



Appeal Decision

Site visit made on 6 October 2020

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6th November 2020

Appeal Ref: APP/Z1775/W/20/3244807

Land at Enterprise House, Isambard Brunel Road, PORTSMOUTH PO1 2AN

- 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 J Smitherman, Axis Associates Ltd. against the decision of Portsmouth City Council.
 - The application Ref 18/01339/FUL, dated 03 August 2018, was refused by notice dated 24/0/2019.
 - The development proposed is Construction of ten storey purpose-built student halls of residence, comprising 59 bedrooms in 25 cluster apartments and following reconfiguration of Enterprise House Surface Car Park and associated works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:

1. The effect of the proposed development on:

(a) the existing green infrastructure at the site resulting from the removal of a mature London Plane tree;

(b) the character and appearance of its surroundings with particular reference to its bulk, height and siting in relation to adjacent buildings and the street scene in general;

(c) the living conditions of its future occupants, and those of nearby buildings, with particular reference to light, outlook and sense of enclosure.

(d) the Solent Special Protection Areas (SPA)

2. Whether appropriate provision has been made for:

(a) affordable housing contributions;

(b) compliance with space standards

(c) open space contributions

S106 Agreement

3. Since the appeal was lodged, the appellants and the Council have submitted an agreement under s.106 of the Town and Country Planning Act 1990 (TCPA) as amended. If planning permission were to be granted, this agreement would limit the occupation of the building to students in full time education during the academic term, limiting any other residential use to a maximum of 2 months.
4. It also provides for the payment of sums¹ that would contribute towards mitigating the various impacts of the development on the Portsmouth Harbour and Chichester and Langstone Harbours SPAs, the Solent and Isle of Wight Lagoons Special Area of Conservation (SAC) and the Solent Marine Areas of Conservation.
5. Reason for refusal no. 4 of the planning application relating to affordable housing contributions, space standards and open space contributions is because there was no means of ensuring the accommodation could be secured primarily for student use at the time of issue. The s.106 agreement would provide for student use for the majority of the time and I consider that these matters have now been satisfactorily addressed.
6. Similarly, the s.106 agreement would now secure the sums sought by the Council to mitigate any harm to the SPAs and SACs which include the possible purchase of the Council's Nutrient Neutral Mitigation Credits. It also makes provision for the appellant to put forward alternative measures of mitigation should the Council hold insufficient Unreserved Nutrient Credits to enable it to mitigate the whole of the development through the appellants' monetary contribution.
7. I note the Council believes it cannot guarantee that credits will be available and there could therefore be some doubt about whether the scheme could go ahead even if granted permission. In addition, the Council would normally impose a condition requiring commencement within one year, should planning permission be granted, so that it could ensure the most efficient use is made of its credit scheme.
8. The Council was expecting to have sufficient credits for 12 – 14 months from February 2020 but this situation has changed since the onset of the Covid-19 pandemic, as it has not been possible to carry out water efficiency improvements in line with the planned programme on which the credits were based. Although the s.106 agreement does make provision for the appellants to put forward bespoke mitigation solutions for the Council's approval, should the credits not be available, the Council is concerned that, if it does not have sufficient credits, the appellants originally appeared to consider that alternative methods of providing mitigation would not be possible in this case.
9. Nevertheless, the appellants have suggested further measures that may be open to them should they not be able to purchase the credits and I consider that, together with the suggested condition, this would give sufficient confidence that suitable mitigation against the potential harm to the SPAs and SACs as cited in reason for refusal number 5 could be achieved through the

¹ Bird Aware Contribution and PCC Nutrient Neutrality Credit Contribution

terms of the s.106 agreement. If this proved not to be possible, any permission could not then be lawfully implemented.

Site and surroundings

10. The site for the proposed new block is within an area containing a group of existing buildings that include other student accommodation. It lies on an area used for car parking in front of Margaret Rule Halls and the wider site includes 6 London plane trees covered by a Tree Preservation Order (TPO).
11. The existing residential blocks in the vicinity vary in height, with the tallest being Greetham Street Halls at 25 storeys, then Enterprise House at 10 storeys and Margaret Rules Halls at 8 storeys. Planning permission has been granted for the addition of 2 further storeys to Enterprise House but has not yet been implemented.

Procedural matters

12. Since the application plans were first submitted, they have been revised and were submitted to the Council on 31 October 2018. The Council issued its refusal notice on 24 September 2019 with reference to the original drawings, but the appellants have requested that I consider the revised versions when determining this appeal.
13. I have examined the proposed changes carefully and conclude that they do not fundamentally alter the nature of the application; rather they fine tune it in a way that would not result in any significant departure from the original concept. The footprint, height and overall design of the building remains the same in both versions and the most notable alterations are in landscaping provision, window placement and internal layouts. These are intended to address the Council's concerns over living conditions within the new and existing adjacent blocks and to mitigate the loss of one of the protected plane trees.
14. I note that the Council considers that these plans do not address their concerns or indicate that the scheme should be granted planning permission and declined to base its decision on them. However, it has had an opportunity to comment on both sets of proposals and I am satisfied that to consider the revised versions would not cause any injustice.

Reasons

Protected tree

15. Both the original site plan and the revised version of the appeal drawings show the removal of one of the protected trees (T2). The appellants maintain that there is an extent permission for the removal of this tree, granted under a variation to the permission². for an additional 2 storeys on Enterprise House The original site plan for this permission showed the provision of 31 parking spaces but, in conjunction with the appeal application, a variation³ to the conditions attached to that approval was sought, in order to allow the construction of the new block.
16. The tree is shown as removed on the plan (16.2151.150 P17) that was approved through the VOC application but the Council notes that it falls within a 'greyed out' area on the plan which also shows the ground floor layout of the

² ref 17/00074/FUL

³ Ref: 18/01340/VOC (the variation of condition (VOC) application)

- new block. This plan shows 18 parking spaces in the area serving Enterprise House and 3 within the area around the proposed new block.
17. The Council also notes that there was no mention of the removal of the tree in the description of the proposed parking revisions and, indeed, it would not be required to facilitate the provision of the parking arrangements granted permission through the VOC application, other than for the 3 parking spaces in the 'greyed out' area.
 18. Condition 7 of the VOC states: *'Prior to the first occupation of any dwelling hereby permitted (or such other period as may be agreed in writing with the Local Planning Authority) parking facilities shall be provided in accordance with approved drawing 16-2151-150 P17; and (b) The approved parking provision shall thereafter be retained for the continued use by the occupiers of the development hereby permitted for the off-road parking of vehicles at all times.'*
 19. The appellants consider that to comply with this condition, all the parking spaces shown would have to be provided, including those numbered 19 – 21 on 16.2151.150 P17 in the 'greyed out' area, and that would necessitate the removal of tree T2. They also make the point that the 'red line' around the site is the same for both applications and submits that this means that the 'greyed out' area on the VOC application cannot be excluded from the need to comply with condition 7.
 20. However, even though the appellants claim that this is a 'fall back' position that would allow them to fell the tree in any event, I do not agree. For a 'fall back' position to be valid, there has to be a genuine likelihood of it being implemented in the event that the planning permission sought was refused, in this case permission for the new block. The conditions varied all relate to the parking layout and refuse storage for planning permission 17/00074/FUL, which have been modified only to allow the new block to be constructed.
 21. If the 2 new stories were to be added to Enterprise House in accordance with 17/00074/FUL without any permission being in place for the proposed new block, there would be no need to implement the VOC permission. Therefore, the only reason for the removal of the tree would be the construction of the new block and, without that justification, there seems to me to be little likelihood of the car park reconfiguration taking place.
 22. In any event, what is actually proposed and authorised by a planning permission must be able to be readily construed from the approved documentation and there is nothing that I have been referred to that suggests that the ground floor of the block and the consequent removal of a protected tree has been, or could be, sought through the VOC application.
 23. Such an application, made under s.73 of the Town and Country Planning Act 1990 can only vary a condition attached to a permission and cannot change the original development applied for. The removal of the protected tree was not originally proposed and there was no request to consider anything other than the acceptability of a reduced number of spaces associated with the enlarged Enterprise House. It could not, under any sensible conclusion, be taken to have authorised the construction of the ground floor of the new block. Therefore, it cannot be the case that everything on the approved revised plan

- has been granted permission and I conclude that development within the 'greyed out' area should be considered as indicative only.
24. Similarly, the Council has made clear that it does not consider that the 3 parking spaces in the 'greyed out' area are to be provided as part of the permission for the additional stories on Enterprise House and it would not, therefore, be likely to interpret the VOC permission in that way or be concerned if the appellants did not provide them if the extra stories were added without the new block being constructed.
 25. Consequently, I do not accept that there is a valid fall back position that would allow the felling of the protected tree in any event and the loss of the tree will be a factor that weighs against the proposal.
 26. In the revised proposals, a replacement tree (an ornamental pear) has been shown set within the car park. Further mitigation measures are proposed in the form of a 'green' or 'brown' roof on the single storey section to the south of the building, a green 'living' wall on one elevation of the proposed new block at ground floor level only and an area of planting adjacent to Dugald Drummond Street, which runs between the proposed new block and the railway line to the north. The appellants have also noted that the Council's Tree Officer withdrew his concerns over the possible long term effects of the development on the root system of one of the other trees on the site.
 27. It seems to me that the existing trees make a small, but very important, contribution to the green infrastructure in this part of the city centre. Whilst individually the trees may not be of any special merit, the line of them along the roadside brings a welcome relief from the substantial amount of hard surfacing and built development that dominate the area around the appeal site. The loss of T2 would break the existing line of trees and I consider that a replacement tree of a different species in the car park would not compensate for that loss.
 28. I note that the revised drawings also show a small triangular area for planting that would provide some relief, but this area would only be about 5m by 2m at its maximum so could not be considered as a significant level of green space. The 'green wall' that is intended as part of the mitigation for the loss of the plane tree would be on the west elevation, partly under the first floor overhang. As such, it would face the car park and not contribute to the impact of the main façade, from where the protected tree would be lost. The 'brown roof' would only be seen from upper stories and, whilst it could have some environmental benefit, it would not lessen the impact of the removal of the tree on the street scene.
 29. Consequently, I find that the removal of the tree would conflict with policy PCS13 of the adopted Portsmouth Plan Core Strategy 2012 which seeks to protect and enhance the integrity of the green infrastructure in the city and the proposed mitigation would not be enough to justify the harm caused.

Character and appearance

30. The Officer's report to Committee makes clear that there is no objection in principle to a building of this height in this part of the city, or to another student block in this location. The site is surrounded by buildings of similar or greater height, but the Council's main concerns relating to the impact on the

character and appearance of the surroundings are that the building would appear bulky and cramped on the site and that its overall design is not of a high enough standard, particularly in its relationship to the street scene.

31. At street level, the main entrance to the new block would be set back behind the columns supporting the projecting first floor. At ground floor, this entrance elevation would contain a glazed section containing the entrance door and giving views into the lobby. This would be flanked by brick walls on either side, one of which would contain a door to a cycle store. Additionally, in order to access the main door, pedestrians would have to cross a hard-surfaced parking area that would directly abut the road, as there is no pavement at this point.
32. There would be little articulation or interest to this elevation which, I consider would not present a particularly inviting or welcoming façade to the street scene. Combined with the loss of the tree noted above, for these reasons I consider that there would be little positive contribution made by the building to the street scene.
33. The appellants have cited examples of relationships between existing buildings that would be similar to those between the new block and the buildings closest to it. The nearest is Margaret Rule Halls where the separation at the closest would be under 8m. The plans show that there would be bedroom and common room windows in the existing building looking out onto the new block and, to ensure there would be no unacceptable inter-visibility between the blocks, the windows in the south elevation of the new block are limited. There would be a glazed stairwell but otherwise this view of the block would, to my mind, be somewhat featureless and forbidding when seen from the existing building.
34. It also seems to me that the building would be perceived as an afterthought in this location as there would be no meaningful relationship with its surroundings. Where one might possibly have expected to see some form of continuation of Margaret Rule Halls to close off the parking courtyard, there would be a block somewhat arbitrarily positioned very close to its neighbours. I consider the relationship between the blocks would appear cramped and uncomfortable and increase the sense of dominance in the street scene.
35. The building would be seen in the context of at least 3 other blocks of different styles, to which it would bear little relation. This might not matter if the new building were to display some form of special architectural quality that clearly distinguished it from the others but, to my mind, it would not. It would be just another rather bland and uninspiring tall block, squeezed in amongst others of the same kind, thereby having a negative rather than positive impact on the street scene.
36. The surrounding buildings are not of any particularly special design quality, but this does not mean that an opportunity to raise the general standard of the area should not be sought. I note that the appellants consider that the proposed building would utilise good quality materials and this may be so, but this is unlikely to be appreciated from a distance or when approaching the entrance under the overhang. The building would, no doubt, appear functional in design terms, but it would also be rather dull, whereas Portsmouth Plan policy PCS23 requires excellent architectural quality, delight and innovation and I see little of those qualities in the proposal.

37. Therefore, I consider that the design of the building would not meet the requirements of policy PCS23, or of policy PCS4, which relates to development in the city centre, and calls for new buildings here to be of exceptional quality.

Living Conditions

38. The appellants have produced a Sunlight and Daylight Study which concludes that only a minority of rooms in the neighbouring building at Margaret Rule Halls would have levels of daylight and sunlight below the recommended standard following the construction of the new block. They consider this should not hinder the grant of planning permission, arguing that the standards required for student accommodation should be relaxed as the occupants use their rooms in a different way to the occupants of other residential dwellings.
39. This may have been true in the past, but current experience from the Covid-19 pandemic has shown that students may be forced to live and learn in different ways in future. Virtual tuition now takes place and students in some universities have had to isolate within their halls of residence for long periods.
40. Hopefully this will not be the case in the future, but it nonetheless illustrates that it would be unwise to assume that students would only use their rooms for sleeping and that the outlook would therefore be of less importance than in standard housing. I therefore give significant weight to the need to ensure that the existing and proposed accommodation would not fall below the recommended standards.
41. Turning to the living conditions in the new block, the revised drawings have addressed some of the concerns raised in respect of the south facing windows on the upper floors. These have now been relocated to the east elevation where they look out towards the Greesham Street Halls, with a minimum separation of about 12.3m between windows. This is certainly an improvement on the original proposal, but the windows to the bedrooms on this side of the new building would still look out onto a 25 storey block some 12 - 13m away and I consider this would cause these already small rooms to feel unacceptably claustrophobic.
42. I note that this relationship may be similar to other blocks in the vicinity, but I have no details of when these were granted planning permission or the policy regime in place when this happened. I have therefore considered this scheme on its own merits and against the current Development Plan policies and conclude that there would be a degree of conflict with policy PCS23 where it requires the protection of amenity and a good standard of living environment for the occupiers of new and existing buildings.

Other Matters

43. There would be some very limited inter-visibility between the appeal site and the grade II listed Portsmouth and Southsea mainline station off Commercial Road. However, the new block would be seen in the context of the much more prominent Greesham Street blocks and I am satisfied that it would have no additional impact on the setting of the listed building.

Conclusions

44. I have found that the appeal scheme would be in conflict with the development Plan in respect of the loss of the protected tree, through a failure to

demonstrate an acceptable design quality which, in turn, would result in a negative impact on the character and appearance of the surroundings and because it would not provide an acceptable standard of amenity for some of the existing and future occupants.

45. The appellants consider that the block would improve the appearance of this area of the car park and, as previously noted, there is agreement that there is no 'in principle' objection to development on this site. While I have not been given any firm evidence of a pressing need for such accommodation, I give some weight to the fact that the block would be likely to be useful in meeting the requirements for student housing in Portsmouth.
46. However, even though the s.106 would remove reasons for refusal 4 and 5 from the original decision and the harm caused by some of the individual remaining reasons for refusal might not, alone, be sufficient to refuse permission for the proposal, I consider that the combined impact would not be outweighed by any benefits of the scheme. On balance, therefore, I conclude that planning permission for it should not be granted and for the reasons given above I conclude that the appeal should be dismissed.

Katie Peerless

Inspector