Planning Board
Agenda

Monday 17 June 2013 at 4.00pm
HMS Phoebe Committee Room, Town Hall, Bournemouth

Membership:

Councillor David Kelsey - Chairman  Councillor Sue Anderson
Councillor Linda Bailey          Councillor Beryl Baxter
Councillor Malcolm Davies       Councillor Johann Edward
Councillor Sue Levell           Councillor Lynda Price
Councillor Philip Stanley-Watts  Councillor Roger West
Councillor John Wilson

For further information please contact: Jill Holyoake, Democratic Services Officer, Legal and Democratic. Tel: 01202 454715. E-Mail: jill.holyoake@bournemouth.gov.uk

For electronic copies of agenda, minutes and reports visit the Council’s web site:

Notes for Members of the Planning Board:

1. Members are asked to bring their copies of the Bournemouth Local Plan: Core Strategy and the District Wide Local Plan to the meeting for reference purposes.

2. As previously agreed by the Planning Board it would be most helpful if Members could inform the relevant officer in advance should they have particular questions - especially of a ‘technical’ nature - relating to items on the agenda

Public information:

Request to speak - ‘Deputation’:
Members of the public may send a request for a deputation in relation to items on this agenda. The request must be sent in writing or electronic mail to Jill Holyoake at the address shown above. The deadline for receiving deputation requests is FRIDAY 14 JUNE 2013 at 10:00am.

Members of the Public and any Councillor are welcome to attend this meeting.

A loop system for hearing impairment is provided, together with disabled access to the building.

If Councillors and visitors wish to attend meetings and have particular needs they should inform the Council before arriving at the meeting.
ITEMS FOR DISCUSSION WITH PRESS AND PUBLIC EXCLUDED

NOTE - In relation to the items of business appearing below, the Board is asked to consider the following resolution:-

“That under Section 100(A) (4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 5 in Part I of Schedule 12A of the Act and that the public interest in withholding the information outweighs such interest in disclosing the information.”

Description of Exempt Information

Paragraph 5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

1. ENFORCEMENT ACTION PROGRESS REPORT
   See non-public report circulated at ‘A’.

ITEMS FOR DISCUSSION WITH THE PRESS AND PUBLIC PRESENT

2. APOLOGIES

3. SUBSTITUTE MEMBERS
   The Service Director for Legal and Democratic will report on any changes in the membership of the Board, under Procedure Rule 89.

4. DECLARATIONS OF INTEREST
   Members will be asked to declare any interests in matters before them at the meeting. Members will also be asked to state fully the nature of the interest, which will be recorded in the record of decisions.

5. CONFIRMATION OF MINUTES
   To agree the minutes of the meeting held on 20 May 2013.

- FROM 4.10PM -

CONSIDERATION OF PLANNING APPLICATIONS -
FOR INFORMATION ON THE ORDER AND TIMING OF PLANNING APPLICATIONS PLEASE CONTACT DEMOCRATIC SERVICES
6. REQUESTS FOR DEPUTATIONS ON PLANNING APPLICATIONS

To receive any requests to speak on planning applications which have been received by the deadline of 10.00 am on Friday 14 June 2013, under Procedure Rule 37c.

7. SCHEDULE OF PLANNING APPLICATIONS

To consider the Schedule of Planning Applications dated 7 June 2013 and previously circulated, and the update by the Service Director for Planning, Transport and Regulation to be circulated on 14 June 2013.

See planning application reports circulated at ‘B1 - B3’.

Members will appreciate that the copy drawings attached to planning application reports are reduced from the applicants original and detail, in some cases, may be difficult to read. The submitted drawings can be viewed on the application file at the planning office or on-line at -

http://planning.bournemouth.gov.uk/RealTimeRegister/planappsrch.aspx

8. TOWN PLANNING APPEALS

See report circulated at ‘C’.

9. PLANNING APPLICATION DECISION PERFORMANCE

See report circulated at ‘D’.

10. ANY OTHER BUSINESS OF WHICH PRIOR NOTICE HAS BEEN RECEIVED AND BY REASON OF SPECIAL CIRCUMSTANCES, WHICH SHALL BE SPECIFIED IN THE MINUTES, THE CHAIR IS OF THE OPINION THAT THE ITEMS SHOULD BE CONSIDERED AS A MATTER OF URGENCY.
On making recommendations on those matters before the Planning Board at this meeting, consideration has been given to the rights set out in Article 8 - rights to privacy - and Article 1 of the first protocol - right to peaceful enjoyment of possessions - of the European Convention on Human Rights, as detailed below:

ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

POINTS FOR THE PLANNING BOARD TO CONSIDER WHEN DECIDING WHETHER TO VISIT A SITE BEFORE DETERMINING A PLANNING APPLICATION

1. Site visits can cause delay and additional costs and should only be used where the expected benefit is substantial.

2. Many Councils allow site visits to be triggered by a request from the Ward Councillor. It is acknowledged that this is a proper part of the representative role of the member, and should sometimes be acceded to, but the substantial benefit test should still apply. It is also good practice to keep a record of the reasons why a site visit is called.

3. A site visit is only likely to be necessary if:

   a. the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by the officers - although if that is the case, additional illustrative material should have been requested in advance; or

   b. there is good reason why the comments of the applicant and objectors cannot be properly appreciated without visiting the site, or the proposal is particularly contentious.
BOROUGH OF BOURNEMOUTH PLANNING BOARD

To: All Members of the Council

SCHEDULE OF PLANNING APPLICATIONS FOR CONSIDERATION

Please find attached the list of Planning Applications for consideration at the Planning Board Meeting to be held on **Monday 17th June 2013 at 4.00pm**.

This is a complete list of applications and members of the Planning Board are asked to bring it to the above meeting. This Schedule is circulated to all Members of the Council prior to the meeting and indicates the recommendation of the Service Director for Planning, Transport and Regulation for the applications that are to be considered for determination at the Board meeting.

Any observations on the recommendations of the Service Director for Planning, Transport and Regulation should be sent to the Service Director, Legal and Democratic by 10am on Monday 17th June 2013 in order that they may be considered by the Planning Board on that day.

PLEASE NOTE:

- Full details of the recommendation including detailed conditions or refusal reasons can be found in the Planning Board Report for each application circulated with the Agenda.
- Representations received on the applications included on this Schedule are available in the Members’ Resource Room prior to the meetings of the Planning Board.
- All representations and application details may be viewed in Planning & Transport until 1.00pm on Board day.
- The Amendment Sheet which is circulated on the Friday prior to each meeting of the Board will contain updated and additional information in respect of this Schedule and the Planning Board Reports for the applications listed.

Key to recommendation abbreviation:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>G</td>
<td>Grant</td>
</tr>
<tr>
<td>R</td>
<td>Refuse</td>
</tr>
<tr>
<td>SD</td>
<td>Split Decision</td>
</tr>
</tbody>
</table>

Received date is the date on which the planning application was registered as a valid application.

Expiry date is target date for despatch of Decision. Where an application is determined by this date, the performance targets set by central government will have been met.
<table>
<thead>
<tr>
<th>Item</th>
<th>Application</th>
<th>Ward</th>
<th>Location</th>
<th>Proposal</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>7-2013-1273-AR</td>
<td>WC</td>
<td>Former Winter Gardens site, Keystone House and 20, 20a and 20b Exeter Road</td>
<td>Outline submission for erection of a mixed use development consisting of 5959 sq. m commercial space (Use Class A3), residential units (Use Class C3 - currently equating to approximately 114 units), a circa 8674 sq.m. cinema, leisure complex and a family entertainment space (Use class D2) and circa 8017 sq.m. hotel (Use Class C1 - equating to 100-120 hotel rooms) and car parking with 550 spaces. This application affects a Public Right of Way.</td>
<td>G</td>
</tr>
<tr>
<td>02</td>
<td>7-2013-12859-H</td>
<td>RN</td>
<td>Rear of 43-45 Howeth Road</td>
<td>Revision to dwellings to change levels to include provision of new patios. Minor material amendment to vary condition no 1 of application no. 7-2012-12859-G.</td>
<td>G</td>
</tr>
<tr>
<td>03</td>
<td>7-2013-5606-C</td>
<td>WE</td>
<td>45 Latimer Road</td>
<td>Alterations and extension to dwelling to create additional dwelling.</td>
<td>R</td>
</tr>
</tbody>
</table>
Subject: TOWN PLANNING APPEALS
Director: Planning and Transport Services
Meeting Date: 17 June 2013
Status: Public
Contact: Amy Butterfield, Appeals Officer
Planning Control Support Team
01202 451323
planning.appeals@bournemouth.gov.uk

Recommendation: To note the contents of the report.

Reason: To provide members with an update on appeals since the last Planning Board meeting.

<table>
<thead>
<tr>
<th>1. Appeals Received:</th>
<th>Comments Due:</th>
</tr>
</thead>
<tbody>
<tr>
<td>ES Written Reps</td>
<td>Delegated 39 Hengistbury Road Alterations and additions including extensions to roof of bungalow to provide additional accommodation.</td>
</tr>
</tbody>
</table>

| 2. Withdrawn Appeals: | none |

<table>
<thead>
<tr>
<th>3. Dismissed Appeals:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>RN 23 Marchwood Road</td>
<td>Erection of bungalow, formation of vehicular access and parking - Revised application</td>
</tr>
<tr>
<td>TB 50 Branksome Wood Road</td>
<td>Erection of a dwellinghouse, formation of vehicular access and parking spaces</td>
</tr>
<tr>
<td>WE 45 Latimer Road</td>
<td>Alterations and extension to dwelling to create additional 1 bed dwelling.</td>
</tr>
</tbody>
</table>

| 4. Split Decision Appeals: | none |

<table>
<thead>
<tr>
<th>5. Allowed Appeals:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>LI 1085-1087 Christchurch Road</td>
<td>An application for a Certificate of Lawfulness for a proposed use to establish that the balance of works necessary to complete planning permission reference 7-2008-22429-C in accordance with the approved plans are lawful</td>
</tr>
<tr>
<td>TB 8 Dunkeld Road</td>
<td>Pollarding of one English Oak</td>
</tr>
</tbody>
</table>
6. Forthcoming Public Inquiries/Hearings:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Address</th>
<th>Status</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>7-2012-7376-AC</td>
<td>15 Grove Road CE</td>
<td>06/08/2013</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4 Owls Road BW</td>
<td>14/08/2013</td>
<td></td>
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</table>

7. Appeals awaiting dates for public inquiries/hearings:

8. Appeals awaiting decisions:

<table>
<thead>
<tr>
<th>Code</th>
<th>Address</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>BE</td>
<td>752-778 Christchurch Road, 1 Gloucester Road</td>
<td>Public Inquiry</td>
</tr>
<tr>
<td>BE</td>
<td>87 Wheaton Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>BE</td>
<td>45-47 Boscombe Overcliff Drive</td>
<td>Written Reps</td>
</tr>
<tr>
<td>BE</td>
<td>903-905 Christchurch Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>BE</td>
<td>Flat 5 36 Ashley Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>BE</td>
<td>8 &amp; 8a Branksome Wood Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>CE</td>
<td>8-10 Madeira Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>CE</td>
<td>1 Lansdowne Crescent</td>
<td>Written Reps</td>
</tr>
<tr>
<td>CE</td>
<td>Christadelphian Church, 28 Bath Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>CE</td>
<td>Bournemouth Arcade Gervis Place</td>
<td>Written Reps</td>
</tr>
<tr>
<td>EC</td>
<td>488 Holdenhurst Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>ES</td>
<td>2 Southbourne Coast Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>ES</td>
<td>39 Hengistbury Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>KN</td>
<td>30 Markham Avenue</td>
<td>Written Reps</td>
</tr>
<tr>
<td>LI</td>
<td>15 Harting Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>MO</td>
<td>1053 Wimborne Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>MO</td>
<td>1053 Wimborne Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>RN</td>
<td>18 Hill View Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>RN</td>
<td>Land adj 2 Pilgrim Cottage</td>
<td>Written Reps</td>
</tr>
<tr>
<td>TB</td>
<td>9 Benellen Avenue</td>
<td>Written Reps</td>
</tr>
<tr>
<td>WC</td>
<td>Land adj to 1 Hahnemann Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>WE</td>
<td>55 Cardigan Road</td>
<td>Written Reps</td>
</tr>
<tr>
<td>WS</td>
<td>1 Beech Avenue</td>
<td>Written Reps</td>
</tr>
<tr>
<td>WW</td>
<td>118 Ensbury Park Road</td>
<td>Written Reps</td>
</tr>
</tbody>
</table>

The planning application details (including drawings) for the planning appeals set out in this report can be accessed at:

http://www.bournemouth.gov.uk/Residents/Planning_Development/Planning_application_search.asp
9. Appeal Decision Analysis for all Appeals

1. Appeals against Planning Board/Full Council decisions (includes 2 below)

<table>
<thead>
<tr>
<th>Year (April - March)</th>
<th>Dismissed</th>
<th>Allowed</th>
<th>Total</th>
<th>% Allowed (Performance target less than 25% allowed)</th>
<th>NFA/Withdrawn</th>
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</thead>
<tbody>
<tr>
<td>2010 - 2011</td>
<td>4</td>
<td>7</td>
<td>11</td>
<td>64%</td>
<td>2</td>
</tr>
<tr>
<td>2011 - 2012</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>0%</td>
<td>1</td>
</tr>
<tr>
<td>2012 - 2013</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>67%</td>
<td>-</td>
</tr>
<tr>
<td>2013 - 2014</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
<td>0</td>
</tr>
</tbody>
</table>

2. Appeals against Planning Board decisions made contrary to Officer Recommendation

<table>
<thead>
<tr>
<th>Year (April - March)</th>
<th>Dismissed</th>
<th>Allowed</th>
<th>Total</th>
<th>% Allowed (Performance target less than 25% allowed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010 - 2011</td>
<td>4</td>
<td>7</td>
<td>11</td>
<td>64%</td>
</tr>
<tr>
<td>2011 - 2012</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>2012 - 2013</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>67%</td>
</tr>
<tr>
<td>2013 - 2014</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
</tbody>
</table>

3. Appeals against Head of Planning & Transport Delegated decisions

<table>
<thead>
<tr>
<th>Year (April - March)</th>
<th>Dismissed</th>
<th>Allowed</th>
<th>Total</th>
<th>% Allowed (Performance target less than 25% allowed)</th>
<th>NFA/Withdrawn</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010 - 2011</td>
<td>129</td>
<td>48</td>
<td>177</td>
<td>26%</td>
<td>3</td>
</tr>
<tr>
<td>2011 - 2012</td>
<td>61</td>
<td>27</td>
<td>88</td>
<td>31%</td>
<td>2</td>
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<tr>
<td>2012 - 2013</td>
<td>67</td>
<td>16</td>
<td>83</td>
<td>19%</td>
<td>8</td>
</tr>
<tr>
<td>2013 - 2014</td>
<td>4</td>
<td>2</td>
<td>6</td>
<td>33%</td>
<td>1</td>
</tr>
</tbody>
</table>
Appeal Decision

Site visit made on 29 May 2013

by Pete Drew BSc (Hons) DipTP (Dist) MRPTI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 May 2013

Appeal Ref: APP/G1250/X/12/2180109
1085-1087 Christchurch Road, Bournemouth BH7 6BQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [LDC].
- The appeal is made by Dave Wells Properties against the decision of Bournemouth Borough Council.
- The application Ref 7-2012-22429-D, dated 19 March 2012, was refused by notice dated 15 May 2012.
- The application was made under section 192 (1) (b) of the Act.
- The development for which an LDC was sought was to establish that the balance of works necessary to complete planning permission reference 7-2008-22429-C in accordance with the approved plans are lawful.

Formal Decision

1. The appeal is allowed and an LDC is issued, in the terms set out in the attached LDC, to establish that the balance of works necessary to complete planning permission reference 7-2008-22429-C in accordance with the approved plans are lawful. A plan that defines the area of land involved edged red is attached to the LDC.

Procedural matters

2. The planning permission at issue [No 7-2008-22429-C], for a total of 10 flats and a shop, was granted planning permission by the Council in a decision dated 27 November 2008. The planning permission was granted subject to a total of 11 conditions, including the commencement condition. In these circumstances The Planning Inspectorate wrote to the parties in a letter dated 10 May 2013 regarding the conditions and, amongst other things, whether they have been discharged. However the Council's response is unequivocal and confirms that "details in respect of conditions 2, 3, 4, 5, 6 and 7 have been submitted to the Council and the conditions were discharged". Although a fair reading of the Appellant's statement might suggest that some or all of those conditions were not discharged, given the unambiguous nature of the letter received from the Council I propose to deal with this appeal on the basis that there has been no breach of any of these conditions, "technical" or otherwise.

3. In the Appellant's supporting statement [paragraphs 4.4 and 4.5] and in the Appellant's appeal statement [paragraphs 6.11 and 6.12] reference is made to an enforcement appeal in Cumbria but no copy appears to have been provided. The Planning Inspectorate allowed an opportunity for comments to be made on this appeal [Ref. APP/Q9495/X/11/2158400] and I have taken account of the comments received, I would record very promptly, from both main parties.

1 Source of quote: letter dated 16 May 2013 to The Planning Inspectorate.

http://www.planning-inspectorate.gov.uk
4. An application for a full award of costs was made by Dave Wells Properties against Bournemouth Borough Council. This application is the subject of a separate decision.

Main issue

5. Paragraph 8.12 of Annex 8 of Circular 10/97 "Enforcing Planning Control: Legislative Provisions and Procedural Requirements" says that the onus of proof in an LDC application is firmly on the Applicant, or at this stage the Appellant. The onus falls upon the Appellant in this appeal to show that the 2008 planning permission was lawfully implemented within 3-years of the date of permission, i.e. prior to 27 November 2011 (hereinafter "the material date"). This gives rise to a single main issue, which is whether any works were carried out by the developer prior to the material date sufficient to amount to a commencement of development within the meaning of section 56 of the Act.

Reasons

Statutory position

6. Section 56(2) of the Act says development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Section 56(4) of the Act defines the term "material operation" to include (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b). That, in turn, is defined as the digging of a trench which is to contain the foundations, or part of the foundations, of a building.

7. Although the Appellant claims the list of works in section 56(4) of the Act is not supposed to be exhaustive that is not my reading of the statute. The Appellant has not provided copies of case law to support this assertion. The justification for this claim is that this Council accept that the provision of a hardstanding to store bins would be a material operation. The Council has not commented one way or the other but it is not inconceivable that a hardstanding might be within the definition in section 56(4) of the Act. In these circumstances this does not lead me to find that the term is open-ended or that these are mere examples.

8. In the Cumbria appeal the Inspector accepted that it was not necessary for the trench that is to contain the foundations to be dug before the laying of the underground pipe could constitute a material operation. I agree with the Inspector's logic that if that were the case subsection (c) would be superfluous. I further agree with the Inspector's view that it can reasonably be interpreted to mean a pipe which is for the purpose of serving the building permitted, such that it does not require the pipe to be immediately adjacent to the foundations.

What works were carried out and when?

9. The Appellant says that the works carried out "...include : a) the digging for the formation of a manhole/inspection chamber and the laying of a pipe of sufficient dimension to function as a sewer pipe for the development". However there is no b) and no indication of what, if any, other works were undertaken. It is stated that the works did not take long to complete and involved a small mechanical digger and 2 operatives; the works included breaking the concrete using machinery and properly installing the pipe work using manpower. It is also said that the works were undertaken by a development company using detailed design plans for the location of drains, connection points and eventual connection into the approved development. These claims are not challenged.
10. The application was not accompanied by any statutory declaration but there was a supporting statement submitted by the Appellant’s Agent and a total of 7 photographs, which include before, during and after shots of the path, pit and manhole cover. The 3 photographs of before are of no particular interest beyond confirming that the path comprised of concrete. The last photograph shows the manhole cover surrounded by fresh concrete, which is consistent with the penultimate shot showing the manhole before the concrete was laid. It is the other 2 photographs that are of particular relevance to this appeal.

11. The fourth shot, with worker in background, shows the excavation and what is of particular interest is the preformed plastic chamber base on the left side of the photograph next to the wall and the blue bucket. This is what I saw on site when I looked into the manhole. It comprises what I shall call a junction of 6 pipes, i.e. 4 ends into a main run, only 3 of which were connected into pipes. So looking at that photograph 3 of the ends have orange pipes that protrude from them, which is what I observed in the ground at my inspection. The other 3 pipes terminate in black plastic ends, which is what I observed in the ground. On the balance of probability I conclude that this chamber base was installed.

12. The fifth shot shows the excavated pit and what appears to be an existing drain that runs along roughly the centre of the path. There is no evidence from this photograph to suggest that there was an existing junction of pipes. What I saw during my inspection would lead me to find that the preformed plastic chamber base has been inserted into that existing drain with the other end from which a plastic pipe protrudes pointing into the site, broadly at right angles to the main path. Although the main run along the path would appear to be connected into the existing drainage pipe it is entirely unclear whether the joining pipe goes anywhere at all. At the site inspection all attempts to pour water down other drains in the vicinity suggested that they were not connected to this pipe. Given the modest size of the excavation, the lack of evidence of an existing junction and the limited length of pipe in the photograph it is more likely than not that this joining pipe, into the existing drainage run, does not go anywhere.

13. The photographs are not dated but I note that they were appended to a letter dated 14 November 2011 that was sent to the Council. This leads me to find, on a balance of probability, that the works described above were undertaken prior to the material date. In the circumstances the question is whether these works constituted a material operation effective to implement the permission.

Analysis

14. The Council’s complaint, which is essentially that the evidence submitted with the application was minimal, is one that I can understand. Indeed it is only as a result of my inspection that I recognise the preformed plastic chamber base in the photograph as being that which has been installed. The Council sought photographic evidence of the pipework that is said to have been installed and even if such evidence did not exist in that form a sworn statement from the contractor or the development company could have covered the point. In its absence I have to take a view on the limited evidence before me in this appeal.

15. The numerous legal authorities to which I am referred suggest that very little is needed to implement a planning permission for operational development and that this section should be interpreted benevolently. Although the Council say that the works are significantly less than was the case in Spackman v The Secretary of State for the Environment and Thamesdown Borough Council

http://www.planning-inspectorate.gov.uk 3
[1977] JPL 174 the test is not one of quantum. Section 56(4) (c) merely refers to the laying of any underground pipe [my emphasis].

16. In the light of my inspection and the submitted photographs I accept that the preformed plastic chamber base, evident in the base of the manhole, has been connected into the existing pipe that is evident in one submitted photograph. Crucially I am also satisfied that a single underground pipe has been laid that connects into the chamber base. Although I have found that it is likely to be limited in length and not connect into anything this is consistent with the claim that this would be a main line spur to serve the new block of flats. On this basis a material operation has been undertaken that is more than de minimis.

17. There is no evidence to suggest these works were carried out for any purpose other than to serve the proposed development. The position of the manhole outside the footprint of the proposed buildings is a logical position in terms of future maintenance even if it does not obviously accord with the junctions shown by the black dots on the drainage plan. It is unclear from the face of the decision notice whether the drainage plan with which I have been provided was approved pursuant to the planning permission. Its date, January 2009, might suggest it was not because this post-dates issue of the decision notice.

18. However the drainage plan does appear to show the approved layout. It must be common ground that no conditions were imposed on the planning permission with regard to drainage matters and so there was no need for the drainage layout to be approved or otherwise shown on the plans submitted to the Local Planning Authority. Confirmation that the dot and dash line on the drainage plan is a foul sewage run is provided by the annotation on the 1:200 scale site plan regarding connection to the public sewer. Moreover the Council has not advanced its case on this basis. In the circumstances I find no reason to dispute that the work done was done in accordance with the permission.

19. I have noted the comments on the case from a neighbour but, as the Circular makes clear, the merits of the operation are not relevant to the consideration of the purely legal issues which are involved in determining this type of appeal. I acknowledge that the Appellant's reference to a drainage system might be an overstatement of the works that were undertaken. However this does not alter the conclusion to which I am drawn on the particular facts of this case.

**Conclusion**

20. For the above reasons, having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC to establish that the balance of works necessary to complete planning permission reference 7-2008-22429-C in accordance with the approved plans was not well founded. The appeal will succeed and I shall exercise the powers transferred to me in section 195 (2) of the Act.

_Pete Drew_

INSPECTOR
Appeal Decision

Site visit made on 2 May 2013

by Jim Quaife  Dip Arb (RFS), F Arbor A, CEnv

an Arboricultural Inspector appointed by the Secretary of State for Communities and Local Government

Decision date:  8 - MAY 2013

Appeal Ref: APP/TPO/G1250/3098

8 Dunkeld Road, Bournemouth, Dorset, BH3 7EN

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order (TPO).
- The appeal is made by Mr Hughes against the decision of the Bournemouth Borough Council.
- The application Ref: 7-2012-P-18462-H, dated 14 December 2012, was refused by notice dated 4 February 2013.
- The proposed work is to prune one oak tree by pollarding it.
- The relevant Tree Preservation Order is The County Borough of Bournemouth (Dunkeld Road, Alyth Road and Nairn Road) TPO 1971, which was confirmed on 18 October 1971.

Decision

I allow the appeal and grant consent for the appeal tree to be pruned but with a modified specification and subject to the two following conditions.

(a) The pruning shall be carried out within one year of the date of this decision. The appellant will give two week’s advanced notice in writing to the Council of the date on which the pruning is to be commenced.

(b) The pruning will be a reduction of the main members of the tree to a radius of not less than 5 metres in lateral and vertical extent measured from the centre of the crown break. The intention is to retain smaller branches supporting existing foliage in accordance with recognised good pruning practice as indicated within British Standard 3998:2010 Tree work – Recommendations.

Main Issues

1. The impact of pruning the tree on the character and appearance of the surrounding area.

2. Whether the reasons for pruning the tree are sufficient to justify that course of action.
Reasons

The impact of pruning the tree on the character and appearance of the surrounding area

3. Dunkeld Road runs roughly east/west within a residential area and comprises two-storey detached properties. The land is level and No.8 is on the southern side of the road. The site is within the Meyrick Park and Talbot Woods Conservation Area.

4. The vicinity has a mixture of mature and younger trees of sufficient density to provide an arboreal character. There is a collection of mature trees at the common rear boundaries of Nairn Road to the east, Alyth Road to the south and Dunkeld Road, and the appeal tree is at the western end of this group. There are other mature trees to the west, but this group is particularly significant.

5. Dunkeld Road has generally smaller trees in the front gardens, some of which are the subject of topiary, but overall the population of trees provides a pleasant “leafy” environment.

6. There appeal tree is a large specimen in the rear garden of No.8 and is of particular prominence when viewed from the western semi-circular arc of visibility. Although the view of the appeal tree is intermittent from Dunkeld and Alyth Roads there are a sufficient number of private properties from which the tree can be seen to constitute a public view.

7. Consequently the appeal tree makes an important contribution to the character and appearance of the Conservation Area and consequently given that the proposed pruning is extensive, it should not be allowed unless there are clear and convincing reasons to do so.

Whether the reasons for pruning the tree are sufficient to justify that course of action

8. The appeal tree is identified within the First Schedule of the TPO as being within the Area A2 and is a Sessile oak (Quercus petraea).

9. The appeal tree is a tall specimen with a large spreading, dome-shaped crown which covers a substantial part of the rear garden. It is situated near the eastern boundary just south of mod-way down the rear garden’s length.

10. The main stem is forked into 12 main branches (depending upon how one determines what constitutes a main branch) at between about 3 to 4 metres. These branches are splayed and appear to be the result of pollarding which the appellant believes to have been done over forty years ago. Whereas pollarding was believed to have originated as means of coppicing above the browse line of grazing animals, it has been more usually employed to control the size of trees in more confined situations for landscape reasons.

11. I could see no visible defects of any significance or any indications that the tree might be unstable. Shoot extension is good and the tree is in a good physiological condition.
12. The exposed heartwood is not necessarily detrimental to the tree and the currently incomplete occlusion of the wound does not mean that it will not occlude completely in time.

13. The appeal tree has been the subject of previous pruning and the last occasion was an overall reduction of some 2 – 3 metres.

14. The appellant indicated to me at my request the intended extent of pruning, which is to reduce the main members to an average of approximately 3 metres in radius from the crown break. This would remove the major part of the crown mass and reduce the tree to what is sometimes described as a “claw”. This would cause a major physiological shock to the tree and whereas the natural growth response is for new shoots to emerge from latent buds, there is no doubt that the retention of some of the existing foliage mass would be beneficial in reducing the intensity of that shock. To my mind the proposed pruning would introduce a risk of dieback.

15. I also accept that the short-term appearance of the tree would be stark, but if the physiological shock could be limited, as the years pass and the shoots develop into branching, the crown would re-form and could be maintained at a smaller mass.

16. The large spread of the crown casts considerable shade to the rear garden. I recognise that the appellant has undertaken pruning in the past which has been proportionately modest, but which has not achieved the reduction of shade sought.

17. A third party representation was received by the Council and I have taken it into account.

Conclusions

18. The appeal tree is in good physiological condition and there is no visible indication that it might be unstable or that here are any significant structural defects.

19. The consideration of TPO protection rests on the balance between the benefits a tree provides to public amenity and the compromises it causes to the private amenity of the owner. I have given very careful consideration to the evidence before me and my own site observations and on balance I am persuaded that the inconveniences the appeal tree causes to the appellant are of sufficient weight to justify the proposed pruning.

20. I have some sympathy with the Council’s concerns, and the severe extent of the proposed pruning is on the face of it contrary to British Standard 3998:2010 Tree work – Recommendations (section 7.10). However although I am inclined to grant consent, the proposed pruning dimensions would remove the entire foliage mass and introduce a significant risk of partial or even complete dieback.

21. Consequently I regard the proposed 3-metre radius as being unacceptable and I am minded to modify it to a reduction of the main members to a radius from the crown break point of a minimum of 5 metres so that some smaller branching with existing foliage can be retained.
22. Accordingly for the reasons I have set out above I allow the appeal with a modified pruning specification and I impose two conditions in respect of the time limit for the consent and the pruning specification.

*Jim Quaife*

Arboricultural Inspector
1. **Recommendation:** To note the contents of the report.

2. **Reason:** To keep Members of the Planning Board informed of:
   - planning application decision performance and planning appeal decision performance against Government targets
   - current planning application workload levels
   - tree work application decision performance; TPO work and consultations
   - Service of Planning Contravention Notices; Breach of Condition Notices; Section 215 Notices; Enforcement Notices and New Complaints Received

3. **Performance:**

   3.1 Planning Application Decisions made within Performance Target

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<td>Other (target 80%)</td>
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<td>85</td>
<td>91</td>
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   3.2 Appeal Decision Performance April: 33% of appellant’s appeals allowed by Planning Inspectorate (National Av. 34%).

   3.3 Trees/Landscaping and Enforcement/Compliance figures are set out at the end of this report.

4. **Options & Impacts:**

   4.1 The information contained within this report is provided to keep Members of the Planning Board informed of current workload and performance of the teams.

5. **Preferred Option:**

   5.1 To agree the recommendation set out in Section 1 of this report.
Planning Applications

Processing of planning applications as measured against Government targets for ‘major’, ‘minor’ and ‘other’ application types.

The Government targets are:

- **Major Applications (Large and Small Scale Major):** 60% to be determined in 13 weeks.
- **Minor Applications:** 65% to be determined in 8 weeks.
- **Other Applications:** 80% to be determined in 8 weeks.

Largescale Major Developments

For dwellings, a largescale major development is one where the number of residential units to be constructed is 200 or more. Where the number of residential units to be constructed is not given in the application a site area of 4 hectares or more should be used as the definition of a major development. For all other uses a largescale major development is one where the floor space to be built is 10,000 square metres or more, or where the site area is 2 hectares or more.

Smallscale Major Developments

For dwellings, a smallscale major development is one where the number of residential units to be constructed is between 10 and 199 (inclusive). Where the number of dwellings to be constructed is not given in the application a site area of 0.5 hectare and less than 4 hectares should be used as the definition of a smallscale major development. For all other uses a smallscale major development is one where the floor space to be built is 1,000 square metres and up to 9,999 square metres or where the site area is 1 hectare and less than 2 hectares.

Minor Developments

For dwellings, minor development is one where the number of dwellings to be constructed is between 1 and 9 inclusive. Where the number of dwellings to be constructed is not given in the application, a site area of less than 0.5 hectares should be used as the definition of a minor development. For all other uses, a minor development is one where the floor space to be built is less than 1,000 square metres or where the site area is less than 1 hectare.

Other developments

Other includes Minerals; Change of Use; Householder Developments; Advertisements; Listed Building Consents to Alter/Extend; Listed Building Consents to Demolish; Conservation Area Consents.
Planning Application Performance for May 2013:

1 - Planning Application Decision Performance Against NI 157

<table>
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<tr>
<th>% Performance:</th>
<th>Number Determined</th>
<th>Number within target</th>
<th>% within target</th>
<th>Annualised Performance to end of May</th>
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<td>Major (Devel. Types 1 - 12)</td>
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<td>3 (3)</td>
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<td>Other (Devel. Types 19 - 27)</td>
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<td>55 (48)</td>
<td>96% (96%)</td>
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<td>All</td>
<td>103 (96)</td>
<td>95 (90)</td>
<td>92% (94%)</td>
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Applications determined by Planning Board (included in Table 1 above): 3

2. Percentage of applications with delegated decisions: 97%

3. Appeal Decision Performance BVPI 204

0% appeals allowed by Planning Inspectorate (May 2013) (National Av. 34%)

4. Figures for May 2013:

   a) Number of applications received 221 (205)
   b) Number of applications registered as valid by 4 June 80 (159)
   c) Number of applications returned as incomplete or remaining unvalidated at 4 June 79 (46)

Overall current planning application workload at 4 June:

   a) Number of applications awaiting validation/registration 73 (65)
   b) Number of applications awaiting recommendation/decision/106 agreement (excluding tree work applications) 199 (194)
Trees/Landscaping:

Information on performance of the Landscape and Arboricultural section in relation to:
- decisions on applications for consent to carry out tree work
- serving and confirmation of new Tree Preservation Orders
- consultations from Planning Case Officers on Planning applications.

Tree work application decisions

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<th>In time</th>
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Tree Preservation Orders

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Consultations on planning applications

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Enforcement/Compliance:

Information on performance of the Enforcement/Compliance section in relation to:
- Planning Contravention Notices Served (requisition for ownership information)
- Breach of Condition Notices served
- Section 215 Notices Served (untidy sites) - Other than those issued by Public Protection
- Enforcement Notices Served
- New Complaints Received

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