



Appeal Decision

Site visit made on 7 February 2022

by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2022

Appeal Ref: APP/Z1775/W/21/3279815

13 Waterworks Road, PORTSMOUTH, PO6 1NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr O El-kilany against Portsmouth City Council.
 - The application Ref 20/00939/FUL, is dated 20 June 2020.
 - The development proposed is for 1 no. dwellinghouse involving extension to existing building & subdivision of plot.
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Decision

1. The appeal is dismissed.

Main Issues

2. The planning application was not determined by the Council before it was appealed. From the Council's Appeal 'Statement of Case', interested party correspondence and all the other evidence submitted I would regard the main issues as being the effect of the development on (1) the character and appearance of the area, (2) the living conditions of neighbours to the site, (3) the provision of parking spaces, and (4) the likely effect on sites of importance for biodiversity.

Reasons

Character and Appearance

3. The dwelling as proposed would be to the rear end of the corner plot garden of No 13 Waterworks Road, though the proposed dwelling would front and be accessed off First Avenue. First Avenue is characterised by dwellings of various types, but generally set within large and particularly deep plots.
4. The proposed dwelling would be part conversion of an outbuilding with an extension to form the dwelling. It would result in the plot of No 13 being significantly reduced in size from existing, but No 13 would still remain a sizable plot comparable to other plots in the area. However, the plot for the proposed dwelling would be particularly small, especially when considered against the characteristic larger plots along First Avenue. To fit the plot the proposed dwelling would be very close to the rear boundary of the plot, with only garden space to the front, which is not typical of this street where there are usually small front gardens and long rear gardens. The small plot would be evident when viewed from the street.

5. For these reasons, a proposed dwelling on this plot would not reflect the prevailing characteristics of the street scene. It would therefore appear as an incongruous development. I note there is already the large outbuilding on site, though this is a structure associated with No 13 and is not an independent dwelling. No 13 currently has a typically large plot. There are dwellings on the opposite side of First Avenue (Nos 2a and 2b) which have smaller plots, but still significantly deeper than that proposed with this appeal.
6. The design and appearance of the dwelling is acceptable, given the variety already in the area. The blank elevations would not be prominent and the proposed roof is of an acceptable design. However, there would be harm to the character and appearance of the area as the dwelling would appear cramped within the relatively small plot, thereby being out of character within the street scene of First Avenue.
7. The proposal is therefore contrary to policy PCS23 of the Portsmouth Plan, which requires that development to be of an appropriate scale, density, layout, appearance and materials in relation to the particular context.

Living Conditions

8. The proposal would introduce a new dwelling into this residential area, near to other dwellings. Firstly, in terms of amenity space I would regard the space remaining for No 13 to be sufficient. Furthermore, future occupiers of the proposed dwelling would have an amenity space/front garden area of sufficient size. It may lack some degree of privacy, but this could be addressed through planting for example.
9. The proposed dwelling with its extension would be close to the boundary with the garden of No 9 Waterworks Road. The dwelling would be visible from this garden, but due to the lower level of the site and the modest height of the dwelling it would not have an overbearing impact or a significant sense of enclosure to the users of the garden of No 9. It would not have much of an overshadowing impact either to this neighbouring plot, over and above existing levels.
10. There are two rooflights that appear to serve the mezzanine area which could be low enough to allow views back towards Nos 9 and 11 Waterworks Road in particular. However, there does appear to be sufficient windows to the front elevation of the proposed dwelling to provide light and outlook from the mezzanine so that a condition could be attached to reasonably require these rooflights to be obscure glazed, thereby sufficiently mitigating any potential overlooking impact. Furthermore, there is a high degree of existing overlooking between neighbouring dwellings, especially from first floor windows, and as such any overlooking impact would be minimal in its impact.
11. Overall, there would be no significant adverse impacts to the living conditions of any neighbours to the site and the future occupiers could enjoy sufficient amenity standards also. The proposal in this regard is in accordance with policy PCS23 of the Portsmouth Plan, which requires that development protects the amenity and good standards for neighbouring and local occupiers, as well as future residents and users of the development.

Parking Provision

12. The proposed dwelling could provide some parking provision (likely for a single vehicle) off-street as demonstrated by the appellant. For a modest sized dwelling as proposed this would be sufficient.
13. As for No 13 Waterworks Road, it is clear that occupants could currently park in the area where the proposed dwelling is to be located. Therefore, there would be no parking provision for this dwelling as a result of the proposal. However, there does appear to be a good amount of on-street parking provision. The on-street parking could become busy with high demand, such as in the evenings, but there is no substantive evidence to demonstrate that parking for No 13 could not be accommodated. Given the on-street parking and also that this is a relatively sustainable location, the parking provision issue does not warrant dismissal of this appeal.

Impact on sites designated for nature conservation

14. The location of the site means that there is a likely potential recreational disturbance around the shorelines of the harbours that could affect Portsmouth Harbour, which is designated as a Special Protection Area (SPA) and also a Ramsar site, along with other Solent Ramsar and SPA designated areas. The Solent Recreation Mitigation Strategy (December 2017) was adopted by Portsmouth City Council on 1st April 2018, which the appellant has already made a contribution towards in line with requirements.
15. If I was allowing the appeal I would pursue this matter further and likely also consult Natural England, but in the circumstances this would not alter the decision being made for this appeal.
16. Furthermore, as set out by the Council, Natural England has provided guidance advising that increased development is resulting in higher levels of nitrogen and phosphorus input to the water environment in the Solent with evidence that these nutrients are causing eutrophication at the Solent European site (as listed in the Natural England letter of the 24 December 2020, including the Portsmouth Harbour SPA). The Council has adopted an Interim Nutrient-Neutral Mitigation Strategy to address this matter for development being proposed in Portsmouth. For smaller development proposals it may be possible to use mitigation credits.
17. The proposed dwelling would likely result in an increase in nitrogen and/or phosphorous input into the Solent, as the appellant has suggested is likely, if only by a modest amount. This would seem likely as it would be a self-contained dwelling rather than an ancillary building if allowed. The proposed development would therefore have a likely adverse effect on the Solent Special Protection Areas. Whilst the appellant has stated they are willing to address this issue, there is no substantive approach put forward by the appellant to address this matter and no legal agreement submitted either. I am not satisfied that this could be achieved through only a planning condition, based on the evidence before me.
18. I acknowledge the issues with processing a legal agreement as set out by the appellant, but nonetheless there is no mitigation before me in the form of a unilateral undertaking. I therefore cannot be confident that the necessary mitigation for the nutrients effects of the development would be secured.

19. The development would therefore have a likely adverse effect to the integrity and ecological value of the Solent Special Protection Area through deterioration of the water environment and be contrary to the requirements of policy PCS13 of the Portsmouth Plan. This policy requires decisions to refuse developments which would have an adverse effect on a European site, amongst other things. The development would also be contrary to Section 15 of the National Planning Policy Framework (the Framework) which requires the protection of sites of biodiversity amongst other things.

Planning Balance

20. The appellant notes that the Council lacks a demonstrable 5-year supply of deliverable housing sites, and this is acknowledged by the Council. In view of my findings in relation to the Solent international designated sites, paragraph 182 of the Framework indicates that in this case the presumption in favour of sustainable development does not apply. Footnote 7 further indicates that the harm I have identified in relation to habitats sites forms a clear reason for refusal of permission. Consequently the 'tilted balance' set out in paragraph 11 of the Framework is not applicable in this instance.
21. Nonetheless, the proposal would provide a dwelling towards the local housing supply in an accessible location. There would be economic benefits from the construction of the new build part of the proposed dwelling, and this could be considered an efficient use of the site, amongst other potential benefits. However, as this is for just a single dwelling the benefits would be limited.
22. Overall, even if the tilted balance had been engaged these benefits are significantly and demonstrably outweighed by the cumulative harm and the conflict with the Framework and development plan on such matters. There are no other considerations that indicate that a decision should be made other than in accordance with the development plan.

Conclusion

23. For the reasons given I conclude that the appeal should be dismissed.

Mr S Rennie

INSPECTOR