



Appeal Decision

Site visit made on 16 August 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2023

Appeal Ref: APP/V1260/W/22/3313536

Land adj 43 Sandecotes Road, Poole BH14 8PA

- 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 Gerald Maurice Gallop and Mr Jonathan Howard Gallop against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref APP/22/00535/F, dated 21 April 2022, was refused by notice dated 29 June 2022.
 - The development proposed is the erection of a detached dwelling with associated access and parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Refusal reasons 4 and 5 on the Council's decision notice 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 9 June 2023 has been provided. The UU includes obligations for financial contributions towards strategic access, management and monitoring (SAMMs) amounting to £428 for the Dorset Heathlands and £152 for Poole Harbour. The Council states¹ that it is satisfied that the financial contributions would address the refusal reasons concerning habitat mitigation. Therefore, the refusal reasons relating to these matters fall away. I shall consider the UU later in my decision.

Main Issues

3. The main issues are the effect of the proposal on:
 - The living conditions of future residents having regard to sunlight and daylight;
 - The character and appearance of the area, with particular regard to protected trees, and;
 - If harm arises, whether this is outweighed by other material considerations

¹ Letter dated 13.7.23

Reasons

Living conditions of future occupants

4. Policy PP27(1) of the Poole Local Plan, November 2018 (LP) sets out general criteria necessary in order to achieve good design. This includes that development would not result in a harmful impact upon amenity for future occupiers considering levels of sunlight and daylight and that it provides satisfactory external and internal amenity space for new occupiers.
5. The appeal site contains a notable number of protected trees, and these would lie to the east, west and south of the proposed dwelling. The submitted tree protection plan² shows that the rear garden would contain 4 Scots pine trees (2 of which are at a height of 20m or more) and an oak tree approximately 14 metres in height. The proposed deck area, living room, dining area and bedroom 1 would face towards some or all of these trees.
6. The Daylight Study³ provided tests the proposed design against BS8206 Lighting Design for Buildings. It concludes that the proposal would meet the recommended % minimum average daylight factor value for respective habitable rooms as set out in the Building Research Establishment (BRE) 'Site Layout and Planning for Daylight and Sunlight 2011'. The results show that the predicted average values for bedroom 1 and the living room would be at the recommended minimum % average daylight factor, with bedroom 2 and the kitchen marginally in excess of it.
7. It is stated that the model used was, in part, based upon the submitted tree survey. This identified that trees T5-8 (Scots pine) and T9 (oak) are at a life stage described as early mature. The tree schedule defines this as a tree in the middle third of its safe, useful life, still with significant capacity for future growth.
8. Paragraph 130a) of the National Planning Policy Framework (the Framework) confirms that part of achieving well-designed places requires planning decisions to ensure that developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development.
9. The evidence indicates that a considerable number of the protected trees that would be close to the dwelling have a significant capacity for future growth. On the basis of the Daylight Study presented, it is not shown that this has clearly been accounted for in the assessment. The increasing height of the Scots pine trees, and wide spreading nature of the oak tree could therefore have a greater impact on light levels to the dwelling in the future.
10. Moreover, the tree information supplied indicates the removal of two protected trees⁴ but states that new tree planting is proposed. Indeed, two new trees are shown on plan DS/29722/AC, one of which is a Black tupelo in the south-eastern corner of the appeal site, which when established could potentially affect levels of light within the dwelling. Examining the model images in Figure 1 of the Daylight Study, it is not clearly demonstrated that full account has been taken of replacement planting as part of the assessment.

² Drawing number DS/29722/AC

³ Prepared by HDS Greentech, Appendix F, Appellants' Appeal Statement

⁴ T4 Lawson cypress & T10 Scots pine, paragraph 5.3, Arboricultural Impact Assessment & Method Statement prepared by Treecall Consulting Ltd

11. In this context, given that some principal rooms are at or are marginally above the recommended minimum value, I am not assured that this would remain the case for the lifetime of the development. Instead, it is probable that with the passage of time, some principal rooms would fail to maintain the minimum % average daylight factor. Consequently, future occupants would be likely to have to rely upon artificial lighting during daylight hours owing to insufficient natural light. This would unreasonably compromise the day to day living conditions of future occupants.
12. The Daylight Study goes on to assess overshadowing to external areas and states that the dominating shading factors are the existing trees rather than the proposed development. As such, the proposed development is anticipated to have a lesser overshadowing issue than the trees it is proposed to replace. Be that as it may, that finding provides little insight as to the likely suitability of the proposed garden space for future occupants in respect of daylight and more specifically direct sunlight levels. No specific reference is made to the minimum BRE recommendations in this regard.
13. The predicted overshadowing diagrams for 21 March (Equinox) show considerable shadowing of the decked area and rear garden, with the majority of the space shaded throughout the day. Likewise, it is not clear that the diagrams take account of the likely future growth of existing early mature trees, nor proposed new tree planting. Furthermore, the proposed car port would be present on some of the external area denoted.
14. The considerable shading effect would include the more private areas of the grounds close to the house, where it is foreseeable that future residents would be likely to want to sit out and spend prolonged periods. Notwithstanding that tree crowns would not entirely block light, the extent of overshadowing would be likely to be the dominant factor in the conditions experienced by future users of the space. Whilst such shady conditions and a woodland feel may be preferred by some people, it is undoubtedly commonplace for residents to seek to enjoy sitting out in the warmth and qualities of direct sunlight, with the option of controlling shade by other means. The limited extent of direct sunlight in the probable most intensively used areas of the garden would not provide that option and consequently, would impair the quality of experience for many people.
15. The shading of the trees would also be likely to curtail other common domestic garden activities such as the drying of washing and cultivation of a wide range of plants and produce.
16. Therefore, despite a reasonable quantum of external space being available, for the reasons outlined I am not persuaded that the provision would meet the satisfactory standard required by policy PP27 of the LP.
17. In making my determination on this main issue I have had regard to the Proposed Sun Analysis Diagram, drawing no. 205. This shows evidence that the appellants have attempted to exploit passive winter sun and solar shading from the trees in summer as part of the design. The appellants' also highlight the large areas of glazing that form part of the design. Nevertheless, based on the daylight study evidence and given the constraints posed by the presence and concentration of protected trees, I am not assured that the proposal would have sufficient capacity to minimise the need for artificial light as generally advocated in PP37 of the LP.

18. Accordingly, I find that the proposal would result in unacceptably harmful living conditions to future occupiers having regard to levels of daylight and sunlight. Therefore, the proposal would be contrary to policies PP27 and PP37 of the LP.

Character and appearance

19. Sandecotes Road is within an established residential area characterised by 2-2.5 storey, detached houses within generous plots. Some variety of architectural styles and materials are in evidence, but coherence is maintained owing to the broadly regular size of plots and set back of dwellings from the road. An important component that enriches the character and appearance of the area is the considerable number of mature trees. These are evident in front, between and in some cases, over the rooftops of the built form and result in a strongly verdant and leafy setting.
20. The appeal site is generally devoid of built form and contains a notable number of impressive trees, which can be seen from Sandecotes Road. The height of some specimens means the canopies of many are also visible from Gleneagles Avenue. Consequently, the site makes a significant positive contribution to the attractive treed setting for the surrounding pattern of built form. It is unsurprising then that trees at the appeal site have been made the subject of a tree preservation order⁵.
21. The proposal would introduce a detached two storey dwelling, the height and siting of which would respect the prevailing height and set back of nearby dwellings. The orientation and size of the footprint does vary somewhat from the majority of housing. However, the assortment of form and building type means that there is a margin of tolerance whereby such variances could be successfully assimilated into the street scene. My observations were that the proposal would be within this margin of tolerance, which is reinforced by the photographic and descriptive analysis of other housing nearby provided by the appellants⁶. Moreover, my findings in this respect are further reinforced by the comments in support from The Society of Poole. However, I note that this was qualified by the impact upon trees being found to be acceptable, and it is to this matter to which I now turn.
22. Policy PP27(1)(b) of the LP states that development should respond to natural features on the site and should not result in the loss of trees that make a significant contribution, either individually or cumulatively, to the character and local climate of the area. It is in this respect that I consider the proposal would ultimately be unsuccessful for the following reasons.
23. Firstly, the proposed access from Sandecotes Road would be close to the trunk of a large protected Yew tree (T2) and as such would introduce additional hardstanding into the root protection area (RPA). The Council's tree officer points out that the proximity of Sandecotes Road and footpath west of the tree is likely to have influenced its root distribution, which is not disputed by the appellants' arboricultural consultant. Hence, additional hardsurfacing to the east would be likely to have a disproportionate impact.
24. Moreover, the proposal would exceed the recommendations of BS5837:2012 section 7.4 that permanent hardsurfacing should not exceed 20% of any existing unsurfaced ground within the RPA. The appellants acknowledge that in

⁵ Reference 79/2001, confirmed 11.3.2002

⁶ 5.15-5.29 Appellants' Appeal Statement

this case, the hardsurfacing would equate to approximately 35%⁷ coverage. Notwithstanding that Yews generally may be more tolerant of drought, there is little substantive evidence to demonstrate that this would warrant permitting an incursion into the RPA significantly higher than the upper limit recommended. This is especially given that the default position in BS5837:2012 is that structures should be located outside of RPAs of trees to be retained.

25. As such, I am not convinced that the proposal would avoid harm to the protected Yew, which is described as early mature, and therefore would otherwise be reasonably anticipated to grow further and have a long life. Jeopardising the long term retention of the readily visible and attractive specimen would undermine an important natural feature.
26. Although some alternative configurations for the driveway are referred to, the appellants have confirmed⁸ that these do not form part of the appeal, and I have determined the proposal on the plans before me.
27. Secondly, given the unsatisfactory relationship outlined in the first main issue, it is probable that tension would arise between the future occupants of the dwelling and the continued presence and growth of at least some of the protected trees. This would be likely to result from future occupants seeking to increase the amount of direct sunlight to the dwelling and garden. As such, it is foreseeable that there would be pressure to reduce or remove some protected trees.
28. Moreover, given the height and proximity of some of the trees to the proposed dwelling, it is also foreseeable that future occupants would be apprehensive that falling branches could damage the property and/or pose a safety risk to occupants. The appellants' arboricultural evidence states that Scots pines have a habit of lower branches dying off and shedding⁹. Trees T3 and T7 are both tall Scots pine with a crown height of approximately 5.5m and 8m respectively¹⁰ that would be in close proximity to the house. Given this configuration, such a concern would have greater magnitude than more typical complaints of natural detritus falling from trees that are more removed from a dwelling.
29. Accordingly, I am not persuaded that such concerns would be without foundation and therefore, could not necessarily be easily dismissed. As such, the proposed development would be likely to give rise to complaints that have sufficient traction to either compromise the longevity and/or natural shape of the closest trees. This would be detrimental to the present attractive tree cover at the site.
30. Whilst it is highlighted by the appellants that moves to reduce or remove protected trees by householders can often be successfully resisted, it is preferable that development avoids giving rise to such undesirable relationships in the first instance.
31. The appellants provide an explanation, proposed foundation plan, details and method statement of the specialist engineering solution involving helical pile

⁷ Paragraph 3.1, Arboricultural Appeal Statement dated 19.12.22, Appendix F, Appellants' Appeal Statement

⁸ Paragraph 5.66, Appellants' Appeal Statement

⁹ Paragraph 3.4, Arboricultural Appeal Statement dated 19.12.22, Appendix F, Appellants' Appeal Statement

¹⁰ Tree Schedule, Arboricultural Survey, Appendix C, Appellants' Appeal Statement

systems they intend to use during the construction of the proposal¹¹. On the basis of this, I accept that it would be possible to avoid harm to the roots of trees T3 and T5-9 despite the proposed encroachment of the development into their RPAs.

32. Nevertheless, it is probable that future occupants may wish to make alterations and additions to the property and grounds over the lifetime of the development. The permitted development rights for householders set out in the Town and Country Planning (General Permitted Development) Order 2015 (as amended) grant consent for minor development that the Government deems normally reasonable to proceed without further restriction. I am doubtful that such construction methods would be diligently observed in those circumstances, which could risk root damage to the trees. Although a condition could be imposed to remove permitted development rights to ensure that the impact on trees is thoroughly considered, in practice this would place an onerous burden on future occupants with the very real prospect that mundane domestic extensions, alterations and outbuildings would be resisted. To my mind this is symptomatic that the constraints of the trees means that the development would not function well over the lifetime of the development contrary to paragraph 130 a) of the Framework.
33. Reference is generally made to other dwellings in the area being close to trees. It is also put to me that the proposal represents an improvement relative to the previously refused scheme¹². Be that as it may, these factors would not address or overcome the harm that I have identified.
34. I am invited to draw a comparison between the appeal proposal and a recent approval for a dwelling at 9 Withingham Road¹³ within a heavily treed plot in a conservation area. However, that site is a considerable distance from the appeal site, and given the individual characteristics of land and trees, there are inevitably differences between the proposed designs as well as the species and number of trees involved. As such, the similarities are broad. It follows that this reduces the weight I can attribute to this matter. Therefore, it carries limited positive weight but would not lead me to a different outcome on the specific merits of the case before me on this main issue.
35. Therefore, I find that the proposal would not adequately respond to the protected trees on the site which make a significant positive contribution to the qualities of the area. For the reasons outlined, the proposal would fail to fully safeguard the health and longevity of the trees for the lifetime of the development and consequently, would lead to an erosion of the sylvan character and appearance of the area. Accordingly, the proposal would be contrary to policy PP27(1)(b) of the LP in this respect.
36. Refusal reason 1 on the Council's decision notice also cites policies PP2 and PP28 of the LP. PP2 is a high level strategic policy outlining the amount and broad location of development supported by the LP. The Council does not object to the principle of further residential development in this location, and I see no reason to disagree. Policy PP28 allows residential proposals involving plot severances or plot sub-divisions subject to there being sufficient land to

¹¹ Proposed Foundation Plan, Drainage and Building Section Drawing 206, Greenfix Method Statement for installation of Geoweb Tree Root Protection System and Geoweb Tree Root Protection (TRP) System, Appendix F, Appellants' Appeal Statement.

¹² Planning reference APP/21/00761/F

¹³ Planning reference APP/22/01020/F. Appendix E, Appellants' Appeal Statement

enable a type, scale and layout of development in a manner which would preserve or enhance the area's residential character. My concerns do not relate to the quantum of land, nor an undermining of residential character, rather they relate to the likely impact on the natural features on the site. Consequently, I do not find a conflict with these policies of the development plan.

Other matters

Other considerations

37. The Council states that they can demonstrate a 4.1 year housing land supply¹⁴, which reflects a moderate shortfall in delivery relative to the housing need in Poole. I shall return to this in the overall planning balance.
38. The proposal 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. Furthermore, some economic benefits would flow from the construction of the dwelling, and economic and social benefits would be likely to derive from future activity of the occupants. Nevertheless, the extent of such benefits accrued from a single dwelling would be small, and therefore, I attribute limited positive weight to them.

Internationally designated sites of importance for biodiversity

39. The appeal site is located within 5km of the lowland heaths in south east Dorset, covered by several European designations¹⁵ 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.
40. 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.
41. 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 requirements set out in the SPD and PHR, which include financial contributions towards SAMMs. The signed and dated UU contains planning obligations that secure a financial contribution towards SAMMs of £428 for the Dorset Heathlands and £152 for Poole Harbour. The Council do not dispute that these

¹⁴ Page 4, Council's delegated report

¹⁵ Including Dorset Heathlands Special Protection Area and Ramsar Site, and the Dorset Heaths Special Area of Conservation.

amounts would accord with the established mitigation frameworks in the SPD and PHR. I am satisfied that the obligations in the UU meet the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended).

42. 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 main issues, I consider this would be unnecessary as it is unlikely to be determinative to the outcome of the appeal.

Planning balance and conclusion

43. 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.
44. Irrespective of the requirements of the Habitat Regulations, in relation to the main issues I consider that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. This is because there would be permanent harm caused to the living conditions of future occupants. Furthermore, I am not persuaded that the proposal would not threaten the long-term health of protected trees at the site, which in turn would adversely dilute the character and appearance of the area. The Framework¹⁶ stipulates that planning decisions should ensure that developments create places with, amongst other matters, a high standard of amenity for future users and be sympathetic to local character, including the landscape setting.
45. As I find that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, the presumption in favour of sustainable development does not apply.
46. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹⁷. In relation to the main issues, 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 the appeal should be dismissed.

Helen O'Connor Inspector

¹⁶ Paragraph 130c) & f)

¹⁷ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.