
Appeal Decisions

Site visit made on 18 November 2019

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 07 January 2020

Appeal Ref: APP/D1780/W/19/3236814
21 Suffolk Avenue, Southampton SO15 5EF

- 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 Andrew Vagg, Dart Assets Limited against the decision of Southampton City Council.
 - The application Ref 19/00521/FUL, dated 13 March 2019, was refused by notice dated 4 June 2019.
 - The development proposed is the construction of 3x2 bed houses with 2 parking spaces each. Associated refuse and cycle store. Visitor parking space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have been appointed to determine two appeals at this site. The other appeal reference is APP/D1780/W/19/3236815. I have considered each proposal on its individual merits.
3. Although not forming part of the Council's reasons for refusal the appellant has submitted to the Council a 'Habitats Mitigation Contribution Agreement', dated 25 April 2019, towards the cost of measures to mitigate the impact of the proposed development on the Solent Special Protection Areas (SPAs). I return to this matter later.

Main Issues

4. The main issues are:
 - Whether the proposal would result in the loss of a family home at 27 Suffolk Avenue with particular regard to outside amenity space;
 - Whether the arrangements for the collection of refuse would be acceptable;
 - Whether adequate living conditions would be provided for the future occupiers of the proposed dwellings and the existing occupiers of the flats at 15-19 Suffolk Avenue in respect of outside amenity space;
 - Whether adequate living conditions would be provided for the existing occupiers of 23 and 25 Suffolk Avenue in respect of outlook and the existing occupiers of the ground floor flats at 15-19 Suffolk Avenue in respect of outlook and privacy.

- The effect of the proposal on the character and appearance of the area.

Reasons

The site and proposed development

5. The appeal site, as shown on the 'existing site plan', includes the existing block of flats, 15-19 Suffolk Avenue, the existing garage block and land described as 'Previously gardens to No. 21, 23 and 25. Now a single plot of land'. I saw on my site visit that this land was fenced off from the remainder of the appeal site. I was afforded access to this land and saw that it was largely overgrown, with the remnants of some fencing and a shed. Despite the description on the plan, I saw that the land was fenced off from the rear gardens of 23, 25 and 27 Suffolk Avenue.
6. The proposed development would include the erection of three two-bedroom dwellings. In addition, notwithstanding the description of development in the heading above, the proposal would include the demolition of the existing garage block in order to enable the erection of the associated refuse and cycle store and, as shown on the 'proposal site plan', an outside private amenity space for the occupiers of the existing block of flats, an enlarged balcony for the existing rear first floor flat and allocated parking spaces, two of which would be within the front garden of the existing block of flats.

Loss of family home

7. The Council's refusal notice refers to the proposal being contrary to the aims of Policy CS16 of the Southampton City Council Adopted Core Strategy (March 2015 amended) (CS) in resisting the loss of family homes. This is in regard to the Council's assessment that the development would reduce the outside amenity space (rear garden area) of No 27 to roughly 55.5 square metres, thus below the Council's minimum standard of 70 square metres for a semi-detached dwelling.
8. I acknowledge the Council state that at the time they visited the site the garden of No 27 and the gardens of the neighbouring properties, Nos 23 and 25, extended to their full original length. However, as noted above in paragraph 5, I saw at the time of my site visit the gardens of all these properties were clearly severed from the appeal site as shown on the submitted proposal site plan.
9. Therefore, taking into account that the rear garden area of No 27 is already below the Council's minimum standard, I conclude that the proposed development would not result in the loss of a family home. Accordingly, it would not conflict with Policy CS16 of the CS which, amongst other things, seeks to resist the loss of family homes.

10. Collection of refuse

11. The proposed development includes a communal bin store positioned in the rear corner of the site behind the existing block of flats, in roughly the same location as the existing garage block. The appellant says that on bin collection day temporary on street collection located at the front of the site would be used.

12. However, such an arrangement would require future occupiers of the proposed development to move their bins approximately 44 metres from the communal bin store to the street for collection by the waste collection authority. Part 9 (Waste Management) of the Residential Design Guide 2006 Supplementary Planning Document (SPD) is clear that waste storage areas should be sited to enable residents to conveniently manoeuvre waste containers to the collection point, in this case the street. Taking into account the distance between the proposed communal bin store and the street, I do not consider the location of the proposed communal bin store is sited to enable residents to conveniently manoeuvre waste containers to the street.
13. Therefore, the waste collection authority would need to access the site to collect waste from the communal bin store. Paragraph 9.3.4 of Part 9 of the SPD states where the communal bin store is not within 10 metres of the highway appropriate hard-surfaced access and manoeuvring space must be provided. It goes on to state the vehicular access should be a minimum of 4.1 metres wide for the first 7 metres length of the access and a tracking diagram should be provided to demonstrate that there is adequate manoeuvring space for refuse vehicles to turn.
14. The 'proposal site plan' shows a gated 3 metres wide vehicular access to the rear of the site, thus less than the required minimum of 4.1 metres. Moreover, I have no evidence before me, in the form of a tracking diagram, to demonstrate that refuse vehicles would be able to safely manoeuvre and turn within the site.
15. For the reasons outlined above, I find that the proposal fails to demonstrate that refuse collection vehicles can safely manoeuvre within the site to allow the refuse collection authority to collect waste from the communal bin store. Consequently, the proposed development would not accord with Policies SDP1(i), SDP4 and TI2 of the Local Plan Review - Adopted Version Second Revision (2015) (LPR); Policy CS13 of the CS, as supported by Part 9 of the SPD which, amongst other things, seeks to ensure that refuse collection vehicles can gain safe access to waste collection points. The Council has referred to Policy CS19 of the CS in their refusal notice. However, this policy relates to car and cycle parking and therefore is not directly relevant to this main issue.

Living Conditions – outside amenity space

16. Each of the proposed terraced properties would have a private rear garden area of roughly 30 square metres. Part 4 of the SPD provides guidance on the provision of private amenity space and refers to Part 2 of the SPD for specific guidance on minimum garden sizes within suburban areas of Southampton. It states, that in the case of a terraced property, a minimum of 50 square metres should be provided. Thus, the proposal would fall significantly short in terms of providing the minimum garden size as required by the SPD.
17. The appellant contends that the SPD makes provision for smaller gardens in urban areas, by reference to paragraph 2.3.14 in Part 2 of the SPD, where the proposal would follow the pattern of typically smaller gardens and cites the existing properties Nos 21 to 27. However, even if the existing properties do have a smaller garden area per household than is proposed for the terraced properties (even after taking into account the appellant's point in regard to the number of households within these properties), based on the evidence before

me, I do not consider that it is demonstrably the case that smaller garden sites are characteristic of the local area; as stated in the aforementioned paragraph of the SPD.

18. The development would include an enlarged balcony, measuring approximately 7 square metres, for the existing rear first floor flat. It would also include an outside private amenity space for the occupiers of the existing flats, which the Council calculate would be 39 square metres. Based on the evidence before me I have no reason to disagree with the Councils' calculation. The outside space would be a relatively narrow area, approximately 2.6 metres wide, and extend across the full width of the rear elevation of the flats. The total outside amenity space provided by the development would, therefore, be approximately 46 square metres.
19. I acknowledge that other than the two first floor balconies the only outside amenity space serving the occupiers of the existing block of flats is the front garden area and the rear gravelled informal car parking area. However, much of the front garden area would be lost to the two proposed car parking spaces and rear gravelled area would be fenced off for car parking, the communal bin store and cycle storage.
20. The SPD states the minimum garden size for flats should be 20 square metres per unit. Thus, taking into account that there are 4 existing flats, this would amount to a total requirement of 80 square metres. The proposal would, therefore, be significantly deficient in terms of providing an appropriate amount of outside amenity space for the occupiers of the existing flats.
21. For the reasons outlined above, I conclude that adequate living conditions for future occupiers of the proposed dwellings and the existing occupiers of the flats at Nos 15-19 would not be provided for in respect of outside amenity space. Consequently, the proposed development would not accord with Policy SDP1(i) of the LPR; Policy CS13 of the CS; Parts 2 and 4 of the SPD, and paragraphs 127 and 130 of the National Planning Policy Framework (the Framework) which, amongst other things, requires that new development provides an appropriate amount of outside amenity space and takes account of local design standards.

Living Conditions – outlook and privacy

22. The existing outlook from the rear elevation habitable room windows of Nos 23 and 25 is towards their respective rear gardens and the fenced off largely overgrown plot of land referred to above. The appellant states that the separation distance between the side gable elevation of the proposed end of terrace two-storey property and the rear elevations of Nos 23 and 25 is around 12.45 metres. Based on the 'proposal site plan' I have no reason to disagree with the appellant's stated separation distance.
23. Taking into account the separation distance, the scale of development would be dominant and overbearing upon the outlook from the rear elevation habitable room windows and gardens of Nos 23 and 25.
24. The appellant states that as the separation distance is 12.45 metres, hence only a little less than the required minimum separation distance in the SPD, he would be happy for this be increased to 12.5 metres and this could be secured by condition. He also says that the roof design could be amended from a gable

- to a hipped roof. However, if I were to determine the appeal on the basis of such amendments, albeit I recognise the increase in separation distance is small, it is possible that the interests of parties who might wish to comment would be prejudiced¹.
25. The existing outlook from the rear elevation habitable room windows of the ground floor flat at Nos 15-19 is towards the gravelled informal car parking area and existing garage block. The boundary structure forming the proposed outside private amenity space would be positioned approximately 2.6 metres from, and extend across the full width of, the rear elevation of the ground floor flat. I have no specific details of the proposed boundary structure before me. However, the appellant states the outside private amenity space would be a "*fenced off lawn area*". Therefore, any fence would have to be a tall structure in order to afford a degree of privacy for the occupiers of the flats using the outside space. Taking into account the separation distance, the proposed boundary structure would be overbearing upon the outlook from the rear elevation habitable room windows of the existing ground floor flat.
26. The appellant states the proposal includes "*defensive planting positioned directly in front of any habitable windows*" to ensure suitable privacy is achieved. However, any defensive planting would need to be kept low level in order to avoid blocking light to the windows of habitable rooms and to avoid being overbearing upon the outlook from the windows. Taking into account the location of the proposed outside private amenity space there would therefore be a loss of privacy for the occupiers of the existing ground floor flat as a result of its use by the occupiers of the other existing flats.
27. The existing outlook from the front elevation habitable room windows of the ground floor flat at Nos 15-19 is towards the front garden. Notwithstanding that one of the proposed car parking spaces would be allocated to the ground floor flat at the front of the building, as a result of the proposed two car parking spaces positioned close to the front elevation of the building there would be a loss of privacy to the occupiers of the existing ground floor flat and a loss of outlook from the front elevation habitable room windows. Defensive planting is also proposed tight to, and across the full width, of the front elevation of the building. However, any defensive planting, for the same reason as set out above would not lessen the loss of outlook or loss of privacy.
28. For the reasons outlined above, I conclude that the development would have a significantly harmful effect upon the living conditions of the existing occupiers of Nos 23 and 25 in respect of outlook. Furthermore, it would have a significantly harmful effect upon the living conditions of the existing occupiers of the ground floor flats at Nos 15-19 in respect of outlook and privacy.
29. Consequently, the proposed development would not accord with Policies SDP1(i) and H7 of the LPR; Policy CS13 of the CS; Part 2 of the SPD, and paragraph 127 of the Framework which, amongst other things, seek to ensure that proposals avoid harmful effect upon the living conditions of the occupiers of neighbouring development.

¹ Annex M of the *Procedural Guide, Planning appeals – England* advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

30. The appellant has drawn my attention to another development 50 metres away from the appeal site where he says the layout is very similar to that proposed and it shows no privacy for a ground floor flat which is adjacent to the communal garden area. However, I am not aware of the full circumstances which led to this development being built. In any event, I have determined the appeal proposal on its individual planning merits and the existence of this other development does not alter or outweigh my overall conclusion on this main issue.

Character and appearance

31. The area is characterised by mostly pairs of semi-detached and short terraced rows of two-storey properties. Most properties that surround the adjoining playing fields have rear gardens backing onto them. As such there is a distinctive perimeter block pattern of development surrounding the playing fields to which the appeal site makes a positive contribution towards.
32. Part 3 of the SPD states, in paragraph 3.7.7, that new infill development, situated part way along streets, should complement the pattern of development in the rest of the street. The proposed dwellings would be orientated perpendicular to the adjacent layout of development in the street. They would also be positioned on land to the rear of Nos 23, 25 and 27, with the north side gable elevation of the end of terrace two-storey property tight to the boundary with the playing fields. Thus, the layout of the proposed dwellings would be at odds with the prevailing pattern of development in the vicinity of the site. For this reason, therefore, the proposed development would be significantly harmful to the character and appearance of the area.
33. Consequently, in this regard, the proposal would conflict with Policy SDP7 of the LPR; Policy CS13 of the CS, and Part 3 of the SPD which, amongst other things, set out to ensure that the layout of proposals respect the character of existing development in the surrounding area. The Council has referred to Policy SDP1 of the LPR in their refusal notice. However, this policy is not directly relevant to character and appearance issues.
34. The appellant says that back land housing configured as proposed is a common feature in this neighbourhood of Southampton. However, he has cited only one example of such development which is approximately 0.5 km south of the appeal site. The existence of this other development, in a different area to the appeal site where the pattern of development differs from that in the vicinity of the appeal site, does not alter or outweigh my conclusion on this main issue.

Other Matters

35. The site is located within 5.6 km of the collectively known European designated areas Solent SPAs/Ramsar sites. As noted above the appellant has submitted to the Council a 'Habitats Mitigation Contribution Agreement'. Notwithstanding the existence of the agreement, there would still be a requirement to carry out an Appropriate Assessment. However, regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to approve planning permission. Thus, given my overall conclusion on the main issues it has not been necessary for me to pursue this matter any further.

36. The appellant states that should nitrate neutrality be required by the Council then there is potential to achieve this on the site by package waste sewage treatment and re-circulated grey water. Whilst I have no doubt, in principle, the development could deliver a scheme to achieve nitrate neutrality the application is not supported with any other information or assessment of the effectiveness of such a scheme. However, in this instance, this matter is not in itself determinative to the outcome of the appeal.
37. The appellant points out that Southampton City Council currently count all student bedroom spaces created as dwellings within their 3-year supply and the proposal creates three new dwellings which are all two-bedroom houses. Notwithstanding this the Council's stated position is that they currently have a 5-year supply of housing land and this has not been disputed by the appellant. Consequently, the presumption in favour of sustainable development contained in paragraph 11(d) of the Framework is not engaged.

Conclusion

38. In conclusion, whilst the proposal would not result in the loss of a family home, this would not overcome the significant harm that would be caused to the character and appearance of the area and the significant harm that would be caused to the living conditions of the existing occupiers of Nos 23 and 25 in respect of outlook and the existing occupiers of the ground floor flats at Nos 15-19 in respect of outlook and privacy. I have also found that adequate living conditions for future occupiers of the proposed dwellings and the existing occupiers of the flats at Nos 15-19 would not be provided for in respect of outside amenity space. Additionally, I find the proposal fails to demonstrate that refuse collection vehicles can safely manoeuvre within the site to allow the collection of refuse. Therefore, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Andrew Bremford

INSPECTOR