



Appeal Decision

Site visit made on 19 June 2025

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2025

Appeal Ref: APP/D1265/W/25/3359721

1 Bitterne Way, Verwood, Dorset BH31 6UU

- 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 and Mrs Betts against the decision of Dorset Council.
 - The application Ref is P/FUL/2024/01565.
 - The development proposed is change of use of public open space to garden curtilage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the application form, omitting the reference to the proposal being 'part retrospective' as that is not an act of development.
3. When I visited the site, I noted that a fence has already been constructed to extend the garden of the appeal site. However, I have judged the appeal on the submitted plans before me rather than what has taken place on site.
4. The main parties have both referred to the Section 52 Agreement that accompanied the 1985 planning permission for the nine dwellings that the appeal property is one of. However, this appeal has been made against the Council's decision to refuse planning permission for the change of use of the appeal site to garden curtilage. The validity and/or enforceability of the Section 52 Agreement is not the subject of this appeal and is not, therefore, a matter that is before me to determine.

Main Issues

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

Reasons

Character and appearance

6. 1 Bitterne Way (No 1) comprises a detached dwelling that is set amongst a group of detached properties located in a cul-de-sac. The appeal site is situated to the side of the dwelling and was previously open space that was publicly accessible. The site is in a prominent position within the street scene as it is in the foreground

of the properties of Bitterne Way, at a point where the road curves past the site. The pavement forks off from the road and passes between the site and a row of garages. The site is therefore directly in the eyeline of people driving or walking towards the cul-de-sac.

7. The openness of the site, in combination with the other nearby open spaces adjacent to the road, is an important characteristic of the street scene that contributes positively to the character and appearance of the area. Particularly as the open spaces help to reduce the overall visual density of the residential properties in the area.
8. I acknowledge that the hedge that would enclose the site is a soft form of boundary treatment and that it would introduce more greenery into the street scene. However, the enclosing of the site would result in a loss of the cumulative visual break in built form created by the open spaces and the visual linkage between them. Furthermore, the funnelling effect created by the new planted boundary and the hedge on the opposite side of the road would result in a further loss in openness when approaching and entering the cul-de-sac.
9. For these reasons, the proposal would cause unacceptable harm to the character and appearance of the area. Consequently, the proposal conflicts with Policies HE3 and HE4 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy (CS), which seek, in part, to safeguard existing open spaces and protect the character of settlements and visual amenity.

Biodiversity

10. The change of use of the land to residential garden would give rise to the potential for the grass to be lost or damaged as a result of domestic use or its replacement with hard standing. However, the open space shown in photographs contained within the Council's officer report appears to have had limited wildlife value. The loss or damage of the grass would therefore have a negligible effect on biodiversity.
11. I note the Council's assertion that a single species hedge comprising New Zealand broadleaf would have negligible wildlife value. However, the new hedge would have some ecological benefits, including the provision of potential nesting opportunities for birds. As such, the hedge would offer compensatory ecological value that would help to mitigate any loss or damage to the grass.
12. An oak tree would also be enclosed by the new hedge. It is shown as being retained on the plans, and is, in any event, protected by a Tree Preservation Order. I have no reason to conclude that it would be harmed by the proposal. Its retention, together with the planting of the new hedge, would result in any biodiversity benefits that the site may have had as open space not being diminished by enclosing it and changing its use to residential curtilage.
13. For these reasons, the proposal would not have a materially harmful effect on biodiversity. Consequently, the proposal complies with Policy ME1 of the CS, which seeks, in part, to safeguard biodiversity.

Planning Balance

14. The appellants and interested parties state that prior to enclosing the land in question with a fence, there was a continuing issue with littering, dog fouling and

fly tipping on the land. It is further stated that the land was left to overgrow, and its state was a health hazard due to rats.

15. Whilst I am sympathetic about the issues raised and acknowledge the benefit of enclosing the land, it has not been sufficiently demonstrated that a less harmful scheme could not be provided that would also address the issues raised. As such, the benefit of enclosing the land is afforded limited weight.
16. The appellants assert that the hedge could be planted without the need for planning permission and the land use of the site would remain as public open space, and this forms a material fallback position. *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314 confirmed that there should be a 'real prospect' of a fallback development being implemented and that the decision-maker should exercise their planning judgement as to whether that would be the case depending on the particular circumstances.
17. Whilst I acknowledge that the appellants could plant the proposed hedge without planning permission, the enclosing of the site as shown on the submitted plans would render the land inaccessible to the general public. Furthermore, there is nothing before me to indicate that should the appeal fail there is every prospect that the hedge would be planted, and the land not used as residential garden. I am not convinced that the hedge would be planted without the intention to use the enclosed area as garden. The potential for a hedge to be planted without planning permission therefore does not represent a genuine fallback position in this particular instance and it is a matter that is also afforded limited weight.
18. Weighing against the benefit and asserted fallback position is the adverse impact of the proposal on the character and appearance of the area and the resulting conflict with Policies HE3 and HE4 of the CS. The proposal may comply with certain policies contained in the CS, but given the harm that I have identified, the proposal conflicts with the development plan when taken as a whole.
19. Policies HE3 and HE4 of the CS are consistent with the National Planning Policy Framework's aims for development to be sympathetic to local character and to sustain an appropriate amount of green and public space. I therefore apportion significant weight to the policy conflicts and associated harm that would be caused by the proposal.
20. Overall, the adverse impact of the proposal would outweigh the limited weight that can be attributed to the previously identified benefit and the appellants' asserted fallback position.

Conclusion

21. For the reasons given above, the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Accordingly, the appeal should be dismissed.

K Reeves

INSPECTOR