



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: 23 October 2024

Appeal Ref: APP/V1260/W/24/3338577

9 Tower Road, Bournemouth BH1 4LA

- 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 R La Bouchardiere (9 Tower Road Limited) against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref is 7-2023-22736-P.
 - The development proposed is erection of a two storey side extension and conversion of loft to habitable use with 2 x rear dormers to enlarge the existing 7-bed HMO with a manager's office.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr R La Bouchardiere (9 Tower Road Limited) against Bournemouth Christchurch and Poole Council. This application is the subject of a separate Decision.
3. An application for costs was made by Bournemouth Christchurch and Poole Council against Mr R La Bouchardiere (9 Tower Road Limited). This application is the subject of a separate Decision.

Preliminary Matters

4. The Council's decision notice included a list of the drawings on which it made its decision. However, during the course of the appeal it was confirmed that two of these were incorrectly listed. I have made my decision based on drawing numbers 23/440-02A and 23/440-04A, rather than 23/452-02A and 23/452-04A, as both parties have confirmed that these were the drawings that were considered by the Council.
5. The extension and loft conversion have already been constructed, so I am largely considering this appeal retrospectively. However, the resultant building does not entirely accord with the plans submitted with the application. In particular, I saw that some of the windows and rooflights were of different proportions. My decision is based on the proposed development as shown on the plans, rather than what has been built.

Background and Main Issues

6. The property has an extensive planning history that includes several appeal decisions. In July 2019 planning permission was granted for an extension to

the existing dwelling and conversion to a 7-bedroom House in Multiple Occupation (HMO) under appeal ref: APP/G1250/W/19/3226002 (the Permitted Scheme). It is not contested that the extensions permitted under this permission have been built.

7. In 2021 an appeal to further extend the property and convert it to an 11-bedroom HMO was dismissed under ref: APP/V1260/W/21/3266654. Proposals for a similar extension, and conversion to an 8-bedroom HMO and a 15-bed HMO were dismissed in 2022 and 2023 respectively under refs: APP/V1260/W/21/3285388 (the 2022 Appeal Decision) and APP/V1260/W/22/3302191. Two further appeals for a similar extension, and conversion to an 8-bedroom HMO and a 14-bed HMO were dismissed in April 2024 under refs: APP/V1260/W23/3331172 and APP/V1260/W/23/3331647 (the 2024 Appeal Decisions). I have had regard to all of these decisions in considering the appeals before me.
8. Also of relevance is a planning permission that was granted by the Council in 2016, under reference 7-2016-22736-E, for a bungalow to the east of the appeal property. This permission has been implemented, and the bungalow appeared to be occupied at the time of my visit.
9. In view of this history, and the conclusions made by the various Inspectors, the Council does not contest that the proposal would respect the character and appearance of the area, and would not result in noise and disturbance that would harm the living conditions of nearby residential properties. It is also common ground that the proposal would not result in an over-concentration of HMOs in the locality under the terms of Policy CS24 of the Bournemouth Local Plan Core Strategy (2012) (the Core Strategy). Furthermore, as the number of units would not exceed that of the Permitted Scheme, it is not contended that there would be any increased impact on European protected wildlife sites. Consequently, the main issues in this appeal are:
 - a) Whether the development would provide suitable living conditions for future occupants with regard to external amenity space; and,
 - b) The effect of the development on the living conditions of the occupants of 9c Tower Road with regard to external amenity space.

Reasons

External space for future occupants

10. Policy 6.17 of the Bournemouth District Wide Local Plan (2002) (the Local Plan) accepts the need for HMOs, but seeks to secure reasonable levels of amenity when determining proposals for this type of accommodation. One requirement of the Policy is the provision of a defined garden or amenity area, of a size appropriate to the number of occupants, which is capable of being used for activities such as drying clothes and sitting out. For HMO proposals, Policy BAP8 of the Boscombe & Pokesdown Neighbourhood Plan (2019) (the Neighbourhood Plan) requires external amenity space to be provided at an appropriate quantity and to a high standard.
11. The appeal building is set well back from Tower Road, behind the frontage development. It is accessed via a long narrow driveway, which opens up in front of the building, to provide a shared turning area for the other properties

that also occupy this backland location. The building is sited close to its rear, northern boundary, beyond which is the mainline railway. The Permitted Scheme for a 7-bedroomed HMO provided an appropriate area of outdoor amenity space to the west of the building, which would have allowed occupants sufficient space for everyday needs, a reasonable degree of light and privacy, and the opportunity to relax outdoors at a suitable distance from passing trains.

12. The extension proposed under the appeal scheme would provide more spacious internal accommodation, which would have the potential to increase the number of occupants. However, it would also result in the loss of much of the external space. A considerable proportion of the remaining land to the west would accommodate cycle and bin stores. The area to the front of the building would be taken up by car-parking and shared manoeuvring space. As a result, the occupants would be reliant on the land to the rear of the building, and an area of land to the east, which did not form part of the Permitted Scheme. This additional land was part of the approved plot for the recently built bungalow.
13. The strip of land to the rear lies to the north of the building, so would be in shade for much of the day. It is also close to the railway line, and subject to significant noise from passing trains. Nevertheless, I saw that it accommodated a picnic table and a rotary clothes line, so it would be of some utility. However, it would not be large enough to provide for the everyday needs of the occupants of a relatively spacious 7-bedroomed HMO. The area to the east of the building is level, open, and relatively private, so would provide a suitable area for drying clothes or for outdoor relaxation. In combination with the land at the rear of the building it would provide an area that would be very similar to that proposed under the 2022 Appeal Decision. In that case the Inspector concluded that *"the external amenity space provision for future occupiers would be sufficient, even with cycle and bin storage in this space"*.
14. The quantum of external space proposed in the 2024 Appeal Decisions was also similar, and I am mindful that the Inspector concluded in those cases that the external space available to occupants of the HMOs would provide unacceptable living conditions. However, in both of those cases, the proposal was for a greater number of units, and a larger area of the external space would have been taken up by cycle and bin stores. Consequently, the balance of considerations in the appeal before me is more closely aligned to that before the Inspector determining the 2022 Appeal Decision. The Council does not have any adopted standards for the area of external space that should be provided, so a judgement is required on a case-by-case basis. In this instance, the external space would, in my judgement, be sufficient to meet the needs of the likely number of occupants.
15. For these reasons, I conclude that the development would provide suitable external amenity space for future occupants. The proposal would, therefore, accord with Policy CS41 of the Core Strategy, Policy 6.17 of the Local Plan, and Policy BAP8 of the Neighbourhood Plan. In combination, these Policies seek to ensure that a high standard of amenity is provided for occupants of new development through the provision of suitable private outdoor space. On this issue, the proposal is also in general accordance with the Council's Residential Development Design Guide (2008) (the Design Guide).

External space for the occupants of 9c Tower Road

16. 9c Tower Road is the bungalow that was approved in 2016, and has now been built. The evidence indicates that the approved scheme included a rear garden extending as far north as the railway embankment. Although the appellant contends that this would have been disproportionately large, I saw that the infill dwelling immediately to the east has a very similar length garden, and that those of the houses fronting Tower Road are significantly longer. The proposal involves the truncation of the previously approved garden. Whilst this has resulted in sufficient space being available for future occupants of the proposed HMO, it would result in a very much smaller outdoor amenity space for the occupants of the bungalow.
17. The appellant's evidence indicates that the rear garden of the bungalow would be 4.2 metres deep, and would have an area of 28.5 square metres. On this basis it is contended that it would provide adequate space for the day-to-day needs of occupants. However, it would be very similar in dimensions to the proposals that were considered by two previous Inspectors under the 2022 Appeal Decision and under decision reference APP/V1260/W/23/3331647. In both of those cases the Inspectors concluded that the reduced garden size would provide inadequate external amenity space for occupants of the bungalow due to its limited size and useability.
18. The bungalow fronts the communal vehicle parking and turning area, and is tight to its south and east boundaries. Consequently, the rear garden is the only outdoor space available to occupants for recreation, drying clothes, storage, and other domestic requirements. Lying to the north of the bungalow, and being of very limited length, it would be mostly in shade for much of the day. In order to provide a degree of privacy, it is surrounded on the other three sides by high boundary fencing, resulting in further shading and a lack of outlook for occupants. It would, therefore, provide an unsatisfactory level of outdoor amenity in both size and quality. I am mindful that there are no development plan policies or adopted guidance that specify space standards for residential gardens, but Policy CS41 of the Core Strategy does require a high standard of amenity to meet the day-to-day requirements of future occupants. I concur with the previous Inspectors' conclusions that the very limited rear garden would fail in this regard.
19. My attention has been drawn to three approvals that have been granted for dwellings with smaller gardens. One of these related to the conversion of an existing building, so is not directly comparable. In that case, the resultant dwelling would also be almost directly opposite a large area of public open space. The other two examples are a considerable distance from the appeal site. Both involved restricted infill sites where, unlike the case before me, a larger area of outdoor amenity provision was not possible. Consequently, the balance of considerations was not the same. I therefore find that none of these cases is so similar to the circumstances of the appeal that they alter my conclusions on this issue.
20. My attention is also drawn to two areas of public open space that would be accessible to occupants of the bungalow as additional external amenity space. The nearest of these would, however, involve a walk of considerable length down the access drive, and along Tower Road, Palmerstone Road, and

Borthwick Road. It would not, therefore, provide a convenient alternative to a suitably sized garden for casual relaxation, or for normal domestic activities.

21. For these reasons, I conclude that the proposal would result in poor living conditions for the occupants of the bungalow, due to a lack of suitable private outdoor space. The development would, therefore, be contrary to Policy CS41 of the Core Strategy, Policy BAP8 of the Neighbourhood Plan, and the advice in the Design Guide. Taken together, these require a high standard of amenity for future occupants of development, and seek to ensure that proposals for HMOs do not have an unacceptable impact on neighbouring residential amenities.

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 not provide suitable living conditions for the occupants of 9c Tower Road with regard to external amenity space. The proposal would, therefore, be in conflict with Policy CS41 of the Core Strategy and Policy BAP8 of the Neighbourhood Plan.
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 National Planning Policy Framework (the Framework). Consequently, the approach to decision-taking described in paragraph 11d) applies, and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
24. Paragraph 60 of the Framework seeks to significantly boost the supply of homes. The development would provide 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. However, the Permitted Scheme already provides for a 7-bed HMO without the harmful impact on the living conditions of the occupants of 9c Tower Road. Consequently, the weight I give to this benefit is significantly reduced.
25. 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 135 says that planning decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.
26. Overall, therefore, the limited benefits associated with the proposal are significantly and demonstrably outweighed by the conflict that I have found with development plan policies that seek to avoid harm to the living conditions of the occupants of 9c Tower Road.

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