



Appeal Decision

Site visit made on 18 May 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2020

Appeal Ref: APP/D1780/W/20/3244851

267-271 Portswood Road, Southampton SO17 2LA

- 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 Joseph Muscat against the decision of Southampton City Council.
 - The application Ref 19/00735/FUL, dated 9 May 2019, was refused by notice dated 18 July 2019.
 - The development proposed is the erection of an additional floor to create 4 x 1-bed flats with associated cycle/refuse storage following partial demolition of existing building to create new entrance and extension of existing restaurant flue.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In my heading above I have taken the description from that used in the appeal form and decision notice rather than the planning application form, as it is more comprehensive.

Main Issues

3. The main issues are the effect of the proposal on:
 - The character and appearance of the area, having regard to a non-designated heritage asset;
 - The living conditions of future residents with regards to levels of light and outlook;
 - Whether there is suitable provision for cycle parking, and;
 - Habitat Sites with reference to the Solent and Southampton Special Protection Area and Ramsar site and Solent Maritime Special Area of Conservation (referred to collectively as the Solent SPA's) and the New Forest Special Area of Conservation, Special Protection Area and Ramsar site (referred to collectively as the New Forest Habitat Sites).

Reasons

Character and appearance

4. The appeal site is located on a busy corner of Portswood Road and Highfield Lane near to shops, a large supermarket and residential uses. The buildings in

the area are varied in form and detailing, reflecting the mixture of uses and the evolution of the area over time. Most buildings are at least two storeys in height, reflect a conventional form and present directly onto the street. Overall, this results in a busy, mixed urban character to the area.

5. 267-271 Portswood Road is a significant and distinctive building in this context for several reasons. Firstly, it is located at a prominent corner and its cranked design, with the main entrance onto the corner is a deliberate response to that. Secondly, the quality of its stone façade, proportions and classical detailing set it apart and give it a greater status than other buildings, commensurate with its original use as a bank. Thirdly, it is single storey but has a parapet roof in contrast to the more commonly used pitched roofs in evidence nearby. Consequently, notwithstanding its limited height, it has an important presence in the street scene and acts as a way marker.
6. In recognition of the factors listed that contribute towards its significance, the Council have included the building on their local list. As such it is a non-designated heritage asset. Paragraph 197 of the National Planning Policy Framework (the Framework) stipulates that the effect of an application on the significance of a non-designated heritage asset should be taken into account and a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
7. The proposal would add a further floor onto the building in order to create four apartments. The increased height at the corner would reinforce the status of the building within the street scene. The submitted architectural illustration¹ shows that this would assist with redressing the current imbalance with the adjacent large residential building of Victoria Lodge. Furthermore, this would accord with advice in the Residential Design Guide Supplementary Planning Document, September 2006² which states that taller buildings can be used to create a visual focus at a street corner and can often provide an opportunity for mixed use.
8. In addition, the design approach ensures that the addition would be clearly discernible and subordinate to the original building. It would largely retain the appearance, proportions and ground floor active use of the principal façade from which most significance is derived. The first floor would be slightly set back and use contrasting darker bronze coloured zinc cladding³ with muted detailing and hence, would visually recede by comparison to the ground floor element. It would also respect the established roof form for the building, albeit at an increased height. Moreover, although the Council have expressed concerns at the use of the narrow windows, their rhythm and vertical proportions are sympathetic to the proportions and symmetry seen on the ground floor elevation.
9. Taken together these factors would retain and emphasise the quality of the historic elevation and would not be harmful to its significance. I am also particularly mindful of paragraph 118e of the Framework which generally supports opportunities to use the airspace above existing commercial premises.

¹ Drawing reference L (PV) 001

² Paragraph 3.6.11

³ 4.3 Design and Access Statement

10. The Council have concerns regarding the modern design approach and would prefer to see a design that replicates the historical and traditional style of the existing building which they consider would be more in keeping with traditional examples of the local vernacular. Be that as it may, it does not necessarily follow that a contemporary approach would result in harm. For the reasons outlined, the proposal would be consistent with paragraph 127c of the Framework which states that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.
11. Accordingly, I find that the proposal would not result in harm to the character and appearance of the area or the significance of the locally listed building. Therefore, it would accord with the relevant fundamental design principles set out in policy CS13 of the Local Development Framework, Core Strategy Development Plan Document, January 2010 (CS). These include requirements that development should respond positively and integrate with its local surroundings, character and architectural vernacular without being a pastiche of the past and contribute positively to local distinctiveness. Neither would the proposal conflict with the aims of saved policy HE4 of the City of Southampton Local Plan Review, March 2006 (LPR) which seeks to resist the harmful demolition or alteration to buildings on the local list.

Living conditions

12. The Council refers to the narrowness of the proposed windows which they consider would result in poor internal living accommodation for future occupants. The natural light for the four apartments does primarily rely on single aspect windows fronting onto Portswood Road and Highfield Lane. Notwithstanding that they are relatively narrow, this is not to the extent that it would prevent views out onto the street as the windows have a vertical emphasis and so consequently, are also relatively tall. In addition, each apartment would have three or more such windows that face either south-west or south-east that would provide light for the main living space. The revised proposed first floor plan⁴ omits the internal partitions originally shown, that would have reduced natural light to the bedrooms of the apartments.
13. Accordingly, there is little substantive evidence to demonstrate that the apartments would receive inadequate natural light or outlook due to the fenestration arrangements. However, I have also had regard to the general concerns raised in representations that the living conditions provided would not be suitable in terms of the internal space standards and the impact of fumes from the restaurant. Nevertheless, I am not aware that the Council has adopted minimum space standards as part of the development plan and it is not otherwise shown how the accommodation, although small, would be unacceptable. Furthermore, the detailed operation of the restaurant flue to prevent fumes and odours is a matter that could be suitably addressed by a planning condition in the event of a permission and I note that the Council's Environmental Health Team did not raise an objection on this basis.
14. Therefore, I find the proposal would not conflict with saved policy SDP1(i) of the LPR which states that planning permission will only be granted for

⁴ Drawing number L(-) 002 Rev B

development which does not unacceptably affect the health, safety and amenity of the city and its citizens.

Cycle parking

15. Saved policy SDP10 (ii) of the LPR indicates that development will only be permitted where, amongst other things, it provides a safe and secure location for any associated cycle parking. The Southampton City Council, Parking Standards, Supplementary Planning Document, September 2011 (SPD) provides further guidance as to the quantum and nature of such cycle parking.
16. The proposal provides 2 cycle parking spaces per apartment in a covered area shown in the rear yard of the building accessible via a pathway between 273 and 275 Portswood Road⁵. This accords with the requisite number of spaces in the SPD⁶. It is further recommended that long stay provision is covered, secure, at ground level, overlooked, close to a road access and conveniently located adjacent to building entrances. The parking provided, subject to further details which could be required by condition, would meet with most of the recommendations. However, it would not be directly adjacent to the entrance to the building and would require access via a narrow path to the rear yard. Nevertheless, although not ideal, this is close to the building and is not so far in distance or difficult to access that it would prevent its frequent use by the intended occupants. Moreover, a planning condition could ensure appropriate security and lighting measures were incorporated in the event of a permission.
17. Therefore, I find that suitable provision for cycle parking would be made that would accord with policy SPD10(ii) of the LPR.

Habitat Sites

18. The appeal site is located within 5.6km of the Solent SPA's. It is also within 10km of the New Forest habitats. These are habitats recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance. In the case of the Solent SPA's this is primarily in relation to waders and wildfowl and for the New Forest habitats, this refers to rare and vulnerable species of birds namely, the Woodlark, Dartford Warbler and Nightjar. Recent caselaw⁷ requires the decision maker, when considering the effect that a proposal may have on such a European Site, to consider mitigation within an Appropriate Assessment rather than at screening stage.
19. In the absence of mitigation measures and using a precautionary approach, given the proximity to the habitat sites it is reasonable to suppose that future residents of the development would potentially visit them for recreational purposes and dog-walking. Intensification of such activities would be likely to cause disturbance to the birds and their habitat in relation to the Solent SPA's and the New Forest habitats.
20. Additionally, there are high levels of nitrogen and phosphorus in the Solent water environment with evidence that these nutrients are causing eutrophication that can impact on the Solent SPA's protected habitat and bird species. It remains uncertain whether additional domestic waste water generated by the development is likely to exacerbate harm from eutrophication

⁵ Ground Floor Plan – Proposed, Drawing L(-) 001 Rev A

⁶ Table 12 of SPD

⁷ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

to the water quality of the Solent SPA's. Notwithstanding that this matter has come to light since the Council made its decision, it is nevertheless relevant to my consideration as part of an appropriate assessment.

21. Although the future number of residents generated by the appeal proposal would be relatively low, I am required to consider the effect of the proposal both individually and in combination with other projects. As such, there is a risk of a significant effect as a result of recreational activity on the internationally important interest features of the protected habitats. Furthermore, I cannot rule out the risk of a significant effect on the water quality of the Solent SPA's.
22. Insofar as is relevant to the impact from recreational activity on the Solent SPA's, the Council, in conjunction with Natural England have adopted a Solent Recreation Mitigation Strategy, March 2018 (SRMS) which sets out the Council's strategic approach to mitigating the adverse effects of new housing development through avoidance measures including the provision of alternative recreational space as well as the provision of rangers, communication, codes of conduct and various other visitor management projects. The mitigation measures in the SRMS are funded by contributions from new development within the identified area of harm secured by a legal agreement, with the proportionate rates set out in the strategy.
23. The need for such a contribution arises from the development and is supported by policy CS22 of the CS which seeks to ensure that development does not adversely affect the integrity of international designations, and that necessary mitigation measures are provided. The appellant has submitted a signed amended Unilateral Undertaking (UU) dated 30 March 2020 that would provide a financial contribution of £1384 towards the costs of providing SRMS. On that basis, I am satisfied that the obligation meets the statutory tests for planning obligations reiterated in paragraph 56 of the Framework.
24. Nevertheless, in relation to the impact from waste water on the Solent SPA's, advice from Natural England⁸ suggests that given the uncertainty as to the impact of new growth, a precautionary approach would be for development to achieve nutrient neutrality to ensure that it does not add to existing nutrient burdens. It sets out a methodology as to how this might be calculated. Based on the limited evidence before me, it is not shown that the development would achieve nutrient neutrality, nor are any mitigation measures specified.
25. The appellant has suggested the use of a Grampian style condition to achieve nutrient neutrality. However, I have concerns with this approach as uncertainty remains as to the extent of any adverse impact arising from the scheme, and therefore, it is not clearly shown that unspecified measures to be agreed at a later date could be achieved or would be sufficient to overcome the adverse effects. Given this uncertainty, consistent with a precautionary approach it is not a matter that can be left to a condition as it goes to the principle of the development. As such, I am not adequately assured that this would prevent the likely harm to the water quality of the Solent SPA.
26. Furthermore, based on the evidence provided, at present there is no equivalent scheme for strategic mitigation to address the impact from recreational activity on the New Forest habitats. The Council indicates that as an interim measure,

⁸ Advice on achieving nutrient neutrality for new development in the Solent region, Version 5, June 2020 & Email dated 10 June 2020

- it has undertaken to commit a minimum of 4% of Community Infrastructure Levy (CIL) contributions to fund improvements to footpaths within greenways and other semi-natural greenspaces in order to provide alternative recreation space for new residents and a 1% of CIL receipts to the New Forest National Park Authority to help deliver their Habitats Mitigation Scheme⁹.
27. Their commitment to doing so is reinforced in a letter to Natural England from the Leader of the Council dated 11 July 2019. Given the authority of the writer giving specific reassurance to another public body, this attracts considerable weight as evidence that such funds will be secured for this purpose.
28. The Council have further indicated¹⁰ that such CIL contributions would go towards funding the programme for resurfacing of footpaths in the existing Bassett Wood Greenway site which is approximately 1.8km from the appeal site. This area of open space is 18ha and provides for a range of habitats including meadows and woodland suitable for recreational walking. This would provide an accessible alternative to future occupiers of the development which may reduce the impact on the New Forest habitat sites to a degree.
29. However, although some indication of how CIL money might be spent within the city boundary is given, there is no specific information relating to the mitigation measures within the New Forest National Park Authority Area nor how or when the New Forest National Park Authority would be obliged to spend such money. It follows that there is little assurance that the timing of any mitigation provision would align with the occupation of the dwellings proposed.
30. Moreover, in response to consultation under Regulation 63(3) of the Conservation of Habitats and Species Regulations 2017, Natural England¹¹ state that uncertainty remains with regards to whether the CIL contributions towards local open space within the city constitute sufficient mitigation and that measures that more directly alleviate recreational pressure within the New Forest habitats would be preferable, such as the New Forest Habitat Mitigation Scheme. Given their specialist knowledge, this attracts considerable weight. Therefore, based on the information provided, I find that there is a significant degree of uncertainty such that it is not shown that the harm to the New Forest habitats arising from the proposal would be sufficiently mitigated or secured.
31. In the light of a negative assessment overall, the Habitats Regulations require consideration as to whether there are any alternative solutions and if not, whether there are any imperative reasons of overriding public interest that would justify the development. I have little before me that would rule out alternative solutions being available. In any event, the provision of the modest number of additional dwellings proposed would not amount to an imperative reason of overriding public interest. In these circumstances the Habitats Regulations indicate that permission must not be granted.
32. Therefore, I find that the proposed development would result in harm to designated European sites and fails to secure appropriate mitigation. It would therefore, conflict with policy CS22 of the CS which seeks to protect against such harm. Additionally, the proposal would be inconsistent with the provisions in the Framework in relation to conserving and enhancing the natural

⁹ Email dated 24 April 2020

¹⁰ Email dated 24 April 2020

¹¹ Email dated 10 June 2020

environment and would not accord with the Conservation of Habitats and Species Regulations 2017.

Planning balance and conclusion

33. The proposal would provide additional smaller housing in an accessible location thereby contributing to the overall housing supply and represents a more efficient use of land. There would also be associated economic benefits arising from the construction and the activities of future occupants. Nevertheless, the modest scale of the proposal tempers the extent of such benefits, which therefore, attract moderate weight.
34. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹². I have found no harm arising due to the impact on the character and appearance of the area, living conditions of future occupants or the level of cycle parking provided. Nevertheless, based on the information provided, the proposed development would result in harm to designated European sites and fails to secure appropriate mitigation, which attracts significant weight.
35. The benefits that the proposal would bring do not outweigh the significant weight given to the conflict with the development plan policy on this issue. Accordingly, they do not justify my determining the development other than in accordance with the adopted development plan and Framework. Therefore, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹² Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.