

Planning Committee Report



Application Address	Fairlea 16 West Cliff Road, Bournemouth BH2 5EZ
Proposal	Minor Material Amendment to vary condition no.1 of application 7-2019-1227-G to provide 3 no external roof terraces with access (Original description - Alterations, roof extension to form three additional flats and formation of additional parking spaces)
Application Number	7-2021-1227-AQ
Applicant	Vivir Properties (Dorset) Ltd.
Agent	Darryl Howells Planning Consultancy
Ward and Ward Member(s)	Westbourne & West Cliff
Report status	Public Report
Meeting date	19 th May 2022
Summary of Recommendation	Grant, subject to the completion of a legal agreement
Reason for Referral to Planning Committee	<p>35 letters of objection</p> <p>At the request of Cllr Beesley for the following reasons:</p> <ul style="list-style-type: none">• Overlooking of residents and balconies of Avon House and other neighbouring properties;• Compromising the visual amenities of neighbouring properties through light pollution;• Noise and disturbance (unless conditioned) to the detriment of the residents of neighbouring properties.
Case Officer	Joscelyn Holbrook

Executive Summary

Under the 'G' planning application, planning permission was granted for the erection of an additional storey to Fairlea and the formation of 3 self contained flats. This is a section 73 application, a minor material amendment seeking to alter the approved 'G' application by installing roof gardens.

A section 73 application provides a different procedure from that applying to many of the applications for planning permission that come before Committee as it requires consideration only of the conditions subject to which planning permission should be granted. However, in doing this, wider issues affecting the grant of permission need to be taken into account and the assessment made in the context of the development plan and other material considerations as the application results in a fresh permission. In

this particular case, one material consideration is the fact that there is a granted planning permission which represents a fallback position.

The approved roof under the 'G' application had a flat roof and solar panels were proposed which would be laid flat against roof. This is the applicants fall back position as there is an extant planning permission. This amendment seeks to install roof terraces for the benefit of the future occupants of the new flats. There will be three roof terraces in total, with each top floor flat having independent access to the private amenity space. Solar panels are still proposed, as per the approved 'G' application, which will be laid flat on the roof.

Concern has been raised by local residents that the roof terraces will cause harmful overlooking to existing residents. In addition, the roof terraces will cause a negative impact due to noise and disturbance, light pollution and health and safety concerns due to high winds on the cliff top.

Concern was also raised that all residents within Fairlea would have access to the roof and this large space would invite large social gatherings/parties and antisocial behaviour. An amended plan was submitted to annotate the roof plan to demonstrate that the 4th hatch would be for maintenance purposes. The roof terraces would be for the sole use of the flat directly below it. A Roof Top Management Policy has been submitted to demonstrate how the applicant will deal with issues such as noise, light pollution and the risk of high winds.

This report discusses the separation distance between the surrounding buildings and that the nearest building is 24.5m away with a row of trees along the boundary. Whilst the roof terraces will impact the view currently enjoyed by local residents, there is no right to a view over private land. The roof terraces are not considered to cause a harmful overlooking impact to local residents.

Whilst there have been 35 letters of objection, the proposal is considered acceptable and is recommended for approval.

Description of Site and Surroundings

1. The surrounding area comprises large purpose built blocks of flats and terraces of hotels and residential accommodation. Fairlea is three storey block of purpose built flats built in 1967 that shares an access with Avon House, a much larger block of purpose built flats. Fairlea has limited architectural merit and planning permission was granted at Committee in 2020 for an additional storey and to increase the number of flats from 9 to 12. Approval was also given for the replacement of the windows in the building and the addition of render and cladding. Additional parking spaces were also approved as well as a cycle store and landscaping. This is known as the 'G' application.
2. Fairlea abuts the West Cliff and Poole Hill Conservation Area. To the south of Fairlea is a large area of green space and the cliff top which is designated public open space. Whilst Fairlea is currently outside of the conservation area, the green is proposed to be included within the conservation area boundary. The consultation process has been through public consultation and weight is given to the fact that Fairlea would most likely be included within the conservation area. The positive impact on the character of the conservation area though is the large open green, rather than the building.

Relevant Planning History

3. 7-2019-1227-G - Alterations, roof extension to form three additional flats and formation of additional parking spaces – **granted** at Committee 30/4/2020.
4. 7-2021-1227-AP - Non-material amendment to application no. 7-2019-1227-G to form three roof gardens to provide additional amenity space – **refused**. Proposal could not be considered as non material.

Constraints

5. The site is adjacent to the Poole Hill and West Cliff Conservation Area. Area TPO.

Public Sector Equalities Duty

6. In accordance with section 149 Equality Act 2010, in considering this proposal due regard has been had to the need to —
 - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Other relevant duties

7. In accordance with section 40 Natural Environment and Rural Communities Act 2006, in considering this application, regard has been had, so far as is consistent with the proper exercise of this function, to the purpose of conserving biodiversity.
8. For the purposes of this application, in accordance with section 17 Crime and Disorder Act 1998, due regard has been had to, including the need to do all that can reasonably be done to prevent, (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); (b) the misuse of drugs, alcohol and other substances in its area; and (c) re-offending in its area.

Consultations

9. Urban Design – Comments received with other examples of roof terraces provided, additional planting could be used to provide extra screening if needed.

Representations

10. 35 letters of objection have been received, raising the following issues:
 - Adversely affect the privacy of existing residents adjacent to the site due to overlooking;
 - Antisocial behaviour. Concerns regarding loud music, parties, BBQ's and gatherings within the roof gardens causing adverse harm to local residents.
 - Noise and light pollution concerns adversely affecting residents;
 - Health and safety, high winds could blow off items placed within the roof garden causing a risk and damage.
 - Concerns the roof will be occupied by all residents of Fairlea, causing greater impact;
 - Inaccurate plans;
 - Fairlea has a large front lawn and is close to the beach and therefore, it is the objectors opinion that roof gardens are not required as they have alternatives;
 - Lack of solar panels and rainwater harvesting, as approved in 2020; (proposed plans updated to show the solar panels and rainwater harvesting, as this is still proposed)
 - Out of character;
 - Concerns regarding the publicity of the application.
 - Concerns regarding the enforceability of the roof terrace management policy.
11. Site notices were erected on the 26th of November 2021. It came to light that the correct notices had not been served and therefore the application was de registered. Full publicity was run again once the Council was satisfied that the correct notices had been received and the application was valid. Replacement site

notices were erected on the 12th of January 2022 and the press notice was published on the 26th of January 2022.

12. Along with the proposed drawings, the agent submitted the previously approved 'G' plans however, these were not the approved plans as there was a revision. The correct approved plans were updated onto the website. In response to the letters of objection, the applicant was asked to provide information on how the roof gardens would be managed, as this is seen to be the key to ensure that the roof gardens are operated in an appropriate manor. The applicant submitted a 'Roof Top Management Policy' to demonstrate how the roof terraces will be managed. An amended plan was received which annotated the 4th access hatch to the rooftop as maintenance only. The applicant has confirmed that solar panels and rainwater harvesting still forms part of the proposal. Solar panels and rainwater harvesting were previously approved on the 'G' application.

Key Issue(s)

13. The key issue(s) involved with this proposal are:

- Impact on the character and appearance of the area;
- Impact on local residents;
- Drainage
- Heathland Mitigation

14. These issues will be considered along with other matters relevant to this proposal below.

Policy Context

15. Local documents:

Core Strategy (2012)

Policy CS3: Sustainable Energy and Heat

Policy CS 4 Drainage

Policy CS33, CS34 and CS35 Heathland and designated sites

Policy CS38: Pollution

Policy CS41: Quality Design

Town Centre Area Action Plan (2013)

Policy D4: Design Quality

17. **Supplementary Planning Documents:**

Dorset Heathlands Planning Framework SPD

18. National Planning Policy Framework ("NPPF"/"Framework")

Section 2 – Achieving Sustainable Development

Paragraph 11 –

"Plans and decisions should apply a presumption in favour of sustainable development.

For **decision-taking** this means:

(c) approving development proposals that accord with an up-to-date development plan without delay; or
(d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of this Framework taken as a whole."

Section 12 – Achieving Well-Designed Places

Paragraph 130 – development should be visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Planning Assessment

19. Fairlea is currently a three storey building but planning permission has been implemented to erect the additional storey approved under the 'G' application. The overall height is modest in scale compared to neighbouring blocks of flats such as Avon House to the North and Tower Court to the east. The approved roof for the building was a flat roof and drawing number 1863 04 rev C showed that solar panels would be inserted onto the roof and laid flat. This section 73 minor material amendment seeks to alter the approved roof and installing 3 roof gardens. Each roof garden measure 4.5m by 5m and will be installed directly above flats 10, 11 and 12. The future occupants of the three flats approved under the 'G' application will have private access to the roof gardens via a spiral staircase. At the top of the staircase will be a glazed horizontal sliding roof cover which is annotated as a 'hatch' on the proposed drawings. A forth hatch is shown on the roof plan and an amended plan has been submitted to annotate that this is for maintenance purposes only. The terraces will have decking and a 1.1m high clear glazed balustrade around the parameter delineating each residents private space with an escape gate. Solar panels will be inserted on the rooftop, as previously approved under the 'G' application.
20. It is not uncommon to find external amenity spaces such as balconies in this coastal area. Fairlea does not have balconies and therefore the use of the flat roof in order to provide private amenity space is a good use of space, to the benefit of the future occupants. Whilst a roof garden is not a common feature, that does not make it an unacceptable addition to the building. Nationally, roof gardens are becoming more popular and given the coastal location, the formation of roof gardens would not be adversely harmful to the character of the area.
21. The site abuts the West Cliff and Poole Hill Conservation Area. To the south of Fairlea is a large area of green space and the cliff top which is designated public open space. Whilst Fairlea is currently outside of the conservation area, the green is proposed to be included within the conservation area boundary. The building is not historic in nature. The positive impact on the conservation area comes from the large open green space and as there no alterations proposes to the green and therefore no harm will be caused to the conservation area.
22. Significant concern has been raised by local residents that the roof gardens will cause overlooking. The context of the site needs to be taken into consideration and that there is already views from existing windows at Fairlea towards the windows and balconies of the neighbouring blocks of flats. In addition, there are already views from the balconies and windows in the blocks of flats such as Avon House and Tower Court towards the windows of Fairlea, therefore creating a mutual overlooking relationship between the buildings. Whilst the proposed roof gardens will be an apparent change to the roof and will be clearly visible to the neighbouring residents, there is a good separation distance between the buildings and the use of the roof gardens would not give rise to an unacceptable level of overlooking that would warrant refusal. The approximate separation distances between the existing buildings can be seen in the table below:

Building:	Separation distance to Fairlea (to the nearest point)	Separation distance to roof garden (to the nearest point)
Avon House	30m	38.6m
Tower Court	19.7m	27.7m
Bayview Gardens	29.7m	30.5m
8 West Cliff Gardens	24.5m	25m
The Lindens	23.5m	24.5m
Rothbury	24.5m	27.5
Silver How Hotel	27.5m	36m

23. Tower Court is located close to Fairlea at 19.7m however, the roof gardens are to be located to the south of Fairlea, closest to the sea which is another 8m away. This then increases the separation distance between the nearest garden and Tower Court to 27.7m. The nearest building to a roof garden is 'The Lindens' at 24.5m. Regard should be given to the line of dense trees located along the western boundary which will provide a degree of screening from the windows to the roof gardens.
24. Due to the spacing between existing buildings there are no objections to the formation of the roof gardens and they would not cause a harmful overlooking impact detrimental to the living conditions of neighbouring residents.
25. From the cliff top there are views towards Fairlea and views towards Avon House which is located directly behind. Fairlea is located 67.5m to the north of the public footpath. Whilst the roof gardens will be visible from the public footpath, especially as they are located on the southern side of the roof, they would not be a harmful addition or cause overbearing from the public vantage points. The roof gardens provide private amenity space for the future residents and whilst they will be visible, they are not considered to cause an adverse impact on the character or appearance of the area to a detrimental degree.
26. The fall back position is that the 'G' application has a flat roof with no roof gardens. This application has assessed the impact of creating roof gardens, which will be visually apparent to all local residents but not considered to cause an adverse harmful overlooking impact.
27. Concern has been raised by local residents that due to the cliff top location there is a health and safety issue due to high winds blowing items off the roof gardens. There is a risk, similarly to the risk to other balconies in the area and something that is common in a coastal location. The applicant has provided a roof top management policy and therefore is aware of the potential risk. It is down to the management of the external spaces to ensure that there is no risk to health and safety and that in bad weather appropriate action is taken.
28. In addition, concern has been raised that the roof terraces will generate significant noise and disturbance, through loud noise caused by the congregation of people/parties and loud music. Similarly to the health and safety issue above, it is down to the management of the roof terraces to ensure that there is no excessive noise, similarly again to a balcony use. If there is excessive noise then this would be a Police matter. The applicant is aware of this concern and it is included in the management policy. The management policy has been included in the list of conditions to ensure compliance.
29. The proposed design of the roof terraces is considered acceptable with glass balustrading surrounding the perimeter of the external amenity space to delineate the boundary. The terraces are a good size and would provide a good standard of amenity for future occupants. The proposal would not cause significant overlooking to existing residents and would be an acceptable addition to the roof of the building.
30. The plans show that solar panels are still proposed on the roof and will be laid flat. In addition, rainwater harvesting is also proposed which will be provided by a large tank below ground. The use of green technology is in accordance with Policy CS3.
31. The proposed design of the roof terraces are considered acceptable and they would not cause a harmful impact on the character or appearance of the area therefore complying with Policies CS 41 of the core strategy and D4 of the Area Action Plan.

Impact on local residents;

Avon House:

32. This 11 storey block of flats is located to the north of Fairlea with a separation distance of 30m at the closest point. There are balconies on the south elevation of this building that overlooks Fairlea, the green, cliff top area and sea. There is no right to a view over private land and whilst the approved increase in height of Fairlea to enable the three additional flats will obstruct views currently enjoyed by residents,

there were no planning grounds to refuse the application based on a loss of a view. In addition, the formation of roof gardens will increase the overall height of the building due to the balustrading and decking, similarly as before, there is no right to a view over private land. Whilst the orientation of Avon House results in views towards Fairlea, there is a good separation distance and therefore the use of roof terraces cannot be considered as harmful overlooking, but will be more of a mutual overlooking impact. The proposal is not considered to cause a harmful impact on existing residents.

Tower Court

33. This 13 storey purpose built block of flats is located to the east of Fairlea with a separation distance of 27.7m between this building and the proposed roof garden at the closest point. The formation of the roof gardens will be apparent to the residents of this building however, similar to above, due to the separation distances it would not cause a harmful overlooking impact. There will be a mutual overlooking impact between the buildings. As previously mentioned, there is no right to a view over private land and whilst the views currently enjoyed will change, this is not a reason to refuse planning permission.

Bayview Gardens

34. This 6 storey block of flats is located to the east of Fairlea with a separation distance of 30.5m to the nearest roof garden. There is a public footpath that separates the two sites. There is some screening along the eastern boundary with the public footpath although this has been cut back since the last site visit. The formation of the roof gardens will be apparent to the residents of this building. However, the roof gardens would not cause harmful overlooking towards the residents of this block.

Rothbury, The Lindens, flats 1-4 and 5-8, 8 West Cliff Gardens:

35. These three storey buildings are located to the west of Fairlea with a separation distance of approximately 24m. There are trees and vegetation located along the boundary with the site with glimpses through to the building. The separation distance is considered acceptable and the formation of the roof gardens is not considered to cause a harmful overbearing or overlooking impact to these buildings to the west.

Drainage:

36. There is no increase in the footprint of the building and therefore there should not be any requirement for additional water disposal. With the previous application, the agent submitted confirmation from Wessex Water that the developer can connect to the main sewer as a soakaway is not appropriate in this cliff top location if required. The roof gardens will catch and retain some rainfall and the area of flat roof will drain as previously agreed and would comply with Policy CS4. A condition was previously included to ensure that the additional hard surfacing required for the parking area will be constructed in a porous material or is designed to direct rainfall to a landscaped area away from the hard surface. This condition will be carried across to the list of conditions at the end of this report.

Heathland Mitigation

37. The site is within 5km of a designated Dorset Heathlands SPA (Special Protection Area) and Ramsar Site, and part of the Dorset Heaths candidate SAC (Special Area of Conservation) which covers the whole of Bournemouth. As such, the determination of any application for an additional dwelling(s) resulting in increased population and domestic animals should be undertaken with regard to the requirements of the Conservation of Habitats and Species Regulations 2017. It is considered that an appropriate assessment could not clearly demonstrate that there would not be an adverse effect on the integrity of the sites, particularly its effect upon bird and reptile habitats within the SSSI.
38. Therefore as of 17th January 2007 all applications received for additional residential accommodation within the borough is subject to a financial contribution towards mitigation measures towards the designated sites. A capital contribution is therefore required and in this instance is £813, plus a £75 administration fee. A deed of variation to the previous S106 legal agreement is therefore required in order to secure heathland mitigation.

39. The development proposal is not liable for a CIL charge because the site is located within the Town Centre AAP boundary where there is an exemption for new residential floor area.

Planning Balance/Conclusion

40. As discussed within the report, there is no right to a view over private land and whilst the alteration to the approved roof through the formation of roof terraces will be an apparent change and visible to all surrounding neighbouring properties, there is a good separation distance between buildings which will not result in a harmful overlooking impact. The roof gardens will alter the view currently enjoyed by neighbouring residents but this is not a reason to refuse planning permission. The large open green to the south of Fairlea is to remain unchanged. It is this part of the site which has a positive impact on the wider conservation area rather than the building. Balconies and roof terraces are a common feature in a coastal location and therefore there are no objections to the principle of the formation of roof terraces. Whilst it is appreciated that the roof gardens will be a significant change to the current view enjoyed by local residents, it has been discussed that there is no right to a view over private land and that the separation distances are good so that there would not be a harmful overlooking impact. The key is to ensure that the roof gardens are properly managed to ensure that necessary precautions are taken during bad weather, that there is not excessive noise or light. The applicant has provided a roof top management policy which will be conditioned to ensure compliance. The proposal complies with the development plan and therefore it is recommended to approve the application.

Recommendation

41. **GRANT permission with the following conditions, of the decision and the completion of a Section 106 agreement (deed of variation) with the following terms:**

Section 106 terms

Financial contribution of £813 plus £75 administration fee towards heathland mitigation (SAMM)

Conditions:

1. Decision notice expiry – Minor Material Amendments:

The development to which this permission relates must be begun not later than the expiration of three years beginning on 30/4/2020.

Reason: This condition is required to be imposed by Section 91 of the Town and Country Planning Act, 1990.

2. Development to be carried out in accordance with plans as listed:

The development hereby permitted shall be carried out in accordance with the following approved plans: site and location plan, 1863 19 proposed site plan, 1863 20a proposed third floor, 1863 21b proposed roof terrace, 1863 22 proposed north elevation roof terrace, 1863 23 proposed east elevation roof terrace, 1863 24 proposed south elevation roof terrace, 1863 25 proposed west elevation roof terrace, Roof Top Management Plan supporting statement.

Reason: For the avoidance of doubt and in the interests of proper planning.

3. In accordance with the Roof Top Management Policy.

The use of the roof terraces hereby approved shall be carried out in accordance with the roof top management policy submitted to the LPA on the 21/2/2022.

Reason: to ensure proper management of the roof terraces and in accordance with Policy CS38 of the Bournemouth Local Plan: Core Strategy (October 2012).

4. Implementation of the approved Arboricultural Method Statement:

The tree protection measures as detailed in the arboricultural method statement dated 17/01/2020 ref.222 and associated plan 222/1A prepared by Partridge Associates shall be implemented in full and in accordance with the approved timetable and maintained and supervised until completion of the development.

Reason: To ensure that trees and other vegetation to be retained are not damaged during construction works and to accord with Policy 4.25 of the Bournemouth District Wide Local Plan (February 2002).

5. Implementation of Soft Landscaping and Landscaping Maintenance as previously agreed:

The soft landscape and maintenance details, as submitted to and approved in writing by the Local Planning Authority in connection with conditions 3 and 4 on planning application reference 7-2019-1227-G shall be implemented in full prior to occupation or use of the development commencing and permanently retained unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the proposed development includes a properly designed and suitably landscaped amenity area in the interests of visual amenity and to accord with Policy 4.25 of the Bournemouth District Wide Local Plan (February 2002) and Policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

6. Materials as Specified

The materials to be used on the external surfaces of the proposed development shall be as specified on the application form/plan unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the visual amenities of the locality and in accordance with Policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

7. Drainage Hard surfaced areas

Any new or replacement hard surfaced area(s) shall either be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.

Reason: To provide satisfactory drainage for the development in accordance with Policy CS4 of the Bournemouth Local Plan: Core Strategy (October 2012) and in order to achieve the objectives set out in the Local Planning Authority's Planning Guidance Note on Sustainable Urban Drainage Systems.

Note: Further guidance in this regard is contained in the Department for Communities and Local Government publication entitled "Guidance on the Permeable Surfacing of Front Gardens" (September 2008).

8. Cycle store to be erected prior to occupation

Before the occupation of any part of the development hereby approved, the cycle store shall be erected as shown on the approved plans and thereafter retained, maintained and kept available for the occupants of the development at all times.

Reason: To promote alternative modes of transport and in the interests of amenity in accordance with Policies CS18 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

INFORMATIVE NOTE: The applicant is advised that there should be no storage of any equipment, machinery or materials on the footway/highway this includes verges and/or shrub borders or beneath the crown spread of Council owned trees.

INFORMATIVE NOTE: The applicant is reminded that this permission is subject to a S106 and capital contribution towards Heathlands mitigation.

Background Documents:

Case File – ref 7-2021-1227-AQ

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.
Background Documents