



Appeal Decision

Site visit made on 12 June 2025

by Lewis Condé BSc, MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2025

Appeal Ref: APP/V1260/W/24/3352682

96 Lowther Road, Bournemouth BH8 8NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Messrs De Kment and Daly against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref is 7-2023-23976-D.
 - The application sought outline planning permission for the demolition of the existing building and the erection of a block of 9 flats with cycle and bins stores without complying with a condition attached to outline planning permission Ref 7-2021-23976-C, dated 28 January 2022.
 - The condition in dispute is No. 1 which states that: "The development hereby permitted shall be carried out in accordance with the following approved plans: J.55.2017.01A Location Plan Only, J.55.2017.03L, J.55.2017.04D, J.55.2017.05D".
 - 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 dismissed.

Preliminary Matters

2. At the outset of the appeal, the appellant submitted an updated elevational drawing to address previously identified discrepancies between the plans/drawings. The updated drawing also includes an obscure balustrade to screen a first-floor balcony area. Although the appeal process should not be used to evolve a scheme, the updated elevational drawing was submitted in direct response to the Council's concerns about the accuracy of plans/drawings. Additionally, the Council and third parties have had an appropriate opportunity to consider the amended plans, including raising concerns over the addition of the balustrade to the balcony area. As such, and having regard to case law¹, I do not consider any party would be prejudiced by my acceptance of the updated drawing. I have therefore proceeded on this basis.
3. I am also the Inspector appointed to determine an appeal² on the adjacent site. Given the similarities in site and development contexts between the appeal schemes, there is a degree of likeness between my decisions. However, each decision has been made upon the schemes' individual merits.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin); and Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

² Appeal Reference: APP/V1260/W/24/3354650 – 98 Lowther Road, Bournemouth

Background and Main Issues

4. Outline planning permission (ref: 7-2021-23976-C) for a block of 9 flats at the appeal site was granted in 2022, with all matters approved except for landscaping. The appellant is now seeking to erect a block of flats of a different design to that approved under the outline permission, by removing the condition relating to the approved plans and replacing it with a condition specifying alternative plans.
5. The main issue is the effect of the proposal on:
 - i) the character and appearance of the area;
 - ii) the living conditions of neighbouring residents in respect of overbearing impacts and loss of outlook; and
 - iii) the living conditions of potential future residents in respect of provision of external amenity space.

Reasons

Character and Appearance

6. No. 96 Lowther Road is an existing sizeable, detached property, in a predominantly residential area. The streetscene consists of primarily large-detached dwellings set in generous plots. There is a diversity in the precise design and appearance of properties within the street, including as a result of properties having been extended or altered. Nonetheless, the surrounding built form retains a strong sense of cohesion. This is largely due to buildings being well architecturally designed, with similarities in scale, siting and proportions, and detailing reflective of the arts and crafts movement.
7. The single storey elements of the appeal proposal would be constructed together with the remainder of the development, such that their materiality would align, and they would form an integral part of the building rather than later extensions. Nevertheless, they would result in the appeal development being of considerable depth. Additionally, despite the use of appropriate materials, the flat roof elements would have little sense of cohesion with the remainder of the proposed building. This is due to their rather rudimentary design and lack of finesse, which harmfully dilutes the architectural quality of the proposal.
8. The appeal plot is large and so the proposal would not appear cramped within the site, while there is not a uniform building line to the rear of properties along the street. However, and taking account of the size of the extant permission, it remains that the proposed building would be disproportionate in scale compared to the nearby built form.
9. The considerable depth and mass of the development, and its flat roof elements, would not be prominent from public vantage points, but would remain apparent from neighbouring properties. Moreover, irrespective of its degree of visibility the proposed development is of an unsuitable design quality.
10. The proposal would therefore have an adverse effect on the character and appearance of the area. As such, it conflicts with Policies CS21 and CS41 of the Core Strategy (adopted 2018) (the Core Strategy), as well as saved Policy 6.10 of the Bournemouth District Wide Local Plan (adopted 2002) (the Local Plan).

Together, amongst other things, these policies require that development be of a high-quality design, reflective of its surroundings.

Living Condition of Neighbours

11. The proposed development would be sited close to the boundary with no. 94 Lowther Road (no. 94). That neighbouring property also sits close to the shared boundary. Furthermore, it appears that the neighbouring property contains a habitable room at ground floor level, near the boundary, which has an outlook to the rear.
12. The proposed built form would project substantially beyond, and in close proximity to, no. 94. Indeed, the appeal scheme would extend further alongside the shared boundary with no.94 than the extant permission due to the incorporation of a single storey element.
13. Regardless of the flat roof nature of the single storey element, the overall depth and height of the proposed development, together with its proximity to no. 94, would result in a significant sense of enclosure to the neighbouring property, both to its garden area and a rear facing ground floor room. As such, the considerable extent of built form proposed would result in overbearing impacts and a harmful loss of outlook to residents at no. 94.
14. The fact that the proposed bike store would be set further into the appeal site's garden does not overcome my above concerns, particularly as the bike store would remain near the boundary with the adjacent property and would also add a sense of enclosure. Nor does the fact that permitted development rights may allow for development near a boundary to be of a similar height as the single storey elements suitably justify the appeal scheme.
15. Overall, I find the proposal would harm the living condition of neighbouring residents in respect of overbearing impacts and loss of outlook. Accordingly, the proposal conflicts with Core Strategy Policies CS21 and CS41, and Saved Policy 6.10 of the Local Plan. Amongst other matters, these seek to ensure that development respects the amenities of neighbouring residents.

Living Conditions of Future Residents

16. My attention has not been drawn to any adopted policies or guidance that identify specific size requirements for private or communal garden. The Council's Residential Development Design Guide Supplementary Planning Document (adopted 2008) does though set out qualitative considerations in relation to the provision of amenity space for new developments. It also highlights that private balconies and communal gardens can be good ways of providing private external space for future occupiers of development.
17. Three of the proposed units would have access to private external amenity space in the form of a balcony area or enclosed rear garden space. These areas would provide sufficient space for occupants of the respective units to sit/relax outdoors, as well as undertake activities such as drying of clothes. Additionally, the private external spaces are well related to the relevant units.
18. A communal garden space would also be available to occupiers of the proposed development. Although smaller than that in the previously approved scheme, the proposed communal garden area would remain of a rather generous size. Some of

the communal garden would be located alongside the proposed bike store, whilst other parts would be near trees and their canopies, resulting in some shading. Still, the size and layout of the proposed communal garden remains suitable to serve the needs of the potential future occupants.

19. The appellant has also indicated a willingness to provide appropriate landscaping as well as communal facilities, such as a barbeque area, to make the main garden space an attractive area for future residents to utilise. The precise details of which could be suitably secured via reserved matters and/or a relevant planning condition. A pleasant and high-quality external garden area would therefore be capable of being provided.
20. Consequently, I am satisfied that the proposal would not harm the living conditions of future residents with regards to access to outdoor space. In respect of this main issue, the appeal scheme therefore complies with Core Strategy Policies CS21 and CS41 and Saved Policy 6.10 of the Local Plan, in so far as they seek to ensure developments provide appropriate living conditions for future residents.

Other Matters

21. Despite the proposal being found to have an adverse effect on the character and appearance of the area, I have not found there to be any harm to the setting of the nearby Portchester Road Conservation Area. This is because the scale and siting of the proposed development, together with intervening vegetation/built form, would prevent the proposal from being experienced alongside the special characteristics of the conservation area in any meaningful way.
22. I have very limited details of that historic permission at the site approved under appeal (ref: APP/G1250/A/09/2108362/NWF), including its precise design. Still, from the evidence before me it is apparent that it was of a different scale and design to the current appeal scheme, while the permission has subsequently lapsed.
23. The appeal site lies within the zone of influence for sites designated under the Habitat Regulations, namely the Dorset Heathlands Special Protection Area (SPA), Site of Special Scientific Interest (SSSI) and Ramsar site, as well as the Dorset Heaths Special Area of Conservation (SAC).
24. The Habitat Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the relevant protected sites. However, as I am dismissing the appeal on other grounds it has not been necessary for me to consider this further, including whether a deed of variation to the previous S.106 legal agreement would continue to secure appropriate mitigation measures.

Planning Balance & Conclusion

25. I have found no harm in respect of the effects of the proposal on the living conditions of potential future occupiers of the appeal scheme. In terms of the planning balance, the lack of identified harm is a neutral factor.
26. The appeal scheme would result in the net delivery of eight new residential units, in a location with good access to facilities and services. There would be socio-economic benefits associated with their delivery, during both construction and their subsequent occupation. Such benefits would largely also be secured via the

previous permission (Ref 7-2021-23976-C), which the appellant has indicated continues to be extant. Given the previously identified harm, I do not share the appellant's views that the current proposal would make a more efficient use of the land. Nonetheless, and taking account of the potential enhanced living conditions to future residents, I still give moderate weight to the benefits of the proposed scheme.

27. Notwithstanding that the appeal scheme may also comply with other development plan policies, through its harm to the character and appearance of the area and living conditions of neighbouring residents, the proposal conflicts with Core Strategy Policies CS21 and CS41 and Saved Policy 6.10 of the Local Plan. These are important policies that govern design expectations in the authority area. They are also consistent with the aims of the National Planning Policy Framework (the Framework) in respect of achieving well-designed places and delivering a high standard of amenity for existing users. Consequently, I find the proposal to be contrary to the development plan as a whole.
28. The Council has acknowledged it cannot currently demonstrate a five-year housing land supply. I have taken account of the Framework's aims to boost significantly the supply of housing, and that it identifies that small and medium sized sites can make an important contribution to meeting the housing requirement of an area. The proposed dwellings would also be within the built-up area of Bournemouth and the Framework indicates that windfall sites should be supported.
29. The above identified support for the proposal is countered by the importance that the Framework attaches to design as a key aspect of sustainable development and its expectation that developments should deliver a high standard of amenity for existing users. Together, I give these matters significant weight.
30. Therefore, when assessed against the policies in the Framework taken as a whole, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits. The appeal scheme therefore does not benefit from the presumption in favour of sustainable development.
31. The appeal scheme conflicts with the development plan when considered as a whole, and there are no other considerations including the provisions of the Framework, that indicate a decision should be made other than in accordance with it. Accordingly, the appeal is dismissed.

Lewis Condé

INSPECTOR