
Appeal Decision

Site visit made on 30 January 2024

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2024

Appeal Ref: APP/Z1775/W/23/3318143

Former St Michael's Lodge, Stone Street, Portsmouth PO5 3BN

- 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 Yeoman Property Development Ltd against the decision of Portsmouth City Council.
 - The application Ref 20/01493/FUL, dated 11 December 2020, was refused by notice dated 21 October 2022.
 - The development proposed is described as the construction of 18 dwellings (12 houses and 6 flats) with associated gardens, parking, and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the development has been taken from the appeal form and the decision notice as the number of proposed dwellings were reduced during the application process and therefore no longer reflects the description on the application form.
3. The National Planning Policy Framework (the Framework) was updated in December 2023. The main parties have been given an opportunity to comment, so the revised version has been referred to in this decision.
4. It was brought to my attention at the site visit that the appellant required additional time to ensure the section 106 agreement was completed due to some of the signatories being based overseas. As set out in paragraph 18.2.1 of the Procedural Guide for Planning Appeals, 'Planning obligations received after the...deadlines will be taken into account only at the Inspector's discretion. The Inspector will not delay the issue of a decision to wait for an obligation to be executed unless there are very exceptional circumstances.'
5. In this instance, I found these circumstances to be exceptional, and a deadline of 8 March 2024 was set. However, this deadline was not met and no obvious change in circumstances have occurred. Nevertheless, giving the parties involved the benefit of the doubt, the deadline was extended for a further week. This final deadline has now passed and, in the absence of further exceptional circumstances or certainty about the resolution of the matter, I have proceeded to a decision.

Main Issues

6. The main issues are:

- the effect of the proposed development on the living conditions of the occupants of 4-20 Flint Street with specific regard to light and outlook, and the safe use of St Jude's Church Nursery regarding the Diamond Street fire exit;
- the effect of the proposed access on on-road parking;
- whether the proposed development would provide adequate affordable housing; and
- the effect of the proposed development on the Solent Special Protection Areas.

Reasons

Living conditions

7. The appeal site is an empty, rectangular site where the previous buildings have been demolished. To one side of the appeal site is two 3 storey residential blocks and a collection of single-storey, linked buildings used by St Jude's Church Nursery (the nursery). These buildings and the appeal site create a rectangular block bound by Gold Street, Stone Street, Silver Street and Fleet Street. There is a short narrow road between the nursery and one of the residential blocks, 4-20 Flint Street (Nos 4-20), called Diamond Street.
8. The proposal would provide a series of 3 storey perimeter residential buildings facing Gold Street, Stone Street, and Silver Street with access into a centralised parking court from Diamond Street.
9. Nos 4-20 is a T-shaped apartment block. One of the gables of the building faces east towards the appeal site. It is set back from the site boundary behind a footpath and within that facing gable there are 3 small windows. The Council have stated the windows are secondary one for kitchens which have main windows facing north.
10. It is proposed that a 3-storey semi-detached dwelling, with single storey element to the rear, would be located opposite these windows along the site boundary. The Council have stated the distance between this building and the facing gable of Nos 4-20 would be around 2m.
11. The location of windows in question in Nos 4-20 would be towards the rear corner of the 3-storey element of the proposed dwelling. Thus, the first and second floor windows would still have access to daylight over the ground floor element of the proposed dwelling. Impact on the access to daylight for the ground floor window would not be significantly more than that from the existing boundary treatment and heavily overgrown shrubbery along its length.
12. Due to the orientation of the buildings, it is accepted that there would be some impact on sunlight and outlook. However, in consideration of their size and that they are secondary windows, I do not consider the effect on all 3 windows would be so great as to make the use of the rooms they relate to be untenable.

13. Therefore, in this instance, I am satisfied the impact on the living conditions of the occupants of the effected apartments within Nos 4-20 would not be so unacceptable as to constitute harm.
14. The nursery has a fire exit which opens onto the pavement on Diamond Street. On visiting the nursery, it was clarified by the manager, the fire protocol is for the children to be escorted by adults over Diamond Street and lined up on the pavement against the flanking wall of Nos 4-20. The proposed alterations to Diamond Street would remove the existing on road parking and install a gated vehicle access into the proposed development.
15. However due to the gated nature of the proposed access vehicles would not be moving at speed and the gate would be set well back from the fire exit of the nursery. The proposed alterations to Diamond Street would not impede the continuation of the afore mentioned fire safety protocol and the removal of on-road parking (discussed below) would ensure better visibility for those crossing. The pavements on both sides of the street would be retained, so the fire exit could be similarly used for non-emergency access as existing. It is therefore considered that the proposal would not cause harm to the users of the nursery regarding the Diamond Street fire exit.
16. Consequently, the proposal would comply with Policy PCS23 of the Portsmouth Local Plan (LP) insofar as it requires new development to protect the amenity and living conditions of the occupants of neighbouring buildings.

On-road parking

17. The Council state that the parking bay on one side of Diamond Street can provide 3 spaces and the proposal would require its removal to allow the free flow of traffic in both directions along the street. It was observed during the site visit that the parking bay was constrained by the narrowness of Diamond Street and although 2 vehicles were using it, a third vehicle would require some significant manoeuvring to access the final space. It was also observed that the surrounding roads had numerous parking bays along them, and all appeared to be controlled by parking permit. It is understood this is also the case for the Diamond Street bay.
18. LP Policy PCS17, seeks to reduce the need to travel and provide a sustainable and integrated transport network. It does not specifically seek to retain existing parking provision, although it does refer to the parking standards for new development set out in the Council's Parking Standards and Transport Assessment Supplementary Planning Document (SPD).
19. It is not disputed the proposal would reduce the on-road parking. However due to the volume of bays within the immediate area, that their use is controlled by permit and that there is no technical information to show they are over prescribed. Along with consideration of the Highway Authorities comments, and that the proposal would provide 3 spaces more than expected by the SPD, I am satisfied the loss of the 3 bays on Diamond Street would not have a harmful impact on the local highway network. The proposal would therefore comply with LP Policy PCS17.

Affordable Housing

20. LP Policy PCS19 requires that where a new development would have a net increase of 15 or more dwellings, 30% of the units should be affordable. Of the

18 proposed units, 6 could be affordable. A draft section 106 agreement has been submitted and on the face of it this could have adequately secured the affordable housing contribution, however it has not been fully executed.

21. Therefore, without any formal mechanism to secure the affordable housing and with no exceptional circumstances provided to condition the completion of the agreement, the proposal would fail to deliver adequate affordable housing, so fail to comply with LP Policy PCS19.

Solent Special Protection Areas

22. The site is within the impact zone of the Solent Special Protection Areas (SPA) which not only need action to be taken concerning nutrient neutrality but also mitigation for any additional recreational pressure that may occur from new residential development. The proposal would contribute to an increased population in combination with other plans, projects, and developments in the area. It would increase the amount of effluent which would require processing. This is understood to be a contributing factor to the nutrient increase in the SPA so requires neutralisation. The proposal's contribution to the increase in population could also lead to an increase in visitors and recreational pressure within the SPA. The susceptibility and vulnerability of the qualifying features of the SPA to such uses means it cannot be concluded that the development would not adversely affect the integrity of the protected site in combination with other projects. As there is nothing before me to the contrary, I can only conclude the proposal would likely have a significant effect on the SPA.
23. Nutrient neutrality and recreational pressure on the SPA have been long-standing issues within the Portsmouth area and the Council has specific and defined contribution strategies to deal with mitigation for both issues. The main parties have agreed the contributions necessary to mitigate these issues. However, as with the affordable housing, there is nothing before me to secure this contribution and no alternative has been proposed.
24. Therefore, I am unable to conclude that the proposal can mitigate the potential harmful effect it could have on the SPA. Consequently, it would fail to comply with LP Policy PCS13 as far as it seeks to protect European sites such as the SPA.

Other Matters

25. That permission has been previously approved for a nursing home on the appeal site is noted. As have the concerns raised by interested parties relating to character and appearance, loss of trees and green space, air pollution, noise, the potential tenure of the housing and antisocial behaviour. I have taken these into account, but they do not alter my findings on the main issues.

Planning Balance

26. The appellant states the Council's housing supply is 2.9 years and the Council agree it cannot demonstrate a 5-year supply. As the appeal site is not within a protected area nor includes assets of particular importance, it would be necessary to apply paragraph 11d) ii) of the Framework.
27. In this context the proposal would provide 18 dwellings, 6 of which could be affordable housing. The Framework seeks to boost significantly the supply of housing and the proposal would exceed the minimum requirements in the

Framework for affordable housing. This along with the capability of the proposal to provide biodiversity enhancements, economic benefits, and well-designed homes, would represent the benefits of the proposed scheme.

28. However, as the affordable housing has not been secured, I can only give the benefits of the scheme moderate weight due to the number of houses proposed. But the potential harm caused by the failure to secure the affordable housing would attract significant weight. As would the potential of harm to the SPA.
29. It is appreciated that no harm has been identified in relation to the living conditions of nearby occupants and on-road parking. Nevertheless, an absence of harm would be neutral in the planning balance.
30. Consequently, I find the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

31. For the reasons given above the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the Framework, which would indicate a decision otherwise. The appeal is, therefore, dismissed.

RJ Redford

INSPECTOR