



Appeal Decision

Site visit made on 9 April 2024

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 May 2024

Appeal Ref: APP/Z1775/W/23/3330717

78 George Street, Portsmouth PO1 5QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Sean Holdway (Gregory Bros Ltd) against Portsmouth City Council.
 - The application Ref is 21/01177/FUL.
 - The development proposed is conversion to form 2 flats; external alterations to include single storey rear extension.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Sean Holdway (Gregory Bros Ltd) against Portsmouth City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have used the description of the development from the appeal form, rather than that given on the application form, as it more accurately describes the proposal shown on the submitted plans.

Background and Main Issues

4. The appeal arises from the Council's failure to make a decision on the application. The Council has submitted a statement setting out how it would have determined the application. Based on this statement and all the evidence before me, I consider that the main issues are:
 - a) The effect of the proposal on the City's stock of family housing; and,
 - b) The effect of the development on the integrity of the Solent Special Protection Areas (the SPAs).

Reasons

Family housing

5. The appeal property is a two-storey end-terraced house occupying a corner plot close to the junction of George Street and Glencoe Road. The surrounding area is almost entirely composed of similarly sized terraced housing, together with a church, a pub, and a cemetery. The house currently has three first floor

bedrooms, and it is proposed to split it horizontally into two one-bedroomed flats.

6. Policy PCS19 of the Portsmouth Plan (2012) addresses housing mix, size, and the provision of affordable homes. The supporting text recognises the need to plan for and provide a variety of housing throughout the city to provide a choice of high-quality homes, and to create inclusive and mixed communities. It notes that a high proportion of new homes delivered in the city between 2001 and 2007 were small flats, whilst the number of new larger dwellings declined. The Policy seeks to redress the balance by requiring developers to deliver 40% of new dwellings on each site as family homes. The Key Indicator is identified as the number of new 3-bedroom family homes delivered per year. There is, however, no wording that prohibits the conversion of existing family-sized houses to smaller flats, so the proposal would not be in conflict with this aspect of the Policy.
7. The Policy also seeks to ensure that the internal space of new dwellings is greater than has previously been delivered in the city, by requiring adherence to space standards. In this case, there is no dispute that the accommodation in the two flats would meet the space standards set out in the Technical housing standards – nationally described space standard. Consequently, the proposal would also accord with the Policy in this regard. The requirement to provide affordable housing only applies to developments resulting in a net increase of eight or more dwellings. The proposal does not, therefore, conflict with any aspect of Policy PCS19.
8. The Council's Housing Standards Supplementary Planning Document (2013) (the SPD) provides further guidance on the application of Policy PCS19. Paragraph 2.4 clarifies that the requirement to provide adequate space within dwellings applies equally to the sub-division of existing properties. Paragraph 2.5 says that the subdivision of houses with a floorspace below 140m² will only be permitted in exceptional circumstances. The appeal building has a floorspace of approximately 102m², so falls below this threshold. However, the Council does not dispute that the proposed flats would provide a satisfactory standard of accommodation, so no harm would arise as a result of the conflict with the SPD guidance in this regard.
9. Paragraph 2.5 indicates that the floorspace threshold for conversions is also required to avoid the loss of existing family housing, and to protect the residential character of streets. However, neither of these issues are covered by Policy PCS19 so, rather than adding further details to the policy, the SPD effectively extends its scope. Consequently, I can only give the SPD guidance limited weight in these regards. In any event, the evidence indicates that the aim of Policy PCS19 to secure at least 40% of new housing as family-sized was exceeded in 2021/22, when 72 new dwellings of three or more bedrooms were delivered. The loss of this single dwelling through the proposed development would, therefore, not have a significant impact on the supply of family housing in the city. Furthermore, I saw nothing at my visit to indicate a trend towards the subdivision of surrounding houses in the locality, and no evidence has been presented to indicate that the proposal would erode the existing residential character of the street or area.
10. In summary, there would be conflict with the SPD guidance relating to the minimum floorspace of a dwelling for subdivision. However, this would not

result in any harm to the living conditions for future occupants, or to the residential character of the area. The loss of one three-bedroomed dwelling would have a very limited impact on the stock of family housing in the city. Overall, therefore, the proposal would comply with the aims of Policy PCS19 of the Portsmouth Plan regarding housing mix and size.

The SPAs

11. The SPAs comprise a coastline of mudflats, shingle and saltmarshes which provide essential feeding and roosting grounds for over-wintering birds, including more than 90,000 waders and wildfowl, and 10% of the global population of brent geese. The SPAs were designated by the Government predominantly to protect these over-wintering birds.
12. Recreational activities which take place on this coastline can result in disturbance to the birds. Furthermore, evidence shows that some areas of the SPAs are in an 'unfavourable' condition due to nutrient levels causing eutrophication. The appeal scheme results in an additional dwelling within the 5.6km 'Zone of Influence' of the SPAs. This has the potential to increase recreational activity around the shorelines, and to raise levels of nitrogen and phosphorus entering the water through the additional wastewater created. When considered alone or cumulatively with other schemes, there would be a likely significant effect on the integrity of the SPAs. Accordingly, under the Conservation of Habitats and Species Regulations 2017, Appropriate Assessment (AA) of the implications of the project for the designated sites is required.
13. As there is no dispute between the parties regarding the need for mitigating measures to avoid harm to the SPAs, I have carried out my AA on a proportionate basis with regard to the evidence before me.
14. The Solent Recreation Mitigation Strategy (December 2017) (the Recreation Strategy) provides a strategic solution to mitigate the impact of increased recreational pressure on the SPAs arising from new residential development. It identifies a package of mitigation measures, including a team of rangers; communications, marketing, and education initiatives; facilitation and encouragement of responsible dog walking; codes of conduct; site-specific visitor management; secure habitats for birds; new/enhanced strategic greenspaces; and a manager to co-ordinate the actions. These measures are to be funded by pooled contributions from individual developments, calculated according to the number and size of dwellings proposed. The necessary contributions increase annually to take account of inflation, and currently stand at £465 for a one-bedroomed property.
15. Paragraph 7.1 of the Recreation Strategy says that each partner authority decides which legal mechanisms to use to secure the developer contributions. The evidence indicates that the Council accepts contributions secured through a legal agreement under either Section 111 of the Local Government Act 1972, or Section 106 of the Town and Country Planning Act 1990.
16. The Council's Updated Interim Nutrient Neutral Mitigation Strategy for New Dwellings (June 2022) (the Nutrient Strategy) indicates the routes available to applicants to secure appropriate mitigation for proposals. These include provisions for purchasing 'mitigation credit' from the Council's Mitigation Credit Bank, which would be used to provide mitigation measures to achieve nutrient

neutrality in the Solent. The Nutrient Strategy identifies the indicative cost of sufficient credits for one new dwelling to be £2,175. Paragraph 4.6 says that planning permission will not be granted until appropriate mitigation has been secured through a legal agreement.

17. The Appellant has provided evidence, in the form of receipts, to show that payments have been made to the Council totalling £2,618. This sum does not correspond with the total of the contributions required by the Recreation and Nutrient Strategies, as set out above. Furthermore, the payments have not been made pursuant to a legal agreement. The Planning Practice Guidance advises that any mitigating measures identified through an AA need to be sufficiently secured and likely to work in practice¹. Notwithstanding that the contributions do not add up to the total required, the Council is not bound by any legal agreement to spend the money that has been received on the mitigating measures. I have no knowledge of its budgeting and auditing procedures, so I cannot satisfy myself that the direct payments would, in practice, secure delivery of the mitigation.
18. For these reasons, following AA and adopting a precautionary approach, I am unable to conclude that the development would not affect the integrity of the SPAs. The proposal would, therefore, be contrary to Policy PCS13 of the Portsmouth Plan (2012), which amongst other things, states that developments which would have an adverse effect on a European site should be refused.

Planning Balance

19. I have found that the proposal would comply with the aims of Policy PCS19 of the Portsmouth Plan regarding housing mix and size. The development would, therefore, accord with Section 11 of the National Planning Policy Framework (the Framework) in making effective use of land to deliver housing. In accordance with Paragraph 70 of the Framework I give great weight to the benefits of using a suitable site within an existing settlement for a new home.
20. However, Paragraph 186 says that if significant harm to biodiversity resulting from a development cannot be avoided, then planning permission should be refused. Furthermore, Paragraph 188 makes it clear that the presumption in favour of sustainable development does not apply where the development is likely to have a significant effect on a habitats site, unless an AA has concluded that it would not adversely affect its integrity. Therefore, notwithstanding that the Council is unable to demonstrate a five-year supply of deliverable housing sites, the presumption in favour of sustainable development is disapplied, so cannot weigh in favour of the proposal. Consequently, my finding of harm to the integrity of the SPAs, and the resultant conflict with the development plan, outweighs the benefits of the development to the supply of housing.

Conclusion

21. For the reasons given above, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR

¹ Paragraph: 004 Reference ID: 65-004-20190722