



Appeal Decision

Site visit made on 6 September 2023

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 September 2023

Appeal Ref: APP/Z1775/W/22/3306550

98 London Road, Hilsea, Portsmouth PO2 0LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Ms Hayley George against Portsmouth City Council.
 - The application Ref 21/01652/OUT, is dated 9 November 2021.
 - The development proposed is the redevelopment of existing retail unit and construction of new building to provide a retail unit at ground floor and 65 affordable homes together with landscaping, cycle parking and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is against the non-determination of the application by the Council. Putative reasons for refusal have been provided as part of their Statement of Case.
3. The application is made in outline, with all matters reserved. Some of the Council's putative reasons relate to the safety of pedestrian access, refuse storage and the living conditions of future occupants in terms of privacy and communal external amenity spaces. However, these concern matters of access, appearance, landscaping and layout which are beyond the parameters of an outline consent.
4. While plans showing proposed elevations, floorplans and 3D perspectives of the proposed development have been submitted with the application and appeal, these can only be taken into account on an indicative basis only. As such it would be inappropriate for me to reach a finding on these specific matters of detail in my consideration of the appeal proposals. I have thus not considered pedestrian access, refuse storage and living conditions further.
5. A signed Unilateral Undertaking (UU) was submitted as part of the appeal. I come to this below.

Main Issues

6. In light of the above, the main issues are:
 - i) the effect on the character and appearance of the area;
 - ii) the effect on highway safety; and,

- iii) the effect on the Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas (SPAs).

Reasons

Character and appearance

7. The property is a 2-storey purpose-built shop unit with a wide frontage to London Road. It is brick built and has a flat roof and small storage yard servicing area to the rear. The site is around 0.18ha in size.
8. The appeal site is located in a busy commercial high street area, along a main through route. The area contains a number of shops, along with cafes and public houses. To the north the site sits directly adjacent to a row of single storey retail units. To the south there is a former cinema with a striking art deco tower above a single storey former foyer to the front. Set back from this frontage is a large auditorium which extends to around 16m in height. There are a mix of building sizes and styles along the rest of London Road, which are predominantly 2-3 storey in height.
9. The proposal is for 65 homes and in order to provide this level of accommodation, the development would need to be relatively tall and would fill a large part of the 0.18ha site. I note that the indicative plans illustrate a development which would be 6-storeys in height. While London Road is a built up and urbanised, there is nothing of this scale in the vicinity of the site.
10. Although the proposal is in outline, it is clear that any form of development of 65 units here is likely to have significant bulk which would be significantly out of scale with the rest of the area, giving rise to an incongruous effect. This would be particularly visible when travelling south along London Road as the development would dominate and have a looming effect over the single storey units to the direct north of the site.
11. I accept that the site is adjacent to a relatively tall building to the south. However, the auditorium of the former cinema is set back and its height is not experienced within the street scene to any significant degree. The tower feature is flanked by single storey elements and has a slender form. The presence of this building would not therefore justify a bulky development at the site given the scale of development proposed.
12. I understand that outline consent was granted for the demolition of the cinema and its replacement with a part 5-storey mixed use development. However, this was approved a significant time ago in 2009 and is now long expired. Accordingly, I do not consider that this can be relied upon to justify the proposals before me.
13. I also note that the appellant quotes from the Officer report for an application in 2017 at the appeal site for a 5-storey care home development which cites no in-principle objection. However, the details before me are limited and I note that this application was refused on excessive scale and bulk.
14. There is emphasis in the National Planning Policy Framework (the Framework) in terms of the optimisation of site potential and supporting appropriate innovation or change (paragraph 130). However, this is a balance in terms of being sympathetic to local character and the built environment and I consider

the development of 65 units on a site of 0.18ha given the prevailing character of the area would clearly represent overdevelopment.

15. Overall, I consider the development would cause harm to the character and appearance of the area. The development would conflict with the Portsmouth Plan (2012) and the saved policies from the Portsmouth City Local Plan (2006), namely policy PSC23 which seeks to secure development which is well designed and has an appropriate scale, density, layout, appearance and materials in relation to the particular context.

Highway Safety

16. London Road is a busy main road. In the carriageway outside of the site is a dedicated bus lane and separate lane for traffic. A bus stop is positioned directly in front of the appeal site. There are also double yellow lines along each side of the road. To the rear of the site is a separate pay and display car park. The wider area has on-street parking, some of which is subject to controls. While only a snap-shot in time, at my site visit the area had a considerable amount of traffic, with high levels of on-street parking and usage of the public car parks.
17. While the application is in outline only, the site is being promoted as a car free development (save for the intended provision of two disability spaces) as set out in the submitted Transport Assessment (TA). The site is located in an area which has good access to local services and facilities as well as public transport options and as such it would lend itself to car free development and a relaxation of the car parking standards as set out in the Parking Standards and Transport Assessments Supplementary Planning Document 2014 (SPD).
18. However, there is no mechanism to secure this as a car free development. Typically, car-free housing developments are restricted through the submission of a planning obligation, however the submitted UU is silent on this issue.
19. The TA goes on to say that if there was any demand from residents at the site, this could be met in the form of resident parking permits for use at the existing public car parks or through on-street parking on adjacent roads. I note that there appeared to be capacity at the Stubbington Avenue Car Park to the rear of the site, however this would be chargeable to residents and visitors and I have no details before me to give an understanding of what the costs are likely to be, nor is there any evidence as to how this could be secured for future occupants.
20. The TA also notes that there is additional uncontrolled on-street parking opportunities at Stubbington Avenue, Emsworth Road and Drayton Road. However, no assessment is given within the TA of the capacity of these areas, and there is no evidence relating to the existing parking demand in both day and night time use of these streets.
21. I have considered whether it would be appropriate to impose a negatively worded condition to secure an obligation to address these issues. However, Planning Practice Guidance¹ (PPG) is clear that the use of a negatively worded condition should only be used in exceptional circumstances and there are none before me to justify the imposition in this case. There are also uncertainties around the specific demand in the area due to a lack of evidence and as such

¹ Reference ID 21a-010-20190723

there would also be question marks around the reasonableness of any measures to be secured by a condition.

22. Taking all of the above together, while the development is anticipated to be car-free, there is no mechanism in place to ensure this. Neither are there any measures in place to secure the implementation of any other off-site measures outlined by the appellant. Without any certainty of this matter, I have concerns regarding the capacity of the local highway network to accommodate the additional vehicular parking. In adopting a precautionary approach, overall I consider that the development of 65 units would be likely to give rise to significant highways effects through increased parking stress and inconvenience to the wider neighbourhood from additional demand.
23. The development would conflict with Policy PCS17 of the Portsmouth Plan which seeks to provide a sustainable and integrated transport network. The development would also conflict with paragraph 110 of the Framework which requires that any significant impacts on the transport network or on highway safety can be mitigated to an acceptable degree.

Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas (SPAs)

24. There is no dispute that the development would result in a net increase in population and as such mitigation is required to ensure that the SPAs' relating to the Solent are adequately protected in line with the Conservation of Habitats and Species Regulations. Natural England and the Council's Ecologist advise as much in their consultation responses and the appellant states that they would enter into a s106 agreement to secure the necessary mitigation.
25. I note the appellant's frustration with the Council in terms of a lack of communication which has apparently hindered their ability to secure such measures through a bilateral undertaking. Instead, they have sought to address this via the submitted UU.
26. Unfortunately, on this matter the submitted UU simply states the following provisions:
- "1.5 Solent Mitigation Contribution to offset the recreational impact of new development.*
- 1.6 Nitrate Mitigation: The appellant would seek to secure the purchase of mitigation credits to offset the nitrate impacts of new residential development."*
27. No specific sums are specified and there is no reference in the definitions and implementation to these terms. The UU is therefore extremely vague and would not, in my view, be legally enforceable to ensure suitable mitigation is secured. The UU would not meet the tests in terms of being directly related to the development and fairly and reasonably related in scale and in kind to the development.
28. Without such an obligation, the development would likely to result in a significant effect on the Portsmouth Harbour and Chichester and Langstone Harbours SPAs. This would be contrary to Policy PSC13 of the Portsmouth Plan which seeks to refuse development which would have an adverse effect on a European site.

Other Matters

29. The development would provide housing in an area where the Council is only able to demonstrate a 2.8 year supply. The development is also proposed to be 100% affordable housing for those most in need, however, as with the SPAs, the submitted UU is poorly drafted and provides no clarity on the scope of this. Again, I have my doubts on the legal enforceability of this document to secure affordable housing.

Planning Balance

30. The development would provide much needed housing, although the affordable housing is not adequately secured. However, I have found harm in terms of character and appearance, highway safety and the SPAs. Taken together, the harms I have identified provide a clear reason for refusing the development proposed, in accordance with paragraph 11 of the Framework.

Conclusion

31. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

C Searson

INSPECTOR