
Appeal Decision

Site visit made on 9 November 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal Ref: APP/L3815/W/20/3255355
23 Lavant Road, Chichester PO19 5RA

- 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 77 Property Ltd against the decision of Chichester District Council.
 - The application Ref CC/19/03008/FUL, dated 6 December 2019, was refused by notice dated 29 May 2020.
 - The development proposed is redevelopment of the site with an apartment building comprising 4 no. 3-bed and 1 no. 2-bed flats, parking, landscaping and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. At the appeal stage the appellant submitted a bat survey report, dated August 2020. The Council were given an opportunity to comment on the findings of the report and have advised that it no longer wishes to defend the second reason for refusal in respect of the effect of the proposal on the protected species. This is because the Council's Environment Officer has reviewed the bat survey report noting that although there are day roosts of bats which would be destroyed by the demolition of the building, the Council is satisfied that the proposed mitigation measures would be suitable and could be secured by condition. I see no reason to disagree and so I have not considered this matter further.
3. In regard to the Council's third reason for refusal, in response to my request, the Council has provided its Habitat Regulation Assessment (HRA) Screening Matrix and Appropriate Assessment Statement which sets out its assessment of whether there could be any potential significant impact of the proposed development on the Chichester and Langstone Harbours Special Protection Area in terms of recreational disturbance and additional nutrient input. The appellant has been given an opportunity to comment on the Council's Statement.

Main Issues

4. Therefore, in light of the above, the main issues are the effect of the proposal on (i) the integrity of the Special Protection Area; and (ii) the character and appearance of the area.

Reasons

Special Protection Area

5. The Council's third reason for refusal solely relates to the impact of treated effluent (nutrients) from the proposed development on the Special Protection Area (SPA). In terms of the impact of recreational disturbance on the SPA, the Council's appeal statement confirms that it has accepted a financial contribution toward putting in place a scheme of access management measures and states that it has received a unilateral undertaking and payment. However, no planning obligation was submitted with the appeal to secure the necessary mitigation.
6. In respect of the impact of treated effluent, the proposal comprises new residential development with additional occupiers which would result in additional wastewater. The development would connect to the Apuldrum Wastewater Treatment Works and so treated effluent would eventually discharge into the SPA, a European designated site.
7. Natural England (NE) advise that there are high levels of nitrogen and phosphorus input to the water environment with sound evidence that these nutrients (particularly nitrogen) are causing eutrophication at internationally designated sites in the Solent. These nutrient inputs, in part, come from wastewater from existing housing and other development. NE advise that the increased wastewater generated by new residential development, in combination with other development is likely to have significant effects on the protected habitats and bird species of the European designated site.
8. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) requires the decision maker to undertake Appropriate Assessment where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. Moreover, to only give consent after having ascertained that there are no adverse effects on the integrity of the European site.
9. It is common ground between the main parties that there is a pathway for effect on the protected habitats and bird species of the designated European site and that significant adverse effects are likely. Indeed, the appellant refers to the Council's calculation of the nutrient budget generated from the development that requires mitigation to achieve nutrient neutrality. Moreover, at a late stage in the appeal process the appellant submitted a 'Nutrient Neutrality Report', dated 16 November 2020, which confirms that there would be a surplus of nitrogen from the proposed development for which mitigation would be required.
10. Therefore, based on the information before me, which includes the Council's Appropriate Assessment and the appellant's 'Nutrient Neutrality Report' there is no doubt that there is a need for mitigation to ensure that the integrity of the SPA is safeguarded, both in terms of recreational disturbance and additional nutrient input.
11. In terms of achieving nutrient neutrality the Council indicate that its approach is to secure mitigation 'indirectly' by permanently converting agricultural land (with higher nitrogen loading) elsewhere within the catchment area to alternative uses with lower nitrogen loading. However, I have not been

- presented with a strategy or any other information about how the Council could secure such mitigation.
12. The appellant has provided details of a parcel of land within the catchment which is currently used for cereal production but could be planted with trees in order to achieve nutrient neutrality. The appellant says that the use of the parcel of land as mitigation has been agreed with the landowner. However, I have not been presented with any compelling evidence to demonstrate that the landowner has agreed to its use in perpetuity.
 13. The appellant suggests that a suitably worded 'Grampian' negative planning condition could be imposed to deliver a mitigation package as set out within the 'Nutrient Neutrality Report'. Even if I were to consult NE and they were to confirm the acceptability of the proposed nutrient neutrality mitigation package, there is no mechanism before me to secure the necessary mitigation measures which could address likely significant adverse effects. Indeed, the 'Nutrient Neutrality Report' states "*A legally binding agreement between the landowner and applicant will be provided as the basis of an S106 agreement provided the identified area of land is deemed acceptable mitigation*".
 14. The Planning Practice Guidance¹ (PPG) advises that a negatively worded condition limiting development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. There is no legally binding agreement before me. As such and given the failure of the appeal proposal in this regard, allowing it would be contrary to the Habitats Regulations and the precautionary principle embedded within the Habitats Directive; based on the information before me I cannot be certain that there would be no adverse effect on the integrity of the designated European site.
 15. Although the PPG advises that a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk, this would only apply in exceptional circumstances. For example, this may apply in the case of a particularly complex scheme, which I do not consider the appeal proposal to be.
 16. For the reasons outlined above, the proposed development would be likely to have adverse effects on the integrity of the SPA, either alone or in combination with other plans and projects, due to the identified impacts and the lack of appropriately secured mitigation in relation to both recreational disturbance and nutrients.
 17. Thus, the proposal would not accord with Policy 50 of the Chichester Local Plan: Key Policies (2014-2029) (LP) which includes that development should not adversely affect the integrity of the SPA. It would also be contrary to advice in paragraphs 170(a) and (d) and 175(a) of the National Planning Policy Framework (the Framework), which indicate that development should protect sites of biodiversity value, minimise impacts and be adequately mitigated.

¹ Paragraph: 010 Reference ID: 21a-010-20190723

18. Furthermore, in so far as it is a material consideration in the determination of this appeal, the proposal would also not comply with criteria 12 of the Council's Interim Position Statement for Housing Development (June 2020), which requires development proposals for new housing to demonstrate how they achieve nitrate neutrality in accordance with NE's latest guidance.

Character and appearance

19. The appeal site is located in a mainly residential area on the western side of Lavant Road and is occupied by a large two storey detached dwelling set back from the road. To the north and west of the site there are substantial detached properties and to the south there is a new large apartment building on the corner of Lavant Road and Plainwood Close. There are also other apartment buildings in proximity to the site. Buildings are broadly in line along this part of Lavant Road and are generally set back from the road within spacious plots. The proposed apartment building would be located roughly in the same position as the existing dwelling, albeit on a larger footprint, and so its siting would be in keeping with the prevailing pattern of development along this side of Lavant Road.
20. Unlike an earlier proposal, dismissed at appeal², for a terrace of townhouses stretching across almost the entire width of the site, the proposed development would be set away from the northern and southern boundaries by distances comparable with the surrounding properties. The depth of the proposed apartment building would be greater than that of the existing dwelling. Consequently, in combination with its width, the resultant size of the footprint of the development would be greater than most other properties in the area, except for some on corner plots including the new apartment building to the south of the appeal site.
21. However, the height of the apartment building would be comparable to the height of neighbouring properties. Furthermore, although the building would incorporate an area of crown roof, it would have one gable to the front and the front, side and rear roofs would be hipped, thus the roof form would be similar to most other buildings in the area. The design of the building would be traditional with Arts and Crafts features, which would complement the built form of some properties in the area. In terms of appearance the materials palette would be reflective of the local vernacular and so the building would suitably integrate within the context of neighbouring development. It would also have a single front door akin to most other buildings in the area.
22. Thus, whilst the proposal would result in a building with increased bulk and massing compared to the existing dwelling on the site, taking into account the aforementioned factors, it would not result in a development that would appear dissimilar in its form and scale to that of a substantial detached dwelling. The proposed development would not, therefore, appear out of place within the context of the prevailing form of existing development in the area, nor would it appear cramped considering the spaciousness of the plot and the space that would remain between the proposed apartment building and the neighbouring properties.
23. Property frontages along this part of Lavant Road are characterised by mature trees, hedgerows and other foliage. In this regard the appeal site, by virtue of

² Reference: W/4000115

- the trees, some of which are protected, and existing tall mature hedging along its frontage, positively contributes to the verdant character of the area.
24. There would be nine parking spaces positioned in front of the apartment building and the existing off-centre access point off Lavant Road would be retained. Taking into account that most of the existing landscaping along the site frontage would be retained and the position of the access, the majority of the parking spaces would not be readily visible in the street-scene. Indeed, the landscaping to the front of the site would soften the appearance of the development, even with the proposed front gates in the open position. Moreover, having regard to their position within the site and the proposed landscaping the bin and bike storage would also not be readily visible.
25. For the reasons outlined above, the scale, form and design of the proposed development would be sympathetic to the prevailing residential built form and verdant character of the surrounding area. Thus, it would not cause harm to the character and appearance of the area.
26. The proposal would, therefore, accord with the design aims of Policies 1, 2, 33 and 47 of the LP which, amongst other things, require new residential development to meet the highest standards of design and be in keeping with the character of the surrounding area and its setting in the landscape. In this respect the proposed development would also accord with chapter 12 of the Framework.

Planning Balance and Conclusion

27. There is no dispute between the main parties that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. The Council's appeal statement indicates that it can only demonstrate a 4.3 year supply of housing land.
28. In terms of decision-taking, paragraph 11 of the Framework indicates that applications for planning permission should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or if specific policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusal.
29. The proposal would seek to boost the supply of housing in the context that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. However, the proposal is for a net increase of only four new dwellings. Consequently, the modest contribution that the proposal would make in housing supply terms is a matter that weighs in its favour to only a limited degree.
30. As outlined above, in the absence of any appropriate secured mitigation for likely significant adverse effects on the integrity of the SPA, paragraph 175(a) of the Framework provides a clear reason for refusal. Furthermore, given the consequent adverse effect on the integrity of the habitats site, paragraph 177 of the Framework indicates that the presumption in favour of sustainable development does not apply. As such the 'tilted balance', and advice to grant planning permission set out in paragraph 11 of the Framework also does not apply.
31. While I find no conflict with policy in relation to character and appearance, I have found that the proposal would conflict with local plan and Framework

policies that seek to protect the integrity of the SPA. This is a matter of overriding concern and I afford significant weight to it in my decision.

32. In conclusion, I find that the benefit afforded by the provision of four new dwellings would not outweigh the conflict that I have found with policies in the development plan and the Framework that seek to protect the integrity of the SPA. Consequently, for the reasons outlined above, the appeal is dismissed.

Andrew Bremford

INSPECTOR