



Appeal Decision

Site visit made on 5 March 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2024

Appeal Ref: APP/D1590/W/23/3325569

34 Bournemouth Park Road, Southend-on-Sea SS2 5LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Justin Carroll against the decision of Southend-on-Sea City Council.
 - The application Ref is 23/00368/FUL.
 - The development proposed is change of use from single dwellinghouse to two self-contained flats, erect single storey rear extension and external staircase to rear, with dormer to rear and rooflight to front and to convert loft into habitable accommodation (amended proposal).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The fourth reason for refusal relates to the development offering no reasonable mitigation of the in-combination effect of the net increase of one dwelling on habitats and species in accordance with the Habitats Regulations as identified in the adopted Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document 2020 (RAMS). I return to this issue later.
3. The National Planning Policy Framework (the Framework) was revised and the 2022 Housing Delivery Test (HDT) results were published in December 2023, and the Council and the appellant were invited to make further comments. My decision reflects the revised Framework and HDT Results.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposed development on the living conditions of the occupiers of 32 and 36 Bournemouth Park Road, and whether acceptable living conditions would be provided for future occupiers, with particular regard to privacy and outlook.

Reasons

Character and appearance

5. The appeal site comprises a two-storey dwelling located within a residential area where terraced properties are prevalent. The house faces Bournemouth Park Road, and the rear is visible from Wimborne Road. The adjacent corner dwelling at 36 Bournemouth Park Road (No 36) has a two-storey rear projection. There are some rear extensions on the terrace but no rear dormers.
6. The proposed dormer would extend across much of the rear roof. Due to its length, height and flat roof, the dormer would be a bulky and discordant addition to the appeal property. Its position close to Wimborne Road means that it would be particularly conspicuous in views from the road, causing harm to the street scene.
7. A new rear staircase and walkway would provide access to the proposed first floor flat. There is a simple wooden external staircase providing direct access to the adjacent upper floor property at No 36 and some other rear accesses in the wider area. There is limited information on the details and materials for the proposed stairs and walkway so harm to the appearance of the building from these cannot be ruled out and, whilst its height would be similar to the neighbouring staircase, a design comparison cannot be made. In any event, due to its length and height, the proposed balustrade above the ground floor extension would be an incongruous addition to the property, evident from Wimborne Road.
8. Therefore, I conclude that the proposal would harm the character and appearance of the area. It would conflict with Policies KP2 and CP4 of the Southend-on-Sea Core Strategy 2007 (CS) and Policies DM1 and DM3 of the Council's Development Management Document 2015 (DMD). Together, these require development to respect the character of the site and the wider area, including in relation to its architectural approach, scale and form, amongst other things. It would also be contrary to the Framework which sets out that development should be sympathetic to local character and development that is not well designed should be refused, reinforced by the National Design Guide which recognises that development should respond positively to the site features and surrounding context.
9. It would also conflict with the Council's Design and Townscape Guide 2009 (Townscape Guide) where it requires new development to complement local character and requires roof extensions to respect the style, scale and form of the existing roof design and townscape character.
10. Policy KP1 of the CS relates to the spatial strategy. As it does not directly link to the harm identified, I find no specific conflict with this policy in reaching my conclusion.

Living conditions

11. The external staircase and walkway would be used to access the proposed upper floor flat by occupiers, visitors and those making deliveries. Those using the access would have views into the rear bedroom and kitchen/diner of the proposed ground floor flat when entering the property and, despite the small boundary upstand, they would also be able to see into the rear bedroom at 32 Bournemouth Park Road (No 32).
12. I acknowledge that the access area would not be large enough for use as an amenity space and a condition could prohibit occupants from sitting out on the

extension roof. However, although partly obscured by the proposed single storey extension, parts of the neighbouring rear gardens at Nos 32 and 36 and the rear garden for the proposed ground floor flat would be visible to those accessing the central rear upper floor door. I note that some overlooking is common in residential areas and that there is an existing external stairway at No 36. However, due to the height and length of the proposed access and its proximity to rear windows/doors, the development would result in unacceptable overlooking of existing and proposed rear gardens, kitchen/dining rooms and bedrooms by those accessing the first floor flat.

13. As the bathroom windows at Nos 36 and 36A are obscure glazed, there would be no harmful loss of privacy to these rooms from people accessing the proposed first floor flat. Further, due to the height of the proposed single storey extension and the narrow gap between it and the ground floor flat at No 36, those using the access would have very limited views of the neighbouring kitchen/dining room door so there would not be unacceptable loss of privacy to the occupants of this room.
14. The proposed single storey extension would be sited close to the rear ground floor bathroom window and side kitchen/dining room door in the ground floor flat at No 36, creating a narrow well between the proposed structure and the neighbouring two storey rear projection. As the kitchen/diner contains windows on two other elevations and the obscure glazed bathroom is not a habitable room, with the area already enclosed to some extent by a high wall and fence along part of the mutual boundary, the proposed development would not result in a harmful sense of enclosure or overbearing impact on the occupants of the adjacent flat when using these rear rooms.
15. The appellant is willing to accept a condition requiring a privacy screen on the staircase, but this would have consequent design implications which, in the absence of further information, cannot be assessed.
16. Whilst the proposed development would not harm the living conditions of the occupiers of No 36 with particular regard to outlook, I conclude that it would harm the living conditions of the existing occupiers of 32 and 36 Bournemouth Park Road and provide unacceptable living conditions for the future occupiers of the ground floor flat, with particular regard to privacy. This would be contrary to Policies KP2 and CP4 of the CS and Policies DM1 and DM3 of the DMD. Together, these require development to avoid detrimental impacts on the living conditions of neighbouring residents and to provide acceptable living conditions for intended occupants, having regard to privacy and overlooking, amongst other things. It would also conflict with the Framework which requires decisions to provide a high standard of amenity for existing and future users.
17. In addition, it would be contrary to the Townscape Guide where it the Council seeks good design to create high-quality living environments.

Other Matters

18. A dormer could be installed for the existing dwelling under permitted development rights in the Town and Country Planning (General Permitted Development) (England) Order 2015, but the proposal is to subdivide and extend the house to provide two flats. Having regard to the relevant case law¹,

¹ Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

there should be a real prospect of a fallback development being implemented. It does not have to be probable or likely, but a possibility will suffice. Whilst the appellant states that production of drawings for building control are underway, there is no evidence of a lawful development certificate, building regulations submission or any other indication that a dormer would be built as permitted development on the existing house. Based on the evidence before me, I am not convinced that the stated fallback position has a greater than theoretical possibility that it might take place and therefore I accord it limited weight.

19. I note that the design has been influenced by the Council's previous decision to refuse a scheme for the site (planning application ref 22/02178/FUL). However, I have considered the proposal on its merits and found it would cause harm to the character and appearance of the area and living conditions for existing and future occupants.
20. The Council does not find harm or development plan conflict in relation to several other matters, including space standards, amenity space, cycle and refuse storage, car parking, highway safety, and noise. There is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters. However, the absence of harm does not carry weight in favour of the proposal.

Planning Balance and Conclusion

21. The Council accepts that it has an under-supply of housing against the required five years. Its current published position, agreed in July 2023, is a 4.18 year housing land supply, equating to 5,904 dwellings when measured against the Government's standard methodology with a 20% buffer. The HDT 2022 confirms delivery at 31%. This represents a significant shortfall and therefore paragraph 11(d) of the Framework is engaged.
22. Paragraph 11(d)(ii) of the Framework confirms that in such circumstances, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
23. The Framework seeks to boost the housing supply and highlights the important contribution small and medium sized sites can make, whilst supporting development which makes efficient use of land. The proposal would make a modest contribution of one additional dwelling to the supply of housing in an urban area with good access to services and public transport. It would contribute towards Southend-on-Sea's housing supply, making some difference to addressing the shortfall, and therefore I attribute modest weight to this benefit.
24. In contrast, the proposal would harm the character and appearance of the area and result in unacceptable living conditions for existing and future residents. The Framework requires development to be sympathetic to local character, development that is not well designed to be refused, and decisions to provide a high standard of amenity for existing and future users. I have concluded that the proposal would conflict with Policies KP2 and CP4 of the CS and Policies DM1 and DM3 of the DMD, and the Townscape Guide. These matters combined carry significant weight against the scheme.

25. Consequently, the harm I have identified significantly and demonstrably outweighs the benefits, when assessed against the policies in the Framework taken as a whole. It therefore follows that the proposal does not benefit from the presumption in favour of sustainable development.
26. The proposal would be likely to have a significant effect, either alone or in combination, on one or more European habitats sites due to its location within the Zone of Influence set out in the RAMS. However, there is no need to consider the implications of the proposal on the protected sites because the scheme is unacceptable for other reasons.
27. For the reasons given above, the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

A Wright

INSPECTOR