



Appeal Decision

Site visit made on 11 June 2019

by **S Edwards MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 July 2019

Appeal Ref: APP/X1735/W/19/3222417

1 Northney Cottages, Northney Road, Hayling Island PO11 0ND

- 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 S Wilson against the decision of Havant Borough Council.
 - The application Ref APP/18/00593, dated 6 June 2018, was refused by notice dated 13 August 2018.
 - The development proposed is erection of a pair of semi-detached houses on former garden of number 1 Northney Cottages, Northney Road with new access and parking (Resubmission of APP/17/00304).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development provided in the application form has been amended in subsequent documents. In the interests of clarity, and having regard to the comments provided by the main parties, I have amended the description of development to refer to 1 Northney Cottages, Northney Road.
3. The National Planning Policy Framework (the Framework), which was revised in July 2018, was subsequently updated on 19 February 2019. References to the Framework within this decision relate to the latest version published in 2019.
4. The main parties have referred to the Council's Draft Havant Borough Local Plan 2036. However, this Draft Borough Local Plan has yet to be found sound, and therefore very limited weight can be ascribed to it at this point.

Main Issues

5. The main issues are:
 - Whether the appeal site constitutes an appropriate location for additional residential development;
 - The effect of the proposal on the character and appearance of the area, including the adjacent Chichester Harbour Area of Outstanding Natural Beauty (AONB); and
 - The effect of the proposal on the Solent Special Protection Areas (SPAs).

Reasons

Location

6. Policy CS17 of the Havant Borough Core Strategy - March 2011 (CS) sets out the settlement strategy for the area administered by the Council, explaining where development proposals are considered acceptable in principle. The strategy seeks to concentrate new development within the five urban areas of Havant, Leigh Park, Waterlooville, Emsworth and Hayling Island. Policy AL2 of the Havant Borough Local Plan (Allocations) – July 2014 (LP) further emphasises the Council’s settlement strategy, by seeking to concentrate development proposals within Urban Area Boundaries and Undeveloped Gaps between Settlements, and makes clear that land outside the defined urban area of Hayling Island is ‘non-urban’ rather than undeveloped gap.
7. As shown on the Proposals Map, the appeal site lies within the village of Northney, outside the urban areas of Hayling Island. It is therefore located in a non-urban area where, in accordance with Policy CS17, development will only be permitted if it is consistent with the policies for the countryside set out in national policy.
8. The proposed pair of semi-detached dwellings would be constructed between existing residential properties, within the village of Northney, and would therefore not be considered as the development of isolated homes in the countryside for the purposes of paragraph 79 of the Framework.
9. Paragraph 78 of the Framework makes clear that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. St Peter’s Church and the North Hayling Recreation Hall lie within relative proximity to the appeal site, as well as Northney Farm Tearooms. The appellant suggests that the site also lies within walking distance of a service station and a public house, which can be accessed using footpaths, but these are located further away.
10. Whilst frequent and regular bus services are available to travel to Eaststoke and Havant, these are located at some distance away from the appeal site, making these services less attractive as an alternative mode of transport to the private car. Furthermore, in the absence of evidence to demonstrate the service frequency, this is a consideration which I can only attach limited weight to. Equally, the Hayling Island Carshare scheme would require future occupiers to plan their journeys in advance and would lack the degree of flexibility required to deter people from using private motor vehicles.
11. By reason of the limited range of services available within the village, and for convenience purposes, there is a greater likelihood that for the large majority of trips, residents would rely on private motor vehicles to travel further afield, to access most everyday facilities (e.g. cultural, recreational, employment, retail, etc).
12. The appeal site forms part of an existing side garden area, which currently serves 1 Northney Cottages. My attention has been drawn to the *Dartford*¹ judgement, which confirmed that the definition of ‘previously developed land’ in the Framework cannot be read to exclude private residential gardens not located in built-up areas. Whilst, as shown on the proposals map, the site clearly sits outside the urban area, it nevertheless forms part of the village of Northney and thus part of its built-up envelope. With this in mind, the appeal

¹ Dartford Borough Council v Secretary of State for Communities and Local Government [2016] EWHC 635 (Admin).

site is considered as a residential garden within a built-up area, which is excluded from the definition of previously developed land contained within the Framework. Even if I were to treat the appeal site as previously developed land, this would not overcome the significant harm which I have identified in respect of the site's accessibility to local facilities and services.

13. The appellant has referred to a scheme for the erection of a dwellinghouse outside of any settlement boundary policy, which was granted by Basingstoke and Deane Borough Council². However, I am not convinced that the circumstances that applied to this particular scheme constitute a direct parallel to the appeal before me, notably in respect of location and development plan policy. In any event, I am required to determine the proposal on its individual merits.
14. I therefore conclude that the appeal site would not constitute an appropriate location for new residential development, and would therefore conflict with CS Policy CS17 and LP Policy AL2, which seek to primarily focus new developments within existing urban areas. It would also not accord with the aims of the Framework relating to development in the countryside.

Character and appearance

15. Located immediately adjacent to the Chichester Harbour AONB, the appeal site forms part of a village characterised by agricultural buildings and residential properties of various types and sizes, including bungalows, detached and semi-detached dwellings which follow a linear pattern of development along the main road. This, together with the mature hedges, surrounding landscape and open fields, give the area a pleasant semi-rural character. The appeal site comprises a semi-detached dwelling, which benefits from a large garden area to the side and rear of the property.
16. The proposal would result in a significant intensification of development on the plot, and close the visual gap which currently makes an important contribution to the character and appearance of this area. The resulting scheme would consolidate development along this stretch of Northney Road, contrasting with the open fields opposite. The appeal scheme would also include extensive areas of hardstanding required to provide the car parking spaces and associated vehicular access.
17. Cumulatively, these elements would significantly erode the spacious nature of the site, and lead to an urbanisation of the plot, which would appear at odds with the semi-rural character which defines this area. The harm would be compounded by the removal of the mature hedge to the front and side boundaries of the site. Whilst the proposal includes the planting of a new hedge it would inevitably take time to become established and provide effective screening.
18. The appeal site may not benefit from the statutory protection afforded to AONBs, but its contribution to the setting of the Chichester Harbour AONB must nevertheless be considered and, as set out in the Framework, great weight should be given to conserving the landscape and scenic beauty of this sensitive area. The proposed development would result in the loss of an important visual gap, which currently provides views to the Chichester Harbour AONB. Whilst

² Local Planning Authority Reference 17/01418/FUL.

the detrimental effect to the setting of the AONB would only be limited, this adds to the harm identified above, and great weight should be given to that harm.

19. The proposal would unacceptably harm the semi-rural character and appearance of the area, including the setting of the Chichester Harbour AONB. Consequently, it would be contrary to CS Policies CS11, CS16, CS17 and DM9 and LP Policy AL2. Amongst other things, these policies seek to protect and enhance the Borough's special environment (including the AONB and its setting), and require development proposals to identify and respond positively to existing features of local character. For similar reasons, the proposal would be contrary to the Framework and the advice contained within Northney and Tye Village Design Statement, notably because it seeks to preserve the characteristics of this rural settlement.

Solent SPAs

20. The appeal site lies within proximity to the Solent SPAs. There is a need to contribute towards mitigation measures due to the potential adverse impact that residential development may cause to these sensitive areas, in the form of financial contributions which are normally secured through planning obligations.
21. As I am dismissing this appeal on other substantive grounds, this is not a matter which needs to be considered further here. However, had the development been considered acceptable in all other respects, I would have had to be satisfied that an Appropriate Assessment had been undertaken, and of the effectiveness of the suggested mitigation measures, to ensure the proposal's compliance with Habitats Regulations, in light of the *People over Wind*³ decision by the Court of Justice of the European Union.

Conclusion

22. For the reasons detailed above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR

³ People over Wind, Peter Sweetman v Coillte Teoranta, Case C-323/17.



Appeal Decision

Site visit made on 12 March 2019

by Robert Mellor BSc (EstMan) DipTRP Dip DesBEnv DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2019

Appeal Ref: APP/X1735/W/18/3202960

50 Silvester Road, Waterlooville, Hampshire PO8 8TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr P Rex against the decision of Havant Borough Council.
 - The application Ref APP/17/01121, dated 7 February 2018, was refused by notice dated 29 March 2018.
 - The description of the proposed development was revised during the application and appeared in the decision notice and appeal form as: '*Demolition of existing outbuildings and conservatory, construction of 1 No. 3 bed detached bungalow with associated car port, revised drive and landscaping*'.
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DECISION

1. The appeal is dismissed.

PROCEDURAL MATTERS

2. The appeal has been determined on the basis of the above revised description and the revised red line defining the application site which excluded the ditch along the northern boundary.

MAIN ISSUES

3. Planning permission was refused because of a claimed adverse effect on the amenity of neighbouring occupiers.
4. Following the decision and having regard to the provisions of the Habitat Regulations¹, the Council has also pointed to a failure to secure mitigation for an adverse effect on coastal Special Protection Areas (SPA) from additional recreational pressure created by residential development.
5. During consultation on a draft Appropriate Assessment of the effect on the SPAs and proposed mitigation of recreational pressures, Natural England (the Statutory Nature Conservation Body) raised a further issue concerning a likely significant effect of additional residential development on water quality.
6. I therefore now consider the main issues to be: the effect of the development on the living conditions of neighbouring occupiers with particular regard to privacy and to noise and disturbance from vehicle movements; and the effect on ecology and bio-diversity.

¹ Conservation of Habitats and Species Regulations (England and Wales) 2017 (as amended)

REASONS

Living Conditions

7. The proposal would include the demolition of an existing single garage serving No 50 Silvester Road and the extension of the existing driveway beyond that garage to provide vehicular and pedestrian access to the proposed bungalow on a backland site within the present rear garden of No 50.
8. Policy CS16 of the Havant Borough Core strategy 2011 provides, amongst other things, that development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.
9. Following the demolition of the existing garage the extended driveway would pass close to the boundary with the neighbouring semi-detached house at 48a Silvester Road. The two-storey flank elevation of that house stands about 1m from the boundary which is marked by a wooden fence. There is a half-glazed door at ground floor level which appears to be unused as there is shelving across it. The window has obscure glazing. There is a further obscure glazed window at first floor level which may serve a bathroom. Attached at the rear of the house is a fully-glazed full-width conservatory. The conservatory has clear glazing to all sides. The side facing the appeal property had drawn blinds at the time of my visit.
10. As the appeal proposal is for a low-set bungalow, sited well to the rear of the frontage properties in Silvester Road, I do not consider that there would be significant overlooking between windows or unacceptable standards of privacy. Suitable privacy between gardens can be provided by fencing, including in relation to the Kings Road properties at the rear.
11. The submitted drawing indicates an opportunity for screen planting adjacent to part of the boundary with No 48a which could provide enhanced mutual privacy. That would include tree planting. The trees would need to be at least 3m from the edge of the sewer that crosses the site. That may limit the northern extent of the planting but would not prevent screen planting where it would have the most effect. The precise location of that planting could be determined by condition were the appeal to be allowed.
12. In 1990 an appeal (ref T/APP/X1735/A/89/143949) was dismissed in respect of a proposal to erect a dwelling house and 2 double garages on approximately the same site as the current appeal site and with a shared driveway in a similar position. One of those double garages would have served the appeal dwelling and the other would have served the retained dwelling at No 50. Thus, the driveway would have carried the traffic for two properties. The disturbance created by those movements was one of the reasons for the dismissal of that appeal.
13. In the current proposal the driveway would again pass between the flank elevations and rear gardens of Nos 50 and 48a to reach the proposed car port near to the long rear garden at No 52a. However, the driveway would thus only carry the traffic for the single new dwelling. There would be parking for the retained dwelling at No 50 at the front of that property adjacent to the street where there are already many vehicle movements. That would result in

materially reduced movements along the driveway adjacent to the boundary by comparison with the dismissed 1990 appeal scheme.

14. It is not unusual in a suburban road for a driveway to a single dwelling to pass close to a neighbouring dwelling or its garden. Whilst there would be some additional brief noise from vehicle movements and possible fleeting disturbance by headlights at night, I do not consider that this would here result in unacceptable harm to the amenity of neighbouring occupiers at Nos 48a, 50 or 52a. The latter property has a long rear garden and the car port would only adjoin a short length of the boundary. Neither would there be unacceptable harm to the privacy of the neighbours. The proposal therefore accords with CS Policy CS16.

Consistency

15. The Appellant points out that the Council has recently granted permission nearby for a backland development of two dwellings with a shared access drive passing between (and close to) between Nos 78 and 80 Silvester Road (Council ref. APP/17/00530). In that case both of those existing dwellings have main windows directly facing that access. There would be more traffic movements along that drive than in the present case.
16. That arrangement was considered acceptable by the Council on the basis that the two frontage dwellings were controlled by the same developer and were included in the application site. Nevertheless, the Council must have concluded that the public interest would be served in that acceptable living conditions would be created for future occupiers of those frontage dwellings, notwithstanding the greater number of movements and the proximity of the facing windows to vehicle movements. It follows that a lesser degree of movement in the present case would also result in acceptable living conditions and that the development would be consistent with that recent decision by the Council in that regard.

Ecology and Biodiversity (including Appropriate Assessment)

17. A previous Appropriate Assessment of the Council's Allocations Plan had concluded that any net increase in residential development in the area would have a likely significant effect on the Solent SPAs that would require mitigation.
18. Since the subject planning permission was refused in March 2018, a ruling of the European Court of Justice in the case of *People Over Wind, Peter Sweetman v Coillte Teoranta* concluded that an Appropriate Assessment is required when a proposal would result (alone or in combination with other development) in a likely significant effect on a European Site such as a Special Protection Area before taking account of any proposed mitigation.
19. Whilst there are several international nature conservation designations around the Solent, the most proximate to the appeal site is the Chichester and Langstone Harbours SPA. The site conservation objectives of the SPA are to maintain or restore the populations of the qualifying features (over-wintering birds) and to maintain or restore the distribution of the qualifying features within the site.

Recreational Pressures

20. CS Policy DM24 provides in summary that planning permission will be granted for development that avoids or mitigates a likely significant effect on Special Protection Areas (SPA) caused by recreational disturbance and that necessary mitigation can be provided by measures which may include a financial contribution.
21. Because the proposed development would, in combination with others, accommodate significantly more people in the area, there is likely to be increased demand for recreational activities. The Chichester and Langstone Harbours SPA in particular would be an attractive destination for activities such as dog-walking with the potential to disturb the over-wintering birds and their habitat which are qualifying features of the SPA. In the terms of the Habitats Regulations there is thus an identifiable pathway of effect and a likely significant effect on the qualifying features, as also recognised by Policy DM24.
22. Mitigation is nevertheless available for these recreational impacts in the form of the Solent Mitigation Strategy which aims to prevent disturbance from recreational activities by measures which include: the employment of coastal rangers; education initiatives; measures to encourage responsible dog-walking; codes of conduct for coastal activities; site-specific projects to better manage visitors and provide secure habitats for birds; the provision of new or enhanced greenspaces as an alternative to visiting the coast; and coordination of the above activities. Implementation is to be funded by contributions based on the number of bedrooms in new properties.
23. The Appellant has already paid the requested financial contribution to Havant Borough Council which is part of a partnership supporting this strategy and I have no reason to doubt that it will be used for the stated mitigation purposes. On that basis I conclude that the recreation mitigation would prevent associated harm from recreational pressures generated by the development to the integrity of the qualifying features of the Chichester and Langstone Harbours SPA (and also avoid any harm to the other protected areas covered by the same strategy that are more remote from the site). The development would therefore accord with Policy DM24 in that regard.

Water Quality

24. Natural England advises that there are high levels of nitrogen and phosphorus input to the water environment of the Solent region caused by wastewater from existing housing and from agricultural sources and that these nutrients are causing eutrophication at the designated nature conservation sites which include the Chichester and Langstone Harbours SPA. This results in dense mats of green algae that are impacting on the Solent's protected habitats and bird species.
25. Natural England further advises that there is uncertainty as to whether new housing growth will further deteriorate designated sites. Work on this issue is on-going with the local planning authorities, the Environment Agency and the water companies. That may lead to identified mitigation measures in the future. However, no mitigation strategy has yet been developed and no interim approach has yet been set up by Havant Borough Council, although it is being progressed. In the meantime, Natural England advises that one way to

address the uncertainty is to achieve nutrient neutrality whereby an individual scheme would not add to nutrient burdens.

26. In the present case, Havant Borough Council has calculated that the wastewater total nitrogen load arising from the planned development of a single dwelling within the existing garden would be 0.99576563 Kg/TN/year.
27. As a redevelopment of existing urban land there would be none of the mitigation that might be expected from a reduction in the nitrogen local from developing agricultural land. The proposed development would not be nutrient neutral. Natural England concludes that it is not possible to ascertain that the proposal will not result in adverse effects on the site's integrity and that the proposal does not provide enough information and/or certainty to enable adverse effects on site integrity to be ruled out.
28. In these circumstances the Regulations provide that planning permission can only be granted if the proposal meets the following tests:
 - there are no alternative solutions to the proposed development;
 - there are imperative reasons of overriding public interest; and
 - there are suitable compensatory measures secured (for example a replacement habitat).
29. On the evidence before me I conclude that none of these tests are satisfied and that the appeal must therefore be dismissed on the grounds of the uncertain but likely adverse effects of waste water from this development, in combination with other developments, on the site integrity of the Chichester and Langstone Harbours SPA and other similarly protected areas around the Solent.
30. I understand that the position is similar in respect of numerous other current development proposals in South Hampshire. It possible that an appropriate mitigation strategy may be developed at a future date, but that possibility would not be an adequate basis to support the granting of planning permission at the present time.

Conclusions

31. I have taken account of all other representations. In particular I acknowledge that the proposal would have the social and economic benefits of providing an additional dwelling. However, having regard to the provisions of the Regulations, that is not sufficient to override the likely environmental harm of the development in combination with other residential development in the wider area.

Robert Mellor

INSPECTOR



Appeal Decision

Site visit made on 11 June 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal Ref: APP/X1735/W/18/3214079

Land adjacent to Mandai, St Peters Road, Hayling Island PO11 ORT

- 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 Laurence Stanley against the decision of Havant Borough Council.
 - The application Ref APP/18/00207, dated 15 February 2018, was refused by notice dated 21 September 2018.
 - The development proposed is use of land for touring caravan site.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Laurence Stanley against Havant Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The National Planning Policy Framework (the Framework), which was revised in July 2018, was subsequently updated on 19 February 2019. References to the Framework within this decision relate to the latest version published in 2019.
4. The main parties have referred to the Council's Draft Havant Borough Local Plan 2036. However, this Draft Borough Local Plan has yet to be found sound, and therefore very limited weight can be ascribed to it at this point.
5. Within the decision notice, the Council's reason for refusal refers to Policy CS9 of the Havant Borough Core Strategy – March 2011 (CS). As part of their submissions, the Council has however clarified that CS Policy CS9 (Housing) was quoted in error, and that CS Policies CS5 (Tourism) and CS16 (High Quality Design) should have instead been referred to within the reason for refusal. I shall proceed on this basis.

Main Issues

6. Following the publication of a Position statement on nutrient neutral development¹, the Council has submitted further information in respect of the effect of the proposal on the Solent Special Protection Areas. This notably concerns the likely effects from proposals providing overnight accommodation on water quality. Both main parties were provided the opportunity to comment on the information submitted by the Council.

¹ Adopted by Havant Borough Council's Cabinet on 26 June 2019.

7. I therefore now consider the main issues to be:

- The effect of the proposal on the Solent Special Protection Areas (SPAs); and
- The effect on the character and appearance of the area, having particular regard to the site's location within the open countryside.

Reasons

Solent SPAs

8. The appeal site lies within proximity to the Solent SPAs, which are protected sites designated under the Birds European Directive, as transposed in the UK by the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations), setting out a strict system of protection for European Sites and European Protected Species. Natural England has recently issued revised advice in respect of increased levels of nitrogen and phosphorous input to the water environment in the Solent, causing a dense growth of certain plants, otherwise known as eutrophication which affects the species using the Solent.
9. The Council's position statement, which reflects Natural England's advice, clearly states that forms of development providing overnight accommodation, such as the appeal proposal, are considered to increase nitrogen and thus cause likely significant effects on European Sites. In such circumstances, the Habitats Regulations state that an Appropriate Assessment (AA) is carried out.
10. Having regard to the nature of the proposed development and the increased risk which would stem from the additional waste water as a result of the proposed use, I consider that in the absence of mitigation measures, the appeal scheme would present likely significant effects on the Solent SPAs which, either alone or in combination with other plans and projects, could adversely affect the integrity of these protected sites.
11. The Council's position statement advises that an avoidance and mitigation package will be necessary for almost all proposals which, it is suggested, can be addressed by way of Grampian conditions. The suggested condition would notably require a mitigation package addressing the additional nutrient input arising from the development to be agreed with the Local Planning Authority, and a financial contribution to facilitate the delivery of the strategic mitigation package.
12. However, I note that there is currently no agreed strategy for collecting contributions for that particular purpose. It is also unclear how the contribution required as part of the mitigation package would be secured, other than through a planning obligation. As no planning obligation has been submitted as part of this appeal, the measures suggested as part of the condition would not be adequately secured, and would not bind the Council to spend the contribution towards the delivery of the mitigation package.
13. Additionally, the Planning Practice Guidance² (PPG) advises that negatively worded conditions limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be

² Paragraph: 010 Reference ID: 21a-010-20190723.

appropriate in the majority of cases. The relative proximity of the site to a SPA would not amount to the exceptional circumstances as envisaged by the PPG.

14. I have had regard to the appellant's suggestion that the existing septic tank could be used, but no substantive information has been submitted to demonstrate that this would constitute a suitable and effective alternative to prevent additional nitrogen and phosphorous entering the water environment of the Solent. Whilst there is a possibility that visitors may not use the facilities provided on-site, it is highly likely that they would seek to dispose of the wastewater contained within the cassette of the caravan prior to leaving the site. Additionally, on the basis of the evidence before me, I am unable to conclude that the proposed use of the site would be as or less intensive than the existing lawful use as a garden detached from a dwelling.
15. In the absence of evidence to the contrary, I conclude that the appeal scheme must be dismissed on the grounds of the likely adverse effects on the integrity of the Solent SPAs, either alone or in combination with other plans and projects, as a result of additional nitrogen and phosphorous from additional waste water generated by the proposed use. The proposal would therefore conflict with Habitats Regulations and Policy CS11 of the Havant Borough Core Strategy – March 2011 (CS) which, amongst other things, seek to protect habitats through appropriate adaptation and mitigation measures.

Character and appearance

16. The appeal site comprises a parcel of land located at the entrance of the small village of Northney, and lies immediately to the south of a residential property known as Mandai, which it was severed from a number of years ago. As part of my site visit, I was able to observe that the plot is clearly separated from Mandai and is largely screened on all sides by mature landscaping. The site is otherwise surrounded by open fields.
17. CS Policy CS17 sets out the settlement strategy for the area administered by the Council, which seeks to concentrate new development within the five urban areas of Havant, Leigh Park, Waterlooville, Emsworth and Hayling Island. Policy AL2 of the Havant Borough Local Plan (Allocations) – July 2014 (LP) further emphasises the Council's settlement strategy, whilst making clear that land outside the defined urban area of Hayling Island is 'non-urban' rather than undeveloped gap. As shown on the Proposals Map, the appeal site lies outside the defined urban areas of Hayling Island. It is therefore located in a non-urban area where, in accordance with CS Policy CS17, development will only be permitted if it is consistent with the policies for the countryside set out in national policy.
18. CS Policy CS5 supports development proposals that provide hotels and other types of tourist accommodation, which are not restricted to urban areas. Camping facilities are not generally associated with the urban environment and are more commonly found in countryside locations. The proposed caravan site would be located outside an urban area, but would support small scale rural tourism. Paragraph 83 of the Framework advises that planning decisions should enable sustainable rural tourism and leisure development which respect the character of the countryside. Additionally, paragraph 84 of the Framework recognises that sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.

19. As noted above, the site lies just outside the village of Northney and within proximity to residential properties. Whilst the caravan site would include some permanent features such as a site cabin, it would have a limited effect on the character and appearance of the area due to the transient nature of the use, the screening provided by the mature trees and landscaping, and the limited scale and massing of the caravans and other structures on the site. Equally, any additional paraphernalia associated with the proposed use would to a large extent be screened by the existing landscaping, fencing and gate to the front of the site.
20. For the foregoing reasons, I consider that the effect of the proposal on the character and appearance of the countryside would be acceptable, and therefore find no conflict with the design aims of CS Policy CS16. Furthermore, the appeal scheme would accord with the policies for the countryside as detailed within the Framework, and there would subsequently be no conflict with CS Policies CS5 and CS17, as well as LP Policy AL2.

Conclusion

21. For the reasons detailed above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR



Appeal Decision

Site visit made on 7 May 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2019

Appeal Ref: APP/Z1775/W/18/3217420

32 Norman Road, Southsea PO4 0LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Robert Leatherland against the decision of Portsmouth City Council.
 - The application Ref 18/01429/FUL, dated 20 August 2018, was refused by notice dated 30 October 2018.
 - The development proposed is change of use from C4 (house in multiple occupation) to 7 person, seven bedroom, Sui Generis (house in multiple occupation for more than 6 persons).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Robert Leatherland against Portsmouth City Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - (a) the effect on the Solent Special Protection Areas (SPAs);
 - (b) whether there would be an imbalance of houses in multiple occupation (HMOs) in the surrounding community; and
 - (c) the effect of the proposal on the living conditions of future residents of the HMO, having regard to communal internal space provision.

Reasons

SPAs

4. The site lies within the 5.6 kilometre zone around the Portsmouth Harbour SPA, Chichester and Langstone Harbours SPA and Solent and Southampton Water SPA (hereafter collectively referred to as the SPAs) which are designated in accordance with the Habitats Directive as transposed in the UK by the Conservation of Habitats and Species Regulations 2017 (Habitat Regulations). The SPAs comprise a coastline that has a network of mudflats, shingle and saltmarshes which support internationally important numbers of bird species: Dark-bellied brent goose, Mediterranean gull, Eurasian wigeon, Ringed plover, Bar-tailed godwit, Grey plover, Sandwich tern, Roseate tern, Common tern and Little tern. These birds feed and roost on or near the ground and as a result

they are very susceptible to disturbance from informal recreational use, especially walking and dog walking. Any proposal which by reason of its proximity of the SPAs, within this "Zone of Influence", that may result in additional recreational disturbance is likely to have an adverse effect on the integrity of the SPA. Natural England has also advised that high levels of nitrogen and phosphorus input to the water environment in the Solent is causing eutrophication. All types of development that would result in a net increase in population served by a wastewater system, including new homes, student accommodation, tourism attractions and tourist accommodation would create additional levels of nitrogen and phosphorus.

5. The conservation objectives for the SPAs are to "Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring; the extent and distribution of the habitats of the qualifying features; the structure and function of the habitats of the qualifying features; the supporting processes on which the habitats of the qualifying features rely; the population of each of the qualifying features, and, the distribution of the qualifying features within the site." I have had regard to these objectives in undertaking my duties in accordance with the Conservation of Habitats and Species Regulations 2017.
6. Where the determining authority decides that a proposed development is likely to have a significant effect on the SPA it must make an Appropriate Assessment (AA) of the implications for the site in view of that site's conservation objectives. Consequently, it is necessary for me to undertake an AA.
7. The characteristics of the proposed development coupled with its proximity to the SPA within its 'Zone of Influence' present an increased risk of harm and disturbance to its qualifying features. This risk is due to the potential for increased visitor pressure and recreational activities undertaken at the SPAs by the additional resident at the appeal site. The risk also stems from the additional waste water created by additional residents at the site. There are not considered to be any other likely significant effects on the SPA from the appeal proposal. It is acknowledged that without mitigation the proposals present a likely significant effect, particularly when the impacts are considered in combination with other residential developments located within the SPA's 5km Buffer Zone to the SPA.
8. In 2017 the Council adopted the Solent Recreation Mitigation Strategy (Mitigation Strategy) which provides for the payment of a mitigation contribution to offset the effects of an increased population on the SPAs. Contributions made under the Mitigation Strategy are put towards the Strategic Access Management and Monitoring (SAMM) of the SPAs and towards its maintenance, the employment of rangers to reduce disturbance levels and initiate specific measures at the sites, a delivery officer to oversee the mitigation scheme as a whole and a coastal dogs project.
9. The appellant has provided evidence to show that the mitigation payment of £337 has been made to offset those effects and therefore, the proposal would not harm the integrity of the SPAs in this regard. This level of contribution is acceptable in accordance with the Mitigation Strategy and Natural England has

agreed that proof of payment is sufficient to secure the appropriate mitigation measures for the proposed development relative to its recreational effects.

10. I am satisfied that the contribution is not towards the provision of infrastructure, as defined in the CiL Regulations, and is therefore not affected by the pooling restrictions in the CiL regulations. The contribution is necessary, directly related to the development and fair and reasonable in scale and kind to the development proposed. I am therefore satisfied that it meets the appropriate tests and is therefore a contribution I can take into account.
11. However, Natural England have highlighted that the increase in occupation and the associated waste water implications from the proposal would be likely to have an in-combination effect on the SPAs in association with other projects and plans. The 'Methodology to calculate the nitrogen budget for development in the Solent and achieve nitrogen neutrality' (Working Draft August 2018) has been provided to me. However, whilst the appellant has provided comments in respect of the potential effects on the SPA in this regard, there is currently no agreed strategy for collecting contributions using this approach and nor has any mitigation been paid or secured by legal obligation.
12. As such, whilst I have had due regard to the contribution paid to the Council for mitigation of recreation effects on the SPA, in the absence of evidence to the contrary, the proposed development would adversely affect the integrity of the SPAs, either alone or in combination with other development, as a result of additional nitrogen and phosphorous from additional waste water generated by the increased population. The proposal would therefore conflict with the Habitats Regulations and PP Policy PCS13, which, amongst other things, seeks to ensure that any unavoidable negative impacts on biodiversity are appropriately mitigated. For similar reasons, the proposal would also conflict with paragraph 175 of the National Planning Policy Framework.

Imbalance of HMOs

13. The appeal property is a mid-terraced dwelling that benefits from a flexible permission which allows it to be used as either a dwellinghouse (Use Class C3) or a house in multiple occupation (HMO) for up to six residents (Use Class C4). The proposal seeks to change the use of the property to a Sui Generis HMO for up to seven residents through provision of another bedroom created by relocating the combined living/kitchen space.
14. Policy PCS20 of the Portsmouth Plan¹ (PP) sets out that the city has a higher percentage of HMOs than the national average. The Policy itself states that in order to support mixed and balanced communities, and to ensure that a range of household needs continue to be accommodated, changes of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses.
15. The Council state that 22 of the 66 properties within a 50 metre radius of the site are in use as a HMO, equating to 33.33%. This level far exceeds the 10% figure set out in the Houses in Multiple Occupation Supplementary Planning Document (updated 2018) (HMO SPD); above which there is considered to be an imbalance. It is however accepted by the Council that the appeal property is already in lawful use as a HMO.

¹ The Portsmouth Plan – Portsmouth's Core Strategy (adopted April 2014)

16. Whilst the increase in concentration of HMOs may otherwise affect the quantity of family housing in the area and alter the demand and price of rented or market housing and local services, including leisure services, schools and other community infrastructure, the proposed change of use to a larger HMO would not result in a change to the balance of uses in the context of the surrounding area.
17. In terms of the point in contention in relation to the addition of one resident at the appeal building, whilst I accept that there could in the future be an issue with cumulative impacts, I have not been provided with evidence to substantiate that such intensification has occurred in the vicinity of the appeal site to conclude that there would be harm from allowing the proposal. As such, I have attached significant weight to the numerous decisions and appeal decisions to which my attention has been drawn relating to very similar proposals across a broad geographic area of the city. Whilst this may not be the total number of such similar proposals having been given permission, it is a small number relative to the number of HMOs in the city and the anticipated future need for HMO accommodation as set out in the SPD.
18. I note the comments relating to the potential for the creation of a precedent that may result in the potential doubling of the population in Norman Road. Whilst I am unconvinced that there is presently an issue with HMO intensification issue in the vicinity of the appeal site, this is a more general concern of the Council that could be illustrated through the compilation of data on the number and location of HMOs that have been intensified and any associated problems therewith. Until such time, this does not alter the general principle that each application is to be treated on its own merits and there is no evidence that allowing this appeal would result in a significant number of other similar proposals coming forward in Norman Road in particular.
19. As such, I find that any increase in occupancy at the property derived from such a small increase in bedroom accommodation would not be materially discernible when considered in the context of the surrounding area. Consequently, in view of this main issue, the appeal proposal would not result in any further imbalance in the community and therefore, I find no conflict with PP Policy PCS20 or any other consideration of sufficient weight to lead me to refuse the proposal on this basis.

Living conditions of future residents

20. The proposal seeks to provide a seventh bedroom measuring 10.22 sqm, which would exceed the minimum space standards set out in the HMO SPD. Each of the other existing bedrooms exceeds the minimum bedroom size requirements. The combined living space to serve all of the residents would be 25.78 sqm which would fall marginally short of the HMO SPD standard of 27sqm for seven or more people. The kitchen/dining component of this space would be marginally undersized, whereas the lounge space is considered to meet the HMO SPD guidance.
21. Whilst there may be a demand for the kitchen cooking space that could not always be satisfied, this would appear to be the case with the six people who can already lawfully live in the property. I am unconvinced from the submitted evidence that not meeting the HMO SPD guidance in this particular respect would make a critical difference to the quality of living environment with one additional resident. As such, in my judgement, given that the proposal relates

to only one additional resident, the marginal under provision of the combined living/kitchen space would not create a harmful living environment for future residents and is partly mitigated by the suitability of the bedroom sizes.

22. I have had regard to another appeal decision for a similar proposal which was dismissed on the basis of the harm to the living conditions of future residents from the provision of under-sized rooms². In that case, there were a higher proportion of rooms, including bedrooms, which failed to accord with the guidance. In this case, there is just one undersized room and the degree of shortfall in its floorspace is more limited when considered against the guidance.
23. Taking into account the proposed increase of one occupant and the living environment of the house as a whole therefore, I conclude that the proposal would not harm the living conditions of future residents with regard to the communal living space provision. As such, I find no conflict with PP Policy PCS23 which, amongst other things, requires that new development provides a good standard of living environment for neighbouring and future occupiers. PP Policy PCS20 does not refer to living standards in HMOs and is not therefore relevant to this issue.

Other Matters

24. Notwithstanding my conclusion in respect of the integrity of the SPAs, there is little evidence in relation to waste water services so as to suggest that there is insufficient capacity in the system to deal with one additional resident. Similarly, the issue of recycling and waste disposal is unlikely to be materially altered from the addition of one resident within an existing HMO.
25. Whilst I accept that some neighbouring residents will experience noisy behaviour from comings and goings and use of the gardens by tenants from time to time, this type of behaviour is not limited to occupiers of HMOs and is unlikely to be exacerbated by the increase of one tenant in an existing HMO.
26. The issue of parking can understandably be problematic in tight-knit terraces where dwellings do not have any dedicated parking. I am mindful from the comments that a parking scheme has been implemented locally which should ease some parking pressures. I also note that the Council highlights that the parking standards would not require any more provision as a result of the change of use. The issue of cycle parking is also addressed in the conditions below in order to reduce the reliance on private vehicle.

Conclusion

27. Whilst the proposal would not lead to an imbalance in the HMOs in the surrounding community and would not harmfully affect the living conditions of future residents with regard to communal internal space provision, the proposal would be likely to harmfully affect the integrity of the SPAs considered in combination with other projects and plans.
28. For the reasons set out above, and having regard to all other matters raised, the appeal is dismissed.

Hollie Nicholls
INSPECTOR

² APP/Z1775/W/17/3188485