
Appeal Decisions

Site visit made on 1 August 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 August 2023

Appeal A Ref: APP/V1260/W/22/3307952

6 Burton Road, Poole BH13 6DU

- 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 Bayview Developments (South) Ltd against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref APP/22/00545/F, dated 23 April 2022, was refused by notice dated 5 August 2022.
 - The development proposed is the subdivision of the plot and construction of a detached house to the rear of the existing building.
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Appeal B Ref: APP/V1260/W/23/3314779

6 Burton Road, Poole BH13 6DU

- 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 Bayview Developments (South) Ltd against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref APP/22/01351/F, dated 30 September 2022, was refused by notice dated 1 December 2022.
 - The development proposed is the subdivision of the plot and construction of a detached house (amended scheme).
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Application for costs

3. In respect of appeal A, an application for costs was made by Bournemouth, Christchurch and Poole Council against Bayview Developments (South) Ltd. This application is the subject of a separate Decision.

Procedural Matters

4. There are two appeals concerning the site. 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. Both proposals involve the subdivision of the plot and the construction of a detached house of a contemporary design in broadly the same location. However, the dwelling proposed in appeal B has a smaller footprint and mass, and it does not include a garage.

5. Refusal reasons 4 and 5 on the Council's decision notice for appeal A, and refusal reasons 3 and 4 on the Council's decision notice for appeal B refer to the absence of acceptable mitigation in relation to the internationally designated sites of importance for biodiversity at the Dorset Heathlands and Poole Harbour. A Unilateral Undertaking pursuant to section 106 of the Town and Country Planning Act 1990 (UU) dated 30 May 2023 has been provided for each proposal. They each include obligations for financial contributions towards strategic access, management and monitoring (SAMMs) amounting to £485 for the Dorset Heathlands and £172 for Poole Harbour. It is stated that the sums have been paid and the Council has not disputed the content of the UUs. Therefore, the refusal reasons relating to these matters fall away. I shall consider the UUs later in my decision.

Main Issues

6. The main issues are the effect of the proposals on:
- The character and appearance of the area, with particular regard to the significance of the Branksome Park Conservation Area (CA) and trees;
 - The living conditions of future residents having regard to the provision of outdoor space (appeal A only), and ;
 - If harm arises, whether this is outweighed by other material considerations.

Reasons

Character and appearance

7. The CA covers a predominantly residential area of Poole, the significance of which is derived from a combination of distinguishing factors. Chief amongst them is the underlying historic layout comprising large, heavily wooded residential plots. This results in a particularly spacious grain of development for an urban area, with buildings set within generous grounds. Significant concentrations of mature trees together with other established vegetation give the area a verdant sylvan character. These natural features take precedence over the largely secluded built form. These qualities are emphasised in the Branksome Park Conservation Area Character Appraisal and Management Plan, Supplementary Planning Guidance 2006 (SPG).
8. The SPG describes the area¹ within which the appeal site sits as running along the edge of the CA and notes a marked difference from one side of the road to the other. It goes on to confirm that the area is characterised by large plots with abundant landscaping forming a low density pattern of development.
9. The appeal site comprises a single detached dwelling within a large, heavily treed plot towards the north-eastern edge of the CA. As such, it positively contributes towards the pattern of development and positive attributes of the CA identified above. I have a statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.

¹ Western Road (Upper) and Burton Road, Section 5.5, page 39 SPG

10. Both proposals would subdivide the present plot and introduce a detached four bedroom, two storey dwelling to the rear of 6 Burton Road. Policy PP28(2) of the Poole Local Plan, November 2018 (LP) stipulates that plot sub-divisions will only be permitted where there is sufficient land to enable a type, scale and layout of development to be accommodated in a manner which would preserve or enhance the area's residential character. The parties disagree as to whether the proposals would do so.
11. In both cases a large dwelling would be introduced onto an area of the plot where there is an absence of buildings. The physical presence of the respective new dwellings and their associated hard standing would not only reduce the spaciousness of the site but would also displace some of the existing greenery. Furthermore, the resultant plot size of the dwellings proposed would be smaller than most of those in this part of the CA, and the coverage with built form would be notably greater. Whilst I have had regard to the analytical block plan² provided by the appellant which gives some indications of site area and footprint coverage, this analysis is selective and includes sites outside of the CA.
12. These factors would undermine the pattern of development and green and spacious qualities that are intrinsically important to the character and appearance of the CA. I acknowledge that in comparison to average standards both proposals would constitute low density development. Nevertheless, the specific context of the appeal site within the CA possesses a layout that is more sensitive to increases in built form. Owing to this it has limited capacity to successfully assimilate additional development as the effects are more far-reaching. The sensitivity of the CA is highlighted by the SPG³, which states that the current fine balance between built form and trees and other landscaping could very easily be upset by new developments. I concur.
13. Hence, the proposed alterations to the plot configuration and consequent increase in the concentration of development in both cases would harmfully dilute the special qualities of the CA and weaken its coherence. Moreover, such adverse development at the edge of the CA would blur the discernible distinction between areas within the CA, and those outside of it.
14. The topography of the appeal site, form of both proposals and established tree cover would mean that neither proposed dwelling would be readily apparent from the street. I accept this would limit the degree of harm, but I am not aware that my statutory duty mentioned above is confined to the consideration of public viewpoints. Moreover, some limited glimpses via the driveway, and some views from other dwellings and gardens are likely to be possible. As such, the proposals would fail to enhance or better reveal the significance and value of the site within the street scene and wider setting as required by policy PP30 of the LP.
15. Moreover, given the nature of the layout, either development proposal would be likely to increase the probability of further such increases in built form in the generous grounds of other plots within the CA. This is more than a generic concern given the persistent planning history that has been drawn to my attention relating to the appeal site and of the adjacent site at 4 Burton Road. Such incremental additional development could cumulatively significantly alter

² SK01, Appellant's Final Comments dated 11 June 2023

³ Code 1, page 26, SPG

the underlying layout that forms a fundamental component of the CA. As such, this is a factor that contributes towards the overall harm.

16. My concerns in this respect are illustrated to an extent given that the appellant seeks to rely upon a development for an additional dwelling permitted at 22 Balcombe Road and 2 Burton Road⁴ in support of the proposals. I accept that the proximity and nature of this development within the CA has some similarities with the appeal proposals and is therefore relevant to my determinations. However, I judge that development to represent a harmful dilution of the pattern of development within the CA, and therefore rather than justifying the appeal proposals it embodies the concerns outlined above. In this respect I disagree with the findings of the Council officer relating to that case that have been highlighted. It follows that this development would not weigh in favour of the proposal, rather the opposite.
17. This example, together with the uncharacteristically small residential plot created at 4a Burton Road by way of a certificate of lawfulness and permitted development, reinforce my concerns regarding the vulnerability of this aspect of the CA. Instead, I give greater weight to the recent appeal decisions for residential development at 4 Burton Road⁵. Although these proposed a greater number of dwellings, they concerned the sub-division of the adjacent site. Both Inspectors found that the resulting layout would not reflect local patterns of development and my approach is broadly consistent with those findings. Although I accept one additional dwelling would not result in the same extent of harm, harm would result nonetheless.
18. In combination these factors would erode the way in which the CA would be experienced and therefore, the proposals would fail to preserve the significance of the CA. However, given their relatively moderate scale, each scheme would result in less than substantial harm.
19. Paragraph 202 of the National Planning Policy Framework (the Framework) states that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Paragraph 199 of the Framework stipulates that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
20. Both proposals would provide an additional energy efficient dwelling in a reasonably accessible location and in an area where there is a shortfall in supply. The proposals would also result in the more efficient use of land, general encouragement for which is found in the Framework. These amount to important public benefits. However, the extent of benefit accrued from the single dwelling proposed in either case would be limited. Therefore, in each case, these matters attract moderate positive weight.
21. Nevertheless, heritage assets are an irreplaceable resource and permanent harm would result. Overall and in either case, I do not consider the sum of wider public benefits sufficient to outweigh the great weight attributed to the

⁴ Planning reference APP/21/01677/F

⁵ Appeal decisions APP/V1260/W/22/3291070, APP/V1260/W/22/3302593, both dated 29.3.23 & APP/V1260/W/20/3247649 dated 28.7.20

less than substantial harm caused to the CA. Conflict therefore arises with the historic environment protection policies in the Framework.

22. The Council raises further concerns in relation to the design and materials of the proposed dwellings. Both schemes propose a contemporary style house that would possess clean lines and a flat roof. The information provided indicates that No.6 has permission for remodelling development that would display a similar form. Moreover, the SPG recognises that there is varied architecture within the CA and the supporting text for the LP⁶ refers to Branksome Park being more diverse in appearance, such that it can accommodate innovative contemporary designs under certain circumstances. On this basis, I do not consider that further harm would result from the proposed building type, and the details of external materials could be adequately addressed by a planning condition.
23. The appeal site is covered by an area tree preservation order. In both cases an arboricultural impact assessment has been prepared that identifies significant trees, their root protection areas and protective fencing measures during development. The information also covers the general approach to services and trenching, which the Council consider insufficient. Nevertheless, based on the report and supplementary commentary in this respect provided by the appellant in both cases, I am satisfied that appropriate methods could be employed so to avoid harm to the roots of protected trees. The details of which could be secured by planning condition.
24. Even so, the absence of harm in these respects would not negate the harm to the significance of the CA that I have found. Accordingly, overall, I find that the proposals would be detrimental to the character and appearance of the area as they would fail to preserve or enhance the character and appearance of the CA. Therefore, they would conflict with policies PP27, PP28 and PP30 of the LP which, amongst other things, seek development that reflects and enhances local patterns of development and preserves and enhances the historic environment and character of the area.

Living conditions of future occupants (in relation to appeal A only)

25. Policy PP27(1)(d) of the LP requires development to provide satisfactory external and internal amenity space for new occupiers. The policy wording does not specify a standard by which to assess this, likewise the supporting text provides little guidance.
26. The appeal A scheme would provide approximately 900m² of garden space to the side and rear of the proposed house. In addition, the dwelling would have terraces and patios at ground and first floor levels. This would allow a choice and ample opportunities for sitting out and gardening. I have seen little substantive evidence that the quantum of external space provided would be unsatisfactory.
27. The Council raises concerns that the presence of tree canopies would overshadow the garden and restrict its usability. Undoubtedly, the trees would cast some shade, but it does not follow that would always be unwelcome. They would also influence the range of activities and plants that might successfully grow but this would be balanced by their contribution as attractive natural

⁶ Paragraph 9.25

features that would enrich the visual and experiential qualities of the external space.

28. Furthermore, a daylighting assessment⁷ has been provided that was conducted in line with the Building Research Establishment (BRE) 209 2022 'Site Layout and Planning for Daylight and Sunlight'. It concludes that the proposed development would achieve over 2 hours of direct sunlight over 50% of the garden, which would meet the minimum BRE recommendations. I have not seen substantive evidence that would undermine those findings.
29. Accordingly, I find that the proposal in appeal A would provide satisfactory external amenity space for future occupiers. It follows that I find no conflict with policy PP27 of the LP in this respect.

Other matters

Other considerations

30. The Council states that they can demonstrate a 4.1 year housing land supply, which reflects a moderate shortfall in delivery relative to the housing need in Poole. I shall return to this in the overall planning balance.
31. The proposals would make more efficient use of the land to provide an additional dwelling. This would assist in boosting the overall supply of housing in the area in a reasonably accessible location. I attribute moderate positive weight to these benefits.

Internationally designated sites of importance for biodiversity

32. The appeal site is located within 5km of the lowland heaths in south east Dorset, covered by several European designations⁸ recognised by the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). They provide habitat for rare heathland species, including the Dartford warbler. Similarly, the site is relatively near to Poole Harbour, a natural harbour designated as a Special Protection Area and Ramsar site for its nature conservation importance to rare, vulnerable and migratory species of birds. Both have suffered adverse effects on the protected habitats and species due to recreational pressure.
33. The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document, April 2020 (SPD) indicates that any net increase in residential development within 5 kilometres will have an adverse impact on the Dorset Heathlands and sets out the Council's approach to mitigating the adverse effects of new housing development. Similarly, the Poole Harbour Recreation 2019-2024, Supplementary Planning Document, April 2020 (PHR) sets out the Council's mitigation strategy to counter the adverse effects of increased recreational activities in and around the harbour causing direct or indirect disturbance to protected birds.
34. Policy PP32 of the LP confirms that development will only be permitted where it would not lead to an adverse effect upon the integrity of European and internationally important sites. Amongst other things, it refers to the mitigation

⁷ Appendix E, Appellant's Grounds of Appeal

⁸ Including Dorset Heathlands Special Protection Area and Ramsar Site, and the Dorset Heaths Special Area of Conservation.

requirements set out in the SPD and PHR, which include financial contributions towards SAMMs.

35. The respective signed and dated UUs contain planning obligations that secure a financial contribution towards SAMMs of £485 for the Dorset Heathlands and £172 for Poole Harbour. The Council do not dispute that these amounts would accord with the established mitigation frameworks in the SPD and PHR. I am satisfied that the obligations in the UUs meet the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended).
36. In the absence of other significant concerns, it would have been necessary to consult Natural England under Regulation 63(3) of the Habitat Regulations and complete an appropriate assessment. However, given the harm found in relation to the first main issue, I consider this would be unnecessary as it is unlikely to be determinative to the outcome of the appeals.

Planning balance and conclusion

37. The Council is unable to demonstrate a five year supply of deliverable housing sites. In these circumstances, paragraph 11d) of the Framework deems the policies which are most important for determining the application to be out of date. The presumption in favour of sustainable development means that planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, or (ii) that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
38. Having undertaken the heritage balance under paragraph 202 of the Framework, I have found the proposals would result in unjustified harm to a designated heritage asset. Footnote 7 to paragraph 11 of the Framework confirms that this amounts to a clear reason for refusing the development proposed for the purposes of paragraph 11d)(i). As such, paragraph 11d)(ii) does not apply. The completion of a positive appropriate assessment under the Habitat Regulations would not have made a difference in this regard.
39. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁹. In relation to the first main issue, I have found the proposals would conflict with policies of the LP which are broadly consistent with the Framework, and so carry full weight. Consequently, the proposals would be contrary to the development plan as a whole. There are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above I conclude that both appeals should be dismissed.

Helen O'Connor

Inspector

⁹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.