



Appeal Decision

Site visit made on 17 November 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2023

Appeal Ref: APP/V1260/W/23/3320130

84 Kings Ave, Christchurch BH23 1NB

- 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 Sayer against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 8/21/1061/FUL, dated 1 November 2023, was refused by notice dated 7 March 2023.
 - The development proposed is sever plot – erect new dwelling, garages and alterations/additions to the existing dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Sayer against Bournemouth Christchurch and Poole Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appellant contends that the Environment Agency (EA) Flood Zones are not consistent with the situation on the ground and as a result the proposal falls within Flood Zone 1. However, any alterations to the Flood Zone Mapping are a matter for the EA and outside of the scope of this appeal. In determining this appeal, I must have regard to the published evidence of the Flood Zones currently contained in the Flood Maps produced by the EA.
4. During the course of the appeal, and following wider advice from Natural England, the Council advised that due to the appeal sites location within the catchment area of the River Avon Special Area of Conservation and Ramsar Site, the proposal should be subject to the Conservation of Habitats and Species Regulations 2017. I will return to this matter below.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character and appearance of the area; and
 - whether the appeal site is a suitable location for the proposed development having regard to the risk of flooding.

Reasons

Character and Appearance

6. The site is located off Kings Avenue on a bend in the road before turning into Glendowe Avenue. The site is occupied by a bungalow with space in the roof served by a front dormer window. There is a linked-detached garage to the side of the plot that benefits from a sizable frontage parking area and large rear garden. To cater for the bend in Kings Avenue the dwellings at this end of the road benefit from generally wide plots off narrower frontages.
7. The immediate area is characterised by a mix of bungalows, dormer bungalows and two storey dwellings mainly constructed from red brick and render under tiled or slate roofs. With the exception of the appeal property and No.92 Kings Avenue that are set back further within their plots, the dwellings generally follow a fairly consistent building line to both sides of the road. The dwellings in the immediate area benefit from off-street car parking to their frontage with some dwellings benefitting from integral garages or garages to the side of the host dwelling.
8. The appeal proposal would extend the existing dwelling through provision of a first floor with roof above, extension to the rear and provision of a double garage to the front of the dwelling. The proposal also comprises a new two-storey dwelling in place of the existing garage with a new integral garage projecting forward of the dwelling. The dwellings would be finished with black stock bricks, render and slate roof tiles.
9. Although I appreciate the desire to position the buildings to seek to follow the established building line and recognise the hard surfaced nature of a number of frontages and provision of some landscaping, the proposal would result in the provision of flat roof garages forward of the main dwellings. By reason of their position and design, they would be prominent in the street scene, out of character with the form of development in the area and would provide an uncharacteristic transition between the existing building lines.
10. The position of the garage forward of the new dwelling, in combination with the dwellings narrow form, lower height and projection forward of No.84, would result in a plot size and form of development that is smaller than the prevailing plot size. This would be at odds with the built form at this end of Kings Avenue. As a result, and even with landscaping, the proposed dwelling would appear cramped and out of character with the prevailing area.
11. I acknowledge the use of hipped roofs and brick, render and slate materials to match the wider area. However, the use of black bricks would not be characteristic and would further emphasise that the proposal would be out of character with the wider area. I note however the appellants agreement to materials being controlled by condition should I be minded to allow the appeal.
12. I have had regard to the comments from the appellant regarding the history of the site and plot division. However, this does not overcome the concerns raised above with regard to the proposal resulting in a form of development and plot size that is uncharacteristic of the area as now developed.
13. In light of the above, I conclude that the appeal proposal would have a harmful effect on the character and appearance of the area. As a result, the proposal is contrary to Policies HE2 of the Christchurch and East Dorset Local Plan Part 1 -

Core Strategy (April 2014) (CS) and saved Policy and H12 of the Borough of Christchurch Local Plan (March 2001) (LP). Amongst other things, these state that the design of development must be of a high quality, reflecting and enhancing areas of recognised distinctiveness and that residential development is appropriate in character, scale, design and materials to the immediate locality.

Flood Risk

14. The appeal site is located within Flood Zones 2 and 3 as defined by the Environment Agency and within the Christchurch Level 2 Strategic Flood Risk Assessment 2019. The National Planning Policy Framework (the Framework) advises at paragraph 159 that inappropriate development in areas at risk of flooding should be avoided, by directing development away from areas of highest risk.
15. Paragraph 162 of the Framework states that the aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Similarly, Policy ME6 of the CS seeks to steer new development away from those areas at highest risk of flooding, applying the sequential approach to the location of development.
16. The appellant has not provided evidence in relation to the Sequential Test but has provided a Flood Risk Assessment (FRA) stating that the primary risk of flooding is tidal from the River Stour. Due to existing site levels, and the proposed finished floor level for the proposed dwelling, the appellant states that the proposed dwelling falls within Flood Zone 1 and that as a result a Sequential Test is not required.
17. Whilst I acknowledge the details regarding land levels provided with the proposal, contents of the FRA and further evidence from the appellant regarding predicted flood levels, there is no doubt that parts of the appeal site fall within Flood Zones 2 and 3 as defined by the EA. As set out in the procedural matters above, I must make a decision based upon the current EA flood risk classification. Moreover, the Planning Practice Guidance (PPG) states at paragraph 023¹ that 'Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. Application of the sequential approach in the plan-making and decision-making process will help to ensure that development is steered to the lowest risk areas, where it is compatible with sustainable development objectives to do so, and developers do not waste resources promoting proposals which would fail to satisfy the test.' As a result, the Sequential Test should be applied to sites that present a greater risk than those within areas in Flood Zone 1 and should be applied when any part of the site is at risk of flooding.
18. The appellant further states that the proposal should be in Flood Zone 1 due to the presence of flood defences. However, I note that the flood defences do not extend along the full extent of the river close to the appeal site and I have little information in relation to the ongoing maintenance of the flood defence to

¹ PPG Paragraph: 023 Reference ID: 7-023-20220825

demonstrate that it can be relied upon. Therefore, for the purposes of this appeal the site falls within Flood Zones 2 and 3.

19. As a result, the Sequential Test as set out in the Framework should be applied to the proposal. The PPG states in paragraph 029 that it is for the decision maker to consider if the Sequential Test is passed, informed by evidence provided by the applicant. It is noteworthy that the comments from the Environment Agency dated 18 October 2023 confirm that the Sequential Test needs to be satisfied despite their original comments stating that the dwelling would be safe from flood risk.
20. It is a requirement to apply the Sequential Test as the site has not, from the evidence before me, been allocated in the development plan and as the proposal is not classified as 'minor development'². In the absence of a Sequential Test from the appellant and given the evidence from the Council with regard to the availability of other sites within Flood Zone 1 within which a single dwelling could be provided, the proposal fails the Sequential Test and would not be located in an area which is considered suitable with regards to flood risk.
21. I note the appellants comments in relation to the lack of request for a Sequential Test, and to the finished ground floor level of the proposed dwelling being raised in height above modelled flood levels. However, these matters do not address the need for the proposal to ensure compliance with the guidance set out in the Framework. Moreover, that the development could be made flood resilient and resistant, does not negate the need to pass the Sequential Test.
22. It follows from the above that I conclude that the appeal site is not in a suitable location for the proposed development having regard to the risk of flooding. As a result, the proposal is contrary to Policy ME6 of the CS. The proposal would also be contrary to advice in the Framework and PPG at the time of this decision that collectively seek to steer new development to areas with the lowest risk of flooding from any source.

Other Matters

23. I have had regard to the improved energy efficiency of the proposed dwelling, inclusion of solar panels, to the economic benefits associated with the new build and the benefit from provision of a new dwelling for family members on brownfield land. However, these benefits are small given the scale of the proposal and as such do not outweigh the harm I have identified above.
24. I note the lack of harm to highway safety, drainage, living conditions of neighbouring occupiers, ecology, and to the provision of adequate car and cycle parking and access. However, these matters, the location of the site outside of a Conservation Area and Green Belt, and lack of objections from neighbouring residents are neutral in my consideration of the appeal.
25. I have considered the other examples of development put forward by the appellant, but I have limited information regarding them and in any case, they are some distance from the site in a different context and I am required to consider the proposal on its merits.

² PPG paragraph: 027 Reference ID: 7-027-20220825

26. The appellant raises a number of concerns regarding engagement with the Council during their consideration of the planning application. However, these are not matters which are for consideration in this appeal.
27. The Council cannot demonstrate a five-year supply of deliverable housing sites at present. Paragraph 11 of the Framework indicates that policies of the development plan, including the LP, may be out-of-date in these circumstances. As a result, the Framework indicates that permission should be granted, except in certain circumstances including where areas or assets of particular importance, such as areas at risk of flooding, provide a clear reason for refusing the development.
28. I have already concluded that development would conflict with the Framework policy relating to development at risk of flooding. This provides a clear reason for refusing the development proposed, in accordance with the presumption in favour of sustainable development set out at paragraph 11 of the Framework.
29. The appeal site falls within 5km of 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 (SAC). The appeal site also falls within the catchment of the River Avon Special Area of Conservation that is saturated with phosphates. However, as I am dismissing the appeal for other reasons, I do not need to consider these matters or the related duties under the Conservation of Habitats and Species Regulations 2017 further.

Conclusion

30. Overall, for the reasons given above, the proposal conflicts with the development plan taken as a whole. There are no other considerations, including the Framework, that indicate that a decision should be made other than in accordance with the development plan. The appeal is dismissed.

C Rose

INSPECTOR