

## Appeal Decision

Site visit made on 30 April 2024

**by K Jones BA (Hons) DipLA CMLI**

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

**Decision date: 01 October 2024**

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**Appeal Ref: APP/V1260/W/23/3327906**

**11 Spencer Road, Bournemouth, BH1 3TE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Pivotal Development Services Ltd against the decision of Bournemouth Christchurch and Poole Council.
  - The application Ref is 7-2023-6798-J.
  - The development proposed is the change of use from a Hotel (Use Class C1) to a 10-bed HMO (Use Class Sui Generis).
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### Decision

1. The appeal is dismissed.

### Preliminary Matters and Planning History

2. The appeal was submitted under a different name (Pivotal Homes) to that of the applicant. The appellant has confirmed that Pivotal Homes represents an umbrella group, and that the appeal should proceed under the name of the applicant, Pivotal Development Services Ltd. I have determined the appeal on that basis.
3. The appeal site lies within 5km of the Dorset Heathlands Special Protection Area and Ramsar site, and the Dorset Heaths candidate Special Area of Conservation. The Council has undertaken an appropriate assessment identifying likely significant effects which would arise from the proposed development, concluding that the measures necessary to prevent the adverse effects may be secured through a legal agreement. The appellant submitted a legal undertaking during the appeal which would secure the financial contributions to strategic access management and monitoring sought by the Council. I will return to this matter later in my decision.
4. The appellant also submitted further information with the appeal regarding Pivotal Housing Association's caring credentials, along with a series of behavioural management policies. These documents provide additional technical details on the internal operation and procedures of the organisation, and do not alter the proposed development from that determined by the Council or on which interested parties' views were sought. In addition, the Council has had the opportunity to review this information as part of the appeal process. As such, I am satisfied that there would be no procedural unfairness by my acceptance of these documents, and I have taken them into account in my determination of the appeal.

## Main Issues

5. The main issues are:

- Whether the proposed development would result in an unacceptable loss of tourism accommodation; and
- The effect of the proposed development on the characteristics of the area and the living conditions of nearby residents, with particular regard to disturbance and fear of crime.

## Reasons

### *Loss of tourism accommodation*

6. The description of development above indicates that the existing use of the appeal building is a hotel. The appellant refers to the application to which this appeal relates as seeking to regularise the existing use of the building as a house in multiple occupation (HMO), which has been operating since at least 2018. I have been provided with some evidence of this historical use, including licencing records, references to the use of the property in nearby planning applications, and communications with the Council. However, there is disagreement between the parties over the duration and continuity of the HMO use.
7. It is not for me, under a section 78 appeal, to determine whether or not the HMO use of the property is lawful. While I recognise the appellant's difficulties as a new owner in obtaining historic information or statutory declarations, in the absence of a lawful development certificate or other confirmation from the Council that the HMO use is lawful, I can only attribute this matter limited weight, and note that the parties agree that the lawful use of the building is that of a hotel (Use Class C1).
8. In this context, Policy CS28 of the Bournemouth Local Plan: Core Strategy (2012) (the Core Strategy) states that development resulting in the loss of sites or premises used, or last used, as tourist accommodation will only be considered acceptable if two criteria are met. Firstly, where it can be demonstrated that the business is no longer viable and has no reasonable prospect of continuing, and secondly where loss of the tourist accommodation will not harm the function of the area in relation to the tourism industry and the local community.
9. Policy CS28 is supported by the Council's Tourist Accommodation Supplementary Planning Document (2013) (the TSPD). Recognising the importance of tourist accommodation to the local economy, the TSPD sets out detailed evidence requirements for meeting the two criteria of Policy CS28. The option to undertake a Viability Screening Service has not been taken by the appellant, indicating that the viability information detailed in Appendix B of the TSPD would be needed to demonstrate compliance with Policy CS28.
10. While pre-application discussions with the Council have evidently taken place, no viability information to support the proposed change of use has been provided. Given the potentially quite extensive period of inactive hotel use combined with a change in ownership, it is reasonable for the appellant to be unable to provide viability information based upon business activity for the past three years. However, the evidence requirements of Appendix B of

the TSPD go beyond recent business activity. They include business planning information, details on the physical condition of the property, experience of the owner in the tourism industry, competitor analysis of other businesses within 300 meters, details of commercial marketing, and consideration of alternative tourism uses. Such details would not be reliant upon a trading history that may be unavailable to the appellant.

11. There are other options for tourist accommodation in the local area, including a mix of hostels, guesthouses, and larger hotels. However, my observations were that the local area is predominantly residential, without an unusually high concentration of such accommodation, particularly given the convenience of the location in relation to the railway station and Boscombe Beach. With no detailed competitor analysis of nearby premises, the fact that there is other tourism accommodation in the local area does not provide clear evidence that the existing C1 use of the appeal building would not be viable, or that its loss would not impact upon the tourism industry.
12. Excerpts of two appeal decisions<sup>1</sup> have been provided, and in reviewing these I agree that when applying Policy CS28 and the TSPD, if there were no real or tangible prospects of tourism use continuing, there would be no real or tangible loss that could be detrimental to the tourism function of the area. However, while it may not be the intention of the appellant to continue the C1 or other tourism use, without the support of viability information as described above, this is not substantive evidence of there being no real or tangible prospect of the tourism use of the property continuing. Indeed, the TSPD is clear that applications for change of use concern the premises rather than the owner.
13. As such, it has not been demonstrated that the business is no longer viable and has no reasonable prospect of continuing, or that loss of the tourist accommodation would not harm the function of the area in relation to the tourism industry and the local community. I therefore conclude that the proposed development would result in an unacceptable loss of tourism accommodation, in conflict with Policy CS28 of the Core Strategy, and the guidance contained in the TSPD.

#### *Characteristics of the area and the living conditions*

14. The appeal property is a semi-detached building within a residential area comprising predominantly flats alongside a number of HMOs, houses, hostels, and holiday accommodation. With development present on only one side of the road, there is a close relationship between the properties due to the narrow gaps between the semi-detached pairs, often with low walls forming the only dividing feature between buildings.
15. The proposed HMO is described as supporting homeless persons, with specific additional on-site support for alcohol, substance use, and mental health issues. The HMO would be run by a registered social housing provider with experience in specialist accommodation. Although there is evidence of an ongoing regulatory review process in respect of the provider, this does not appear to relate to failures in the quality of service to residents and the wider community, and I note the evidenced caring credentials and internal regulatory framework for risk management. I also recognise the Dorset

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<sup>1</sup> Appeal references APP/G1250/C/15/3016557 and APP/G1250/W/17/3179765

Police Crime Prevention Design Advisor's comment on the company's good reputation.

16. There would be a staff presence on site 24 hours a day, 7 days a week. The HMO would also operate in accordance with various organisational policies, including the Anti-Social Behaviour Policy and Procedure, CCTV Policy, and Drugs and Alcohol Procedure. Copies of these documents have been provided with the appeal, and are jointly described as the Behavioural Management Plan (BMP).
17. The appellant identifies that the scheme would not result in any increases in antisocial behaviour or levels of crime in the surrounding area as a result of the caring credentials and BMP. However, the policy documents are clear that the company will take a balanced approach to anti-social behaviour, with a focus on prevention, early intervention, support, and where necessary, enforcement action. In addition, while the BMP does not condone the use of illicit drugs or other substances, it does accept that such events will occur. While the policies represent reasonable and proportionate measures to the possibility of future antisocial events occurring, they would not expressly prevent them occurring in the first place.
18. It is evident from the comments provided by interested parties and Dorset Police that several incidents have occurred in relation to an existing supported living HMO run by the same provider nearby, which has included considerable and recent engagement between the Police, the provider, and the local community. Whilst I do not consider it appropriate to list the incidents here, it is clear that there is a direct link between some local incidents of crime and antisocial behaviour, and the operation of the nearby supported living HMO. Alongside the fact that this area is identified by the Police as a hotspot for substance abuse and antisocial behaviour, this has plainly had a significant effect on existing residents, affecting the characteristics of the area, undermining community cohesion, and creating anxiety and fear of crime.
19. I acknowledge that in any environment, individual incidents of antisocial behaviour cannot be ruled out. However, the local Police's assertion that the proposal is likely to result in an increase in antisocial behaviour, the aforementioned evidence of issues arising in practice, and the close-knit character of properties in this location provides a strong indication that the proposal would harm the residential character of the area, resulting in an increase in disturbance, and a justified increase in fear of crime.
20. The Police comments outline a series of recommendations to improve the overall safety of the property against 'Secured by Design' principles. These include upgrades to the internal and external doors, securing the internal office, providing lone night workers with alarms, providing secure cycle storage, and gated access to the rear of the property. Such measures could reasonably be secured by condition if the appeal were to be allowed. While I have had regard to the appeal decision<sup>2</sup> referred to by the appellant and the benefits of Secured by Design principles, I do not have details of the particular Secured by Design measures required in that case. With respect to this appeal, there is limited evidence that the changes requested by the Police would improve incidental surveillance of the local area, or substantially

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<sup>2</sup> Appeal reference APP/Z2315/W/20/3252022

reduce the effects of antisocial behaviour or fear of crime in the local community.

21. My attention has been drawn to two further appeal decisions<sup>3</sup> in support of the scheme. While both appeals related to HMOs, neither scheme proposed supported living accommodation. In addition, neither Inspector found there to be compelling evidence that crime or antisocial behaviour was likely to increase as a result of the proposals. For my reasons above, that is not the case in this location. As such, while I have had regard to these decisions, I have reached my conclusion based on the individual circumstances of this case.
22. While there is no evidence of complaints from the existing unauthorised use of the property as an HMO, there is no substantive evidence that this use has any component of supported living. The absence of complaints does not therefore indicate that the appeal proposal could operate without harm to the character of the locality or the living conditions of nearby residents.
23. The Core Strategy identifies that high concentrations of HMOs in particular parts of Bournemouth have led to negative impacts on the amenities of local residents and on the character of an area. Although not strictly relevant to the change of use from a Class C1 use to a HMO, Policy CS24 of the Core Strategy has been considered by the parties in so far as it sets a threshold of 10%, over which is considered to be an unacceptable concentration of HMOs. While close to the threshold, the Council is satisfied that the presence of an HMO at the appeal site, in principle, would not result in an intensification of HMOs above 10%, and I see no reason to disagree.
24. Nevertheless, for my reasons above, the existing circumstances of the local area leads me to conclude that the proposed supported living HMO would have an unacceptable effect on the characteristics of the area and the living conditions of nearby residents, with particular regard to disturbance and fear of crime. These concerns arise from the particular details of the proposal and its context.
25. Thus, the proposal would be contrary to Saved Policy 6.17 of the Bournemouth District Wide Local Plan (2002) (the BDWLP) where it requires that development is compatible with the existing character of the area, and that the amenities of neighbouring residents will not be adversely affected by noise or general disturbance, having regard to the nature of the use and the levels of activity which would likely be generated. There would also be general conflict with Policies CS6 and CS41 of the Core Strategy in so far as they seek to ensure that new development including changes of use, enhance character and amenities of future occupants and neighbouring residents. I also find conflict with paragraph 135 f) of the National Planning Policy Framework (the Framework) which states that developments should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing users, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
26. The appellant has referred to Policy CS38 of the Core Strategy. Although reference is made within the policy to noise pollution, this policy primarily

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<sup>3</sup> Appeal references APP/A4520/W/20/3265859 and APP/D1780/W/21/3282523

relates to polluting development including water-based and airborne pollution, and not the amenities of neighbouring residents as protected by the policies listed above. As such, I do not consider this policy to be determinative to the appeal.

### **Other Matters**

27. As described above, the appeal site is located within 5km of sites protected by the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations). In accordance with Policy CS33 of the Core Strategy and the Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document, additional residential development in this area is likely to have a significant effect on the protected sites. The evidence indicates that these effects could potentially be mitigated through contributions secured by way of a legal undertaking, the details of which have been submitted with the appeal.
28. The Regulations require 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. However, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

### **Planning Balance**

29. I have found that the proposal conflicts with the development plan in respect of the loss of tourist accommodation, and the effect of the proposed development on the characteristics of the area and the living conditions of neighbouring occupiers.
30. It has not been put to me that paragraph 11d) of the Framework is engaged. While the BDWLP predates the Core Strategy and the Framework, it is clear that existing policies should not be considered out-of-date simply because of their age. Saved Policy 6.17 is generally consistent with the Framework in terms of its aims regarding achieving well-designed and beautiful places, and creating places that are safe, with a high standard of amenity for existing and future users. As such, I afford significant weight to the conflict of the proposal with this policy and the development plan as a whole.
31. In accordance with paragraph 12 of the Framework, where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. The Framework is clear that decisions may be made that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
32. That there would be no harm in respect of matters including the external design of the property, the amenity of new occupiers, transport and parking, protected species, or flooding are neutral considerations weighing neither for nor against the proposal.
33. I am mindful that accommodation for vulnerable individuals is a significant and worsening issue nationally, and that the Council area has high levels of

homelessness. In the context of the Government's aims to combat homelessness and address the needs of groups with specific housing requirements, the appeal proposal would make a small contribution towards tackling these issues. There would also be some social benefits associated with the improved medical, psychological, and emotional support of residents, and resulting reductions in the need for emergency healthcare. However, as only a single property and 10 bedrooms of supported living accommodation would be provided, I afford these benefits modest weight.

34. While there may also be some economic benefits associated with the staffing and occupation of the HMO in an accessible location, with reference to my first main issue, there is little evidence to demonstrate that this would outweigh the loss of the economic activity associated with the existing hotel use. As such, I afford any benefits in this regard very limited weight.

35. Accordingly, even in totality, the benefits of the proposal would be limited in scope and scale, and would not outweigh the conflict with the development plan.

### **Conclusion**

36. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. I therefore conclude that the appeal should be dismissed.

*K Jones*

INSPECTOR