



Appeal Decision

Site visit made on 14 June 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 August 2022

Appeal Ref: APP/D1780/W/21/3283120

Hall rear of 72 Paynes Road, Southampton SO15 3BY

- 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 Abbots Langley against the decision of Southampton City Council.
 - The application Ref 20/01809/FUL, dated 21 December 2020, was refused by notice dated 18 March 2021.
 - The development proposed is conversion of existing hall provide a single 2 bed residential unit including setting out of a domestic curtilage and provision of cycle and refuse store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A parking survey accompanied the appeal submission. This was not assessed by the Council when it made its decision and as such represents new information. The appeals' procedural guide makes it clear that 'the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'¹.
3. Nevertheless, it is my view, that the additional information does not fundamentally alter the scheme in terms of its design, scale and layout. Whilst I appreciate that the information is somewhat technical in nature given that it relates to parking statistics in the locality, the Council have had sight of it and had the opportunity to comment. I have therefore assessed the appeal based on the additional information.
4. The parking survey submitted with the appeal as well as proposals for a bike store at the site have addressed the Council's highway safety and transport concerns such that they no longer object to the scheme on those grounds. Therefore, I consider that those matters have been addressed.
5. During the course of the appeal, new issues arose in relation to the impact of new housing on levels of nitrogen and phosphorus in wastewater effluent discharged into the Solent Special Area of Conservation (SAC) and Special Protection Area (SPA). The effects of increased recreational activity upon designated sites of the New Forest were also raised. Although not forming part of the Council's reasons for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant

¹ Annex M, M.2.1, The Planning Inspectorate Procedural Guide, Planning Appeals – England, August 2019

effect on the ecological integrity of the SACs/SPAs in accordance with the Habitats Directive². For this reason, it is necessary to consider this matter as a main issue.

6. To inform my assessment of the appeal in relation to this main issue the Council has provided details of the relevant designated sites together with other relevant documents including its mitigation strategy and supporting evidence base for the avoidance of impacts on the SACs/SPAs. I have also sought comments from the appellant and Natural England on these matters.

Main Issues

7. The main issues are the effect of the proposed development on the:
 - integrity of the Solent and New Forest SAC, SPA and Ramsar sites; and
 - whether future occupiers would be likely to experience acceptable living conditions in terms of outlook, daylight and amenity space provision.

Reasons

Habitats sites

8. The appeal site is within the river catchment of the Solent SPAs and SACs designated sites. The site is also within the 13.8km zone of influence of the New Forest designated sites. These areas are selected for their important aquatic and bird species/habitats.

Nutrient effects

9. Natural England (NE) has identified³ that high levels of nitrogen and phosphorus, mostly from agricultural sources or wastewater from existing housing or other development, are being discharged to the water environment in the Solent. These substances contribute to the creation of dense mats of green algae which adversely affect the habitats and species of the Solent and Southampton Water SPA. Whilst Natural England remains uncertain about the effect, it is sufficiently concerned to advise local planning authorities that all new housing development should achieve nutrient neutrality if it is to be considered acceptable.
10. The previous use at the site, related to the storage of documents associated with a legal firm. The layout of the existing building indicates a toilet, so it was likely that wastewater was being discharged away from the site into the Solent's catchment, yet I have no details of the volumes involved. The proposal would comprise a toilet and shower, and its use as a dwelling would be expected to involve daily, possibly more frequent use of those facilities and therefore increases in wastewater discharges.
11. On nitrates the appellant's case is lacking detail on comparing the previous and proposed uses in terms of wastewater therefore I must adopt a precautionary approach as I cannot be certain that the development would not result in harm to protected species and habitats. On the basis of the available evidence, the proposal would result in likely significant effects on the SACs/SPAs due to the increase in wastewater from new developments coming forward.

² Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

³ Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites, Natural England 16 March 2022

12. NE explains that one way to address the uncertainty over potential impacts is for new developments to achieve nutrient neutrality. This is a means of ensuring development does not add to the existing nutrient burdens and this provides certainty that the whole of the scheme is deliverable in line with the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations).
13. The Council published a Nitrogen Mitigation Position Statement (NMPS) in June 2022. As the appeal predates the publication of the guidance, the Council consider that the appellant is not required to follow the mechanisms of securing nitrogen mitigation outlined in the NMPS. Nonetheless as the competent authority on this matter, I must have regard to the concerns outlined by the NE, which are material to the consideration of the main issue.
14. In the appellant's view, the proposal would be similar to the previous use and have no material impact on surface water run-off. Yet, they have not included evidence that the conversion would be nitrate neutral nor proposals to mitigate the impact from increases in wastewater discharges. Moreover, the financial contribution provided by the appellant would address recreational pressures, rather than mitigating nitrates entering the Solent.
15. Therefore, without any proposals to mitigate the effects arising from the occupation of a further dwelling through wastewater discharge, the development is likely to have an in-combination adverse effect on the integrity of the Solent designated sites.

Recreation effects

16. The appeal site is within the 13.8km zone of influence of the New Forest SAC, SPA and Ramsar sites. Their special features include breeding populations of nightjar, woodlark and Dartford warbler. New residential development in the locality would likely result in more recreational visits to the New Forest with consequential effects through disturbance from increased human and/or dog activity upon those special features. The impacts of recreational disturbance can be such that they affect the breeding success of the designated bird species and therefore act against the stated conservation objectives of the designated sites.
17. NE recommends that these likely significant effects can be mitigated by the provision of alternative green space outside of the New Forest, access management within the New Forest designated sites and education and communication within and outside of the designated sites.
18. There is no Council mitigation strategy in place to address those effects, yet the appellant indicates that financial contributions derived from "ring fenced" Community Infrastructure Levy (CIL) charges could fund footpath improvement works within suitable semi-natural sites within Southampton. These improved facilities will provide alternative dog walking areas for new residents.
19. Whilst those proposals could be of benefit, I have no details of where those improvements would take place and how they would be monitored. Additionally, there are no proposals for access management within the New Forest, nor any commitments towards improved communication/education strategies which could prevent disturbance of designated bird species. In the absence of those details, I cannot be certain that the adverse effects arising

from the increased recreational disturbance associated with an additional dwelling within the identified New Forest zone of influence would be addressed.

20. Even if I were to have more detail on acceptable mitigation proposals, I have no evidence that any payments have been made and no planning obligations have been provided to me for the contributions towards mitigation measures for the recreational disturbance. I cannot be certain therefore that the necessary mitigation has been secured. Therefore, taking a precautionary approach, and notwithstanding the absence of a Council mitigation strategy on this matter, I must proceed on the basis that the development would lead to adverse harm upon the New Forest designated sites.
21. The appeal property is within the zone of influence of the Solent SPAs. The mudflats, shingle and saltmarshes of the SPAs provide essential feeding and roosting grounds for an assemblage of internationally important numbers of water birds which together comprise the qualifying features of the SPAs. The conservation objectives for each of the SPAs are to ensure that the integrity of the site is maintained and restored in order to protect the habitats and the birds that depend on them.
22. New housing around the Solent would lead to more people visiting the coast for leisure, the majority from within a 5.6 km straight line distance of the SPAs. This increased recreation has the potential to cause more disturbance to the birds, thus threatening their survival.
23. The Solent Recreation Mitigation Strategy (2017) (the SRMS) provides a strategic solution to ensure that the requirements of the Habitats Regulations with regard to the in-combination effects of increased recreational pressure on the SPAs arising from new residential development are met through mitigation measures. Mitigation measures include code of conducts, initiatives to encourage responsible dog walking, site specific visitor management and bird refuse projects, along with continued monitoring.
24. I consider that the SRMS sets out suitable measures for the mitigation of the likely significant effects of the development on the SPAs and that financial contributions towards this mitigation are necessary to make the development acceptable in planning terms. The appellant submitted details of payments made to the Council, as well as evidence that those monies have been received and are linked to the appeal site and proposal. Accordingly, there is sufficient certainty to indicate that the necessary mitigation has been secured.

Findings on main issue

25. I have found that financial payments can be made to overcome recreational pressure upon the Solent Coastline SPA. However, the adverse effects arising from the occupation of a further dwelling through additional wastewater discharges into the Solent and recreational activity within the New Forest, have not been adequately addressed by acceptable mitigation proposals. Without these and appropriate mechanisms to secure that mitigation, the development is likely to have an in-combination adverse effect on the integrity of the SACs and SPAs.
26. In this respect, the development conflicts with the Habitats Regulations and Policy CS22 of the Local Development Framework Core Strategy Development Plan Document (2015), where it requires proposals to not adversely affect the

integrity of international designations and that necessary mitigation is provided.

Living conditions

27. The appeal site is located to the rear of properties fronting Paynes Road and Mansion Road. The hall building on the site is largely surrounded by garden walls and fences, as well as occasional boundary trees relating to the surrounding residential properties.
28. The proposal relates to the conversion of the existing hall building and the creation of a two-bedroom dwelling. The main kitchen, dining and living areas would have an open plan arrangement that would be served by around four windows. Two of these would be positioned very close to the site's north-eastern boundary and would face a tall block wall/fence. This would significantly limit the amount of light entering the room, while restricting outlook.
29. The opposing window openings, a set of patio doors and kitchen window, would face a shorter fence running along the site's south west boundary, while maintaining a gap of around 1.7m from that enclosure. The window and door would have a height that would allow for views over the fence, towards neighbouring gardens and trees as well as views of the skyline beyond. Although the presence of the boundary fence would be close, the outlook from the open plan living area would be attractive, while the windows would orientate to capture good levels of natural light for the room.
30. The proposed bedrooms would each have a window facing the rear boundary block wall of the site. The top of the windows would be positioned close to the eaves of the appeal building which would allow for views over the wall towards open garden land at a neighbouring property. The presence of tall mature trees close to the block wall would reduce light entering the bedrooms, yet there are sufficient gaps between those trees that would allow sufficient light to be captured and enter the rooms.
31. In view of the above, I am satisfied that the internal living and sleeping areas within the building would have an acceptable outlook and level of daylight.
32. The Council's Residential Design Guide (RDG) states that detached dwellings should have a minimum size of 10m / 90sqm. It also states that garden space can be created in a variety of ways from front gardens and back gardens to roof gardens, balconies and communal courtyards. In addition, those spaces should be fit for purpose, useable and offer occupiers privacy.
33. The proposed external amenity space provision would comprise an area to the rear of the building measuring around 2.7m – 3.2m in depth by 8m in width. There would also be a long narrow area running, in part, along the side of the building and the boundary with No 74 Paynes Road (No 74), in addition to an area between the front of the appeal building and the rear boundary of No 72 Paynes Road (No 72).
34. Cumulatively those spaces would, according to the appellant exceed the Council's 90m² space requirement, and although their arrangement is somewhat piecemeal, they would adequately cater for the needs of a two-bedroom dwelling in terms of functionality with ample area for the placing of outdoor seating, plants and external storage.

35. I am mindful that the areas to the rear of the proposed dwelling and running along the boundary with No 74 are shallow while being slightly confined by the presence of boundary enclosures and the appeal building. However, the space in front of the proposed dwelling would be deeper and more generous in area, while having an attractive outlook that includes the neighbouring garden trees. Moreover, those trees along with the common boundary walls and fences that enclose Nos 70, 72 and 74 Paynes Road are of a height that would adequately screen and enclose the space to ensure adequate levels of privacy for future occupiers. Accordingly, the proposed amenity space is also acceptable in qualitative terms.
36. I therefore conclude that the proposed development would result in satisfactory living conditions for future occupiers in terms of outlook, daylight and amenity space provision. Accordingly, I find no conflict in this respect with Policies SDP1 and H7 of the amended City of Southampton Local Plan Review (as amended 2015) and the guidance in the RDG. It would also meet the requirements of the National Planning Policy Framework in terms of amenity for future occupiers.

Other Matters

37. I acknowledge that the proposal would result in the re-use of a neglected building within a sustainable location close to local services and transport connections. However, these matters do not outweigh the likely significant effect on the integrity of designated habitats sites which would be adverse and for which there is no adequate mitigation before me.

Conclusion

38. Although I have found that the development would create adequate living conditions for future occupiers, this is not sufficient to outweigh the conflict with the development plan and the Habitats Regulations I have identified above. Therefore, and having regard to the other matters raised, the appeal is dismissed.

RE Jones

INSPECTOR