
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: 02 May 2023

Appeal Ref: APP/Z1775/W/22/3306944

34-36 High Street, Cosham, Portsmouth PO6 3BZ

- 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 Mark Smith (Kingfisher Property Group Ltd) against the decision of Portsmouth City Council.
 - The application Ref 21/00397/FUL, dated 12 March 2021, was refused by notice dated 22 July 2022.
 - The development proposed is construction of four storey extension comprising 8no. self-contained flats with associated cycle storage, refuse storage and parking; and sub-division of existing retail unit (following demolition of existing rear extension).
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the heading above is taken from the decision notice and the appeal form, since it more accurately describes the proposal than the description on the planning application form.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on highway safety, with particular regard to access design;
 - The effect of the proposal on the living conditions of future occupiers of the development, with particular regard to the provision of outdoor living space;
 - The effect of the proposal on the safety of future occupiers/users of the development, with particular regard to crime safety; and
 - The effect of the proposal on the integrity of the Solent Special Protection Areas (SPAs)

Reasons

Character and appearance

4. The site lies west of the pedestrianised part of Cosham High Street and has an L-shaped layout extending back to Fire Station Close (FSC) at the rear. It is

occupied by a vacant, double-fronted retail unit, which comprises a period pitched roof two-storey element fronting onto the High Street, together with a later long, flat roofed rear single storey extension. There is hard surfaced parking to the west side of the building, which is accessed via FSC.

5. The immediate locality of the appeal site is characterised by mixed commercial and residential development. Commercial units front onto the High Street at two/two and half storeys and onto Wayte Street at single storey height. Upper floors of accommodation also include some residential uses.
6. The proposal would replace ground and first floor rear portions of the building with a four-storey, flat roofed, contemporary-designed residential building, comprising 8 flats spread over the upper three floors. The ground floor would be accessed via FSC and would include communal pedestrian access to the flats, rear service access to the proposed two commercial units, refuse and cycle storage facilities and on-site parking for the development.
7. FSC is a small cul-de-sac which acts as a rear service road to the aforesaid commercial and residential properties, providing access to their parking and servicing facilities. It also provides vehicular access and egress to a multi-storey car park in connection with a nearby supermarket, which lies on the north side of FSC opposite the appeal site.
8. The townscape of FSC is characterised by period two-storey buildings with brick walls under tiled pitched/hipped roofs. Many have been extended to their rear by means of single and/or two-storey extensions, a large number of which are flat-roofed. These rear subsidiary structures and their rear parking and/or servicing areas provide the immediate streetscape for FSC.
9. The supermarket car park, although a notably different structure, accords with the predominant height range of buildings within the vicinity, which range between single storey and two and a half storeys. Whilst the townscape comprises a variety of building forms with no distinct uniform style, there is a cohesion of building heights and a general subordination of building height and scale towards the rear of the higher structures fronting the High Street and Wayte Street.
10. In principle, new residential development would not be out of keeping with the prevailing mixed commercial and residential nature of the area. Also, there would be townscape benefits arising from the introduction of a more active street-facing frontage within FSC, which is currently dominated by rear service yards and parking.
11. However, proposal would introduce a notably different form and layout of development within the context of the FSC townscape. The new building would be of a substantially larger scale and height than is characteristic of the immediate locality, and would, as a result, stand out as a harmful anomaly within the context of its immediate surroundings.
12. The combined height, mass and bulk of building would be significantly greater than that which it would replace, and the building would be notably higher than the surrounding single storey structures and of a greater height and massing than those of the highest pitched roof buildings within the immediate site vicinity, including the host property at 34-36 High Street and the adjacent Cosham Social Club in Wayte Street.

13. As a result of a combination of the proposed wholly four storey height of the flats component of the scheme, its blocky rectangular design, and its position close to the site frontage, the proposal would appear unduly incongruous and visually over-dominant, within the small and enclosed intimate street scene of FSC.
14. Moreover, the proposed large number of windows across the upper floors of the principal street-facing and west side elevations, in conjunction with their vertical design emphasis and regular spacing in lines above one another, would serve to further draw the eye towards the overall height of the building.
15. The over-imposing presence of the building within FSC would not be sufficiently visually alleviated by features such as the proposed partial stepping in of the north and west sides of the third storey element, the incorporation of metal cladding to the third floor and a recessed part of the north elevation, and the provision of cantilevered features on the west side.
16. The harmful townscape impact of the proposal would be particularly evident to service users of FSC as well as, what would reasonably be expected to be a large number of, vehicle drivers accessing and exiting the supermarket car park.
17. The set-back position of the new flats behind frontage development along the High Street and Wayte Street would help to minimise its visual impact in wider public views from these, and other nearby roads. However, the proposal would still be apparent in public views from Wayte Street, particularly where seen behind frontage single storey buildings. It would also be visible at street level on the approaches to the junction of Wayte Street, High Street and Albert Road, which comprises a busy, visually prominent corner location, and where shoppers make their way from the southern part of the High Street to the pedestrianised northern section. In these views, the proposal would appear as an overly large and discordant element within the established roofscape. This impact would not be sufficiently mitigated by the inclusion of recessed 'false windows' in the south elevation of the building.
18. The appellant has drawn my attention to a modern 4-storey apartment development nearby on the corner of Wayte Street and Wootton Street. However, I do not find the site circumstances or scheme details in that instance to be directly comparable with the current appeal proposal. The existing development comprises a much larger flatted building, on a notably more open site, which is much less constrained by its immediate built surroundings. As such, and given the distance and intervening lower height developments between that scheme and the appeal site, the existence of that block of flats does not alter my conclusions in respect of the current appeal proposal.
19. For the above reasons, I therefore conclude that the proposal would materially harm the character and appearance of the area. As such, the appeal scheme would not 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, including being appropriate in scale, density, layout and appearance in relation to the particular context.

20. For similar reasons, the proposed development would not accord with guidance in Chapter 12 of the *National Planning Policy Framework 2021* (the Framework) which requires high quality design.

Highway safety

21. The Council's concerns in respect of highway safety relate to the restricted nature of visibility from the proposed vehicular access and associated impact upon the safety of vehicle users and pedestrians. The Council's Highways Officer considers that visibility splays of approximately 2m by 2m could be achieved to the right, and approximately 2m by 5m to the left, upon exiting the site, and that these are significantly below the standard required for safety.
22. The information before me is that the Highway Officer comments are based upon the proposed Site Plan, Ref 28101-PD101A, that was originally submitted with the planning application, and proposed a 5.2m wide vehicular access and the reinstatement of frontage flint boundary wall.
23. Subsequent to these comments, the appellant submitted a revised Site Plan, Ref 28101-PD101B, which shows a widened vehicular access of 6.3m and omits reference to rebuilding the frontage wall, together with a new Transport Statement¹ (the PBATS). Whilst the evidence before me is that the Council received these documents prior to its determination of the planning application, it has confirmed that the revision 'B' Site Plan did not form part of the refused drawings.
24. The Council has had the opportunity to comment upon the TBATS and revised Site Plan during the course of this appeal, as they have been included within the appellant's appeal submission.
25. There is no substantial evidence before me that the frontage flint boundary wall is of any notable architectural or historic merit that warrants its restoration, and I note that it is proposed to be removed on a recently submitted revised scheme² that the Council has confirmed it intends to approve.
26. As such, and having regard to a lack of third party representations in respect of the planning application or the appeal, I do not consider that the Council or other third parties would be prejudiced by my acceptance of the revised Site Plan and PBATS as comprising part of the appellant's case. I have therefore determined the appeal on the basis of these updated documents.
27. I saw, during my site visit, that existing visibility onto the highway for cars exiting the site is restricted due to the existing access width, the narrow public footway in this part of the road, and the positioning of the appeal site and neighbouring Social Club buildings, which extend close to the back of the footpath.
28. The appellant has demonstrated that primary direction visibility is achievable to 16.9m to the end of the FSC carriageway, secondary direction visibility is achievable to 18.5m, measured to the centre of the carriageway, and there would be reasonable intervisibility between the site access and other accesses on FSC, including the egress of the supermarket multi-storey, which is likely to generate the majority of the westbound traffic within FSC. In the absence of

¹ Transport Statement by Paul Basham Associates Ltd, Ref 105.0012/TS/2 dated 3 February 2022

² Ref 23/00118/FUL

cogent evidence to the contrary, I am satisfied that such access visibility would be satisfactory, having regard to the short, cul-de-sac nature of FSC and the existing 90-degree bend in the road, so that vehicle speeds would be low, and opportunities for overtaking would be limited.

29. In coming to this view, I have also taken account of the highly accessible location of the appeal site and the associated proposed low provision of on-site car parking to serve the development, which would reasonably be expected to make non-car ownership a realistic prospect for residents of the development. I have also acknowledged the appellant's submitted Personal Injury Accident data, which does not highlight any existing highway safety issues within the immediate locality of the appeal site.
30. For the above reasons, and in the absence of demonstrative evidence to the contrary, I therefore conclude that it has not been satisfactorily demonstrated that the appeal scheme would result in material harm to highway safety. Accordingly, I cannot conclude that the appeal scheme would be contrary to the objectives of PP Policy PCS17, in so much as this Policy seeks to ensure that new development promotes walking and cycling and improved integration with other modes.
31. This accords with advice in the Framework which advises that "*Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*" (Paragraph 111).

Living conditions – outdoor living space

32. The proposal would provide 8 units of flatted development. As such, it is reasonable to expect the development to provide an amount of outdoor living space appropriate to the needs of the potential occupiers. In considering such requirements, I have taken account of the proposed flat sizes, comprising 4 x two-bedroom and 4 x one-bedroom dwellings, as well as the location of the proposal within a largely commercial urban environment.
33. Taking both these factors together, I consider it unlikely that the development would appeal, in the main, to families with children. As such, the requirement for outdoor living space to accommodate activities associated with family occupancy, such as outdoor play and large outdoor dining facilities, would be less in the case of the appeal scheme than for a development of larger dwellings.
34. The proposal would include a communal outdoor terrace, which would be of sufficient size so as to provide outdoor seating and space for the occupiers of several flats to congregate at one time.
35. Moreover, the appellant has drawn my attention to four public parks which are within easily accessible walking distance from the appeal site, and which, I consider, in this instance to provide a compensatory alternative to on-site outdoor living space provision.
36. The Council has not drawn my attention to any adopted development plan policies or supplementary planning guidance in respect of private or communal outdoor living area requirements for flatted development, and none are contained within PP Policy PCS23, the relevant policy referred to in the Council's third reason for refusal.

37. With all the above in mind, whilst it would be desirable for each dwelling to be provided with individual private outdoor living space, in the particular circumstances of the appeal site and the appeal proposal, in this instance, I do not find the proposed lack of such provision to be likely to have a materially harmful impact upon the living conditions of future occupiers of the development.
38. For the above reasons, I conclude that the proposal would provide satisfactory living conditions for future occupiers of the development, having regard to the provision of outdoor living space. As such, the proposal would accord with PP Policy PCS23, in so much as this policy seeks to ensure that new development provides a good standard of living environment for future residents and users of the development.
39. This is generally consistent with guidance within 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 (Paragraph 130).

Living conditions – crime safety

40. I acknowledge the Council's concerns in respect of the safety of future users of the parking spaces and cycle storage, having regard to the proposed arrangement of these elements of the proposal in relation to the building entrance. I consider that the proposed layout of the ground floor is such that it could readily accommodate the installation of security measures, such as gates, security lighting and/or a CCTV system. Moreover, such security measures would reasonably be expected to be provided in new residential apartment developments where there are features such as communal undercroft parking and storage facilities. As such, in the absence of any cogent evidence to the contrary, I am satisfied that such measures could be secured by means of a planning condition, were I minded to allow the appeal.
41. For the above reasons, I conclude that, it has not been satisfactorily demonstrated that the proposal is not capable of providing adequate in-built security measures, having regard to ensuring the safety of future occupiers/users of the development, with particular regard to crime safety. As such, subject to an appropriate planning condition, the proposal would accord with PP Policy PCS23, in so much as this policy seeks to ensure that new development provides public and private places that are safe, and car parking and cycle storage which is secure and convenient to users.
42. For similar reasons, the proposal would accord with Paragraphs 92 (b) and 130 (f) the Framework, which require developments to create places that are safe and where crime, and the fear of crime, do not undermine the quality of life.

SPAs

43. 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.
44. The appeal scheme results in 8 new dwellings 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.

45. 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.
46. 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.
47. Therefore, had I reached a different conclusion on the first 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 enter into a legal agreement to secure the required financial contributions to provide mitigation as required by the Council's *Solent Recreation Mitigation Strategy* (2017) and *Interim Nutrient Neutral Mitigation Strategy* (June 2022 update). However, since the first 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

48. The Council has confirmed that it cannot demonstrate a 5-year supply of deliverable housing sites as required by the Framework, and that the figure is 3.8 years of deliverable housing land supply. As such, the shortfall is serious.
49. 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.
50. 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 the designated Cosham District Centre, where there is very good access to facilities and services and public transport connections.

51. Paragraph 60 of the Framework refers to boosting significantly the supply of homes, and 8 additional dwellings would make a moderate 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 dwellings and economic and social benefits as a result of their 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.
52. I have taken account of the support given to new residential development within Cosham District Centre in Policies PCS8 and PSC21 of the PP, and the Council's intended direction of travel within the emerging Local Plan in respect of encouraging high density housing within a designated Cosham Strategic Site, noting that PP Policy PCS21 requires housing density development to be a minimum of 100 dph. The evidence before me from the appellant, which is not disputed by the Council, is that the provision of 8 dwellings would exceed the Policy PSC21 minimum stipulated density, but that reducing the scheme to 6 units through the removal of the upper-most floor, would result in a density of 96 dph.
53. PP Policy PSC21 recognises that appropriate densities depend upon various factors. Moreover, whilst the Framework encourages the effective use of land in meeting the need for homes, I am not persuaded, on the basis of the evidence available to me, that an appropriately designed building which achieves the Council's density aspirations could not be achieved on the appeal site by means of an amended scheme.
54. As such, and being mindful of guidance in the Framework which states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, I am not persuaded that the ability of the appeal scheme to meet the minimum density requirement of Policy PSC21 is, in itself, sufficient to justify the harm I have identified to the character and appearance of the area.
55. 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 neighbouring properties, parking provision and flood risk. Moreover, I have found no harm in respect of the impact of the development upon highway safety and the living conditions of future residents of the appeal scheme.
56. 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 the character and appearance of the area.
57. The harm I have identified in respect of the first main issue would be significant. As a result, the social objective of sustainable development of fostering well-designed and beautiful places would not be achieved.
58. 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.

59. Whilst the Framework requires the Council to approach decisions in a positive and creative way, this is not unqualified, and would not address or outweigh the aforementioned harm that I have identified in respect of the first main issue.
60. The appellant refers to pre-application advice received from the Council in respect of a 10-dwelling scheme. I acknowledge that the current proposal is an amended scheme to that which was the subject of the Council's pre-application advice, including a reduction in the number of units and changes to the building design, internal layout and proposed parking arrangement. Moreover, at pre-application stage, the Council did not specifically raise concerns about the proposed outdoor living space for the development or crime prevention measures.
61. Notwithstanding the above, 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, which I have determined on the basis of the merits of the scheme before me.
62. I have also been made aware of a later planning application³ in respect of the appeal site, which the Council has confirmed it intends to approve, subject to the resolution of SPA mitigation. The details of that scheme, which comprises a reduced development comprising a three-storey block of six flats with different parking, pedestrian access and outdoor living space proposals, are sufficiently different from those of the current appeal, so that this does not alter my conclusions in respect of the appeal proposal.
63. 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.

Conclusion

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

S Leonard

INSPECTOR

³ Ref 23/00118/FUL