
Appeal Decision

Site visit made on 2 May 2017

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 13 June 2017

Appeal Ref: APP/Z1775/W/16/3165141

191 Havant Road, Drayton and Farlington PO6 1EE

- 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 Mr and Mrs David Hall against the decision of Portsmouth City Council.
 - The application Ref 16/01578/FUL, dated 22 September 2016, was refused by notice dated 8 November 2016.
 - The development proposed is a rear garden development of 2 semi detached cottages.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i) The effect of the proposal on the character and appearance of the surrounding residential area;
 - ii) The effect of the proposal on the living conditions of the occupiers of nearby neighbouring properties at 189, 191A, 191B, 193 and 193A Havant Road with particular regard to outlook and visual impact, overlooking and light, and
 - iii) whether the proposal would have a significant adverse effect on the integrity of the Portsmouth Harbour and the Chichester and Langstone Special Protection Areas.

Reasons

Character and appearance

3. The site is occupied by a large two-storey care home. The building has a substantial width; it is set back from Havant Road, with much of the area between the front elevation of the building and the road frontage being taken up by accesses, parking and servicing. The rear of the premises has a narrow patio area and, at a slightly higher level, a large lawn fringed by planting. An access on the east side of the site leads to three detached dwellings in a backland position to the rear of Nos 191 and 193 Havant Road.
 4. The area has a mixed character; along Havant Road there is a variety of house types and sizes, and there is a line of commercial and retail uses on the south side of the road close to the appeal site. The backland houses to which I have
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referred are discretely tucked away, largely hidden by trees, the care home and the dwelling at 193 Havant Road.

5. The proposed dwellings would be partly screened by the care home, but they would be more visible from the junction of the access road and Havant Road because of the need to remove tree planting alongside the drive. Even so, they would only be glimpsed, and in the mixed context of the area, I consider that the provision of two further backland dwellings would not, in itself, be harmful to local character.
6. However, the hinterland of the Havant Road properties in the vicinity of the appeal site has a considerable degree of tree planting, particularly to the west of the site, and cumulatively, this makes a positive contribution to the pleasant character of the area. The large lawn at the rear of the care home together with trees and shrubs on three sides of the site make a valuable addition to the greenery of the area, much of which would be lost to the development.
7. The submitted arboricultural report recommends that the trees on the northern and western boundaries should be removed, but the appellants indicate that the planting on these boundaries would be retained. Notwithstanding this intention, the boundary planting extends some way into the site, and I consider that because of the small size of the gardens, there would be considerable pressure from occupiers to remove it. Although additional planting is indicated, I consider that it would not adequately mitigate the loss of tall trees and other planting. I acknowledge that none of the trees is of high quality, but their group value, together with the open green space provided by the rear garden is of significant value.
8. I also consider that the siting of the proposed dwellings would look cramped in their context. They would be too close both to the Haven care home and to the houses at Nos 191A, 191B (shown on the submitted plans as 192A) and 193A, and to the boundaries of the site. The front gardens would be too small to accommodate a hardstanding in front of the main elevation. Even though the adjacent backland dwellings have small gaps between them, they sit in much larger plots with substantial gaps between the front and rear elevations and neighbouring houses. This is consistent with the general pattern of development in the hinterland which is of well-spaced properties, whereas the proposal would stand out as being squeezed, and uncharacteristic. This would add to the harm that I have found in respect of the loss of greenery.
9. I therefore conclude on the first main issue that the proposal would result in material harm to the character and appearance of the surrounding residential area and would conflict with Policy BCS23 of the Portsmouth Local Plan (LP), which deals with design and conservation.

Living conditions

10. The north and south elevations of the proposed dwellings would have no windows in them, and therefore there would be no overlooking, real or perceived, of windows in the properties to the east or west of the site. There would be a gap of some 10m between the rear of the proposed houses and the side boundary of 189 Havant Road. That boundary also has a line of planting along it, on both sides of the boundary fence. Even if it were likely that the planting on the side of the appeal site would be removed, that which would remain on the side of No 189 would provide a degree of screening, although I

accept that it could not be relied upon to remain in perpetuity. Even so, I consider that there would be sufficient distance to ensure that the rear garden of No 189 would not be overlooked to a degree that would result in material harm.

11. The front elevations of the houses would face the parking area of the house at No 193A Havant Road, and part of the rear garden of No 193. Again, the combination of distance and angle, together with intervening tree screening in places, would ensure that neither property would be overlooked to a harmful extent. The rear elevations would have an oblique viewing angle towards 191A Havant Road, the upper storey of which has non-habitable rooms facing towards the site, and the ground floor of which would be screened by boundary fencing and planting.
12. The pair of dwellings would have a main two-storey element and a single storey rear element. The two storey part would not project significantly in front of the elevation of No 191A which faces the site. The existing boundary planting already affects both light and outlook, and I consider that the proposal would not have a materially harmful effect in respect of either. The house at No 191B would be even further away, and therefore the impact of the proposal would be even less.
13. The proposal would result in the loss of most of the rear garden of the care home; the front garden provides at best a passive amenity space, with some planting to look out on, but most of it is taken up with access, parking and servicing. Even so, there is no evidence to show that the care home residents are likely to require substantial areas of outside space, and I consider that the remaining rear garden would be likely to be sufficient to meet residents' needs.
14. I therefore conclude that the proposal would not result in material harm to the living conditions of the occupiers of surrounding residential properties at 189, 191A, 191B, 193 or 193A Havant Road and would not conflict with LP Policy BCS23, which includes a criterion that development should ensure the protection of amenity and the provision of a good standard of living environment for neighbouring and local occupiers as well as for future residents and users of the development.

The effect on the Solent SPAs

15. The site lies within 5.6km of the Portsmouth Harbour and the Chichester and Langstone SPAs. English Nature has indicated that it is satisfied that there would be no significant adverse effect arising from the proposal, subject to mitigation being provided in accordance with the Council's adopted avoidance strategy. The Council has indicated that a payment of £352 would be required to be paid to fund measures to mitigate the increased recreational pressure on the SPAs resulting from the additional residents.
16. The appellants have said that if the appeal were to be successful, the required contribution would be paid. However, no obligation has been submitted to secure payment and the Planning Practice Guidance indicates that only in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before development can commence may be appropriate, such as in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.

17. The Guidance sets out a clear, unambiguous indication that a Grampian condition is not an appropriate means of dealing with this issue. The proposal is not a complex and strategically important development, and therefore the exceptional circumstances which would justify the imposition of a Grampian condition do not exist.
18. Accordingly, the failure to mitigate satisfactorily the effect of the proposal on the SPA means that I cannot be certain that there would not be an adverse effect on the SPA. The proposal would conflict with LP Policy PCS13 and the Council's Solent SPAs Supplementary Planning Document.

Other matter

19. A neighbour has indicated that the appellants do not have a legal right to obtain access to the site. Although this is disputed by the appellants, ultimately this is a private land law matter, and cannot affect the planning merits of the appeal.

Conclusion

20. Although I have found that no material harm would be caused to living conditions, this is outweighed by the harm that I have found that would be caused to the character and appearance of the area. I conclude that this harm, and the conflict with the policies to which I have referred above, are sufficiently serious to amount to a conflict with the development plan as a whole, and thus, for the reasons given above, the appeal should be dismissed.

JP Roberts

INSPECTOR