



Appeal Decision

Site visit made on 3 January 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2023

Appeal Ref: APP/D1780/W/22/3305202

198 Burgess Road, Southampton SO16 3AY

- 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 Heman Sahid against the decision of Southampton City Council.
 - The application Ref 21/01756/FUL, dated 23 November 2021, was refused by notice dated 27 May 2022.
 - The development proposed is described as "new staircase enclosures to external seating area, enclosed with canopy roof & fence panels with grass netting, extend restaurant into former fish market with new toilets & access to first floor bedsit."
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Decision

1. The appeal is dismissed.

Application for costs

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

Preliminary Matters

3. The application form indicates that the proposed development was completed prior to submission. However, whilst I observed during my site visit that part of the development had been completed as per the proposed plans, I also noted a window in the first floor side elevation which is not shown on the proposed plans. Therefore, as I cannot be certain that what has already been constructed reflects the appeal scheme, I have determined this case based on the proposed plans submitted with the planning application.
4. The appellant has submitted amended plans with the appeal that materially alter the nature of the proposed development through a deeper first floor extension and the addition of an external smoking area. Solid acoustic panels are also specified on part of the first floor extension on the amended plans. As I cannot be sure that interested parties views have been sought on them, I have not considered the amended plans as part of the appeal. To clarify, my decision is based on the drawings submitted with the planning application and upon which the Council made its decision.
5. Within its statement, the Council has queried the ownership of the appeal site. The appellant has subsequently provided a copy of their leasehold agreement for the majority of the appeal site. However, this is a separate matter to the case before me and has not affected by determination of the appeal. The Council has also drawn my attention to the Enforcement Notices that have

been issued in respect of the first floor extension¹ and the bedsit². These are not a consideration for this appeal.

Main Issues

6. Whilst commercial waste management is included in the reasons for refusal, the Officer Report also refers to the waste facilities for the bedsit. For completeness, I have included both uses in this main issue.
7. Therefore, the main issues of the appeal are:
 - the effect of the proposed development on the living conditions of occupiers of 196 and 200C Burgess Road (No 196 and No 200C), with particular reference to outlook, daylight, privacy and noise;
 - whether appropriate living conditions would be provided for future occupiers, with particular regard to outlook, privacy, outlook, noise, internal space and safety;
 - the effect of the proposed development on the character and appearance of the area; and
 - whether the proposed development would provide adequate cycle storage facilities for future occupiers of the bedsit and adequate waste facilities for future occupiers of the bedsit and the restaurant.

Reasons

Living conditions – existing occupiers

8. Whilst the proposed first floor extension would not extend to the full depth of the existing flat roofed part of the property, it would be sited beyond the rear facades of the upper floors of No 196 and No 200C. Both neighbouring properties have windows on the rear façade serving habitable rooms. Given the narrow plot widths and the length of the proposed covered extension, existing occupiers of both neighbouring properties would experience a restriction in the outlook from these rear windows. As there are two windows of a medium-large size to the rear elevation of No 200C, the reduction in the outlook for occupiers of this property would not be significant. However, in the case of No 196, the single window at the rear is small. Therefore, the proposed development would significantly restrict the outlook from this window and, combined with the proximity of the extension, would be intrusive and increase the enclosure experienced.
9. Despite a flat roof, given the depth of the proposed first floor extension and the siting of the side elevations on the site boundaries, there would be an unacceptable reduction in the amount of daylight reaching the window at No 196 and the closest window of No 200C. This would create dark and uninviting rooms to the detriment of the existing occupiers.
10. Irrespective of whether the proposed extended opening times to the restaurant would only apply to the takeaway element of the business, the rear kitchen and service counter at the front of the property would still be operational. As a result, there would be internal noise from preparing and serving food, as well

¹ AR/RC/ENV - 048596

² AR/RC/ENV - 048632

as customers and delivery drivers' activity on the pavement outside. Additionally, although the appeal site is located within a short terrace of shops and cafes/restaurants which form part of the Burgess Road Local Centre, the evidence before me indicates that late night noise would be unexpected in this area. As a result, existing occupiers would be likely to experience unacceptable noise disturbance.

11. Given the enclosed nature of the proposed covered seating area, and the lack of windows on either side elevation, there would be limited opportunity for customers and staff of the restaurant to overlook the neighbouring properties. As such, I do not consider that the privacy of existing occupiers of No 196 and No 200c would be harmed as a result of the proposed development.
12. I have found that the proposed development would not harm the living conditions of neighbouring occupiers of No 196 and No 200C in respect of privacy. However, I conclude that the proposed development would cause unacceptable harm to the living conditions of these occupiers in regard to outlook, daylight and noise. As a result, it would be contrary to Saved Policies SDP1, SDP9, SDP16 and REI7 of the City of Southampton Local Plan Review (amended 2015) (the Local Plan). These policies, amongst other provisions, require new development to ensure a high quality of living conditions, including acceptable noise levels, is provided. Although the Council refers to Policy CS13 of the Local Development Framework Core Strategy (as amended 2015) (the Core Strategy), as this policy refers to these issues in the context of landscape design principles, it is not determinative in this main issue.
13. I also find conflict with Section 2 of the Southampton City Council Residential Design Guide Supplementary Planning Document (2006) (the Design Guide) and Chapter 12 of the National Planning Policy Framework (the Framework) which seek to ensure a reasonable quality of living conditions for existing residents.

Living conditions – future occupiers

14. No alterations are proposed to the three existing windows to the first floor rooms. Although unchanged, the modest sized window on the front elevation would provide the only external outlook for future occupiers of the separate dwelling. As a result, future occupiers would experience an unacceptable standard of outlook from the bedsit.
15. Furthermore, the remaining windows of the bedsit would be internally facing; from the kitchen onto a private stairwell; and from the shower room window onto the customer stairwell access to the first floor covered seating area. Given the proximity of the stairwell to the shower room window, future occupiers would experience an unacceptable standard of privacy when using this room.
16. When staff and customers use the stairwell access to the proposed first floor seating area, future occupiers of the bedsit would be likely to experience unacceptable levels of noise disturbance, particularly when the shower room window is open. Moreover, future occupiers would also be likely to experience noise disturbance as a result of the activity associated with customers and delivery drivers arriving at the property during the proposed extended hours. Such disturbance would be unacceptable, particularly given the location of the main living and sleeping space for the bedsit at the front of the property and the lack of late night uses close by.

17. The appeal scheme includes the change of use of part of the first floor to a bedsit with a layout the appellant contends is the same as that approved as part of a previous planning permission³. However, as the proposed plans include the relocation of the stairs, the blocking of a doorway into a store room and rooms labelled with different functions, there are material differences between the schemes. Moreover, with its separate entry from the street and the blocking up of the connecting doorway to the restaurant area and in the absence of any mechanism limiting it to staff accommodation, the bedsit could operate as a separate dwelling. Given the constrained size of the main living and sleeping space, the proposed layout of the bedsit would not be capable of providing an acceptable form of accommodation for future occupiers. Additionally, the lack of room layout detail shown on the plans does not persuade me otherwise. The use of the narrow lobby area for cycle storage would prejudice the safety of future occupiers through obstructing the sole access from the bedsit.
18. I conclude that the proposed development would not provide appropriate living conditions for future occupiers, with particular regard to outlook, privacy, noise, internal space and safety. I therefore find that the proposed development would be contrary to Saved Policies SDP1, SDP7, SDP16, H7 and REI7 of the Local Plan and Policy CS13 of the Core Strategy in these respects. I also find conflict with Section 2 of the Design Guide and Chapter 12 of the Framework which seek to ensure a reasonable quality of living conditions for future residents.

Character and appearance

19. Although the rear of properties in the terrace currently includes a variety of extensions and alterations, including additions to the first floor, none are of the height, bulk and scale of the proposed development. The proposed extension would, therefore, dominate the rear elevation of the property and be an intrusive feature in the context of the wider terrace. Despite the limited consistency in the palette of materials in the surrounding area, those present do have a utilitarian appearance, reflective of the mix of uses in the terrace. The addition of artificial grass and fencing panels would introduce further variations in materials on the rear elevation of the terrace which, given their location at first floor level, would be incongruous additions to the appeal property.
20. I conclude that the proposed development would unacceptably harm the character and appearance of the area, contrary to Saved Policies SDP1, SDP7, SDP9 of the Local Plan and Policy CS13 of the Core Strategy. These policies, amongst other provisions, seek to ensure new development is of a high quality, respects the surroundings and does not harm the character or appearance of the area. In addition, it would not accord with the guidance set out in Section 2 of the Design Guide which seeks to ensure new development positively enhances local character nor Chapter 12 of the Framework which requires new development to be well-designed development and sympathetic to local character.

³ Ref 16/00300/FUL

Cycle and waste storage

21. The Council's Parking Standards Supplementary Planning Document (2011) require a minimum of one long stay⁴ cycle parking or storage space to be provided for every new flat. No details of cycle storage for the proposed bedsit are provided. Whilst the appellant states that cycles could be stored in the ground floor entrance lobby to the bedsit, this space is narrow and, given the lack of detail on the plans I am not persuaded is of sufficient size to accommodate the required cycle storage. Although the appeal site is located on a bus route and communal electric scooters are often available nearby, these factors do not negate the need for long stay cycle storage to be provided for the benefit of future occupiers of the bedsit.
22. Furthermore, the proposed plans do not include details of where the waste resulting from both the commercial and residential units will be stored. During my site visit I observed several commercial bins within the service access lane between 200C and 200A Burgess Road, within the area to the rear of the appeal site and at the front of neighbouring commercial premises. However, as these areas are located outside the application boundary, I have limited evidence before me to confirm if their use for waste storage is permissible or if is a suitable mechanism to control such use.
23. The lack of cycle and waste storage provision, therefore, would not promote the use of sustainable modes of transport nor control the storage of waste facilities. As such, there is the potential that bins would be left on the pavement or obstruct the access to the rear service yard, thereby impacting on the health and safety of pedestrians, cyclists and drivers.
24. I conclude that the proposed development would not provide adequate cycle and waste storage facilities for the future occupiers of the bedsit or, in the case of waste storage only, for the restaurant use. It would therefore be contrary to Saved policies SDP1, SDP4, SDP5, REI7 of the Local Plan and Policy CS13 of the Core Strategy. These policies require new development to be designed to ensure it does not unacceptably affect the health, safety and conditions of the city and its citizens, promote sustainable transport and provide adequate waste facilities. I also find conflict with Section 9 of the Design Guide which sets out the requirements for residential bin storage areas, and Chapters 9 and 12 of the Framework in respect of promoting sustainable transport and achieving well-designed places.

Other Matters

25. The site is located within just over 5km of the Solent Coastline SPA, which includes the River Itchen Special Area of Conservation, European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017. The final reason for refusal concerns the lack of a legal agreement to mitigate against the wider impacts the proposed development will place upon the Solent Coastline Special Protection Area (SPA). Although the appellant has confirmed they are willing to enter into a s106 agreement to secure mitigation towards the Solent Disturbance Mitigation Project, no such document has been provided as part of the appeal. Notwithstanding this, as I

⁴ Defined as covered, enclosed, suitable for leaving bikes all night and/or overnight and providing a degree of security.

have found that the development is unacceptable for other reasons, it is not necessary for me to further consider the implications on the SPA.

26. Whilst my attention has been drawn to the previous planning permission which includes an extension to the first floor, the appeal scheme is substantially deeper than the approved scheme. Therefore, should the previous planning permission be constructed it would not be more harmful than the proposed development.

Planning Balance

27. Given the net gain of one dwelling, the appeal scheme's contribution to the local housing mix and supply, plus the social and economic benefits through the construction and occupation of the property would be small. The commercial economic benefits from the improved restaurant facilities would also be limited. I have found that the proposed development would lead to significant harm to the living conditions of existing and future occupiers, and moderate harm resulting from inadequate cycle and waste storage facilities. The development plan policies relating to these matters are broadly consistent with the Framework. As such, I give the conflict with these policies substantial weight and conclude that the appeal scheme is contrary to the development plan as a whole.
28. As the Council is unable to demonstrate a five year supply of deliverable housing sites, the presumption in favour of sustainable development set out in paragraph 11dii applies. The proposed bedsit would align with the Framework's aim to increase the supply of housing and the expanded business would provide small scale economic benefits. However, I have found that the proposed development would be contrary to the Framework in respect of the requirement to achieve well-designed places that provide reasonable living conditions, promote the use of sustainable transport and are sympathetic to local character.
29. Therefore, the identified adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

Conclusion

30. The proposed development conflicts with the development plan as a whole and there are no material considerations, either individually or in combination, including the Framework and its presumption in favour of sustainable development, that outweigh this conflict.
31. For the reasons identified above, the appeal is dismissed.

Juliet Rogers

INSPECTOR