



Appeal Decision

Site visit made on 18 April 2024

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th May 2024

Appeal Ref: APP/V1260/W/23/3334179

288 - 292 Lyminster Road, Highcliffe BH23 5ET

- 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 A & T Aldridge against the decision of BCP Council.
 - The application Ref 8/21/0669/FUL, dated 15 June 2021, was refused by notice dated 6 June 2023.
 - The development proposed is alterations to existing shop frontage, extension of building at first and second storey level. Creation of 3 flats at ground floor, 1 flat at first floor, 1 flat at second floor, 3 maisonettes at first and second floor. Demolition of rear single storey outbuildings and two-storey building at rear containing 1 flat (9 residential units in total).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the refusal of the application, the subject of this appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published in December 2023. The main parties have had the opportunity to comment upon the revised Framework in respect of the appeal, and I have taken it into account where relevant to my decision.
3. In January 2023, after the planning application submission date and prior to the refusal of the application, the *Highcliffe and Walkford Neighbourhood Plan* (the Neighbourhood Plan) was made. The planning application and this appeal must be determined in accordance with the development plan in place at the time of each decision.
4. Therefore, whilst I have noted the appellant's views on this matter, I must have regard to Neighbourhood Plan Policy HWNP2 in determining this appeal. This policy is referred to in the Council's first reason for refusal and the appellant has had the opportunity to comment upon the policy through the appeal process.
5. The description of development in the banner heading above has been taken from the appeal form and the decision notice. It differs from that on the application form, and it accords with the changes that were made to the originally submitted scheme prior to the determination of the application.
6. The Council has not provided a statement of case nor suggested conditions, should the appeal be allowed, and the decision notice does not include a list of

refused drawings. The information before me indicates that the drawings were revised during the planning application process. Therefore, in the interests of certainty, I sought confirmation from the Council as to which drawings formed the basis of its decision.

7. It confirmed, by email dated 2 May 2024, that the following proposed drawings were those that were considered: LA01revA; PH06_lo; PR_GA01revC; PR_GA02revB; PR_GA03revC; PR_GA06revA; PR_GA07revC; PR_GA08revA; PR_GA09revA and PR_GA10revA. I have dealt with the appeal accordingly.
8. Based on the non-inclusion of originally submitted drawings PR_GA04 (top floor/lower roof – proposed) and PR_GA05(upper roof – proposed) from the list of drawings upon which the application was determined, and having regard to the description of development in the decision notice, appeal form and officer report, which is not disputed by the appellant, I am satisfied that the proposal does not include an additional third floor of living accommodation.
9. Although I note that sections/elevations drawings PR_GA06revA and PR_GA07revC still show the deleted originally proposed third floor of accommodation, as I am dismissing the appeal, there is no requirement to address these drawing discrepancies, which do not affect the outcome of the appeal.
10. The appeal documents include revised proposed ground floor plans PR_GA01rE and PR_GA01rF, which, in response to the first reason for refusal, amend the proposal to remove either all or part of the proposed ground floor residential use from the scheme. These were not before the Council at the time that they made their decision and involve fundamental changes to the application scheme.
11. The planning appeals procedural guidance¹ confirms that, if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Accordingly, having regard to the tests in *Holborn Studios Ltd*², and noting that a number of interested parties commented upon the planning application, who would not have been made aware of the revisions, I have determined the appeal on the basis of the scheme that was before the Council at the time of determination. I have not considered the merits or otherwise of the aforesaid revised plans submitted with the appeal.
12. The appellant has also submitted revised drawings PR_GA04rA, PR_GA05rA, PR_GA11 and PR_GA12 with its appeal submissions, to provide drawing consistency in respect of the proposed roof of the outbuilding to the rear, and clarity regarding the relationship of the ground floor accommodation to the eastern boundary and the proposed living space for unit M1. These drawings will not form part of my determination of this appeal, as they include the aforesaid deleted third floor accommodation referred to paragraph 8 above.

Main Issues

13. The main issues are:

¹ Procedural Guide. Planning Appeals – England. The Planning Inspectorate January 2024

² *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823

- The effect of the proposal on the vitality and viability of the District Centre;
- The effect of the proposal on the living conditions of future occupiers of the ground floor flats with particular regard to outlook and sunlight/daylight provision;
- The effect of the proposal on the living conditions of future occupiers of flat M1 with particular regard to outdoor living space; and
- Whether the proposal can provide adequate mitigation for the Dorset Heathlands European Protected Site (EPS).

Reasons

Vitality and viability

14. The appeal site lies on the north side of Lymington Road and comprises a part 2-storey, part single-storey end-of-terrace building. The ground floor is in commercial use and there is a 3-bedroomed flat within the flat-roofed first floor element at the front part of the building. To the rear, there is a hard surfaced parking area and a detached outbuilding and garage block which are used for storage purposes. These are accessed via a shared vehicular access which runs along the west side of the building.
15. The site is within the designated Highcliffe District Centre according to the Neighbourhood Plan. It lies within a row of properties which are characterised by ground floor commercial uses with a mix of commercial and residential uses over. This applies to the properties both sides of the appeal site and those on the opposite side of Lymington Road.
16. Policy HWNP2 of the Neighbourhood Plan recognises a need to facilitate the continued provision of local services for the community by retaining a healthy mix of retail and other uses within this part of Lymington Road and making it an inviting experience. The policy restricts the use of ground floor units within this area to those within Use Classes E (commercial, business and service uses), F1 (learning and non-residential institutions), F2 (local community uses), C1 (hotels and guesthouses) as well as other Sui Generis uses which are usually found in town centres (such as public houses, hot food takeaways and a variety of leisure venues).
17. Policy CH6 of the *Christchurch and East Dorset Local Plan Part 1 – Core Strategy* (2014) (the Core Strategy) aims to provide an appropriate mix of retail units alongside other uses which contribute to the vitality and viability of the designated Highcliffe Primary Shopping Frontage, within which the appeal site also lies. This policy allows the loss of ground floor retail uses provided the new uses are within a defined list of uses comprising the former Class A2 (financial and professional services), Class A3 (food and drink), Class D1 (non-residential institutions) and Class D2 (leisure and entertainment). Policy HWNP2 supports the aims of Policy CH6, whilst incorporating the increasing flexibility in respect of permitted changes to commercial premises as reflected in recent changes to the Use Classes Order.
18. These policies do not allow for residential uses to replace existing ground floor uses which contribute to the vitality and viability of the local centre, with dwellings generally being located at upper floors above ground floor commercial uses and in relatively recent set-back developments, including

terraced housing to the rear of nos. 282-286, which shares access with the appeal site.

19. At the time of the determination of the planning application, the ground floor of the premises was occupied by three Use Class E units, comprising a charity shop (no.288), a hairdresser (no.290) and a chiropodist (no.292). Nos. 288 and 290 have separate entrances and large shop frontage windows facing onto Lymington Road. Whilst the main floorspace of no. 292 lies behind that of no.290, there is frontage signage and a public entrance to this unit from the building frontage.
20. As such, all 3 units have an existing visible 'presence' within the ground floor commercial frontage of this part of the street, and I am satisfied that they make a positive contribution to the vitality and viability of this part of the local centre. Moreover, I do not find that the proposed physical alterations to the shopfronts would result in a significant improvement to the visibility and presence of the ground floor commercial element of the building, given the existing sufficiently large shopfronts that already exist.
21. The appeal scheme would contravene Policies HWNP2 and CH6 by replacing existing ground floor Class E uses with residential units, so that, not including the removal of the existing single storey outbuildings, there would be a loss of 2 independent ground floor commercial units and a reduction of more than 50% of the existing commercial floorspace.
22. Whilst the proposal would maintain a commercial frontage onto Lymington Road, this alone does not indicate that there would be no harm to the vitality and viability of the local centre arising from the scheme.
23. The appellant has not substantiated the proposed loss of commercial floorspace with any cogent evidence to demonstrate that full ground floor commercial use of the building is not viable. Such supporting information could include, for example a Marketing Report in respect of the now vacant charity shop unit, tenancy terms, and financial information including rental costs. In the absence of substantive evidence to the contrary, I find that the proposed significant reduction in ground floor commercial use, including a loss of two individual Class E units would have a significant detrimental impact on the vitality and viability of this part of the Highcliffe District Centre, where I observed, on my site visit, most ground floor units to be in active commercial use.
24. In addition, I find that there is no substantive evidence before me to support the appellant's assertion that the proposed removal of the rear outbuildings would result in improvements to commercial viability of the appeal site.
25. My attention has been drawn to a previous, now lapsed, permission³ in respect of the development of the appeal site with a total of 8 flats. There is limited information before me, but I note that the officer report includes confirmation that the scheme would '*not replace any retail floorspace with residential accommodation*' and that '*whilst the proposal would see the loss of one retail unit, overall the floorspace will not change*'.
26. The appellant has also referred to two nearby completed mixed use developments adjacent to the appeal site at nos. 282-286 Lymington Road⁴

³ LPA Ref 8/13/0539

⁴ LPA Ref 8/16/1209/FUL

and on the opposite side of the road at nos. 261, 273a, 273b and 275b⁵ which were approved in 2016. Notwithstanding that the application forms included with the appellant's appeal documents appear to indicate that there was a proposed loss of retail floorspace in each case, noting that proposals can change during the course of the application, this is not substantiated by additional information such as existing and proposed floorplans or the officer reports.

27. Moreover, all three applications were determined a long time prior to the adoption of the Neighbourhood Plan. Also, they were considered within the context of the ground floor uses that existed at that time and having regard to the contribution they made to the vitality and viability of the shopping frontage then. There is no cogent evidence before me that those commercial viability circumstances were directly comparable to the current situation regarding the appeal site. As such, I am not persuaded, based on the evidence before me, that these decisions justify allowing the loss of commercial floorspace which is currently proposed in respect of the appeal site.
28. For the above reasons, based on the evidence before me, I therefore conclude that the proposal would have a harmful effect on the vitality and viability of the Highcliffe District Centre. As such it fails to accord with the aforesaid aims of Neighbourhood Plan Policy HWNP2 and Core Strategy Policy CH6.
29. This is generally consistent with advice in Chapter 7 of the Framework which seeks to ensure the vitality of town centres.

Living conditions – outlook and sunlight/daylight provision

30. The officer report confirms that the Council's second reason for refusal specifically relates to poor sunlight/daylight provision and outlook in respect of the bedrooms of the proposed ground floor flats 1, 2 and 3.
31. The amount of daylight and sunlight reaching the bedroom of flat 1 and the outlook from the window of that bedroom would be restricted due to the eastern orientation of the bedroom window and its proximity to the eastern side boundary, which, notwithstanding the appellant's confirmation that no boundary treatment is proposed, I find would reasonably be required to be enclosed in some form in order to protect the privacy of the occupiers of that flat.
32. The bedrooms of flats 2 and 3 would also experience limited levels of sunlight and daylight and a restricted outlook from the bedroom windows as the windows would be northerly facing into small and enclosed courtyards.
33. The Council has not provided an objective assessment using a recognised tool for assessing daylight/sunlight impacts. Moreover, having regard to their proposed primary purpose of providing places for sleep, I find that bedrooms are not as important as living/dining rooms in respect of their requirements for sunlight and daylight and outlook. I also note that the proposal would incorporate larger than usual bedroom window openings in the form of floor to ceiling height glazing for the bedrooms of flats 2 and 3.
34. Having regard to the above, and in the absence of cogent evidence to the contrary, I am not persuaded that there would be an unsatisfactory living

⁵ LPA Ref 8/16/0459/FUL

environment for future occupiers as a result of the outlook and levels of natural light enjoyed by the bedrooms of flats 1,2 and 3, nor that this matter adds up to material harm that would amount to a reason for dismissing the appeal.

35. The officer report also refers to poor levels of sunlight that would reach the bedroom courtyards to flats 2 and 3. I find that the proposed perforated wall design would go some way to ameliorate this, by letting in some light. However, more significantly, these would be secondary outside amenity areas to these units, which would also benefit from external forecourts to the west side of the building leading directly off the proposed open plan lounge/living areas. Flat 1 would have a similar arrangement.
36. For the above reasons, I therefore conclude that there would be no material harm to the living conditions of the future occupiers of the ground floor flats, with particular regard to outlook and daylight/sunlight. The development would therefore accord with Core Strategy Policy HE2 and Saved Policy H12 of the *Borough of Christchurch Local Plan (2001)*, in so much as these policies aim to ensure that new development is functional and protects the living conditions of existing and future occupiers of dwellings, including ensuring that there are no adverse effects due to loss of light.
37. This is generally consistent with guidance within the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health, and well-being for existing and future users (Paragraph 135).

Living conditions - outdoor living space

38. The Council's third reason for refusal relates to a proposed lack of outdoor amenity space for maisonette M1 which is spread over the first and second floors. Proposed first floor drawing PR_GA02rB indicates that an outside terrace leading from the dining/living room of this unit is proposed at first floor level.
39. The proposed position of this terrace in relation to surrounding built development, and its enclosed nature are such that it would provide a private outdoor living space for the occupants of this unit. It would also be a sufficient size to provide outdoor seating and a table and large enough to enable the occupiers of this unit to congregate outside for sitting out or dining at one time.
40. Moreover, the Council has not drawn my attention to any adopted development plan policies or supplementary planning guidance in respect of private or communal outdoor living area requirements for flatted development, and none are contained within Core Strategy Policy HE2 and Local Plan Saved Policy H12, the relevant policies referred to in the Council's third reason for refusal.
41. For the above reasons, I conclude that the proposal would provide satisfactory living conditions for future occupiers of the development, having regard to the provision of outdoor living space for unit M1. As such, the proposal would accord with Core Strategy Policy HE2 and Local Plan Saved Policy H12, in so much as these policies aim to ensure that new development is functional, protects the living conditions of existing and future occupiers of dwellings and ensures that new residential development includes, where appropriate, an adequate provision of open space.
42. This is generally consistent with guidance within the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health, and well-being for existing and future users (Paragraph 135).

EPS

43. The appeal site lies within the zone of influence of the Dorset Heathlands EPS. Natural England is concerned about the intensification of residential development in South-East Dorset, and the resultant pressures upon protected Heathland by the new occupants of these dwellings living near such areas. Studies have shown that increased access to lowland heathland from nearby development leads to an increase in wildfires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion and disturbance by humans and their pets. It is the view of Natural England that within 5km of Heathland, there will be significant adverse effects in combination with other proposals. However, avoidance or mitigation measures, including access management measures to divert recreational pressure from heathland can allow development to be permitted.
44. The proposal would be required to comply with an Avoidance and Mitigation Framework Strategy contained within the *Dorset Heathlands Planning Framework 2020–2025 Supplementary Planning Document* (2020) (the DHPF) which includes a requirement for a financial contribution towards Strategic Access Management and Monitoring (SAMM).
45. The appellant has submitted a draft unilateral undertaking (UU), pursuant to section 106 of the Town and Country Planning Act 1990, in respect of the payment of a SAMM contribution to mitigate against 'in-combination' effects from new residential development upon the EPS due to increased recreational disturbance to the protected habitats and species of the lowland heath.
46. The Council has not specifically commented upon the submitted planning obligation, but has confirmed that, in principle, such a mechanism constitutes a satisfactory means of addressing this matter.
47. Within the context of this appeal, the responsibility for assessing the effects of the proposal on the EPS falls to me as the competent authority. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine this matter further and to undertake an Appropriate Assessment (AA), under the Habitats Regulations, of the implications of the appeal scheme for the EPS.
48. However, as the first main issue provides clear reasons for dismissing the appeal, the outcome of any such AA would have no bearing on the overall outcome of this appeal. There is therefore no need for me to consider this matter any further as part of my decision since any findings on this issue would not change the appeal outcome.

Other Matters

49. The appellant has referred to the Council's procedures during the determination of the planning application. I have noted the appellant's frustrations in this respect. However, the Council's processes are not a matter for consideration as part of this appeal, which I have determined on the merits of the proposal before me.

Planning Balance

50. The Council has confirmed that it cannot demonstrate a 5-year supply of deliverable housing sites as required by the Framework, and that the Council's supply stands at 2.7 years of deliverable housing land. As such, the undersupply is acute.
51. Paragraph 11 of the Framework applies, which states that relevant policies for the supply of housing should not be considered up to date where a 5-year housing land supply cannot be demonstrated, or the Housing Delivery Test indicates that the delivery of housing was substantially below the housing requirement over the previous three years.
52. Paragraph 11 sets out that, where relevant policies are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, provides a clear reason for refusing the development proposed, or 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, or specific policies in the Framework indicate that development should be restricted.
53. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social, and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an urban area within a designated settlement boundary, where access to facilities and services and public transport connections is likely to be greatest.
54. Paragraph 60 of the Framework refers to significantly boosting the supply of homes, and 8 additional dwellings would make a modest contribution towards addressing the housing delivery deficit. Moreover, the development would comprise sizes of dwelling which the Council has identified that there is a need for within the Borough, and the scheme could be built out relatively quickly, having regard to Paragraph 70 of the Framework.
55. There would also be economic benefits arising from the construction of the new dwellings and economic and social benefits as a result of their future occupation. These considerations weigh in favour of the development, and I afford them moderate weight, having regard to the modest size of the proposed development.
56. The Council has raised no objection to the appeal scheme in respect of matters including the principle of additional dwellings on the site, the impact of the proposal upon the character and appearance of the area and the living conditions of the occupiers of existing neighbouring properties, highway safety and parking, flood risk and on-site ecology and biodiversity. Moreover, I have found no harm in respect of the impact of the development upon the living conditions of future occupiers of the scheme. In terms of the planning balance, the lack of identified harms is a neutral factor.
57. Whilst the Framework encourages the effective use of land in meeting the need for homes and requires the Council to approach decisions in a positive and creative way, these matters are not unqualified.
58. Accordingly, having carefully considered the balance of factors, notwithstanding whether footnote 7 to Paragraph 11 of the Framework applies with respect to

habitats sites, I consider that, when assessed against the policies in the Framework taken as a whole, the significant harm that would arise from the proposal in respect of the vitality and viability of the District Centre would significantly and demonstrably outweigh the benefits. As a result, the economic objective of sustainable development of helping to build a strong, responsive, and competitive economy, would not be achieved. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

59. For the above reasons, I therefore conclude that the appeal should be dismissed.

S Leonard

INSPECTOR