



Appeal Decision

Site Visit made on 21 September 2021

by S Edwards BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal Ref: APP/C3810/W/20/3271532

77 Aldwick Road, Bognor Regis PO21 2NW

- 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 Simon Royall (Monairit Properties Limited) against the decision of Arun District Council.
 - The application Ref BR/31/20/PL, dated 30 January 2020, was refused by notice dated 29 April 2020.
 - The development proposed is part change of use of ground floor & formation of a first floor rear extension to create 2 no self-contained studio flats with associated refuse / recycling & cycle store (re-submission following BR/233/19/PL).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) published on 20 July 2021 sets out the Government's planning policies for England. Policies within the Framework are material considerations which should be taken into account for the purposes of decision-making from the date of its publication. The parties were given the opportunity to comment on this matter, and I have had regard to the updated Framework in determining this appeal.
3. A previous appeal¹ has recently granted planning permission for a similar scheme, and whilst each proposal has to be assessed on its individual merits, this is nevertheless an important consideration for the determination of this appeal.
4. The appellant has submitted a Unilateral Undertaking dated 20 February 2020, pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended), which I shall return to later in this decision.

Main Issues

5. The main issues are:
 - The effect of the proposal on the Pagham Harbour Special Protection Area (SPA); and
 - The effect of the proposal on the living conditions of the neighbouring occupiers of nos 75, 77 and 79 Aldwick Road, with particular regard to

¹ APP/C3810/W/20/3245777.

outlook and light, and nos 10 and 14-16 Stocker Road, with particular regard to privacy.

Reasons

Pagham Harbour SPA

6. The appeal site lies within proximity to Pagham Harbour SPA, which is recognised under the Habitats Regulations as being of international importance for the breeding, feeding, wintering and migration of rare and vulnerable bird species such as dark bellied Brent Geese and Black-tailed Godwits. The Council has adopted a strategic approach to mitigation to address current and future pressures on Pagham Harbour caused by recreational disturbance associated with residential development.
7. There is no dispute between the main parties that the proposed development could have a likely significant effect on the integrity of these sensitive areas (either individually or in combination with other plans or projects) notably by reason of additional recreational pressures, unless suitable mitigation is provided. In such circumstances, I am required, when evaluating the effects that a proposal might have on a European site, to consider avoidance and reduction measures through an Appropriate Assessment (AA), rather than at the screening stage.
8. Policy ENV DM2 of the Arun Local Plan 2011-2031² (LP) requires development proposals within Zone B to make contributions towards the agreed strategic approach to access management at Pagham Harbour, which are normally secured through the completion of a planning obligation. As noted above, a signed and dated Unilateral Undertaking (UU), which would provide the required financial contributions towards Strategic Access Management and Monitoring, has been submitted as part of the appeal.
9. The statutory provisions clearly state that the UU would take effect on the date of grant of the Planning Permission. This term is however restrictively defined within the UU as the planning permission granted by the Council in respect of the Planning Application. Were I minded to allow this appeal, planning permission would not be granted by the Council, and there is therefore no certainty that the requirements set out within the submitted planning obligation would be triggered, thus limiting the weight which can be afforded to this document.
10. As part of the previous appeal, the Inspector addressed the matter by imposing a condition. However, as emphasised by the national Planning Practice Guidance chapter on the use of planning conditions³, a negatively worded condition limiting the 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.
11. In the absence of alternative planning obligation or exceptional circumstances to justify the matter being addressed by the imposition of a negatively worded

² adopted July 2018.

³ Paragraph: 010 Reference ID: 21a-010-20190723.

condition, I cannot be certain that the mitigation measures would be secured, and that significant adverse effects would be consequently avoided. Furthermore, I have been presented with no alternative solutions that would avoid or reduce the effects on the protected sites whilst achieving the same outcomes as the proposed development.

12. The development would enable the provision of two additional dwellings, thus helping to fulfil the demand for housing in an accessible area, but these considerations would not constitute imperative reasons of overriding public interest, which could justify harm being caused to the SPA.
13. Taking a precautionary approach, it cannot be excluded that the proposal would have, in combination with other plans and projects, significant adverse effects on the integrity of the Pagham Harbour SPA, particularly in the absence of appropriately secured mitigation measures. The appeal scheme would therefore fail to accord with LP Policy ENV DM2, which sets out protection measures for Pagham Harbour.

Living conditions

14. The appeal site lies within an area of mixed character, which typically comprises commercial premises at ground floor level and residential accommodation in the upper floors. The first floor flat of no 77 benefits from a small terrace, which appears to constitute the only outdoor space for the residents. The proposed development seeks to convert the existing single storey premises and add a first floor extension, to create two additional dwellings.

Outlook and light

15. The extension would be constructed within proximity to the terrace of the first floor flat of no 77 would to some extent restrict the outlook for the occupiers of this property. However, as noted by the previous Inspector, there would still be an outlook alongside the new building. Furthermore, the height of the roof would ensure that the new addition does not cause unacceptable harm to the outlook from the rear aspect of this flat or the terrace. The first floor flats at nos 75 and 79 Aldwick Road would be sited further away from the proposed extension and the outlook from these neighbouring properties would also remain acceptable.
16. Whilst the appeal proposal is not supported by a full Building Research Establishment (BRE) sunlight/daylight study, limited information has been presented by the Local Planning Authority to substantiate its concerns in that respect. The appellant's submissions show that the proposed development would not breach the 25 degree angle drawn from the first floor window serving the living/dining area. Overall, the scale and height of the extension would ensure that no 77 retains a reasonable amount of daylight and sunlight.

Privacy

17. The appeal scheme includes the formation of a first floor window to the rear elevation of the extension, which would be located within a relatively short distance of the rear boundary shared with nos 10 (no 10) and 14-16 (nos 14-16) Stocker Road. However, it is accepted by the main parties that to the rear of nos 14-16, there is a single storey outbuilding and large parking

area. As noted by the previous Inspector, 'its shared nature as a parking area means that it would not be private to the individual occupiers' of nos 14-16.

18. The appeal site only shares a small section of its rear boundary with no 10, and the window would be sited so as to minimise any loss of privacy for the occupiers of this neighbouring property. For these reasons, any views would remain oblique and limited in their extent, thus ensuring that the appeal scheme would not result in a harmful loss of privacy for the occupiers of no 10.
19. Given the above, the effect of the proposal on the living conditions of the occupiers of neighbouring properties, whether in terms of outlook, daylight, sunlight or privacy, would be acceptable. I am therefore satisfied that the appeal scheme would accord with LP Policies D SP1, D DM1, D DM4 and QE SP1 which, amongst other things, seek to ensure that development proposals have minimal impact to users and occupiers or nearby property and land. There would also be no conflict with the design aims of Section 12 of the Framework.

Other Matters

20. The Council is unable to demonstrate a five-year supply of deliverable housing sites. In such circumstances, paragraph 11d) of the Framework, as directed by Footnote 8, advises that the policies which are most important for determining the application have to be considered out-of-date. Planning permission should be therefore be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
21. As detailed in paragraph 182 of the Framework, the presumption in favour of sustainable development does not however apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. Given my earlier findings, the tilted balance does not apply in this particular instance.

Conclusion

22. There are no material considerations, which indicate that the appeal should be determined, other than in accordance with the development plan. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal is dismissed.

S Edwards

INSPECTOR