



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: 15th March 2024

Appeal Ref: APP/D1590/W/23/3324529

160 Bournemouth Park Road, Southend-on-Sea SS2 5LT

- 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 Castelnau Eden Limited against the decision of Southend-on-Sea City Council.
 - The application Ref is 23/00433/FUL.
 - The development proposed is described as "Application for new build residential development alongside and to the rear of 160 Bournemouth Park Road to provide 4 self-contained flats together with a one-bedroom two-person unit to the rear, car parking, cycle storage, refuse provision and communal and private amenity space".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The fourth reason for refusal relates to the development offering no suitable mitigation of the in-combination effect of the net increase of five dwellings on habitats and species in accordance with the Conservation of Habitats and Species Regulations 2017, as identified in the adopted Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document 2020 (RAMS). The appellant has made a payment towards the RAMS, and 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, with particular regard to trees;
 - the effect of the proposed development on the living conditions of the occupiers of 160 Bournemouth Park Road, with particular regard to outlook and light; and
 - whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to light, outlook, privacy and accessibility.

Reasons

Character and appearance

5. The site comprises domestic garages and disused garden ground adjacent to a row of three terraced properties within a predominantly residential area. There are some medium sized trees towards the rear of the site which are visible from Bournemouth Park Road and surrounding gardens, contributing to the landscaped backdrop behind the garages and the local environment.
6. The proposed rear dwelling would result in the loss of trees. However, no arboricultural impact assessment (AIA) has been provided to identify, categorise, outline life expectancy, and classify the visual amenity of the existing trees on the site.
7. I acknowledge that the trees are not subject to a Tree Preservation Order nor within a Conservation Area and the appellant indicates that they are self-set trees, including some conifers. Nevertheless, in the absence of an AIA, I cannot be certain that the proposal would not cause the loss of significant trees, resulting in harm to the streetscene and rear garden environment.
8. Consequently, I conclude that the proposal would harm the character and appearance of the area, with particular regard to trees. This 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 its surroundings, including in relation to its landscape setting, and to not result in the loss of significant trees, amongst other things. It would also be contrary to the Framework which requires development to be sympathetic to local character.
9. It would additionally conflict with the Council's Design and Townscape Guide 2009 (Townscape Guide) where it requires new development to safeguard and enhance local character.

Living conditions – neighbouring occupiers

10. The large rear outrigger on the adjoining two-storey dwelling at 160 Bournemouth Park Road (No 160) is located only a small distance from the appeal site boundary and it includes a side upper floor bedroom window (bedroom 3). The neighbouring house also has rear ground floor dining room and first floor bedroom (bedroom 2) windows facing into the garden.
11. The proposed development would be located to the south of No 160. The two-storey extension would have a similar projection to the neighbouring outrigger and be sited a comparable short distance from the mutual boundary.
12. The height, projection and siting of the proposed extension would result in significant enclosure of the area to the rear of No 160. It would dominate the outlook from the windows in the dining room and bedrooms 2 and 3 in the adjacent property and have an overbearing effect, adversely affecting the living conditions of the occupiers of No 160 when using their dining room and these bedrooms. In the absence of any evidence to the contrary, the scale and position of the proposed extension, and its orientation relative to the adjoining house, would also result in a harmful loss of sunlight and daylight to the neighbouring dining room and bedrooms 2 and 3.

13. I note that outriggers are often a feature of terraced dwellings, and these are present in the locality. However, rooms in outriggers are typically rear facing with only secondary windows facing into the wells between them. In this case, the adjoining property only has a single side window in bedroom 3, and, although it is a large, dual aspect house, the size and siting of the proposed extension would harm the living conditions in several neighbouring rear rooms.
14. Therefore, I conclude that the proposal would adversely affect the living conditions of the occupiers of 160 Bournemouth Park Road, with particular regard to outlook and light. 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, having regard to outlook, visual enclosure, daylight and sunlight, amongst other things. It would also conflict with the Framework which requires decisions to provide a high standard of amenity for existing users.
15. In addition, it would fail to comply with the Townscape Guide which requires extensions to not adversely affect the light or outlook of habitable rooms in adjacent properties.

Living conditions – future occupiers

16. The proposed single storey house would be located at the far end of the site, next to the communal amenity space and opposite ground floor flat 2. The bungalow would have ground floor living room and bedroom windows immediately facing the shared garden, and the living room windows and patio doors to flat 2 would also adjoin it.
17. I acknowledge that communal gardens for flats are not uncommon, but the use of the proposed outdoor space by all future occupants and the proximity of windows to it would cause harmful overlooking of habitable rooms in the proposed house and flat 2. Whilst it is stated that small private outdoor areas could be created for these properties, this is not included in the scheme before me, and it could have harmful implications for amenity space provision for the remaining flats.
18. The bungalow would have windows on three elevations but the nearest living room windows in flats 2 and 4 would be a maximum of 14m away from its front facing windows. Due to the siting of the proposed flats opposite the house and the limited separation distance between them, the occupiers of the flats would directly overlook the bungalow's bedroom and living room, harming the privacy of its occupants.
19. Each one-person, dual aspect flat would have large bay windows to an open plan living area with a large bedroom window facing into the space between the proposed extension and the existing outrigger at No 160. The length and height of the existing and proposed outriggers and the location of the proposed bedroom windows for flats 1 and 3 in the narrow gap between them would limit the light to these bedrooms. Although these windows would face towards the amenity space, because of their size, the outriggers would dominate the outlook and have an overbearing effect, adversely affecting the living conditions for future occupiers of these flats when using their bedrooms.

20. The bedrooms for flats 2 and 4 would face north towards the outrigger at No 160. Due to the limited separation distance and the scale of the neighbouring building, the existing outrigger would also dominate the outlook from these rooms. Further, the window orientation would limit sunlight to these bedrooms. Thus, the proposal would result in harmful living conditions for the future occupants of flats 2 and 4.
21. Amongst other things, Policy DM8 of the DMD requires new dwellings to meet the Lifetime Homes Standard, unless it can be clearly demonstrated that it is not viable and feasible to do so. The Lifetime Homes Standard is now superseded by Building Regulation M4(2) 'accessible and adaptable dwellings' as set out in the Council's Technical Housing Standards Policy Transition Statement 2015, which includes a requirement for step-free access.
22. The proposed ground floor flats and the house could achieve step free access. There would be a need for a lift to achieve step free access for the first-floor flats, and I accept that this would have subsequent implications on the size of the proposed extension and the viability of the scheme. As such, I do not find conflict with Policy DM8.
23. Consequently, whilst the development would provide acceptable future living conditions with particular regard to accessibility, I conclude that it would provide unacceptable living conditions for future occupiers, with particular regard to light, outlook and 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 future residents, having regard to outlook, daylight and sunlight, amongst other things. It would also conflict with the Framework which requires decisions to provide a high standard of amenity for future users.

Other Matters

24. The Council does not find harm or development plan conflict in relation to several other matters, including unit sizes, space standards, car and cycle parking, highways and refuse provision. 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

25. 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. This represents an improvement compared to 2021 when appeals for another site in the Council's area were determined¹. Nevertheless, the HDT 2022 confirms delivery at 31% over the past three years, which is one of the lowest delivery rates in the country and significantly below the 75% referred to in the Framework. Therefore, there remains a significant shortfall and paragraph 11(d) of the Framework is engaged.

¹ Appeal refs: APP/D1590/C/18/3218906, APP/D1590/C/18/3218913, APP/D1590/W/19/3242322 and APP/D1590/W/19/3242326

26. 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.
27. 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 five dwellings to the supply of housing making better use of land 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.
28. There would also be some economic and social benefits with future residents supporting local services. However, given the relatively small scale of the proposal, these benefits would be limited.
29. 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 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.
30. 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.
31. 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, notwithstanding that the appellant has made a payment towards the RAMS, there is no need to consider the implications of the proposal on the protected sites because the scheme is unacceptable for other reasons.
32. 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