



Appeal Decision

Site visit made on 29 May 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2019

Appeal Ref: APP/D1780/W/19/3224383

43 - 45 East Street, Southampton SO14 5HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Hayden Ebert (Tenant Direct) against the decision of Southampton City Council.
 - The application Ref 18/02193/FUL, dated 4 December 2018, was refused by notice dated 30 January 2019.
 - The application sought planning permission for the erection of a second floor extension and two additional floors to create 9 additional flats (17 in total, 3 x 2-bed, 12 x 1-bed, 2 x studio) with associated alterations, cycle/refuse storage and retention of shop fronts without complying with a condition attached to planning permission Ref 18/00745/FUL, dated 22 November 2018.
 - The condition in dispute is No 18 which states that:
The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.
 - The reason given for the condition is:
For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The site address on the planning application form differs to that on the appeal form. I have used the version on the appeal form, as that corresponds with the previous planning permission on the site and has the correct postcode.

Background and Main Issues

3. The application subject to this appeal was made under Section 73 of the Town and Country Planning Act, for a minor material amendment. It sought approval for a revised, but not substantially different, design to the building approved in November 2018; essentially an increase in the size of the proposed windows in the west elevation. The Council's first reason for refusal reflects its concern that the larger windows would affect the future development potential of adjoining land.
4. The original planning permission was also the subject of a Section 106 Agreement (S106), which secured financial contributions towards mitigation for impacts on the Solent Special Protection Areas (SPAs), and improved pedestrian facilities in the immediate vicinity, including footway improvements

and pedestrian crossing facilities, together with a highway condition survey. Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission.

5. In the light of the above, the main issues in this appeal are:
- a) Whether the revised building design would prejudice the future development potential of adjoining land;
 - b) The effect of the development on the integrity of the Solent SPAs and the New Forest Special Area of Conservation (SAC), SPA and Ramsar site; and,
 - c) The effect of the development on highway safety.

Reasons

Development potential of adjoining land

6. The appeal site is a 2 and 3-storey building, with commercial uses at ground floor level, and flats above and to the rear. The site lies in the centre of Southampton, in an area that is currently undergoing significant levels of redevelopment. The site is adjacent to the service area of a large department store. The appeal site, the department store, and a large area of land to the east are identified as an Opportunity Site in the Council's City Centre Action Plan (2015) (the CCAP). Policy AP24 of the CCAP identifies that retail-led mixed use development will be supported on the site, with residential, hotel and office uses above ground floor.
7. Planning permission exists to add additional storeys to the existing building, so that it would be 5-storeys, and would accommodate a further 9 flats. The appeal building sits a little further forward than the adjacent department store, and has a side-facing shop window in the west elevation at ground floor level. The plans approved under reference 18/00745/FUL include high-level windows in the west elevation, above the ground floor window, serving the proposed flats on the first, second and third floors. They would receive light across the service area of the adjacent department store, as it only contains single-storey buildings.
8. The appeal seeks an amendment to the design of the building to enlarge the proposed windows, in order to improve the quality of the internal spaces of the flats in this corner of the building. The proposed windows will face directly on to third party land, and will therefore be a consideration if plans for redevelopment of the adjacent site come forward. There are currently no such plans, and no objections have been received from the adjacent landowner to the proposed enlargement of the windows. However, the site is identified as a potential development site in the CCAP, so proposals may well come forward in the future. The potential impact of the enlarged windows on future development is therefore a relevant issue.
9. The ability to develop the adjacent land to its site boundaries is already compromised by the existing ground floor window. I accept that it would be possible to protect the light and outlook to the ground floor window, whilst maximising the extent of the upper floors. However, the presence of the approved upper floor windows would place a further limitation on the extent of development that may be acceptable, as they would be a source of light to the flats.

10. The enlargement of the windows would mean that outlook from them would also have to be considered in designing the adjacent development. However, in overcoming the constraints placed by the existing ground floor and approved high-level windows, it is likely that some outlook would also be retained. In any event, planning permission has been granted for the flats with high-level windows, so an acceptable standard of internal accommodation is achieved without the full-size windows. It therefore follows that some reduction in the light reaching the enlarged windows, or loss of outlook from them, would not result in such harm to the living conditions of occupants that planning permission should be refused. I therefore find that the enlargement of the windows would not place a significantly greater constraint on the redevelopment prospects of the adjacent site than the existing approval.
11. The Opportunity Site identified in the CCAP extends to about 2.3 hectares. The constraint placed on this land by the development that has already been permitted, would affect a very small part of the site. The proposed enlargement of the approved high-level windows would not increase the area of land that is affected to any material degree. I therefore find that the removal of the condition, and replacement with a condition specifying the amended plans, would not prejudice the future development potential of adjoining land.
12. For the reasons given above, I conclude that the proposal would accord with Policies SDP1, SDP7 and SDP9 of the City of Southampton Local Plan (2015). Taken together, these policies seek to ensure that development respects surrounding land uses, local amenity and the existing scale and layout of buildings within the streetscape. The proposals also accord with Policy AP16 of the CCAP, which aims to ensure that where a key site is developed in phases, the layout and design of each phase will retain the ability for future phases to integrate into the development, to achieve the comprehensive design principles for the whole site. In coming to this conclusion, I have also had regard to the advice in section 2.2 of the Council's Residential Design Guide Supplementary Planning Document (2006), but found that it was not of direct relevance.

Special Protection Areas

13. The appeal site lies within 5.6km of the Solent and Southampton SPA and Ramsar site, and Solent Maritime SAC, collectively known as the Solent SPAs. The site also lies within easy travel distance of the New Forest SAC, SPA and Ramsar site. The proposed development of 9 additional flats therefore has the potential to impact on the integrity of these sites, through increased recreational disturbance.
14. Regarding the Solent SPAs, in combination with other residential development within 5.6km, there would be an increase in the level of recreation and disturbance of bird species. The impacts of this additional disturbance could affect the status and distribution of key bird species. In relation to the New Forest SAC, SPA and Ramsar site, the development, in combination with others, would lead to additional recreational pressure. The impacts of recreational disturbance could affect the breeding success of nightjar, woodlark and Dartford warbler. The development would therefore be likely to affect the stated conservation objectives of both SPAs.
15. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that an Appropriate Assessment is carried out, and that permission may only be granted after having ascertained

that development will not affect the integrity of the SPAs. Mitigation for any impacts on the New Forest SAC, SPA and Ramsar site could be secured through the Council's policy of ring-fencing 5% of the Community Infrastructure Levy (CIL) arising from the development, to provide alternative recreation opportunities within the city. Mitigation for impacts on the Solent SPAs could be achieved through adherence to the strategic solution, which is set out in the Solent Recreation Mitigation Strategy (SRMS), which was adopted by the Council in March 2018. This approach would require the provision of a financial contribution from the developer towards mitigating measures, that should be secured through a legal agreement.

16. With ring-fenced CIL, and a financial contribution towards the SRMS, secured by way of a legal agreement, there would be no adverse effect on the integrity of the SPAs. The appellant has not contested the strategic approach to mitigation, however, as there is no S106 associated with the appeal proposal, no appropriate means of securing mitigation has been provided. I cannot therefore be certain that the proposal would not adversely affect the integrity of the Solent SPAs.
17. The Habitats Regulations require me to consider whether there are any alternative solutions. In this case, a very similar development could proceed through the implementation of the original planning permission, so there is a means of achieving the required level of development without harm to the Solent SPAs. I must also consider whether there are any imperative reasons of overriding public interest. Considering that the same number of dwellings could be provided without harm to the SPAs, there is no overriding public interest in allowing an amended design, without securing the necessary mitigation. Consequently, having regard to the Habitat Regulations, permission must not be granted.
18. I therefore conclude that the development would result in harm to the integrity of the Solent SPAs. Consequently, the proposals would be contrary to Policy CS22 of the Council's Local Development Framework Core Strategy Development Plan Document (2015), which seeks to ensure that development does not adversely affect the integrity of international designations, and that the necessary mitigation measures are provided.

Highway safety

19. As the development would be unchanged, apart from window sizes, it is reasonable to conclude that it would have the same impact on highway safety as the original permission. I have not, however, been provided with evidence from either party setting out the nature of, or justification for, the improved pedestrian facilities or highway condition survey. On the evidence before me, therefore, I am not able to determine conclusively whether the absence of a S106 to secure the contributions would be harmful to highway safety. However, I am dismissing the appeal due to the harm to the integrity of the Solent SPAs, and would do so even if I were to find no harm in relation to highway safety. It is therefore not necessary for me to explore this issue further, as it is not determinative.

Conclusion

20. I have found that the amended design would not prejudice the future development potential of the adjoining land. However, no means of securing

appropriate mitigation in respect of the Solent SPAs has been provided. For this reason alone, the appeal is therefore dismissed.

Nick Davies

INSPECTOR