



Appeal Decisions

Site visit made on 13 June 2024

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2024

Appeal A Ref: APP/V1260/W/24/3339647

4 Burton Road, POOLE, BH13 6DU

- 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 Mr C Wilson against Bournemouth Christchurch and Poole Council.
 - The application Ref is APP/23/01228/F.
 - The development proposed is Partial demolition of the garage, erect new side elevation walling, sever land and erect 2 detached houses with associated car parking (revised scheme).
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Appeal B Ref: APP/V1260/W/24/3339623

4 Burton Road, POOLE, BH13 6DU

- 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 outline planning permission
 - The appeal is made by Mr C Wilson against Bournemouth Christchurch and Poole Council.
 - The application Ref is APP/23/00617/P.
 - The development proposed is Partial demolition of a garage, rebuild the side elevation of the garage. Sever land, extend driveway and erect a detached dwelling with off road car parking.
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Decisions

1. The appeals are dismissed and planning permission is refused.

Applications for costs

2. Applications for costs were made by Mr C Wilson against Bournemouth Christchurch and Poole Council in relation to both appeals. These applications are the subject of a separate Decision.

Preliminary Matters

3. Appeal A and Appeal B relate to separate planning applications for different development proposals as set out above. However, the site context is common to both appeals and therefore in the interests of conciseness and to avoid undue repetition, I have dealt with both appeals in one document.
4. Both appeals relate to planning applications that were not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of Appeal A highlighting that it would have refused

the application for planning permission. The Council's concerns are that the proposal would cause harm to the character and appearance of the area and would have adverse impacts on European protected sites. I have had regard to the Council's statement in framing the main issues.

5. During the course of the appeal process for Appeal B it became apparent that the Council had issued a decision relating to the original application. The Council stated that they were unaware an appeal had been lodged. As a valid appeal against non-determination had been lodged prior to the issue of the decision I have determined the appeal on that basis. However, I have considered the Council's Decision Notice in my determination of the appeal.
6. The application in respect of Appeal B was made in outline with matters of access, layout and scale to be determined as part of the application and matters of appearance and landscaping reserved to be determined at a later date. I have determined the appeal on this basis and have taken any details relating to the reserved matters shown within the appeal documentation as illustrative.

Appeal A Main Issue

7. The main issue in this appeal is:
 - the effect of the proposal on the character and appearance of the area including whether or not the proposal would preserve or enhance the character or appearance of the Branksome Park Conservation Area.

Appeal B Main Issues

8. The main issues in respect of Appeal B are:
 - the effect of the proposal on the character and appearance of the area including whether or not the proposal would preserve or enhance the character or appearance of the Branksome Park Conservation Area; and
 - the effect of the proposal on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

9. The appeal site for Appeal A comprises a significant plot of land which is currently occupied by the existing property at No 4 Burton Road (No 4) and its gardens.
10. In respect of Appeal B, a smaller red line site boundary has been drawn which includes a section of land adjacent to the existing dwelling at No 4 and a portion which runs in front of No 4 and would provide access to the proposed dwelling.
11. Both appeal sites are within the Branksome Park Conservation Area (CA). The Branksome Park Conservation Area Character Appraisal and Management Plan Supplementary Planning Guidance 2006 (the Appraisal) sets out that the significance of the CA is derived from its spacious sylvan character resulting from the planned division of a substantial estate into large building plots. The road layout, generous wooded plots, dense evergreen hedges and turf

embankments which date from the original plan, create a peaceful residential setting, distinct from the surrounding urban landscape.

12. The appeal site in respect of both appeals is within the area defined within the Appraisal as the Western Road (Upper) and Burton Road area. The appraisal sets out that the whole of this area runs along the edge of the Conservation Area and there is therefore a marked difference from one side of the road to the other, highlighting the generous plots sizes seen within the Conservation Area and emphasising the large areas devoted to trees and landscaping within the Conservation Area when compared to surrounding development. This area of the CA is characterised by large plots and abundant landscaping forming a low density pattern of development.
13. The existing dwelling at No 4 sits within a generous plot, surrounded by mature trees and makes a positive contribution to the tranquil, verdant and spacious character and appearance of the CA.

Appeal A character and appearance

14. The proposal under Appeal A is, in broad terms, to subdivide the plot and erect two detached houses with associated car parking. The proposed dwellings would be sited behind the existing dwelling at the rear of the plot and would each be accessed via a long driveway from Burton Road. Each of the plots would have a fairly small rear garden area and would look onto a landscaped area to the front.
15. The proposal would split the large existing plot into three smaller ones and, as such, would significantly erode the sense of spaciousness which is a key characteristic of the area. The resultant plots would be markedly smaller than others in the area and would fail to assimilate well with the prevailing spatial characteristics. The density of the properties within the site would be significantly higher than is the case elsewhere in this part of the CA.
16. The proposal would intensify the number of buildings on site and would also introduce an increased amount of hard landscaping. This would further reduce the soft, green and open character of the site.
17. All of the trees on the site are protected by a Tree Preservation Order (TPO). The proposed scheme is accompanied by a Landscape Plan prepared by JPS Landscape Design (The Landscape Plan). This plan indicates that a group of trees would be removed from the rear of the site in order to facilitate the development. The removal of these trees which make a positive contribution to the character and appearance of the CA would further reduce the sylvan character and appearance of the area.
18. I note that the Landscape Plan also shows the retention of many of the trees on site and the planting of around 16 new trees amongst other soft landscaping. Whilst this would indeed go some way towards mitigating the impact of the proposal, any new planting would not be mature and it would be many years before the new trees became large enough to compensate for those lost. As such, the loss of trees contributes further to the harm I have identified.
19. The plan also indicates that areas of the development including the location of a proposed car port and areas of the new access road would be within the root protection areas of many of the protected trees. I am not therefore persuaded

on the basis of the evidence before me that the longevity of these trees would be guaranteed. However, were I minded to allow the appeal a planning condition could have been imposed in order to control these details.

20. The appeal site slopes downwards to the rear and the plot contains a number of mature trees along its boundaries. Consequently, the proposed dwellings would be partially screened from public view from a number of view points. The proposal would, nevertheless, be visible in glimpse views from the highway and the reduction in plot size and the existence of further built form to the rear would be evident. Furthermore, views into the site from other nearby properties would be possible.
21. For the reasons set out above the proposal would lead to a harmful intensification of the use of the site and a subsequent reduction in the spacious and green character of the area. Thus, the proposed development would cause harm to the character and appearance of the area and would fail to preserve or enhance the character or appearance of the CA. Due to the scale and nature of the proposed development, the harm to the heritage asset would be less than substantial.
22. The approach in the National Planning Policy Framework (the Framework) is that where a proposal would lead to less than substantial harm to a heritage asset, as in this case, that harm should be balanced against the public benefits of the proposal.
23. I note that the proposal would provide housing in a sustainable location well served by existing facilities and infrastructure. However, this benefit is limited by the small scale of the scheme before me. I also note the appellant's evidence that the proposal would not have adverse impacts in other respects. The lack of harm in these respects is a neutral factor and not a benefit of the scheme and as such this element does not carry additional weight in favour of allowing the proposal.
24. On the other side of the balance I have identified that the proposal would fail to preserve or enhance the character or appearance of the area and as such would not meet the statutory requirements set out in s72 (1) of the Town and Country Planning (Listed Buildings and Conservation Areas Act) 1990 (TCPA) and would cause harm to the significance of the heritage asset. The Framework indicates that great weight should be given to a heritage asset's conservation. Accordingly, the public benefits of the scheme do not outweigh the harm identified.
25. As such the proposal would be contrary to Policy PP28 of the Poole Local Plan, November 2018 (LP). This policy deals specifically with plot severances and sub-division and is clear that residential proposals involving plot severances or plot sub-divisions will only be permitted where there is sufficient land to enable a type, scale and layout of development including parking and usable amenity space to be accommodated in a manner which would preserve or enhance the area's residential character.
26. The proposal would also directly conflict with Policy PP27 (b) of the LP which states that development will be permitted provided that it responds to natural features on the site and does not result in the loss of trees that make a significant contribution, either individually or cumulatively, to the character and local climate of the area.

27. The proposal would also fail to comply with other provisions of Policies PP27 and PP30 of the LP. Amongst other things, these policies, in turn, require a good standard of design in all new developments and expect development to preserve or enhance Poole's heritage assets.

Appeal B character and appearance

28. The proposal under Appeal B is for the severance of a section of the wider plot measuring around 967.77sqm to the south of the existing dwelling and the construction of a two-storey dwelling. Access would be via a shared driveway and the proposed new property would be sited adjacent to the existing dwelling at the front of the plot.
29. The subdivision of the wider plot into only two would ensure that the resultant plots would be larger than those which are proposed under Appeal A. However, the plots would, nevertheless, be smaller than the majority of other plots within the vicinity of the appeal site. Furthermore, the placement of the proposed dwelling at the front of the site would make the fact that the plot had been sub-divided and the resultant smaller plot sizes immediately evident from the street.
30. The separation distance between the proposed new dwelling and the existing dwelling on site would be far smaller than is typical of other properties in the CA. Additionally, the proposed new dwelling would be closer to the site boundary than is often the case. Consequently, the proposal would result in a development which would appear cramped and out of keeping with the prevailing pattern of development within the CA.
31. Though the landscaping of the proposal is a reserved matter to be considered at a later date, it is clear from the submitted plans that in order to accommodate the additional dwelling and the associated access and circulation space on the site a proportion of the existing soft landscaping would be removed and replaced with the built form. This would further erode the green, open and sylvan character of the site.
32. For the reasons set out above, the proposal would result in a harmful reduction in the spacious and green character of the area and would not be consistent with the pattern of development. Therefore, the proposed development would cause harm to the character and appearance of the area and would fail to preserve or enhance the character or appearance of the CA. Due to the scale and nature of the proposed development, the harm to the heritage asset would be less than substantial.
33. As with Appeal A the Framework indicates that where a proposal would lead to less than substantial harm to a heritage asset that harm should be balanced against the public benefits of the proposal.
34. I once again accept that the proposal would provide housing in a sustainable location well served by existing facilities and infrastructure but this benefit is limited by the scale of the proposal. I also recognise that the proposal would not have adverse impacts in other respects. However, this is a neutral factor and does not weigh in favour of allowing the proposal.
35. Conversely, I consider that the proposal would fail to preserve or enhance the character or appearance of the area, would cause harm to the significance of the heritage asset and would not meet the statutory requirements set out in

the TCPA. As such, the public benefits of the scheme do not outweigh the harm identified.

36. The proposal would, therefore, be contrary to Policy PP28 of the LP which states that residential proposals involving plot severances or plot sub-divisions will only be permitted where there is sufficient land to enable a type, scale and layout of development including parking and usable amenity space to be accommodated in a manner which would preserve or enhance the area's residential character.
37. The proposal would also fail to comply with Policies PP27 and PP30 of the LP. Amongst other things, these policies require a good standard of design in all new developments and expect development to preserve or enhance Poole's heritage assets. Policy PP27 (b) is also clear that development will be permitted provided that it responds to natural features on the site and does not result in the loss of trees that make a significant contribution to the character and local climate of the area.

Appeal B living conditions

38. The Council have raised concerns that the additional traffic movements associated with the proposed dwelling would have a detrimental impact on the peaceful nature in which neighbouring residents enjoy their garden spaces within the tranquil CA. However, the proposed access to the new dwelling would run in front of the existing dwelling at No 4 to the front of the properties. This access would be a significant distance from the main amenity spaces serving neighbouring properties which are largely to the rear. As such, any associated noise and disturbance would be sufficiently distant so as not to cause an unacceptable reduction in the peaceful living conditions enjoyed by those living nearby.
39. Furthermore, the number of vehicular movements associated with a single dwelling would be limited and would not be such that it would erode the tranquil nature of the CA to such an extent that it would cause harm.
40. Therefore, I consider that the proposal would not cause harm to the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance. As such, the proposal would accord with Policy PP28 of the LP in this regard.

Other Matters

41. The appellant has provided details of other schemes within the area whereby subdivision of a larger plot has been deemed acceptable. However, whilst consistency is important, circumstances on site are very rarely identical and each case must be treated on its own merits based on the particular context within which it is to be determined.
42. Of the other examples provided, details are limited, but a number appear to have been determined within a different policy context. For example, the Appeal at 2 Western Avenue¹, the site at 11 Leicester Road², the site at 8 Withingham Road³, the site at 19 Canford Cliffs Road⁴, the site at 4 Mornish

¹ APP/Q1255/W/17/3183246

² APP/17/00449/F

³ APP/14/00928/F

⁴ APP/17/01883/F

Road⁵ and the Appeal at 12A Western Avenue⁶ all appear to pre-date the adoption of the Poole Local Plan in November 2018. Furthermore, the site contexts and the specifics of each scheme also vary. These examples are not therefore directly comparable to the proposals before me.

43. Another example of particular note is the recent decision to permit the demolition of the existing dwelling and replace it with two new dwelling houses at 14 Dover Road, Poole⁷. I note that the scheme at 14 Dover Road involved the subdivision of the plot and the creation of two new dwellings which would be a similar distance from one another than that which is proposed in these appeals. However, based on the limited evidence before me, it would seem to me that there are a number of differences between this development and the appeal proposals.
44. The proposal at 14 Dover Road added only one unit of housing and, according to the appellant's planning statement, would provide two dwellings within a plot of around 0.40ha at a density of 5.92 dph. The proposal under Appeal A would include three dwellings in a site of 0.43ha at a density of 6.9dph. These differences are key in assessing the reasons why the scheme proposed under Appeal A is not directly comparable.
45. Though I note that Appeal B seeks only one new unit of housing the arrangements on site are very different and, unlike the scheme under Appeal B, the proposed dwelling at 14 Dover Road would be sited to the rear of the plot and not adjacent to the road. Furthermore, the landscaping and the layout of the dwellings within the site are notably different with boundary hedgerows proposed between the dwellings and two separate access roads.
46. The appellant has also provided some information regarding a grant of planning permission in September 2019 for a new two storey domestic dwelling at 2 Burton Road & 22 Balcombe Road⁸. As with the scheme at Dover Road, this permission relates to the addition of only one dwelling which would appear to be sited directly behind the existing building. As such, as I have set out above, this scheme would also be different to both appeals in this case.
47. I note that the subdivided plots would be larger than the neighbouring plot at No 4a Burton Road. However, this plot and the dwelling which sits upon it is the exception and not the rule. Plots of this type are not typical of the area and do not characterise the pattern of development. In any event, as I have set out above, each case must be determined on its own merits based on the specific circumstances at each site. Indeed, it would appear that the dwelling at No 4a was approved through a very different policy and planning context.
48. In any event, the existence of other examples is not sufficient reason to justify the grant of planning permission and this consideration does not outweigh the harm I have identified above.
49. I note that the appellant has made changes to a previously refused scheme in order to overcome the harm which was identified. However, the changes to the proposals are not sufficient to successfully overcome all of the previous

⁵ APP/16/01743/F

⁶ APP/Q1255/W/15/3138244

⁷ APP/22/01429/F

⁸ APP/18/01446/F

objections and, in my view, both schemes would, nevertheless be detrimental to the character and appearance of the area.

50. The appeal site is within 5Km of a Site of Special Scientific Interest (SSSI). This SSSI is also part of the designated Dorset Heathlands SPA (Special Protection Area) and Ramsar site and is also part of the Dorset Heaths SAC (Special Area of Conservation).
51. These areas host protected priority habitats and species including Dartford warblers, nightjars, woodlark, hen harrier, merlin, sand lizards and smooth snakes as well as other typical species of lowland heathland, wetlands and dunes. The Dorset Heathlands cover an extensive area of South East Dorset and are fragmented by urban development, forestry, agriculture and other land uses.
52. The application site is also within close proximity to Poole Harbour which is a SPA, SSSI and Ramsar site. The site was designated under the EU Birds Directive to protect rare, vulnerable and migratory birds.
53. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. This responsibility falls to me in the context of these appeals.
54. Both of the developments proposed under Appeal A and Appeal B would introduce additional residential units to the area. In my view, the additional residential units which would be provided would indeed be likely to lead to additional recreational visits and an intensification of the use of the protected sites. For this reason, both proposals would be likely, alone and in combination with other plans and projects in the area, to have a significant effect on the protected sites.
55. This assessment is supported by The Dorset Heathlands Planning Framework 2020 – 2025 Supplementary Planning Document (SPD) which states that various studies have found that public access to lowland heathland, from nearby development, has led 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 amongst other factors have an adverse effect on the heathland ecology and the special qualities.
56. Similarly, the Poole Harbour Recreation 2019 – 2024 Supplementary Planning Document, April 2020 (SPD2) is clear that population growth will increase recreational activities in and around the harbour causing direct or indirect disturbance to protected birds. Disturbance can be defined as any human activity that influences a bird's behaviour or survival. Studies show that public access in and around the harbour, and various forms of recreational activities can cause disturbance, e.g. boats, walkers, dogs, bait digging, etc.
57. However, both the SPD and SPD2 set out that such developments can be made acceptable in planning terms through the use of suitable mitigation measures. An Ecological Appraisal submitted by the appellant and prepared by Cherry Tree Ecology LTD on behalf of Beam Contracting Ltd, dated 17 May 2022 sets out that "there is potential for recreational pressure impacts and airborne

pollutants on the Dorset Heaths Sites through the increase in residential units. The appropriate CIL payments made by this application which fund both the recreational pressure avoidance measures and those projects put in place to improve air quality. The site is also within the zone of influence for waste water and recreational pressure impacts on Poole Harbour. The appropriate contributions will also be made to the Poole Harbour impact avoidance measures.”.

Planning Balance

58. There is no dispute between the parties that the Council cannot demonstrate a five year housing land supply. As such Paragraph 11 (d) of the Framework indicates that planning permission should be granted, unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. In this instance I have found that both of the proposals would cause harm to the significance of a designated heritage asset. As such, the presumption in favour of sustainable development would not apply.
59. Nevertheless, I note that the addition of housing which would contribute towards the supply in the area would be a benefit of both schemes. This benefit is, however, limited by the small scale of the proposal in each case and must be considered in that context.
60. Conversely, I have found that the proposals would cause harm to the character and appearance of the street scene and the wider area and would fail to preserve or enhance the character or appearance of the CA. As such, in my view, in each of the appeals before me the adverse effects would significantly and demonstrably outweigh the benefits.
61. If I had come to a different conclusion, it would have been necessary for me to undertake an AA and give further consideration to the likely effectiveness of mitigation measures associated with the protected sites. However, as I am dismissing the appeals for other reasons, this has not been necessary.

Conclusions

62. For the reasons above and having had regard to the development plan as a whole and all other relevant material considerations, I conclude that both appeals should be dismissed and planning permission should be refused.

L J O'Brien

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/V1260/W/24/3339647	Mr C Wilson
Appeal B	APP/V1260/W/24/3339623	Mr C Wilson