



Appeal Decision

Site visit made on 23 January 2024

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 02 February 2024

Appeal Ref: APP/J1725/W/23/3323001

106 Brockhurst Road, Gosport, Hampshire PO12 3DG

- 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 Arthur Peach against the decision of Gosport Borough Council.
 - The application Ref 22/00280/FULL, dated 5 July 2022, was refused by notice dated 28 November 2022.
 - The development proposed is the demolition of existing building and construction of detached building to form 5 No. Flats with associated parking, cycle and refuse storage (Amended Application to 21/00248/FULL) (as amended by plan received 04.11.22).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Arthur Peach against Gosport Borough Council. This application is the subject of a separate Decision.

Procedural matters

3. The Council change the description of the proposed development from that provided on the application form to that shown in the banner heading above. I consider that this amended description is a more accurate reflection of the development proposed which I have therefore used in this decision.
4. The National Planning Policy Framework (the Framework) was revised in December 2023 and is a material consideration in planning decisions. Any references to the Framework in this decision relates to the revised document. In having regard to the matters that are most relevant to this appeal, there are no material changes to the Framework of relevance to the substance of this appeal. Therefore, I am satisfied that no party to this appeal would be prejudiced by the changes to the national policy context.

Main Issues

5. The main issues are:
 - The effect of the proposed development on the character and appearance of the surrounding area.

- The effect on the living conditions of the occupiers of neighbouring residential properties and the future occupiers of the proposed development with particular regard to privacy, outlook, noise and disturbance.
- The effect of the proposed development on highway safety with particular regard to parking provision.
- Whether the proposed development would make adequate provision for the storage and collection of refuse.
- The effect of the proposed development on the special interest of the non-designated heritage asset.

Reasons

Character and appearance

6. The appeal site comprises a rectangular plot of land located behind the existing buildings on the eastern side of the Brockhurst Road frontage. It is accessed from an existing driveway, which the Council suggest is 3m in width at its narrowest, located between Nos. 104 and 108 Brockhurst Road. The site is occupied by a number of garages located along the northern site boundary and a single storey larger building, used for industrial purposes, is positioned along the eastern boundary of the site and occupies the full width of the plot.
7. Buildings in the vicinity of the appeal site along Brockhurst Road comprise a variety of two and three storey properties of various design styles and construction ages. These are used for commercial and residential purposes with No. 104 comprising a two-storey detached dwelling and No. 108 comprising a three-storey, end terraced property, with accommodation in the roof, and used as a dwelling and flats. The eastern rear boundary of the site abuts a surfaced footpath/alleyway with two-storey, semi-detached dwellings, beyond on Netherton Road. The northern boundary of the site partly abuts the rear garden of No. 112 Brockhurst Road.
8. The appeal proposals would involve the demolition of the existing building and garages, other than one garage that abuts the rear property boundary of No. 108, and the construction of a two-storey building with accommodation in the roof space to form five flats. The building would have a rendered finish with parapet walls with a mansard style crown roof. It would occupy the full width of the site and would be set back from the eastern boundary with the footpath by approximately 1.4m. Five car parking spaces would be provided along the northern boundary with a further two spaces along the southern boundary.
9. The area in the vicinity of the appeal site has a varied design character. In this context, I consider that the architectural design elements of the proposed building, when considered in isolation, would be compatible with the design character of the surrounding area. Furthermore, I agree with the Council that the principle of residential use on this site, that is located within the Urban Area Boundary, would be appropriate.
10. However, the proposed building would be of substantial scale and mass that would occupy the full site width with minimal separation to the east. As such, it would appear as an unacceptably excessive and dominant form of development in relation to the plot size. In occupying the full extent of the plot

width, it would also appear as a cramped form of development. The vast majority of the space to the front of the proposed building would be dominated by car parking and manoeuvring area with little, if any, opportunity for landscaping. In this context, the proposal would appear as a stark, dominant and unacceptably cramped form of development.

11. Taking the above factors into account, I consider that the proposal, due to its scale and mass, would appear unacceptably dominant and would result in cramped, unsympathetic and overdevelopment of the site. As such, the proposed development would be detrimental to the character and appearance of the surrounding area and contrary to Policy LP10 of the Gosport Borough Local Plan 2011 -2029 (the Local Plan). The relevant parts of this policy, amongst other things, identifies that planning permission will be refused for development of poor design that fails to take the opportunities available for improving the character of an area and that development should have a high-quality appearance in terms of scale, setting, layout, massing and landscaping.

Living conditions

12. The Council indicates that the proposed development would have a separation distance of 25m to the nearest properties on Brockhurst Road and Netherton Road. Given this separation distance, and the fact that the proposed flat within the roofspace would have no windows facing properties on Netherton Road, I do not consider that the proposed development would result in any overlooking to, and from, existing properties of an extent that would cause a material harmful impact on privacy.
13. Given the scale and massing of the proposed building, and being significantly higher than the existing building, the proposal would likely appear as an overbearing form of development to users of the garden at No. 112 to the immediate north. Owing to the fact that the proposed building would adjoin part of the rear garden of No. 112, with no opportunity for intervening landscaping, there would likely be an overshadowing impact and the introduction of a localised sense of enclosure for users of the garden.
14. The Council indicate that the eastern elevation of the proposed building would be sited approximately 5m from the rear gardens of properties on Netherton Road and separated by the intervening footpath. Although there is the potential for some degree of overshadowing to these nearby rear gardens, owing to the separation distance I do not consider that this would be of an extent that would contribute to the dismissal of this appeal on the grounds of overbearing and overshadowing impacts that would be materially detrimental to the living conditions of the occupants of those properties.
15. Given that unrestricted access and parking associated with the existing business use already occurs at the appeal site, I do not consider that there would be any significant harmful impacts on the living conditions of the occupants of nearby residential properties associated with the proposed access and parking arrangements.
16. The proposed windows and French doors serving the kitchen and dining/living room of the two ground floor flats would face directly towards the footpath/alleyway from where they would be separated by proposed 0.9m high iron railings. In such circumstances, pedestrians using the footpath/alleyway would realistically have unrestricted views of the windows and French doors

with a resultant unacceptable loss of privacy that would be detrimental to the living conditions of the occupants of the ground floor flats.

17. The proposals incorporate a shared pedestrian access and short stay cycle parking facility within an undercroft and positioned adjacent to the only bedroom window of ground floor Flat 2. Notwithstanding the fact that the undercroft would likely cause a substantial loss of light to this bedroom window, residents accessing the other flats and using the short stay cycle storage area would have unrestricted views of the bedroom window with a resultant unacceptable loss of privacy. In addition, the occupants of Flat 2 would likely suffer more general disturbance as a consequence of the use of the pedestrian access and short stay cycle storage facility in such close proximity to the bedroom window.
18. The bedroom window of Flat 2 would also face towards the site access from Brockhurst Road thereby creating the potential for car headlights to shine into the bedroom window associated with vehicles accessing the site. Furthermore, a degree of vehicular manoeuvring associated with the parking of vehicles on the site would likely occur in close proximity of the ground floor bedroom windows of Flats 1 and 2. This would result in noise and general disturbance being experienced by the occupants of those bedrooms.
19. For the above reasons, the proposed development would have a detrimental impact on the living conditions of the future occupants of the ground floor flats as a consequence of a loss of privacy and general disturbance. In addition, there would be an unacceptable sense of enclosure and overbearing outlook from the garden of No. 112 which would cause unacceptable harm to the living conditions of the occupants of that property. The proposal would therefore be contrary to Policy LP10 of the Local Plan. The relevant parts of this policy, amongst other things, identifies that development will be permitted within the urban area provided that it does not cause harm by reason of loss of light, privacy, outlook, noise and light pollution.

Highway safety

20. The existing access has an unrestricted use by vehicles accessing and egressing the appeal site. Hampshire County Council, in its capacity as highway authority identified that, although there would be some degree of increase in vehicle trips, the use of the access would not be detrimental to highway or pedestrian safety. In addition, the provision of seven car parking spaces would, in principle, accord with the requirements of the Borough Council's Parking Supplementary Planning Document (Parking SPD).
21. The Borough Council's concerns primarily relate to the potential obstruction of existing parking to the rear of No. 108 and access to the garage that is proposed to be retained as a consequence of the position of the proposed parking bays. In addition, the Council considers that the position of the proposed refuse bin collection area would further make vehicular manoeuvring difficult in the vicinity of the garage to be retained.
22. The Appellant has provided vehicle tracking plans which show that vehicles can adequately access and egress the parking area to the rear of No. 108 with refuse bins in place in the proposed collection area. However, the Council considers that the tracking plans have used a vehicle length of 3.5m and that tracking using a design of vehicles having 4.8m in length should have been

used. As such, the Council considers that the tracking plans are not representative of likely vehicle manoeuvres and that use of the existing parking area to the rear of No. 108 and the retained garage may be rendered unusable.

23. I observed at my site visit that existing parking arrangements require careful manoeuvring and, other than space availability, there is no limitation on the number of vehicles that can currently park at the appeal site. The proposed number of car parking spaces would generally accord with the Parking SPD and although there would likely be an increase in the availability of manoeuvring space, as a consequence of the demolition of some of the garages and other buildings, a degree of vehicle manoeuvring will still be required to access or egress the proposed parking spaces.
24. Whilst a number of tight vehicular manoeuvres may be necessary, I am not convinced that this would likely correlate to an increase in the number of vehicles parking on the public highway. In my view, the occupants of the existing and proposed residential units would likely park their vehicles off the public highway and within the proposed allocated spaces which would be more convenient and provide a degree of security as a consequence of the parking area being overlooked from some of the flats.
25. Whilst the use of a car length of 4.8m may be reflective of the length of some vehicles, the Council has not drawn my attention to any policy or design guidance that suggest that vehicular lengths of 4.8m should be used in tracking plans. In my view, the use of 3.5m in this case is reasonable to give some indication of manoeuvrability particularly as the proposals provides some degree of additional manoeuvring space from that which currently exists.
26. I recognise that the width of the access off Brockhurst Road is not sufficient to allow two vehicles to pass and therefore there is risk that a vehicle would have to wait on Brockhurst Road while another vehicle is exiting the site. However, this is the situation that currently occurs with the existing unrestricted use of the site. Consequently, I do not consider that the proposed development would materially increase the risk to highway safety or the free flow of traffic beyond that which already occurs with the existing use of the appeal site, particularly in circumstances where the highway authority has raised no objections on these grounds.
27. Taking the above factors into account, I do not consider that the proposed development would result in a demonstrable risk of overspill car parking on the public highway. Consequently, there would be no material detrimental impact to highway safety or the free flow of traffic and no conflict with Policy LP23 of the Local Plan. This policy, amongst other things, requires that new development makes adequate provision for parking cars and that adequate provision is made for an appropriate range of vehicles to access the site, manoeuvre within it, park, load and unload and turn around in a safe and convenient manner.

Refuse Storage

28. I recognise that refuse collection vehicles would not enter the appeal site and that refuse bin emptying would occur on Brockhurst Road. The Council's Officer Report identifies that, in operational terms, the location of the proposed refuse bin collection area is an acceptable distance from Brockhurst Road to allow collections to take place. The Council's main concern regarding the

location of the bin collection area relates to a perceived detrimental impact that this may have on vehicle manoeuvring within the appeal site. Other than the fact that the use of the bin storage area within the proposed building would necessitate the use of a bin collection area positioned close to Brockhurst Road, I have no evidence to suggest that inadequate arrangements are proposed for the storage of refuse bins within the proposed building.

29. I have found above that vehicles would likely be able to manoeuvre into and out of the parking areas with the bin collection point in place, albeit I accept that a degree of careful manoeuvring may be required for the drivers of larger vehicles. However, the refuse bins would only be taken to the collection point from the bin storage area within the proposed building on collection days. Therefore, the bin collection area would only likely be occupied by refuse bins on the specified collection day and would be free of such bins on other days.
30. Giving my findings above, I do not consider that the position of the bin collection area would cause a detrimental impact on vehicle manoeuvring within the appeal site of an extent to warrant the dismissal of this appeal on those grounds. Furthermore, a scheme for the management of the refuse bin collection and storage area could be made the subject of an appropriately worded planning condition, were I minded to allow this appeal, to ensure that bins are only taken to the collection area on the allocated collection day and that they are thereafter transferred to the bin storage area within the proposed building.
31. Taking the above into account, I do not consider that there is any compelling evidence to suggest that the proposal fails to make adequate provision for the storage and collection of refuse. Consequently, there would be no conflict with Policy LP10 of the Local Plan.

Special interest of the non-designated heritage asset

32. The Council's Conservation Officer identified that the substantial brick wall, which forms the eastern elevation of the existing building, dates back to the late 19th Century and forms the remnants of a historic brewery on the site and given its historical association, it forms a non-designated heritage asset. The Council contends that the historic interest of the building, as a non-designated heritage asset, and contribution that it makes to the locality are not dealt with by the Appellant in the heritage appraisal that accompanied the planning application.
33. Furthermore, the Council is of the view that there may be some potential for parts of the existing walls to be incorporated into a redevelopment proposal so that its interest is retained. Consequently, the Council considers that the appeal proposal does not adequately demonstrate that the loss of the non-designated heritage asset is absolutely necessary.
34. The Appellant contends that the "Local List of Heritage Assets in Gosport Borough" was last amended on 26th August 2022 and that the appeal site was not included. Consequently, the appeal proposal would, by definition, not lead to the loss of a non-designated heritage asset. In addition, an application was made to Historic England for consideration of the potential of the building to be given statutory listing. Historic England advised in October 2021 that the application would not be taken forward to a full assessment and that the building would therefore not be added to the 'List'.

35. The Planning Practice Guidance (PPG)¹ identifies that there are a number of processes through which non-designated heritage assets may be identified but irrespective of how they are identified, it is important that the decisions to identify them as non-designated heritage assets are based on sound evidence. It further states that it is important that all non-designated heritage assets are clearly identified as such and it can be helpful if local planning authorities keep a local list of non-designated heritage assets. However, the PPG also advises that in some cases, local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications.
36. Although the building is not included on the "Local List of Heritage Assets in Gosport Borough", in light of the advice provided in the PPG, I consider that the Council were entitled to identify the building as being a non-designated heritage asset as part of the decision-making process on the planning application. Moreover, the evidence suggests that the Appellant was aware of the Council's position regarding the heritage status of the building following the previous refusal of planning permission (Ref 21/00248/FULL).
37. Taking into account the above, and the guidance provided in Section 16 of the Framework, I am obliged to consider the building as a non-designated heritage asset. Paragraph 200 of the Framework sets out that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. It further states that the level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.
38. Although the planning application was accompanied by a "Planning, Heritage and Design and Access Statement", the heritage information provided therein merely refers to the views of Historic England in that the building does not have the requisite special architectural and historic interest to be listed. It cannot be reasonably argued that this would constitute an assessment of the significance of the non-designated heritage asset or support the demolition of the building without consideration of the retention of some of its relevant features. Furthermore, the fact that the building may not be considered to be appropriate for listing does not mean that it has no heritage significance.
39. Policy LP13 of the Local Plan sets out that planning permission for a development which could result in harm to, or the loss of, a locally important heritage asset will only be granted if it can be demonstrated that the benefits of the development outweighs the asset's historical or architectural significance and ensures all appropriate recording of the building, structure or other feature has taken place before it is lost. In this case, the appeal proposals would result in the total loss of the substantial brick wall that forms the eastern elevation of the building. I have no evidence before me that considers the significance of the asset, or any subsequent scheme to ensure its appropriate recording, to demonstrate that its loss may be outweighed by the benefits of the proposal.
40. Whilst I recognise that it may be difficult to design a residential building that would retain the wall and meet the Council's other development policies, I have no appropriate assessment of the significance of the non-designated heritage asset to support the demolition of the structure. Therefore, taking the above

¹ Paragraph: 040 Reference ID: 18a-040-20190723

matters into account, the proposal fails to demonstrate that the loss of the non-designated heritage asset is necessary. As such, the proposed development would be contrary to Policy LP13 of the Local Plan and the relevant advice provided in Section 16 of the Framework.

Other matters

41. The Council's reasons for the refusal of planning permission identified that the proposal does not make adequate provision to mitigate against the harmful impacts of recreational disturbance on the Portsmouth Harbour Special Protection Area (SPA), the Solent and Southampton Water SPA and the Chichester and Langstone Harbours SPA (reason No. 4). In addition, the Council's seventh reason for the refusal of planning permission sets out that the proposal fails to demonstrate that the development would be nitrogen neutral and/or would provide mitigation to off-set any increased nutrient discharge associated with the proposals. Consequently, the Council considered that the proposal would cause unacceptable harm to European and Internationally designated habitat sites.
42. The Appellant has provided a completed planning obligation by way of Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 dated 29 November 2023. This provides for appropriate habitat mitigation contributions and a Nitrate Credit Purchase to be made prior to the commencement of development. The Council has confirmed that the submitted planning obligation addresses reasons for refusal 4 and 7.
43. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. Given my conclusions on the main issues above and the planning balance, it is not necessary for me to consider this matter in any further detail.
44. In addition to the main issues that I have identified above, I have also taken into account the concerns of local residents which, amongst other things, relate to access for emergency vehicles, impacts during construction, ecology, and potential asbestos in the roof material of the existing building. Whilst these matters have been carefully noted, they do not alter the main issues which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council has not objected to the appeal scheme for these other reasons.

Planning Balance

45. I have found that the proposed development would not result in a demonstrable risk of overspill car parking on the public highway. Consequently, there would likely be no detrimental impact to highway safety or the free flow of traffic. Furthermore, adequate provision would be made for the storage and collection of refuse.
46. I recognise that the proposals would involve the use of previously developed land and would result in the removal of the existing B2 General Industrial Use from the surrounding residential area. I also recognise that the appeal site is sustainably located close to bus routes and local shops and makes provision for cycle storage to encourage the use of transport by means other than the car. Furthermore, the proposal would make a modest contribution to the supply of

housing within the Borough. All of these matters and benefits weigh in favour of the proposal.

47. However, the proposal would be detrimental to the character and appearance of the surrounding area and have a detrimental impact on the living conditions of the future occupants of the ground floor flats and the occupants of No. 112. In addition, the proposal fails to demonstrate that the loss of the non-designated heritage asset is necessary.
48. In considering the planning balance, I conclude that the significant and unacceptable adverse impacts of granting planning permission upon the character and appearance of the surrounding area, the effect on living conditions and the effect on the non-designated heritage asset would significantly and demonstrably outweigh the benefits, when assessed against the policies in the development plan and the Framework taken as a whole.

Conclusion

49. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR