



Appeal Decision

Site visit made on 1 October 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2025

Appeal Ref: APP/V1260/W/23/3334458

Dorset Lake Manor, 155 Sandbanks Road, Poole, BH14 8EL

- 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 JKA Property Ltd against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref is APP/22/01469/F.
 - The development proposed is proposed external alterations to the existing block of flats and an upwards extension of two floors to create an additional seven flats with associated parking.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by JKA Property Ltd against Bournemouth, Christchurch and Poole Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appellant has submitted additional information, amended plans and a topographical survey with the appeal. These are largely in response to the Council's reason for refusal relating to floor risk and comprise the addition of walls, flood doors, raised car park and technical information. The amendments do not alter the main elements of the proposal, and the Council have commented on these in full in their submission. Due to the minor level of the amendments, I do not consider that I would prejudice any party in taking them into account. I have determined the appeal on this basis.
4. In their statement, the Council detail that a reason for refusal was left out of the decision notice due to an administrative error. This reason relates to living conditions. These concerns are evident in the Officer Report. The appellant has provided comments on living conditions within their submissions.

Main Issues

5. The main issues are;
 - the effect of the proposed development on the character and appearance of the area;

- the effect on the proposed development of flood risk, including application of the sequential test and, if necessary, the exception test;
- the effect of the proposed development on the living conditions of existing and future occupiers; and
- the effect of the proposed development on protected trees.

Reasons

Character and Appearance

6. Sandbanks Road is characterised by two and three-storey buildings, mainly residential in use. There is much variation in the design of buildings which have been developed and altered over time, with large detached and semi-detached dwellings and apartments located along the road. Due to the location of Sandbanks Road, close to the harbour and sea, many properties have been altered to have glazed features facing the seafront.
7. The appeal site is an existing block of flats. The surrounding development is in a generally linear arrangement, fronting on to the road with cul-de-sac development to the rear. Opposite the appeal site is a large open space, which gives open views of the appeal site.
8. Dorset Lake Manor is already one of the larger buildings in the area. The additional storeys would substantially increase its height and massing, creating a dominant feature in the streetscene. The resultant large principal elevations fronting on to Sandbanks Road, which would be seen in connection with the two/three storey buildings to its north and south, would heighten the additional massing. It would appear excessive in the context of the surrounding residential properties.
9. I therefore consider that the proposed development, by virtue of its scale and massing, would fail to promote or reinforce the distinctive characteristics of the area and would adversely harm rather than positively contribute to the character and appearance of the area.
10. Whilst the proposed development would use materials that would complement the wider area, this would not overcome the harm identified above.
11. I therefore find the proposed development would harm the character and appearance of the area contrary to Policies PP27 and PP28 of the Poole Local Plan (2018) (LP) which seek to ensure that developments reflect or enhance local patterns of development and neighbouring buildings in terms of height and scale; bulk and massing.

Flood Risk

12. The appeal site is an irregularly shaped parcel of land with an apartment building and garages. Whilst most of the site is within Flood Zone 1, a small section of the site to the north lies within Flood Zones 2 and 3. The proposal, as additional residential units, is a 'more vulnerable' classification of land use. Furthermore, the appeal site, including the access and appeal building, are located in a Future Flood Zone – Tidal. These classifications are confirmed by the appellants Flood Risk Assessment (FRA).

13. Paragraph 170 of the Framework sets out that inappropriate development in area at risk of flooding should be avoided by directing it away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
14. Paragraph 174 of the Framework states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test.
15. Paragraph 175 of the Framework goes on to state that the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk).
16. Paragraph 181 requires that when determining applications, local planning authorities should ensure flood risk is not increased elsewhere, applications should be supported by a site-specific flood risk-assessment. Development should only be allowed in areas at risk of flooding, in the light of this assessment (and the sequential and exception tests, as applicable) where it can be demonstrated that within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location; appropriately flood resistant and resilient; incorporates sustainable drainage systems; any residual risk can be safely managed; and safe access and escape routes provided.
17. The submitted Sequential and Exception Assessment does not provide substantive evidence to demonstrate that there are no other sequentially preferable sites. Notwithstanding the lack of engagement by the Council in the preparation of the sequential test, through restricting the search to an extension of an existing building, the size of potential flats, and the market value of the units this has overly restricted the available sites. Furthermore, it has discounted allocated sites for housing.
18. I have had regard to the number of sites reviewed, almost 400. However, many of these have been discounted due to assumptions that they are undeliverable or unavailable. No contact was made with the owners as to availability. Whilst limited details of these sites have been provided, full evidence of whether they are available or not has not been provided. Therefore, there is not sufficient information to demonstrate that these would not be sequentially preferable or reasonably available.
19. The appellant suggests that the appeal site is preferable, particularly due to it being owned by the appellant. However, the Planning Practice Guidance (PPG)¹

¹ Flood risk and coastal change (2014, updated 2022)

advises that lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available.'

20. Overall, I have several concerns about the application of the sequential test. I understand that much of the area is subject to some form of flood risk, and this site could be sequentially preferable. However, the sequential test before me is simply not robust nor a thorough comparison of reasonably available sites to form a satisfactory conclusion. For this reason, the application of the sequential test fails. The exception test cannot be applied.
21. The Council have also raised concerns regarding the potential for the proposed development to increase flooding to neighbouring land and property. The amended scheme includes the provision of additional flood walls and an increase in height of the car park to provide a dry and safe refuge for residents during a flood event.
22. The FRA details that areas of land and dwellings to the north are located in an area of higher flood risk, both now and in future. I have not been provided with any detailed evidence regarding the impact of the walls and level increase on flood levels. Whilst the appellant submission states that there would only be a minor increase in impermeable area which would have a negligible impact on surface water and goes on to state that impact would be minor in relation to tidal flooding, I have limited evidence that the inclusion of the walls and increase in floor level would not increase flooding elsewhere. In the absence of information relating to the flood walls I cannot conclude that there would not be harmful impact to neighbouring properties and land.
23. Whilst I note that the Lead Local Flood Authority (LLFA) has not raised concerns regarding the proposed development, this does not overcome the need to firstly pass the sequential and exception tests to establish whether the appeal proposal is acceptable in principle on flood risk grounds. Taking all matters into consideration, the proposal would not be acceptable in respect of the risk of flooding.
24. The proposal would therefore conflict with LP Policy PP38 which seeks, amongst other things, to ensure that developments are located in sequentially superior locations. It would also run contrary to the Framework and the guidance within the PPG, as it fails to adequately demonstrate that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

Living Conditions

25. The Council's concerns relate to the impact of the increase in height on the outlook from neighbouring buildings, No's 8, 11, 12, and 13 Waterford Close, 156 Sandbanks Road, and 11-13 Wedgewood Drive. These concerns are also raised by interested parties.
26. The appeal building is set away from its north and southern boundary by an access road and area of landscaping. To the east, the building is set back from this boundary by an area of open space/parking and garaging.
27. The proposed development would result in an additional two floors being constructed above the existing building. The additional floors would be stepped back from the front and side elevation by approximately 1.6 metres, thereby

increasing the distance between nearby dwellings and the proposed development.

28. Whilst there would be some impact on neighbouring residents with regards to outlook, this would largely be in the form of oblique views, and partial views of the proposed development. Whilst the proposal would be visible, its location in the centre of the plot, its set back from the side and front walls would ensure that the proposal would not have an enclosing impact on neighbouring properties.
29. The Council have also raised concerns regarding the internal space within the appeal building. The Council note that the proposed development would result in dwellings with a floorspace 2 square metres less than the measurements detailed within the Nationally Described Space Standards (NDSS). The shortfall in floorspace according to the Council's measurements is noted, however this is only a minor shortfall and the plans demonstrate that adequate accommodation can be provided.
30. The proposed development would therefore have an acceptable effect upon the living conditions of future occupiers. This would comply with LP Policy PP27 and paragraph 135 of the Framework that seeks high standards of amenity for existing and future users.

Protected Trees

31. A number of trees on the boundaries of the appeal site are covered by a Tree Preservation Order (TPO). The Council initially raised concerns over the loss of three protected trees.
32. In support of the appeal the appellant has provided an Arboricultural Survey and Report. This details a number of mitigations measures to ensure the protection of trees during construction including protective fencing, no parking of vehicles within root protection areas (RPAs), signage, management of chemicals, prohibiting fires. Whilst this does not provide full details of the protection measures, this could be conditioned if I were minded to allow the appeal. The Council agree that their concerns can be overcome by condition.
33. In light of the submitted Arboricultural Survey and the retention of the protected trees, the evidence confirms that the proposed development would not have a harmful impact on protected trees. The proposed development would therefore comply with LP Policies PP27 and PP33 which seek, amongst other things, developments that do not result in the loss of trees.

Other Matters

34. In respect of the Dorset Heathlands Special Protection Area (SPA), Ramsar and Special Area of Conservation (SAC) and the Poole Harbor SPA and Site of Special Scientific Interest (SSSI), Habitats Regulation 63(1) states that a competent authority, before deciding to give permission, must make an appropriate assessment of the implications of the development of that site. Given my reasoning in respect of the main issues and that the appeal is dismissed, there is therefore no requirement upon me in that regard and have not considered the matter further.

Planning Balance

35. The Council has indicated that it cannot demonstrate a 5-year supply of deliverable housing land and that paragraph 11(d) of the Framework is engaged. This indicates that 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.
36. The proposal would provide additional dwellings in a sustainable location. As the proposal would only increase dwellings numbers by seven, the proposal would make a limited contribution to the housing undersupply. There would be socio-economic benefits arising from the construction works and occupation of the proposal. There would also be a benefit to existing occupants of the building through the introduction of flood doors and an elevated area outside flood waters. I afford these benefits limited weight due to the scale of the proposal.
37. I have found no harm regarding the living conditions of nearby residents and protected trees. A unilateral undertaking would provide a financial contribution towards mitigating the development from potential impacts to protected sites. These are neutral in my considerations.
38. I have found that the proposed development would cause harm to the character and appearance of the area and on flood risk. I ascribe significant weight to these harms. Therefore, the adverse impact of granting planning permission would significantly and demonstrably outweigh the benefits. Material considerations do not indicate that a decision should be taken otherwise than in accordance with the development plan.

Conclusion

39. For the reasons given above the appeal should be dismissed.

Tamsin Law

INSPECTOR