

---

# Appeal Decision

Hearing held on 28 February 2023

Site visit made on 28 February 2023

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2023

---

Appeal Ref: APP/V1260/W/22/3310870

1-3 Watkin Road, Bournemouth, BH5 1HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Axis 51 Developments against Bournemouth Christchurch and Poole Council.
  - The application Ref 7-2022-9829-F, is dated 21 April 2022.
  - The development proposed is **described as** "outline planning application for the demolition of existing buildings and the erection of new development of up to 36 dwellings".
- 

## Decision

1. The appeal is dismissed, and outline planning permission is refused.

## Applications for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

## Preliminary Matters

3. This appeal seeks outline planning permission with appearance, landscaping and layout as reserved matters. I have accordingly treated the submitted plans as indicative regarding these matters.
4. The appeal results from the failure of the Council to issue a decision for the original planning application. Following submission of the appeal the Council advised that, had it been in a position to do so, it would have refused planning permission for the proposed development. The main issues are derived from **the Council's suggested reasons for** refusal and were agreed with the main parties during the Hearing.

## Main Issues

5. The main issues are:
  - The effect of the proposed development on the significance of designated heritage assets including the Grade II listed Church of St Andrews and the Boscombe Manor Conservation Area,
  - The effect on the character and appearance of the area,

- The effect on the living conditions of neighbouring occupiers with regards to outlook and natural light,
- The effect on protected trees; and,
- Whether it would provide acceptable living conditions for future occupiers with regard to the provision of outdoor amenity space.

## Reasons

### *Heritage assets*

6. The appeal site lies opposite the Grade II listed Church of St Andrews. The church dates from the early twentieth century and was constructed in the Decorated Gothic style. It has a distinctive roof comprising three ridges of which the centremost is the tallest, with each gable facing Watkin Road housing an elaborately arched stained glass window. The church derives its significance from its architectural character and its importance as a place of worship for the local community. Given its size, character, and siting at the corner of Florence Road and Watkin Road it is a landmark building and prominently visible in both directions along Florence Road as well as along Watkin Road. At its highest ridgeline it is the tallest building in the surrounding area.
7. The largest of the proposed buildings would occupy the corner plot directly opposite the church. It would be of a comparable height to the church if built to its maximum indicated height. A building of such a height would be harmful to the status of the church as a landmark building in the area, competing with it in the Watkin Road and Florence Road street scenes, and diminishing its visibility and prominence. Whilst the appearance of the development is a reserved matter, a 5 storey building of the scale indicated on this corner plot would nevertheless be harmful to the significance of this listed building.
8. The appeal site also borders the Boscombe Manor Conservation Area (the CA). This derives its significance principally from the historic character of the buildings within it, many of which date from the turn of the twentieth century at a time when the area was growing rapidly. The existing villas at 1 and 3 Watkin Road are examples of architectural design and detailing found throughout the wider area. As such, they contribute to the setting of the CA. They have been significantly altered to accommodate the consolidation into a care home with extensive additions and alterations that have reduced their individual quality. Nevertheless, they are representative of the architecture used in developing this area, and their demolition would be harmful to the setting of the CA.
9. While permission is sought for up to 36 dwellings, and a smaller development could be brought forward at reserved matter stage, I must consider the maximum scale of development for which permission is sought. In this case, the appellant has indicated that development would include elements of 4 and 5 storeys in height. Properties within the CA are typically between 2 and 3 stories in height, although of generous size such that the 2.5 storey house at 5 Watkin Road would be a similar height to the 4 storey Block C shown on the indicative plans. However, the loss of the existing villas and the introduction of uncharacteristic 4 and 5 storey buildings would result in harm to the setting of the CA.

10. The appeal site is separated from the listed church by Watkin Road and would only have a limited impact on its significance. Given the size of the CA the appeal proposal would also have a limited impact on its setting. The harm to the significance of these designated heritage assets would therefore be less than substantial.
11. The National Planning Policy Framework (the Framework) requires that less than substantial harm is weighed against the public benefits of a proposal. It is not disputed that the Council has a shortfall in its supply of deliverable housing land, with an identified supply of 2.3 years representing a substantial shortfall. Furthermore, the most recent Housing Delivery Test results show a significant shortfall in the number of homes delivered in the preceding 3 years.
12. The appeal proposal would deliver up to 36 new dwellings on the site, helping **to support the Government's objective of significantly boosting the supply of** new homes. The homes would meet or exceed the standards of accommodation set out in the Nationally Described Space Standards. The appeal site comprises a vacant care home that has been empty for more than 5 years, and therefore the proposal would constitute a more efficient use of a windfall brownfield site. The site is relatively small, and the development could be delivered quickly, which is particularly significant given the shortfall both in housing land and delivery. There would be economic benefits arising from the construction of the proposed development, as well as social and economic benefits from the ongoing occupation of the proposed dwellings. Given the shortfall in both housing land and the delivery of new homes, collectively these benefits attract substantial weight.
13. The Framework requires that great weight be given to the conservation of designated heritage assets, even where there would be less than substantial harm. That great weight would, in this instance, outweigh the public benefits of the development given the harm to the significance of the listed building and the setting of the CA.
14. Consequently, the proposed development would conflict with Policies CS39, CS40 and CS41 of the Bournemouth Local Plan Core Strategy (the CS) and Policies BAP1 and BAP2 of the Boscombe and Pokesdown Neighbourhood Plan (the NP). These policies require, amongst other criteria, the protection of designated heritage assets from proposals that would adversely affect their significance and support the retention of all buildings of architectural or local heritage value in order to preserve the historic character of the area.
15. The Council also referred to Policy 4.4 of the Bournemouth District Wide Local Plan (the LP) in relation to this matter. However, this Policy relates to development proposals in a CA so is not determinative in this appeal.

#### *Character and appearance*

16. The existing care home is in poor condition and has been vacant for several years. There is the potential for redevelopment of the site to significantly improve its appearance, and its contribution to the street scene and wider area.
17. There is some precedent for development of the scale proposed in this appeal in the 4 storey building at 19 Florence Road immediately next to the site. In addition, there are large 2.5 storey buildings with prominent dormers on the

corner plots of Watkin Road and Glen Road. Even so, the Florence Road property is an incongruous feature in the street scene, jarring in its flat-roofed form and height and not in keeping with the wider character of that street where most properties are between 2 and 3 storeys in height with pitched roofs. The properties on the corner plots of Watkin Road and Glen Road are large, but of a scale in keeping with the wider character of those streets. I therefore give this **strand of the appellant's argument** limited weight in the determination of this appeal.

18. There are also larger buildings in the wider area. Fairhaven Court at the junction of Florence Road and Sea Road is 4 storeys along the Sea Road frontage, including where it turns the corner into Florence Road. Viscount Court on Sea Road is also 4 storeys, while there are buildings of between 4 and 6 storeys around the junction between Sea Road and Owls Road. However, these are so far from the appeal site they do not provide any meaningful reference of design or scale for the development proposed.
19. Development of the scale proposed would be uncharacteristic in both Watkin Road and Florence Road. Block A would be a dominant presence in the broadly uniform Florence Road street scene, and its scale if built to the maximum for which permission is sought would amplify the existing incongruity of the building at 19 Florence Road. Given the general consistency of scale of development in Florence Road, Watkin Road and Glen Road, the appeal proposal would therefore be harmful to the character and appearance of the area.
20. The proposed development would consequently conflict with Policies CS21 and CS41 of the CS, Policy 6.10 of the LP and Policies BAP1 and BAP2 of the NP. Taken together these policies require that development be of a scale designed to respect the site and its surroundings and reflect the character of the area.

#### *Neighbour living conditions*

21. This appeal seeks permission for up to 36 dwellings, and therefore a smaller number of units could be proposed at reserved matters stage. However, scale is not a reserved matter, and the appellant has indicated a scheme of up to 5 storeys in height and which would occupy a similar footprint to the existing care home. While a smaller scheme could be brought forward, I have assessed this proposal on the maximum height and plot coverage for which permission is sought.
22. Both the 4 and 5 storey buildings would have more storeys of accommodation than any other property in Watkin Road, and only 19 Florence Road immediately adjoining the site presently has 4 storeys of accommodation in that street. Properties in Glen Road are typically 2 to 3 storeys in height. The maximum scale of development would therefore result in the larger buildings being prominently visible from surrounding properties. They would be larger than the existing buildings, and harmful to the outlook from neighbouring properties, especially 19 Florence Road which has an existing penthouse apartment with a wraparound balcony from which Block A would be a dominant and overbearing presence.
23. During the Hearing the appellant suggested that the development could be sunken into the ground to reduce its overall height. However, given the flat topography of the area and the relatively constrained site, it is not clear how

this could be achieved, or what implications it would have for the overall scale of development that could be achieved on site. I therefore give this possibility very limited weight in my determination of this appeal.

24. The proposed buildings would, at maximum indicated scale, be larger than those presently on the site. Block C would, however, be similar in height to No 3 Watkin Road. Subject to a suitable appearance and layout I consider that a building of this scale could be built at the appeal site without undue harm to the light to, or overshadowing of, neighbouring properties. Block A would be **significantly taller than No 1 Watkin Road. However, given the site's orientation** relative to the nearest neighbouring property at 19 Florence Road I am satisfied that even allowing for its greater height Block A would not cause an unacceptable loss of light to the occupiers of that property, including the penthouse apartment.
25. The gardens of 19 Florence Road and of 22 Glen Road would also potentially be directly overlooked by balconies and windows from the proposed development. However, their siting and orientation could be controlled at reserved matters stage, so on balance I am satisfied that this would not result in a loss of privacy to neighbouring occupiers.
26. Overall, therefore, a development at the maximum scale for which permission is sought would be likely to result in harm to the living conditions of neighbouring occupiers by reason of loss of outlook. It would therefore conflict with Policies 6.10 of the LP and CS21 and CS41 of the CS. Taken together these require that new development respect or enhance the amenities of neighbouring residents.
27. The Council also referred to Policies BAP1 and BAP7 of the NP in relation to this issue. However, these policies do not refer directly to the living conditions of existing occupiers, so they are not determinative in relation to this issue.

#### *Trees*

28. There is a Tree Preservation Order (TPO) covering several properties on Florence Road, including no 19 next to the appeal site. Trees referred to in the rear garden of No 19 include a Sweet Gum and Lawson Cypress trees close to the shared boundary with the appeal site. In addition, mature trees in the rear garden of 22 Glen Road are in the CA so cannot have works undertaken to them without an application having first been made to the Council.
29. From what I saw on my site visit some of the trees in the rear garden of No 19 have been removed, but there are still mature trees close to the boundary. No tree survey has been carried out to identify the crown spread or root protection areas for these trees. However, layout is a reserved matter. If I were otherwise minded to allow this appeal it would be possible to impose an appropriately worded condition requiring that a tree survey be carried out to inform the development of a detailed scheme for submission at reserved matters stage. Such a scheme would have to show that the trees would be protected from harm, which may influence the siting of the proposed buildings. As the trees closest to the common boundary are aligned with the area of the proposed 2 storey element to the proposal I am satisfied, on balance, that this matter could be resolved by a condition in this instance.

30. The appeal proposal would therefore not cause harm to protected trees, so would accord with Policy CS41 of the CS and Policy 4.25 of the LP. These policies require, amongst other criteria, that development respect its surroundings and provide for the retention of existing topographical features including trees.

#### *Outdoor amenity space*

31. Policies CS41 of the CS and BAP1 and BAP7 of the NP collectively seek that new development enhances the amenities of future occupants, including the provision of adequate amenity space.

32. The appeal proposal at the maximum number of dwellings for which permission is sought would be a very dense development. However, as the appeal seeks outline permission the nature of the dwellings is not fixed. Neither the CS nor the NP set out minimum standards for amenity space. While I consider that family dwellings would be reasonably expected to provide useable private garden space, the provision of balconies and communal space would provide an acceptable amenity space for occupiers of smaller units. Additionally, if family housing were proposed on the site, space would be available to provide private and useable gardens, subject to layout.

33. Given the potential for such details to be addressed at reserved matters, I am therefore satisfied that the appeal proposal could comply with the requirements of policies CS41 of the CS and BAP1 and BAP7 of the NP set out above.

#### *Other Matters*

34. The site falls within 5 kilometres of the Dorset Heathlands Special Protection Area and Ramsar Site and the Dorset Heaths Special Area of Conservation. The appellant has submitted a unilateral undertaking committing them to pay for mitigation measures to offset any adverse effect arising from the proposed development. Had I otherwise been minded to allow this appeal I would have undertaken an Appropriate Assessment to determine whether this would be sufficient to mitigate the likely significant effects on the integrity of the European Site. However, as I am dismissing the appeal on other grounds it is not necessary for me to consider this matter further.

#### *Planning Balance*

35. It is not disputed that the Council has a substantial shortfall both in its supply of deliverable housing land and its delivery of new housing in recent years. Paragraph 11d) of the Framework therefore states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed.

36. The proposed development would deliver up to 36 new homes on the site, providing good quality accommodation. The site could be redeveloped quickly, and it would represent a more efficient use of previously developed land. The redevelopment of the site would deliver both social and economic benefits.

37. However, the appeal proposal would result in less than substantial harm to the significance of the Grade II listed church and the setting of the CA and this would not be outweighed by the public benefits of the development. The

application of policies in the Framework which seek to conserve and enhance the historic environment therefore provide a clear reason for refusal.

38. In addition, the appeal proposal would result in harm to the living conditions of neighbouring occupiers as well as to the character and appearance of the area. This adds further weight against granting outline planning permission.

39. Consequently, the proposed development would conflict with the development plan. There are no material considerations, including the Framework, that indicate that this appeal should be determined otherwise than in accordance with the development plan.

#### Conclusion

40. For the reasons set out above, this appeal fails.

*M Chalk*

INSPECTOR

## Appearances

### For the appellant

Steven Bainbridge  
Bene Pal

Associate Director, Chapman Lilly Planning  
Appellant

### For the Council

Piotr Kulik  
Peter Burrige  
Mrs Katherine Ashley  
Patrick Clarke  
Alexis Edwards  
Sophie Leon

Senior Planning Officer  
Team Leader  
Planner, Heritage Team  
Landscape and Arboricultural Officer  
Transport Development Manager  
Urban Designer

### Interested parties

Laura Westcott  
Terri Westcott  
David Cameron

Resident  
Resident  
Resident





---

## Costs Decision

Hearing Held on 28 February 2023

Site visit made on 28 February 2023

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2023

---

Costs application in relation to Appeal Ref: APP/V1260/W/22/3310870  
1-3 Watkin Road, Bournemouth, BH5 1HP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Axis 51 Developments for a full award of costs against Bournemouth Christchurch and Poole Council.
  - The hearing was in connection with an appeal a failure to give notice within the prescribed period of a decision on an application for outline planning permission for development described as "outline planning application for the demolition of existing buildings and the erection of new development of up to 36 dwellings".
- 

### Decision

1. The application for costs is allowed in part, in accordance with the terms set out below.

#### The submissions for Axis 51 Developments

2. The applicants claim that the Council did not constructively respond to correspondence regarding their planning application, which necessitated submission of an appeal against non-determination. They were provided with a draft Statement of Common Ground on 10 November 2022 and did not respond until 6 January 2023, with the deadline for submission on the 9 January, despite the applicants chasing them throughout that time. The Council also **failed to respond to the applicants' efforts to** agree the unilateral undertaking.
3. The applicants submitted amended plans during the application to assist consultees, but the Council refused to accept them. They did not upload consultee comments to their website and did not respond to requests for information during the application.
4. The applicants contend that the Council failed to understand the nature of the application, with matters reserved for later consideration. The putative reasons for refusal addressed detailed design matters and the suggested conditions were for a full planning permission rather than an outline permission. The reasons for refusal are vague, generalised, address matters which were reserved and are unsupported by evidence. The Council failed to review the evidence promptly on receipt of the non-determination appeal, resulting in a protracted exercise in preparing the statement of common ground. The applicants sought intervention from senior officers at the authority but received no response. They contend that excessive time was spent on explanations

during both the application and the appeal and on trying to agree a statement of common ground.

#### The response by the Council

5. The Council responds that there was ongoing communication between themselves and the applicants during the application process. The Council provided regular updates on the application progress, consultee responses and the issues arising from them. The delay in determining the application arose in part from the lack of existing floor plans which were required to carry out CIL calculations, and these were not provided for some time.
6. The Council refused to accept amended plans in line with its policy not to do so once an application is validated. It also advised that a proposed amended plan submitted on the 28 September 2022 did not contain sufficient information to allow the Council to determine the application.
7. The applicants lodged the appeal against non-determination before the district **valuer's response was provided. The appeal was not validated by the** Inspectorate for around a month after submission, and the case officer sent legal instructions 2 days after it was allocated to them.
8. The applicants did not make a pre-application enquiry to the Council regarding the scheme, which would have informed the development process. The National Planning Policy Framework encourages pre-application engagement, which is also encouraged at a local level. Doing so could have allowed issues with the proposal, including those raised by internal consultees, to be identified. In the knowledge that the Council would not have supported the proposal the applicants could have avoided the costs of the application.
9. The Council sought a different format for the statement of common ground. That proposed by the applicants is that suggested for a public inquiry, and the format for a hearing is typically much simpler and likely could have been agreed.

#### Reasons

10. National Planning Practice Guidance advises that costs may be awarded in an appeal where a party has behaved unreasonably, and that behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. In an appeal against non-determination the local planning authority may be at risk of an award of costs if the Inspector determines that there were no substantive reasons to justify delaying determination of the application, and where better communication with the applicants would have enabled the appeal to be avoided altogether.
11. I have found that the appeal proposal would not be acceptable for the reasons set out in my decision. Accordingly, I do not consider that the appeal could have been avoided, as I agree with the Council that outline planning permission should not be granted for it. I also recognise that the delay in determining the application arose in part from the need for a valuation exercise that could not be begun until existing floor plans were provided, and which was not completed until after the appeal was lodged.
12. Nevertheless, the failure to agree a statement of common ground resulted in considerable expenditure of time on the applicants' part. A draft statement was

provided early in the appeal process, and while the format may have been that used for a public inquiry, the Council had sufficient time to respond. Discussions on the statement continued until 14 February, where the **Inspectorate's deadline for submission of a completed and agreed statement of common ground** was 9 January. On the 14 February, considering the lack of resolution, I advised the parties that the statement was not essential and sought clarification on 3 points ahead of the Hearing to save further time for preparation for the Hearing itself.

13. Furthermore, the Council stated that it would have refused planning permission in part due to a lack of outdoor amenity space for future occupiers. However, both the number and nature of the units would be determined at reserved matters stage, as well as the layout of the development. I do not therefore consider that this matter should have been put forward as a reason for refusal.
14. I have also found that the question of harm to protected trees around the site could have been resolved at reserved matters stage. **The Council's validation requirements for an outline planning application do not require submission of a tree survey or similar documents.** However, the Landscape and Arboricultural consultee raised concerns regarding nearby protected trees, which from the evidence before me were highlighted to the applicants during the application. On balance, while this could have been resolved at reserved matters stage, this **would have been contrary to the consultee's advice.** I therefore do not consider that the Council acted unreasonably in pursuing this as a possible reason for refusal.
15. Overall, therefore, I find that the Council acted unreasonably in their approach to the statement of common ground, and in pursuing the perceived shortfall in outdoor amenity space as a possible reason for refusal.

#### Costs Order

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bournemouth Christchurch and Poole Council shall pay to Axis 51 Developments the costs of the appeal proceedings incurred in responding to the external amenity space issue, and in the preparation of the statement of common ground.
17. The applicants are now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*M Chalk*

INSPECTOR