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## Appeal Decision

Site visit made on 26 August 2025

by **P Burley BA (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 November 2025

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**Appeal Ref: APP/V1260/W/25/3364854**

**35-43 Westover Road, Bournemouth BH1 2BZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Bournemouth Building and Construction Ltd against the decision of Bournemouth Christchurch and Poole Council.
  - The application Ref is 7-2024-891-AF.
  - The development proposed is described as: 'Outline Application for partial retention of building including main facades at three levels on the Westover Road and Hinton Road frontages to allow for the construction of 936sq.m. commercial floorspace at lower ground and upper ground levels, comprising three units for use within either E (a) (retail), E(b) (restaurant), F1 (learning and non-residential institution) or F2 (b, c & d) (local community); 86 apartments, 26 car parking spaces, associated servicing facilities, refuse and cycle storage'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Since the appeal application was determined by the Council, the effect of development on the New Forest European designated site has arisen as an issue. Whilst the Council did not raise this during the application process I am nevertheless obliged by the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) to consider this matter.
3. This is an outline application covering all matters except for landscaping. None of the submitted drawings are marked as illustrative and therefore I have considered these on the basis that they show the details for which approval has been sought.
4. Whilst the planning application form refers to 86 apartments, the appellant's Statement of Case refers to 85, and 85 apartments are labelled on the submitted drawings. Therefore, I have considered the scheme on the basis that it is proposing 85 apartments.
5. Since the proposal relates to the setting of a listed building and a registered park and garden, I have had special regard to s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### Main Issues

6. The main issues are:
  - the effect of the appeal scheme on designated and non-designated heritage assets;

- whether there would be satisfactory living conditions for the future occupiers of the appeal scheme;
- whether any effects on designated habitats sites would be appropriately mitigated; and
- whether affordable housing and transport-related contributions are necessary and have been secured.

## **Reasons**

### *Heritage Assets – The Host Building*

7. The former cinema building on the appeal site is locally-listed and, in terms of the National Planning Policy Framework (the Framework), is a non-designated heritage asset. This status is derived principally from the elevations, mainly from the external appearance of the principal facade, and the role of the building with regard to the local historic environment and the distinctive history and identity of Bournemouth.
8. The appeal scheme would add a number of floors which would contrast in style with the retained façade of the former cinema, attempting to create a lighter-weight appearance to the upper floors and making the difference between the old and new readily apparent. It would result in a building that would be almost as tall as its neighbour to the south-east, significantly higher than the former ice rink to its north-west, and which would project above the line of the existing roof of the former cinema. The height, bulk and massing of the modern addition above the retained façade would overpower and therefore diminish this important component of the group of buildings on Westover Road and would also unsettle its harmonious relationship with its neighbours because of its dominance.
9. Whilst there is an extant planning permission for additional floors on the appeal site, from the information provided I consider that to be a more balanced and well-considered approach to the development of this site and, therefore, less harmful to the significance of the locally-listed host building.
10. I conclude that the appeal scheme would result in a moderate degree of harm to the significance of the locally-listed host building and as such the appeal scheme would conflict with Policies CS40 and CS41 of the Bournemouth Local Plan: Core Strategy (2012) (CS) and Policy D4 of the Bournemouth Local Plan: Town Centre Area Action Plan (2013) (TCAAP), and with sections 12 and 16 of the Framework, which seek to protect local / non-designated heritage assets and to achieve good quality design. Paragraph 216 of the Framework advises that the identified harm to the significance of this non-designated heritage asset should form part of a balanced judgement and, therefore, this is a matter that I will return to below.

### *Heritage Assets – Nearby Designated Heritage Assets*

11. The site is in relatively close proximity to the Grade II Listed Pavilion Theatre and a Grade II Registered Park & Garden.
12. The overall significance of the Grade II Listed Pavilion is derived from the architectural interest of the 1920s structure, including the well-preserved interior, historical associations with its designer, and, as an entertainment venue, communal value to the local community and visitors. The key element of its setting

is the Lower Central Pleasure Gardens, with the River Bourne, tree plantations, lawns and rockeries all enhancing the garden location of the building. Its location also reflects its historic contribution to the development of Westover Road as a beach-side centre for entertainment.

13. The Grade II Registered Park & Garden – the Upper, Central and Lower Pleasure Gardens and Coy Pond Gardens – have important historical, evidential and aesthetic qualities as an example of a Victorian urban public park established as part of the development of Bournemouth as a seaside resort, and altered from the mid-19th century onwards to provide the growing town with public open space. This public ownership to the gardens adds considerably to its significance through providing a communal place for the people of Bournemouth to enjoy. The significance of the Upper and Lower Central Gardens is further derived from the group value of the Registered Park and Garden with the Grade II Pavilion Theatre.
14. The Gardens Trust has expressed concerns regarding the impact the increased mass and height may have on the setting of the registered garden.
15. The settings of those designated heritage assets are very varied, have clearly changed over the years as the local area has continued to evolve and they are an interesting manifestation of a storied past. I consider that there is capacity for the setting to accommodate change without harm to the significance of the assets. Bringing the appeal site back into use with a modern addition would be a new chapter in the history of the area and not, as a matter of principle, an objectionable change, not least when the utilitarian appearance of the former cinema's large roof is taken into account.
16. Nevertheless, although variety is part of the assets' settings, the surrounding townscape is generally well-balanced such that it does not compete with, but rather complements, those assets. Whilst a number of large developments have been approved on nearby Hinton Road (to the rear of the appeal site), the dominance of the appeal scheme along Westover Road would unduly compete with and therefore negatively affect the way that the designated heritage assets are experienced and appreciated. Therefore, the appeal scheme would result in harm, albeit less than substantial harm at the lower end of the spectrum, to the significance of the Grade II Listed Pavilion Theatre and to the Grade II Registered Park & Garden.
17. Paragraph 212 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The Framework also notes at paragraph 215 that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
18. In this case, and even when great weight is attached to the harm, I find that the public benefits of bringing the building back into use and the delivery of housing countervail the aforementioned harm to the significance of the designated heritage assets. Thus, I consider that the appeal scheme accords with CS Policy CS39 which requires an assessment of the impact of a proposal on designated heritage assets as well as with section 16 of the Framework.

### *Heritage Assets – Other Locally-listed Buildings*

19. The appeal site is located in close proximity to other locally-listed buildings including the Premier Inn to the south-east, and the former ice rink (now a gymnasium) and former ABC Cinema to the north-west. The significance of these buildings lies principally in their aesthetic value and, like the appeal site, their roles as entertainment and hospitality facilities.
20. Due to the scale of these existing buildings and the topography of the town centre, they feature prominently in townscape views from a number of key locations. A general stepping-down in the height of the buildings from the Premier Inn to the former ice rink can also be seen, reflecting the downward slope of Westover Road.
21. Whilst it would not affect the understanding of their original functions, the height and massing of the appeal scheme would jar with what is currently a harmonious grouping of buildings, particularly in longer-range townscape views. As such I find that the appeal scheme would result in a small degree of harm to the settings of these locally-listed buildings and, therefore, would conflict with CS Policies CS40 and CS41 and TCAAP Policy D4, and with sections 12 and 16 of the Framework, which seek to protect local / non-designated heritage assets and to achieve good quality design. As noted at paragraph 216 of the Framework, this harm is a matter to be weighed in the overall planning judgement which is set out below.

### *Living Conditions*

22. The reason for refusal relating to living conditions set out issues in respect of internal space standards, daylight, overlooking, and overshadowing.
23. According to the Council, Units 55, 65, 67, 76, 78 and 85 – all of which are 3-bed apartments – would each have one 5m<sup>2</sup> bedroom which would fail to meet the minimum size of 7.5 m<sup>2</sup> for a single bedroom as set out in the Nationally Described Space Standard (NDSS). In addition, Units 1, 54, 66 and 77 would each have two bedrooms which are suitable for single occupancy but no double-occupancy bedroom. Furthermore, Units 25, 26, 27, 28 and 29 are below the minimum size for duplex units and Unit 82 is below the minimum size for a two-bed unit. Thus, 16 of the 85 units would not conform with the NDSS.
24. Although Units 14, 18, 21, 33, 38, 45, 50, 58, 62, 70 and 73 would have poor light to the kitchen areas, the appellant has argued that this is a result of a re-design of the building to meet fire safety recommendations, and that apartments would have living and dining areas with good natural light. However, I also note that there would be no windows in the bedrooms in Units 6, 7, 8, 9 and 10, all of which are 1-bed flats and that this would not represent a satisfactory living environment.
25. In relation to overlooking, following an explanation from the appellant that the windows on the side elevation of the neighbouring building do not serve active hotel accommodation but a disused multi-storey car park, I consider that there would not be a harmful relationship and that, in this regard, the appeal scheme would not have a more harmful effect than the extant planning permission for the site. Whilst the reason for refusal also referred to overshadowing, in the absence of any evidence to demonstrate that this would be an issue and based on my own observations when I visited the site, I consider it unlikely that there would be a harmful degree of overshadowing to the proposed apartments.

26. I consider that the absence of windows in habitable rooms such as bedrooms is not acceptable as the rooms would be unpleasantly dark and would have no outlook. Similarly, the extent of deviation from the NDSS would result in unacceptably small and cramped living accommodation for the future occupiers of a significant proportion of the proposed dwellings. Therefore, the appeal scheme conflicts with CS Policies CS21 and CS41, TCAAP Policy D4 and section 12 of the Framework which together seek good design in housing and a high standard of amenity to meet the day-to-day requirements of future occupiers.
27. The reason for refusal also cited saved Policy 6.10 of the Bournemouth District Wide Local Plan (2002). However, this policy relates to the effects of development in terms of character and appearance and the living conditions of nearby occupiers and I do not consider it to be directly relevant to this issue.

#### *Effect on Habitats Sites – Heathlands*

28. The site is within 5km of the Dorset Heathlands Special Protection Area (SPA) and Ramsar Site and the Dorset Heaths Special Area of Conservation (SAC) which covers the whole of Bournemouth. CS Policies CS32, CS33 and CS34 seek to protect such international sites and Sites of Special Scientific Interest (SSSI), including the heathlands, from harm and, where necessary, seek mitigation against any adverse effect of development.
29. The Dorset Heathlands are an extensive network of lowland heath. The creation of a new dwellinghouse within the Zone of Influence (Zol) could result in increased recreational activity in the habitats sites, which in the heathlands can lead to an increase in wild fires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion and disturbance by humans and their pets amongst other factors, resulting in an adverse effect on the heathland ecology.
30. Therefore, I consider that the appeal scheme, in combination with other plans or projects, could have a likely significant effect on the habitats sites as it would be likely to exacerbate existing recreational pressures. As the competent authority in this case I am required to carry out an appropriate assessment, therefore. Where it cannot be concluded that there would be no adverse effects on a site's integrity, which is the case here due to increased disturbance to the qualifying features from recreational activity, it is necessary to consider potential mitigation.
31. The Council has, with the agreement of Natural England, established a strategic, district-wide approach to mitigating recreational pressures on the habitats sites which involves securing financial contributions for access management schemes and monitoring, as set out in the Council's Dorset Heathlands Planning Framework SPD (2020), by way of a planning obligation pursuant to section 106 of the Town and Country Planning Act 1990. I consider that this is an appropriate approach to mitigating identified harms.
32. Although the appellant has indicated its willingness to pay the required contribution, an executed planning obligation is required to secure this contribution. In the absence of such an obligation the appeal scheme conflicts with CS Policies CS32, CS33 and CS34, the Dorset Heathlands Planning Framework SPD (2020), and with paragraph 193 of the Framework which seek to avoid harm to the protected habitats, as well as with the Regulations.

### *Effect on Habitats Sites – New Forest*

33. The site also lies within the 13.8km zone of influence of the New Forest SPA, New Forest SAC and New Forest Ramsar sites. Recreational pressure from additional bedroom numbers has the potential to harm their integrity as a result of increased recreational pressure. Again, as the competent authority in this case, I am required to carry out an appropriate assessment.
34. The New Forest is classified as an SPA for its breeding and overwintering bird species of European importance and is designated as an SAC for its habitats and non-avian species of European importance, including Stag Beetle, Southern Damselfly and Great Crested Newt. Recreational activities, including dog walks and competitive adventure and endurance sports, can have an impact on these qualifying features.
35. Given that it cannot be ruled out beyond all reasonable scientific doubt that the appeal scheme would not have a likely significant effect on the sensitive interest features of the habitat sites from human pressures, either alone or in combination with other proposals, it is necessary to consider whether the harm could be adequately mitigated, in line with Natural England's standing advice on this issue.
36. In November 2025 and with the support of Natural England and New Forest National Park, the Council published its Planning Position Statement in respect of the New Forest SAC, SPA and Ramsar site. This provides for mitigation by way of SAMMs payments and sets a tariff per dwelling of £300. However, an executed planning obligation is required to secure this contribution. In the absence of such an obligation the appeal scheme conflicts with CS Policies CS32 and CS34 and with paragraph 193 of the Framework which seek to avoid harm to the protected habitats and to SSSI.

### *Planning Obligations*

37. All applications proposing residential development of more than 10 units net are subject to the Council's adopted affordable housing policy, Policy AH1 of the Affordable Housing Development Plan Document (2009), which seeks the provision of 40% affordable housing subject to viability. Affordable housing would be secured by way of a planning obligation but one has not been submitted with this appeal and no viability evidence has been submitted to justify the absence of an affordable housing contribution. Accordingly, the failure to address this policy requirement weighs against the scheme.
38. Similarly, no obligation has been provided in respect of a number of transport-related contributions comprising cycle lane improvements, car club spaces, and travel plan monitoring. Given that 26 car parking spaces have been proposed for a development of 85 apartments and that the majority of residents would need to rely on means of transport other than the private car, I consider that such contributions would be necessary to make the development acceptable. In the absence of these contributions the appeal scheme conflicts with CS Policies CS14 and CS15 which together require developers to contribute towards improvements to existing transport infrastructure that are deemed to directly relate to, and mitigate against the impacts of, new development and to promote sustainable forms of travel by way of a travel plan.

## Other Matters

39. The appellant has said that the appeal scheme would make a worthwhile contribution towards housing supply. In addition, there would be other economic and social benefits deriving from the proposal to be taken into consideration including the contribution that it would make to the regeneration of this important town centre location and the 20 full-time equivalent jobs that are noted on the application form. Given the prominence of the site and the general support for employment-generating uses as set out in the Framework, I attach a moderate amount of positive weight to these benefits.

## Conclusion

40. The Council cannot demonstrate a five-year supply of deliverable housing sites and therefore paragraph 11 d) of the Framework is engaged. However, and with reference to footnote 7, the unmitigated impact on habitats sites provides a strong reason for refusing the development proposed. The proposed development would not therefore benefit from the presumption in favour of sustainable development found at paragraph 11 of the Framework.
41. In light of the Council's housing land supply position I attach significant positive weight to the housing that is proposed and, as noted above, I attach a moderate amount of positive weight to the employment- and regeneration-related benefits of the appeal scheme.
42. Although it would result in a small degree of less than substantial harm to designated heritage assets and I attach considerable importance and weight to that harm, I find that the public benefits of the appeal scheme counterbalance that harm.
43. However, the proposal would cause a moderate degree of harm to the host building which is an undesignated heritage asset and a small degree of harm to the setting of nearby non-designated heritage assets, matters which weigh against the grant of planning permission.
44. I have also found that the appeal scheme would give rise to unacceptable harm in terms of the effects on the living conditions of future occupiers and on designated habitats sites. In addition, planning obligations relating to affordable housing and transport, which are required by policy, have not been secured.
45. Overall, I find that the adverse impacts clearly outweigh the benefits and that none of the other considerations material to the proposed development indicate that the appeal decision should be taken otherwise than in accordance with the development plan.
46. For the reasons given above, having regard to the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

*P Burley*

INSPECTOR