



Appeal Decision

Site visit made on 23 July 2019

by Roy Curnow MA BSC(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2019

Appeal Ref: APP/D1780/W/19/3224346

27A, First Floor Flat, Hanover Buildings, Southampton SO14 1JU

- 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 M Yeganegy against the decision of Southampton City Council.
 - The application Ref 18/02096/FUL, dated 15 November 2018, was refused by notice dated 6 February 2019.
 - The development proposed is formation of 1 x 1 bedroom flat at first floor.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. I have dropped the address from the description of the development that is proposed, as this is not development.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the Solent Special Protection Areas; and
 - the effect of the proposed development on the living conditions of the occupants of 27A Hanover Buildings, having particular regard to outlook, privacy, and daylight and sunlight.

Reasons

4. 27 Hanover Buildings is a three-storey building in the city centre, comprising a commercial unit on the ground floor with residential accommodation above. The residential accommodation, including 27A Hanover Buildings, is accessed via a flight of steps from York Walk across a flat roof at the rear of the property. It is on part of this area of flat roof that it is proposed to build the single bedroom flat.

Ecology

5. The site lies within 5.6kms of the Solent and Southampton Special Protection Area and Ramsar site and the Solent Maritime Special Area of Conservation, which are collectively known as the Solent SPAs. These are European Sites of Nature Importance (ESNIs) and are subject to protection under the

Conservation of Habitats and Species Regulations 2010. Regulation 61(5) imposes a duty on the competent authority to consider whether any proposal may have a significant effect on such areas, either alone or in combination with other plans and projects.

6. In 2018 the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage¹. This is a responsibility that now falls to me as the 'competent authority'.
7. The ESNIs are an important recreational and economic resource. They have international ecological importance as the Solent's tidal mud flats attract great number of waders and wildfowl. They have particular importance as feeding and roosting grounds for over-wintering birds. They are well frequented by the public and it is therefore likely that occupants of the proposed development would visit them. Human activity can disturb birds, leading to a reduction in the amount of food they eat. This can lead to birds leaving areas rich in food and increase competition in areas that are less food rich. Amongst the consequences of this are increased bird mortality and a reduction in the numbers of birds reaching their breeding grounds.
8. The Solent Recreation Mitigation Strategy, December 2017, (SRMS), was jointly produced by Councils that fringe the Solent. Amongst other things, it identifies development pressures in the area and the harmful effects that these might have on the Solent's ecology. The evidence before me is clear that the proposal, particularly when combined with other development in the area, would have a significant effect on these ESNIs through increased disturbance from recreational activity.
9. The SRMS sets out a strategy to mitigate these harmful effects, which, in respect of the proposed development, can be achieved through a financial contribution. Notwithstanding that there is a slight disagreement between parties in respect of the required fee – the appellant mentions £346 and the Council £337 - my assessment is that an appropriate contribution would mitigate the harm that would otherwise arise. In this regard, I note that Natural England, in response to the AA undertaken by the Council, found that subject to the payments being made there would be no adverse effect on the integrity of European sites. I give this comment significant weight.
10. The appellant has stated that he would be willing to make the necessary contribution prior to my decision being made. However, there is no evidence to show that the payment has been made or that there is a mechanism in place to ensure that this will occur.
11. I must therefore conclude that, following Appropriate Assessment, the proposal would adversely affect the integrity of the Solent ESNIs. It would, therefore, be contrary to the terms of CS Policy CS22 that seek to avoid harm to internationally designated ecological areas, the approach advocated by the SRMS and the Government's policies on 'Habitats and Diversity' in its National Planning Policy Framework.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

Living Conditions

12. No 27A is a first floor, two-bedroom flat with a dual aspect. The plans show a bedroom, (having a home office type use when I visited), and its kitchen-living space facing north to Hanover Buildings. Another bedroom faces rearwards, (southwards), to York Walk. This flat is set some way back from York Walk, behind the area of flat roof on which the proposed flat would be erected.
13. Part 2 of the City Council's Residential Design Guide (RDG) is entitled 'Maintaining Residential Standards'. Paragraphs in its section 2.2 advise on maintaining natural light, outlook and privacy for neighbours of development proposals. This reflects, and provides detailed guidance for, 'saved' Policy SDP1(i) of the City of Southampton Local Plan Review, 2006 (LP) and Policy AP16 of the City Council's City Centre Action Plan, 2015 (AP).
14. The outlook from the rear bedroom to No27A is limited to a small degree by flanking buildings and this would be further reduced by the use of obscure glazing in the lower part of its main windows. However, it is not at all unusual for bedrooms to have a reduced outlook, and they are commonly served by rooflights alone. Here, two new rooflights would supplement the clear glazing that would be retained in the upper parts of room's main windows. The living conditions of users of this room would be satisfactory. Furthermore, the proposed development would not fundamentally undermine the living conditions enjoyed by occupants of the whole flat. Its main living areas would be unaffected and would maintain their open outlook.
15. In terms of privacy, paragraph 2.2.4 of the RDG sets out window to window distances that are usually required. However, it does not specify such a distance where, as here, it involves two single-storey units. Its paragraph 2.2.5 acknowledges that flexibility is required in inner city locations, providing that a reasoned case is put forward.
16. Such a case is made here, where a new wall between the two resultant units and the use of obscure glazing in the lower parts of the rear bedroom windows in No 27A is proposed. Although I agree that the planters are not necessary in this regard, I do not find the proposed wall to be a contrivance. Its provision would be reflective of the guidance in paragraph 2.2.9 of the RDG.
17. Paragraph 2.2.19 of the RDG suggests that if a proposed development is located to the north of a neighbour, no harmful impact to its occupants in terms of light received is likely. However, it does not rule out new development to the south of a neighbour. Here, the degree of separation between the proposed flat and No 27A would be sufficient to allow ample daylight into the flat. Given its southerly aspect, good levels of sunlight would reach the rear bedroom of No 27A, which would not be unduly shaded.
18. For the above reasons, the living conditions of the occupants of No 27A, with particular regard to outlook, privacy, and daylight and sunlight would not be unacceptably affected. Therefore, the scheme would accord with LP Policy SDP1(i), Policy AP16 of the AP and the terms of section 2.2 of the RDG.

Other Matters

19. The effects of the proposed development on the setting of the Town Wall is a matter of great importance. Section 66(1) of the Planning (Listed Buildings and

Conservation Areas) Act 1990 (the Act) requires special regard to be had to the desirability of preserving the setting of a listed building.

20. The Wall, which was covered in protective netting at the time of my visit, seemingly in response to the development of neighbouring land, is an impressive feature. It is constructed from stone and rises several metres above York Walk. It adds greatly to the character and appearance of the area. Given its proximity to the Wall, there can be little doubt that the site of the proposed development lies within the setting of this important designated heritage asset.
21. The proposed development would not result in the rear of the building projecting any closer to the wall than it does presently. The first floor of 27 Hanover Buildings would be in line with that to the rear of 26 Hanover Buildings, and slightly behind the rear of 28 Hanover Buildings. The rear of No 27 would have a very similar appearance to the rear of No 26.
22. Given the above, I find that the setting of the listed Town Wall would be preserved, in accordance with the terms of Section 66(1) of the Act.
23. I note that Appendix 1 to the Officer's report acknowledges that the proposed development would be likely to lead to adverse effects to the New Forest Special Protection Area, Special Area of Conservation and Ramsar site. These, too, are ESNIs. The Council has no policy in place, with regards to mitigation of these effects, but would ring fence 5% of the Community Infrastructure Levy raised from the development to fund mitigating works. As such, it did not form a reason for refusal in its decision.
24. I have no substantive evidence that the Council's approach on the New Forest ESNIs would provide adequate mitigation. However, given that I am refusing permission on the ground of harm to the Solent ESNIs, I have not considered the matter further.

Conclusion

25. The proposed flat would not affect the living conditions of the occupants of 27A Hanover Buildings to the degree that planning permission should be refused. However, neither this nor the benefits of a new dwelling in a highly sustainable location outweigh the harm that would arise to ESNIs in the Solent and New Forest.
26. For the above reasons, and having taken all other matters into account, the appeal is dismissed.

Roy Curnow

INSPECTOR