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## Appeal Decision

Site visit made on 31 October 2023

**by Adrian Hunter BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 February 2024**

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### **Appeal Ref: APP/V1260/W/23/3315468 7a Spencer Road, Poole BH13 7ET**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr P Briant of Brownseabuild Ltd against Bournemouth, Christchurch and Poole Council.
  - The application Ref APP/22/00577/F, is dated 27 April 2022.
  - The development proposed is demolish the existing dwelling and erect a replacement building containing 7 apartments.
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### **Decision**

1. The appeal is dismissed, and planning permission is refused.

### **Application for Costs**

2. An application for costs was made by Mr Mike McCabe on behalf of Canford Cliffs Land Society and the Branksome Park and Canford Cliffs Residents Association against Bournemouth, Christchurch and Poole Council. This application is the subject of a separate Decision.

### **Preliminary Matters**

3. Following the submission of the appeal against a failure to give notice within the prescribed period, the Council have clarified the position they would have taken had they determined the application. I have had regard to these submissions, in so far as they provide clarity in terms of the reasons why the Council would have refused planning permission had it done so. The main issues below are therefore informed by the Council's submissions.
4. During the appeal a signed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 was submitted to mitigate the impacts from future occupiers on the integrity of European Sites and their features. This is a matter I will consider later.

### **Main Issues**

5. The main issues in this appeal are:
  - The effect of the proposed development upon the character and appearance of North Canford Cliffs Conservation Area;
  - Whether the site is an appropriate location for new flatted development with particular regard to accessibility;

- The effect of the proposal upon the living conditions of No 7 and No 11 Spencer Road, with particular regard to overlooking, loss of privacy and overbearing; and
- The effect of the proposal on nationally and internationally protected sites.

## **Reasons**

### *Character and appearance*

6. The appeal site is located on the northern side of Spencer Road and lies within the North Canford Cliffs Conservation Area (NCCA). The appeal property comprises a substantial, predominately two storey detached dwelling, with single storey additions to the side and rear. The dwelling sits within an extensive plot and is sited a considerable distance back from the road, with the majority of the front area being laid to open lawn. Access is from Spencer Road, via a gated entrance. The boundaries of the site are well screened with mature trees and landscaping. Despite the landscaping, there are still views of the appeal dwelling from Spencer Road, although due to the position of the dwelling within the plot, it is not possible to appreciate the building in full.
7. The character of the NCCA in the vicinity of the appeal site consists mainly of detached dwellings, set within large plots. Within the immediate vicinity of the appeal site, dwellings are predominately two storey, although within the wider NCCA there are a number of buildings that are three and four storeys in height. The design of surrounding dwellings is varied, with a number having been redeveloped or extended over the years, but despite this, most are set within extensive, landscaped plots. Properties along the northern side of Spencer Road are generally set well back from the road, with large gaps between dwellings and mature landscaping to their boundaries. On the southern side, buildings are closer to the frontage, but still set back behind driveways and parking areas, and also benefit from considerable landscaping to the front. As a result, the overall character is one of spaciousness and low-density development, which, when combined with the mature landscaping, gives the area an open, verdant and sylvan feel. This is reinforced by the presence of street trees along parts of Spencer Road.
8. The Proposed development would occupy a similar footprint to the existing dwelling, however it would comprise a mix of two and three storeys, with the third floor being presented either within gable ends or within the roof space. The proposed building would have a considerably greater ridge height than the existing building and would be of a greater depth. As a result, it would be substantially taller than the existing dwelling and be of considerably greater bulk, scale and mass. Whilst the proposal would include the provision of a basement level, principally for car parking, I do not find that this element would be readily perceptible from public viewpoints.
9. Despite the position of the proposed development within the site, due to its considerable height and its additional bulk, scale and mass, the proposed development would be appreciably more visible within the street scene than either the existing development, or those around it. As such, it would introduce a form of development that, due to its height, bulk, scale and mass would represent an overly-dominate feature within the street scene, which would harm the character and appearance of the NCCA.

10. I have been referred to the design approach taken by the appellant and the design references taken from other developments within the NCCA, along with the design of the existing dwelling. In this instance however, I find that the overall height, scale, mass and bulk of the proposed development to be such that it would be harmful to the character and appearance of the NCCA and do not consider that the design of the proposal justifies this harm. Neither do I consider that the retention of all the trees around the boundary of the appeal site to overcome this. In any event, even considering the contribution of this landscaping, the proposal would still be visible within the street scene and would represent a form of development that would harm the character and appearance of the area. I do however find that the retention of the trees serves to preserve the sylvan character of Spencer Road.
11. I have been referred to a number of other developments within the NCCA, principally ones where larger buildings have been developed. Whilst I acknowledge their presence within the NCCA, I find their locations and surroundings to be different to the appeal site and do not provide a justification for the proposed development. In any case, I am not familiar with all of the circumstances around the other developments to which I have been referred and I am required to determine the appeal on its own merits.
12. I do not consider that the proposed development would involve the sub-division of the existing plot. In this respect, I find that the approach to redeveloping the site with a single building, retaining the large, single plot to be an aspect of the proposed development that would preserve the character of the NCCA. I also do not consider the existing building on site to be of an architectural design that reflects the more historical parts of the NCCA. Nonetheless, I do not consider that either of these provides a justification for its replacement with a building of such a scale and mass that would cause harm to the character and appearance of the area.
13. I have had regards to my duty under S72(1) of the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 as to the desirability of preserving or enhancing the character or appearance of the NCCA. Accordingly, I conclude the proposal would cause less than substantial harm to the significance of the NCCA as a designated heritage asset. Paragraph 208 of the National Planning Policy Framework (The Framework) requires such harm to be weighed against the public benefits of the proposal.
14. I have considered the provision of seven dwellings in terms of their contribution to the supply of housing in the area, especially where it is accepted that the Council are unable to demonstrate a five-year supply of housing land, as well as in respect of helping to support local services and facilities and provide investment during the construction. I have also found that maintaining the existing plot size and the retention of existing trees on the site preserves the character and appearance of the NCCA. All these factors weigh in favour of the proposed development.
15. However, given the modest scale of the development, the associated benefits carry only limited weight relative to the harm and the associated development plan policy conflict identified above, and would not outweigh the less than substantial harm to the significance of the NCCA as a designated heritage asset. Given the national importance to protecting heritage assets, relative to the modest benefits that would accrue from the appeal development, all of the

considerations that weigh in favour of the proposal do not clearly outweigh the identified harm to the heritage asset, to justify the development. Furthermore, whilst it is acknowledged that there is a lack of a five-year supply of housing land, housing land supply issues are likely to be temporary, while the harm to the NCCA would be permanent.

16. For the reasons outlined above, I therefore conclude that the proposed development would fail to preserve the character or appearance of the NCCA and it would cause less than substantial harm to its significance as a designated heritage asset. In the absence of any significant public benefits to outweigh this harm it would be in conflict with Policy PP30 of the Poole Local Plan. This policy, amongst other things, seeks to conserve the local character and historic environment. The proposed development would also conflict with the aims of The Framework as it would fail to sustain the significance of the designated heritage asset where the public benefits would not outweigh the harm.

#### *Accessibility*

17. Policy PP2 of the Poole Local Plan 2018 (PLP) seeks to direct high density development to the most accessible locations, which are defined as town and district centres, along with sustainable transport corridors. The appeal site does not fall within any of these locations.
18. For development proposed outside of these areas, Policy PP2 permits development subject to proposals being capable of delivering sustainable patterns of development. Proposals are also required to identify and incorporate the provision of suitable sustainable transport measures to connect with the defined locations and reduce the reliance upon the use of private car as a means of travel.
19. From the evidence before me, whilst I do acknowledge that it is likely that future residents may use private cars for longer trips, I do not find that the distances or the nature of the routes themselves to nearby local facilities to be so great as to prohibit local residents from either walking or cycling. To support this, I note that the proposal makes provision for secure cycle storage within the proposed basement. Furthermore, I also consider that the distances to public transport routes are within a reasonable distance to make them an attractive alternative to the use of private vehicles.
20. I have been referred to the Council's Car Parking SPD, which identifies the appeal site as being within Zone D, which is characterised as areas which have the lowest level of access to public transport services and facilities, the least accessible areas and where car ownership is at its highest. In this respect, whilst this may well be the case, I still consider that, in this instance, residents would have access to public transport routes within a reasonable walking distance of the appeal site. I also note that the local highway authority raised no objections in this regard.
21. For these reasons, I conclude that the proposed development with regards to accessibility delivers a sustainable pattern of development and, in this respect does not conflict with PLP Policy PP02 and those set out in the Framework.

*Living conditions*

22. In relation to No 11 Spencer Road, at present, the existing boundary treatment, along with the single storey nature of the existing rear extension, prevents any significant overlooking or loss of privacy. There are also no windows in the two-storey element of the existing dwelling which face towards No 11. There is an existing Juliet balcony at the front of the appeal property, which due to its position does provide the opportunity for some overlooking, although this is limited by the presence of landscaping along the site boundary and would only affect the garden area furthest away from No 11.
23. At the rear, the proposed development would include a new build element which would be parallel to the site boundary with No 11. It would occupy a similar footprint to the existing single storey rear extension and would include additional windows at the 2nd and 3rd storey level. These windows would serve a range of rooms including lounge/kitchen, bedroom, bathroom, utility and a study. They would face directly towards No 11. Due to the orientation and relationship of the two properties, these windows would have views into the hall and lounge of No 11, as well as onto the front garden area and front patio.
24. I note the presence of an access lane between the appeal site and No 11, which serves Nos 9 and 15a Spencer Road, which would provide some separation distance between the appeal proposal and No 11. However, given the considerable increase in the number of windows and, when combined with the additional scale, bulk and mass of the proposed development, I find that it would have an unacceptable effect upon the living conditions of the residents of No 11, both in respect of overlooking and the overbearing nature of the proposed development.
25. I note the suggestion from the appellant that I could attach a condition to ensure that these windows would be obscured glazed. Whilst I agree that this would address the issue of potential direct overlooking, in my view it would not be sufficient to address the harm I have identified in relation to the overbearing nature of the proposed development.
26. In respect to No 7 Spencer Road, there is considerable landscaping along the boundary of the appeal site. Whilst the rear extension would be of a greater bulk than the existing dwelling and would introduce a significant number of new windows that would face towards the rear garden, I find that due to the presence of this landscaping, in combination with the distance to the boundary, it is unlikely that the proposed development would result in any adverse effects upon the living conditions of residents of No 7 Spencer Road.
27. For the above reasons, I conclude that the proposed development would harm the living conditions of No 11 Spencer Road and therefore, in this respect, would be contrary to PP27 of the PLP and the Framework. These policies, amongst other things, require development to be compatible with surrounding uses and not result in a harmful impact on living conditions for local residents and future occupiers in terms of sunlight, daylight, privacy, noise or be overbearing or oppressive.

### *SSSI and European Sites*

28. The appeal site lies within 5km of the internationally protected Dorset Heathland SSSI, which is also part of the designated Dorset Heathlands Special Protection Area (SPA) and Ramsar Site, and also the Dorset Heaths Special Area of Conservation (SAC). It is also within close proximity to Poole Harbour, which is a SPA, SSSI and Ramsar Site.
29. The appellant has provided a Unilateral Undertaking (UU) as part of the appeal. This secures a financial contribution towards the Strategic Access Management and Monitoring (SAMM), as sought by the Council. However, given my conclusion on the other main issues, it is not necessary or appropriate for me to carry out an Appropriate Assessment as required under The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). Thus, given my overall conclusion on the main issues it is not necessary for me to consider this matter in any further detail.

### **Other Matters**

30. I have been referred to the positive response to the submitted pre-application enquiry. Whilst I appreciate that the pre-application advice differs from the decision on the appeal application, pre application advice is offered without prejudice to the formal decision on any subsequent planning application. Accordingly, issues relating to the pre-application advice have not had any material bearing on my assessment of the planning issues in this appeal.
31. Residents of neighbouring properties have raised concerns associated with highway issues, energy efficiency, precedent, effects upon ecology, loss of a family home and issues around waste disposal, amongst other things. However, these matters do not alter the main issues which have been identified as the basis for the determination of this appeal.

### **Planning Balance and Conclusion**

32. It is accepted by both parties that it is not possible to demonstrate a five year housing land supply at present. Paragraph 11 of the NPPF applies, which states that relevant policies for the supply of housing should not be considered up to date where a five year housing land supply cannot be demonstrated.
33. Paragraph 11 d) of The Framework states that where the policies which are most important are out of date, permission should be granted, unless 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 or, where specific policies in the Framework, provide a clear reason for refusing the development proposed. As I have already found that the Framework policy relating to heritage assets in paragraph 208 indicates that development should be restricted, such that, notwithstanding the current absence of a Framework compliant supply of housing land, the so-called tilted balance does not apply in this case.
34. In many respects the proposal would contribute positively to sustainable development objectives as set out in the Framework, particularly in respect to the benefits associated with housing. I have also found the location of the site to be acceptable in terms of accessibility. Nonetheless, these benefits would be limited given the reasonably modest scale of the development proposed. Moreover, in view of the harm that would be caused to the significance of NCCA

and the importance given to the conservation of such heritage assets, the benefits of the proposed development would fall somewhat short of outweighing the harm I have outlined above. Furthermore, I note that the Council raise no other issues in relation to ecology, trees, highway matters, parking, flooding or waste disposal, amongst other things. However, as these are requirements of policy and legislation, the absence of harm in respect of these matters are neutral factors that weigh neither for nor against the development. Consequently, the proposal does not represent sustainable development and permission should be refused.

35. For all of the reasons given above, I conclude that the appeal should be dismissed.

*Adrian Hunter*

INSPECTOR