The Planning Inspectorate

Appeal Decision

Hearing held on 16 May 2017

Site visit made on 16 May 2017

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 26th May 2017

Appeal Ref: APP/Z1775/W/16/3161911
46a, Lealand Road, Drayton and Farlington, Portsmouth PO6 1LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Rhema Project Management Limited against the decision of Portsmouth City Council.
- The application Ref 15/01671/FUL, dated 11 September 2015, was refused by notice dated 28 April 2016.
- The development is described as "The proposal offers a small community of dwellings aimed at the downsizer market. The form, layout and scale of development is respectful of surrounding properties and balances the efficient use of land with the provision of carefully considered contemporary living environment".

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision notice described the development as: "construction of 6 semi-detached houses and single coach house unit to include vehicle parking and cycle/refuse stores accessed from Lealand Road (following the demolition of existing dwelling) (amended scheme to 14/00863/FUL)". This wording was also included on the appeal form and it was agreed at the hearing that it is a more accurate description of the proposed development. I have dealt with the appeal accordingly.

3. After the application was refused two amended plans were submitted to address the Council's concerns about the size of parking spaces and the location of the facilities for refuse and recycling on the site. These minor amendments in relation to the layout were accepted by the Council and fully explained at the hearing. On this basis, I am satisfied that no interests would be prejudiced by determining the appeal on the basis of the amended plans.

4. The Council gave three reasons for refusing the application, one of which related to the lack of information about the possible presence of bats, a protected species, on the site. Since the application was determined the appellant carried out additional survey work and has satisfied the Council that there are no bats roosting on the site. Mitigation measures are therefore not required. On this basis the Council withdrew its objection to the scheme and I see no reason to disagree with its conclusion in relation to this matter.

5. Although the Council did not refuse the application because of its effects on the living conditions of occupants of any of the surrounding properties, this matter was raised by a number of local residents. I was able to assess the effect on their homes on my site visit.

Main Issues

6. I therefore consider the main issues in determining the appeal are:

   a) the effect of the proposal on the living conditions of occupants of nearby dwellings in relation to outlook and enclosure;

   b) whether or not the proposal would result in unacceptable residual risk of flooding on the site or increased risk of flooding elsewhere;

   c) the effect of the proposal on the character and appearance of the area.

Reasons

7. The appeal site is an area of flat land to the rear of three residential streets, Lealand Road, Central Road and South Road. Lealand Road is predominantly characterised by modest two-storey semi-detached houses. By contrast, most of the dwellings backing onto the site from Central Road and South Road are detached bungalows. All the surrounding dwellings are set in modest-sized plots with mature gardens. This gives the area an open and spacious appearance. The appeal site is on slightly undulating ground with its northern end at a slightly lower level than the remainder. A good-sized bungalow and a garage/workshop currently occupy part of the site and there is a large garden to the rear of the dwelling. The site is accessed via a narrow driveway between Nos 46 and 48.

8. The proposal would demolish the existing buildings on the site and replace them with three pairs of two-storey, semi-detached houses and a first floor flat above undercroft parking. The existing garage at No 46 would be removed and its garden reduced in order to widen the access driveway and enable a total of 13 parking spaces to be provided on the site.

Living conditions

9. I am aware that the Council did not raise any objection in relation to the effect of the proposal on the amenity of adjoining occupiers. However, this matter was raised by local residents in their original representations on the scheme and at the hearing. The adjacent properties that would be most affected by the development would be Nos 1 and 3 Central Road and Nos 38 and 42 Lealand Road. On my site visit I stood in the rear gardens of Nos 3, 36 and 42.

10. No 3 has a generously proportioned rear garden and a large conservatory that looks out onto it and towards the appeal site. Units 1 and 2 would be constructed immediately adjacent to the rear boundary of Nos 1 and 3. The rear elevation would occupy the full width of No 3's rear garden and almost the full width of No 1's garden. The brick wall of the ground floor would project a little above the existing fence. The first floor element would be set further into the appeal site. However, its height, width and lack of articulation would result in the outlook from Nos 1 and No 3 being dominated by a large, bulky and blank, timber clad wall. It would also introduce a significant sense of enclosure into their gardens, particularly that of No 3. The surrounding area is flat and

much of the existing, adjacent development is single storey. In this context I consider that the introduction of a building of this scale, bulk and height would appear both un-neighbourly and overbearing. Even though the separation distances between the proposal and the existing dwellings are generous, I am not persuaded that they would offset the harmful loss of outlook and sense of enclosure that would arise. Furthermore, the total lack of space between the boundary of the appeal site and the new building would not provide any opportunities for landscaping that could soften or reduce the wall's dominant and overbearing appearance.

11. The garden of No 42 is already somewhat enclosed by the flank wall of the existing bungalow (No 46a). The flank wall of Unit 6 would be closer to the rear boundary and wider at first floor level, although it would not be as tall. There would therefore be a change in the outlook from the house, but I do not consider this would be so great as to result in material harm to the living conditions of the occupants of No 42. The occupant of No 38 would also experience a change in outlook, which I was able to assess from the garden of No 36. However, the width of the plots at both properties is a little greater than that of the proposed flank walls. In addition, the gaps between the buildings would provide views through the development and prevent it giving rise to an unacceptable sense of enclosure at either of these properties.

12. Local residents also raised concerns about the proposal giving rise to loss of privacy. However, windows in the first floor of the proposed dwellings would have only oblique views of neighbouring gardens. I am therefore satisfied that there would not be any harmful overlooking of the adjacent properties.

13. Nevertheless, for the reasons set out above I conclude that the proposal would be harmful to the living conditions of the occupants of No 3 and to a slightly lesser extent the occupants of No 1, arising from the loss of outlook and introduction of a significant sense of enclosure. This would be contrary to the Framework's core principle of always providing a good standard of amenity for all existing and future occupants of land and buildings. It would also fail to comply with requirement to protect amenity of neighbouring and local occupants set out in Policy PSC23 of the Portsmouth Plan. I consider this to be the case notwithstanding the lack of specific local guidance or standards in relation to outlook and enclosure.

Flood risk

14. The garden of the existing bungalow and the rear gardens of the dwellings in Lealand Road form a depression which is a little below the remainder of the appeal site and the area immediately to the north and west. The site as a whole lies within Flood Zone 3 and the area is known to have experienced flooding in the past. The evidence showed that whilst this affected streets and gardens it had not penetrated into people's homes.

15. The Council's approach to reducing and managing flood risk is set out in PCS12 of The Portsmouth Plan and makes reference to Planning Policy Statement 25 (PPS25). Although PPS25 has been superseded by the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG), the national policy approach to addressing flood risk has been retained. The Framework sets strict tests to protect people and property from flooding. It states that where these tests are not met, new development should not be allowed. Paragraph 102 states that for the Exception Test to be passed the

wider sustainability benefits must outweigh flood risk and the site-specific flood risk assessment must demonstrate that the development would be safe for its lifetime without increasing flood risk elsewhere.

16. Portsmouth is a low-lying, coastal city and is therefore at risk of flooding from a variety of sources, but especially from the sea and from surface water. The Council contend that the source of flooding in and around the appeal site is currently not known. It therefore concluded that it was not possible to assess the effectiveness of the attenuation measures proposed by the appellant, or be certain that the development would not increase the risk of flooding elsewhere.

17. However, the appellant has undertaken a significant amount of work in an attempt to understand the causes of flooding on the site and to devise a drainage strategy that would attenuate any flooding that would be generated by the site itself. Investigation of the ground conditions on the site indicates it comprises silty, sandy, gavelly clay over putty chalk. The clay forms an impermeable barrier that prevents water percolating into the ground. This causes surface water to collect on the site and in the surrounding gardens. It also means that soakaways are, and would be, an inappropriate means of dealing with surface water run-off.

18. A map of the catchment area presented at the hearing (Document 1) showed that the northern part of the site lies within a small valley where the general direction of travel of the water will be in an easterly and then southerly direction along Lealand Road. A map, based on information from Southern Water was also presented (Document 2) which showed that the site and its immediate environs are considered to be at low-medium risk of surface water flooding. As there are many areas of hard surfacing and the ground itself is impermeable due to the presence of clay, periods of intensive rainfall are likely to lead to a build-up of surface water.

19. At present no surface water drainage network appears to serve the buildings or hardstanding on the appeal site. It is therefore likely that rainwater discharges to the foul sewer in Lealand Road. Some of the residents in Lealand Road were under the impression that water from their roofs drained into soakaways on the site rather than into the surface water sewers. However, even if this were the case, soakaways would be ineffective due to the nature of the ground.

20. The area is served by a system of surface water sewers which are the responsibility of Southern Water. The appellant undertook a CCTV survey of the existing sewers which demonstrated that these were not working effectively, due to blockages and collapses. Photographic evidence of flooding in June 2016 produced by local residents (Document 4) also appeared to be related to the recorded rainfall in the area at the time of this flood event, details of which were also presented at the hearing (Document 5). This seemed to confirm that the most likely cause of the recent flooding in the area is the combined effects of the inability of the area to absorb surface water and for the surface water sewers to take it away.

21. However, the Council disputed this, suggesting instead that the flooding could be caused by ground water. To support this contention it provided details of changes in ground water levels which appeared to be closely associated with a rainfall incident. I did not find this evidence particularly convincing as water takes time to percolate through the ground; this would result in a significant time lag between any rainfall and a change in the ground water flows.

Furthermore, it would be difficult for ground water to come to the surface through the impermeable clay. At the hearing the Council's engineer then suggested that there could be ground water flowing beneath the surface but above the clay bands, although there was little evidence to substantiate this theory.

22. I accept that there is a level of uncertainty about the causes of flooding in the area. However, from the evidence presented, the discussions at the hearing and the experience of local residents, it seems to me that the primary cause is surface water flooding following periods of rain. This may have been compounded by the poor state of repair of the surface water sewers in the area, which added to the problem by preventing water from flowing away. However, following the identification of the blockages and collapsed sewers, Southern Water has confirmed that it has undertaken repairs which should ease the problem in future.

23. On the basis that the primary cause of flooding is from surface water the appellant's drainage strategy seeks to do two things. Firstly, there would be a separation of foul and surface water on the site. This would be a benefit and would reduce pressure on the foul sewerage system. Secondly, there would be an area of storage built into the sub-base of the permeable surfaces to enable water to be collected during rainfall events and discharged to the surface water sewer at a restricted rate. These measures would reduce the risk of flooding both on the site and within the downstream catchment area. The design would allow water that currently flows through the site to continue to do so; this would prevent any displacement of existing flows into the surrounding area.

24. Taking all these factors into account, I conclude that the development would not result in an unacceptable residual risk of flooding on the site or increase the risk of flooding elsewhere. In these respects the proposal would meet the requirements of the Exceptions Test set out in the Framework and the advice of the PPG. It would also comply with Policy PCS 12 of the Portsmouth Plan which, amongst other things, requires surface water to be separated within the site, the post development rate of discharge to be no greater than the existing rate and to mitigate residual flood risk through appropriate design and emergency response plans. In coming to my conclusion I have also had regard to the responses from the Environment Agency, Southern Water and the Eastern Solent Coastal Partnership, none of whom objected to the proposal.

Character and appearance

25. The proposal would make efficient use of the site. The southern part would be used to provide parking spaces to serve the development as a whole, including three beneath a new building containing a first floor flat. I agree that the number of spaces to be provided would be appropriate; they would take account of the suburban nature of the area and the limited availability of on-street parking in the vicinity. The courtyard would provide sufficient space for vehicles to manoeuvre and turn around whilst preventing the site as a whole being dominated by access roads and hard-surfacing. Following the minor amendments to the scheme the Council is also satisfied with the proposed arrangements for bin storage in this part of the site.

26. The three pairs of semi-detached dwellings would be approached by a pedestrian walkway. Each dwelling would face south and have a small, but privately enclosed front garden. The dwellings would be of a contemporary

design with flat roofs, extensive use of glass and the upper floors would be timber clad. In all these respects the proposed development would be totally different from any of the surrounding residential dwellings. Nevertheless, as the site is self-contained and does not have strong visual links with nearby development, I consider that it could accommodate a bespoke design using an innovative layout.

27. The rear elevation of Units 1 and 2 would be immediately adjacent to the northern boundary of the site. In addition, the flank walls of Units 3-6 and the rear wall of Unit 7 would only be about 1m from the site's boundaries. This has enabled a development of 45 dwellings/hectare to be achieved, but would be at odds with the more traditional, low-density layout in the surrounding area where there are more generous spaces both between and around the buildings. It would also restrict the amount of space available for landscaping, which could soften its appearance and assist with its integration into the surrounding context. However, I do not consider that these factors result in material harm to the area's character or appearance that would justify rejecting the scheme. I have also had regard to the Design Review Panel's view that there was a clear rationale for the design and concluded that the scheme should be supported.

28. For these reasons I conclude that the proposal would comply with Policy PCS23 of the Portsmouth Plan, which requires new development to meet a series of criteria including being appropriate in scale, density, layout, appearance and materials in relation to the particular context.

Other Matters

Parking and access

29. Lealand Road is a cul-de-sac. Its limited width means that on-street parking can only occur on one side of the road without causing inconvenience to other vehicles. On my site visit I saw that some vehicles were parked partly on the footway. However, although some driveways are protected by advisory white lines, the area is not subject to any parking regulations. In this context I consider the proposal's intention to provide 13 spaces, which is more than the 11 required by the Council's adopted standards, would be appropriate. It should prevent unacceptable overspill parking from the site onto Lealand Road.

30. The access is to be widened and improved; traffic flows and speeds in the area are low and visibility at the access meets the highway authority's requirements. On this basis the Council was satisfied that the proposal would not be prejudicial to highway safety and I see no reason to come to a different conclusion.

Solent Special Protection Area

31. The appeal site lies within an area affected by the Portsmouth Harbour Special Protection Area (SPA). It is therefore my statutory duty under the Conservation of Habitats and Species Regulations 2010 to consider the implications of the proposal on the conservation objectives of the designated area.

32. It has been established that any residential development in the city will result in a significant effect on the SPA. The Council's Supplementary Planning Document: *Solent Special Protection Areas* sets out a package of measures to provide mitigation and enable development to proceed in compliance with the

Habitat Regulations. I confirmed at the hearing that the measures relate to management of the SPA rather than infrastructure, so contributions towards them can be secured by a planning obligation. A completed Unilateral Undertaking was presented at the hearing which the Council accepted would meet the requirements of its SPD. I am therefore satisfied that there would be no significant harm to the designated area arising from the proposal. However, as I am dismissing the appeal for other reasons, this is not a determining factor in this case.

Conclusions

33. The appeal site and some of the surrounding gardens are known to experience flooding. From all that I have read and heard I have concluded that it is most likely to be caused by surface water being unable to percolate into the impermeable ground, combined with faults and failures in the surface water sewer system. However, this latter issue has been addressed by Southern Water. I was therefore satisfied that the appellant's drainage strategy would ensure that flood risk both on the site and elsewhere would be adequately mitigated.

34. The layout and design of the scheme would be substantially different from the character and appearance of the surrounding traditional development. However, I have found that the proposal would be innovative, make efficient use of land and would be appropriate to its context. I concurred with the highway authority's conclusions in relation to parking and access and was satisfied that a contribution towards mitigation measures to protect the SPA could be secured. All these factors weigh in the scheme's favour.

35. However, having heard from local residents and visited the site, I found that the two-storey blank wall which would form the northern elevation of Units 1 and 2 would unacceptably affect the living conditions of the occupants of No 3 and to a lesser extent those of the occupants of No1 Central Road.

36. For this reason, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

Sheila Holden

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Ruth Harding MRTPI	Paris Smith
Siri Pen MSC	Mayer Brown
Paul Bulkeley RIBA	Snug Architects
Glen Delve	Rhema Project Management
Julian Marriott	Director – Rhema Project Management

FOR THE LOCAL PLANNING AUTHORITY

Rebecca Altman MRTPI	Principal Planning Officer
Harvey Cable	Senior Engineer
Ruth Ornella MRTPI	Development Manager

INTERESTED PERSONS

Robert Clemmence	Local resident
Lee Roberts	Local resident
Mark Buckner	Local resident
Peter Sparshott	Local resident
Maureen Parvin	Local resident
Bob Ridgeon	Local resident
Cllr Steve Wemyss	Ward Councillor

LIST OF DOCUMENTS SUBMITTED AT THE HEARING

1 Map of catchment areas around the appeal site

2 Map showing risk of surface water flooding in area around appeal site

3 Portsmouth City Council's adopted parking standards

4 Photographs of flood event dated 25 June 2016

5 Data associated with rainfall event on 25 June 2016

6 Completed Unilateral Undertaking to secure SPA mitigation measures

7 Draft condition on drainage agreed by the parties

8 Letter from Southern Water dated 16 May 2017 confirming repairs to surface water sewers in the vicinity of the appeal site (read out at the hearing and received on 17 May 2017)