



Appeal Decision

Site Visit made on 27 October 2020

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 30th November 2020

Appeal Ref: APP/Z1775/W/20/3248374

Fontenoy House, Grand Parade, Portsmouth PO1 2NF

- 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 and Mrs Jason and Kate Phillips against the decision of Portsmouth City Council.
 - The application Ref 18/01634/FUL, dated 29 September 2018, was refused by notice dated 12 September 2019.
 - The development proposed is construction of additional two stories to form one dwellinghouse (Class C3); extension to existing external fire escape; and alterations to existing building to include installation of replacement windows, juliet balconies, new brickwork and raising of parapet walls.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the proposal relates to the setting of a number of listed buildings and is in a Conservation Area, I have had special regard to Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).
3. In this regard, although the Council refused the application because of the effects on the setting of Square Tower and associated Kings Bastion alone, I am required to consider the effect on the settings of the other listed buildings and scheduled monuments in the near vicinity.

Main Issues

4. The main issues are the effects on:
 - the settings of various listed buildings and scheduled monuments;
 - the Old Portsmouth Conservation Area (No 4);
 - the living conditions of the proposed occupiers/the continued operation of the adjoining The Wellington public house; and
 - habitats sites.

Reasons

5. The appeal site lies on the corner of High Street and Grand Parade which forms part of an 'island' of built development made up from a number of buildings of varying heights, ages and styles. Most appear to be in residential use although there is The Wellington public house within the island immediately adjacent to

the appeal building on High Street. Grand Parade to the north and east of the island provides a semi-formal cobbled square which is used for parking.

6. The appeal building is of three stories, flat roofed and brick clad, built in the mid-twentieth century following bomb damage from the Second World War. The window frames are made from uPVC and there is a set of folding vehicle doors providing access to Grand Parade as well as personnel doors on both elevations. It has a parapet with chimneys that protrude above this level. The building is used as a block of flats.
7. The proposal is to construct a two-storey extension to provide an additional dwelling. This would be in the form of mansard roof set back from the existing façade, although the upper storey would be more rectilinear in form. This would be constructed of zinc and glass with a frameless glass balustrade around the upper storey.
8. In addition, it is proposed to undertake various works to the existing building. In simple terms these would be the addition of a dark grey render to the ground floor, brick slips applied to the first and second floors, zinc canopies over the existing doors facing Grand Parade, replacement of the window frames, some in larger openings with Juliette balconies, the extension of existing balconies at the rear, and works to the yard at the rear.

Settings of listed buildings and scheduled monuments

9. The National Planning Policy Framework (the Framework) defines the significance of a heritage asset as the value of a heritage asset to this and future generations because of its heritage interest. The national Planning Practice Guidance (the PPG) also notes¹ that 'significance' derives not only from a heritage asset's physical presence, but also from its setting.
10. The appeal site is within the setting of a number of listed buildings and scheduled monuments; these are all designated heritage assets². These include to the south Square Tower, a Grade I listed building and part of the larger Point Battery including King Edward's Tower and Square Tower scheduled monument (I will refer to this as "Point Battery"). To the east is Long Curtain, King's Bastion and Spur Redoubt (again, as "Long Curtain"), which is also a scheduled monument and Grade I listed building. Insofar as its material to this appeal Point Battery, Square Tower and Long Curtain have both historic and architectural significance from their forming part of the fortifications of Portsmouth Harbour, and from their association with a number of historic figures, including Lord Nelson, whose monument, a Grade II listed building in its own right, lies on a plinth within Grand Parade between the buildings island and Long Curtain. The massive and solid form of Square Tower in particular provides a literal bulwark in the street scene along High Street when viewed from the north.
11. In relation to the setting of Square Tower and Port Battery the island of buildings is seen as a subservient feature. Although some small elements are taller, this island is generally three or four stories in height, with those buildings closest to Square Tower predominantly at three storeys, with small

¹ Reference ID: 18a-006-20190723

² Appendix 3 to the Old Portsmouth Conservation Area No 4 'Guidelines for Conservation' provides a list of these listed buildings, ancient monuments and buildings on the Local List of Buildings of Architectural or Historic Importance.

pitched roofs, and where taller with small, subservient dormers. This is important in the relationship between the listed buildings and scheduled monument and the buildings on the island when these are viewed as part of the overall view along High Street. Here Square Tower acts as a focal point at the end of the view and currently the island is subservient in this view. This is also the case in travelling eastwards along Broad Street where the smaller built form of the island buildings ensures that the hierarchy with the massive Square Tower is easily appreciated. Thus, part of the setting of Square Tower and Port Battery is the subservience of the island of buildings.

12. On the north side of Grand Parade on the corner is 59 and 60 High Street, a Grade II listed building. This dates from the late eighteenth century, although altered in the nineteenth and twentieth centuries. This has three stories and a mansard attic, although it also has a small fifth storey set back from the mansard elevation. Insofar as is material to this appeal the significance of this building relates to its architectural form and its corner function between Grand Parade and High Street. In front of 60 High Street in Grand Parade is a K6 telephone box, listed in its own right at Grade II, the significance of which relates to its architectural design and function.
13. Further to the east on the north side of Grand Parade are a series of Grade II listed buildings. Aquitane House (No 2) dates from the mid-nineteenth century and is a stuccoed four storey building whose significance for the purposes of this appeal relates to its relationship to Grand Parade. To the east of this are four individual Grade II listed buildings, Nos 3, 4, 5 and 6 Grand Parade, although these are also included for their group value. These buildings date from different parts of the nineteenth century and are generally three storeys in height although with an attic to No 3. Insofar as is material to this appeal their significance relates to their effect on the overall composition of Grand Parade as a semi-formal square.
14. A short distance to the north-east is the Grade I listed St Thomas of Canterbury Cathedral (Portsmouth Cathedral), and a number of other Grade II listed buildings in the southern end of the High Street. The significance of these buildings as they relate to the matters in this appeal relate to their architectural interest and the intervisibility between them, particularly the Cathedral which is set in an open grassed close. In this area the Cathedral is the tallest building and the tower provides a landmark and focal point above the other buildings in the area. To the east is the Royal Garrison Church which is also a Grade II listed building, and this is preserved to include evidence of bomb damage; the significance here for this appeal relates to its relationship with Grand Parade.
15. Within the island beyond The Wellington public house is 63 High Street, again a Grade II listed building. This has three storeys and an attic. It dates from the sixteenth century with later alterations. From the listing description I note the internal sixteenth century frame truss is exposed, and for the purposes of this appeal the significance of this building lies with this element.
16. Paragraph 193 of the Framework indicates that great weight should be given to the conservation of a heritage asset and this is irrespective of the level of harm that may occur. It is also emphasised that the more important the asset, the greater the weight should be. Scheduled monuments and Grade I listed buildings are at the pinnacle of such importance. Paragraph 194 of the

Framework indicates that any harm to the significance of a heritage asset, or from development within its setting, should require clear and convincing justification.

17. The effects on the settings of the various listed buildings and scheduled monuments derive principally from the additional storeys proposed. This is not to say that the effects of the other proposed alterations are not material, it is rather they are of less import to their settings and relate more to the effect on the Conservation Area, which I will consider in detail below.
18. By adding two additional storeys to the appeal building, particularly in the form proposed, would result in a change in the relative importance of the buildings in the views along both High Street and Broad Street. Due to the bulk, architectural form and dark colours of the materials the extended height would appear as a massive structure and this would mean that it would reduce the importance of the solid Square Tower and Port Battery in these views and thus reduce the architectural significance of the setting of the listed building and scheduled monument. This is particularly true in longer distance views along High Street through the effects of perspective which emphasise buildings closer to the viewer. In this regard I concur with the views of Historic England which considers that the proposal could cause a degree of harm to the setting of the Square Tower in kinetic views from the High Street.
19. When viewed from Long Curtain the proposed extension, for the same reasons, would also act as a highly visible feature which would detract from the massive nature of Square Tower and Port Battery when seen together, and this would reduce the architectural significance of Square Tower. In terms of the Framework the effects of the proposal on the setting of Square Tower and Port Battery would represent less than substantial harm, but nevertheless this should have considerable importance and weight.
20. Part of the significance of Square Tower and Port Battery and Long Curtain is the relationship between them. These are all coastal features whose primary relationship is to the sea and the fortifications of Portsmouth Harbour. Although there is some distance between it and Long Curtain and the buildings in the island, the proposal would have also harmful effect on the setting of Long Curtain. It would be seen as a large bulky feature in views of Long Curtain from Square Tower and Port Battery and vice versa adding to the mass of the existing building. This would also represent less than substantial harm and again should have considerable importance and weight.
21. In relation to the setting of 59 and 60 High Street, the overall height of the proposed extension would be similar to that building. From Long Curtain, within the square and along the High Street the physical separation of the Grand Parade square means the proposal would have no harmful effect on the significance of this building and thus it would preserve the setting of this listed building. For the same reasons this would also apply to the setting of the K6 telephone box and to the setting of the other listed buildings on the north side of the Grand Parade square, that is Aquitane House and Nos 3, 4, 5 and 6 Grand Parade, and to the Royal Garrison Church to the east. As I have identified the significance of 63 High Street for this appeal relates to its interior timber frame and thus this proposal would have no effect on this.
22. Portsmouth Cathedral is a short distance away and the appeal site and it can only be appreciated together at street level in a narrow arc of view in the gap

between 59 and 60 High Street and the post-war buildings on the west side of High Street. Due to the separation and narrow arc the proposal would not harm the setting of the Cathedral in this location. However, I have been provided with photographs from the sea on the approach to Portsmouth Harbour and consider that the additional height would interrupt the hierarchy of buildings, particularly as the tower of the Cathedral would appear less important in these views. The proposal would thus detract from its significance as a landmark and focal point. This would, therefore, also lead to less than substantial harm to the setting of this designated heritage asset and this also should have considerable importance and weight.

23. In relation to the re-elevating of the appeal building, which I discuss in more detail below in relation to the effect on the Conservation Area, this would have no effect on the setting of the designated heritage assets where I have identified harm. This is because the harm would be occasioned by the roof elements, and the re-elevating would have no material effect on the setting of these heritage assets and therefore would not mitigate this harm.
24. To sum up on this issue, the proposal would be harmful to the settings of Square Tower, Port Battery, Long Curtain and Portsmouth Cathedral as designated heritage assets, and such harm would be less than substantial. Therefore, the proposal would be contrary to that element of Policy PCS23 of the Portsmouth Plan which requires new development to relate well to the history of Portsmouth including listed buildings and scheduled monuments. I give this harm special attention and great weight. That being the case paragraph 196 of the Framework states that where a proposal will lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal. I will undertake this in the planning balance section below.

Effect on Conservation Area

25. The appeal site lies in the Old Portsmouth Conservation Area No 4 (the CA) which was first designated in 1969. The Council has published Guidelines for Conservation for the CA. This points out that the CA was the location of the city's first settlement. The architectural character is noted as being diverse, mainly due to post-war redevelopment. However, historic elements, such as Georgian townhouses and the medieval layout of roads and spaces are still evident.
26. The Guidelines document notes that in the eighteenth and nineteenth centuries Grand Parade was the most fashionable address in Old Portsmouth. In terms of land use the settlement began its life as a harbour settlement, and while harbour uses remain, along with other uses such as the cathedral, shops, public houses and the like, the area is predominantly residential. It is noted that the appeal site suffered bomb-damage in the Second World War. All this leads me to conclude that the character and appearance of the CA, and thus its significance, relate to its history, form, architecture and mix of uses.
27. Within the CA buildings are mixed in form and style. The existing building has the appearance of one erected using relatively cheap materials, and clearly has been altered over the years; the uPVC windows evidencing this. The Inspector in an earlier appeal³, which I will discuss further below in the context of the

³ APP/Z1775/A/13/2209514

fall-back position and other matters, described the building as 'bland and utilitarian', and I agree.

28. In the terms of the effect on the CA it is necessary to look at the complete proposal in terms of its effects on the CA as a whole. The additional height and mass of the proposed two storey extension would be harmful. The design would provide a large, box-like structure on the highest floor. While some buildings do have elements above a mansard, the most noticeable example being 59 and 60 High Street, these are much smaller in size and scale. As discussed above the design would be very massive and bulky and would be harmful to the character and appearance of the CA.
29. However, against this harm should be set the other elements of the proposal. That is the refacing of the façades, including the replacing of the windows, and the provision of interest in the form of Juliette balconies. This would have the benefit of upgrading the building and giving it interest; it would no longer be bland and utilitarian. While I appreciate that the CA Guidelines strongly discourage the use of aluminium finishes for windows, it must be acknowledged that this is set out in the same sentence as the discouragement of the use of uPVC windows, which exist.
30. While the roof elements would be harmful, the re-elevation of the remainder of the building would be positive, so taken together, the proposal would be neutral and preserve the character and appearance of the CA. As such it would comply with that element of Policy PCS23 of the Portsmouth Plan which requires development to relate well to history, particularly the city's conservation areas.

Living conditions/continued operation of The Wellington public house

31. The Wellington public house is located immediately adjacent to the appeal property facing High Street. To the rear is a small courtyard which I visited at the site visit into which discharges a flue from the public house kitchen. This flue discharges above the eaves at first floor level. In the earlier appeal for two flats in a single storey roof extension the Inspector noted that the Council's Environmental Health Officer did not object on the basis that the west facing windows in that proposal would be non-opening.
32. In this case the Council's Environmental Health Officer however does raise objection based on the number of doors and windows on the western façade of the proposal, and the location of the fourth floor external terrace directly west, and thus down-wind, of the efflux point. The concerns relate to noise and fumes, which if not resolved that could lead to complaints and could lead to enforcement action restricting activities at the public house.
33. Paragraph 182 of the Framework states that planning decisions should ensure that new development is integrated effectively with existing businesses and cites public houses as an example. It indicates that the applicant, through the 'agent of change' principle, should be required to provide suitable mitigation. There was no equivalent paragraph to this in the version of the Framework applicable at the time of the earlier appeal decision. This therefore represents a material change in circumstances since that earlier appeal.
34. Given the proximity of the flue and the detailed design of the proposal, in the light of current guidance, the applicant/appellant needs to demonstrate that

suitable mitigation is in place. It is not appropriate to deal with this by condition since, for example, mitigations in the form of revisions to the flue have not been designed to be effective to deal with these identified problems, may have other effects, and since they would involve third party ownership would fail the tests for conditions set out in paragraph 55 of the Framework and the PPG⁴.

35. Without this being resolved it cannot be said that proposal would give rise to satisfactory living conditions for the proposed occupiers without the risk to the adjoining premises of enforcement action under non-planning legislation which would result in unreasonable restrictions being placed upon them.
36. As such the proposal would be contrary to that element of Policy PCS23 of the Portsmouth Plan which requires the provision of a good standard of living environment for future residents. It would also be contrary to paragraphs 182 and 127 of the Framework as set out above, and which requires planning decisions to create places with a high standard of amenity for existing and future users.

Habitat Sites

37. The appeal site lies in the Zones of Influence of a number of habitats sites and a potential habitat site. These are the Portsmouth Harbour Special Protection Area (SPA)/Ramsar Site, Chichester and Langstone Harbours SPA/Ramsar Site, the Solent and Isle of Wight Lagoons Special Area of Conservation (SAC), the Solent Maritime SAC, the Solent and Southampton Water SPA and the Solent and Dorset Coast potential SPA. I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). Paragraph 176 of the Framework makes clear that potential SPAs should be given the same protection as designated habitats sites. I will refer to these sites collectively as "the habitats sites".
38. The proposed development would result in an increase in the number of people living in proximity to the habitats sites. It does not appear to be in dispute that this proposal, in combination with other plans and projects, is likely to have a significant effect on the habitats sites through increased recreational activity and increased nutrient load. As the proposal is not directly connected with or necessary for the management of the habitats sites it is therefore necessary for me to undertake an appropriate assessment of the implication of the proposal for the habitats sites in view of their conservation objectives. I can only grant planning permission if I ascertain in that appropriate assessment the integrity of the site would not be adversely affected.
39. To address recreational disturbance the Council has adopted a Solent Recreation Mitigation Strategy. This seeks contributions towards a range of mitigation measures to manage visitors to the coast so as to modify behaviours. This has been found through empirical research to be effective on levels of disturbance.
40. The appellant refers to payments "have already been made for the extant planning permission". Be that as it may, this would not provide the appropriate mitigation. This is because to satisfy the requirements of the Habitats Regulations there has to be a direct link between the necessary mitigation and

⁴ Reference ID: 21a-009-20140306

the proposal, and sufficient certainty that the mitigation will take place. This is normally secured through a specific Planning Obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) relating to the scheme. There is no such Planning Obligation in front of me.

41. Without that direct link between the mitigation and the proposal I am unable to conclude in an appropriate assessment that the proposal would not adversely affect the integrity of the European sites.
42. Turning to nutrient load, the Council has set out a cascade of mitigations, with the final option of purchasing 'credits' from the Council's Mitigation Credit Bank. These credits are accrued by the Council's continuous programme of installation of water efficiencies into its own housing stock and making these credits available to new development. The Council indicates that the fall-back position is part of the "existing problem" and thus there is no need to provide mitigation for this proposal. I am not necessarily certain this is the case, as I do not have sufficient information as to whether this effect formed part of the background level⁵. Had I otherwise been minded to allow this appeal I would have requested further information. However, as I am going to dismiss the appeal for other reasons, I do not need to consider this facet further.
43. In any event, due to my conclusions on recreational disturbance, pursuant to Regulation 63(5) of the Habitats Regulations I am required to refuse planning permission. Further, Policy PCS13 of the Portsmouth Plan requires refusing developments which would have an adverse effect on a European site and as such the proposal would be contrary to this policy.

Other Matters

44. As noted above planning permission was granted at appeal in 2014 for two penthouse flats in a single storey development on top of the existing building. The same planning permission has been approved twice subsequently in 2017 and 2020 and is thus extant and could be implemented.
45. To judge the materiality of this there is a two stage approach, whether there is a greater than theoretical possibility that the development might take place, and then the weight that should be ascribed to that.
46. In this case although it has now been over six years since the planning permission, it is clear that the current appellant has been pursuing an alternative scheme and thus not wanting to pursue the approved scheme until that has been resolved. This decision provides that resolution and while the appellant may or may not pursue alternatives there is a greater than theoretical possibility that the planning permission may be built out. However, as it is clear that scheme is not what the appellant optimally wishes to pursue, I only give this moderate weight.
47. Putting to one side the effects on the habitats sites for the moment, the permitted scheme by being only for one additional storey has less of an effect on the setting of the listed buildings and scheduled monuments to which I have identified harm. While this scheme does not have the additional benefits of the re-elevating of the existing building, I conclude that the permitted scheme would be, overall, more beneficial than the existing scheme.

⁵ See Regulation 65 of the Habitats Regulations.

Planning Balance

48. The proposed development would provide for an additional dwelling. This is a public benefit in social and economic terms as is the enhancement to the public elevations of Fontenoy House. However, the enhancements to the public elevations of Fontenoy House only balances the harm to the CA. The remaining public benefits do not outweigh the less than substantial harm identified above to the settings, and therefore significance, of Square Tower, Port Battery, Long Curtain and Portsmouth Cathedral as designated heritage assets. This resultant harm should be given great weight.
49. Although in the officer report the Council indicates that it cannot demonstrate a five year supply of housing land, given my conclusions on the harm to the designated heritage assets and to habitats site the tilted balance set out in paragraph 11 d) of the Framework does not apply.
50. The proposal would have a neutral effect and thus preserve the character and appearance of the CA and also preserve the setting of some listed buildings. However, it would be harmful to the settings of Square Tower, Port Battery, Long Curtain and Portsmouth Cathedral, which are designated heritage assets of the highest importance. I am not satisfied that clear and convincing justification has been given for this harm so as to allow the proposal.
51. Further, there is insufficient information to ensure the living conditions of the proposed occupiers while ensuring that the operation of The Wellington public house would not be unreasonably restricted, and there would be harm to the habitats sites.
52. While there are elements where the proposal complies with parts of the development plan, I conclude that the proposal is contrary to the development plan taken as a whole and there are insufficient material considerations that indicate a different decision to determining the appeal otherwise than in accordance with those provisions.

Conclusion

53. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR