

Appeal Decision

Site visit made on 24 September 2024

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2024

Appeal Ref: APP/V1260/W/24/3344024

8 Fir Vale Road, Bournemouth BH1 2JG

- 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 E La Bouchardiere (8 FVR Limited) against Bournemouth Christchurch and Poole Council.
 - The application Ref is 7-2024-14911-G.
 - The development proposed is change of use from a former language school (Use Class F1(a)) to a 12-bed HMO (Use Class Sui Generis).
-

Decision

1. The appeal is dismissed and planning permission for change of use from a former language school (Use Class F1(a)) to a 12-bed HMO (Use Class Sui Generis) is refused.

Application for costs

2. An application for costs was made by Mr E La Bouchardiere (8 FVR Limited) against Bournemouth Christchurch and Poole Council. This application is the subject of a separate Decision.

Background and Main Issues

3. The appeal arises from the Council's failure to make a decision on the application. The Council has submitted a statement setting out how it would have determined the application. Based on this statement and all the evidence before me, I consider that the main issues are:
 - a) Whether the proposal would preserve or enhance the character or appearance of the Old Christchurch Road Conservation Area (the CA);
 - b) The effect of the development on the integrity of the Dorset Heathlands Special Protection Area (the SPA) and the Dorset Heaths Special Area of Conservation (the SAC); and,
 - c) Whether the proposal would provide suitable living conditions for future occupants with regard to communal rooms and facilities.

Reasons

Character or appearance of the CA

4. The CA comprises of an assemblage of neo-Georgian, Victorian, Edwardian, and Art Deco terraces, originally intended as residences, but now largely in

commercial uses. They are generally of substantial proportions, giving a sense of urban scale to the town centre. The significance of the CA lies in the historic value of the layout, as part of a prosperous Victorian seaside town, and in the architectural value of the collection of high-quality buildings. The appeal building lies in the middle of an elegant, curved terrace of four-storey red brick buildings with symmetrical bay windows. They have notable period details, including decorative plaster banding and window surrounds, and ornamental brick detailing at eaves level. The scale, layout, and architectural quality of the building means that it makes a positive contribution to the significance of the CA.

5. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
6. The proposal would not involve significant external alterations to the building itself, but it does include the provision of outside bicycle and refuse storage facilities. I am mindful that the current scheme follows from a previous proposal that was dismissed on appeal¹. In that case, the proposed cycle stores were to the front of the building, and the Inspector found that their prominence and design would fail to preserve or enhance the character or appearance of the CA.
7. The cycle and refuse stores are now proposed to the rear of the building, which has an access to Old Christchurch Lane. Whilst the rear elevation of the terrace lacks the architectural ornamentation of the frontage, its scale, symmetry, and robust materials are clearly evident. Old Christchurch Lane is a highway, so the proposed stores would be visible from close public views. Furthermore, the rear of the appeal building is particularly prominent in views from Old Christchurch Road, through the gap between Nos 104 and 106, where it acts as a focal point at the end of the road. In this view it is seen in association with the high-quality buildings fronting Old Christchurch Road.
8. The submitted drawings show the stores to be located in an unenclosed bay, level with Old Christchurch Lane. They would, therefore, be entirely open to view. The transparent plastic proposed for the cycle store, and the lightweight panelling for the refuse store, would not reflect the high-quality, robust materials of the surrounding buildings in the CA. They would, therefore, be incongruous, free-standing structures, which would not assimilate well into their historic context. As they would be readily visible along the length of Old Christchurch Lane, and from Old Christchurch Road, they would be harmful to the character and appearance of the CA.
9. My attention has been drawn to an extant planning permission² for the conversion of the building to eight flats, which includes the provision of cycle and refuse storage in a similar location. However, the evidence indicates that the approved facilities would be of robust, bespoke design, and would be enclosed by railings and a lockable gate. By contrast the appeal proposals would be of lightweight materials and open to the highway, so would not only be more visible, but would also be more prone to accidental damage from passing vehicles, and to fly-tipping, and crime. It is therefore likely that the harm to the CA would increase over time through the inevitable deterioration

¹ Appeal Decision APP/V1260/W/23/3334973

² LPA reference 7-2021-14911-D

of the structures. Consequently, the facilities would not function well and add to the overall quality of the area for the lifetime of the development, as required by paragraph 135a) of the National Planning Policy Framework (the Framework). The extant planning permission does not, therefore, alter my conclusion that the proposal would fail to preserve or enhance the character or appearance of the CA.

10. The harm that I have identified would be limited to a relatively small part of the CA, so it would be less than substantial for the purposes of paragraph 205 of the Framework. Nevertheless, paragraphs 205 and 206 state that great weight should be given to the conservation of heritage assets, and that any harm to, or loss of, their significance should require clear and convincing justification.
11. Paragraph 208 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the development. In this regard, the proposal would provide additional residential accommodation in a sustainable location. It would also provide some economic benefits through employment during the conversion works, and the ongoing spend of future residents in the local area. However, I note that similar benefits could be secured through implementation of the approved scheme for eight flats. Consequently, although I give some weight to these benefits, they do not outweigh the great weight that the Framework gives to the conservation of heritage assets.
12. In summary, the proposal would result in less than substantial harm to the CA, which is not outweighed by public benefits. The development would, therefore, be contrary to Policies CS39 and CS41 of the Bournemouth Local Plan: Core Strategy (2012) (the Core Strategy), saved Policy 4.4 of the Bournemouth District Wide Local Plan (2002), and Policy D4 of the Bournemouth Local Plan: Town Centre Area Action Plan (2013). These policies seek, amongst other things, to protect designated heritage assets, and to ensure that all developments are well designed and of a high quality, and that bin and cycle storage is well integrated into developments so as not to adversely affect the street scene. The proposal would also conflict with the Framework's aim of conserving and enhancing the historic environment.

Integrity of the SPA and the SAC

13. Evidence shows that the SPA and SAC are under significant pressure from an increase in the level of recreation, and disturbance of bird species, as a result of urban development. The proposal would result in additional residential accommodation within the area of influence of these European sites. Whilst the impact of the development itself would be small, in cumulation with the 11,290 new homes that are projected in the Council's housing trajectory for the period 2020-2025, it has the potential to impact on the integrity of the protected sites, through increased recreational disturbance. In these circumstances, the Conservation of Habitats and Species Regulations 2017 require that an Appropriate Assessment (AA) be carried out, and that permission may only be granted after having ascertained that development will not affect the integrity of the European sites. I have carried out my AA on a proportionate basis with regard to the evidence before me.
14. The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (the SPD) sets out that mitigation for the impacts of

development will be delivered through a combination of Heathland Infrastructure Projects (HIPs), and Strategic Access Management and Monitoring (SAMM). The HIPs will generally be funded by the Council using Community Infrastructure Levy receipts, whereas SAMM funding will be through individual contributions from all developments that involve an increase in residential accommodation, including Houses in Multiple Occupation (HMOs). The Council's statement sets out the level of contribution that would be necessary in this case to accord with the SPD.

15. The appellant does not contest that mitigation is necessary, and states that a financial contribution will be secured through a legal agreement prior to determination of the appeal. However, no such agreement has been provided. Consequently, there is no mechanism in place to ensure that the increased recreational pressure resulting from the development would be mitigated. Following AA and adopting a precautionary approach, I am therefore unable to conclude that the development would not affect the integrity of the European sites. The proposal would, therefore, be contrary to Policy CS33 of the Core Strategy, which says development will not be permitted unless it can be ascertained that it will not lead to an adverse effect upon the integrity, directly or indirectly, on the SPA and the SAC.

Living conditions for future occupants

16. Although the application form describes the building as being vacant, it appeared to be in use as an HMO at the time of my visit. The proposal would comprise 12 bedrooms over four floors. Each room would be over 20 square metres in area and would have a large bay window to provide light and ventilation. Consequently, it is not disputed that the bedrooms would provide a suitable standard of sleeping accommodation. The appellant has indicated that each of the rooms would be let for single occupancy. However, the two rooms that I inspected both contained double beds, and the evidence indicates that an HMO license has been granted for the occupation of the building by up to 20 people.
17. The previous proposal, which was dismissed on appeal, was for 14 bedrooms and the Inspector concluded that the communal facilities would not provide appropriate living conditions for future occupants but would create a cramped and congested HMO resulting in a poor living environment. The scheme now before me omits two bedrooms to provide an additional communal lounge on each of the first and second floors. There would, therefore, be a potential reduction in the number of occupants, and a significant increase in shared space, with one large room on each floor designated as a kitchen/dining room or lounge, a smaller kitchen on the first floor, and two laundry rooms.
18. The dimensions and shape of the first-floor kitchen means that it is only really suitable for one or two people to prepare food at a time. It is therefore contended that it is not suitable to provide for the needs of all of the occupants of the two upper floors. However, the much larger kitchens proposed on the ground and lower ground floor would also be available to these residents, and these would be large enough to allow three or four people to prepare food at the same time. I saw that there were three cookers in the existing ground floor kitchen, and a similar number could be installed in the enlarged lower ground floor kitchen. In addition to the single facility on the first floor, this would provide sufficient cooking facilities for residents, as it

is unlikely that the occupants of all 12 rooms would be preparing meals at the same time.

19. Both of the bedrooms that I inspected were arranged with a small table and chairs for dining, so residents would not be wholly dependant on the communal spaces to eat meals. As all of the rooms are of similar dimensions, it is likely that similar arrangements are in place in other rooms. Consequently, with a maximum of 20 residents, it is unlikely that any of the four large communal rooms would become overcrowded at any time. Bearing this in mind, there is scope, should the need arise, for additional cooking facilities to be installed in the upper floor lounges.
20. I have not been provided with details of proposed layouts for the two laundry rooms, but each would appear large enough to accommodate two or three appliances. I also saw that washing machines were installed in each of the kitchens on the lower floors. There is, therefore, space to provide at least one washing machine for every two rooms. This level of provision would be reasonable, as it is unlikely that all residents would choose to do their laundry at the same time.
21. Policy CS41 of the Core Strategy seeks to ensure that all development provides a high standard of amenity to meet the day-to-day requirements of future occupants. However, the Council has not provided details of any adopted policies or guidance on the size or standard of communal facilities that are expected in HMOs in order to comply with this development plan policy. In this case, there would be large communal kitchen/dining rooms or lounges on each floor totalling 96 square metres in area, plus two separate laundry rooms. The individual rooms would also be large enough to provide some relaxation space for residents, such that they would not be entirely dependant on the communal areas. In these circumstances I am satisfied that, overall, the proposal would provide suitable living conditions for occupants, so would comply with Policy CS41.

Planning Balance

22. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission, and therefore appeals, should be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found that the proposal would fail to preserve or enhance the character or appearance of the CA, and would adversely affect the integrity of European protected wildlife sites. The proposal would, therefore, be in conflict with the policies of the development plan as set out above.
23. It is not disputed that the Council is unable to demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 77 of the Framework. The evidence indicates that the current supply is 2.3 years, so the shortfall is substantial. However, paragraph 188 of the Framework makes it clear that the presumption in favour of sustainable development does not apply where the proposal is likely to have a significant effect on a habitats site, unless an AA has concluded that the plan or project will not adversely affect its integrity. In the absence of any agreed mitigation, the proposal would have a likely significant effect on the SPA and SAC. Consequently, the approach to decision-taking described in paragraph 11d) of the Framework does not apply.

24. Nevertheless, the benefits of the proposal must be weighed against the harm that I have identified. Paragraph 60 of the Framework seeks to significantly boost the supply of homes. The development would provide additional residential accommodation, which would assist with this aim, and would make a modest contribution to reducing the identified shortfall. The site is in an accessible location that would be suitable, in principle, for residential development. Paragraph 70 of the Framework says great weight should be given to the benefits of using suitable sites within existing settlements for homes.
25. There would also be benefits to the economy associated with the construction phase of the development, and the future spend by occupants in the local area. However, in view of the limited scale of the proposal, the economic benefits would be small, so carry little weight in my decision.
26. The Framework makes it clear at paragraph 12, that the presumption in favour of sustainable development does not change the statutory status of the development plan, and that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Furthermore, paragraph 186 says that if significant harm to biodiversity resulting from a development cannot be avoided, then planning permission should be refused. Overall, therefore, the limited benefits associated with the proposal do not outweigh the conflict that I have found with development plan policies that seek to avoid harm to designated heritage assets and European protected wildlife sites.

Conclusion

27. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR