



Appeal Decision

Site visit made on 24 July 2024

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2024

Appeal Ref: APP/J1725/W/23/3334097

Land adjacent to 189 Forton Road, Gosport PO12 3HB

- 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 Trevor Lazenbury of Lazenbury Property (Bemisters) Ltd against the decision of Gosport Borough Council.
 - The application Ref is 21/00516/FULL.
 - The development proposed is described on the application form as the 'construction of a single block of 5 1 bedroom flats with associated parking and bin storage'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Lazenbury against Gosport Borough Council. That application is the subject of a separate decision.

Preliminary Matters

3. I have used the Council's site address, which more accurately describes the location of the site. I note that the appellant has also used this in their appeal form and statement.
4. Notwithstanding the description of development set out above, which is taken from the application form, the scheme would be better described as the erection of a detached part single/part two-storey building to form 5No. one bedroom flats with associated parking, cycle and bin storage. The Council determined the scheme on this basis and so shall I.
5. Within the submitted evidence, reference has been made to the potential impact of the proposed development on the levels of nitrogen and phosphorus discharged into nearby Special Protection Areas. Although not forming part of the Council's reasons for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the ecological integrity of those areas. For this reason, it is necessary to consider this matter as a main issue.

Main Issues

6. The main issues are:

- the effect of the proposed development on the integrity of protected habitat sites; and
- the effect of the proposed development on parking provision.

Reasons

Protected habitat sites

7. The appeal site is located within the Zone of Influence of the Solent and Southampton Water Special Protection Area (SPA) and Ramsar Site, the Portsmouth Harbour SPA and the Chichester and Langstone Harbours SPA.
8. Regulation 63 of the Habitats Regulations prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of these protected sites, which includes the Solent. I am the competent authority for the purposes of this appeal.
9. The Council have cited advice from Natural England, which sets out that new development within the catchment of these habitats has the potential to cause adverse impacts with regard to nitrogen and phosphorus input into the water environment (Solent), with evidence that these nutrients are causing eutrophication. Mitigation measures are required to offset any increases in nitrogen discharge that would result from the proposals.
10. A nutrient budget calculation and mitigation strategy have been provided by the appellant in support of the appeal. The mitigation strategy sets out that the nitrates calculator has been completed and that the appellant is in discussion with, and intends to enter an agreement with, the Warnford Park Estate offset scheme to purchase offset credits. It also sets out that an allocation agreement has been requested. The application was originally recommended for approval, subject to the provision of mitigation measures in respect of the impacts on the water environment.
11. I acknowledge that the Council is in agreement with the suggested mitigation measures proposed. I also note the correspondence received from Natural England. However, this sets out that the advice given is provided on the basis that all mitigation measures will be secured as planning conditions or obligations to ensure their strict and timely implementation for the full duration of the development. There is no substantive evidence before me to demonstrate that the proposed mitigation has been either provided or that an agreement has been entered into in relation to an offset scheme, as suggested. Moreover, there is no planning obligation before me to secure the delivery of the mitigation measures.
12. In order for an Appropriate Assessment (AA) to conclude that there are no likely significant effects on the protected sites, I must be entirely satisfied that the development could achieve nutrient neutrality. Based on the limited information before me, I cannot reasonably rule out that the development would not have any likely significant effect on the important features of the protected sites, alone or in combination with other plans and projects.

13. I have considered whether a condition could be imposed in this regard. However, as the appellant has not provided sufficient detail in this respect, I am unable to determine whether the mitigation proposed would be appropriate to achieve nutrient neutrality. Furthermore, as there is no evidence of a mitigation scheme in place, or close to being finalised, there is insufficient assurance that measures could be secured to achieve nutrient neutrality within an appropriate time period.
14. Having regard to the precautionary approach promoted by the Habitats Regulations, and based on the evidence provided, I must conclude that the development would have a likely significant effect on the conservation objectives of the SPAs. I am unable to rule out the possibility that the development, either alone or in combination with other development, would have an adverse effect on the integrity of the protected sites. No alternative solution, overriding public interest, or compensatory measures have been put forward. Consequently, having regard to the Habitats Regulations, permission must not be granted.
15. The development also conflicts with Policies LP39 and LP42 of the Gosport Local Plan (2015), which opposes development that would have an adverse impact on a protected species or its habitat, including in SPAs. This is in a similar vein to the objectives of paragraph 186 of the National Planning Policy Framework which seeks to avoid development proposals if significant harm to biodiversity cannot be avoided, mitigated, or as a last resort, compensated for then planning permission should be refused.
16. The appropriate mitigation contribution in respect of recreational disturbance has been paid. However, that does not overcome or outweigh the harm identified above in respect of nutrient neutrality.

Parking provision

17. The appeal site comprises a parcel of land positioned at the junction of Forton Road with Alma Street. The proposed development involves the erection of a block of 5 flats.
18. The area surrounding the appeal site is, in part, regulated by the use of double yellow lines. On Forton Road, both single and double yellow lines exist. Unrestricted parking is available in some nearby locations, including Alma Street, together with a number of dedicated disabled bays.
19. Policy LP23 of the Gosport Local Plan (2015) sets out that development proposals will be permitted where they, amongst other objectives, ensure adequate parking provision. The policy directs attention to the Council's Parking Supplementary Planning Document (SPD, 2014). The SPD sets out specific standards for parking in the borough, including that for visitor parking. There is no dispute between the Council and appellant in respect of the number of parking spaces proposed for the use of future occupiers of the development.
20. Specifically on visitor parking, the SPD states that an additional 0.2 parking spaces per dwelling must be provided off street, or where there is demonstrable capacity, in whole or part on-street. The calculation of 0.2 extra spaces per 5 dwellings is equal to 1 visitor parking space. No visitor parking is proposed on the site.

21. Whilst the appellant has not provided any clear evidence to demonstrate that there is capacity, either in whole or part on-street, to accommodate the required visitor parking space, such as a parking survey, they set out that the site is located near to Whites Place car park and that a number of uncontrolled on-street parking spaces exist nearby.
22. At the time of my weekday site visit, there were a reasonably high number of parked cars along Alma Street, where properties generally rely on on-street parking. However, a number of available spaces were available, mindful that the volume of parked cars is likely to be at a higher volume in the evenings. The Whites Place car park is located a short walking distance from the site. This is a large public car park which provides free parking. Although parking demand at the car park would no doubt fluctuate throughout the day and week, and I accept that my visit was only a snapshot in time, there were several available parking spaces at the time of my site visit. Overall, I am of the view that sufficient levels of parking availability exist in the area in-lieu of a single on-site visitor parking space.
23. I acknowledge neighbour comments received in respect of parking. Nevertheless, as reasoned above, there is no substantive evidence before me to demonstrate that that uplift in visitor parking demand would be harmful, or result in dangerous or nuisance parking, effecting highway safety.
24. Based on the evidence before me, together with my observations of the site and surrounding area, I conclude that the proposed development would not have an unacceptable effect on parking provision or highway safety, and would not conflict with the relevant provisions of Policy LP23 of the Gosport Local Plan (2015). This policy, in summary, seeks to ensure that development proposals provide sufficient parking space. This is in a similar vein to the provisions of paragraph 115 of the National Planning Policy Framework, which sets out that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.

Other Matters

25. I acknowledge that the proposal would result in the efficient use of a neglected site within a reasonably sustainable location, close to local services and transport connections. However, these matters do not outweigh the likely significant effect on the integrity of designated habitats sites which would be adverse and for which there is no adequate mitigation before me.
26. I also acknowledge that the scheme would meet other planning policy objectives, including in respect of internal space standards and the impact on the living conditions of neighbouring properties. However, these matters are not in dispute and do not lead me to an alternative conclusion on the main issues.

Conclusion

27. For the reasons above and having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

A Price INSPECTOR