



Appeal Decision

Site visit made on 17 September 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2024

Appeal Ref: APP/V1260/W/23/3330583

Jade, 2 Delhi Close, Poole, BH14 9NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr J Yeoman, Park Place Properties against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref APP/22/01702/F, dated 12 December 2022, was refused by notice dated 12 September 2023.
 - The application sought planning permission for variation of condition 2 of planning permission APP/19/01577/F to replace approved plans with PT100-01 Revision F, PT211-008, PT211-020 Revision D, PT100-006 and PT100-008 without complying with a condition attached to planning permission Ref APP/22/00871/F, dated 8 December 2022.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: Site Layout and Location Drawing No. PT100-001 Revision F Received 16 November 2022; Proposed Floor Plans Drawing No. PT211-008 Revision NR Received 23 June 2022; Proposed Elevations (Drawing No. PT211-020 Rev D) – Received 23 June 2022; Bin Store Extension Details (Drawing No. PT100-006) – Received 16 November 2022; Site Sections A and B (Drawing No. PT211-005 Rev D) – Received 01 May 2020; Site Sections C, D and E (Drawing No. PT211-007 Rev B) – Received 01 May 2020; Site Sections F and G (Drawing No. PT211-008 Rev C) – Received 23 June 2020; Cycle Store (Drawing Number PT 100-008) Received 16 November 2022; Tree Constraints Plan and Tree Survey Schedule (Drawing No. GH1840.1a) – Received 07 January 2020; Tree Protection Plan and Arboricultural Method Statement (Drawing No. GH1840.1b) – Received 07 January 2020; Arboricultural Impact Assessment and Arboricultural Method Statement (Ref: GH1840.1) prepared by Gwydion's Tree Consultancy and dated 02/01/2020 – Received 07 January 2020; and Preliminary Ecological Appraisal (PEA) and Preliminary Roost Appraisal (PRA) prepared by ABR Ecology Ltd and dated 5 December 2019 – Received 20 December 2019.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for variation of condition 2 of planning permission APP/19/01577/F to replace approved plans with PT100-01 Revision F, PT211-008, PT211-020 Revision D, PT100-006 and PT100-008 without complying with a condition attached to planning permission Ref APP/22/00871/F, dated 8 December 2022, at Jade, 2 Delhi Close, Poole BH14 9NH in accordance with the application Ref APP/22/01702F, dated 12 December 2022 and subject to the Schedule of Conditions attached to this Decision.

Applications for costs

2. An application for costs was made by Mr J Yeoman, Park Place Properties against Bournemouth Christchurch and Poole Council. This application is the subject of a separate Decision.

Background and main issues

3. The appeal property comprises a four-storey block of flats located at the southern end of Delhi Close, which is accessed from Birchwood Road. This residential block has been recently completed and its extensive planning history suggests that its appearance and scale have been altered through various design iterations.
4. The variation of condition 2, is to allow the submission and approval of revised plans to those approved under planning permission Ref APP/22/00871/F ('the original permission'). These revised plans seek to retain balconies at second floor level, serving flats 7 and 8. This includes some associated external alterations. Because the proposed balconies are intended to provide private amenity space for flats 7 and 8, if allowed, there would be no requirement for the occupiers of these flats to use the communal amenity space to the south of the residential block. Instead, this area has been divided to provide separate amenity areas for flats 1 and 2.
5. The Council alleges that the proposed balconies along the second floor would result in overlooking and the loss of privacy to neighbours and that planning permission for these should be refused. Therefore, the Council maintains that the communal amenity space to the south of the residential block is necessary to meet the private amenity space requirements for flats 7 and 8 and should not be subdivided.
6. Accordingly, the main issues are: i) Whether the balconies for flats 7 and 8 would harm the living conditions of neighbours, and ii) whether the subdivision of the communal amenity area to serve flats 1 and 2 would be acceptable.

Reasons

Living conditions of neighbours

7. The rear elevation of the residential block faces towards the rear gardens of dwellings in Munster Road. This rear elevation includes balconies at first and third floors. I was able to access these along with the balconies on the second floor. In the absence of any specific space standards for this type of scenario, the effects of the proposed balconies on neighbouring properties is largely a matter of planning judgement.
8. From the second floor balconies for flats 7 and 8, views are largely limited towards the rear garden of 17b Munster Road and to a lesser extent the rear garden of 17a Munster Road. However, the garden areas of these properties are largely screened by the branches and leaf cover from intervening trees. Because the third floor balconies are setback on the building, from these, the views over neighbouring properties are limited.
9. However, I observed that despite their elevated positions, the views from the second floor balconies for flats 7 and 8 are only marginally more extensive than those available from the balconies of flats 4 and 5 along the first floor.

Even so, the tree canopy structures appear denser at second floor level, which offer better screening. Furthermore, because of the elevated nature of the proposed balconies, the distance from neighbouring gardens is slightly increased and this reduces visibility.

10. There are also existing approved windows along the rear elevations of the residential block at first and second floor, these also provide similar views towards the rear gardens of 17a and 17b Munster Road.
11. I acknowledge that due to seasonal variations, leaf cover on the boundary trees would change. Despite this, the branches of the trees would still provide some filtering of views. Also, the fencing and other garden structures offer some visual breaks. In addition, because of the proposed arrangement, the second floor balconies are unsheltered and therefore their use is likely to be limited during inclement weather, which is likely to coincide with times of the year when leaf cover is reduced.
12. The appearance of the proposed balconies and associated alterations to fenestration reflect the design of the appeal property and are acceptable.
13. Drawing on the above reasons, on balance, whilst the proposal would introduce further potential for overlooking, I am unpersuaded that this would be appreciably worse than that associated with the balconies and windows already approved at the residential block.
14. Therefore, the introduction of the balconies on the second floor of the residential block, would not unacceptably harm the living conditions of neighbours with regard to overlooking and loss of privacy. As such, I find no conflict with Policy PP27 of the Poole Local Plan ('LP'), which along with other things requires that proposals are compatible with surrounding uses and would not result in a harmful impact upon amenity of local residents, including privacy.

Living conditions of occupiers

15. The proposed balconies for flats 7 and 8 would provide sufficient private amenity space for these dwellings. Therefore, the occupiers of these flats would not require the use of the ground floor amenity area. Consequently, the subdivision of this, solely for the use of flats 1 and 2 is acceptable. This accords with the aims of Policy PP27 of the LP, which requires the provision of satisfactory external and internal amenity space for both new and any existing occupiers.

Other Matters

16. The main parties and others have referred to a previous appeal decision Ref 3222113, which relates to alterations and extensions to the residential block at the appeal site. In determining this appeal, the Inspector found that this proposal would lead to a significantly harmful exacerbation of the degree of overlooking to the rear gardens associated with the aforementioned properties and that this would result in significant harm to the living conditions of their occupants.
17. I acknowledge that the scheme dismissed on appeal incorporated balconies at second floor level in broadly the same position as the scheme before me. However, the extent of balcony/terrace areas associated with the third floor on

the scheme under appeal 3222113 were more extensive. Also, on the information available to me, the Inspector does not identify specific harm arising from particular windows of balconies that were proposed as part of appeal 3222113. Since this appeal, there is also likely to have been some maturing of the intervening landscaping. Moreover, I am unaware of the full extent of the evidence available to the previous Inspector, and as already stated, as part of my assessment I have had the opportunity to access the balconies for flats 7 and 8.

18. Accordingly, I attach limited weight to appeal 3222113, and this does not alter my findings on the first main issue.
19. The proposed balconies would provide amenity space for the occupiers of flats 7 and 8. However, in the context of a built-up residential area, I am not persuaded that the use of these balconies, individually or cumulatively in association with the residential block, would result in any unacceptable noise and disturbance to the detriment of the living conditions of neighbours.

Conditions

20. Condition 1 of my Decision replaces Condition 2 on the original permission and includes the amended drawings. This is necessary in the interests of certainty.
21. In respect of any other conditions on the original permission, the Planning Practice Guidance makes clear that when granting planning permission under section 73A of the Act they should be repeated on decision notices unless they have already been discharged. In this case Condition 1 of the original permission relates to the time-limit for implementing it. As the original development has been started, it is not necessary for me to impose this condition.
22. Some of the remaining conditions from the original permission require discharging. As I am not certain if these have been complied with, I have restated these to reflect this. Where works have already been undertaken in accordance with any discharged conditions these could be agreed between the main parties. I have also restated those undisputed conditions that are still subsisting and capable of taking effect. My reasons for restating these conditions are the same as those specified on the original permission.

Conclusion

23. For the above reasons, I conclude that the appeal should be allowed.

M Aqbal

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Site Layout and Location (Drawing No. PT100-001 Rev G) - Received 12 December 2022; Proposed Floor Plans (Drawing No. PT211-014 Rev A) - Received 12 December 2022; Proposed Elevations (Drawing No. PT211-020 Rev F) - Received 12 December 2022; Bin Store Extension Details (Drawing No. PT100-006) - Received 16 November 2022; Site Sections A and B (Drawing No. PT211-005 Rev D) - Received 01 May 2020; Site Sections C, D and E (Drawing No. PT211-007 Rev B) - Received 01 May 2020; Site Sections F and G (Drawing No. PT211-008 Rev C) - Received 23 June 2020; Cycle Store (Drawing Number PT 100-008) Received 16 November 2022; Tree Constraints Plan and Tree Survey Schedule (Drawing No. GH1840.1a) - Received 07 January 2020; Tree Protection Plan and Arboricultural Method Statement (Drawing No. GH1840.1b) - Received 07 January 2020; Arboricultural Impact Assessment and Arboricultural Method Statement (Ref: GH1840.1) prepared by Gwydion's Tree Consultancy and dated 02/01/2020 - Received 07 January 2020; Preliminary Ecological Appraisal (PEA) and Preliminary Roost Appraisal (PRA) prepared by ABR Ecology Ltd and dated 5 December 2019 - Received 20 December 2019.
2. The materials and finishes to be employed on the external faces of the development, hereby approved, shall be as per those indicated on the approved plans.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and the Town and Country Planning Act 1990 (as amended) or any subsequent reenactments thereof, the flat roof areas of the development, hereby permitted, other than those flat roof areas marked as 'Balcony' on the approved plans, shall not be used as a balcony, roof garden or similar amenity area.
4. The 1.8m high opaque glazed screens of the third floor balcony to Flat 10 & Flat 11 of the development hereby approved, as shown on the approved plans, shall be glazed with glass which conforms to or exceeds Pilkington Texture Glass Privacy Level 3. The 1.8m high opaque glazed screens shall be erected prior to the commencement of use of the balcony and shall thereafter be maintained and permanently retained as such
5. Both in the first instance and upon all subsequent occasions, the first and second floor windows serving en-suite bathrooms annotated as 'obscure glazed' as shown on the approved floor plans, shall be glazed with glass which conforms to or exceeds Pilkington Texture Glass Privacy Level 3 and shall either be a fixed light or hung in such a way as to prevent the effect of obscure glazing being negated by reason of opening. These windows shall be installed prior to the first occupation of each of the flats to which they and shall thereafter be retained as such at all times.
6. Measures to provide 10% of the predicted future energy use of the development from on-site renewable sources, shall be in accordance with the information submitted on 18th May 2021. These measures must then be

implemented before any residential occupation is brought into use, and maintained thereafter.

7. The residential flats hereby permitted, shall not be first occupied until such time that the access, vehicle parking and turning space shown on the approved plans have been constructed, laid out and made available for use, and these shall thereafter be retained and kept available for those purposes at all times. The car parking spaces shall be available for residents and visitors to the residential flats at all times. The parking shall therefore remain as unallocated parking at all times with no parking space allocated to any individual residential unit and no parking barriers shall be placed to restrict access to the car parking area or any individual bays.
8. Prior to the first occupation of any of the residential flats hereby approved, the existing site entrance gates shall be removed and the site entrance shall thereafter remain open and ungated and unobstructed by any form of barrier.
9. Prior to the first occupation of any of the residential flats hereby approved, the cycle store and cycle stands (Sheffield stand or similar) to provide a minimum of 11 cycle parking spaces shall be constructed and made available for use as shown on the approved plans and shall thereafter be maintained, retained and kept available for use as such at all times.
10. Prior to the first occupation of any of the residential flats hereby approved, the bin store shall be constructed in accordance with the details shown on the approved plans and made available for use and shall thereafter be maintained, retained and kept available for use as such at all times.
11. All ground hard surfaces shall either be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the site. The hard surface shall thereafter be retained as such.
12. All works relating to the ground clearance, tree works, demolition and development with implications for trees shall be carried out as specified in the approved Arboricultural Impact Assessment and Arboricultural Method Statement and in accordance with the details contained on the approved Tree Protection and Arboricultural Method Statement Plan (Gwydions Tree Consultancy, Ref:GH1840.1, Dated 02/01/2020) and shall be supervised by an arboricultural consultant holding a nationally recognised arboricultural qualification.
13. Site visits shall be carried out by the developer's arboricultural consultant in strict accordance with the supervision schedule contained within the approved arboricultural method statement. Copies of written site notes and/or reports detailing the results of all site supervision visits and any necessary remedial works undertaken or required shall be submitted to and approved in writing by the Local Planning Authority. Variations to the approved supervision schedule must be submitted in writing to the Local Planning Authority and shall not be implemented until written consent has been obtained.

14. The development, hereby approved, shall be carried out in accordance with the ecological mitigation, compensation and enhancement measures detailed in Section 5 of the approved Preliminary Ecological Appraisal (PEA) and Preliminary Roost Appraisal (PRA) prepared by ABR Ecology Ltd and dated 5 December 2019.

The ecological enhancement measures detailed in Section 5 of the approved Preliminary Ecological Appraisal (PEA) and Preliminary Roost Appraisal (PRA) prepared by ABR Ecology Ltd and dated 5 December 2019 and as shown on the approved plans shall be implemented in their entirety and made available for use prior to the first occupation of any of the residential flats hereby approved and shall thereafter be retained.