



Appeal Decision

Site visit made on 18 May 2021

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 04 FEBRUARY 2022

Appeal Ref: APP/Z1775/W/20/3265574 62 Middle Street, Southsea PO5 4BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by PV Developments Limited against the decision of Portsmouth City Council.
 - The application Ref 20/00169/OUT, dated 6 February 2020, was refused by notice dated 24 June 2020.
 - The development proposed is demolition of existing building and the construction of student residential accommodation (21 units) in a four-storey building together with 73.6 sqm of business floor space (Class B1) at ground floor level.
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Decision

1. The appeal is allowed, and planning permission is granted for demolition of existing building and the construction of student residential accommodation (21 units) in a four-storey building together with 73.6 sqm of business floor space (Class B1) at ground floor level at 62 Middle Street, Southsea PO5 4BP in accordance with the terms of the application, Ref 20/00169/OUT, dated 6 February 2020, subject to conditions in the attached schedule.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) was published on 20 July 2021. The main parties were given the opportunity during the course of the appeal to submit representations on the Framework insofar as the revisions related to the appeal scheme.
3. The appellant applied for outline permission with scale and access to be determined at this stage. Accordingly, matters relating to appearance, layout and landscaping are reserved and I have determined the appeal accordingly. I have treated plans that address reserved matters as indicative only, however I note that the indicative plans indicate that the upper floors of the building could accommodate up to 21 student rooms, which is reflected in the description.

Main Issues

4. The main issues are;
 - the effect of the proposal on the provision of employment uses within the Somerstown and North Southsea Area; and

- the effect of the proposal on The Portsmouth Harbour Special Protection Area/RAMSAR site; The Chichester and Langstone Harbours Special Protection Area/RAMSAR site; The Solent and Isle of Wight Lagoons Special Protection Area of Conservation; and the Solent Maritime Special Area of Conservation.

Reasons

The provision of employment uses

5. The site is located within the Somerstown Core Regeneration Area as defined by Policy PCS6 of the Portsmouth Plan. This policy seeks to regenerate the Somerstown and North Southsea areas of the city, with objectives including the redevelopment of existing housing stock and provision of additional dwellings, and the retention and consolidation of employment uses. The policy states that specific proposals for development would be guided by relevant Area Action Plans. For Somerstown, an Area Action Plan (AAP) was adopted in 2012 and the application site forms part of a site identified as 'Site 1', which incorporates Nos. 22 to 62 Middle Street. Policy SNS8 of the AAP allocates Site 1 for employment uses (Class B1) on the ground floor with residential accommodation (Class C3) above. The supporting text to Policy SNS8 indicates that the purpose of the ground floor employment allocation is to ensure that development contributes to the wider objective of retaining and improving employment opportunities in the area.
6. The appeal scheme would include a 73.6m² office unit on the ground floor of the building, which would ensure that an employment use would be retained on the site in accordance with the objectives of the Area Action Plan and the specific allocation requirement of Policy SNS8. Accordingly, the proposed office space would accord with the specific allocation set out within Policy SNS8 of the AAP and would further enhance the range of employment uses in the area.
7. I find that the proposal would retain sufficient employment uses on the site. It would comply with policy PCS6 of the Portsmouth Plan and the allocation for ground floor employment uses set out in Policy SNS8 of the Somerstown and North Southsea Area Action Plan, thereby retaining and improving employment opportunities in the area needed to act as a springboard for social and economic regeneration.

The effect of the proposal on designated sites

8. There are designated conservation sites around the Solent including the Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours Special Protection Area (SPA), Portsmouth Harbour SPA and the Solent and Isle of Wight Lagoons SAC. These areas are protected because they provide essential winter feeding and roosting for thousands of birds, such as waders, wildfowl and geese who spend the winter here before returning to the Arctic to breed.
9. The provisions of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended) require that prior to deciding whether to grant planning permission for development which is likely to have a significant effect on a European Site, either individually or in combination with other developments, then the competent authority must make an appropriate

assessment of the implications for the European site. Consent should only be granted if there are no adverse effects on the integrity of the site unless other legal tests have been met.

Nutrient neutrality

10. New residential development generates wastewater. Even after treatment additional nitrogen from this scheme could be discharged into the Solent. A significant effect on the European sites would be likely to occur from the proposed increase in residential development alone, or in combination with other plans and projects, in an area where increased nutrients (nitrates or nitrogen) from wastewater entering the Solent would exacerbate eutrophication. In turn, this would be harmful to habitat and species within the European sites.
11. The appellant has submitted a Unilateral Undertaking (UU) which commits to the purchase of nitrate credits to allow for the net increase in nutrient load that would occur as a result of the development to be successfully mitigated. Whilst I note the Council's comments on the UU, having consulted with Natural England and considered the drafting of the UU I am satisfied that the UU restricts occupation of the development until the relevant nitrate mitigation is secured in perpetuity, evidence of this has to be provided to the reasonable satisfaction of the Council, and evidence that the relevant mitigation scheme is operational and providing the nitrate mitigation is also to be provided to the reasonable satisfaction of the Council.
12. A condition is attached which prevents occupation of the development until the mitigation is actually provided, i.e. the credits are purchased. I am satisfied that the use of the UU and the condition will provide suitable mitigation such to ensure that the proposal would not lead to an adverse effect on the integrity of the protected area.

Special Protection Areas and recreational activity

13. A significant effect on the SPAs feeding grounds for its population of overwintering birds would be likely to occur from the proposed increase in residential development alone, or in combination with other plans and projects, in an area where the additional residents would be within such proximity to this habitat site that they would be likely to visit for recreational purposes.
14. The authorities, in partnership with Natural England, have developed mitigation strategies to reduce the level of disturbance. This is focussed on marketing and education initiatives, encouraging responsible dog walking, visitor management and bird management projects. All these activities are supported by a team of rangers. The details are set out in the Solent Recreation Mitigation Strategy (SRMS), which has also set out a tariff-based approach requiring contributions from all residential development to fund its implementation over the long term.
15. The appellant has submitted a Unilateral Undertaking UU which would secure a payment of an index-linked contribution towards the SRMS. On that basis Natural England is satisfied that there would be no adverse effects on the integrity of the SPAs, arising from recreational disturbance.

16. I am content that subject to the obligations and condition identified above, the integrity of the designated habitats would be safeguarded. In this respect the development would accord with Policy PCS13 of the Portsmouth Plan (2012), the Conservation of Habitats and Species Regulations 2017 [as amended] and the Wildlife and Countryside Act 1981.

Other matters

17. The surrounding area is of mixed use. Student accommodation is typical in the area with a four-storey student accommodation neighbouring the site to the west. Additionally, north of the site on Melbourne Place is an eight-storey student residential accommodation. The Student Halls of Residence Supplementary Planning Document identifies that only 75% of first year students can be accommodated by university halls, with the greatest demand for accommodation located close to the University of Portsmouth. The proposal would deliver an additional 21 accommodation spaces for students in a location that would allow residents to walk or cycle to the University of Portsmouth. Directly opposite the site is a University of Portsmouth Building, the Eldon Architecture School, and the Students Unions is approximately 0.5 miles away.
18. The area is characterised by tall buildings and the Area Action Plan identifies that the site would be suitable for the construction of a 4-8 storey building. The proposed 4 storey building, which would be subservient to the proposed development directly to the north, and the same height as the existing student accommodation to the west, would sit comfortable in respect of its scale and mass at this location. Moreover, the top floors would be recessed to create interest and break up the massing and ridged verticality of the scheme.
19. The proposed modern style brick work with aluminium cladding would complement other new developments along Middle Street. The grey and buff shades of brick and cladding would maintain continuity with the Existing Eldon Architecture School on Middle Street whilst complimenting the style of the existing flats at Stratford House. This contemporary approach to the design using traditional materials offset with the modern aluminium would create a building which would be contextually appropriate whilst being architecturally interesting.
20. The area benefits from extensive pedestrian and cycle infrastructure, and there are several bus stops located within a short walking distance providing fast and frequent services to the surrounding localities. Portsmouth and Southsea Train Station is located under a 10-minute walk away providing easy access to Southampton, London, and Brighton. The site is also closely located to a range of local services being only a 5 minute from Guildhall Walk. Accordingly, the location would allow for a wide range of transport modes for future occupiers, and I do not consider that the proposal would contribute to traffic congestion or parking problems either in the immediate vicinity of the site or on the wider highway network.
21. Given the mixed use of buildings around the site, including the Raven Pub opposite, existing student accommodation and commercial use along Middle Street, I do not consider that the proposed development would significantly impact on the existing noise levels of the area.

Conditions

22. I have assessed the suggested conditions in light of the tests set out at paragraphs 55 and 56 of the National Planning Policy Framework and the advice in the Planning Practice Guidance. The reserved matters need to be submitted for approval. In some instances, I have adjusted the suggested wording in the interests of precision.
23. I have included the plans for certainty. Conditions relating to land contamination are necessary to ensure that risks from land contamination to future users are minimised. I have secured cycle storage to encourage the use of alternative means of transport. A condition relating to refuse is necessary to ensure suitable amenity for future occupiers. A condition securing landscaping and biodiversity enhancements is necessary to improve the green infrastructure network and achieve a net gain in biodiversity. Conditions relating to noise are necessary to ensure suitable living conditions for future occupiers. A condition relating to drainage is necessary to ensure that the proposal minimises flood risk. A condition requiring the access to Earlsdon Street to be stopped up is necessary in the interest of highway safety. A condition securing emission levels is necessary to ensure that the development is sustainable. A condition restricting permitted development rights is in this case necessary to ensure that any impact on the employment use of the site can be properly considered having regard to the location of the site. A condition restricting occupation is necessary to ensure the integrity of European sites.

Conclusion

24. I have found that the proposal would that the proposal would retain and improve employment opportunities in the area and would not adversely affect the integrity of designated European sites. The proposal would comply with the development plan when taken as a whole and there are no other considerations that suggest an alternative decision should be taken.
25. Accordingly for the reasons above I conclude that the appeal is allowed.

J Ayres

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun either before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is later.
- 2) (i) Plans and particulars showing the detailed proposals for all the following aspects of the development, the 'Reserved Matters', shall be submitted to the Local Planning Authority prior to any works taking place on the site:
 - (a) the layout of the site and building, to include details of pedestrian entrances / pathways, internal room sizes, refuse and cycle storage facilities;
 - (b) the appearance and architectural design with a detailed schedule (including any samples, as may be necessary) specifying the proposed

materials and finishes to be used for the external surfaces of the building;

(c) the hard and soft landscaping of the site specifying species, planting sizes and numbers/densities of planting and proposed finished levels or contours as well as all hard surfacing materials/finishes and details of the alignment, type, appearance, dimensions and materials/finishes of all walls, fences and other means of enclosures.

(ii) An application for the approval of the outstanding Reserved Matters shall be made in writing to the Local Planning Authority before the expiration of three years from the date of this Outline Permission

- 3) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings -Drawing numbers: Existing Site Plan, 277-ACG-B2-00-DR-A-0005 Rev. B; Proposed Site Location Plan, 277-ACG-B2-00-DR-A-1001 Rev. C; Proposed Ground Floor Plan -Outline, 277-ACG-B2-00-DR-A-2034 Rev. B; Proposed Elevation East -Outline, 277-ACG-B2-00-DR-A-4017 Rev. B; and Proposed Elevation South -Outline, 277-ACG-B2-00-DR-A-4016 Rev. B.
- 4) No works pursuant to this permission shall commence until there has been submitted to and approved in writing by the Local Planning Authority or within such extended period as may be agreed with the Local Planning Authority:
 - a) A desk study (undertaken in accordance CLR11* following best practice including BS10175:2011+A2:2017 'Investigation of Potentially Contaminated Sites Code of Practice') documenting all the previous and current land uses of the site. The report shall contain a conceptual model showing the potential pathways to contaminants (including any arising from asbestos removal) both during and post-construction and summarise the sampling rationale for every proposed sample location and depth.

and unless otherwise agreed in writing by the LPA,

- b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the conceptual model in the desk study (to be undertaken in accordance with BS10175:2011+A2:2017 and BS 8576:2013 'Guidance on investigations for ground gas -Permanent gases and volatile organic compounds (VOCs)'). Unless agreed in advance, the laboratory analysis of soils should include assessment for heavy metals, speciated PAHs and fractionated hydrocarbons (as accredited by the Environment Agency's Monitoring Certification Scheme (MCERTS) and asbestos. The report shall refine the conceptual model of the site and confirm either that the site is currently suitable for the proposed end-use or can be made so by remediation;

and, unless otherwise agreed in writing by the LPA,

- c) A remediation method statement detailing the remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the development hereby authorised is completed, including proposals for future maintenance and monitoring, as

necessary. If identified risks relate to bulk gases, this will require the submission of the design report, installation brief, and validation plan as detailed in BS 8485:2015 -Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings. The scheme shall take into account the sustainability of the proposed remedial approach and shall include nomination of a competent person[‡] to oversee the implementation and completion of the works.

- 5) The development hereby permitted shall not be first occupied/brought into use until there has been submitted to, and approved in writing by, the Local Planning Authority a stand-alone verification report by the competent person approved pursuant to condition 4c, that the required remediation scheme has been implemented fully in accordance with the approved details (unless varied with the written agreement of the LPA in advance of implementation). The report shall include a description of remedial scheme and as built drawings, any necessary evidence to confirm implementation of the approved remediation scheme, including photographs of the remediation works in progress and/or certification that material imported and/or retained in situ is free from contamination, and waste disposal records. For the verification of gas protection schemes the approach should follow CIRIA 735 Good practice on the testing and verification of protection systems for buildings against hazardous ground gases. For the avoidance of any doubt, in the event of it being confirmed in writing pursuant to Condition 4b above that a remediation scheme is not required, the requirements of this condition will be deemed to have been discharged.
- 6) The cycle storage facilities as approved in accordance with Condition 2(a) shall be provided prior to first occupation of the building and shall thereafter be retained for cycle storage purposes.
- 7) The refuse storage facilities as approved in accordance with Condition 2(a) shall be provided prior to first occupation of the building and shall thereafter be retained for refuse storage purposes.
- 8) (a) The soft landscaping scheme approved under condition 2(c) shall be carried out in the first planting season following the occupation of the building or the completion of the development whichever is the sooner; (b) Any trees or plants which, within a period of 5 years from the date of Practical Completion of the landscaping scheme, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. (c) The hard surface treatments shall be carried out in accordance with the hard landscaping scheme approved by condition 2(c) before first occupation of the building and shall thereafter be retained.
- 9) (a) No development (except demolition) shall take place at the site until a scheme for proposed biodiversity enhancements and their timing shall have been submitted to and approved in writing by the Local Planning Authority; (b) The scheme for biodiversity enhancement shall be fully implemented in accordance with the details approved under part (a) of this condition and thereafter retained.
- 10) (a) No development (except demolition) shall take place at the site until a scheme for insulating habitable rooms against road traffic noise has been

submitted to and approved in writing with the Local Planning Authority. The scheme shall be designed to ensure that the following acoustic criteria will be achieved in all habitable rooms:

- Daytime LAeq(16hr) (07:00 to 23:00) 35dB
- Nighttime LAeq(8hr) (23:00 to 07:00) 30dB and L_{Amax} 45dB

(b) The noise insulation scheme approved under part (a) of this condition shall be implemented before first occupation of the development and thereafter retained.

- 11) (a) Prior to the installation of any fixed plant or equipment, an assessment of noise from the operation of the plant shall be undertaken using the procedures within the British Standard BS4142:2014, to include measures to mitigate any identified adverse effects, and a report shall be submitted to and approved by the Local Planning Authority in writing.
- (b) Any mitigation measures shall be implemented in accordance with the details approved under part (a) of this condition and thereafter retained.
- 12) No development (except demolition) shall take place at the site until full details of the proposed means of foul and surface water sewerage disposal have been submitted to and approved in writing by the Local Planning Authority in consultation with Southern Water; and the development shall thereafter be carried out in full accordance with details approved pursuant to this condition.
- 13) Prior to first occupation of the development hereby permitted, the existing access to the site from Earlsdon Street shall be stopped up and the kerb reinstated.
- 14) The development hereby permitted shall not be occupied until written documentary evidence has been submitted to, and approved by, the local planning authority, proving that the development has achieved:
- a minimum of a 19% improvement in the dwelling emission rate over the target emission rate, as defined in The Building Regulations for England Approved Document L1a: Conservation of Fuel and Power in New Dwellings (2013 edition). Such evidence shall be in the form of an As Built Standard Assessment Procedure (SAP) Assessment, produced by an accredited energy assessor; and
 - a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended).

Such evidence shall be in the form of a post-construction stage water efficiency calculator.

- 15) Notwithstanding the provisions of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that order with or without amendment), the office unit hereby permitted shall only be used for purposes falling within Use Class E of the Town and Country Planning (Use Classes) Order 2015 (as amended) (or any order revoking or re-enacting that order with or without amendment), and for no other

purpose without the prior written permission of the Local Planning Authority through submission of a formal planning application.

- 16) The development hereby permitted shall not be occupied until a scheme for the mitigation of increased nitrogen and phosphorus levels resulting from the development has been (a) submitted to, and approved in writing by the Local Planning Authority, and (b) implemented in accordance with the approved scheme with any mitigation measures thereafter permanently retained.

END OF SCHEDULE