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## Appeal Decisions

Site visit made on 27 February 2024

**by J J Evans BA (Hons) MA MRTPI**

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

**Decision date: 30 April 2024**

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### **Appeal A Ref: APP/V1260/W/23/3331172**

#### **9 Tower Road, Bournemouth BH1 4LA**

- 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 R La Bouchardiere of 9 Tower Road Limited against the decision of BCP Council.
  - The application Ref 7-2023-22736-M, dated 2 March 2023, was refused by notice dated 8 September 2023.
  - The development proposed is alterations and extensions to include formation of new second floor level and conversion to an 8 bedroom HMO (House in Multiple Occupation) (Sui Generis) – revised scheme.
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### **Appeal B Ref: APP/V1260/W/23/3331647**

#### **9 Tower Road, Bournemouth BH1 4LA**

- 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 R La Bouchardiere of 9 Tower Road Limited against the decision of BCP Council.
  - The application Ref 7-2023-22736-N, dated 26 April 2023, was refused by notice dated 4 October 2023.
  - The development proposed is the enlargement of existing building to create new roof, and convert to 14 bedroom HMO with manager's office.
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## **Decision**

1. Appeal A: the appeal is dismissed.
2. Appeal B: the appeal is dismissed.

## **Procedural Matters**

3. As set out above, there are two appeals on the same site. They seek alterations and extensions to provide either an eight or fourteen bedroom house in multiple occupation (HMO). I have considered each proposal on its individual merits, although to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
4. It was apparent from my site visit that works to the house had taken place and that it was being occupied as an HMO. A two storey side extension had been erected and rear elevation dormers had been installed, albeit the works that have been undertaken on site are different to those depicted on the appeals submissions. For the avoidance of doubt I have determined the appeals on the basis of the submitted drawings, rather than what has occurred on site.

5. The property has a lengthy planning history that includes several appeals. Planning permission was granted at appeal in 2019 for an extension to the existing dwelling and conversion to a seven bedroom HMO under the appeal ref: APP/G1250/W/19/3226002. An appeal to extend the property and convert it to an eleven bedroom HMO was dismissed in 2021 (ref: APP/V1260/W/21/3266654). An appeal for extensions, alterations and conversion to an eight bedroom HMO (ref: APP/V1260/W/21/3285388) was dismissed in 2022. In 2023 there was a dismissed appeal (ref: APP/V1260/W/22/3302191), that sought the enlargement of the building to create a fifteen bedroom HMO. I have had regard to these decisions in considering the appeals before me.
6. The appeals site is within 5km of the Dorset Heathlands, which are an extensive network of heaths nationally and internationally recognised and protected as a Site of Special Scientific Interest, a Special Protection Area, Ramsar, and Special Area of Conservation. During the appeal process the appellant provided a Unilateral Undertaking (UU) for each appeal so as to provide financial contributions for mitigation measures to protect the integrity of the Dorset Heathlands habitat sites. The Council have stated that the UUs secure the required contributions. Given this, the appeals turn on the main issues below, and I shall return to the matter of the habitat sites later.

## **Main Issues**

7. The main issues for the appeals are:
  - for both appeals, whether future occupiers of the HMOs, and for Appeal B, whether occupiers of the neighbouring bungalow, would be provided with acceptable living conditions with regard to external space;
  - the effect of Appeal B on the living conditions of nearby residents, with particular regard to noise and disturbance;
  - for both appeals, whether adequate levels of parking provision and electric charging points would be provided, and in addition for Appeal B, whether adequate provision for cycle parking would be provided;
  - whether Appeal B would provide biodiversity enhancements; and
  - whether Appeal B would provide satisfactory drainage arrangements in order to prevent localised flooding.

## **Reasons**

### *Living Conditions – External Space*

8. 9 Tower Road (No 9) is a detached building positioned within a mostly residential area that is set back from the public highway at one end of a single lane track, the use of which is shared by nearby properties. There is a detached bungalow to one side of the house and a pair of semi-detached houses to the other, albeit these homes are not included within the red lined site areas. To the front of the house is a gravelled parking and turning space that serves the appeals property and other nearby dwellings. There is a rendered walled shed within the garden, along with a few picnic tables, and large waste bins.

9. Parking for the property has not been shown on the submitted drawings for either appeal, and to the front of the house much of this area is used as a turning space for the occupiers of the nearby dwellings. The shared use of this area would require it to be unobstructed, particularly as even with one vehicle parked in front of No 9, as I saw during my site visit, other vehicles movements would be compromised and restricted. Given the intensity of the use of this area and that it is shared by other properties, private amenity space for the occupiers of the HMOs would have to be within the side or rear gardens.
10. However, these external spaces would be modest in size and tightly constrained, not just by the presence of the house which would occupy much of the plot, but also through the proposed bin and cycle stores. To the rear of the building the external space is narrow in depth and would provide little opportunity for use apart from as a thoroughfare. The area in front of the bin and cycle stores would need to be kept free of obstruction, and consequently this garden area would provide little opportunity for use.
11. There would be some space to the east of the house to accommodate the day-to-day needs of the occupiers. This space would need to fulfil the requirements of all the occupiers of the home, including for such provision as seating and play areas. As it would be next to communal rooms for both proposals it would not provide a particularly private space. It may be the case that the schemes would only be occupied by one person per room, and that neither HMO would be occupied by children. Nevertheless, whether providing for the needs of eight or fourteen people, external relaxation and activities would be concentrated within the small, overlooked area to the eastern side of the building. Whilst the Inspector for the appeal for the eight bedroom HMO (Appeal Ref: APP/V1260/W/21/3285388) considered the outside space for future occupiers would be sufficient, the appeals before me have a smaller external area, particularly as the proposed bin and cycle stores would be larger, thereby reducing the available external areas that could be used for seating or relaxation. The differences are such that the previous appeal scheme does not form a binding precedent for approving those before me.
12. Further reductions in the external space available for occupiers of the HMOs have arisen through the provision of a larger garden for the bungalow. The small increase in the size of the bungalow's garden would be a slight improvement of available space for the occupiers of this property, but in doing so there would be less for the occupiers of the HMOs. In addition, the site and layout drawings (drawing refs: 23/403-01 and 23/403-01 Rev B) for the fourteen bedroom scheme show different sizes of gardens for the bungalow and HMO. Irrespective of this ambiguity, even the larger sized garden for the HMO would be insufficient to serve the needs of fourteen people. It follows that the larger sized garden would provide inadequate external space for occupiers of the bungalow as it would be unacceptably small and cramped.
13. The appellant has drawn my attention to planning permission for a dwelling with a small garden (ref: 7-2018-20584-D). However, this permission allowed a single dwelling with a parking space, and although the Council described the garden as limited in size, it was also considered private and usable. Given these differences, including that the scheme is for a single dwelling rather than a HMO, it does not determine that I should allow the appeals.

14. The appellant has pointed out that the Council does not have defined space standards and that occupiers would have access to a nearby public park. Nevertheless Policy 6.17 of the Bournemouth District Wide Local Plan (2002) (LP) requires amongst other things, that HMOs have a defined garden or amenity area that is capable of being used for activities associated with residential use as well as being of a size appropriate to the number of occupiers of the property. For the reasons given above, the external space available to occupiers of the HMOs and bungalow would provide unacceptable living conditions. Neither scheme would thereby accord with the objectives of this policy, nor with Policies CS5, CS6 and CS41 of the Bournemouth Local Plan Core Strategy (2012) (CS), Policies BAP2 and BAP8 of the Boscombe and Pokesdown Neighbourhood Plan (2019) (NP), nor the guidance in the Residential Development Design Guide (2008) (RDG). These require, amongst other things, a range of housing types and well-designed development that provides a high standard of amenity to meet the day-to-day requirements of future occupants, including an appropriate quantity and high standard of external amenity space. Such objectives reflect those within the National Planning Policy Framework (the Framework), which also seeks a high standard of amenity for existing and future users.

*Living Conditions of Nearby Residents*

15. There are several residential properties in close proximity to No 9, some of which share the use of the drive. These homes are set well away from the public highway, and the area is essentially quiet. Apart from the railway line, the occupiers of No 9 and the nearby homes would experience little public disturbance.
16. For the fourteen bedroom HMO scheme, the Council and local residents have raised concerns regarding unacceptable levels of activity, noise and disturbance. One of the previous appeals (Appeal ref: APP/V1260/W/21/3266654) found that even an increase in size to an eleven bedroom HMO would have an unacceptable impact upon the living conditions of nearby residents. As the proposal before me would be for a fourteen bedroom HMO, the number of residents would significantly intensify the activity surrounding the property, including through associated movements such as visitors and deliveries.
17. The comings and goings associated with the scheme would be numerous and frequent, and such movements would necessitate the use of the narrow drive, which is bounded on both sides by other homes and their gardens. There would also be a greater and intensified use of the areas around the appeals property, and such concentrated activity would be close to nearby homes. The daily activities of fourteen people in such a situation would cause unacceptable noise and disturbance to nearby residents.
18. One of the proposed rooms would be for an office manager, the presence of which may ameliorate some of the anti-social behaviour that some residents allege to be occurring. Notwithstanding these arrangements, there would still be disturbance and noise resulting from the use of the gardens and also from the frequent comings and goings associated with a fourteen bedroom HMO.
19. For these reasons the fourteen bedroom HMO would unacceptably harm the living conditions of nearby residents, and the suggested conditions would not ameliorate this harm. The scheme would therefore conflict with LP Policy 6.17,

CS Policy CS41, NP Policy BAP8, and the RDG. These require amongst other things, that development respects its site and surroundings, and that the amenities of neighbouring residents would not be adversely affected, thereby reflecting objectives of the Framework.

### *Parking*

20. CS Policy CS16 requires parking provision to be in accordance with the Council's adopted parking standards, as specified in the Parking Standards Supplementary Planning Document (2021) (PSPD). In the case of HMOs one parking space per home is required, along with secure covered cycle parking. Neither scheme provides a car parking space, albeit the appellant refers to the scope to provide one.
21. Given the constrained nature of the space around the home, that includes the need for bin storage and cycle parking provision, where vehicle parking could occur is unclear. The land to the front of No 9 is shared by other homes, and as these properties have parking spaces, whether a space for the HMOs could be provided whilst retaining sufficient manoeuvring room for other vehicles has not been demonstrated. Given these uncertainties, conditioning the provision of a space would not be reasonable, thereby contrary to the conditions requirements imposed by the Framework.
22. The HMOs would be near to a variety of services and facilities, and it might be the case that occupiers who own a vehicle could park on the public highway. However, the appeals property is in a tight knit residential area with many residents already parking on-street. If a variation from complying with the parking standards set out in the PSPD is required, such a departure should be fully justified. Neither appeal scheme has been supported with a parking stress survey, nor a full justification of why a departure is appropriate. The Council have referred to the on-street parking being at capacity, and although they have not surveyed the situation, they are familiar with the area and that it experiences significant parking stress. An additional car displaced onto the public highway may not significantly increase the existing pressure, but in the absence of a parking survey to demonstrate this, it could also be the case that existing on-street parking pressures could be exacerbated, including those resulting in highway safety concerns from inconsiderate parking.
23. Whilst there is no disagreement between the parties as regards the number of cycle parking spaces to be provided for each scheme, the Council are concerned that the use of a polycarbonate shed would be a target for crime. Both schemes show the provision of cycle stores, and it might be the case that sufficient space could be provided, particularly for the eight bedroom scheme. However, the PSPD requires cycle parking to be constructed of robust materials with lockable doors, and whilst the appellant has suggested such provision could be a conditional requirement, how it could be achieved has not been demonstrated. With regard to the constraints of the site, I am not convinced that there is the space for accessible, robust and secure provision for cycle parking.
24. CS Policy CS17 seeks to encourage facilities in new developments to enable the use of greener, low carbon vehicle technologies, and in both appeals a condition could be imposed that required the installation of an electric car parking point.

25. For the above reasons, neither scheme would provide adequate vehicle parking, nor has it been demonstrated that robust, secure and accessible cycle parking could be achieved for appeal B. The conditions suggested by the parties would not satisfactorily address these matters. The schemes would fail to accord with the requirements of LP Policy 6.17, CS Policies CS16, CS17, CS18, CS41, NP Policy BAP8, the requirements of the PSPD, and those of the RDG. These seek, amongst other things to provide parking provision in accordance with defined standards, not to exacerbate on-street parking pressures, and to provide adequate cycle storage, objectives which accord with those of the Framework that also seeks convenient, safe and secure parking.

#### *Biodiversity*

26. In addition to being near to the Dorset Heathlands, the appeals site is near a wildlife corridor. CS Policy CS35 seeks, amongst other things, the promotion of biodiversity interests, including that development adds to biodiversity conservation networks, and such objectives accord with those of the Framework that requires development to contribute to and enhance the natural and local environment and biodiversity. Whilst the appellant would address this matter through a condition, the fourteen bedroom home covers much of the site, and this along with the proposed cycle and storage sheds, and the large amount of hard landscaping, would combine to result in little opportunity for achieving on-site biodiversity enhancements. Given this, a condition to achieve such benefits would be unreasonable, and the scheme would therefore fail to comply with the objectives of CS Policy CS35 and the Framework.

#### *Surface Water*

27. Two soakaways are proposed for the fourteen bedroom HMO, both positioned to the northern side of the property close to the railway cutting. The appellant has described these positions as being potential ones, suggesting a condition for details of drainage and the approval of a management plan.
28. The size of the building, as well as that of the existing shed and those proposed, along with the increase in number of occupiers, is such that the absence of drainage detail for an intense use within a tightly constrained site is concerning. The Framework requires that development should not increase flood risk elsewhere, and CS Policy CS4 requires that use of sustainable drainage systems is a requirement other than in exceptional circumstances where no technical solution is available, with details of the drainage and maintenance to be provided as part of any planning application.
29. Given the constraints of the site, and that it is adjacent to a railway line in a residential area, if drainage matters cannot be satisfactorily achieved there is a risk to people and property from localised flooding. Whilst it might be the case that drainage could be satisfactorily addressed through conditions, there are a number of uncertainties, and it remains unclear as to whether they could be satisfactorily addressed. Irrespective of the appellant's suggested condition, whether adequate drainage and ongoing management measures could be achieved and maintained to avoid localised flooding has not been demonstrated. In light of these unresolved issues, imposing conditions would be unreasonable and contrary to the conditions tests of the Framework. Furthermore, if it cannot be achieved there would be an unacceptable risk to people and property, contrary to the above referenced CS policy and objectives of the Framework.



## **Other Matters**

30. The site is within 5km of the Dorset Heathlands, which are an extensive network of heaths nationally and internationally recognised and protected. The Dorset Heaths host priority habitats and species, including birds, lizards and snakes as well as other typical species of lowland heathland, wetlands and dunes. The heathlands are under significant pressure from increased public access and use, and a net increase in the number of dwellings and occupiers in the area would have an adverse effect upon these important habitat sites and species.
31. Given the location of the appeals property, future occupiers would be likely to impact upon the habitat sites and having a significant effect upon their integrity. The Conservation of Habitats and Species Regulations (2017) require the decision maker to undertake an Appropriate Assessment (AA) where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority. The appellant has provided UUs to secure the required mitigation measures, and has served notice of the appeals upon the property owners. The Council have confirmed the UUs secure the required contributions, and I will return to this matter below.
32. Local residents have raised a number of matters, including waste and rubbish disposal, anti-social behaviour, fences and property maintenance, and the over-provision of HMOs in the area causing a loss of community. Issues of land ownership and maintenance would be matters for the relevant parties to resolve, and have not had a bearing on my assessment of the planning issues. Some of the other concerns are not directly connected with the planning considerations of the proposal before me, and of those that are, following my findings on the main issues, I have no need to consider them further.

## **Planning Balance and Conclusion**

33. The Council acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites. Consequently, Paragraph 11(d) of the Framework is engaged, whereby planning permission should be granted unless the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.
34. The provision of additional homes near to a variety of services and facilities would be a benefit of the schemes. Weighing against these modest benefits would be the significant harms that arise with each scheme. The living conditions of the occupants of the HMOs and also those of the surrounding residents would be unacceptable, and there would be further social and environmental disbenefits due to the absence of vehicle parking and the nature of the cycle parking. Uncertainties surrounding the ability of the property to be adequately drained are further environmental and social harms, whilst harms to the environment would occur through the absence of measures to promote biodiversity.
35. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. The policies referred to above are broadly consistent with those in the Framework. The harms arising from the proposals significantly and demonstrably outweigh the limited benefits, when weighed against the policies in the Framework as a whole. It follows for

neither appeal does the presumption in favour of sustainable development apply.

36. If I had come to different conclusions on the main issues, it would have been necessary for me to undertake an Appropriate Assessment for each appeal and give further consideration of the likely effectiveness of mitigation measures on the protected Dorset Heathlands. In doing so I would have had regard to the provisions of the UUs and whether there would be significant effects arising from the proposals, either alone or in combination with other schemes, as I would have to be certain that the integrity of the protected sites would not be adversely affected. However, as I am dismissing the appeals for other reasons, this assessment has not been necessary.
37. Thus, for the reasons given above, and having regard to all other matters raised the appeals are dismissed.

*J J Evans*

INSPECTOR