



Appeal Decision

Site visit made on 18 April 2023

by S Leonard BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2023

Appeal Ref: APP/Z1775/W/22/3303934

11 Prinsted Crescent, Portsmouth PO6 1NS

- 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 Richard Leader against the decision of Portsmouth City Council.
 - The application Ref 20/01062/FUL, dated 17 September 2020, was refused by notice dated 28 January 2022.
 - The development proposed is a three-bedroom house.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The impact of the proposal on the character and appearance of the area;
 - The impact of the proposal on the living conditions of the occupiers of 28 Nutbourne Road, having regard to privacy and outlook impacts; and
 - The impact of the proposal on the Solent Special Protection Areas (SPAs).

Reasons

Character and appearance

3. The appeal site lies on the west side of Prinsted Crescent, in an established residential area within the designated settlement boundary. The locality is characterised by two-storey, semi-detached and terraced dwellings. There is a strong uniformity of building style, materials, and positioning in relation to the street. Properties tend to have a traditional design, with brick and tile clad walls under hipped tiled roofs. They front onto the street with regular front building lines. Front gardens tend to be enclosed by low boundary walls or completely given over to parking with no road-facing enclosure.
4. The existing semi-detached house on the appeal site is typical of the pattern of built development within the locality in terms of its traditional hipped roof design and brick and tile materials. A generous plot width has provided room for a flat roofed garage at the side of the house, together with a large area of forecourt parking in addition to a grassed front garden to the front of the dwelling.

5. The proposal would replace the existing garage with an attached, two-storey dwelling, thereby creating a terrace. This form of development is acceptable in principle, having regard to existing nearby terraces in Prinsted Crescent and Nutbourne Road.
6. Having regard to the design detailing of the new property, the proposed materials, roof form, and fenestration design would be in keeping with those of the host property and adjacent semi-detached house at No.9, as would the front and rear building lines of the property, apart from a small set-back at the front.
7. The proposed setting down of the roof ridge in relation to that of Nos. 9 and 11, together with the proposed pedestrian walkway through the new building adjacent to No.11, would introduce elements of variety within the newly created terrace. This would not be unduly uncharacteristic of the prevailing townscape, which includes properties on both sides of Prinsted Crescent which have been altered from their original design.
8. The proposal would not appear unduly cramped within the street scene due to the juxtaposition of the appeal site to the neighbouring property at No.13, and an existing large gap between the side of that dwelling and the appeal site. Moreover, the proposal would retain a clear gap between the resulting housing terrace and the existing pair of semi-detached houses at Nos 13-15, so that each respective group of houses would be read as separate entities, in keeping with the general layout of development within the area.
9. Whilst the new property would have a slightly wider footprint than that of the host dwelling, this additional width roughly equates with that of the proposed ground floor passageway under the dwelling. Having regard to its height, hipped roof design and proposed positioning of front elevation fenestration, when read within the context of the resulting terrace as a whole, the proposed dwelling would be perceived as being of a similar scale and appearance as the host property, and not unduly visually dominant in scale or design in relation to the adjacent semi-detached properties.
10. Moreover, the space that would remain between the side of the new building and the side boundary with No.13 would be comparable with other side gaps within the locality, so that the new building would not appear cramped in relation to its neighbour to the north.
11. The proposed forecourt parking would be similar to the existing on-site parking arrangement, and reflective of other forecourt parking within the locality. As such, I find the proposed layout of development to be in keeping with the prevailing layout of development which characterises the area.
12. For the above reasons, I therefore conclude that the proposal would not materially harm the character and appearance of the area. As such, the appeal scheme would accord with Policy PCS23 of the *Portsmouth Plan* (2012) (the PP), in so much as this policy, amongst other things, seeks to ensure that new development is well designed and respects the character of the city.
13. For similar reasons, the proposed development would accord with guidance in Chapter 12 of the *National Planning Policy Framework 2021* (the Framework) which requires high quality design.

Living conditions

14. The rear wall of the proposed dwelling would align with that of the host property, which contains first floor rear elevation windows. An element of overlooking to neighbouring properties is not uncommon within urban built-up residential areas, and the existing built relationship between Nos 9 and 11 and the properties to the rear at 26 and 28 Nutbourne Road is acceptable in respect of privacy and outlook impacts, given the space between the properties and the juxtaposition of buildings within the two roads to each other.
15. However, due to the tapering shape of the rear garden of 28 Nutbourne Road and the angled positioning of that property relative to the appeal site, the appeal scheme would introduce new built development within the existing established urban environment that would impact upon the privacy of the occupiers of No.28.
16. The rear wall of the new dwelling would be sited around 12 m from the rear wall of No.28. That property extends across the whole width of its site at two-storey height. Whilst its upper floor windows closest to the appeal scheme are obscure-glazed, it contains principle windows across its ground floor which would experience loss of privacy from the proposed large clear-glazed rear bedroom window of the new dwelling.
17. Moreover, that window would also overlook the main private external amenity area to the rear of No.28, which narrows opposite the proposal, and appears to provide a well-used area of outdoor living space, as evidenced by paving and domestic paraphernalia, including a barbeque. Given the relatively short distance between the proposed rear bedroom window of the appeal scheme and this relatively shallow amenity area, I find that the proposal would unduly harm the privacy of the rear garden and rear ground floor rooms of No.28.
18. I have considered whether this matter is capable of being dealt with by a condition requiring the glazing of the proposed rear bedroom window to be designed to prevent overlooking, as in the case of the subsequently approved revised scheme¹ for a dwelling on the appeal site. However, in the case of the extant permission, an additional bedroom window would be provided in the side wall of the bedroom in question, thus providing a replacement outlook for users of that room. In the absence of another window to serve this room, I do not consider it to be reasonable to attach a condition requiring the glazing of the bedroom window to be obscure and fixed to such height that it would prevent a clear outlook for users of that room, having regard to its function as a principal room window.
19. Having regard to the Council's concerns in respect of outlook, within the context of a dense built-up urban environment, I find that there would be sufficient space between the new building and the neighbour to the rear, that the outlook of the occupiers of No.28 would not be unduly harmed by the appeal scheme. In coming to this view, I have taken account of the aforementioned extant permission, which is a material consideration in the determination of this appeal, and although setting the building back slightly behind the line of the rear wall of No.11, essentially would result in similar outlook impacts upon the occupiers of No.28 as the appeal scheme.

¹ Ref 22/00164/FUL

20. For the above reasons, whilst I have not found material harm in respect of outlook impacts, I therefore conclude that the proposal would materially harm the living conditions of the occupiers of 28 Nutbourne Road, having regard to privacy impacts. As such, the development would not accord with PP Policy PCS23, in so much as this Policy, amongst other things, seeks to ensure that new development protects amenity and provides a good standard of living environment for neighbouring and local occupiers as well as future residents and users of the development.
21. This is generally consistent with Paragraph 130 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

SPAs

22. 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, including more than 90,000 waders and wildfowl including 10 per cent of the global population of brent geese. The SPAs were designated by the Government to protect these over-wintering birds.
23. The appeal scheme results in a new dwelling within the 5.6km 'Zone of Influence' of the SPAs. This net increase of residential accommodation has a potential two-fold impact upon the SPAs arising from, firstly, possible disturbance to the birds arising from increased recreational activity around the shorelines of the harbours, and, secondly, the prospect of increased levels of nitrogen and phosphorus entering the water and resulting eutrophication, arising from additional waste-water created by additional residential occupation of the site.
24. 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.
25. The *Conservation of Habitats and Species Regulations 2017* (as amended) require a decision maker to undertake an appropriate assessment (AA) before giving any permission where there are likely significant effects on the integrity of the designated habitats sites from the proposal. This is either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal.
26. Therefore, had I reached a different conclusion on the second main issue, it would have been necessary for me to undertake an AA and give further consideration to the likely effectiveness of mitigation measures. In doing so, I would have had regard to the appellant's stated intention to purchase the required mitigation credit, to be secured by the completion of a legal agreement, having regard to the Council's *Solent Recreation Mitigation Strategy* (2017) and *Interim Nutrient Neutral Mitigation Strategy* (June 2022 update). However, since the second main issue provides clear reasons for dismissing the appeal, I have not had cause to pursue these matters further, since any findings on these issues would not change the appeal outcome.

Other Matters

27. The Council has confirmed that it cannot demonstrate a 5-year supply of deliverable housing sites as required by the Framework. The information before me from the appellant is that the figure is 3.8 years of deliverable housing land supply, and this figure has not been disputed by the Council. As such, the shortfall is serious.
28. As such, 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 5-year housing land supply cannot be demonstrated, or the Housing Delivery Test indicates that the delivery of housing was substantially below the housing requirement over the previous three years. Paragraph 11 sets out that, where relevant policies are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, provides a clear reason for refusing the development proposed, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate that development should be restricted.
29. 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 within a designated settlement boundary, where access to facilities and services and public transport connections is likely to be greatest.
30. Paragraph 60 of the Framework refers to boosting significantly the supply of homes, and an additional dwelling would make a small contribution towards addressing the housing delivery deficit. Moreover, the development could be built out relatively quickly, having regard to Paragraph 69 of the Framework. There would also be economic benefits as a result of the construction of the new dwelling and economic and social benefits as a result of its future occupation. These considerations weigh in favour of the development, and I afford them moderate weight, having regard to the modest size of the proposed development.
31. The Council has raised no objection to the appeal scheme in respect of matters including the principle of residential development, impact on the living conditions of the future occupiers of the new dwelling and parking. Moreover, I have found no harm in respect of the impact of the development upon the character and appearance of the area.
32. In terms of the planning balance, the lack of identified harm is a neutral factor that does not diminish the harm that would arise from the proposal in respect of the impact on neighbour living conditions.
33. The harm I have identified to neighbouring living conditions would be significant. As a result, the social objectives of sustainable development of fostering well-designed and beautiful places and providing a good standard of residential amenity, would not be achieved.
34. Accordingly, notwithstanding whether footnote 6 to Paragraph 11 of the Framework applies with respect to habitats sites, I have found that, 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.

35. 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 in respect of the second main issue.
36. Neither am I persuaded that the appellant's stated benefits of the appeal scheme in comparison with the extant permission, including ease of cycle storage and potential for less disturbance to neighbours from building works, would outweigh or justify the harm I have identified. These matters have not been raised as concerns by the Council in respect of the appeal scheme, and, on the basis of the information before me, there is no reason for me to consider that they cannot be satisfactorily addressed in respect of the appeal scheme.
37. The appellant has referred me to the time taken to determine the planning application and the Council's procedures during the application process. These matters are not for consideration as part of this appeal, which I have determined based upon the merits of the appeal scheme before me.
38. The appellant refers to pre-application advice received from the Council which did not mention living neighbouring living conditions as an issue of concern. I note that the advice sought was in respect of a different, detached dwelling scheme. Notwithstanding this, I am not bound by the advice given by the Council prior to the submission of the planning application, and it does not alter or outweigh my conclusion on the main issues.

Conclusion

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

S Leonard

INSPECTOR