



Appeal Decision

Site visit made on 6 March 2024

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st March 2024

Appeal Ref: APP/D1780/W/23/3326439

360 Winchester Road, City of Southampton, Southampton SO16 6TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by RCCV Ltd against the decision of Southampton City Council.
 - The application Ref 22/01580/OUT, dated 18 November 2022, was refused by notice dated 27 January 2023.
 - The development proposed is described as Demolish and erect pair of semi detached 3 bed houses and terrace of 7 houses to the rear (4 x 2 bed and 3 x 3 bed) with parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made in outline with the matter of landscaping reserved for future consideration. I have therefore assessed the submitted drawings as merely illustrative insofar as they relate to the reserved matter of landscaping.
3. A revised National Planning Policy Framework (Framework) was published in December 2023. The main parties were given the opportunity to comment on its relevance to the appeal proposal and I have had regard to it in reaching my decision.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the living conditions of adjoining occupiers, with particular regard to overlooking of the rear gardens of Nos 364-370 Winchester Road; and
 - whether the wider impacts of the proposed development would be sufficiently mitigated.

Reasons

Adjoining occupiers

5. The appeal site extends across the rear gardens of Nos 364-370. Although a reasonable size, their length means that much of each garden provides useable private outside space for the occupiers of those properties. Boundary treatment on the shared boundary with those properties includes fencing, walling and planting. Despite the relatively built-up nature of the surrounding area, privacy levels in the rear gardens of Nos 364-370 are relatively good, with overlooking

possibilities of each property's rear garden generally limited to that from adjoining properties only.

6. The proposed development would result in a row of two-storey properties positioned close to the shared boundary. Whilst boundary treatment would prevent overlooking from the ground-floors of the terraced houses, direct views of the rear gardens of Nos 364-370 would be possible from the proposed upper floor windows. Boundary treatment and existing outbuildings in the rear gardens of those properties would restrict the degree of overlooking to some extent. Nevertheless, the size of the rear gardens and proximity of the proposed row to the shared boundary means that overlooking of the rear gardens from the terraced houses' upper floors would be significant and result in an unacceptable loss of privacy for the occupiers of Nos 364-370. The separation distances between the rear elevations of those properties and the proposed houses, the set back of unit 9 and that unit 3 would face the proposed parking area do not lead me to a different conclusion.
7. In coming to this view, I have taken into account the adjacent development. However, that scheme is not directly comparable to the appeal proposal because, for example, there is car parking between No 356 and the dwellings in that scheme, whilst the rear section of No 358's garden has been subdivided to form part of the scheme. The design of No 9's first-floor windows, which are close to the appeal site and partly face towards it, also serve to limit potential overlooking with high-level windows and obscure glazing. The relationship between the proposed houses and Nos 364-370 would not therefore reflect that between the adjacent scheme and the gardens of the houses in front. Its presence does therefore not indicate that the appeal proposal is acceptable. The available evidence indicates that the adjacent development was also determined under a different development plan.
8. For the above reasons, I conclude that the proposed development would harm, significantly, the living conditions of adjoining occupiers, with particular regard to overlooking of the rear gardens of Nos 364-370. I therefore find that it conflicts with Policies SPD1, SDP7 and SPD9 of the City of Southampton Local Plan Review – Adopted Version 2nd Revision (2015) (LPR) and Policy CS 13 of the Local Development Framework Core Strategy Development Plan Document (2015) (CS). Amongst other aspects, these set out that development should integrate into the local community and place 'people first'; proposals should respect their surroundings in terms of the impact on surrounding land uses and local amenity; and that planning permission will only be granted for development which does not unacceptably affect the amenity of the city's citizens. The appeal proposal would also be inconsistent with the provisions in the Framework in relation to providing a high standard of amenity for existing users; and the guidance in the Council's Residential Design Guide that housing development should ensure privacy is maintained for existing occupants in their private gardens.

Wider impacts

9. The submitted sustainability statement indicates that the proposed development would exploit solar gain, natural light, energy efficiency and renewable energy generation. On this basis, it sets out that the design SAP calculations would be in line with New Part L 2021, the required improvement threshold would be met, and over half the energy required would be provided

by renewables. This is consistent with CS Policy CS 20, which seeks all development to be low carbon and maximise energy efficiency and renewable/low carbon technology. However, with the aim to achieve carbon neutrality, the policy also sets out that remaining carbon dioxide emissions can be offset through contributions to a carbon offset fund. Supporting this, the Council's Developer Contributions Supplementary Planning Document (SPD) identifies the threshold for such contributions as development resulting in a net gain of five residential units.

10. Whilst the proposal, providing an additional eight residential units, would maximise energy efficiency and minimise carbon emissions, it would not achieve carbon neutrality. As such, part of the Council's second reason for refusal relates to the need for a section 106 agreement to secure a contribution to the carbon offset fund. Given the scale of the proposed development and its location, a financial contribution towards site-specific transport improvement works for pedestrians and cyclists at the nearby roundabout, with regards to safety and accessibility, is also sought by the Council and forms another part of its second reason for refusal.
11. Although my attention has not been drawn to any relevant words in LPR Policy SDP 4 in relation to this matter, such as contribution 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 public transport and active travel. The SPD also sets out that most developments require localised contributions to address their immediate impact and identifies a threshold for site-specific transport contributions, to promote sustainable and active travel, of development involving a net increase of five or more dwellings. In addition, in-line with section 6.6 of the SPD, the Council seeks the securing of a highway condition survey by planning obligation.
12. Based on the available evidence, the above contributions and highway survey directly relate to the development, are necessary to make the development acceptable in planning terms, and are fairly and reasonably related in scale and kind to it. Whilst I note the appellant's appeal statement indicates the intention for these matters to be addressed through a Unilateral Undertaking, no such undertaking (or other legal agreement) has been submitted with the appeal. Accordingly, the wider impacts of the appeal proposal in relation to highways, carbon emissions and local transport improvements would not be sufficiently secured and mitigated, contrary to the above relevant policies and guidance.
13. The submitted evidence identifies that there is also a need to mitigate the wider impacts of the development in relation to additional residential occupiers increasing recreational disturbance and wastewater pollution in designated nature conservation sites (habitats sites) in the Solent area and the New Forest. The Council's second reason for refusal refers to mitigation for the above impacts not being secured due to the lack of a s106 agreement.
14. It seems to me that the mitigation required for recreational impacts on the New Forest designated site and for wastewater impacts on designated sites in the Solent could in theory be secured by legal agreement. However, in this instance, the submitted Habitats Regulations Assessment indicates that the Council considers that other actions could also sufficiently secure adequate mitigation for these aspects (via, respectively, the use of a Grampian condition

and allocating a specific portion of Community Infrastructure Levy funding). Be that as it may, the lack of a submitted legal agreement means that the relevant financial contribution to the Solent Disturbance Mitigation Project has not been secured. On this basis, and with no other proposal from the appellant for alternative mitigation of the increased recreational disturbance on the Solent and Southampton Water Special Protection Area (SPA) and Ramsar site, the wider impacts of the proposed development on this habitats site would not be mitigated. On this basis, the appeal proposal is also contrary to CS Policy CS 22, which seeks to ensure that necessary mitigation is provided for development to not adversely affect the integrity of international designations.

Other matters

15. The proposed development, in combination with other plans and projects, would be likely to have a significant effect on habitats sites in the Solent area and the New Forest 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, in view of the conservation objectives, without adequate and appropriately secured mitigation. In this instance, whilst it may be possible to secure mitigation for recreational disturbance in the New Forest and wastewater impacts via means other than a s106 agreement, no mitigation has been secured for the recreational impacts arising from the appeal proposal on the Solent and Southampton Water SPA and Ramsar site.
16. As such, an Appropriate Assessment under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) would be unable to ascertain that the proposed development would not adversely affect the integrity of designated habitats sites. However, as I am dismissing the appeal for other reasons, I am not pursuing this matter further – including in relation to the objection from Natural England on this topic – because it would not lead me to a different overall decision.
17. With the available evidence indicating that the Council cannot demonstrate a sufficient supply of deliverable housing sites, the approach set out in paragraph 11d) of the Framework applies. However, the Framework is clear that in such circumstances, permission should be granted unless the application of its policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; and this includes, as per footnote 7, habitats sites. Given my findings above and the lack of mitigation secured to avoid the development harming habitats sites, there is thus a clear reason for refusing the development proposed. The presumption in favour of sustainable development is therefore not applicable in this instance.

Planning Balance

18. There is no objection to the principle of development. Nevertheless, the harm I have identified and the conflict with the above development plan policies leads me to conclude that the appeal proposal conflicts with the development plan as a whole.
19. The proposed windfall development would provide an additional eight residential units in an accessible location. The provision of additional accommodation, supported by the Framework which seeks to significantly

boost housing supply and delivery, would contribute towards the mix and supply of needed family-sized housing in the district. The appeal proposal would also support the local economy through construction employment for example. However, the harm to the living conditions of adjoining occupiers would be significant and the wider impacts of the development would also not be mitigated.

20. The above matters therefore outweigh neither the harm I have identified nor the conflict with the development plan. In addition, even if Framework paragraph 11d)ii were to apply, my findings on the main issues indicate that the development proposed would be contrary to various provisions in the Framework, including with regards to providing a high standard of amenity for existing users, promoting sustainable transport, conserving and enhancing the natural environment, and making effective use of land. Given the harm arising from the appeal proposal would be significant, the adverse impacts of granting permission would therefore significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

21. 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

INSPECTOR