



Appeal Decision

Site visit made on 26 March 2024

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2024

Appeal Ref: APP/V1260/W/23/3321753

25 Spencer Road, Bournemouth BH1 3TE

- 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 Paul Leslie Trubody against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref 7-2022-4800-E, dated 26 September 2022, was refused by notice dated 15 December 2022.
 - The development proposed is alterations and further rear extension to an approved application 7-2010-4800-B for extension and conversion to 7 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The main parties' submissions indicate that full planning permission was granted in August 2010 under reference 7-2010-4800-B (Permission B) for 'alterations and 2 storey extension and conversion of guest house (unauthorised house in multiple occupation) into 7 flats with bin and cycle stores, formation of parking spaces and modification of vehicular access.'
3. The appellant advises that Permission B was commenced in 2013, with major foundation works constructed and subsequently inspected and approved by the Council's Building Control department. The Council does not dispute that these foundations were started within the time limit for commencement required by any conditions attached to Permission B. However, the Council asserts that the foundations built in pursuance of Permission B, when considered with the apparent lack of further operations, represent de minimis works rather than material operations.
4. What constitutes a start of development is set out in s56 of the Town and Country Planning Act 1990. For the purposes of implementing a planning permission, the relevant date is the date on which a "material operation" is carried out. According to s56(4), in sub-section 2, a "material operation" includes:
 - (a) any work of construction in the course of the erection of a building;
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

5. Case law¹ has established that the threshold for what is deemed to be material operations is low. Consequently, it cannot reasonably be said that the construction of foundations built in pursuance of Permission B are de minimis. Whilst there is only very limited information before me regarding whether the lawful material commencement of Permission B has occurred, the Council has not provided any substantive evidence to contradict or otherwise make the appellant's version of events less than probable. As such, the evidence before me, on the balance of probabilities, indicates that Permission B has been lawfully commenced and remains extant, representing a significant material consideration in the assessment of this appeal.

Main Issues

6. The main issues in this appeal are the effect of the development on:
- the living conditions of the neighbouring occupiers, with particular regard to outlook and privacy;
 - the living conditions of the future occupiers of the development, with particular regard to indoor and outdoor space;
 - the character and appearance of the area; and
 - designated European habitats sites.

Reasons

Living conditions of neighbouring occupiers

7. No 27 Spencer Road is attached to no 25 and has previously been extended to the rear, resulting in a large 2-storey projection containing 2 self-contained split-level dwellings that are referred to as 1 and 2 The Mews (on the site location plan). These dwellings have several windows facing directly towards the application site, including 3 first floor windows that are non-obscured and appear to serve habitable rooms.
8. The proposed 2-storey rear extension would introduce built form and first floor windows directly opposite the existing facing first floor windows at nos 1 and 2 The Mews. Whilst the proposed first floor bathroom window could be secured by condition as obscure glazed, close distance views from the proposed first floor kitchen window into the windows of facing habitable rooms would be possible. These close distance views would inevitably have a detrimental impact on privacy. A similar impact on privacy would, however, result if Permission B were completed.
9. The proposed 2-storey rear extension, by virtue of its bulk and close proximity, would also have a detrimental impact on the outlook from the facing first floor windows at nos 1 and 2 The Mews. The overbearing impact of the proposal would be significantly worse than that under Permission B given it would significantly reduce the separation distance between the facing elevations. Whilst the appellant states that the existing facing first floor windows at 1 and 2 the Mews should be obscure glazed, no substantive evidence has been provided to that effect. The appeal must be determined based on the evidence before me.

¹ Malvern Hills DC v SSE & Barnes and Co [1982] JPL 439

10. The development would, therefore, harm the living conditions of the neighbouring occupiers at 27 Spencer Road (nos 1 and 2 The Mews) by virtue of its overbearing effect, detrimental impact on outlook, and harm to privacy. Consequently, the proposal is contrary to Policies 6.10 and 6.13 of the Bournemouth District Wide Local Plan 2002 (LP), Policies CS21 and CS41 of the Bournemouth Local Plan Core Strategy 2012 (CS), and the Council's Residential Development Design Guide 2008 (RDG). Taken together, these policies require, amongst other things, that development is of a high quality that respects residents' amenities. It would also conflict with the Framework requirement for a high standard of amenity for residents.

Living conditions of future occupiers

11. The submitted plans show that the internal areas of the 2-bedroom flats (numbers 2, 4, and 7) would be 56, 57 and 58 sq m respectively. This represents an increase in the internal floor area of those flats in comparison to that previously approved by Permission B (46, 43 and 49 sq m respectively). The Nationally Described Space Standards (NDSS) set out that 2-bedroom, single-storey properties should provide 61 sq m of internal space in the case of 3 persons occupying the property. Under permission B, flat 7 is shown as a 1-bed flat providing a NDSS compliant internal area.
12. The proposed 2-bedroom flats would not provide the total internal space required by the NDSS. The lack of adequate internal living space would be likely to result in an oppressively confined form of living accommodation that could be detrimental to the health and wellbeing of its future occupants.
13. The appropriate type and level of provision of outdoor space will vary according to the characteristics of the development. Families are less likely to occupy modest scale flats and there is, therefore, limited need for outdoor play areas for children. Outdoor communal areas to flats are, however, beneficial to future residents where they provide attractive places for sitting and socialising, drying space for washing, and storage.
14. The site plans include car parking, bicycle and bin storage. The remaining outdoor space would be awkward and narrow, squeezed between the elevations of the building and the boundaries to the site. It would not provide the benefits to occupiers of high quality outdoor amenity space noted above. If Permission B were completed, residents would have slightly more outdoor space, but it would be similarly poor quality to that provided by the appeal proposal.
15. Overall, the proposed development would not provide satisfactory living conditions for future occupiers with regard to internal floor space and shared outdoor space. It would, therefore, conflict with LP Policies 6.10 and 6.13, and CS Policy CS41, and the provisions of the Framework, which taken together require new development to provide a high standard of amenity to meet the day-to-day requirements of future occupants.

Character and appearance

16. Spencer Road is an attractive tree-lined residential street with dwellings located on a relatively consistent building line on the northern side. Many of the original buildings have been substantially extended to the rear, but many continue to display their characteristic original architectural features such as

decorative barge boards under pitched roofs. The proposed large 2-storey flat-roofed rear extension and the flat-roof dormer would be broadly reflective to that previously added to the attached dwelling at no 27. The scale and design of the development would not, however, respect the character of no 25. The box dormer would clash uncomfortably with the existing hipped roof. Furthermore, the 2-storey rear extension would harmfully diminish the space around the original dwelling to the extent that the site would become awkward, cramped, and overdeveloped. The previous extensions to no 27 do not justify the further erosion of the character of the area, rather they exacerbate the harm that would arise from the appeal proposal.

17. The development proposed under Permission B is less harmful as it does not include a large box dormer on the rear roof slope, and the 2-storey rear extension would be smaller and includes some articulation to break up its mass.
18. Consequently, the development would result in harm to the character and appearance of the area contrary to the requirements of LP Policy 6.8, CS Policies CS21 and CS41, the Council's RDG, and the provisions of the Framework. Taken together these require, amongst other things, that development is of a high quality that contributes positively to the character and function of the neighbourhood.

European sites

19. The Council advises that the site is within 5km of the designated Dorset Heathlands SPA (Special Protection Area) and Ramsar Site, and part of the Dorset Heaths candidate SAC (Special Area of Conservation) which covers the whole of Bournemouth. These designated European sites contain lowland heath important for nature conservation of protected habitats and species.
20. The Council has adopted an avoidance and mitigation strategy which aims to ensure no adverse effect on the integrity of the European sites². It includes strategic access management and monitoring of recreational use of the heath by a standard tariff per dwelling financial contribution; and provision of suitable alternative natural greenspace to alleviate use of the heath through Community Infrastructure Levy receipts generated by development. Appendix B to the Dorset Heathlands Planning Framework 2020-2025 supplementary planning document sets out different uses and whether they are likely to cause a significant effect alone or in combination upon the Dorset Heathlands.
21. No 25 is currently a house in multiple occupancy (HMO) with 14 bedrooms. The proposal would result in a total of 10 bedrooms across 7 flats. If occupancy of the proposed flats is in accordance with the NDSS, there would be no net increase in residents on the site. Consequently, the development would not result in a net increase in people visiting the heath for recreational purposes. The proposal would not, therefore, result in a likely significant effect on the integrity of the aforementioned European sites. The development would not, therefore, be contrary to CS Policy CS33 or the provisions of the Dorset Heathlands Planning Framework SPD.

² The Dorset Heathlands Planning Framework 2020-2025 supplementary planning document, April 2020

Planning Balance

22. Paragraph 11(d) of the Framework is engaged because the Council is unable to demonstrate a five year supply of deliverable housing sites. In such circumstances, the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies taken as a whole.
23. The proposal would make a contribution to the Government's objective of significantly boosting the supply of homes. The benefit of that contribution, however, would be limited given the displacement of occupants from the existing HMO. The dwellings would be in a sustainable location with good access to services and facilities. Whilst the Framework definition of previously developed land (PDL) excludes land in built-up areas such as residential gardens, the development would nevertheless involve an element of PDL. However, in light of the small scale of the proposal, these benefits attract limited weight.
24. Weighing against these benefits would be the above identified harms in terms of the character and appearance of the area, and with regards to the living conditions of existing and future occupiers. The Council's policies seeking high quality design and protection of living conditions are broadly consistent with the Framework. The identified conflict with the development plan therefore attracts significant weight.
25. Given the very limited scale of the benefits identified, the substantial adverse impacts of granting permission would significantly and demonstrably outweigh the limited benefits when assessed against the policies of the Framework when taken as a whole.
26. Whilst the extant permission represents a significant material consideration and would provide more spacious flats, the appeal scheme would be more harmful overall given its greater harm to the character and appearance of the area, and to the living conditions of neighbouring occupiers. I have therefore attached only limited weight to the fall-back position of Permission B being developed completely. Additionally, I note that the appellant refers to the amended drawings from a later proposed scheme. I have not been provided with any substantive details of that later scheme and therefore cannot give it weight in my decision.
27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations, including the Framework, indicate otherwise. The proposal would conflict with the development plan when read as a whole and there are no other considerations that outweigh that identified conflict.

Conclusion

28. For the above reasons, the appeal is dismissed.

S D Castle

INSPECTOR