



Appeal Decision

Site visit made on 8 November 2023

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2023

Appeal Ref: APP/V1260/W/23/3322132

Bournemouth Gardens Tennis Centre, Central Gardens, Bourne Avenue, BOURNEMOUTH, Dorset, BH2 6EY

- 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 Peter Elviss (West Hants Club) against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 7-2022-14544-M, dated 15 September 2022, was refused by notice dated 26 January 2023.
 - The development proposed is to replace 2 no tennis courts with 2 no padel courts with associated screens and pole mounted floodlights.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Policies in the development plan of central relevance are within the Bournemouth Local Plan: Core Strategy (Core Strategy). The National Planning Policy Framework (the Framework) is a material consideration.

Main Issues

3. The main issues are:
 - Effects on the character and appearance of the area bearing in mind the effects on designated heritage assets. If harm arises, whether the harm would be outweighed by the public benefits.
 - Effects in respect of flood risk.

Reasons

Character and appearance

4. The site sits within the Upper, Central and Lower Pleasure Gardens, and Coy Pond Gardens (the Gardens) which is included on English Heritage's Register of Parks and Gardens of Special Historic Interest in England (the Register) at Grade II. The Gardens are a designated heritage asset for the purposes of applying Framework policy.
5. The Grade II* Listed War Memorial sits within the Gardens in proximity to the site and is also a designated heritage asset. I am mindful of the special regard to be paid to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

6. Whilst not within it, the boundary of the Merrick Park and Talbot Wood Conservation Area (Conservation Area) is adjacent to the site and is a designated heritage asset.
7. Specific effects on the War Memorial and Conservation Area form part of the Council's case as part of arguments around group value, along with the Gardens. For the avoidance of doubt, I have considered the effects on the relevant heritage assets individually and cumulatively in line with the relevant duties.
8. No specific heritage impact assessment document has been produced. However, paying regard to Framework Paragraph 194, the evidence base, and the scale and nature of the proposal, the Appellant has provided proportionate information on the significance of heritage assets that is sufficient to understand the potential impact of the proposal. The list description for the Gardens is also comprehensive and helpful in forming a view about significance.

Significance and effects of the proposal

9. The Gardens were first included on the Register in 1986 and date from the mid 19th century. They cover an area of around 20.5 hectares and form a narrow, linear park running inland for approximately 3 kilometres along the course of the river Bourne. Collectively they are a good example of a series of public gardens created as part of the development of Bournemouth as a seaside resort.
10. The list description provides a detailed walk through of the Gardens. It is notable that the principal reasons for inclusion on the Register at Grade II relate to historic interest, intactness, group value, and social history. The site lies within the central gardens, in a stretch between Bournemouth Square in the south and where the A338 flyover passes in the north. The flyover is acknowledged by both parties as being an unfortunate post war intervention. I do not disagree; the flyover detracts from significance.
11. In this section of the Gardens, from south to north, public walkways either side of the river Bourne pass through gardens arranged with varying levels of formality before arriving at the tennis courts. Excluding the tennis courts, this part of the Gardens is a naturally appearing, yet curated experience and journey that is at the heart of what pleasure grounds are designed to provide. The experience is focused on greenery and the contrast of openness, natural enclosure provided by trees and vegetation, tranquillity, and public amenity, all within harmony. These aspects contribute positively to significance.
12. The list description notes that the existing tennis courts are late 20th century, but that courts were first introduced on the site during the late 19th century (although the original form and scale as somewhat unclear). Regardless, outdoor recreation (including tennis) is part of the social function of the Gardens and therefore contributes positively to significance. Nevertheless, the physical infrastructure associated with the tennis courts (fencing, hardstanding, flood lights, and winter tennis dome) detract from other aspects of significance, notably the curated garden experience described above.

13. Of particular relevance to this appeal is how the proposal would impact the Gardens as experienced from two locations. Firstly, the section of gardens immediately adjacent to the site to the south. Secondly, the walkways that pass the courts as one moves from the flyover, through the site in a southward's direction towards the section of gardens immediately to the south. Most of the following discussion relates to the fencing as experienced from these two areas. Effects arising from other aspects of the proposal (notably court floor material, lighting, and use) are addressed in a more general sense afterwards.
14. Starting with the effects on the gardens immediately adjacent to the site to the south. The flyover and hard infrastructure associated with the tennis courts (including dome) are part of the same visual backdrop when seen from this location, filtered at times through trees and other vegetation. The cumulative effect of these elements on the significance of the Gardens derived from greenery and natural appearance is detracting. This is both in terms of the appearance of hard physical infrastructure and the poor contrast it provides with surrounding greenery and the enclosure/visual separation that also results.
15. I acknowledge that the flyover and tennis dome are significant contributors to this effect. Nevertheless, the tennis courts also play a role as part of what are cumulative impacts. As Courts 1 and 2 are immediately adjacent to this section of garden, fencing is able to have a more direct impact as a consequence of proximity.
16. The padel courts would follow the orientation of the existing tennis courts (identified as Courts 1 and 2). Although semi-transparent, the wire mesh fencing that would form the side walls of the padel courts would be visible through the replaced fencing around the existing courts and provide an additional physical and visual feature of unnatural appearance. The filtering provided by the replaced fencing would not be effective in minimising the impact as it is in itself partially see through. Considering the chosen orientation, the clear end panels, only partially wrapping around the sides, would be ineffective in reducing the impacts that primarily come from the side of the proposed courts.
17. Overall, this element of the proposal would have a harmful impact on the Gardens as seen from the gardens immediately adjacent to the site to the south. Taken on its own, it would result in additional enclosure to the gardens (both an actual and sense of enclosure) that would negatively impact on the current sense of openness. It would also result in further visible fencing that would negatively impact on the natural appearance and greenery that is central to the significance of this part of the Gardens.
18. The proposal would also contribute towards an already negative cumulative effect discussed above by increasing the built presence of unnatural appearance closer to the section of gardens to the immediate south, where openness and greenery contributes towards significance. The existing detracting context provided by the flyover and tennis courts does not in itself justify further detraction, especially when assessing whether the proposal would conserve.

19. Turning to the effects from the walkways that pass the courts as one moves from the flyover, through the site in a southward's direction towards the gardens. The existing tennis court fencing already segregates this area, allowing movement between the flyover and the section of gardens to the south of the site mainly via walkways either side of the courts. Taking the Gardens as a whole, this has a detracting effect as it further reinforces the segregation between the sections of the Gardens provided by the flyover.
20. As experienced from this area, the physical barrier provided by the padel courts would increase the feeling of separation between the courts and the section of gardens immediately adjacent, reinforcing the segregating effect described above. The clear panels at the end of the courts and set in of the proposal within Courts 1 and 2 would reduce this effect. However, this generates a negative impact on the significance of the Gardens, albeit not of the same magnitude as from the gardens immediately adjacent to the site to the south.
21. Turning to matters other than the fencing, which I address in a general sense as my conclusions are relevant to experiences from multiple viewpoints (including the two discussed above). The material and colour of the court surfacing could be controlled by condition. The proposed lighting would be offset by the removal of the taller lighting poles around Courts 1 and 2 (although the effects in terms of luminance when in use are not evidenced). Nevertheless, this offsetting could be required by condition. As such, no impact on significance arises from these elements of the proposal.
22. The Council is non specific about what it refers to as 'other paraphernalia'. As such, I am unable to reach a meaningful conclusion on this element of their case, other than to say that general use of the padel courts is likely to be similar to that associated with the existing courts. As such, use would have no effect on significance.
23. In relation to the Listed War Memorial, this structure was listed in 2014. Paying regard to the list description, its significance is derived from its historic interest (a reminder of the impact of the First and Second World Wars) and architectural and artistic interest. It also has a group value which, along with the Gardens and town hall, make an important historic and civic contribution to the area.
24. The memorial is visually removed from the tennis courts by distance, natural barriers, and the layout in this part of the Gardens. It does not therefore fall within the setting of the tennis courts. As such, the proposal would not have a direct effect on significance. There would be an indirect effect by association as part of the collective experience on the area of gardens to the south of the site. This issue is more usefully discussed in the context of effects on the Gardens themselves, although I keep this in mind when drawing my conclusions.
25. The relevant boundary of the Merrick Park and Talbot Wood Conservation Area is outside of the Gardens to the north, with views from it over the site available from higher ground. The Council have advanced no specific arguments about how the significance of the Conservation Area would be impacted by the proposal in terms of setting. In addition, their points around group value are not as self evident as those relating to the memorial.

26. At my request, a copy of the Conservation Area Appraisal has been provided by the Council, with no additional commentary from them on it. As such, I have paid regard to the Appraisal in a general sense. Considering the nature of the proposal and the extent of the views afforded from higher ground, no impacts on the significance of the Conservation Area arise when regard is paid to setting.

Heritage balance

27. In light of the above discussion, harmful effects on the significance of nationally designated heritage assets arise principally as a consequence of the fencing associated with the proposed padel courts. The effects would be less than substantial, but nevertheless of considerable importance and weight.
28. The effect on the gardens immediately adjacent to the site to the south would be towards the upper end of less than substantial. This is primarily due to the proximity of the padel courts to this space. The effect on the walkways that pass the courts as one moves from the flyover through the site in a southward's direction would be at the lower end of less than substantial. This is primarily due to the degree of impact and because the effects are experienced from within the tennis court area itself.
29. In such circumstances, Paragraph 202 Framework advises that this harm should be weighed against the public benefits of the proposal. I have paid regard to the benefits advanced by the Appellant.
30. The proposal would be consistent with historic uses within the Gardens. As acknowledged above, outdoor recreation (including tennis) is part of the social function of the Gardens and therefore contributes positively to significance. Keeping pace with changing user demands is an important aspect of securing the continued longevity of the space for outdoor recreation. The proposal would enhance the recreational use of this part of the Gardens, and it therefore logically follows that a positive contribution to this aspect of significance would result.
31. Although the tennis centre operates based on membership, it is accessible to non members and is relatively cost effective. It can reasonably be said to offer affordable and centrally located sporting facilities that contributes towards the social and physical wellbeing of the community. Sustaining the public accessibility of the tennis centre is a public benefit of the proposal.
32. On a wider level, it would broaden participation in tennis by, in padel tennis, providing a version of the sport that is more accessible to a broader range of people than the traditional format in a southern and public park setting. This is evidenced through the Lawn Tennis Association information provided by the Appellant and the letter of support from the Sport and Recreation Development Team.
33. As discussed elsewhere, the removal of the taller lighting poles around Courts 1 and 2 would offset the proposed lighting. It offers a modest additional benefit arising from the existing poles being taller and therefore having a greater visual impact than the proposal.
34. I acknowledge the benefits, which I regard as public benefits and therefore deserving of positive weight in the Paragraph 202 balance. However, weighing them up, they are not sufficient to outweigh the harm that I have identified.

35. For the avoidance of doubt, the Council's representations relating to the downgrading of the listing status of the Gardens are vague and have no impact on the operation of the balance one way or another.
36. My assessment of the heritage balance above is based on the merits of the proposal. In terms of avoiding/minimising the effects (which I address as it forms part of the parties' cases) I agree with the Appellant's view that proposing the padel courts at a different site altogether would not be a viable alternative in light of staffing and other factors (paying regard also to the supplementary statement at Appendix D of the Appellant's statement). However, options may be reasonably available within the current site that have strong potential to avoid/minimise the level of less than substantial harm significantly.
37. The obvious option would be to locate the padel courts further away from the boundary with the gardens immediately adjacent to the site to the south. The Appellant's reasoning for rejecting this option due to risk of vandalism is unevidenced and does not address the question of how a staffed clubhouse during the day (when there is presumably more activity in the Gardens anyway) would assist with reducing the risks at night. In the absence of more detailed consideration on this matter, I cannot discount this option as a reasonable alternative in circumstances where moving the proposal even one court over has the potential to avoid/minimise the level of harm.
38. In conclusion on this main issue the proposal would have harmful effects on the character and appearance of the area bearing in mind the effects on designated heritage assets. The harm would not be outweighed by the public benefits. Consequently, there is conflict with the development plan for the area, notably Policies CS39 and CS41 of the Core Strategy that together aims to secure development of a high quality design that protects designated heritage assets.

Flood risk

39. That the site is located within Flood Zone 3 is a matter of common ground. The Framework (footnote 55) indicates that a site specific flood risk assessment should be provided for all development. This applies notwithstanding the classification of a tennis court as 'water compatible development' in Annex 3 of the Framework.
40. The Appellant's FRA (April 2023) was submitted with the appeal. In light of its technical nature, I see no material risk of unfairness arising from accepting the document at this stage. It considers flood risk from a range of sources. The report provides no justification for some of its key conclusions and is subject to a degree of internal inconsistency. Notably that the site is at very low risk of fluvial/tidal flooding, notwithstanding its position within Flood Zone 3, and ground water flooding is unlikely, in circumstances that the report acknowledges the potential for it considering the underlying geology.
41. The FRA also does not seriously engage in the required depth with the Council's key concerns about the effects of the solid screens and the risk that they would act as a barrier to water flow during more extreme flood events. Whilst I accept the risks to users of the courts is low, and reflected in the classification as water compatible development, the evidence does not adequately consider whether flood risk would be increased elsewhere.

42. As such, the FRA is neither credible nor fit for purpose. This is the case even paying regard to the principle that flood risk evidence should be proportionate to the degree of flood risk and scale, nature and location of development.
43. In light of the evidence presented and taking a precautionary approach to this issue in light of the harm I find elsewhere, I am unable to conclude whether the proposal would have acceptable effects in terms of flood risk. there is conflict with Policy CS4 Core Strategy in relation to flood risk.

Other Matters

44. I have paid regard to comments from other interested parties. Where they relate to the main issues they have been considered as part of my conclusions elsewhere in this decision. Other comments do not affect my conclusions on the main issues or the overall outcome of the appeal.

Conclusion

45. The proposal would have harmful effects on the character and appearance of the area bearing in mind the effects on designated heritage assets. Conflict with the development plan flows from this harm. In light of the harm, and acknowledging accordance with Policy CS31 Core Strategy, the conflict is with the development plan taken as a whole.
46. I am also unable to conclude whether the proposal would have acceptable effects in terms of flood risk. This is a conclusion reached on a precautionary basis considering the lack of suitable evidence that could reasonably be addressed. As such, for the avoidance of doubt, I have not factored this into my final planning balance. In effect, this matter has therefore had no impact on the outcome of the appeal.
47. The Framework is a material consideration and, in striving to achieve sustainable development, has policies that pull in both directions. This is not an uncommon situation. Supporting vibrant and healthy communities and fostering well designed places helps to meet social objectives. Protecting and enhancing the built and historic environment assists in meeting the environmental. I do not need to rehearse the detailed policies on these issues, including policies in Section 8 (Promoting healthy and safe communities), Section 12 (Achieving well-designed places), and Section 16 (Conserving and enhancing the historic environment). Nevertheless, Paragraph 199 is one of the more instructive policies when considering weight to be given to the impact on the significance of a designated heritage asset.
48. Weighing the issues up, in light also of the discussion around benefits elsewhere in this decision, there are no material considerations to indicate that a decision should be taken other than in accordance with the development plan.
49. For the reasons given above I conclude that the appeal should be dismissed.

D R McCreery

INSPECTOR