



Appeal Decision

Site visit made on 10 February 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal Ref: APP/Z1775/W/19/3239347

227 Commercial Road, Charles Dickens, Portsmouth PO1 4BJ

- 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 Ali Hamid of T Bello Group against the decision of Portsmouth City Council.
 - The application Ref 19/00398/FUL, dated 4 March 2019, was refused by notice dated 23 July 2019.
 - The development proposed is described as conversion of existing first floor, installation of oriel windows in north façade, 2 windows in east façade and 3 rooflights to provide 2 x 2 bed flats and 1 x 1 bed flat, and re-ordering of rear yard to provide restaurant service yard, residential amenity space and fire escape route.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal form states that a change in the description was agreed, however no confirmation of this has been provided. I have therefore used the description of development on the application form in the banner heading above.

Main Issue

3. The main issue is the effect of the development on the living conditions of future occupants of the development with regard to outlook, privacy and light, and future occupants of the 229-231 Commercial Road, with regard to privacy.

Reasons

Outlook

4. The flats would occupy first floor space above a restaurant. Both the front and the rear elevations face onto open space. The long side elevation however faces directly towards a building referred to by the Council as Nos 229-231, and is separated from it by a pedestrian passage which narrows considerably towards the Commercial Road frontage. Upper floors of Nos 229-231 currently appear to be undergoing conversion, and the Council has confirmed that this is in order to accommodate flats.
5. Presently many of the windows in the side elevation of the appeal site face directly towards windows at Nos 229-231, and/or they are overlooked by windows positioned at higher level opposite. In order to provide occupants with

privacy, the obscure glazing of some windows, and installation of projecting oriel windows featuring angled side panels of glazing in others, has been proposed.

6. The design of the oriel windows is such that, standing inside and facing towards them, there would very little view out. Indeed, depending on proximity and orientation the view would either be predominantly, or wholly, of the blank inner face of the window. Indeed, it appears that it would only be possible to gain a clear and unimpeded view out through the windows if standing immediately next to them. Even then the field of vision would be limited either by adjacent oriel windows, or the side elevation of Nos 229-231.
7. With the exception of the living/dining room serving the middle flat, all the rooms featuring oriel windows would be bedrooms. Within these rooms the provision of a clear outlook would be less important than within rooms providing the principal daytime living space. The very limited nature of the outlook would nonetheless provide oppressive conditions for users of the rooms in question due to the acute sense of enclosure. This would not be relieved by the rooflight in bedroom 2, or obscure glazed window in bedroom 1 of the rear flat, given that neither would provide any meaningful outlook.
8. As the middle flat would be served by only one conventional window, the view through which would be obstructed by adjacent oriel windows, the outlook from this flat would be the most restricted of the 3 flats proposed. The fact that parts of the interior would be reliant on either rooflights or artificial lighting would accentuate the oppressive effects of the very limited outlook provided from this flat.
9. The front and rear flats would each feature living rooms within which at least one window would provide a both clear and direct outlook over open space. The rear flat would however again be reliant on a combination of artificial light and rooflights across a large proportion of the floorspace. This, in combination with obscured and oriel windows in the bedrooms, would mean that the outlook from the flat as a whole, was very limited. Even in the front flat, which would feature a number of small windows serving the hallway, kitchen and bathroom, the outlook would, on the whole be poor, as these windows would face onto an enclosed rooftop space.
10. I acknowledge that housing within densely developed urban locations may not be expected to enjoy the same quality of outlook as housing within more spacious suburban areas. Even taking this into account however, the quality of outlook from the proposed flats would be unacceptably poor considered as a whole.
11. For the reasons set out above I conclude that the development would provide unacceptable living conditions for future occupants due to lack of adequate outlook. The development would therefore conflict with Policy PCS23 of the Portsmouth Plan 2012 (the PP), which amongst other things seeks to secure development which provides a good standard of living environment for its users, and which reflects the objective set out in paragraph 127(f) of the National Planning Policy Framework (the Framework), to ensure that developments provide a high standard of amenity for future users.

Privacy

12. As outlined above, the installation of obscure glazing within some existing windows along the side elevation, and oriel windows in others would prevent direct views between the proposed flats and those under construction at Nos 229-231. Indeed, the fact that I have found the outlook from the proposed would be very restricted demonstrates the effectiveness of the strategy, as it would be equally difficult to see into the flats.
13. I therefore conclude that the privacy of future occupants of both the proposed flats and those at Nos 229-231 would not be unacceptably compromised. In this regard therefore the development would comply with Policy PCS23 of the PP as set out above.

Light

14. Planning permission was partly refused on the basis that rooms within the flats would receive inadequate levels of light. A daylight and sunlight report (DSR) has however been submitted by the appellant. This confirms that some windows would provide light below minimum levels recommended within BS8206 Part 2 (2008). However, rooflights would compensate for this. The DSR thus concludes that bedrooms, living rooms and kitchens within all 3 flats would receive levels of daylight and sunlight above the recommended minimum levels. The Council has not provided any technical evidence to counter this assessment, and I see little other reason to question its conclusions.
15. I therefore conclude that the flats would receive adequate levels of daylight and sunlight. In this regard therefore the development would comply with Policy PCS23 of the PP as set out above.

Other Matters

Crime

16. The appellant states that the development would reduce crime in the area. However, no evidence has been set before me which shows how the provision of flats over the existing restaurant would reduce crime. Indeed, I can see no particular reason why this should be the case. As such I have not attached any weight to this claim.
17. The appellant additionally states that if permission is not granted the premises will return to public house use, with implications for security. However, it appears unlikely that the restaurant at ground floor level would return to use as a public house, and I have not been provided with any other reason to believe that the rest of the building would serve such a use. Again therefore, I have not attached any weight to this claim.

Housing supply

18. Set within the context of Framework's objective of significantly boosting the supply of homes, the Council accepts that it lacks a demonstrable 5-year supply of deliverable housing sites. Therefore, the policies most important for determining the application are out-of-date, and planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, or if specific policies within the Framework that protect areas or assets of particular importance provide clear reasons for refusal.

19. In this case the policy most important for determining the application is Policy PCS23, the relevant provisions of which I have found to be consistent with the Framework. In this regard, I consider that the adverse effects of the development on the living conditions of future occupants, would significantly and demonstrably outweigh the limited social, and economic benefits of providing 3 flats in an existing, under-utilised building, within an accessible location. This includes with regard to the limited contribution that the development would make to helping to meet the Council's shortfall. Consequently, paragraph 11 of the Framework does not support the grant of planning permission in this instance, or therefore indicate that my decision should be taken other than in accordance with the development plan.

European sites

20. The absence of adequate mitigation for likely significant effects on the integrity of European sites in the Solent, which would arise from increased recreational pressure generated by the development, considered alone, and in combination with other plans and projects, was a reason for refusal of planning permission. Having made an earlier payment to the Council, the appellant has subsequently made a further direct payment to make up the shortfall. Section 111 agreements relating to both payments have been set before me. However, as neither has been signed by the Council they are both incomplete.
21. The absence of mitigation for likely significant effects on the integrity of European sites in the Solent, which would arise from the increased discharge of nitrogen and phosphorus in wastewater by the development, considered alone, and in combination with other plans and projects, was also a reason for refusal of planning permission. In response to guidance published by Natural England, the Council has recently adopted an Interim Nutrient Neutral Mitigation Strategy. Though the appellant indicates a willingness to comply with this strategy, no mechanism for securing the mitigation it sets out currently exists.
22. Had I been minded allow the appeal, and the circumstances therefore existed within planning permission could granted, it would have been necessary for me to seek further information in relation to both the above matters, and to undertake an Appropriate Assessment of the scheme's effects on European sites in the Solent. As the appeal will be dismissed on other grounds however, I am not required to consider these matters further.

Conclusion

23. For the reasons set out above I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR