



Appeal Decision

Site visit made on 14 May 2024

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Appeal Ref: APP/V1260/W/23/3329221

Land adjacent to 62 Dawkins Road, Poole BH15 4JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Luka Homes against Bournemouth Christchurch and Poole Council.
 - The application Ref is APP/23/00425/F.
 - The development proposed is full planning application to erect a terraced row of 9 houses with associated car parking, cycle store and bins.
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Decision

1. The appeal is dismissed and planning permission for the erection of a terraced row of 9 houses with associated car parking, cycle store and bins is refused.

Preliminary Matter

2. The appeal was lodged following the failure of the Council to determine the planning application within their deadline for doing so. Although the Council subsequently issued a decision notice, the appeal has been determined on the basis of non-determination of the application. The Council's putative reasons for refusal have however informed the main issues of the appeal, which are set out below.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the character and appearance of the area;
 - the living conditions of nearby occupiers, with particular regard to privacy and outlook;
 - highway and pedestrian safety, having particular regard to parking provision; and
 - the integrity of habitats sites.

Reasons

Character and appearance

4. The appeal site comprises a partially overgrown parcel of land with a pedestrian track running through it, situated in-between a residential area and an industrial estate on Dawkins Road in Poole.

5. 2-storey buildings predominate on the north side of Dawkins Road in the vicinity of the site. Although 3-storey blocks of flats are present opposite the site, due to the compact nature of each storey and their overall heights, they do not alter the impression of buildings in the local area as having a broadly consistent and modest scale. Nearby buildings, including the blocks of flats opposite the site, tend to be situated within good-sized plots. Buildings, including those at the industrial estate, are commonly set-back from the footway.
6. In contrast, the introduction of the proposed terraced row of 9 dwellings on this small site would result in each residential unit having a plot size which would be appreciably smaller than is typical in the locality, with each individual unit appearing very narrow, and with most of the units having a limited amount of private amenity space.
7. Whether or not the private amenity space provided for each unit would be sufficient to meet the reasonable needs of the future occupiers of the proposed new terrace, the layout of the proposed development would appear cramped and contrived in its context. This harmful effect on the character and appearance of the area would be intensified by the overall height of the terraced row, which would have the appearance of being tantamount to 3 and a half storeys.
8. Units 1 and 9, at each end of the terraced row, would suffer from having irregular plot shapes. Although the row of dwellings would face onto the new private roadside, the row would be positioned very close to the edge of the proposed residents' footpath with minimal areas of soft landscaping provided, in contrast to nearby buildings which are often set-back from Dawkins Road with fairly generous amounts of soft landscaping to their frontages.
9. As a result, the proposed development would unduly contrast with the prevailing pattern of development in the vicinity, and it would undermine the relatively spacious character of development which is common locally. The contemporary design and proposed materials for the proposed new terrace, whilst not objectionable in principle, would not be of sufficient merit to overcome these adverse impacts.
10. Due to the minimal space which would remain to the frontages of the proposed dwellings, there would be little room left for soft landscaping in these areas. As such, a planning condition requiring a soft landscaping scheme would not overcome the adverse impacts identified above. The proposed development would obstruct views of some of the units in the industrial estate, but there is no evidence before me to suggest that a less harmful scheme could not achieve the same aims. These matters accordingly do not change my findings above.
11. I therefore find that the proposed development would have an unacceptable and harmful effect on the character and appearance of the area. It would conflict with parts (1)(a)(i) and (ii) of Policy PP27 of the Poole Local Plan (adopted 2018) (Local Plan) which provides that, amongst other things, development will be permitted provided that it reflects or enhances local patterns of development and neighbouring buildings in terms of layout and siting, and height and scale.
12. The proposed development would also conflict with paragraph 135 c) of the National Planning Policy Framework (the Framework) which provides that,

amongst other things, planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

13. Policy PP28 of the Local Plan has been referred to by the Council. However, as this policy relates to flats and plot severance, it is not directly relevant to this main issue. Nevertheless, the above-mentioned policies are more than sufficient for me to come to a view on this main issue.

Living conditions

14. The rear garden areas of 56 to 62 Dawkins Road (Nos 56 to 62) are situated in close proximity to the site. The proposed development would incorporate windows serving lounges and bedrooms at first and second floor level within the proposed new terrace which would enable direct views over these areas. Whether or not these areas are communal or individual amenity areas, due to the minimal separation distances between them and the proposed new terrace, the proposed development would result in an undue loss of privacy for the users of those rear garden areas.
15. Furthermore, due to the overall height and scale of the proposed new terrace, which would stretch alongside and very close to the rear garden areas of 60 and 62 Dawkins Road (Nos 60 and 62), the proposed new terrace would appear as an overly-dominant and overbearing feature in views from those areas. It would therefore be harmful to the outlook for the users of those rear garden areas.
16. Consequently, the proposed development would make the above-mentioned rear garden areas much less pleasant to use than at present, which would adversely effect the living conditions of the occupiers of Nos 56 to 62 with respect to privacy, and Nos 60 and 62 with respect to outlook.
17. I therefore find that the proposed development would have an unacceptable and harmful effect on the living conditions of nearby occupiers, with particular regard to privacy and outlook. It would conflict with part (1)(c) of Policy PP27 of the Local Plan which provides that, amongst other things, development will be permitted provided that it would not result in a harmful impact upon amenity for local residents considering privacy and whether the development is overbearing or oppressive.
18. The proposed development would also conflict with paragraph 135 f) of the Framework which provides that, amongst other things, planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Highway and pedestrian safety

19. The site is situated within BCP Council Parking Zone C, according to the SPD¹. For various reasons, the appellant considers that the site should be considered more akin to Zone B. However, considering that the planning system should be genuinely plan-led, and noting that the SPD is an adopted document which is one of the 'relevant standards' referred to in part (1)(g) of Policy PP27 of the Local Plan, it is imperative that I have due regard to it. Additionally, as the SPD

¹ Parking Standards: Supplementary Planning Document (adopted 2021)

contemplates residential development being located within Zone C, the fact that the site has an extant planning permission for flatted development does not alter the zone which the site is located within. I have therefore considered the proposed development on the basis that the site is situated within Zone C.

20. For Zone C, the SPD requires that houses with 4 or more habitable rooms should have 2 car parking spaces. As the proposed new terrace would only offer 1 car parking space per dwelling, the proposed development would suffer from a shortfall of 9 car parking spaces.
21. The SPD states that where developers wish to provide a different level of parking on-site than recommended by the SPD, a parking survey and assessment of 'Parking Stress' (parked vehicles as a percentage of the number of standard available parking spaces) will be required at the Council's discretion to form part of a design-led approach to parking. However, no parking survey has been submitted.
22. Local residents have referred to issues stemming from parking stress in the area. I observed that there were almost no parking spaces available for a significant stretch on Dawkins Road to the south of the site, and very few parking spaces were available to the west of the site on Dawkins Road. Whilst only a snapshot in time, my observations corroborate the representations from local residents in relation to the industrial estate being busy with large and heavy goods vehicles frequently traversing roads within the industrial estate.
23. Apart from the proposed development, which as mentioned above would suffer from a shortfall of parking provision, the north side of Dawkins Road in the vicinity of the site would be a likely place for the future residents of the proposed new terrace to park. The submitted Street Parking plan² shows that the north side of Dawkins Road to the immediate east of the site has unrestricted on-street parking.
24. However, I am mindful that local residents have raised concerns that Dawkins Road currently lacks adequate parking facility for the existing flats on the opposite side of Dawkins Road to the site. As the appellant has not submitted a parking survey, including in relation to actual parking demand versus available capacity on Dawkins Road or Freshwater Drive, it has not been demonstrated that nearby streets in reality have sufficient capacity to accommodate the shortfall in parking provision referred to above.
25. In the absence of substantive evidence to the contrary, the representations of local residents is persuasive on this matter. As such, it has not been demonstrated that the nearby surrounding road network has sufficient capacity to safely absorb the additional on-street parking requirements arising from the proposed development. This situation would increase the risk of inconsiderate / illegal / dangerous parking and consequently the potential for collision between vehicles. Therefore, it has not been demonstrated that the proposed development would not have an unacceptable impact on highway safety.
26. Units 4 to 9 of the proposed new terrace would incorporate car parking spaces to the side of each unit, which would be positioned directly adjacent to the proposed residents' footpath. Although it is possible that drivers could reverse into the spaces, this cannot be mandated, and as no specific turning area has

² Location Plan - Street Parking (Drawing No. 2120 34)

been provided from the access driveway, there is no guarantee that this would occur on a regular basis.

27. Accordingly, in all likelihood vehicles would reverse out of the parking spaces across the proposed residents' footpath. The lack of adequate visibility for vehicles reversing out of the spaces would create a danger to pedestrian safety, especially for vulnerable pedestrians such as children. This would be contrary to paragraph 5.9.9 of the SPD which provides that, amongst other things, the safety and convenient movement of pedestrians should be a priority in new developments.
28. I have had regard to the plans and decision notice relating to a planning permission for the erection of 2 bungalows with parking at 71 New Road, Bournemouth³. However, I am not bound to fall in line with any previous decision of the Council, and as the Officer's Report relating to that permission has not been provided it has not been possible to scrutinise the logic applied by the Council in that case. As it has not been demonstrated that this example offers a desirable precedent to follow, it does not change my findings above.
29. I therefore find that it has not been demonstrated that the proposed development would not result in unacceptable impacts on highway and pedestrian safety, having particular regard to parking provision, which paragraph 115 of the Framework sets as the threshold for development to be prevented or refused on highways grounds.
30. The proposed development would conflict with part (1)(f) of Policy PP27 of the Local Plan which provides that, amongst other things, development will be permitted provided that it provides a well-connected network of streets and spaces that considers the needs of all transport users prioritising the needs of pedestrians, cyclists and public transport users before private cars, and with part (1)(g) of Policy PP27 which provides that, amongst other things, development will be permitted provided that it provides convenient and practical parking in accordance with the relevant standards.
31. The proposed development would conflict with part (1)(c)(ii) of Policy PP35 of the Local Plan which provides that, amongst other things, proposals for new development will be required to contribute positively to the retention and creation of safe, convenient pedestrian and cycling routes.

Habitats sites

32. The site is within the 400 metres to 5km heathland area of the Dorset Heathlands, as defined in the Dorset Heathlands SPD⁴. The Dorset Heathlands include, amongst other designations, the Dorset Heathlands Special Protection Area and the Dorset Heaths Special Area of Conservation. Additionally, the site is near to Poole Harbour, which is a Special Protection Area, Site of Special Scientific Interest, and Ramsar site.
33. Paragraph 4.7 of the Dorset Heathlands SPD provides that, amongst other things, Natural England advise that additional residential development within this area is likely to have a significant effect on the Dorset Heathlands either alone or in combination with other proposals, and that in order for an Appropriate Assessment to be able to conclude that there is no adverse effect

³ Local Planning Authority reference: 7-2022-28497

⁴ The Dorset Heathlands Planning Framework 2020-2025: Supplementary Planning Document (adopted 2020)

on the integrity of the Dorset Heathlands it is necessary for certain types of development to require avoidance or mitigation measures to be implemented to allow development to be approved.

34. Similarly, paragraph 3.6 of the Poole Harbour Recreation SPD⁵ provides that, amongst other things, Natural England advises that the cumulative effect of residential and tourism development around Poole Harbour will have a likely significant effect on the Poole Harbour protected sites.
35. In relation to the proposed development under consideration in this appeal, Natural England have advised that it would have a likely significant effect on the European and international wildlife sites arising from the increase in residential units and hence increase in urban-related pressures such as recreational access.
36. As the competent authority, I am required to undertake an Appropriate Assessment in line with the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations), which includes taking account of any proposed mitigation measures.
37. Following Natural England's advice, the Council requires financial contributions to fund Strategic Access Management and Monitoring (SAMM). Even though appellant has indicated that they are willing to provide the financial contributions requested, only a draft Unilateral Undertaking agreement has been submitted.
38. Paragraph 18.2.2 of the Procedural Guide: Planning appeals – England provides that, amongst other things, the appellant must ensure that an executed and certified copy of a planning obligation is received at the time of making their appeal. The Planning Practice Guidance⁶ states that a negatively-worded condition limiting development that can take place until a planning obligation has been entered into is unlikely to be appropriate in the majority of cases. Considering this, and as exceptional circumstances do not exist in this case, the imposition of a planning condition regarding this matter would not be reasonable.
39. As effective mitigation has not been secured, the proposed development would not mitigate the impacts of the proposed new residential development upon the Dorset Heathlands nor on Poole Harbour. It follows that the results of my Appropriate Assessment are that the proposed development would cause adverse effects on the integrity of the relevant designated habitats sites when considered in combination with other development. Consequently, the proposed development would not comply with the Habitats Regulations nor with s40 of the Natural Environment and Rural Communities Act 2006 (as amended).
40. I therefore find that the proposed development would have an adverse effect on the integrity of habitats sites. It would conflict with part (1)(b) of Policy PP32 of the Local Plan which provides that, amongst other things, to ensure that heathland sites are not harmed, residential development involving a net increase in dwellings between 400 metres and 5 km of a heathland (everywhere else in Poole), will provide mitigation in accordance with the advice set out in the Dorset Heathlands SPD or appropriate to the adverse

⁵ Poole Harbour Recreation 2019-2024: Supplementary Planning Document (adopted 2020)

⁶ Paragraph 21a-010-20190723

effects identified, and with part (2)(b) of Policy PP32 which provides that, amongst other things, development proposals for any net increase in homes will provide a SAMM contribution to mitigate the adverse effects of recreation related pressures within Poole Harbour in accordance with the adopted SPD.

41. The proposed development would also frustrate the implementation of part (1) of Policy PP39 of the Local Plan which provides that, amongst other things, the Council will collect funding from development for infrastructure by Section 106 Agreement or Section 111 to provide some of the mitigation for European and internationally important sites (that cannot be taken through the Community Infrastructure Levy).

Other Matters

42. The conduct of the Council during the processing of the planning application is not a matter that I can assess in the context of a planning appeal.

Planning Balance

43. I have had regard to the extant outline planning permission for the erection of a 2-storey block of 10 flats with associated car parking, bin, and cycle storage⁷. I have no reason to doubt that this planning permission would be implemented in the event that this appeal is dismissed.
44. Although the extant permission would have a greater overall site coverage than the proposed development, as the extant permission relates to a block of flats, the extant permission would not suffer from the same deficiencies as the proposed development would in terms of the plot sizes for the proposed development resulting in a cramped and contrived layout. Nor, due to the off-set position of the block of flats from the rear garden areas of Nos 60 and 62, would the block of flats obstruct the outlook from those rear garden areas.
45. As the extant permission would be less harmful in terms of its impact on the character and appearance of the area and on the living conditions of nearby occupiers, it provides limited support for the proposed development. Little weight has been given to the fall-back position, as a result.
46. Following the extant outline planning permission referred to above, the principle of residential development on this site has been established. In this regard, the proposed development would contribute towards the Government's objective of significantly boosting the supply of homes, in the context of Poole's lack of a 5-year supply of deliverable housing sites, which is stated to be an approximately 4.1 year housing land supply with a 20% buffer. Of particular relevance here is paragraph 70 of the Framework which provides that, amongst other things, small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly.
47. It is common ground between the main parties that the site lies within a sustainable transport corridor location as defined in the Local Plan, and I note that the services and facilities available at Lower Hamworthy and at Hamworthy are within walking and cycling distance. By way of providing dwellings suitable for family occupation which might potentially appeal to

⁷ Local Planning Authority reference: APP/21/01412/P

- young people seeking a home with a garden, the proposed development would contribute to housing choice and mix in the local area.
48. The proposed development would contribute to the local economy via the spending from the future occupiers of the proposed new terrace, and from payments made to the Council under the Community Infrastructure Levy.
49. If the proposed development were acceptable in all other respects, potentially a planning condition could be imposed requiring the incorporation of renewable energy technologies on site, such as solar panels to be installed on the roof of the terrace.
50. Nevertheless, whilst noting the policy support in the Local Plan and the Framework in relation to the above-mentioned matters, the proposed development would result in a net gain of 9 new dwellings only, which is a modest amount. Furthermore, although the proposed development would in principle make an effective use of land, considering my findings on the first main issue above, it would not comply with paragraph 128 e) of the Framework which provides that, amongst other things, planning decisions should support development that makes efficient use of land, taking into account the importance of securing well-designed places. The above-mentioned benefits of the proposed development therefore attract no more than moderate weight in its favour.
51. The proposed development would result in unacceptable and harmful effects on the character and appearance of the area and on the living conditions of nearby occupiers. Moreover, it has not been demonstrated that the proposed development would not result in unacceptable impacts on highway and pedestrian safety. The proposed development would also have an adverse effect on the integrity of habitats sites. As these adverse impacts relate to the fundamentals of the planning and development process, in combination they amount to great weight in opposition to the proposed development.
52. As a matter of planning judgement I therefore find that the considerations put forward in support of the proposed development, do not, either individually or collectively, outweigh the adverse impacts identified, nor the conflict with the development plan identified. The proposed development would conflict with the development plan when considered as a whole.
53. Paragraph 186 a) of the Framework provides that, amongst other things, if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Considering this, it is evident from my findings on the fourth main issue above in relation to habitats sites, that the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the proposed development. Hence, paragraph 11 d) i. of the Framework is applicable, which means that paragraph 11 d) ii. of the Framework is not engaged. Thus, the proposed development would not benefit from the presumption in favour of sustainable development.
54. Overall, none of the other considerations, which include the provisions of the Framework, indicate that this appeal decision should be taken otherwise than in accordance with the development plan.

Conclusion

55. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations (including the representations of all interested parties and local residents), I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR