
Appeal Decision

Site visit made on 18 August 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2021

Appeal Ref: APP/D1780/W/20/3265347
72 Burgess Road, Southampton SO16 7PP

- 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 Rosemary Lewis against the decision of Southampton City Council.
 - The application Ref 20/01046/FUL, dated 20 August 2020, was refused by notice dated 30 November 2020.
 - The development proposed is conversion of existing dwelling into 4 x 1-bed flats (bedsits) with associated parking and cycle/refuse storage.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Rosemary Lewis against Southampton City Council. This application is the subject of a separate Decision.

Procedural Matters

3. Since the refusal of the planning application and the submission of this appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published on 20 July 2021. I have taken the revised Framework into account where relevant to my decision.
4. I have taken the description of development from the appeal form and decision notice, since, whilst this differs from that on the planning application form, it was agreed by both main parties prior to the validation of the planning application.
5. During the period between the validation and refusal of the planning application, the Council granted permission¹ for a lawful development certificate for the use of the property as a Class C4 House in Multiple Occupation (HMO) on 23 October 2020 (the LDC approval). I have taken this into account in my decision, and this is a matter I later return to.

Main Issues

6. The main issues are:

¹ Ref 20/01027/ELDC

- The effect of the proposed development on the European designated sites of the Solent SPAs and the New Forest SPA, SAC and Ramsar site; and
- The effect of the proposed development on the provision of family housing.

Reasons

Solent SPAs and the New Forest SPA, SAC and Ramsar site

7. The Council's second reason for refusal relates a failure to mitigate against the impacts of the development upon the Solent SPAs. The SPAs comprise a coastline that has a network of mudflats, shingle and saltmarshes which provide essential winter feeding and roosting grounds for birds that spend the winter here. The SPAs were designated by the Government to protect these over-wintering birds.
8. The appeal scheme results in a net increase in dwellings within the 5.6km 'Zone of Influence' of the SPAs. This net increase in residential development has a potential impact upon the SPAs resulting from possible disturbance to the birds arising from increased recreational activity around the shorelines of the harbours, such as walking, jogging, cycling and dog-walking.
9. As such, without mitigation, the appeal scheme presents a likely significant effect upon the integrity of these sites, particularly when the impacts are considered in combination with other residential developments located within the 5.6km Buffer Zone to the SPAs. Therefore, it is necessary for me, as the competent authority, to undertake an Appropriate Assessment (AA) under the *Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations), of the implications for the sites in view of the conservation objectives of the SPAs, and to consider whether or not mitigation could reduce any adverse effects on the protected sites. I have undertaken this on a proportionate basis with regard to the evidence submitted by the Council.
10. The Council has carried out a Habitats Regulation Assessment (HRA) under Regulation 63 of the Habitats Regulations, in accordance with an approach which has been agreed by Natural England. This concludes that adverse impacts would be avoided if mitigation is carried out in accordance with the Council's adopted Solent Recreation Mitigation Strategy (2017) (SRMS), which provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development.
11. The SRMS provides for the payment of a mitigation contribution to offset the effects of an increased population on the SPAs. The payments made under the SRMS are put towards a package of mitigation measures, including a team of rangers, communications marketing and education initiatives, the facilitation and encouragement of responsible dog walking, codes of conduct, site-specific visitor management and bird refuge projects, new/enhanced strategic greenspaces, a delivery officer and monitoring of the mitigation measures.
12. As the SRMS has been endorsed by Natural England, I am satisfied that these measures would provide adequate mitigation for any recreational impacts associated with the development. These measures are funded by contributions from all new residential dwellings within 5.6 km of the SPA boundaries, the amount being based on the number of bedrooms, to be secured through a legal

agreement, unless the developer can demonstrate to the satisfaction of the local planning authority and Natural England that it will provide alternative 'bespoke mitigation' which will fully mitigate the recreational impact of development.

13. There is no agreement before me as part of this appeal. The proposed new residential units would comprise modest, one-bedroom dwellings, and I have noted the appellant's intention to target them towards providing accommodation for post-graduate/mature students/student couples, who prefer a more self-contained unit of accommodation than the existing Class C4 HMO student accommodation. The appellant's view is that, given the similarity of residential occupants and their total number, the residents of the appeal scheme would be unlikely to make more recreational visits, with or without pets, than existing HMO occupants.
14. I acknowledge that the appeal scheme would result in a reduction in the number of bedrooms in the property, and that no increase in the overall number of residents is proposed. However, it would be possible for the proposal to accommodate 8 occupiers, should the bedrooms shown as single bedrooms be occupied by couples.
15. Moreover, on the basis of the information before me, I am not persuaded that the proposal would accord with the requirements of the SRMS. This states that, for the purposes of the SRMS, additional dwellings include 'net new dwellings created through the sub-division of existing dwellings', and no exception is made in the case of proposals for the conversion and subdivision of HMOs.
16. Furthermore, having regard to the self-contained nature of the proposed dwellings, I find that it is more likely that occupants of the new flats would have pets than those of the existing HMO accommodation, including dogs, noting that off-lead dogs have been identified within the SRMS as making a significant contribution to bird disturbance impacts affecting the SPAs.
17. Whilst the SRMS makes an exception in respect of the payment of mitigation contributions in respect of purpose-built student accommodation, where pet ownership would not be possible, 'self-contained student accommodation', as proposed by the appellant, is included within the SRMS definition of net new dwellings. Moreover, the occupation of the proposed flats would not necessarily be limited to education-associated residents. Other feasible occupants, as confirmed by the appellant, for example could include young professionals.
18. I have noted the proximity of the site to the public open space of Southampton Common which provides facilities for recreational activities, including dog walking. However, the 5.6km SPA buffer zone, within which mitigation contributions are required, does not specifically exclude such locations close to existing public open space from the requirement to make a payment.
19. I therefore conclude that, from the evidence provided and taking a precautionary approach, I cannot be reasonably certain that the development does not have an in-combination adverse effect on the integrity of the Solent SPAs from additional recreational activity.
20. Accordingly, in this respect, the proposed development conflicts with the Habitats Regulations and Policy CS22 of the *Local Development Framework Core Strategy Development Plan Document* (as amended 2015) (the Core

Strategy). Policy CS22 aims to promote biodiversity and protect habitats, including ensuring development does not adversely affect the integrity of international designations, and that the necessary mitigation measures are provided.

21. The Council's HRA also concluded that the appeal scheme has the potential to adversely impact on the site integrity of the New Forest SPA, SAC and Ramsar site, in combination with other development in the Solent area, due to an increase in recreational disturbance to breeding populations of birds. Mitigation for the New Forest sites is covered by ring-fencing a percentage of the Community Infrastructure Levy (CIL) paid in respect of the appeal scheme. This is used to fund improvements to footpath improvements within greenways and other suitable semi-natural greenspaces within Southampton, in order to provide alternative dog walking areas for new residents. The development would generate a CIL payment and thus mitigate its likely significant effect.

Family Housing

22. The appeal site lies adjacent to Southampton Common on the southeast side of Burgess Road within an established residential area. It is occupied by a detached two-storey property. Vehicular access is from Burgess Road and there is driveway parking and an attached single garage to the side.
23. The information before me is that the property was approved as a dwelling house in the late 1980s, but has been occupied as an HMO providing student accommodation since construction. The recent LDC approval confirms the lawful use as a *'Class C4 HMO with 6 bedrooms, 6 occupants and shared living, kitchen and bathroom facilities'*.
24. The Council's first reason for refusal is that the proposal would result in the loss of a *'family home'*, which Core Strategy Policy CS16 seeks to protect. For the purposes of Policy CS16, *'family homes'* are defined as *'dwellings of three or more bedrooms with direct access to useable private amenity space or garden for the sole use of the household'*. The Policy requires the amenity space or garden to be fit for purpose, and in the case of the appeal site, have a minimum size of 90 sqm.
25. In determining the appeal, I have given careful consideration to the objectives of Policy CS16, which are that the Council will provide a mix of housing types and more sustainable and balanced communities. The Policy sets out 5 criteria by which this will be achieved. The second of these states that there will be no net loss of family homes on sites capable of accommodating a mix of residential units unless there are overriding policy considerations justifying this loss. As the property is large enough to accommodate additional units through its conversion to 4 self-contained flats, it is able to accommodate a mix of residential units, which could include a mix of dwelling sizes. I have therefore given careful consideration as to whether the property is currently a *'family home'*.
26. The property contains the requisite number of bedrooms. It also provides private enclosed garden to the rear and side accessed directly from the kitchen and living room. The appellant's view is that the external amenity space does not meet the requirements of Policy CS16 in terms of its size and useability. I have no cogent evidence, such as precise measurement details, to enable me to confirm the garden size, and I note that trees adjacent to the site boundary

would render the rear-most part less functional for use as outdoor living space. However, as this matter is not determinative to my conclusion on this second main issue, it is not necessary for me to reach a firm conclusion on the precise size of the appeal site garden.

27. Notwithstanding the number of bedrooms and garden size, it is relevant to consider how the property is used. The Policy CS16 definition of '*family home*' is based on layout, and does not specifically relate to the occupancy or use of the property. It does, however, refer to 'household' in the singular. This would accord with the definition of a Class C3 dwellinghouse within the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO) which specifically refers to single household occupation. Moreover, the word '*family*' centres on dwellings occupied by single households comprising members with a familial relationship. In contrast, and in accordance with the UCO and the Housing Act 2004 (as amended), HMOs provide accommodation for persons who do not form a single household.
28. A recognition of a difference between a family home and a HMO within Policy CS16 is also apparent when considering criterion 3 of the Policy, which requires '*control of Houses in Multiple Occupation (HMOs) where planning permission is required, particularly those properties which provide accommodation for students*'.
29. Planning permission is required for the change of use of a dwellinghouse to a large HMO, and where the permitted change between a dwellinghouse and a small HMO is restricted. The latter applies to Southampton City, where an Article 4 Direction, which came into effect in March 2012 removes the permitted development right to change from C3 to C4. Moreover, supporting paragraph 5.2.13 of Policy CS16 sets out how the creation of small HMOs results in the loss of family homes. I find that this indicates a clear distinction between family homes and small HMOs for the purposes of Policy CS16.
30. As the appeal property is lawfully occupied as a small HMO, and has been used as such since its construction, I find that it does not comprise a family home for the purposes of Policy CS16. Therefore, the appeal proposal to convert the property into 4 flats would not result in the loss of a family home, or, as described in the first reason for refusal, a '*family dwelling unit*'.
31. The Council acknowledges that the appeal property is not currently occupied by a family, and that it is unlikely to be so within the immediate future. Its view is that the loss of a residential property which is suitable and appropriate for family accommodation, and which could change back to a Class C3 dwellinghouse without the need for planning permission, would be contrary to the aims of Policy CS16 which are to preserve the stock of such suitable houses. In this respect, the Council cites the proposed physical works to the property which would potentially result in a permanent removal of the property from the Council's stock of family houses.
32. I acknowledge that the current layout of the premises is capable of being occupied as a family unit of accommodation without changes to the fabric of the building. Furthermore, it can function as a family unit without the requirement for a change of use as permitted by Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) which allows for the change of use from Class C4 HMO to a Class C3 dwellinghouse.

33. However, having regard to my reasoning in respect of the definition of a family home as set out in Policy CS16, I am not persuaded that the Policy can be applied on the basis of the potential for the property to be used as a family home, and the Council has not provided me with evidence that this was a stated intention of the Policy.
34. Moreover, I have no evidence before me of any likelihood of the property converting from a HMO to a Class C3 dwellinghouse. In this regard I note that although approved as a dwellinghouse, the property has always been occupied as a HMO. As such, I am not persuaded that the appeal site would be likely to make a positive contribution to the identified need for family housing, should the appeal be dismissed, or that the development would harm the supply of such housing. In this respect I note that criteria 3 of Policy CS16 seeks to control HMOs, particularly for those properties which provide accommodation for students, as such, the change to another use accords with one of the stated criteria for achieving its overall aims in respect of a mix of housing types and sustainable and balanced communities.
35. Furthermore, having regard to the overarching objectives of Policy CS16, I have not been presented with detailed information in respect of the mix of housing types or sustainability and balance of the community within the site vicinity. As such, there is no substantive evidence before me to demonstrate how the appeal scheme would harm the mix of housing or the sustainability and balance of the community. I found during my site visit that the area appeared to include a mix of dwelling types including single dwellings, flats and HMOs.
36. In this respect I have noted the appellant's assertion that the proposal is a response to a demand for the type of accommodation proposed, which would suit students, post-graduates, couples or young professionals, seeking a more self-contained form of accommodation. The appellant also refers to a decrease in demand for student HMO accommodation arising from the construction of purpose-built student accommodation within the City. Having regard to my observations of purpose-built student accommodation within the City, whilst undertaking my site visit, and the small size of the proposed flats, I consider that there is a reasonable probability that the appeal proposal has arisen due to such factors.
37. For the above reasons, I conclude that the proposed development would not have an adverse effect on the provision of family housing. As such, the proposal would not conflict with criterion 2 of Core Strategy Policy CS16, since the development would not result in the loss of a unit of family housing, and there would be no conflict with the objectives of the Policy, in so much as it seeks to provide a mix of housing types and more sustained and balanced communities.
38. For similar reasons, the appeal scheme would accord with the Framework objective of creating mixed and balanced communities, as set out in Chapter 5.
39. The Council's first reason for refusal also refers to conflict with criterion (i) of saved Policy SDP1 of the *City of Southampton Local Plan Review* (as amended 2015). I do not find this Policy, which relates to the quality of development, to be directly relevant to this main issue of the provision of family housing.

Other Matters

40. Since the refusal of the planning application and the submission of the appeal, the Council has confirmed that, in conjunction with Natural England, it is developing a nutrient neutrality strategy to address the potential impacts on SPAs due to wastewater from new housing. As such, from September 2021, proposals providing new overnight accommodation will require the submission of a Nitrogen Budget Calculation, and applicants will be required to demonstrate that proposals are nitrate neutral or that their impacts on the SPAs, due to wastewater from new housing, can be mitigated. This matter has arisen at a late stage in this appeal process, and has not been addressed by the appellant.
41. However, notwithstanding my role as the competent authority, as I have found the proposal to be unacceptable in respect of recreational impacts on the Solent SPAs, there is no need for me to consider further at this stage, the effects of nitrates upon the Solent SPAs, since any findings on this matter would not change the appeal outcome.
42. Since the refusal of the planning application and the submission of this appeal, the transition period in respect of the new standard method for assessing local housing need where strategic policies are more than 5 years old, has ended. Accordingly, since the new methodology includes a 35% uplift for Southampton City, the Council has provided a five-year housing land supply position statement, upon which the appellant's views have been sought.
43. The Council has confirmed that it is unable to demonstrate a five-year supply of deliverable housing sites. It considers that it has a 4.53 year supply. Whilst the shortage is not yet acute, Paragraph 11 of the Framework applies, which states that relevant policies for the supply of housing should not be considered up to date where a five-year housing land supply cannot be demonstrated.
44. As such, in accordance with paragraph 11d) of the Framework, where relevant policies are out of date, planning permission should be granted unless: i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusal; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
45. In the case of the appeal scheme, exemption i) applies, since the development requires an AA because of its potential impact on habitats sites, and I have found that this matter provides a clear reason for refusing the development. As such, in accordance with paragraph 182 of the Framework, the presumption in favour of sustainable development does not apply.
46. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an urban area where access to facilities is likely to be greatest. 4 new flats would make a modest contribution towards addressing the housing supply deficit, and could be constructed relatively quickly, having regard to paragraph 69 of the Framework. There would also be economic benefits as a result of the construction and occupation of the new dwellings.

47. Whilst the Framework encourages the effective use of land in meeting the need for homes, and requires the Council to approach decisions in a positive and creative way, these matters are not unqualified and would not address or outweigh the aforementioned harm that I have identified to the SPAs.
48. I acknowledge that the Council has raised no objection in respect of highway safety and residential living conditions. However, this does not justify or outweigh the harm I have identified in respect of the first main issue.
49. Therefore, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

50. For the above reasons, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR