



Appeal Decision

Site visit made on 4 May 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2023

Appeal Ref: APP/A1720/W/22/3301137

56 West Street, Portchester, Fareham PO16 9UN

- 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 Bill Seager against the decision of Fareham Borough Council.
 - The application Ref P/21/0994/FP, dated 8 June 2021, was refused by notice dated 17 May 2022.
 - The development proposed is described on the application form as, "Demolition of existing single storey launderette and replacement with 3 storey 6 apartment block".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Differing to the description of development in the banner header above, the Council's decision notice accurately describes the development as shown on the supporting plans as, "Demolition of existing single storey launderette and replacement with 3 storey 5 apartment block (4x1 bed and 1x2 bed) (revised submission of P/21/0319/FP)". I have used this description in my consideration of the appeal since it best describes the proposed development in precise and concise terms.
3. During the course of the appeal the Council adopted the Fareham Local Plan 2037 (adopted 2023) (Local Plan) which supersedes the Local Plan Part 1: Core Strategy (2011) and the Local Plan Part 2: Development Sites and Policies (2015). The parties were provided with an opportunity to comment on its relevance to this appeal, and I have taken the comments received into account in my consideration of this appeal proposal.

Main Issue

4. The main issue is the effect of the proposal on Habitats Sites, with particular regard to nutrient levels in the Solent.

Reasons

5. The appeal site comprises a single storey launderette in a mixed commercial and residential area. The site is within the catchment area for the Solent, which contains internationally designated sites of importance for biodiversity. Specifically, the site is in close proximity to the Portsmouth Harbour Special Protection Area (SPA), Solent and Dorset Coast SPA, Solent and Southampton Water SPA, Solent Maritime Special Area of Conservation (SAC), and the Solent

and Isle of Wight Lagoons SAC. These sites are protected for their international importance for plants, habitats, and birds, including waders and wildfowl.

6. Of relevance to this appeal is the pathway of potential adverse effects on the integrity of these sites via water quality impacts, specifically arising from nitrification of the waters entering the Solent. The Council have mentioned that Natural England has highlighted that there is existing evidence of high levels of nitrogen and phosphorus in parts of the Solent with evidence of eutrophication, and that increased levels of nitrates entering the Solent would have a likely significant effect upon the relevant habitat sites.
7. I note that the Nutrient Neutrality Generic Methodology¹ states that nutrient inputs currently mostly come either from agricultural sources or from wastewater from existing housing and other development. As the proposal relates to an apartment block, and given the lack of evidence to the contrary, I consider that the proposal, in combination with other development, would result in a likely significant effect on these protected areas with respect to water quality impacts. Hence, as the competent authority, it is incumbent upon me to undertake an Appropriate Assessment in line with the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). Mitigation measures and their effectiveness must also be taken into account.
8. In this regard, the Council have calculated a nitrogen budget in accordance with Natural England's guidance, resulting in a figure of approximately 4.05kg TN/year to be generated from the proposed development, based on an average occupancy of the proposed residential units of 2.4 persons.
9. As confirmed in *Wyatt*², Natural England's recommendation is that this occupancy rate should be "considered" by competent authorities, not that its use is in any way mandatory, and that competent authorities "may" choose to adopt a different rate, tailored to a particular area or particular scheme, but that where they do so, the occupancy rate adopted must be evidence-based, clearly explained and consistent with other calculations used in relation to the proposed development.
10. In this regard, reference has been made to the occupancy rate used by other authorities³. However, few details have been provided to explain how these figures have been arrived at, which limits the weight which can be given to them in support of the adoption of a bespoke occupancy rate in this case.
11. Although figures have been provided demonstrating that household sizes in the UK have been diminishing since 1921, and figures have been provided relating to the average dwelling population for the Isle of Wight and Dorset, the ONS average households figure provided for the current (2011) period is 2.4 persons, which is the same figure as used by the Council. Additionally, based on the submitted information, it is unclear how reflective those alternative figures are of the potential occupancy rates within the Fareham Borough Council area. Moreover, no mechanism is before me which would stop the proposed units of accommodation being occupied by people from outside the area covered by Fareham Borough Council and thereby resulting in an increase in population in the area.

¹ Issue 1: February 2022

² *R oao Ronald Wyatt v Fareham Borough Council & ors* [2022] EWCA Civ 983

³ Cornwall, Dorset, Somerset, New Forest, Herefordshire, Folkestone/Hythe

12. Whilst the appellant has provided an analysis of the potential occupancy rate of the proposed residential units based on the Technical housing standards – nationally described space standard (March 2015 (amended 19 May 2016)), this standard provides at paragraph 6 that the application of the standard does not imply actual occupancy, or define the minimum for any room in a dwelling to be used for a specific purpose other than in complying with the standard.
13. Therefore the figures provided by the appellant on this basis, whilst of some relevance, do not indicate that the average occupancy rate of 2.4 persons per dwelling as found in Natural England’s guidance should not be followed. I further note that I have not been provided with any evidence which indicates that Natural England have endorsed the above-mentioned approaches put forward by the appellant.
14. Given the lack of persuasive evidence relating to the appellant’s approach, including with respect to the adoption of a bespoke occupancy rate, it is clear that this approach conflicts with the agreed mitigation strategy for the Solent, which has been approved by a wide partnership of authorities. As adequate nitrate mitigation has not been provided in relation to nutrient levels in the Solent, either via a planning obligation or otherwise, it has not been demonstrated that nitrate output will be effectively mitigated to ensure nutrient neutrality. Given that it is unclear whether the appellant would be willing to purchase the required nitrate credits using the latest Natural England methodology, it would not be reasonable to impose a planning condition (including a Grampian condition) relating to this matter.
15. The proposed residential units would incorporate efficient fixtures and fittings and low-flow showers, and no external taps would be installed. However, few specific details have been provided to demonstrate how the suggested 80 litres per person per day figure has been arrived at.
16. If the proposal were found to be acceptable overall, a planning condition could be imposed to ensure that a water efficiency standard of 110 litres per person per day is secured, in line with Building Regulations. Even so, considering the proximity of the site to the protected habitat sites of the Solent, this does not alter the need for a precautionary approach to be taken in line with Natural England’s advice.
17. I have had regard to the assertion that the launderette has a throughput of thousands of litres daily with a 25ppm nitrate content on average, however no specific sources have been provided to substantiate this claim. Hence, this matter does not change my findings on this main issue.
18. In concluding my Appropriate Assessment, I therefore find that there would be adverse effects on the internationally designated sites of importance for biodiversity in the Solent from nutrient enrichment arising from this proposal when considered in combination with other development. It follows that the proposal would not comply with the Habitats Regulations.
19. The proposal would conflict with part a) of Strategic Policy NE1 of the Local Plan which provides that, amongst other things, development will be permitted where designated international, national sites and local sites of nature conservation value are protected and enhanced. The proposal would also conflict with Policy NE4 of the Local Plan which provides that, amongst other things, planning permission will be granted where the integrity of the

designated sites is maintained, having regard to the effect of nutrients on the designated sites arising from increased wastewater production.

Other Matters

20. The conduct of the Council during the processing of the planning application is not a matter that I can assess in the context of a planning appeal.
21. Mention has been made of the potential exercise of permitted development rights under Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), and Class AA of Part 20 of Schedule 2 of the GPDO. However, on the main issue I have found that the proposal is likely to have a significant effect on European sites in combination with other plans or projects and as approval under regulation 77 of the Habitats Regulations has not been given, there is not a greater than a theoretical possibility that these permitted development rights would be exercised. Hence, my findings on the main issue remain unchanged.
22. A copy of an agreement given pursuant to section 111 of the Local Government Act 1972 (as amended) has been submitted which relates to contributions in respect of recreational disturbance on the Solent SPAs. However, as the appeal is to be dismissed for other reasons, it is not necessary to consider the submitted agreement in any further detail.
23. I have had regard to the representations submitted by local residents. Had my findings in relation to the main issue been more favourable, it would have been necessary to address representations on the other issues raised by local residents in more detail. However, as I am dismissing the appeal for other reasons, with the overall outcome of the appeal having been determined, I make no further comments on these matters.
24. The appellant has highlighted Housing Delivery Test results in the context of paragraph 11 of the National Planning Policy Framework (the Framework) which relates to the presumption in favour of sustainable development. However, following my findings on the main issue above, and taking account of footnote 7 of paragraph 11 of the Framework, the application of policies in the Framework that concern habitats sites provides a clear reason for refusing the development proposed. Hence, paragraph 11 d) i. of the Framework applies and the proposal would not benefit from the presumption in favour of sustainable development.

Conclusion

25. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR