

Appeal Decision

Site visit made on 13 November 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2023

Appeal Ref: APP/D1780/W/23/3315088

201 Portswood Road, Southampton SO17 2NF

- 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 S Ahmed against the decision of Southampton City Council.
 - The application Ref 22/00843/FUL, dated 6 June 2022, was refused by notice dated 16 August 2022.
 - The development proposed is 2 storey rear extension to provide extended retail on the ground floor and a residential flat at first floor.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. At my request, the Council provided an explanation of what it considers to be its current 5-year housing land supply position. The appellant was given an opportunity to comment on this but no comments were received. I have taken the appellant's other comments into account in determining the appeal.

Main Issues

3. The main issues in this case are the effect of the first floor of the proposal on:
 - the living conditions of the existing occupiers of the first floor flat on the site and of the existing occupiers of the first floor flat next to the site, having regard to outlook and natural light;
 - the living conditions of the future occupiers of the proposed first floor flat with regard to private external amenity space;
 - the Solent coastline designated as European sites; and
 - the Council's housing land supply position.

Reasons

Living conditions – existing occupiers

4. The proposal would infill an open yard with a two-storey rear extension under a flat roof. It would stretch across the full width of the site and most of its depth along the common boundaries with the terraced properties either side, wider than their two-storey rear wings.
5. The first floor of the proposal would therefore block the main perpendicular view from a rear bedroom window in the first floor flat on the site. There is no view from this window in one direction due to the existing first floor flat on the site and a narrow sideways view in the other direction is already restricted by

the end of the first floor flat next to the site and would be the only view from this bedroom. A rear window in the other bedroom of the existing first floor flat would be blocked up, leaving a side window which already faces the side elevation of the first floor flat next to the site. The first floor of the proposal would further restrict the angled view from this window past the end of the first floor flat next to the site and be the only view from this bedroom.

Perpendicular views and sideways views in one direction from rear windows of the first floor flat next to the site would not be significantly affected. However, the first floor of the proposal would restrict angled views from these windows in the other direction and block angled views from side windows in this flat, including to a room which did not appear to be dual aspect.

6. The gap and space between these two existing adjoining flats and these respective windows is already narrow and has a northwest aspect. It is also enclosed by the rear wings of the buildings on both plots and the taller roofs of these buildings behind, fronting Portswood Road. Notwithstanding a flat roof the first floor would be on the southwest side of these windows and as a result further restrict natural light for most of the day. Even if all these windows are bedrooms, they can be in domestic use during daylight hours; especially in smaller flats such as these where internal space is at a premium. Satisfactory outlook and natural light is a facet of such use.
7. No-one has a right to a private view and the site is in a tight, urban location. However, these blocked or restricted views would infringe the Council's '45 Degree Code' or separation distances between facing elevations in its Residential Design Guide (RDG)¹. It seeks to maintain satisfactory relationships between residential development. The siting and position of the first floor of the proposal would have an unduly overbearing presence so significantly restrict or block views from habitable room windows in the existing flat on the site and in the existing flat next to the site. The remaining narrow views would be mostly glimpsed in nature or upwards towards the sky. Some rooms in these flats would be gloomy and over-reliant on internal artificial lighting. Neither outcome would be conducive to well-being nor provide satisfactory living conditions.
8. The existing occupiers of both existing flats did not object but that does not mean no adverse impact for planning purposes in the wider public interest. Most of the rear extensions in this row of terraced properties have flat roofs. However, none have the same combination of storeys, width, height, depth, siting or orientation of windows as in this appeal, including at Nos.191, 191a, 219, 221, 229 and 331 Portswood Road. While this other development has some parallels in design and in its effect on character and appearance of the area, it is not therefore directly comparable to the living conditions of existing or future occupiers in this appeal.
9. I therefore find that the first floor of the proposal would cause unacceptable harm to the living conditions of the existing occupiers of the first floor flat on the site and to the existing occupiers of the first floor flat next to the site, having regard to outlook and natural light. Consequently, the proposal would conflict with saved Policy SDP1 of the City of Southampton Local Plan Review 2nd Revision March 2015 (the LP) and with Policy CS13 of the Core Strategy March 2015 (the CS). These policies include that development should have a positive impact on health and not unacceptably affect the amenity of citizens.

¹ Residential Design Guide – Making Better Places for Living (Final Approved Version) – September 2006 (Supplementary Planning Document)

Living conditions – future occupiers

10. There would be no external private or communal amenity space for the proposed flat. The RDG sets out that extensions should leave adequate garden space but its minimum of 20 sqm garden space for flats applies where flatted development has communal space, so is not applicable in this case. There is no other suitable space on the site which might otherwise be retained as a garden because of the commercial ground floor use of the yard and the proposal itself takes up the entire first floor, with no terrace or even balcony provision.
11. There is public open space within a 10-15 minute walk of the site, so accessible for leisure or recreational activity and to provide some relief to the internal living environment of the proposed flat, which in size is likely for single person occupation not a family. However, there is no evidence a park could be used for private domestic use or activity, such as drying washing or sitting out to relax or entertain. Potential occupiers could dry clothes by other means and not everyone values an outdoor living space so these considerations would inform a decision to occupy the flat. Nonetheless, the absence of any private outdoor amenity space (such as a terrace or a balcony) would not provide suitable or satisfactory living conditions for planning purposes in the wider public interest.
12. The RDG acknowledges that characteristics of the local area are a relevant consideration. Other flats in this terrace did not appear to have private amenity space. However, there is no evidence they were established as a result of lawful use, permitted development or planning permission granted after the Council's current development plan policies and RDG were adopted.
13. I therefore find that the first floor of the proposal would cause unacceptable harm to the living conditions of the future occupiers of the proposed first floor flat with regard to private external amenity space. Consequently, the proposal would conflict with saved LP Policy SDP1 and with CS Policy CS13. These policies include that development should have a positive impact on health and not unacceptably affect the amenity of citizens.

European sites

14. The appeal site is within a zone of influence of the Solent coastline designated as European sites to protect habitat for important bird species, including ground nesting and breeding species². Alone or in-combination with other development the net dwelling gain in this case would have a likely significant effect on the integrity of these features of the European sites due to recreational disturbance by the additional occupiers visiting them, including for dog walking.
15. With advice from Natural England and endorsed by it, the Council adopted a Solent Recreational Mitigation Strategy, December 2017 (SRMS). It provides for a tariff based per dwelling financial contribution towards implementing strategic mitigation measures set out in the SRMS. By this means the Council's Habitats Regulation Assessment (HRA) considers that the proposal would have no adverse effect on the integrity of the Solent and Southampton SPA and Ramsar site and the Solent Maritime SAC European sites. I have no reason to find otherwise in this respect. The appellant states that the financial contribution will be paid 'once consent has been offered in principle'.

² The Solent and Southampton Special Protection Area (SPA) and Ramsar site, the Solent Maritime Special Area of Conservation (SAC) and the New Forest SPA, SAC and Ramsar site

However, according to the SRMS, payment of the financial contribution must be secured by a suitable planning obligation agreed prior to granting planning permission. There is no planning obligation before me and no alternative mitigation has been suggested by the appellant in this regard.

16. The HRA also states that the precise scale of the potential impact on the New Forest SPA, SAC and Ramsar site is currently unknown and there is no agreed [strategic] scheme of mitigation. Meantime, the Council would ring-fence a percentage of the Community Infrastructure Levy receipt generated by the proposed flat (though it is not clear if this would be 5% or 10%). It would use this contribution for footpath improvements at semi-natural sites within Southampton and anticipates this 'will provide alternative dog walking areas' for new residents. On this basis it considers that the proposal would not have an adverse effect on the integrity of the New Forest SPA, SAC and Ramsar site.
17. The Council means this to be a 'precautionary approach'. However, it has provided no details, such as any specific improvement schemes, and there is no evidence of endorsement of this approach by Natural England. Nor any evidence or guarantee that residents of the proposed flat would use footpaths within the urban environs of the city instead of the countryside or coast of the New Forest. On the face of it the nationally designated protected landscape of this National Park would likely be attractive to recreational or visitor use for reasons other than travel convenience or dog walking.
18. Both issues (SRMS payment and New Forest SPA, SAC and Ramsar site mitigation) are fundamental to an in principle decision to grant planning permission. In these circumstances, as the competent authority in this appeal and after Appropriate Assessment³, the absence of suitable mitigation for the proposed first floor flat would harm the nature conservation interests of the Solent coastline designated as European sites so adversely affect their integrity. Consequently, the proposal is contrary to CS Policy CS22 which includes that development should not adversely affect the integrity of designated sites of biological interest.

Housing land supply

19. The Council meets the most recent Housing Delivery Test and it had a 6-year housing land supply before the Government's standard methodology with a 35% uplift. I have also been informed about a Local Plan review, a full Strategic Land Availability Assessment update said to identify a significant increase in supply and that the Council is working with other Council's across south Hampshire about how to meet unmet housing need. However, there is no evidence that the standard methodology with a 35% uplift should not be used. No details of these other initiatives, including any Local Plan draft housing need or requirement figures or what stage reached have been provided. As of April 2023, the Council agrees that it cannot currently demonstrate a 5-year supply of deliverable housing sites, with a 4.19 year supply.

Planning Balance

20. Given the housing land supply position, by virtue of footnote 8 Framework paragraph 11(d) is therefore engaged. The starting point is that planning permission should be granted. In this appeal the application of policies in the

³ The Conservation of Habitats and Species Regulations 2017 (as amended)

Framework that protect an area or asset of particular importance (the European sites) provide a clear reason for refusing permission. Accordingly, the presumption in favour of sustainable development does not apply in this case.

21. The site is in a built-up area and is previously-developed land. The ground floor extension would enlarge an existing retail unit so help to sustain commercial activity in this local shopping frontage. The 1-bedroom flat would be on a small windfall site in an accessible urban area near facilities and services, have sufficient internal space and could be built relatively quickly. It would contribute to meeting the Council's housing requirement and add to the diversity of the local housing stock. The proposal would sustain employment during construction. These outcomes would align with objectives of the Framework to significantly boost the supply of homes, meet people's living needs and support the economy. Given the small scale of the development in this case, these would be limited social and economic benefits so, in my view, they have modest weight in support of the proposal.
22. On the other hand, the proposal would cause significant harm to the living conditions of the existing occupiers of the first floor flat on the site, the existing occupiers of the first floor flat next to the site and to the future occupiers of the proposed first floor flat; as well as to the Solent coastline designated as European sites. This would undermine the Council's development plan objectives in these respects. In light of the housing land supply position, reduced weight applies to these policies most important for determining the appeal. But they are broadly consistent with aims of the Framework to achieve well-designed places and conserve the natural environment; including that development should ensure a high standard of amenity for existing and future users, maintain the character of the undeveloped coast while improving public access to it and protect sites of biodiversity value by avoiding significant harm through adequate mitigation.
23. Consequently, notwithstanding the housing land supply position and the not insignificant scale of housing shortfall, I consider that the support given in the Framework to delivering housing is not at the expense of ensuring that residential development is appropriate and suitable in relation to existing and future occupiers or harm to the European sites. In my view, these individually important and cumulatively compelling adverse social and environmental impacts have substantial weight against the proposal. The benefits if the proposal would not, therefore, outweigh the harm.

Conclusion

24. The first floor of the proposal, so the proposal as a whole, conflicts with the development plan overall and with relevant provisions of the Framework. There are no other material considerations to indicate that the decision should be taken other than in accordance with the development plan⁴. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR

⁴ Section 38(6) Planning and Compulsory Purchase Act 2004 (as amended) and Framework paragraph 12