Road, partly on the footprint of the existing garage. Although the house would be two storeys and have an appearance that references the Arts and

Crafts style, it would nevertheless be a discordantly harmful addition to the conservation area. The close proximity of the house to the highway would make it conspicuously intrusive in an area whereby a prevailing characteristic is that the houses are set well back from the road behind front gardens.

9. The house would be smaller than many of the others nearby and would have a pitched roof, as well as being set into the hillside. Nevertheless, these measures would fail to mitigate the incongruous prominence of the proposal in the street scene. The house would be so close to the public footway that there would be little opportunity to provide landscaping to soften the impact of the dwelling, and the absence of such landscaping would serve to exacerbate its discordant appearance. There are other properties in the conservation area that are close to the road and that do not have hedged boundaries. However, a characteristic of the properties near the appeal site along Brunstead Road is the dominance of evergreen hedgerows delineating the public realm. In such a context the absence of such planting would serve to exaggerate the incongruous appearance of the proposal.
10. There are a variety of plot sizes nearby, albeit most are of generous dimensions. In an area characterised by large detached houses positioned within generous, maturely landscaped plots, the proposed dwelling would harmfully erode the spacious and sylvan appearance of the area. Not only would the house be very close to the highway, but its primary elevation and front door would face into the site rather than over the highway as is the case with nearby houses, thereby exaggerating the discordant appearance of the proposal. Furthermore, the position of the house at the bottom of the slope close to the highway would give it a constricted and constrained appearance when compared to the spacious positioning of nearby houses within their plots.
11. The appellant has drawn my attention to the presence of other buildings close to the highway, such as the existing garage on the site and another at 11 Brunstead Road. However, in both cases these buildings have a clear ancillary relationship to the host dwellings and are much smaller in size and height than the proposed house. In addition, the garages are set back behind evergreen hedgerows that not only partly screen the buildings but contribute to the verdant appearance of the area. As such these cases do not form a binding precedent for allowing the appeal.
12. The retention of the trees within the site would be a positive aspect of the proposal as they would maintain the verdant setting and skylines that are such a feature of the conservation area. I saw from my site inspection that the pine within 41 Nelson Road had been felled, and that works to crown raise the trees that are growing within the appeal site had occurred. The trees within the site contribute to the distinct verdant character and appearance of the conservation area. Where trees are present that make an important contribution to an area, there is a

balance to be struck between achieving the development of the site and retaining the trees, including considering their impact upon the living conditions of future occupiers.

13. The combination of the steep topography, the elevated position of the trees, their evergreen nature, and their proximity to the house, along with the size of the plot, would be such that future occupiers would experience shading and light loss for much of the day. It cannot be assumed that future occupiers would be comfortable with the presence of the trees and the impact they would have upon living conditions. Having regard to the size and proximity of the trees to the house, including that much of the garden would be impacted by the trees, there would also be an ongoing requirement upon future occupiers to manage and maintain the trees, which some may not wish to undertake.
14. Furthermore, the presence of trees is a consideration that should inform site layout and design, and a positive aspect of the proposal is that the trees within the site would not be felled. BS5837 – Trees in Relation to Design, Demolition and Construction makes some allowance for disturbance to the roots and crowns of trees during construction works. Trees self-optimize to their context and in this case that would include a root system that accommodates the steeply sloping nature of the hillside. The impact of the slope upon these trees has not been assessed in any detail with regard to root protection areas. This would be necessary in this instance because of the proximity of the trees to the dwelling, and also because a variety of other works are proposed, such as retaining walls, ground and levelling works, and hard surfaces, all of which could impact upon the trees.
15. One of the trees within the site is a yew, and these trees can accommodate a degree of heavy pruning. The yew would be very close to the dwelling and the use of contiguous piles would help to minimise some of the impact of the works occurring within its root protection area. Notwithstanding this, the appellant's tree consultant advises careful implementation of the development. Given this, and the circumstances of this case, including the totality of works to both the canopies of the trees and within the root protection areas, there remains a number of uncertainties about the impact of the development upon nearby trees. Consequently, I am not convinced that conditions would be sufficient to protect nearby trees during construction, nor ensure their long-term health and vitality, and thereby the positive contribution they make to the character and appearance of the conservation area.
16. The National Planning Policy Framework (the Framework) requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. In this case the proposal would lead to less than substantial harm given the size of the development compared to that of the conservation area as a whole. Nevertheless, this harm carries considerable weight, and the Framework requires that this harm

must be weighed against the public benefits of the proposal. The Council have referred to the provision of an additional home being a public benefit. However, such a benefit would not outweigh the significant harm that would arise to the conservation area.

17. For these reasons the proposal would unacceptably harm the character and appearance of the area and would neither preserve nor enhance the character or appearance of the conservation area. The fundamental harms arising from the proposal would not be mitigated by the suggested conditions. The harm to the conservation area would not be outweighed by public benefits, and consequently the scheme would fail to accord with the Framework.
18. The proposal would also be contrary to Policies PPO1, PP27 and PP28 of the Poole Local Plan (2018) (LP). These policies seek amongst other things, sustainable development, a good standard of design that reflects or enhances local patterns of development, including layout, siting, height, scale and landscaping, and that plot severances should only occur where there is sufficient land to enable a type, scale and layout of development which would preserve or enhance the area's residential character, thereby reflecting objectives of the Framework. Nor would the proposal accord with LP Policy PP30, which requires heritage assets to be preserved or enhanced, including enhancing the significance of the site within the street scene and wider area.
19. The parties have also referred to LP Policy PP02 in consideration of the case. Amongst other things this policy is concerned with the strategic delivery of housing. The proposal would deliver an additional dwelling, but this would not outweigh the harm that arises from the proposal and the conflict with other LP policies.

Other Matters

20. The appeal site is within 5km of the Dorset Heathlands, which are an extensive network of lowland heaths nationally and internationally recognised and protected. These heathlands host priority habitats and species, including birds, lizards and snakes as well as other typical species of lowland heathland, wetlands and dunes. In addition, the site is also within the zone of influence of the Poole Harbour habitat sites, which are nationally and internationally important for rare, vulnerable and migratory birds, and their supporting habitats of seagrass, shallow inshore waters, intertidal sediments, saltmarsh, and reedbeds. The Dorset Heathlands and Poole Harbour are under significant pressure from increased public access and use, and a net increase in the number of dwellings and occupiers in the area, would increase the pressure upon these important habitat sites.
21. The Council has produced Supplementary Planning Documents (SPD) (ie the Dorset Heathlands Planning Framework SPD (2020) and the Poole Harbour Recreation SPD (2020)), detailing a strategy for the avoidance and the mitigation of impacts of new residential development upon these

important sites. These require that a contribution is made towards mitigating the impact of additional residents, including measures to control access, monitoring, and mitigation of the sites, and reflect the objectives of LP Policy PP32 which seeks amongst other things to only permit development that would not have an adverse effect upon the integrity of nationally, European and internationally important habitat sites.

22. Given the location of the proposed dwelling, future occupiers would be likely to impact upon the sites having a significant effect upon their integrity. The Conservation of Habitats and Species Regulations (2017) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority. The appellant provided a UU during the appeal, securing a contribution towards the mitigation measures identified in the SPDs, and the Council has approved the document. I will return to this matter below.
23. Local residents have raised a number of concerns, including increased parking pressure, the impact upon wildlife, the loss of views, and the creation of a precedent. As regards the latter concern, each scheme is considered on its individual merits, and of the other concerns, following my findings on the main issue, I have no need to consider them further.

Planning Balance

24. The Council acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites. Consequently, Paragraph 11 of the Framework is engaged, whereby planning permission should be granted unless the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.
25. The provision of an additional dwelling would be a social benefit arising from the scheme as it would contribute towards the supply of housing. There would also be a small, time-limited economic benefit arising from the construction phase of building an additional home. Future occupiers would contribute to the local economy, and would live close to a variety of services and facilities.
26. Weighing against these benefits would be the significant environmental harms arising from the development of the site. The proposal would deliver an additional high-quality home, but in doing so would cause significant harm to the character and appearance of the area, as it would neither preserve nor enhance the character or appearance of the conservation area. LP Policies PP01, PP27, PP28, and PP30 are broadly consistent with the Framework, as the Framework also requires development to be sympathetic to local character, and to sustain and enhance the significance of heritage assets.

27. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. The adverse environmental impacts in this case amount to environmental harm which carries substantial weight, and this thereby significantly and demonstrably outweighs the economic and social benefits, when assessed against the policies in the Framework as a whole. It follows that the presumption in favour of sustainable development does not apply.
28. Had I reached a different conclusion on the main issue, it would have been necessary for me to undertake an Appropriate Assessment and give further consideration to the likely effectiveness of mitigation and avoidance measures. In doing so I would have had regard to the UU. However, as I am dismissing the appeal for other reasons this has not been necessary.

Conclusion

29. The scheme would cause unacceptable harm to the character and appearance of the area, and it would neither preserve nor enhance the character or appearance of the conservation area. The suggested conditions would not overcome this harm. The harm to the conservation area would not be outweighed by public benefits. The scheme would fail to accord with the Framework, and would conflict with the development plan taken as a whole, and there are no considerations that outweigh this conflict. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR