



Appeal Decision

Site visit made on 22 April 2025

by **J J Evans BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 June 2025

Appeal Ref: APP/V1260/W/24/3348942

46-52 Brownsea View Avenue, Poole BH14 8LQ

- 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 A&C Real Estate Limited against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref is APP/23/00944/F.
 - The development proposed is the demolition of an existing dwellinghouse and subdivision of the plot to erect four dwellinghouses with associated parking and landscaping and access works.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by A&C Real Estate Limited against Bournemouth Christchurch and Poole Council. This application is the subject of a separate decision.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. The comments of the main parties have been sought, and consideration has been given to those received in reaching the appeal decision.
4. Two of the Council's reasons for refusal relate to the effect of the development upon the integrity of the Dorset Heathlands Special Protection Area (SPA) and Ramsar, the Dorset Heaths Special Area of Conservation (SAC), and the Poole Harbour SPA and Ramsar. During the appeal the appellant provided a completed Unilateral Undertaking to secure financial contributions towards mitigation measures for the impact of the scheme upon the habitat sites. These matters will be returned to below.
5. Since the appeal was lodged, the Council has granted planning permission for the demolition of the existing house and the erection of three houses, with associated parking, landscaping and access, and works to an existing outbuilding to form an annexe (application ref: APP/24/00939). This permission represents an established fallback position, and will be considered as such for the appeal.

Main Issues

6. The main issues in this case are:-

- the effect of the scheme upon the character and appearance of the area, including with regard to nearby protected trees;
- the effect upon the living conditions of future occupiers, having particular regard to privacy and light levels; and
- whether the scheme would be provided with a suitable sustainable drainage system, in accordance with the requirements of national and local policy.

Reasons

Character and Appearance

7. The appeal site comprises a detached house and its garage that are positioned within generous gardens that contain a variety of mature trees. 46-52 Brownsea View Avenue (No 46-52) fronts the public highway, with its gardens extending primarily to the rear of the house and garage. The surrounding mostly residential area comprises a mix of houses and bungalows of various styles. Within many of the properties to the south and east of the appeal site there are mature trees of a variety of evergreen and deciduous species, and there are other trees within areas of public open space, including Blake Hill.
8. The residential area extends up the hillside above the harbour. Brownsea View Avenue curves uphill to join with Partridge Drive and Blakedene Road. To either side of these roads and the spurs off them there are long lines of mostly detached houses and bungalows, that are set back from the highway behind front gardens. No 46-52 is a pivotal property in the street scene as it is the last property when travelling up the hill that makes a verdant contribution to the area. Beyond it, there are fewer trees, and it is the houses and bungalows that dominate the street scene rather than trees and hedges.
9. The proposed houses would be positioned to front the spur of the road that extends from Brownsea View Avenue, and they would have an active relationship with the highway. This positioning would harmonise with that of the dwellings found to the north, amongst which there are other houses and bungalows that have front garden parking. The proximity of the dwellings to each other would reflect the dense grain that occurs with the houses and bungalows further up the hillside.
10. There are numerous examples of other modern styled dwellings within the area, several of which have a unique appearance, and this juxtaposition of styles seems to have occurred as a result of plot subdivision, replacement dwellings, and works that have been undertaken to existing homes. The provision of the houses would accord with such a mixture, particularly as there are other clusters of similarly styled and formed houses present, including those at 27A and 27B, 29A and 29B, 32A and 32B, and those at 44A and 44B Brownsea View Avenue (Nos 44A and 44B). Furthermore, the permitted scheme has consented three houses that would form a short row with a contemporary style.
11. The articulation of the houses would provide visual interest to the street scene as well as breaking up the bulk of the buildings. Within the area there are other houses that are taller than two storeys, including some that have flat roofs and others that have very shallow pitched roofs, and the form and style of those proposed would not appear conspicuous in such a context. There is also a varied

palette of materials found within the area, with some houses comprising multiple materials and others that have timber effect cladding, such as occurs at Nos 44A and 44B. In addition, the houses in the permitted scheme would be three storey, have flat roofs, and be constructed from a variety of materials.

12. For these reasons, the proposed dwellings would accord with the character and appearance of the area. The scheme would thereby comply with objectives of Policies PP27 and PP28 of the Poole Local Plan (2018) (LP), as these seek amongst other things, a good standard of design that preserves, reflects and enhances the area's residential character and local patterns of development.

Trees

13. The extensive variety of large trees is a distinctive element of the character and appearance of the area. No 46-52, the lower section of Brownsea View Avenue, and the land to the east and south of the appeal site, all contribute to this diversity due to the presence of numerous trees within public open space and private gardens. This rich, verdant tapestry creates leafy skylines and settings to the buildings, and the extensive presence of trees upon the slopes of the hillsides creates a green continuity that is visible from long distances away. The trees within the appeal site positively contribute to this distinct local identity, and particularly so as beyond the appeal property further up the hillside, the closer spacing of the housing and the smaller plots has resulted in fewer trees.
14. The trees within the site form groups near to the boundaries, with the group growing to one side of the corner of the road junction and those to the rear and eastern side of the house being particularly impactful. The height and size of these trees, along with the rich diversity of species within them, and that they are growing high up the hillside makes them an important group within the area. They are visually interesting and attractive, in part due to being a mix of evergreen and deciduous species with the resultant contrasts of leaf forms and colours, and also because of their impressive sizes and composite crowns. This impact is emphasised by them being at one end of the broad swathe of trees that extends over the hillside in an easterly and southerly belt. The trees form a distinct cluster that are visible from higher land, and many are impressive specimens in their own right, such as the imposing maritime pines growing within the eastern side of the site, and also the sweet chestnut described by the parties as T23. As such the protected trees within the appeal property make an important contribution to the character and appearance of the area.
15. The scheme proposes the removal of several trees, with many of the cypress along the western boundary being felled and some poorer protected specimens, such as two birch and an oak. There is no disagreement between the parties as regards the felling of these trees, and from what was evident at the site visit, the form of the oak and the poor health of the birch would necessitate their felling.
16. Two protected specimens classed as Category B trees within the appellant's Arboricultural Impact Assessment and Method Statement (2023) would also be felled, namely a sweet chestnut (ie T23) and T33, which is a beech. Both are at the edge of one of the groups, and they have forms that have self-optimised to reflect growing as part of a composite crown. They also both have a size and form that allows them to be seen from long distances away, including from high up the hillside. They form a leafy contrast to the pines and make an individual and group

contribution to the character and appearance of the area. Given this importance, the reasons for felling these trees needs to be convincing and conclusive.

17. Irrespective of the impact of the beech within the area, the permitted scheme has approved the removal of this tree, albeit T23 would be retained. Consequently, as regards the impact of trees upon the character and appearance of the area, the appeal turns on the loss of tree T23. Although the appellant considers felling the sweet chestnut would not reduce the substance of the protected group, given the height and size of the tree, felling it would erode the verdant skyline and backdrop that it imparts to the area, in both close views and distant ones. Furthermore, the sweet chestnut provides a leafy contrast to the nearby pines, thereby enhancing the verdant variety of the area as well as providing visual interest due to its glossy dark leaves and its autumn colours. The loss of such an impactful and prominent tree would erode the diversity of the protected group, and its loss would take many years, if ever, to be mitigated by any new planting.
18. The proposed replacement planting would introduce younger trees within the site to improve the age balance of the groups. However, the sweet chestnut appears in good health and vitality. There is some retained deadwood present, but this should be removed as part of the ongoing routine management of the tree, and no evidence has been provided that the tree would need to be felled for structural or health reasons. Felling this specimen would remove its current and future contribution to the area. Sweet chestnuts are long-lived, developing tall domed crowns and huge branches as they mature, and as the protected tree continues to grow, its impact and contribution to the character and appearance of the area would increase.
19. Taken as a whole the felling of the sweet chestnut would unacceptably erode the verdant character and appearance of the area, and whilst it is one of many trees within the site it is prominent and distinctive and its loss would be harmfully apparent. For these reasons the loss of this tree would conflict with LP Policy PP27, which requires, amongst other things, development to respond to natural features and not result in the loss of trees that make a significant contribution, either individually or cumulatively, to the character of the area.

Living Conditions

20. There are a variety of rear garden sizes evident within the surrounding area, ranging from generous plots as found with the properties lower down the road, to those with shallow rear gardens, such as occurs higher up the hillside. Some properties have very shallow rear gardens, such as the neighbouring houses that are under construction at Nos 44A and 44B. The scheme provides each of the dwellings with rear gardens that would be of a size that could accommodate day to day living requirements, albeit the garden of Unit 4 would be dominated by tall trees.
21. The appellant's Daylight and Sunlight Assessment (2023) has found that despite the trees, the habitable rooms of the houses would be well lit. Notwithstanding this, the proximity and nature of the retained trees would noticeably reduce the levels of sunlight received by future occupiers within their gardens, balconies and terraces.
22. All four of the properties would experience shading from the trees, and as the summer progresses more shadowing would occur, and particularly so for the

occupiers of Units 3 and 4 who would have no direct sunlight by late summer. In addition, the proximity of numerous tall trees would form an enclosed and dominating outlook for future occupiers, and particularly so for those living in Unit 4. Some may not mind the presence of the trees, but given their size and proximity to the houses along with the attractive panoramic views that they would screen, it cannot be assumed that others would accept their presence.

23. The trees would be verdant screening to provide privacy for future and existing residents, but those retained and those planted would grow, and the harmful impact upon future residents would increase. Works to those protected would be in the control of the Council, but there are numerous protected pines present. The evergreen nature of these trees is such that even with their raised crowns, all year round they would form a dark and oppressive outlook as well as impact upon light levels and cast shade. The proximity of trees to the houses, particularly Unit 4, would also impose other inconveniences and expenses upon future occupiers. Ongoing management works to the trees would need to be undertaken, as well as regular property maintenance to deal with leaf, seed and cone deposits. Such commitments, inconveniences and costs may not be what some future occupiers would be willing to accommodate, thereby resulting in pressure to fell.
24. In seeking to make an effective use of land to provide homes, the Framework advises a flexible approach to daylight and sunlight where it would otherwise inhibit making efficient use of a site, as long as a scheme would provide acceptable living standards. In this case there would be conflict with this requirement as the proximity of the trees would result in harm to future occupiers throughout the year, and particularly so in the case of Units 3 and 4.
25. The balconies and terraces of Units 1, 2 and 3 would afford future occupiers with a choice of external spaces to enjoy. However, the close proximity of the houses to each other would result in future occupiers having elevated and direct views into these areas and the neighbouring gardens. Metal louvres would provide screening, and the appellant would accept a condition for the erection of privacy screens.
26. There is often a degree of mutual overlooking of gardens within urban areas that comprise houses. Screens along each side of the terraces would provide privacy for future occupiers and also reduce the immediacy of the views into neighbouring gardens. Similar measures have been included with the permitted scheme, along with a reliance upon hedges between each property. Having regard to the fallback position of the permitted scheme, the appeal scheme would not result in harmful levels of overlooking for future residents.
27. Whilst future occupiers would not experience unacceptable overlooking, the proximity of nearby trees would result in unacceptable living conditions as regards light levels for the external spaces, and the suggested conditions would not overcome this harm. Whilst the scheme would accord with the objectives of LP Policies PP27 and PP28 to provide usable and satisfactory external amenity space, there would be conflict with LP Policy PP27's requirement that development should not result in a harmful impact upon the amenity of future residents with regard to levels of sunlight and daylight.

Drainage

28. The Framework requires that any planning application should ensure that flood risk is not increased elsewhere, and that applications which could affect drainage on or around the site should incorporate sustainable drainage systems to control flow rates and reduce volumes of runoff. The appellant's Drainage Design Strategy (2024) has identified that the combination of the soil type and the size of the buildings is not suitable for infiltration drainage for all the plots, with individual attenuation tanks with flow controls to the public sewer being proposed for three of the houses and one having infiltration drainage.
29. The Council's reason for refusal specifically referred to the appellant having not obtained the necessary permissions and agreements with the relevant authorities for the connection of a new section of sewer into the public surface water sewer. However, the appellant has provided confirmation from Wessex Water that the connection into the public sewer and the proposed discharge rates would be acceptable. Furthermore, the permitted scheme has its houses being connected to the public sewer along with the Council having also imposed a condition to secure sustainable urban drainage measures.
30. Having regard to this and subject to the conditions suggested by the parties, the scheme could be provided with a sustainable drainage system that would be proportionate to the nature and scale of the proposal. As such the scheme would accord with LP Policy PP38 which seeks, amongst other things that surface water drainage should be appropriate to the location and designed to manage surface water run-off in accordance with the Non-technical Standards for Sustainable Urban Drainage Systems (2015).

Other Matters

31. The appeal site is within 5km of the Dorset Heathlands, which are an extensive network of heaths nationally and internationally recognised and protected. The heathlands are designated as a Site of Special Scientific Interest (SSSI), as an SPA, Ramsar, and SAC, as they host priority habitats and species, including birds, lizards and snakes as well as other typical species of lowland heathland, wetlands and dunes. The appeal site is also near the Poole Harbour SSSI, SPA and Ramsar habitat sites, which are nationally and internationally important for rare, vulnerable, and migratory birds, and their supporting habitats of seagrass, shallow inshore waters, intertidal sediments, saltmarsh, and reedbeds. The heathlands and Poole Harbour are under significant pressure from increased public access and use, and a net increase in the number of dwellings and occupiers in the area would therefore have an adverse effect upon these important habitat sites and species.
32. Given the location of the houses, future occupiers could visit the habitat sites, and this use would have a significant effect upon the integrity of these protected sites. The Conservation of Habitats and Species Regulations (2017) require the decision maker to undertake an Appropriate Assessment (AA) where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to occur with the appeal. To secure mitigation, access measures and monitoring of the habitat sites, the appellant has provided a completed Unilateral Undertaking (UU) for the appeal. Although the Council has not commented on the UU, the matter of considering the impact of the scheme upon the habitat sites and undertaking AAs for the appeal will be returned to later.

33. Local residents have raised concerns that include the loss of wildlife, increased parking pressure, and that the existing property should be listed. The latter matter is not for consideration through the appeal process, and as regards the other concerns, following the findings on the main issues, there is no need to consider them further.
34. The appellant's concerns regarding the Council's handling of the application and appeal relate to procedural matters and have no bearing on the consideration of the planning merits of the case.

Planning Balance

35. With a housing land supply of 2.1 years the Council has an acute shortfall of supply. In such a context the provision of an additional three homes would be an important benefit of the scheme that would weigh in its favour. The Framework requires the development of windfall sites and the use of under-utilised land, with great weight occurring from the use of a site within an existing settlement. The scheme would accord with these objectives. Future occupiers would be close to nearby local services and facilities and would make a modest contribution to supporting them. There would also be a modest, albeit time-limited economic benefit arising from the construction of the homes. Modest environmental benefits would occur from the provision of energy efficient homes, and the inclusion of biodiversity enhancements.
36. Weighing against these benefits would be the loss of a protected tree that makes an important contribution to the character and appearance of the area, and that future occupiers would experience unacceptable living conditions with regard to light levels. These harms are considerable and weigh very heavily against the proposal. The Framework requires that due weight should be given to existing policies according to their degree of consistency with the Framework. LP Policy PP27 is broadly consistent with the Framework and its requirements of achieving a high standard of amenity for future users, and that trees make an important contribution to the character and quality of an urban environment and existing ones should be retained wherever possible. Consequently, the conflict of the scheme with the development plan should be afforded considerable weight.
37. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole, the Framework does not suggest this should happen at the expense of other considerations. The adverse impacts in this case amount to cumulative harm that significantly and demonstrably outweighs the modest environmental, social, and economic benefits that arise from the scheme. These considerable harms also outweigh the great weight from the provision of three homes upon a small windfall site that make an effective use of land in a sustainable location, when assessed against the policies in the Framework as a whole. It follows that the presumption in favour of sustainable development does not apply.
38. If the appeal was to have been allowed, it would have been necessary to undertake AAs and give further consideration to the likely effectiveness of mitigation and avoidance measures for the Dorset Heathlands and the Poole Harbour habitat sites. In doing so the provisions of the UU and the requirements of the Council would have to be scrutinised to ensure that the integrity of the

habitat sites would not be adversely affected. However, as the appeal is being dismissed for other reasons, this has not been necessary.

Conclusion

39. The scheme would conflict with the development plan when considered as a whole, and the suggested conditions would not overcome this conflict. There are no other considerations, including the requirements of the Framework, that outweigh this finding. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR