



Appeal Decision

Site visit made on 14 December 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 07 January 2021

Appeal Ref: APP/L3815/W/20/3255657
110 The Hornet, Chichester PO19 7JR

- 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 Adamos and Elizabeth Papadamou of La Fish against the decision of Chichester District Council.
 - The application Ref CC/20/00188/FUL, dated 24 January 2020, was refused by notice dated 6 April 2020.
 - The development proposed is described as 'change of use of residential accommodation above fish & chip shop from one habitable flat to three habitable flats, including extended first floor area approved partially implemented approval CC/08/00137/FUL'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. In regard to the Council's second reason for refusal, the appellants have submitted in support of the appeal a completed and signed copy of a unilateral undertaking for the sum of £812, as a contribution towards the provision of access mitigation measures in respect of the Chichester and Langstone Harbours Special Protection Area. Furthermore, the appellants say that they have now made the necessary payment to the Council. I return to this matter later.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of future occupiers in respect of noise, vibration and odour and whether the proposal would provide suitable living conditions for future occupiers with regard to internal space provision.

Reasons

4. The appeal site comprises a building in mixed use. Commercial use in the form of a fish and chip takeaway and restaurant occupies the ground floor with residential use on the upper floors.
5. While the proposed external works would principally incorporate the building out of the 2008 extant permission¹, which included a rear first floor extension to enlarge the existing residential accommodation, the appeal proposal is to

¹ Local Planning Authority Ref: 08/00137/FUL

form three flats. Units 1 and 2 would be formed over the first and second floors and unit 3 would be formed at first floor level.

6. The plans of the 2008 extant approval do not show the flue (the external ductwork) to ridge level. So, although the flue that serves the commercial operation currently exits from the ground floor further back into the site than that shown on the 2008 plans, as part of the extant permission it is by no means clear what route the flue would take to ridge level.
7. In any event, in regard to the appeal proposal, the plans clearly indicate that the existing flue (the mechanical extract outlet) would be re-aligned to the external wall and roof in proximity to the bedroom of unit 3.
8. There is, therefore, potential for noise, vibration and odour from the flue to have an adverse and detrimental impact upon the living conditions of future occupiers of unit 3 given the proximity of the flue to a habitable room.
9. The appellants suggest the imposition of a planning condition to manage any noise, vibration and odour emanating from the mechanical extract outlet. However, I have not been presented with any manufacturer's details or technical specifications, or indeed any assessment to demonstrate that the relationship between the flue and the proposed habitable accommodation would be suitable. Consequently, I cannot be certain that the potential impact of any noise, vibration or odour could be adequately attenuated or mitigated against to ensure that there would be no adverse and detrimental impact upon future occupiers' living conditions. Therefore, in this case, I do not consider that this matter can be appropriately addressed by a condition.
10. The internal floor area of unit 3, at around 54 square metres (sq. m), would meet the technical housing standards² (THS) which require that a single storey, one bed, two person dwelling provide a minimum gross internal floor area of 50 sq. m. However, proposed units 1 and 2, would fall appreciably short³ of the minimum gross internal floor area of 58 sq. m for a two storey, one bed, two persons dwelling as required by the THS. Moreover, the appellants acknowledge that owing to the existing floor to ceiling constraints within the historic part of the proposed development, some of the full height floor areas would fall slightly below the 2.3 metre required for 75% of the unit area as required by the THS.
11. The appellants contend that if proposed units 1 and 2 were occupied by single persons then the THS would be satisfied. Moreover, while they consider it unlikely that unit 2 would be used as a two person unit, they do not suggest that these two units will only ever be occupied by single persons.
12. The Design and Access Statement sets out that the development would provide accommodation for up to six persons. Thus, it is clear that the intention is for each proposed unit to potentially have double occupancy. Furthermore, I have not been presented with any compelling evidence to demonstrate that the bedrooms within units 1 and 2 would not be of sufficient size to potentially have double occupancy. To that end, the bedrooms must be considered to be double bedrooms and therefore units 1 and 2 should be assessed on the basis that they would be one bed, two person dwellings. In this regard, from the

² Technical housing standards – nationally described space standard, March 2015

³ The appellants' recalculated gross internal areas, to include only floor areas with a headroom of at least 1.5m: flat 1 at 39.47 sq. m and flat 2 at 37.58 sq. m.

evidence before me, the proposed internal space provision for these two units would be considerably below that required by the THS.

13. Whilst it is clear that proposed units 1 and 2 would not meet the THS, these standards can only be applied if there is a relevant development plan policy seeking these space standard requirements. Policy 33 of the Chichester Local Plan: Key Policies 2014-2029 (LP) predates the publication of the THS and therefore cannot apply the standards as set out within the THS.
14. However, the National Planning Policy Framework (the Framework) states that the creation of high quality buildings is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development which should achieve a high standard of amenity for existing and future users. Weight should be given to development plan policies depending on their consistency with the Framework. In this regard, I find that Policy 33 of the LP consistent with the Framework as it requires, amongst other things, that new residential development meet the highest standards of design and a high quality living environment. The supporting text to the policy explains that in providing new homes, it is important that they are designed and constructed to a high quality with good standards of internal space.
15. Clearly the THS is helpful guidance when considering good standards of internal space. The overall impression of proposed units 1 and 2 is that they would both fail to provide a satisfactory environment for future occupiers as a result of their limited and somewhat cramped internal space provision.
16. For the above reasons, the proposed development would cause harm to the living conditions of future occupiers of unit 3 as a result of the potential for noise, vibration and odour from the flue that serves the ground floor commercial operation. Furthermore, the proposal would not provide suitable living conditions for the future occupiers of units 1 and 2 due to a significant shortfall in the provision of internal space.
17. Overall, the proposed development would not provide a suitable standard of living accommodation for future occupiers. Consequently, in this regard, it would be contrary to Policy 33 of the LP which requires new residential development to meet the highest standards of design and provide a high quality living environment. It would also conflict with paragraph 127 (f) of the Framework which seeks to create places with a high standard of amenity for future occupiers.

Other Matters

18. The appeal site is located within the 'Zone of Influence' of the European Chichester and Langstone Harbours Special Protection Area (SPA) where it has been identified that all net increases in residential development, as in this case, are likely to have a significant effect on the SPA, either alone or in combination with other developments, due to increased recreational disturbance.
19. Furthermore, at the appeal stage, the Council has drawn attention to the updated Natural England (NE) guidance regarding new development with overnight accommodation and the wastewater impacts on the SPA. The Council state that it would appear that the development would connect to the Apuldram Wastewater Treatment Works and so treated effluent would eventually discharge into the SPA. 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.

20. The Council indicate that it has carried out an appropriate assessment relating to the impacts of the proposed development in regard to increased recreational disturbance in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) and concluded that a legal agreement to secure a financial contribution to offset the impact provides adequate mitigation. The Council has not carried out an appropriate assessment in regard to the wastewater impacts of the proposed development on the SPA.
21. The Habitats Regulations requires the decision maker to undertake an 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.
22. So, notwithstanding the existence of the unilateral undertaking, had the proposal been acceptable in planning terms it would still have been necessary for me to undertake an appropriate assessment as the competent authority. However, regulation 63(1) of the Habitats Regulations indicates the requirement for an appropriate assessment is only necessary where the competent authority is minded to approve planning permission. Thus, given my overall conclusion on the main issue it has not been necessary for me to pursue this matter any further.
23. The appeal site lies within the Chichester Conservation Area (CA). There is a duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The Council consider that the form of the proposed extension masks the historic form of the building and the proposed fenestration is inappropriate by means of proposed uPVC material. However, the appellants consider that the proposed additions would represent an enhancement of the overall arrangement at the site given the assortment of building elements that already exist to the rear of the main structure. So, whilst there is some disagreement between the main parties about the potential impact of the proposal on the CA, there is no dispute between the parties that taking into account an identical form and footprint of extension remains extant, on balance, even if there was harm to the CA it would not, in this case, warrant refusal of planning permission. I see no reason to take a different view.

Planning Balance and Conclusion

24. The Council accepts that it cannot currently demonstrate a five-year supply of deliverable housing sites. In its appeal statement the Council indicate that its assessment of housing land supply is currently being updated and the expectation is that it will be a little less than 4 years.

25. 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.
26. The proposal would seek to boost the supply of housing in the context that the Council cannot currently demonstrate a deliverable five-year supply of housing sites. Moreover, the Framework acknowledges at paragraph 68 that small and medium sized sites can make an important contribution to meeting the housing requirements of an area.
27. However, whilst paragraph 59 of the Framework refers to boosting significantly the supply of housing the proposal is for a net increase of only two 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.
28. The proposal would lead to some employment through the construction of the dwellings, although this would be a short-term benefit. Although not expressly cited by the appellants in support of the appeal, I am willing to accept that the future occupiers of the dwellings would help to support local facilities and services. However, the economic contribution from the occupiers of two additional dwellings would not in itself be a very significant benefit.
29. The aforementioned considerations are weighed in the overall planning balance below.
30. I have found that the proposed development would not provide a suitable standard of living accommodation for future occupiers. I afford substantial weight to this matter as part of the determination of this appeal noting conflict with both development plan and Framework policies.
31. In conclusion, I find that the identified adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Consequently, the proposal would not amount to a sustainable form of development and therefore the appeal should be dismissed.

Andrew Bremford

INSPECTOR