



Appeal Decision

Site visit made on 13 May 2019

by Tim Crouch DipUD MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 09 July 2019

Appeal Ref: APP/D1780/W/19/322275

City Annexe, 90 Andersons Road, Southampton SO14 5FR

- 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 Neil Moores of Sunset Red Ltd against the decision of Southampton City Council.
 - The application Ref 18/01121/FUL, dated 19 June 2018, was refused by notice dated 14 August 2018.
 - The development proposed is removal of unused staircase & addition 2no. 1 bed apartments.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The site is located within 5.6km of the Solent and Southampton Special Protection Area (SPA), and associated Ramsar site, and the Solent Maritime Special Area of Conservation (SAC). These are collectively known as the Solent SPAs. It is also within 10km of the boundary of the New Forest SPA, SAC and Ramsar site (New Forest SPAs) within which it has been identified that a significant proportion of additional future visitors will result from new housing developments.
3. These are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not forming part of the Council's reason for refusal, it is incumbent upon me now as the competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SPAs. It is necessary to consider this matter as a main issue.
4. During the course of the appeal Natural England also highlighted additional concerns regarding the effects of waste water from development in the Solent catchment creating an adverse effect on international sites. The appellant's views were also sought on this.

Main Issues

5. The main issues are therefore the effect of the proposal on, firstly, the integrity of the Solent SPA and the New Forest SPA, and secondly, the living conditions of future occupiers of the proposed units.

Reasons

Effect on the SPAs

6. The parties and Natural England are in agreement that the proposal, as a net gain in dwellings, would contribute towards an impact on site integrity of the Solent SPAs as a result of increased recreational disturbance in combination with other development in the Solent area. It is also the position of the Council and Natural England that the net gain in dwellings has the potential to adversely impact site integrity of the New Forest SPAs.
7. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that an Appropriate Assessment is carried out. I have sought further evidence on this matter.
8. Both SPAs are designated for reasons including the presence of habitats which support bird species of international importance which breed, feed and nest in these areas. The structure and function of these habitats can be directly or indirectly altered by increased human and/or dog activity. In this case, the proposal comprises two additional dwellings, and due to its proximity to the Solent SPAs and, with wider catchment for recreation, the New Forest SPAs, there is a reasonable likelihood that these would be accessed for recreational purposes by future occupiers of the development. Although this may be minimal by itself, a significant effect on the integrity of the SPAs would occur, when considered in combination with other development in the surrounding area.
9. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European sites, which includes whether site specific conditions or restrictions could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the sites. Due to the scale of the proposed development and site constraints, there is no scope to provide on-site mitigation. However, Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects to the Solent SPAs, in the form of the Solent Recreation Mitigation Partnership Strategy (SRMP) which was adopted by the Council in 2018 and requires financial contributions from developments.
10. The appellant has submitted an agreement pursuant to Section 111 of the Local Government Act 1972 to make a financial contribution as set out in the SRMP (at 2018 prices). I have also been provided with SRMP which sets out the justification for the payment levels and the overall strategy for mitigation. However, there is no detail as to the specific proposed mitigation for this proposal, evidence that it has been secured and is deliverable. Furthermore, the SRMP details the approach of pooling of developer contributions, which it notes 'will constrain the implementation of mitigation measures'. Accordingly, I am not satisfied that an appropriate means of securing mitigation has been provided and I cannot therefore be certain that the proposal would not adversely affect the integrity of the site.
11. In relation to the New Forest SPAs, the Council state that there is no formal scheme of mitigation addressing impacts on the New Forest designated sites, although work is underway to develop one. The Council is therefore ringfencing 5% of Community Infrastructure Levy (CIL) contributions to fund improvement works to footpaths in suitable semi-natural sites within the City.

This is also not sufficient to provide certainty that the proposal before me would not adversely affect the integrity of the site.

12. No alternative solutions that would have a lesser effect, or avoid an adverse effect, have been provided. Therefore, the Habitats Regulations states the permission must not be granted, unless there are imperative reasons of overriding public interest. Given the scale of the proposal, I do not consider the provision of two additional dwellings to represent such an overriding public interest in this case.
13. Natural England has also identified that there is existing evidence of high levels of nitrogen and phosphorus in the Solent water environment, unbalancing the water nutrient composition. It considers that the waste water from all new development within the catchment, in combination, will create a likelihood of significant effects on the internationally designated sites. The appellant does not contend this but considers that the impact of only two small flats within the catchment to be so insignificant that their impact will not represent a measurable harm. I do not have all the information before me and my role as competent authority requires certainty of no likely significant effects, including in combination with other development within the catchment. In this case I have no certainty that the proposal, in combination with all other plans and projects of all scales within the catchment, would lead to no likely significant effects and no mitigation is proposed. This issue adds further weight to my conclusion.
14. Therefore, evidence before me indicates that there is potential for recreational disturbance to the SPAs through additional activity and waste water associated with the proposed development, which has the potential to affect the integrity of the SPAs. Therefore, the proposal would be contrary to Policy CS22 of the Southampton Core Strategy (CS) (2015) as supported by the Habitats Regulations which requires the safeguarding of international, national and local designated sites.

Living conditions of future occupiers

15. The proposed units are within a former school building which has been converted to provide 44 existing flats. The building has high ceilings and large windows with many of the flats of duplex layout and ranging in floorspace amount given the characteristics of the historic building.
16. The proposal would convert an existing staircase to provide two new 1 bed apartments in its place. The staircase is positioned alongside another and serves differing floors, reflecting the segregation that was designed into the original school use. There is no architectural objection from parties to the loss of this feature, with alteration for all floors to then be served by the main staircase. There is concern from a third party regarding the implications of this and fire safety. However, this would be controlled by separate legislation under Building Regulations Approval.
17. Whilst narrower than other apartments within the block, the proposed units would have similar floorspace to the range within the building and would allow for circulation within the dwellings. The two units would have mostly a single outlook, but the windows are large and would be significant features within the rooms. This also reflects the characteristics of many of the other units within the block. The split level nature of the units, providing the bedroom on a

different floor, is also a feature of the building and isn't considered harmful to living conditions.

18. The proposal does not include any outdoor amenity space. However, there is none supporting the existing units, apart from private space upon the roof. Therefore, this isn't out of character which the existing features and constraints of the historic building. The site is within the city centre where there are other opportunities for external public open space.
19. Therefore, the proposal would provide acceptable living conditions for the future occupiers of the units. Consequently, the proposal would not be contrary to Policy CS13 of the CS or saved policies SDP1(i) and H7 of the City of Southampton Local Plan Review (2015) as supported by the provisions of the Council's Residential Design Guide Supplementary Planning Document (2006). Taken together, amongst other objectives, these require development to not unacceptably affect the health, safety and amenity of the city and its citizens and to respond positively and integrate with its local surroundings.

Other matters

20. The proposal would result in two additional units to the existing 44, and which I have found would provide acceptable internal living environment. Therefore, given the small percentage increase to the overall number, and the appropriateness of the units themselves, I do not consider that this represents over intensification of the buildings.

Conclusion

21. Although I have found that the proposal would not cause harm to the living conditions of future occupiers, this does not outweigh the harm in relation to the SPAs.
22. Whilst I understand that the appellant has experienced delays with the applications, and this will be a further setback, given the requirements of my statutory duty as competent authority, and the precautionary principle when considering internationally important designations, I must conclude that, for the reasons above, the appeal should be dismissed.

Tim Crouch

INSPECTOR