



Appeal Decision

Site Visit made on 10 November 2020

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th November 2020

Appeal Ref: APP/Z1775/W/20/3253423

Land adjacent to 4 Ashby Place, Southsea, PO5 3NA

- 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 C Marodeen against the decision of Portsmouth City Council.
 - The application Ref 19/00952/FUL, dated 18 June 2019, was refused by notice dated 19 December 2019.
 - The development proposed is erection of a 1.5/2-storey one-bedroomed dwelling (Re-submission of application 18/00570/FUL).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the determination of the application, the appellant has made an uplift payment for mitigation of the likely recreational effects associated with the occupation of the proposed dwelling on the Portsmouth Harbour Special Protection Area (SPA). The Council has confirmed that this has addressed its third reason for the refusal of the application. I return to this matter below.

Main Issues

3. The main issues are the effect of the proposed development on:
 - i) the character and appearance of the area, with particular regard to the location of the appeal site within Conservation Area number 2: Owens Southsea; and
 - ii) the living conditions of the occupiers of No 68 Osborne Road (No 68), with particular regard to the rear yard of that property.

Reasons

Character and appearance

4. Ashby Place is located behind the main commercial streets of Osborne Road and Palmerston Road in Southsea town centre. It provides access to a public car park, a number of dwellings, a hotel / restaurant and the rear of commercial properties. The dwellings vary in age and design, including No 4 Ashby Place (No 4), one of a pair of 3-storey dwellings with the top floor within a mansard roof. These dwellings are mainly on the west side of Ashby Place, although a pair of 2-storey dwellings are located opposite the appeal site. The dwellings are predominantly directly adjacent to the footway with gardens or yards to the rear.

5. The dwellings, the hotel / restaurant and other properties to the south of Ashby Place lie within Conservation Area number 2: Owens Southsea (the Area). Although the appellant queries the justification for their inclusion in the Area, it is not for me in determining this appeal to consider whether or not the site should be in the Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires me to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area. Paragraph 184 of the National Planning Policy Framework (the Framework) sets out that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance.
6. The Area is extensive, encompassing terraces and villas around the Southsea shopping centre developed from the 1830s by Thomas Ellis Owen and others. The significance of the Area lies in its development as a 'villa suburb' and the way it is laid out to combine high density and picturesque effect. The general distinctive character of the Area derives from its combination of buildings, walls, trees, shrubs and road layout, although the character of the area south of Osborne Road is quite distinct from that of other parts of the Area with more rigid lines and fewer trees.
7. The appeal site lies between the side elevation of No 4 and the rear single-storey element of No 70 Osborne Road, a butcher's shop. It is currently undeveloped with No 4 to the south and high walls, gates and fences to the other sides. The site forms a break in the built frontage between the commercial development on Osborne Road and the residential development on Ashby Place.
8. Although views beyond this gap are restricted by a large building to the rear of No 68 Osborne Road (No 68), trees in the rear gardens / yards of properties on Osborne Road and Netley Terrace to the south are visible. These, together with the openness of the site, provide relief from the dense built development. The site therefore currently makes a positive, albeit minor, contribution to the character and the appearance of Ashby Place and the Area.
9. The proposal follows the refusal of permission for a 2-storey dwelling on the appeal site in 2018. The proposed dwelling before me would differ in design to the previous proposal, being part 1.5-storey. It would also be of a different design to No 4 but would be acceptable in its own right, given the variety of design of the dwellings in Ashby Place. It would not be prominent in views along the west side of Ashby Place. In its appearance, therefore, the dwelling would not be harmfully incongruous in the street scene.
10. However, the proposal would result in the complete development of the appeal site, substantially filling the gap between No 4 and No 70, and it would be visible when passing and from elsewhere in Ashby Place. The loss of this gap would be harmful to the street scene. Furthermore, the lack of any space between the dwelling and the site's boundaries would result in a cramped form of development at odds with the prevailing pattern of residential development in Ashby Place. In these respects, the proposal differs from the two dwellings opposite, which have rear gardens.
11. I therefore conclude that the proposal would be harmful to the character and appearance of Ashby Place and so would fail to preserve or enhance the character or appearance of the Area. Accordingly, in this respect, the proposal would conflict with Policy PCS23 of The Portsmouth Plan Portsmouth's Core

Strategy (2012) (the Core Strategy). This sets out that all new development should be well-designed with regard to, amongst other things, scale and layout, and respect the character and protect the historic assets of the city, including conservation areas.

12. Although the Core Strategy pre-dates the Framework, Policy PCS23 is consistent with the policies of the Framework relating to design and the protection of heritage assets and therefore the conflict between the proposal and Policy PCS23 attracts significant weight in this appeal.

Heritage balance

13. I consider the harm to the Area to be less than substantial. It is thus necessary to weigh this harm against the public benefits of the proposal in accordance with paragraph 196 of the Framework.
14. An additional dwelling would have limited social and economic benefits. The principle of the development is acceptable in accordance with Policies PCS10 and PCS21 of the Core Strategy. However, the proposal would make little difference to the overall supply of housing and the support one extra household would provide to the local economy would not be significant.
15. These benefits are therefore not sufficient to outweigh the great weight paragraph 193 of the Framework requires to be given to the conservation of heritage assets. The proposal would thus also conflict with paragraph 184 and, in the absence of any clear and convincing justification for the harm to the Area, paragraph 194 of the Framework.

Living conditions

16. The proposal would be built up to the boundary with No 68 and would result in a high blank elevation extending the full length of the plot adjacent to the rear yard of No 68. Due to restrictions relating to the Covid-19 pandemic, I have been unable to visit the rear yard of No 68 although I note the appellant's description of it as 'unkempt and unused'. From the evidence before me No 68 is in use as a public house and I have no evidence that it includes any living accommodation for which the yard provides outdoor space. Any use of the yard in association with the commercial use of No 68 is likely to only be for short periods of time.
17. It has therefore not been demonstrated that the proposed development would adversely affect the living conditions of any occupiers of No 68. Accordingly, in this respect, I find no conflict between the proposal and Policy PCS23 of the Core Strategy which seeks to protect amenity and the living environment of neighbouring occupiers. I also find no conflict with paragraph 127 f) of the Framework which requires planning decisions to ensure that developments create places with a high standard of amenity for existing and future users.

Other Matters

The Portsmouth Harbour SPA

18. The appeal site is within 5.6 km of the Portsmouth Harbour SPA which, together with the Chichester and Langstone Harbours SPA and the Solent and Southampton Water SPA form the Solent SPAs (the SPAs). The mudflats, shingle and saltmarshes within 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 the SPAs are, in summary, to ensure that the integrity of the sites is maintained or restored as appropriate, and to ensure that the sites contribute to achieving the aims of the Wild Birds Directive.

19. Increased recreation by the occupiers of new housing around the Solent has the potential to cause more disturbance to the birds, thus threatening their survival and the achievement of the conservation objectives for the SPAs. Moreover, Natural England (NE) has identified that high levels of nitrogen and phosphorus, mostly from agricultural sources or wastewater from housing or other development, are being discharged to the water environment in the Solent¹. 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 developments coming forward.
20. The proposal would result in additional residents, with consequent likely additional recreational activity and wastewater. When considered in combination with other projects, the proposal is likely to have a significant effect on the SPAs. The Conservation of Habitats and Species Regulations 2017 (as amended) require the decision maker to undertake an appropriate assessment (AA) before giving any permission where there are likely significant effects on the integrity of designated habitats sites from the proposal, either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal. I return to this matter below.

Netley Terrace

21. Netley Terrace lies to the south-west of the appeal site and comprises 11 dwellings dating from 1859-60 and listed as Grade II. The rear of the terrace can be seen from Ashby Place across the appeal site and so the site is within the setting of the terrace. The significance of the terrace is derived from its architectural and historic interest. The principal elevation of the terrace, with an elegant canopy and small flat-roofed dormers, faces south, away from the appeal site. The rear elevation of the terrace can only be glimpsed from Ashby Place and I have no evidence of any historical connections between the appeal site and the terrace. I therefore consider that the site currently makes a neutral contribution to the significance of Netley Terrace and the appreciation of that significance.
22. The proposed development would result in the loss of that glimpsed view and would just be visible at an oblique angle from Netley Place at the eastern end of the terrace. However, it would not obscure views of or otherwise affect the principal elevation of the terrace. I am therefore satisfied that, although the proposal would result in a change to the setting of the terrace, it would not adversely affect the significance of the listed building or the ability to appreciate its significance. The proposal would have a neutral effect on that significance and, consequently, it would preserve the setting of Netley Terrace.

¹ Advice on Achieving Nutrient Neutrality for New Development in the Solent Region' (version 5) June 2020

Third parties

23. The lack of any objection to the proposal from consultees or third parties is not a planning benefit of the scheme and therefore attracts neutral weight in my decision.

Planning Balance

24. The Council is unable to demonstrate a 5-year supply of deliverable housing land, with a slight shortfall. Consequently, because of footnote 7, paragraph 11 d) of the Framework is engaged. I have found above that it has not been demonstrated that the proposal would be harmful to the living conditions of any occupiers of No 68. However, in accordance with paragraph 11 d) i and footnote 6, the application of the policies in the Framework that relate to designated heritage assets provides a clear reason for refusing the development proposed, and so the presumption in favour of sustainable development does not apply.
25. Had the proposal been acceptable in all other respects, it would have been necessary for me to undertake an AA and give further consideration to the likely effectiveness of mitigation measures. In doing so, I would have had regard to the appellant's payments towards the mitigation measures for the recreational and nutrient discharge impacts of the proposal in accordance with the Solent Recreation Mitigation Strategy (2017) and the Council's Interim Nutrient Neutral Mitigation Strategy (2019). I would also have had regard to the uncertain availability of nutrient mitigation credits. However, as I am dismissing this appeal for another reason, this has not been necessary.

Conclusion

26. The proposal would conflict with the provisions of the development plan taken as a whole and there are no other considerations, including the provisions of the Framework, to outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

Martin Small

INSPECTOR