
Appeal Decision

Site visit made on 17 January 2024

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st February 2024

Appeal Ref: APP/D1780/W/23/3327463

432 Bitterne Road Precinct, City of Southampton, Southampton SO18 5RT

- 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 Prashad Jaitley, Lyonwood 11 Limited, against the decision of Southampton City Council.
 - The application Ref 22/01300/FUL, dated 14 September 2022, was refused by notice dated 21 April 2023.
 - The development proposed is described as 'PROPOSED REDEVELOPMENT REAR OF 432-434 TO FORM 6 x One Bed RESIDENTIAL and 1 x Two Bed RESIDENTIAL APARTMENTS WITH ASSOCIATED PARKING.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the appeal, the appellant submitted a Unilateral Obligation made as a Deed pursuant to section 106 of the 1990 Act and imposing obligations on the site. I have had regard to this in reaching my decision.

Main Issues

3. The main issues are:
 - the effect of the proposed development on preserved trees, with particular regard to the character and appearance of the surrounding area, biodiversity and climate change mitigation; and
 - whether the wider impacts of the proposed development would be sufficiently mitigated.

Reasons

Preserved trees

4. The appeal site is situated in a built-up area dominated by numerous buildings and hard surfacing. Currently a service yard, the development site is positioned to the rear of 432-434 Bittern Road Precinct and to the side of the substantial building which stretches most of the full width and depth of the rest of the block. There are also relatively large buildings with hard surfaced areas on the opposite side of Angel Crescent. The site contains a silver birch (T1) whilst two limes (T2 and T3) are on the adjacent verge. These are covered by the Southampton (Angel Crescent) Tree Preservation Order 2023 (TPO T2-762). There are other trees and areas of planting in the surrounding area, including

to the south, south-west and surrounding the car park on the opposite side of Angel Crescent. However, the three trees sit as a distinct group and serve to soften the dominating presence of the built-up character and hard-landscaped appearance of the area surrounding the site.

5. The three preserved deciduous trees therefore positively contribute to the visual amenity of the locality and provide obvious climate change mitigation, including for example urban cooling and limiting surface water runoff. The submitted Tree Report (by KJF Consultancy Ltd) sets out that none of the trees contain any features used by bats and no signs of bird nests were noted during the tree survey. However, the trees, especially given their size and the extent of built form in the vicinity, are likely to have some biodiversity value, such as providing habitat and food for various forms of wildlife. It seems to me that it is probable that the trees will not only continue contributing to these aspects but will also increase their visual prominence, importance as climate change mitigation and value to wildlife as they continue to mature.
6. The proposed development would be situated to the north of the trees and would not impact on their root protection areas. However, it would be approximately one metre from the current extent of T3's canopy and although the canopies of T1 and T2 are further away, all three trees, given their position and height, would significantly reduce the amount of sunlight reaching the proposed development. Whilst the Horizontal Shadow Plan indicates that no shade from the trees would fall on the proposed development from 1300 hours on 21 June, the adjoining building, given its height and position, would clearly shade the site for much of the rest of the day.
7. Although the proposed apartments would be dual aspect and their main outlook would be to the east (away from the trees), they would therefore only receive direct sunlight for a short part of the day. Consequently, future occupiers of the proposed apartments on the southern side of the building – who could reasonably expect to have more than dappled shade via the southerly-facing windows which serve habitable rooms – would be likely to see the trees as significantly impacting their living conditions through overshadowing and loss of sunlight. With the trees still maturing, their effect on the amount of sunlight reaching the development is also only likely to increase.
8. On this basis, it seems to me that the proposed development would inevitably lead to pressure to frequently/significantly prune the trees or remove them. The trees' natural cooling presence, the ability for solar radiation to penetrate their canopies (especially during winter), the extent of other glazing in the apartments and there being only one terrace facing the trees do not lead me to a different conclusion. In coming to this view, I have also taken into account that future occupiers would be aware of the trees beforehand, the adjoining building is close to the trees and that such proximity does not automatically mean applications to prune or remove them will follow, and the Council has not alleged that the living conditions of future occupiers would be inadequate.
9. The limited degree of separation between the proposed apartments and trees, combined with their notable height, means that future occupiers would also likely be concerned about their safety from the trees or branches falling, especially during storms. With the trees yet to reach maturity, it is probable that such concerns would intensify as the trees grow higher and/or closer to the development site. Safety concerns are therefore also likely to result in

requests from future occupiers to have the trees either removed or regularly/significantly pruned. The trees already overhanging the public highway and the presence of other trees near other buildings, roads and public areas do not change this.

10. Given the trees' location and proximity to one another, it has been put to me that they will not grow to their full potential. However, the Tree Report identifies that all three are still maturing and the estimated heights indicate the trees are already higher than the proposed building. Whilst they may not grow to their full potential size, the verge that the lime trees are on is reasonably large and I observed on my visit, via the open trench, that the hard surface on the site is not particularly deep and contains tree roots underneath. Accordingly, even if they do not reach their full potential height and width, it seems to me that the trees could continue to grow higher and/or closer to the proposed building than they already are. In any event, the trees' current size means that there would likely still be pressure, for the reasons above, to remove or regularly prune them.
11. Given the proximity, there would be leaf litter and debris falling from the trees on to the development site. However, the submitted ground floor plan shows the proposed green space as being for ecology enhancement, with access only for maintenance. The only terrace facing the trees, on the top floor, would also be high enough to avoid the majority of leaf fall and tree debris, whilst the other terraces would not be orientated towards the trees and would extend away from them. There would therefore be little justified reason for future occupiers of the proposed development to seek the removal or extensive pruning of the trees in relation to this matter.
12. Nevertheless, due to shading and safety issues, I conclude that the proposed development would result in future pressure for the preserved trees to be removed or, to the detriment of their long-term health, frequently/significantly pruned. Given my findings above, it seems to me that the Council would struggle to justify resisting such requests, and such actions would result in significant harm to the character and appearance of the surrounding area and biodiversity, and reduce mitigation against the effects of climate change. I therefore find that the appeal proposal conflicts with Policy SDP 1 of the City of Southampton Local Plan Review – Adopted Version 2nd Revision (2015) (LPR) and Policies CS 13 and CS 22 of the Local Development Framework Core Strategy Development Plan Document (2015) (CS).
13. Amongst other aspects, these: set out that planning permission will only be granted for development which does not unacceptably affect the amenity of the city; require development to make a positive contribution to tackling climate change and contribute to the greening of the city by incorporating landscape qualities and green infrastructure; and seek to ensure that development retains, protects and enhances features of biological interest. These policies appear to be broadly consistent with the provisions in the National Planning Policy Framework (Framework) relating to achieving well-designed and beautiful places, meeting the challenge of climate change and conserving and enhancing the natural environment. Given my findings above, the appeal proposal also cannot be described as making effective use of land.

Wider impacts

14. During the appeal, a Unilateral Obligation (UO), made as a Deed imposing obligations on the site, was submitted. Equating to a s106 agreement, the UO seeks to mitigate the wider impacts of the proposed development.
15. The definitions in it cover the three matters identified in the Council's second reason for refusal, involving highway condition surveys and financial contributions to the Solent Recreation Mitigation Strategy and for site-specific transport works. Although the Land Registry titles have not been provided to the Council, the UO includes the title numbers associated with the site, the appellant has set out that both freeholds are solely owned by them in freehold, and the available evidence does not indicate otherwise. The Council has raised a number of other concerns with the UO, including that any permission for the proposed development would not be granted by the Council given the appeal has been made and that the appellant has neither paid nor is proposing to pay the Council's legal costs. However, these matters do not indicate that the Deed as a whole is invalid or fundamentally flawed and that its relevant provisions and obligations are invalid or unenforceable.
16. Schedule 1 of the UO defines the highway condition surveys and covenants the owner to carry out the surveys and secure any repairs required to rectify any damage caused to the highway from construction of the development. This covers part ii of the second refusal reason. It also directly relates to the development and, given the scale of the appeal proposal and its proximity to the highway, is necessary to make the development acceptable in planning terms and is fairly and reasonably related in scale and kind to it.
17. Covering the environmental obligations of the UO, Schedule 2 defines the contribution to the Solent Recreation Mitigation Strategy and covenants the owner to not commence development unless the contribution has been paid to the Council. This covers part iii of the second refusal reason and, based on the available evidence, indicates that sufficient mitigation would be provided to avoid the development adversely affecting the Solent and Southampton Water Special Protection Area (SPA) and Ramsar site through increased recreation disturbing the designated site's qualifying features. On this basis and considering the submitted evidence, this obligation accords with CS Policy CS 22; and is necessary to make the development acceptable in planning terms, directly relates to the development and is fairly and reasonably related in scale and kind to it.
18. Schedule 1 defines the 'site specific transport works' and the appellant's final comments indicate that the UO has been amended to include a contribution for this. However, the signed and dated UO submitted with the appeal contains no covenant on the owner to pay the contribution. As such, whilst the appellant appears to accept the need for it, there is no obligation to actually pay it.
19. The proposed development would be car-free and opportunities for on-street parking are limited in the vicinity due to parking restrictions. However, as identified by the Highway Authority, there is a section of unrestricted kerbside in the locality, near to the car park at the eastern end of Angel Crescent. The submitted evidence indicates that parking in this section can impede access to several commercial units.

20. With no vehicular parking provided for future occupiers, the proposed development could result in an increased demand for on-street parking. To ensure it does not lead to overspill parking that hinders access in the locality, the seeking of a financial contribution by the Council for the introduction of parking restrictions on that section of highway is, despite the lack of objection from the Highway Authority, therefore reasonable and justified to make the development acceptable. The resulting parking restrictions would also encourage less reliance on the private vehicle and promote active travel. Although my attention has not been drawn to any relevant words in LPR Policy SDP 4 in relation to this matter, this would be in-line with CS Policies CS 18 and CS 25. Amongst other aspects, these set out that the Council will seek to support infrastructure and secure developer contributions towards directly related measures and which promote active travel. The Council's Developer Contributions Supplementary Planning Document also sets out that most developments require localised contributions to address their immediate impact and that site specific transport obligations, which often promote sustainable and active travel, can include parking controls. These broadly accord with the Framework's provisions promoting sustainable transport.
21. I have found that the UO sufficiently secures the highway condition surveys and the Solent Recreation Mitigation Strategy contribution. Nevertheless, the lack of a covenant securing the site-specific transport works contribution means that not all the wider impacts of the proposed development would be sufficiently mitigated, contrary to the above policies and guidance.

Other matters

22. The proposed development, in combination with other plans and projects, would be likely to have a significant effect on designated nature conservation sites¹ due to additional residential occupiers leading to increased recreational disturbance and wastewater pollution. The available evidence indicates that it would not be possible to ascertain that the proposed development would not adversely affect the integrity of the designated sites without adequate and appropriately secured mitigation. In this instance, the submitted UO secures a contribution to mitigate recreational disturbance to the Solent and Southampton Water SPA and Ramsar site whilst the Council considers that other actions could sufficiently secure adequate mitigation for the development's wastewater impacts on the relevant designated sites and recreational impacts on the New Forest SPA. However, as I am dismissing the appeal for other reasons, I am not pursuing this matter further because it would not lead me to a different decision.
23. The proposed development would provide various social, economic and environmental benefits. This includes the creation of seven additional apartments contributing to the supply, mix and range of housing in the district. The car-free development would also be in an accessible, brownfield location and provide construction employment. In addition, the proposed green space on the site would incorporate landscaping for the enhancement of biodiversity.

¹ Including the Solent Maritime Special Area of Conservation, the Solent and Southampton Water SPA and Ramsar site, and the New Forest SPA.

Planning Balance

24. Local and national policy seek to maximise use of previously developed land in accessible locations such as this, which is within the Bittern Centre with its numerous services, facilities and public transport options. The Council supports the principle of additional windfall residential development in this location, whilst the Prior Approval schemes mean that residential use on the rear part of the site is established. The appeal proposal would not conflict with the various other development plan policies cited in the Council's Delegated Report, and I recognise that policies in the development plan may pull in different directions. The units would also be sufficiently sized, the proposed building would have an acceptable design and appearance, and the Council has not identified that the development would result in unacceptable effects on various other matters. Furthermore, the trees would provide natural cooling during the summer, which is becoming increasingly important due to climate change, and thus reduce the need for air conditioning and the associated energy use and pollution.
25. Nevertheless, I have found that the proposed development, resulting in future pressure for the preserved trees to be pruned or removed, would significantly harm the character and appearance of the area and biodiversity, and reduce mitigation against the effects of climate change. Its wider impacts in relation to highways matters would also not be sufficiently mitigated. The available evidence and the policy conflicts I have identified therefore lead me to conclude that the proposed development conflicts with the development plan as a whole.
26. However, the Council cannot demonstrate a sufficient supply of deliverable housing sites as required by the Framework. Although the shortfall in supply is said to be relatively small, paragraph 11d) of the Framework should, because of the provisions of footnote 8, therefore be applied. In this instance, the Council has not indicated that there are any applicable Framework policies that protect areas or assets of particular importance which provide a clear reason for refusing the development proposed, and my findings on the main issues above do not indicate otherwise. Accordingly, paragraph 11d)ii of the Framework is engaged.
27. As identified above, the scheme would provide various benefits. These attract significant weight and align with what various local and national policies seek to achieve, including the Framework's policies in relation to delivering a sufficient supply of homes, supporting economic growth, promoting sustainable transport modes, providing net gains for biodiversity, and making use of previously developed land. However, given the scale of the development, its benefits and contribution to housing supply in the area would be relatively limited, even taking account of the objective of boosting significantly the supply of housing in the Framework and the Council's housing land supply position. With the appellant indicating that the proposed development would supersede the Prior Approval consents, the actual overall contribution to housing supply resulting from the appeal proposal would also be lessened. Furthermore, the benefits to biodiversity from landscaping of the proposed green space would be offset by the reduced biodiversity value that would arise from the likely future pruning/removal of the preserved trees.
28. Conversely, the harm I have identified would be significant and, overall, contrary to the provisions in the Framework relating to achieving well-designed and beautiful places, meeting the challenge of climate change, conserving and

enhancing the natural environment, promoting sustainable transport and making effective use of land. Consequently, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development does therefore not apply in this instance.

Conclusion

29. The proposal conflicts with the development plan as a whole and there are no material considerations, including the benefits of the scheme, the limited supply of housing in the area and the provisions of the Framework, which carry sufficient weight to warrant a decision otherwise than in accordance with it. The appeal is therefore dismissed.

T Gethin BA (Hons), MSc, MRTPI

INSPECTOR