

Appeal Decision

Site visit made on 7 May 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2024

Appeal Ref: APP/V1260/W/23/3331984

54 Frances Road, Bournemouth BH1 3SA

- 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 Mr Bryan Dion of Decomatic UK Ltd against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref is 7-2023-14547-G.
 - The development proposed is use of hotel (Use Class C1) to provide accommodation for guests and residents (sui generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant states that the appeal site has been used as a House in Multiple Occupation (HMO) since 2016 and it is confirmed that the site holds an HMO licence and has done for a number of years. It is also confirmed that the site has not been run as a hotel since the pandemic started in 2020. However, the evidence before me does not demonstrate that the lawful use of the site is anything other than a hotel and I have determined the appeal accordingly.
3. The Council's reason for refusal refers to Policy CS38 of the Bournemouth Local Plan (Core Strategy) (2012) (CS). However, it has subsequently been confirmed by the Council that this was an error, and Policy CS28 of the CS should have been referred to instead. The appellant discussed Policy CS28 in their appeal statement and they had the opportunity to comment further as part of their final comments. As such, they would not be disadvantaged or prejudiced by me determining the appeal on the basis that the reason for refusal should state a conflict with Policy CS28 rather than Policy CS38.
4. A revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the matters relied on by the main parties are unchanged. Therefore, I did not need to consult with the main parties regarding the revised Framework.

Main Issues

5. The main issues are:

- whether the hotel is viable and has any prospect of continuing, and the effect of its loss on the function of the area in relation to tourism and the local community; and
- whether the proposal would provide adequate and suitable cycle storage facilities to serve the needs of future occupants.

Reasons

The hotel use

6. Policy CS28 of the CS sets out that the loss of tourist accommodation, such as hotels, will only be acceptable if it is demonstrated that the business (i) is no longer viable and has no reasonable prospect of continuing; and (ii) the loss of the tourist accommodation will not harm the function of the area in relation to the tourism industry and the local community.
7. The appellant argues that Policy CS28 does not apply in this particular case as the hotel use would not be lost as part of the proposal as it would still function as a hotel during the months of June, July and August. The Council has suggested the imposition of a planning condition that would restrict the occupation of the property during those three months to hotel guests only. However, the appellant has confirmed that the intention would be to allow HMO residents to stay in their room during those months should they not want to vacate. As such, the requirements of the planning condition would not be practical or achievable, and I do not therefore have a mechanism before me to ensure that the hotel use is secured and continues to subsist in the future. As such, without the ability to prevent the hotel being lost as part of the proposed flexible use of the site, Policy CS28 applies to the determination of the appeal.
8. The Council's Tourist Accommodation Supplementary Planning Document (2016) (SPD) includes, at paragraph 7.6, the criteria that should be satisfied to demonstrate that the tourist business is no longer viable. Additionally, it advises that supporting information should be provided to demonstrate business activity for a minimum of the last three years. Furthermore, if it is not possible to provide the necessary information, or it is not considered by the accommodation owner to be relevant to the assessment of the proposal, then a written statement should be submitted outlining the reasons for this.
9. The appellant has suggested that the SPD guidance on the criteria for demonstrating that a tourist business is not viable is out of date. However, activities such as marketing the business for sale and providing accounts outlining any profits and losses are still sensible and practical means to test whether a business is still viable. The SPD guidance is therefore still relevant to the assessment required to satisfy the first part of Policy CS28.
10. My attention has been drawn to Policy E9 of the Bournemouth, Christchurch and Poole Local Plan: Publication Draft (eLP), which relates to visitor accommodation. It is clear that there is an intended change in the Council's approach to the retention of existing tourist accommodation. The

requirement to demonstrate that a hotel is no longer financially viable would only apply to tourist accommodation with more than 10 bedrooms (or 24 bedrooms in the central Bournemouth area). However, I am unaware whether there are any outstanding objections to the eLP and given the stage of its preparation and that it may be subject to change, I afford limited weight to emerging Policy E9.

11. The appellant has not provided any evidence to demonstrate that the hotel premises is no longer viable and has no prospect of continuing. There is no information before me showing that marketing of the premises as a hotel business has taken place in line with the SPD's suggested marketing exercise. I understand that the hotel business has not functioned for a number of years. However, the SPD does allow some flexibility in respect of this aspect of the viability evidence and the Council's Tourism Officer did suggest an alternative form of information could be provided in the form of an annual business plan with cash flow projections. Despite this, the appellant has not provided such information.
12. I acknowledge that the appellant has explored various activities at the hotel to diversify the business. However, that is only a single element of the assessment to establish whether the hotel business is no longer viable and on its own does not demonstrate that the business is no longer viable. The limited evidence to support the appellant's assertion that the hotel business is no longer viable is not sufficient to demonstrate that the first part of Policy CS28 has been complied with.
13. Turning to the second part of Policy CS28, without the evidence before me to sufficiently demonstrate that the business is no longer viable or capable of being viable, there is still the potential for the hotel to positively contribute to the current and future demand for accommodation used by tourists visiting the area. In turn, without information to the contrary, the hotel would still provide potential support for other businesses in Bournemouth that are part of the tourism economy of the town. On this basis, the proposal would negatively impact on the business' function as part of the tourism economy and local community of the town. In reaching that view, I have taken into account that the management arrangements proposed for the HMO are intended to minimise any effects on the surrounding area. However, that matter does not override the harm arising from the potential loss of hotel accommodation.
14. For the reasons given, I conclude that it has not been demonstrated that the hotel is not viable and has no prospect of continuing, and the effect of its loss on the function of the area in relation to tourism and the local community would be materially harmful. Consequently, the proposal would conflict with Policy CS28 of the CS, which seeks, in part, to prevent the unjustified loss of tourist accommodation in the interests of sustaining a steady tourism economy in Bournemouth. Additionally, the proposal would conflict with the Framework insofar as it facilitates each area to build on its strengths, counter any weaknesses and address the challenges of the future.

Cycle storage facilities

15. The Council partly refused the application on the basis that the original planning application did not propose on-site provision for the cycle storage

facilities and did not justify the absence of such facilities. However, the appellant has confirmed that there is the option to convert the existing garage/store to cycle storage for future occupants.

16. Looking at the plans, the garage/store seems large enough to accommodate the number of bicycles associated with the occupants of the appeal building. Even if further storage space was required, the outdoor garden space would still be adequate to serve the reasonable needs of the future occupants. Adequate and suitable cycle storage facilities can be secured through an appropriately worded planning condition.
17. For these reasons, I conclude that the imposition of an appropriately worded condition would result in the proposal providing adequate and suitable cycle storage facilities to serve the needs of future occupants. Consequently, the proposal would comply with Policies CS18 and CS41 of the CS, which collectively seek, in part, for development to provide adequate cycle storage to facilitate and increase levels of cycling in the Borough. Additionally, the proposal would comply with the Framework insofar as it seeks opportunities to promote cycling to be identified and pursued, and cycling networks supported through facilities such as secure cycle parking.

Other Matters

18. The use of the building as an HMO would make a contribution to the stock of HMO accommodation and the future occupants would contribute to the local economy by using the local services and facilities. However, given that the hotel guests would also contribute to the local economy and that the proposal is relatively small scale, the benefits carry limited weight and would not outweigh the identified conflict with the development plan and the associated harm that I have previously identified.

Conclusion

19. For the reasons given above, the proposed development would conflict with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. As such, the appeal should be dismissed.

K Reeves

INSPECTOR