



Appeal Decision

Site visit made on 4 August 2020

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2020

Appeal Ref: APP/Z1775/W/20/3246262

48 Jessie Road, Southsea, PO4 0EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Antony Lane against Portsmouth City Council.
 - The application Ref: 19/00682/FUL is dated 24 April 2019.
 - The development proposed is change of use from purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a Sui Generis house in multiple occupation.
-

Decision

1. The appeal is dismissed and planning permission is refused for change of use from purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a Sui Generis house in multiple occupation at 48 Jessie Road, Southsea, PO4 0EN in accordance with the terms of the application Ref 19/00682/FUL, dated 24 April 2019 and the plans submitted with it.

Procedural Matters

2. The address of the appeal property in the banner heading above is taken from the application form. The appeal form gives the address as 56 Jessie Road, but the appellant has confirmed that the correct address should be 48 Jessie Road¹. The appellant's name is spelt 'Anthony' on the application form but 'Antony' on the appeal form. The appellant has confirmed the correct spelling to be 'Antony' and I have therefore used this spelling in the banner heading above.
3. The Council has advised that, had it been in a position to determine the application prior to the submission of the appeal, it would have refused planning permission. I have had regard to the Council's indicated reasons for refusal which relate to the quality of the living accommodation and the need for mitigation to protect three Special Protection Areas.
4. At the time of my site visit the property was unoccupied but I observed that 7 rooms including the room annotated as 'Bedroom 7' on the submitted proposed floor plans have been furnished as bedrooms. Therefore, I have considered this appeal on the basis of an assumed occupancy of 7 people.

Application for costs

5. An application for costs was made by Mr Antony Lane against Portsmouth City Council. This application is the subject of a separate Decision.

¹ By email dated 5 February 2020

Main Issues

6. The main issues are:

- i) the effect of the development on the integrity of the Portsmouth Harbour, Chichester and Langstone Harbours and Solent & Southampton Water Special Protection Areas (the SPAs); and
- ii) whether the development provides adequate living conditions for its residents in respect of communal space and whether or not it represents an over intensive use of the property.

Reasons

The integrity of the SPAs

7. The mudflats, shingle and saltmarshes with the SPAs provide essential feeding and roosting grounds for an assemblage of internationally important numbers of water birds which together comprise the qualifying features of the SPAs. The conservation objectives for each of the SPAs are to ensure that the integrity of the site is maintained and restored in order to protect the habitats and the birds that depend on them.
8. Research undertaken during 2009-2013 predicted that new housing around the Solent would lead to more people visiting the coast for leisure, the majority from within 5.6 km straight line distance of the SPAs². This increased recreation has the potential to cause more disturbance to the birds, thus threatening their survival.
9. Furthermore, Natural England (NE) has identified that high levels of nitrogen and phosphorus, mostly from agricultural sources or wastewater from existing housing or other development, are being discharged to the water environment in the Solent³. These levels are causing eutrophication of the SPAs which impacts on their important bird species. NE considers that there is a likely significant effect on the SPAs due to the increase in wastewater from new developments coming forward.
10. The appeal property is within 5.6 km of the SPAs. There would therefore likely to be additional recreational activity and wastewater arising from an additional occupant. Whilst considered in isolation this change would be small, when considered in combination with other projects, it is likely to have a significant effect on the SPAs. It is therefore necessary for me, as the competent authority, to undertake an appropriate assessment (AA) and consider whether or not mitigation could reduce any adverse effects on the protected areas.
11. The Solent Recreation Mitigation Strategy (2017) (the SRMS) provides a strategic solution to ensure that the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) with regard to the in-combination effects of increased recreational pressure on the SPAs arising from new residential development are met through mitigation measures.

² Liley D & Tyldesley D (2013) Solent Disturbance & Mitigation Project Phase III Towards an Avoidance and Mitigation Strategy

³ Advice on Achieving Nutrient Neutrality for New Development in the Solent Region' (version 4) March 2020

12. The Strategic Access Management and Monitoring mitigation measures include a team of rangers to help coastal visitors and communities understand the importance of the different bird species and the impact of disturbance. The measures are funded by contributions from all new residential dwellings within 5.6 km of the SPAs. The SRMS also sets out that the creation of two new alternative greenspaces and enhancements to existing greenspaces are underway, funded by the Solent Local Growth Deal with complementary funding from the relevant local authority.
13. The evidence before me is that the appellant has made a payment towards mitigation of the recreational effect in accordance with the SRMS through an agreement under S.111 of the Local Government Act 1972. This payment meets the tests set out in paragraph 56 of the National Planning Policy Framework (the Framework). I am therefore satisfied that the appellant has provided for adequate mitigation for the likely effects of additional recreational pressure on the SPAs. I note that this is the conclusion of the Council's AA, as agreed by NE.
14. As regards nutrients, NE explains that one way to address the uncertainty over potential impacts is for new development to achieve nutrient neutrality. NE appreciates that it may be difficult for smaller developments to achieve nutrient neutrality and states that it is working together with a number of Councils to progress mitigation strategies that cover the Councils' areas and include more strategic options. NE suggests that these may include a scheme collecting financial contributions from developers.
15. The Council has published an Interim Nutrient Neutral Mitigation Strategy (2019) (INNMS). The INNMS sets out three possible mitigation options, including *"Purchasing of 'mitigation credit' from the control of, and water efficiency improvement works to, the Council's own property assets or other recognised source of 'credit' in perpetuity"*. The INNMS explains that the Council is currently able to accumulate 'mitigation credit' to help offset new development through water efficiency improvements to the Council's housing stock and by holding vacant Council assets due for redevelopment.
16. This mitigation option is to be funded through a proportionate contribution from developers as appropriate, collected and pooled through S106 agreements. For smaller development proposals that are seeking to utilise the mitigation credit, the Council will offer such credit in perpetuity for a £200 per unit administration and monitoring fee. The contribution will be secured through S106 planning obligations prior to occupation of the development, with planning permissions subject to a standard condition to require higher levels of water efficiency and to prevent occupation until such time as the 'Nutrient Neutral' mitigation credit has been funded through the S106 obligation.
17. The appellant has submitted a statement with the application confirming his agreement to the £200 payment and a S106 agreement in respect of mitigation for the additional wastewater discharge. Subject to this payment / agreement and a condition requiring mitigation to be in place prior to the first occupation of the additional bedroom, the development would not result in a net increase in the levels of nitrogen input to the water environment within the SPAs. I note that this is the conclusion of the Council's AA, as agreed by NE. However, as no agreement has been provided with the appeal, I cannot be confident that the necessary mitigation has been secured.

18. I have considered whether a condition were planning permission to be granted, such as that suggested by the Council, would be an appropriate means of securing the requisite contribution to mitigation measures. A footnote to the Council's suggested condition indicates that this contribution is usually secured through a legal agreement.
19. The Planning Practice Guidance advises that a negatively worded condition requiring the appellant to enter into a planning obligation is unlikely to be appropriate in the majority of cases⁴. Such a condition may be appropriate in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk, for example in the case of particularly complex development schemes. However, I have no evidence that this is applicable to this proposal. A condition requiring a planning obligation would therefore not be appropriate, in my view, in the circumstances of this appeal.
20. I therefore conclude that, without a suitable mechanism to secure appropriate mitigation for the effects arising from the occupation of the additional bedroom through wastewater discharge, the development would be likely to have an in-combination adverse effect on the integrity of the SPAs.
21. Accordingly, the development conflicts in this respect with the Habitats Regulations and Policy PCS13 of The Portsmouth Plan Portsmouth's Core Strategy (2012) (the Core Strategy). Policy PCS13 sets out that green infrastructure will be protected by, amongst other things, refusing developments that would have an adverse effect on a European site either alone or in combination with other plans and projects. Furthermore, paragraph 175 of the Framework sets out that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or, as a last resort, compensated for, planning permission should be refused. The proposal would also be contrary to the intentions of the Wildlife and Countryside Act 1981.

Living conditions

22. The Council's revised "Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities" Supplementary Planning Document (2019) (the SPD) sets out a standard of 34 m² for a combined living space for 6 or more persons. The communal combined living / kitchen / dining area in the appeal property, shown as approximately 27 m² on the submitted plans, is therefore significantly smaller than this standard.
23. However, I observed during my site visit that the communal area has seating for 7 persons in reasonable comfort with further seating for dining. Although access to the kitchen / dining area is through the living area and the former is of restricted width, the access is not impeded and there is sufficient room in the kitchen for people to pass. Whilst it would be very restricted if all 7 persons were to attempt to use it at the same time, this is unlikely and would also be the case for the existing 6 occupiers. The kitchen is of a high standard with fitted cupboards and appliances and the whole communal area is well lit by a box window to the side elevation and a large window in the rear elevation. A fully glazed door also provides access to the rear garden, which provides additional space in fine weather.

⁴ Paragraph 010 Reference ID: 21a-010-20190723 Revision date 23 07 2019

24. An additional person would not significantly reduce the quantum or quality of the communal space available. Therefore, having regard to the arrangement and standard of the communal area, in my view the shortfall against the standard in the SPD would not result in an inadequate standard of accommodation for 7 persons in this case.
25. Moreover, as regards the amount of floor space in the property as a whole, I observed that all the bedrooms are of reasonable size and exceed the minimum standard in the SPD. Whilst some of the floor area of Bedroom 6 on the top floor has a reduced floor to ceiling height due to the slope of the roof, it is nevertheless of a reasonable size with adequate useable space.
26. I conclude that the proposed development would not be harmful to the living conditions of the occupiers of the property with respect to the provision of the communal living area and would not represent an over intensive use of the property. Accordingly, I find no conflict with Policy PCS23 of the Core Strategy which, amongst other things, requires that new development provides a good standard of living environment for neighbouring and future occupiers. Whilst the communal area would not meet the standard in the SPD, this is guidance and I cannot give it the full weight of a development plan policy.
27. Furthermore, I do not find any conflict with paragraph 127 f) of the Framework, which requires development decisions to ensure that developments create places with a high standard of amenity for existing and future users.

Other Matters

28. I acknowledge that the appellant has an HMO Licence for the property for no more than 7 persons and I observed during my site visit that the accommodation is of high quality. There may also be a need for this type of accommodation in the area. However, these matters do not outweigh the conflict with the development plan, the Framework and the Habitats Regulations I have identified above.

Conclusion

29. Although I have found that the development would not result in inadequate living conditions for 7 persons, this is not sufficient to outweigh the likely significant effect on the integrity of designated habitats sites which would be adverse and for which there is no adequate mitigation before me, with consequent conflict with the development plan, the Framework and the Habitats Regulations.
30. Therefore, and having had regard to the other matters raised, the appeal is dismissed, and planning permission is refused.

Martin Small

INSPECTOR