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# Appeal Decision

Site visit made on 21 May 2024

**by Juliet Rogers BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 June 2024**

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**Appeal Ref: APP/D1780/W/23/3332017**

**117 Annexe, Prince of Wales Avenue, Southampton SO15 4LS**

- 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 M Yeganegy of Roxan Construction against the decision of Southampton City Council.
  - The application Ref is 23/01087/FUL.
  - The development proposed is the conversion of the annexe into a separate unit.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. In the description above, I have omitted the text which does not describe an act of development. The application form confirms that the development was completed before submission. The Council has assessed the scheme retrospectively. During my site visit, I observed that the annexe was occupied as a self-contained unit. However, with respect to the area outside the annexe, the scheme shown in the Proposed Block Plan<sup>1</sup> had not been implemented. Therefore, I have determined the appeal scheme based on the plans submitted with the planning application.
3. Since the Council determined the planning application, an updated version of the National Planning Policy Framework (the Framework) came into effect. The main parties have provided comments on this version and I have taken them into account in my decision. I am satisfied no party would be prejudiced by determining the appeal accordingly.
4. During the appeal, an executed Unilateral Undertaking (UU)<sup>2</sup> was submitted by the appellant. In the event that the appeal is allowed, the UU obligates the appellant to contribute to the Solent Recreation Mitigation Strategy. I will return to this matter later.

## Main Issues

5. The main issues are:
  - whether the development provides acceptable living conditions for occupiers of the adjacent property (No 117) in terms of the provision of private outdoor space;

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<sup>1</sup> Dwg No: 1054/B02, dated July 2023

<sup>2</sup> Dated 25 April 2024

- whether the annexe provides acceptable living conditions for occupiers in terms of the provision of internal living space and private outdoor space; and
- the effect of the development on the character and appearance of the area.

## Reasons

### *Living conditions – occupants of No.117*

6. Occupants of No.117 have access to a private outdoor space to the rear of the property. However, due to the siting of the rear back access lane, the depth of the space is limited and significantly shorter than other properties in the street. Moreover, the narrow width of the garden results in the amount of private outdoor space falling short of the minimum rear garden area for a terraced property, as set out in the Design Guide<sup>3</sup>.
7. The triangular shape of the outdoor space also limits its ability to provide suitable space for a family to sit outside, grow plants and hang out their washing - uses indicated appropriate in the Design Guide. The outdoor space associated with No.117 may not have been utilised in this way immediately before the construction of the annexe and the size of the rear garden has not substantially reduced. Nonetheless, as the amount of space available was significantly greater than within the appeal scheme, occupiers of No.117 would have had more flexibility in how the various garden areas could be used.
8. In the case of the appeal scheme, the small front garden provides some additional outdoor space and, combined with the rear garden this would meet the minimum requirement in the Design Guide. However, the low boundary frontage treatment means the garden is neither private nor secure. I have limited evidence before me to conclude it could be adapted to achieve this without detriment to the character and appearance of the street scene, as concluded in a previous appeal<sup>4</sup>.
9. The proximity of the site to Cedar Lodge Park does not negate the need to provide acceptable private outdoor space, as similarly concluded in the previous appeal. Whilst it may be the case that other dwellings in the city have smaller gardens, this does not justify permitting development which provides unacceptable living conditions.
10. My attention has been drawn to the Oakley Road appeals<sup>5</sup> where new dwellings were permitted despite not being provided with the minimum areas set out in the Design Guide. This case differs from the appeal scheme given the Council considered the outdoor amenity space provided with the new dwellings was usable and that the provision of four 'family sized' dwellings outweighed the harm as a result of the area deficiency. As the appeal scheme provides a single, one-bedroom property, the Oakley Road appeal is not directly comparable.
11. I conclude that the development does not provide acceptable living conditions for occupiers of No.117, in terms of the provision of private outdoor space, contrary to Policy SDP1 of the Local Plan<sup>6</sup>. This policy stipulates that planning

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<sup>3</sup> Residential Design Guide: Final approved version – September 2006 (the Design Guide)

<sup>4</sup> Appeal ref: APP/D1780/A/12/2186824

<sup>5</sup> Appeal refs: APP/D1780/W/16/3141459 & 3147879

<sup>6</sup> City of Southampton Local Plan Review – Adopted Version Second Revision 2015

permission will only be granted for development which does not unacceptably affect the amenity, amongst others, of the city's citizens. I also find conflict with the Design Guide which requires new dwellings to have access to a private space that is not overlooked and comprises a minimum and usable area.

12. Policy CS5 of the Core Strategy<sup>7</sup> is referenced on the decision notice. This sets out the appropriate location of a range of housing densities relative to the accessibility of an area and against a list of criteria including the quality and quantity of open space. However, the term open space most commonly refers to publicly accessible open space, not private garden areas. Therefore, Policy CS5 is not determinative in this main issue.

*Living conditions – occupants of the annexe*

13. Occupiers of the annexe have sole use of the outdoor space to the front and side of the plot. Whilst a larger, consolidated space than the rear of No.117, it is highly visible from the Avenue and the rear access lane. When being used, the space would not provide the level of privacy which is reasonably expected within a private garden, to the detriment of the living conditions of occupants of the annexe. Furthermore, as also identified above in response to the front garden of No.117, limited substantive evidence is before me demonstrating how this space could be made private without harming the character and appearance of the area.
14. The Council refer to the minimum space standards set out in the Government's Technical housing standards – nationally described space standards (NDSS) stating the annexe does not meet the appropriate standard. I acknowledge that the NDSS can be a useful starting point for considering the liveability of a dwelling and that the Framework<sup>8</sup> indicates policies may make use of the nationally described space standard. However, there are no minimum internal space standards referenced in the Core Strategy, Local Plan or the Design Guide. As such, compliance with the NDSS is not mandatory.
15. Furthermore, the need to consider the configuration of the internal spaces within a dwelling is relevant in the assessment of liveability. Comprising two storeys, the annexe provides an open plan kitchen, dining and living space on the ground floor, a double bedroom with built-in storage and a bathroom upstairs. Although compact, based on my observations during my site visit, the layout and amount of internal space provided within the unit are sufficient to meet the day-to-day needs of the occupier.
16. To justify the use of the NDSS, I have been provided with several appeal decisions<sup>9</sup> where the standards therein have been determinative. These, however, are decisions that were issued before the latest version of the Framework and relate to dwellings either with a significant shortfall in the amount of space provided or impractical layout. They do not, therefore, persuade me to conclude that the internal space standard in the NDSS is determinative in this case.

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<sup>7</sup> Local Development Framework Core Strategy Development Plan Document Amended Version incorporating the Core Strategy Partial Review March 2015

<sup>8</sup> Footnote 52

<sup>9</sup> Bellemoor Road (Appeal ref: APP/D1780/W/22/3310237); Clovelly Road (Appeal Ref: D1780/W/19/3237833); Tennyson Road (Appeal Ref: D1780/W/20/3251054); and Willis Road (Appeal Ref: APP/D1780/W/20/3261090)

17. Nonetheless, I conclude that the annexe does not provide acceptable living conditions for occupiers in terms of the provision of private outdoor space, contrary to Policy SDP1 of the Local Plan which resists development that would unacceptably affect the amenity of the city's citizens. It also conflicts with the Design Guide due to the lack of privacy the occupiers would experience when using the space.

### *Character and appearance*

18. No external changes to the annexe building as approved<sup>10</sup> are included in the appeal scheme. Whilst a fence has been erected dividing the front garden space, it is aligned with the former side elevation of No.117 and, due to the width of the plot's frontage, a similarly sized front garden to others nearby has been created. As such, it is not an uncommon feature in the wider street scene.
19. Even if the removal of the garage from the appeal site has resulted in the ability to place bins, cycles and other ancillary items out of view of the public domain, this was undertaken when the annexe was constructed. Regardless, I see no reason why bin and cycle stores could not be accommodated in the front garden space.
20. I acknowledge that non-physical elements resulting from a development can affect the character and appearance of an area, including changes in activity levels, as highlighted in a court of appeal judgment<sup>11</sup>. However, any increase in the number of comings and goings resulting from the permanent occupation of the annexe would be limited given its size. With its own front door, even if used as ancillary to No.117, it would not necessarily be obvious that occupants are connected or that this would result in significantly different noise and disturbance effects on neighbouring occupants.
21. Although dismissed due to the effect of the proposed development on the street scene, the previous appeal scheme was determined before the construction of the annexe. It also comprised a detached built form with a contemporary architectural design. Therefore, comparisons between the proposed development and the previous appeal scheme, in terms of the effect on the character and appearance of the area, are limited.
22. I conclude that the development does not harm the character and appearance of the area, in accordance with policies SDP1 and SDP7 of the Local Plan, and amplified in the Design Guide, with respect to how development is compatible with the quality of the local environment.

### **Other Matters**

23. The appeal site is located within the catchment area of the Special Protection Areas of the Solent Coastline (the Solent), an internationally habitat. Whilst a UU has been submitted by the appellant, this was not in place at the time the Council determined the planning application. If the circumstances leading to the grant of planning permission had been present, I would have considered the impact of the proposed development upon the Solent, in accordance with the Conservation of Habitats and Species Regulations 2017. However, as I am dismissing the appeal on the main issues above, I have not found it necessary to consider such matters any further.

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<sup>10</sup> Council Ref: 14/01590/FUL

<sup>11</sup> *Kazalbash v SSLUHC & London Borough of Hillingdon Council* [2023] EWCA Civ 904

24. Social and economic benefits arise from the permanent occupation of the annexe close to existing services, facilities and public transport. As the annexe is already in place, any benefits to the local economy resulting from construction work would be negligible. Given the scale of the annexe, I attach limited weight to the resultant public benefits.

### **Planning Balance**

25. The Framework recognises that, in meeting the need for homes, development should ensure healthy living conditions. This is reflected by Policy SPD1 of the Local Plan and supported by the Design Guide. Therefore, the development is contrary to the development plan as a whole and I attach significant weight to this conflict.
26. There is no disagreement between the main parties that the Council is unable to demonstrate a five-year supply of deliverable housing sites in accordance with the Framework. In these circumstances, paragraph 11dii of the Framework states that planning permission should be granted unless any adverse impacts of doing so would significantly or demonstrably outweigh the benefits when assessed against the policies in the Framework.
27. The Framework affirms the Government's objective of boosting the supply of homes and therefore, the provision of additional housing in an accessible area where a shortfall in deliverable housing sites exists would be a public benefit. The Framework also highlights the role starter units can contribute to creating a mixed and balanced community. Given the scale of the appeal scheme, I attribute limited weight to these benefits. Whilst the Council is unable to demonstrate a five-year supply of deliverable housing sites, I attach limited weight to the net gain of a single dwelling which would result from the appeal scheme, irrespective of the scale of the shortfall.
28. I have concluded that the annexe provides acceptable living conditions for its occupiers in respect to internal space, and the development does not harm the character and appearance of the area. However, these are neutral factors which do not outweigh the harm I have found with regard to the living conditions of the occupiers of No.117 and the annexe in terms of the provision of private garden areas. Even if I were to conclude that the development would not harm the Solent, this would also be a neutral factor in my decision.
29. Consequently, the identified adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole, and the presumption in favour of sustainable development does not apply.

### **Conclusion**

30. The proposed development conflicts with the development plan as a whole and there are no material considerations, either individually or in combination, including the Framework and its presumption in favour of sustainable development, that outweigh this conflict.
31. For the reasons identified above, the appeal is dismissed.

*Juliet Rogers*

INSPECTOR