
Appeal Decision

Site visit made on 29 May 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 July 2019

Appeal Ref: APP/Z1775/W/18/3213995

20 Montgomerie Road, Southsea PO5 1ED

- 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 Kevin Zahra against the decision of Portsmouth City Council.
 - The application Ref 18/01336/FUL, dated 2 August 2018, was refused by notice dated 11 October 2018.
 - The development proposed is change of use from purposes falling within a C4 (house in multiple occupancy) to a seven person, seven bedroom house in multiple occupancy for more than 6 persons (Sui Generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In response the Council's second reason for refusal the appellant provided a copy of a receipt for a payment of £337, that was made during the appeal process, that is intended to provide a contribution towards the Solent Recreation Mitigation Strategy 2017 (SRMS). The SRMS aims to prevent bird disturbance within the Portsmouth Harbour, Chichester and Langstone Harbours and Solent & Southampton Water Special Protection Areas (SPAs) from recreational activities associated with additional residential accommodation. These 3 SPAs form the Solent SPAs and there is no dispute that the site is within the 5.6 kilometre zone of influence (ZOI) associated with the SPAs. It was also brought to my attention that Natural England (NE) is currently advising that there is uncertainty as to whether the increase in waste water from new housing in the Solent catchment will have an adverse effect on the SPAs.
3. The main parties and NE have been given the chance to comment on these matters and therefore would not be prejudiced by my consideration of them. I have a duty as the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) to consider whether the proposal would be likely to have a significant effect on the integrity of the SPAs. I will return to this matter below.

Main Issues

4. The main issues are:
 - The effect on the integrity of the SPAs;
 - The effect of the development on the mix and balance of the community.

Reasons

The SPAs

5. The SPAs are habitats sites for the purposes of the Framework, as defined within its Annex 2. The SRMS describes how, without mitigation, new residential development in Portsmouth will result in a significant effect on the SPAs in relation to recreational disturbance. It sets out how developer contributions, based on the number of bedrooms and collected by the Council, towards a range of management measures and projects to be implemented by the Solent Recreation Mitigation Partnership, can mitigate the effect of development on the SPAs in this respect.
6. The evidence before me indicates that the water environment within the Solent region is one of the most important for wildlife in the United Kingdom. NE have advised that *'there is existing evidence of high levels of nitrogen and phosphorus in the Solent water environment with evidence of eutrophication at some designated sites. The Partnership for Urban South Hampshire (PUSH), NE, and Environment Agency (EA) have been jointly working to develop an Integrated Water Management Strategy (IWMS). This examines the potential for the PUSH region to accommodate future housing growth without having a detrimental effect upon the water environment'*.
7. The mudflats, shingle and saltmarshes within the SPAs provide essential winter feeding and roosting grounds for an assemblage of water birds and together they comprise the qualifying features of the SPAs. The conservation objectives of the SPAs are to ensure that the integrity of the sites are maintained or restored as appropriate, and to ensure that they contribute to achieving the aims of the Wild Birds Directive.
8. The appeal site is within the ZOI for the SPAs and while the development results in only 1 additional person residing in the appeal property, it is highly likely that there would be additional recreational activity and waste water as a result of this development. Therefore, taking a precautionary approach I consider that as the proposal would not be directly connected with or necessary to the management of the protected sites, it would, either alone or in combination with other projects, be likely to have a significant effect on the SPAs. As a result, it is necessary to carry out an appropriate assessment (AA) to ascertain whether an adverse effect on the integrity of the SPAs can be ruled out.
9. The proposal would result in an increase in residential accommodation within the ZOI of the SPAs and the additional resident would present an increased risk of harm and disturbance to its qualifying features. This would be through the potential for increased visitor pressure and recreational activities undertaken at the SPAs. The risk also stems from the additional waste water created by the extra resident. There are not considered to be any other likely significant effects on the SPA from the appeal proposal. Even though, these impacts may be limited in extent, due to the scale of the appeal proposal, it is acknowledged that without mitigation the proposals present a likely significant effect, when the impacts are considered in combination with other residential development projects within the ZOI of the SPAs.
10. The SRMS provides mitigation measures to help avoid and mitigate the recreational disturbance that could harm the integrity of the SPAs, funded by developer contributions. The measures outlined comprise mitigation projects such as a team of rangers, marketing, education, communication, initiatives to

encourage responsible dog walking, codes of conduct and monitoring. As stated above the appellant has provided a receipt for a contribution that is intended to be used towards these measures. However, I have no evidence before me to indicate that the payment is associated with a mechanism, such as an agreement pursuant to Section 111 of the Local Government Act 1972 to ensure that it would be used for its intended purpose.

11. NE has produced advice on achieving nutrient neutrality for new development in the Solent region (Version 2 June 2019). This advice states that the nutrient inputs are currently caused mostly by wastewater from existing housing and agricultural sources and that the resulting dense mats of green algae are impacting on the Solent's protected habitats and bird species. There is uncertainty at the present time as to whether new residential development will further deteriorate the SPAs and one way to address the uncertainty is for new development to achieve nutrient neutrality. NE states that it is appreciated that it may be difficult for smaller developments to achieve nutrient neutrality and that it is working together with a number of Councils to progress mitigation strategies that cover the Council's areas and include more strategic options. I understand that this may include a financial contribution scheme.
12. However, whilst I sympathise with the appellant's frustration that this matter has arisen during the determination of his application/appeal it would not be reasonable to delay this appeal indefinitely until the mitigation strategies for nutrient neutrality have been adopted.
13. Taking into account all of the above, I am not satisfied that an appropriate means of securing mitigation for the potential recreational disturbance associated with the proposal has been provided. Moreover, the evidence before me indicates that there is the potential for the additional waste water associated with the proposal to adversely affect the integrity of the SPAs and that presently there is uncertainty in relation to how this could be mitigated. Accordingly, I cannot therefore be certain that the proposal would not adversely affect the integrity of the SPAs.
14. The Habitats Regulations require me to consider whether there are any alternative solutions. However, no such solutions have been put forward for my consideration. I must also consider whether there are any imperative reasons of overriding public interest. The provision of an additional bedroom, taking into account the merits of the case, is not sufficient to amount to such overriding public interest. Consequently, having regard to the Habitat Regulations, permission must not be granted.
15. As a result, the proposal would conflict with Policy PCS13 of The Portsmouth Plan, Portsmouth's Core Strategy (CS) which, amongst other things, seeks to ensure that any unavoidable negative impacts on biodiversity are appropriately mitigated. For similar reasons, the proposal would also conflict with paragraph 175 of the National Planning Policy Framework. With regard to paragraph 213 of the Framework I consider that CS Policy PCS13 is broadly consistent with section 15 of the Framework and the conflict with it has significant weight.

Mix and balance of the community

16. CS Policy PCS20 states that in order to support mixed and balanced communities, and to ensure that a range of household needs continue to be accommodated throughout the city, applications for changes of use to a House in Multiple Occupation (HMO) will only be permitted where the community is

- not already imbalanced by a concentration of such uses or where the development would not create an imbalance.
17. The Council's HMOs Supplementary Planning Document (SPD) defines an imbalanced community as one where more than 10% of residential properties within a 50 metre radius of the area surrounding the application property are already in HMO use. The SPD indicates that where planning permission is sought to change the use of a Class C4 or mixed C3/C4 use to a HMO in sui generis use, the Council will seek to refuse applications in areas where concentrations of HMOs already exceed the 10% threshold. The SPD is a material consideration as it provides guidance on the implementation of CS Policy PCS20 and in this respect it has significant weight.
 18. The proposal would have the impact of allowing an additional resident to live at the property. The Council considers that on the balance of probabilities it appears that the property has been used as a Class C4 HMO for a number of years and continues to be used in that way. I have no reason to dispute this.
 19. There is no dispute that 26 of the 79 properties within a 50 metre radius of the application site are considered to be in lawful use as a HMO, which equates to a proportion of HMOs of around 33%. Using the definition within the SPD the community around the appeal property is therefore already imbalanced by the concentration of HMO uses. Nevertheless, the dwelling is already in use as a HMO and the proposal would not increase the number of dwellings within HMO use. Moreover, the policy's definition of an HMO includes HMOs in sui generis use.
 20. I acknowledge that the Council considers that intensification of a HMO use could have a number of impacts on the community. However, the number of houses in Class C3 use in the area has not been reduced so I cannot see how the additional bedroom for one resident increases the competition for private rented houses or inflates house prices. There is no substantive evidence that the proposal would reduce the affordability of family homes, materially alter the nature of the community or decrease the demand for services.
 21. The Inspector in an appeal decision relating to 103 Manners Road¹ stated that *'within the area, there would be an adverse impact on the community in terms of being unneighbourly if a significant number of the existing HMO's were to increase their number of residents'*. However, there is no evidence that the existing HMOs within the surrounding area have been altered to HMOs in sui generis use or that their use has resulted in unneighbourly adverse impacts, nor any indication that the increase of an additional bedroom would either singly or cumulatively exacerbate any ill effect, including community cohesion and the quality of the local environment.
 22. My attention has been drawn to numerous appeal decisions in relation to the application of CS Policy PCS20 and the SPD. However, I do not have the full details of those case and therefore cannot be certain that they are directly comparable to the case before me. Moreover, the matters under consideration in this appeal are specific to the site and its immediate surroundings and as such those appeal decisions have limited weight. In any case I am required to determine the appeal proposal on its own merits.
 23. I conclude on this issue that while I give significant weight to the Council's guidance, the house is already in HMO use and no material change to the

¹ APP/Z1775/W/17/3187443

balance of uses in the area would occur. There is no substantive evidence that the development would result in harm to the mix and balance of the community. It follows that it would not therefore conflict with CS Policy PCS20.

Other matters

24. I note the appellant's concern regarding the Council's methods of dealing with his planning applications on the appeal site. However, that is not a matter for my consideration in the context of this appeal decision.

Conclusion

25. I have found that it is not certain that the proposal would not adversely affect the integrity of the SPAs, would conflict with the Habitat Regulations and that the conflict with CS Policy PCS13 has significant weight. As such, the proposal would not comply with the development plan as a whole. Having had regard to all other matters raised, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR