



Appeal Decision

Site visit made on 31 January 2024

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2024

Appeal Ref: APP/W1715/W/23/3321516

Bursledon Congregational Church, School Road, Bursledon SO31 8BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr A Loizou against the decision of Eastleigh Borough Council.
 - The application Ref is F/21/89869.
 - The development proposed is the change of use of existing Methodist Church Hall to three dwellings and the construction of a garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. During the appeal, an updated version of the National Planning Policy Framework (the Framework) came into effect. The main parties have been invited to provide further comments on the revised Framework and, where received, I have taken them into account in my decision. I am satisfied no party would be prejudiced by determining the appeal accordingly.
3. Within the appeal documentation, further information confirming the minimum proposed ground floor level and additional bat survey results in response to the reasons for refusal on the decision notice has been provided. As a result, the Council have withdrawn the reasons for refusal relating to flood risk and the effect of the proposed development on bats.
4. Consequently, the main issues are:
 - whether the proposed development would be likely to have a significant effect on the integrity of the Solent and Southampton Water SPA¹ and New Forest SPA and SAC², with particular regard to recreational activity;
 - whether the development would be likely to have a significant effect on the integrity of the Solent and Southampton Water SPA, with particular regard to nutrient neutrality; and
 - the effect of the proposed parking arrangement on the safety of users of Spring Grove.

¹ Special Protection Area (SPA)

² Special Area of Conservation (SAC)

Reasons

Recreational activity

5. The appeal site is located within the catchment areas of the Solent and Southampton Waters SPA and New Forest SPA and SAC. These are European Designated Sites which are afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations).
6. The special interest of the Solent and Southampton Waters SPA relates to its habitats which support overwintering birds. Similarly, the variety of wet and dry heathland and woodland habitats in the New Forest SPA and SAC support the feeding and breeding of different bird species. Consequently, the overarching objective of the SPAs and SAC is the ongoing management of these habitats, ensuring they do not deteriorate. An increase in the number of people visiting the area for recreational purposes places pressure on these designated sites by causing erosion and disturbance of the habitats.
7. As the proposed development would increase the number of people living in the area, when considered alongside or in combination with other plans or projects, it would be likely to have a significant adverse effect on the integrity of the SPAs and SAC. Therefore, it is necessary for me, as the competent authority, to conduct an Appropriate Assessment (AA) concerning the effect of the proposed development on the integrity of these designated sites regarding recreational activity.
8. Policy DM11 of the Eastleigh Borough Local Plan 2016-2036 (the Local Plan) permits development which is likely to adversely affect the integrity of a European site only where necessary compensatory measures to ensure no adverse impact can be implemented at the appropriate time. Strategies³ setting out how the impacts resulting from the increase in recreation pressure on these areas can be mitigated have been prepared. These require development contributions to be paid based on the number of dwellings or the number of bedrooms and would be used to implement and monitor a range of measures set out in the strategies. However, no such contributions have been made in respect of the development.
9. It has been suggested that a negatively worded condition could be imposed were I to allow the appeal. This would prevent the occupation of the proposed dwellings until an appropriate mitigation package is secured. This would require details of the mitigation scheme to be submitted to the Council at a later date, following which a further AA would be necessary before the condition could be discharged.
10. However, the Planning Practice Guidance (PPG) sets out that the use of a negatively worded condition is unlikely to be appropriate in most cases, even if the Council have imposed a similar condition on other planning permission⁴. The PPG also refers to the use of a planning obligation, before granting planning permission, being the best way to deliver sufficient certainty for all parties. No such legal agreement has been provided as part of the appeal.

³ Bird Aware Solent - Solent Recreation Mitigation Strategy and Eastleigh Borough Council Interim Mitigation Strategy to address recreation impacts on New Forest protected sites

⁴ Paragraph: 010 Reference ID: 21a-010-20190723

11. Although exceptional circumstances may exist where there is clear evidence that the delivery of the development would otherwise be at serious risk, this has not been demonstrated in this case. The circumstances before me would also apply to other proposals for residential development within the catchment of the SPAs and SAC. As a result, this does not lead me to conclude the appeal scheme represents an exceptional situation that allows me to impose a negatively worded condition.
12. Furthermore, the measures sought to mitigate any adverse effects to the New Forest SPA and SAC depart from the standards established by Natural England in respect of calculating the amount of Suitable Alternative Natural Greenspace (SANG) required. As such, even if the contributions required by the Interim Strategy had been paid, I can not conclude with certainty that the measures implemented would mitigate the adverse effect because of the proposed development.
13. In the absence of the necessary mechanisms required to secure the appropriate mitigation measures, I conclude that the development would result in an adverse effect on the integrity of the Solent and Southampton Waters SPA and New Forest SPA and SAC. It would not, therefore, accord with the Habitat Regulations. As there are no measures in place that would mitigate the additional recreational pressure resulting from the proposed development, it would be contrary to policies S1 and DM11 of the Local Plan. In combination, these policies seek to maintain and enhance the natural habitats within the Borough and restrict development that is likely to have an adverse effect on the integrity of designated sites.
14. It also conflicts with Chapter 15 of the Framework which seeks the protection and enhancement of habitats and biodiversity, including internationally designated sites.

Nutrient neutrality

15. As identified above, the special interest of the Southampton and Solent Water SPA results from the bird species the habitat supports. In addition to pressure from recreational activity, an increase in the population would also result in the increase in wastewater being discharged into the Solent, including pollutants or nutrients, such as nitrates and phosphates, which affect the water quality. This can result in a process known as eutrophication which speeds up the growth of certain plants damaging the habitat and threatening the aquatic ecosystem. In turn, this removes a food source for the protected species.
16. As the proposed development would add to the number of people living in the area, it would also increase the amount of wastewater being discharged into the Solent. Therefore, the proposed development, taken both in isolation and cumulatively with other projects, would be likely to have a significant adverse effect on the integrity of the Southampton and Solent Water SPA. It is, therefore, necessary for me, as the competent authority, to conduct an AA in relation to the proposed development's effect on the SPA regarding nutrient neutrality.
17. The Council follows the guidance and advice provided by Natural England which sets a hierarchical approach to the selection of appropriate mitigation measures to ensure that development does not add to existing nutrient burdens on the Solent. As part of the appeal, a nutrient budget has been prepared by the

appellant which calculates the change in nutrient input which would result from the development. Therefore, the amount of nutrient loading that requires counterbalancing has been determined.

18. Despite indicating a willingness to purchase the required number of credits from the Council's Nitrates offsetting scheme, there is no confirmation before me that such a purchase has been made. I note that the Council have suggested the mitigation is secured by condition. However, for the reasons outlined above, the use of a negatively worded condition would not be appropriate in this circumstance. Additionally, there is no legal agreement before me which obligates the appellant to provide the appropriate mitigation.
19. I conclude that the proposed development would result in an adverse effect on the integrity of Solent and Southampton Water SPA, in accordance with the Habitat Regulations and there are no measures in place that would mitigate the additional nutrients resulting from the proposed development. It would be contrary to policies S1 and DM10 of the Local Plan which require compliance with the Habitat Regulations and the avoidance or mitigation of any adverse impacts on designated sites.
20. I also find conflict with Chapter 15 of the Framework where the protection and enhancement of habitats and biodiversity, including internationally designated sites is required.

Parking

21. The proposed development comprises the conversion of the existing building on the site to provide three dwellings. Although at the time of my site visit it was clear that the building had not been in use for some time, the evidence before me indicates that the last operational use was as a church hall and nursery.
22. The proposed development would provide a total of six allocated on-plot car parking spaces, following the Council's minimum parking standards as set out in the Council's Parking SPD⁵. Four of these would be accessed off the unadopted Spring Grove near the existing gated entry to the front of the building. Two other spaces are proposed for Dwelling 3 via an access opposite 1 and 2 Meadow View (No.1 and No.2). This is positioned where an existing gate, albeit overgrown and in poor condition, previously provided pedestrian access to the entry to the smaller of the rooms in the existing building.
23. When entering or exiting the proposed car parking spaces allocated for Dwelling 3, parts of Spring Grove would be required to enable vehicles to manoeuvre in a maximum of two movements. This is demonstrated on the Vehicle Swept Path Tracking Plan⁶ where close to the full width of Spring Grove outside No.1 and No.2 would be required. The evidence before me indicates that the width of the proposed front parking space for Dwelling 3 complies with the requirements of the Parking SPD.
24. Although a snapshot in time, during my site visit no vehicles were parked outside these properties nor elsewhere along the unadopted road. However, given the lack of on-plot space associated with No.1 and, in combination with the photographs provided with the appeal, the evidence before me indicates that occupiers of No.1 and No.2, and Dell Cottage do use various parts of

⁵ Residential Parking Standards Supplementary Planning Document (the Parking SPD)

⁶ Drawing No: NJC-001

Spring Grove to park their vehicles. The unadopted lane also provides the sole vehicular access to the Glencoe Cottage.

25. Notwithstanding the above, I have no substantive evidence before me to ascertain the ownership of Spring Grove or the areas used by the occupiers of the existing properties for parking. Furthermore, no visible spaces are allocated to a specific property on the ground, even if it is considered to be an established parking area for these dwellings. Indeed, the advice provided by Placidi Solicitors⁷ indicates that the ownership of Spring Grove is not known despite it forming part of a public right of way⁸ connecting School Lane with Portsmouth Road.
26. Whilst landownership is a civil matter which should be resolved between the relevant parties, should cars be parked outside No.1 and/or No.2, future occupiers of Dwelling 3 may not be able to access their on-site parking. In this circumstance, the Council is concerned that future occupiers would be encouraged to park on the public highway and cause a hazard. School Lane is the nearest public highway to the site where parking is restricted by double yellow lines on both sides of the carriageway. Therefore, should future occupiers of Dwelling 3 decide to park on School, this would be likely to obstruct other traffic and restrict visibility. However, given the availability of other unrestricted parking areas on Portsmouth Road and the informal use of Spring Grove, the prospect of this occurring would be low.
27. Whilst the proposed development would lead to an increase in the number of vehicles using Spring Grove, this would be minimal, relating to drivers accessing Dwelling 3. Furthermore, given the unsurfaced nature of the lane and the short distance between its junction with School Lane and the parking associated with Dwelling 3, vehicle movement is likely to be slow. As a result, it would not lead to an unacceptable degree of conflict between pedestrians and vehicles sharing the use of Spring Grove over and above the existing situation.
28. I conclude that the proposed parking arrangement would not harm the safety of users of Spring Grove, in accordance with Policy DM14 of the Local Plan. This requires, amongst other aspects, new residential development to provide off-highway parking which is adequate in terms of highway safety and traffic management. Additionally, the proposed parking complies with the standards set out in the Parking SPD. It also accords with Chapter 9 of the Framework which seeks to ensure development provides safe and suitable access to the site for all users.

Other Matters

29. A Grade II listed building known as The Thatched Cottage is located close to the site on Portsmouth Road. Therefore, I am required by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Based on the evidence before me, the significance/special interest of the setting of The Thatched Cottage is, in part, due to its nestled position off Portsmouth Road in combination with the use of traditional construction techniques and materials. However, other buildings are located between the

⁷ Letter to DPD Architects Limited dated 14 April 2021

⁸ Footpath No. 12

site and the cottage and there are no physical or visual connection between the heritage asset and the appeal building. The proposed development would, therefore, preserve its setting.

30. As the boundary of the Old Bursledon Conservation Area (OBCA) is located close to the appeal site, paragraph 205 of the Framework requires me to consider the impact of a proposed development on the significance of a designated heritage asset, including its setting. One element of the OBCA that contributes to its significance is the variation of characters it possesses. The nearest parts of the OBCA to the appeal site comprises large areas devoid of built form around the infant and junior schools, and the Recreation Ground. However, due to the intervening properties on School Road, Redcroft Lane and The Grove, and the wooded area on the edge of the OBCA on rising topography, the setting of the OBCA is not influenced by the appeal site.
31. The proposed development would provide social, economic and environmental benefits from the occupation of the proposed dwellings in a location with good access to services and facilities. It will also bring back into use a vacant building currently in poor condition the target of vandalism, enhancing the appearance of the building and its immediate surroundings. I acknowledge the support of the scheme by some members of the local community in this respect. Whilst these benefits would be limited due to the scale of the development, nevertheless they weigh considerably in favour of the appeal scheme.

Planning Balance and Conclusion

32. Whilst I have found that the proposed parking arrangement would not harm the safety of users of Spring Grove and benefits would arise from the proposed development. However, these must be balanced against the harm I have identified given the adverse effect on the Solent and Southampton Water SPA and New Forest SPA and SAC, and the associated conflict with the development plan. I give substantial weight to this conflict.
33. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. Therefore, I conclude that the appeal is dismissed.

Juliet Rogers

INSPECTOR