
Appeal Decision

Site visit made on Wednesday 6th February 2019

by Martin S. Lee, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2019

Appeal Ref: APP/A1720/W/18/3209744
70-70A Albert Road, Southsea PO5 2SL

- 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 C Kennett, CWK Properties against the decision of Portsmouth City Council.
 - The application Ref 18/00509/FUL, dated 16 March 2018, was refused by notice dated 5 June 2018.
 - The development proposed is Conversion of existing store to form dwellinghouse (Class C3); to include the formation of a balcony (amended description)
-

Decision

1. The appeal is dismissed.

Preliminary Matters

Environmental Impact Assessment & Mitigation

2. The Council raised a new issue relating to the Solent Special Protection Areas and Ramsar sites and the Solent Maritime Special Area of Conservation (SPAs) following recent evidence from Natural England. The appellant has been given an opportunity to and provided comment on this matter

Main Issues

3. The main issues are the effect of the proposal upon:
 - (a) the living conditions of the occupiers of 3 Theatre Mews and 2 Napier Road, with particular regard to noise and disturbance, overlooking and privacy, and
 - (b) the Solent Special Protection Areas (SPA) and consequent requirement for appropriate mitigation.

Reasons

Living conditions

4. This urban site comprises a two storey former store previously granted planning permission in 2016 for conversion to provide a new dwellinghouse. The current proposal alters that previous scheme by seeking to add a single storey extension with an open balcony terrace at first floor on what is presently a small area of open yard, adjacent the building.

5. Whilst the single storey extension of the building may not be at issue, it is the use of its rooftop as an open balcony terrace with sufficient space to accommodate table and chairs and enable its use as an additional living space (albeit in the open air) which would substantially reduce the quality of visual and aural privacy for adjacent private residential properties.
6. Notwithstanding the appellant's suggestions with regard to obscure glazing, the short distances between the roof terrace and neighbouring residential properties consequent upon the intimate courtyard layout of surrounding properties, would provide increased opportunity for overlooking and no aural protection or adequate opportunity for dissipation over distance. This would result in significant harm to neighbours' living conditions and would be contrary to Policy PCS23 of the Portsmouth Plan, which (amongst other things) aims to protect the amenity and living environment of neighbours.

The Solent SPA

7. The appellant has not made a payment towards mitigation of the impact of the development on the Solent Special Protection Areas. Nor has the appellant submitted an undertaking to make such a payment in the event this appeal were to be allowed and planning permission granted. Under these circumstances, I cannot be satisfied that the proposal would not, in combination with others, have a significant adverse effect on the habitats of protected bird species for which the SPA is designated. The proposal would therefore be contrary to Policy PCS13 of the Portsmouth Plan.
8. Natural England's recent representation makes clear the seriousness of the pollution of the Solent SPAs by nitrates and phosphorous and seeks a Habitats Regulation Assessment to demonstrate either that the resultant increase of water usage from the proposal would not contribute to this problem or that adequate mitigation can be provided. In this case, permission has already been granted for the creation of the dwelling and that development has been commenced. Accordingly, the appeal proposal falls to be considered against this fall-back scenario and thus it is the potential impact that enlargement of that dwelling would have which would require such an assessment to be undertaken. In dismissing this appeal that assessment does not need to be carried out.

Conclusion

9. For the reasons give above, having regard to the development plan when read as a whole, I conclude that the appeal should be dismissed.

Martin S. Lee

INSPECTOR