



Appeal Decisions

Site visit made on 4 April 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal A Ref: APP/V1260/W/22/3307293

318 Windham Road, Bournemouth BH1 4QU

- 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 Mr A Hooper, Churchfield Investments Limited against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 7-2022-6682-T, dated 13 May 2022, was refused by notice dated 19 August 2022.
 - The development proposed is change of use from an office to a 1 bedroom dwelling.
-

Appeal B Ref: APP/V1260/W/22/3312367

Building to North East of 318 Windham Road, Bournemouth BH1 4QU

- 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 Mr A Hooper, Churchfield Investments Limited against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 7-2022-6682-U, dated 21 September 2022, was refused by notice dated 24 November 2022.
 - The development proposed is change of use from an office space (E) to 1 x residential dwelling (C3(a)) with associated access and parking.
-

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for change of use from an office to a 1 bedroom dwelling at 318 Windham Road, Bournemouth BH1 4QU in accordance with the terms of the application, Ref 7-2022-6682-T, dated 13 May 2022, subject to the 4 conditions in the attached schedule.

Appeal B

2. The appeal is allowed and planning permission is granted for change of use from an office space (E) to 1 x residential dwelling (C3(a)) with associated access and parking at Building to North East of 318 Windham Road, Bournemouth BH1 4QU in accordance with the terms of the application, Ref 7-2022-6682-U, dated 21 September 2022, subject to the 5 conditions in the attached schedule.

Preliminary Matters

3. As set out above there are two appeals on this site. They differ only in the detail of the design of windows. I have considered each proposal on its

individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

4. In relation to Appeal A, I have used above the description of development from the application form as neither party has provided written confirmation that a revised description has been agreed.
5. Both appeals have been accompanied by a signed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 to mitigate the impacts from future occupiers on the 'Dorset Heathlands' which comprises the Dorset Heathlands Special Protection Area (SPA), Dorset Heathlands Ramsar Site, Dorset Heaths Special Area of Conservation (SAC) and Dorset Heaths Special Area of Conservation (Purbeck and Wareham) and Studland Dunes. This is a matter I will consider later.

Main Issues

6. The main issues are:
 - whether the living conditions of future occupiers of the proposed developments would be acceptable with particular regard to the size of the dwellings, outlook, provision of daylight and outdoor space;
 - the effect on the living conditions of the occupiers of 318 Windham Road from Appeal B; and,
 - the effect of the developments on the integrity of the SPA and SAC.

Reasons

Living conditions of future occupiers

7. The appeal proposals seek the change of use of the building to a residential dwelling. The site is located within a predominately residential area positioned in very close proximity to No.318 Windham Road and its associated outdoor space. It also adjoins The Legion forming No.143 Ashley Road.
8. The appeal building is currently served by several obscure glazed windows, particularly to the upper floors, and by a small outdoor space and single parking area. It has a small footprint but comprises 3 floors of accommodation.
9. The Nationally Described Space Standards (NDSS) prescribe minimum gross internal floor areas and storage. However, the NDSS does not prescribe minimum floor areas or storage for three-storey one-bedroom dwellings of the nature proposed and the failure to meet the technical requirements does not necessarily mean that living accommodation would be unacceptable or sub-standard.
10. Despite the small footprint, the proposed dwellings would benefit from accommodation arranged over three floors. Over the three floors the dwellings would benefit from a separate kitchen/dining area, lounge, and bedroom with associated shower and toilet. This would provide adequate facilities for a likely single occupier. In addition, the proposed plans demonstrate that adequate space would be provided to meet basic furniture needs and provide suitable circulation space.

11. The proposals would also benefit from outdoor space to the rear of the units. Whilst it would be enclosed by fencing, the adjoining building and appeal building, restricting its receipt of direct sunlight, the area would be usable for sitting out and would be private. In addition, the appeal site is located in very close proximity to a large area of open space and recreation facilities off Ashley Road that is easily accessible and that occupiers could make use of. In light of this, and in the absence of a specific development plan policy to provide outdoor space of a certain size or standard, I find that the outdoor space in both appeals would be adequate for future occupiers.
12. Although several of the windows to the dwellings are proposed to be obscure glazed in order to protect the living conditions of neighbouring occupiers, it would only be the middle floor in Appeal A that would not benefit from a clear glazed window. Whilst I appreciate that the proposed louvres to the lounge window in Appeal B would restrict casual horizontal and downward outlook to protect the living conditions of neighbouring occupiers, it would allow adequate upward outlook through a clear glazed window.
13. Whilst there would be a high level of obscure glazing, and regardless of whether the first-floor window to the front elevation of Appeal B would be obscure glazed or not, both dwellings would benefit from adequate outlook from non-obscured windows, doors and the lantern.
14. Given the number of windows, doors and lantern serving the dwellings which allow light to penetrate each floor, both proposals would benefit from adequate daylight and provide a light living environment.
15. For the above reasons, I conclude that the living conditions of future occupiers of the proposed developments would be acceptable with particular regard to the size of the dwellings, outlook, provision of daylight and outdoor space. Accordingly, the proposals comply with Policies CS21 and CS41 of the Bournemouth Local Plan: Core Strategy Adopted October 2012 (LP), Section 3.7 of the Residential Development A Design Guide (2008) and the National Planning Policy Framework (the Framework). Amongst other things, these seek to ensure that development respect residents' amenities, and provides a high standard of amenity to meet the day-to-day requirements of existing and future occupiers and users.

Living conditions of 318 Windham Road from Appeal B

16. The first-floor window to the proposed front (north-west) elevation that would serve the proposed lounge is currently obscure glazed. However, the proposed plans for Appeal B show this window with clear glazing. The window is in close proximity to the windows in the rear elevation of No. 318 Windham Road. In light of the close relationship and clear glazing to the window facing towards No.318, this would result in an unacceptable degree of overlooking and loss of privacy to the occupiers of No.318.
17. However, this window is already obscure glazed with the building benefiting from planning permission for use as an office with associated activity. In light of this and given that a condition securing the obscure glazing of this window would result in a similar relationship to that already existing, this would remove any unacceptable degree of overlooking and loss of privacy.

18. I conclude that the proposal forming Appeal B would not harm the living conditions of the occupiers of 318 Windham Road. As a result, the proposal complies with Policies CS21 and CS41 of the Bournemouth Local Plan: Core Strategy Adopted October 2012 (LP), Section 3.7 of the SPD and the Framework, insofar as they seek to ensure, amongst other things, that development respect residents' amenities and provide a high standard of amenity to meet the day to day requirements of existing and future occupiers.

Integrity of the SPA and SAC

19. The appeal site falls within the 5km zone of influence around the Dorset Heathlands Special Protection Area (SPA) and Dorset Heaths Special Area of Conservation (SAC), which overlap with various other environmental designations. Both are extensive areas of land including lowland heathland, wetlands and dunes. The SPA and SAC are protected via the Habitats Directive, which is incorporated into domestic statute via the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). I am statutorily required to take appropriate steps to conserve biodiversity.
20. The SPA and SAC are designated in order to safeguard ecology and the habitat upon which various species are reliant, notably in this instance Dartford warblers, nightjars, woodlark, hen harriers, merlin, sand lizards and smooth snakes. Ecology can be disturbed by recreational activities, predation from domestic pets, and from habitats being unavailable from time to time by consequence.
21. Whilst not a precise correlation, the potential for adverse effects increases with the number of dwellings nearby, including within a wide zone of influence (and therefore the aggregate, or in-combination, implications of a number of smaller developments may be significant). Habitats Regulation 63(1) states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an appropriate assessment'. I have sought to apply that requirement reasonably and proportionately relative to the nature and context of the development proposed.
22. The avoidance or mitigation of effects resulting from increased residential development would be achieved by the provision of alternative greenspace, to redirect those who would have made use of the SPA and SAC recreationally, and via associated monitoring and management arrangements. The contributions that individual schemes are expected to make in that context are established at a strategic level, such that a proportionate contribution is made in each instance (the former being funded by Community Infrastructure Levy receipts). Signed Unilateral Undertakings for each appeal have been submitted by the appellant and accepted by the Council. These would provide a financial contribution of £428, plus a £75 administration fee, per dwelling towards ecological monitoring and management arrangements in that context, consistent with the Council's approach. I have consulted with Natural England which has confirmed that the payment is sufficient to avoid adverse impacts on the integrity of the European Sites and their features.
23. Chapter 4 of the Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document April 2020 (SPD) indicates the approach that it establishes towards ecological mitigation has been arrived at in conjunction between Dorset Council, Bournemouth, Christchurch and Poole Council with Natural England, the appropriate nature conservation body under

Regulation 63(3). Consequently, subject to appropriate financial contributions being made, I am satisfied that likely significant effects to the ecological integrity of the SPAs would be avoided.

24. Paragraph 56 of the Framework and Regulation 122 of the CIL Regulations sets out three tests that planning obligations must meet. Firstly, they must be necessary to make the development acceptable in planning terms, secondly, they must be directly related to the development and thirdly they must be fairly and reasonably related in scale and kind to the development.
25. I am satisfied that the financial contribution is necessary to make the proposed development acceptable in planning terms. The obligation would contribute towards the provision of mitigation towards wardening, raising awareness and monitoring. Given the location of the appeal site within 5km of the protected sites, I consider that the contribution is directly related to the appeal scheme. In addition, as it relates to a standard charge based on the scale and type of residential development proposed, I consider it to be fairly and reasonably related to the proposal in scale and kind.
26. For the above reasons, I am satisfied that the planning obligation would meet the requirements of the Framework and the CIL Regulations.
27. In conclusion, I am satisfied that with the proposed avoidance and mitigation measures in place, secured through the CIL Regulations and planning obligations, the developments would not have an adverse effect on the integrity of the SPA or SAC. The developments would therefore comply with the Conservation of Habitats and Species Regulations 2017. They would also accord with LP Policy CS33 and the SPD which, amongst other things, seek to ensure that development will not lead to an adverse effect on the integrity, directly or individually, of the Dorset Heaths international designations.

Other Matters

28. The Council refer to a dismissed appeal decision on the site for alterations and conversion of the appeal property to a dwellinghouse. However, I have no plans and very little information about the detailed circumstances in relation to that appeal. I have therefore determined the current appeal on its merits.
29. I have taken into account the concerns of a neighbouring occupier at Flat 2 The Legion regarding noise from building works and people within the building. However, I have limited information before me to demonstrate that there would be inadequate insulation or sound proofing once occupied and in any case such matters are covered by other legislation.

Conditions

30. I have had regard to the tests in the National Planning Policy Framework in relation to conditions, and the planning conditions suggested by the Council. In relation to both appeals, in addition to the standard time condition, it is necessary for a condition to confirm the approved plans in the interests of certainty. Further conditions are necessary to secure cycle parking facilities in the interests of sustainability, and the obscure glazing of windows in the interests of protecting the living conditions of nearby residents.
31. In relation to Appeal B, a further condition is necessary to ensure the provision of the louvres proposed to the lounge window in the interests of protecting the

living conditions of nearby residents. I have however amended the suggested wording in the interests of conciseness.

Conclusions

32. For the reasons given I conclude that both appeals should succeed.

C Rose

INSPECTOR

SCHEDULE OF CONDITIONS

Appeal A:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1061R4/101a Block and Location Plan;
 - 1061R4/100 Proposed Site Plan;
 - 1061R4/103 Proposed Floor Plans.
- 3) Prior to the first occupation of the building, details of a cycle store showing the site location, elevations and materials to be used in the construction shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle store shall be completed prior to the first occupation and shall be retained and maintained thereafter.
- 4) Prior to the first occupation of the building, the proposed obscure glazed windows shown on drawing 1061R4/103 Proposed Floor Plans shall be obscure glazed to a level equivalent to Pilkington Level 3 or above (or the nearest equivalent standard) and shall be permanently retained as such.

Appeal B:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1061R4/101a Block and Location Plan;
 - 106R4/100 Proposed Site Plan;
 - 1061R4/103b Proposed Floor Plans;
 - 106BR/108 Proposed Elevations.
- 6) Prior to the first occupation of the building, details of a cycle store showing the site location, elevations and materials to be used in the construction shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle store shall be completed prior to the first occupation and shall be retained and maintained thereafter.

- 7) Prior to the first occupation of the building, the windows to the proposed front (north west) elevation and upper floor proposed side (south west) elevation serving the en-suite as shown on drawing 1061R4/103b Proposed Floor Plans shall be obscure glazed to a level equivalent to Pilkington Level 3 or above (or the nearest equivalent standard) and shall be permanently retained as such.
- 8) Prior to the first occupation of the building, the louvres to the lounge window to the proposed side (south west) elevation as shown on drawing 1061R4/103b Proposed Floor Plans and detailed on drawing number 1061/BR/108 Proposed Elevations shall be installed and permanently retained as such.

*****END OF SCHEDULE*****