
Appeal Decision

Site visit made on 5 January 2016

by David Cliff BA Hons MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 March 2014

Appeal Ref: APP/D1780/W/15/3131682

Land to the rear of 114-116 Portsmouth Road, Southampton SO19 9AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr J Kemmish against Southampton City Council.
 - The application Ref 15/00147/OUT, is dated 16 January 2015.
 - The development proposed is the erection of 4 dwellings to rear of 114-116 Portsmouth Road, utilising the existing access from Portsmouth Road.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline with details of access to be considered as part of the application. Landscaping, layout, scale and external appearance are matters reserved for later approval. The submitted plans include layout drawings, elevations of a proposed cycle store and a proposed section through the site. Other than the details of the proposed access, I have treated these drawings as being only for illustrative or indicative purposes.
3. The site address I have used more accurately relates to the appeal site than that stated in the planning application form. The Council has confirmed that it does not object to the use of this address which is also used in the appellant's further comments.
4. In its appeal statement the Council has confirmed that, if it had been in a position to determine the application, it would have refused planning permission for reasons relating to the loss of an open space/recreational facility and the absence of a mechanism for securing financial contributions to mitigate the adverse impact upon protected species.

Main Issues

5. The main issues are the effects of the proposed development on open space and recreational facilities and on the integrity of the Solent Coastline Special Protection Areas (SPAs).
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Reasons

Open space and recreational facilities

6. Paragraph 74 of the National Planning Policy Framework (the Framework) states that existing open space, sports and recreational land should not be built on unless the space is demonstrably surplus to requirements; or the lost open space would be replaced elsewhere; or the development is for alternative sports and recreational provision.
7. In determining the previous appeal¹ the Inspector concluded that the proposal for four dwellings would result in undue harm from the loss of open space and potential sporting facilities. The Inspector found that *the openness of the site gives the land a collective public value, its location and vegetation allow it to function as a green lung of important local value to the environment and stated that I am not persuaded that the site has been shown by assessment to be surplus to requirements in terms of the Framework.*
8. The Council draws attention to the Open Space Audit carried out as part of the preparation of the Core Strategy which identified the southern sector of Southampton as having a comparatively low provision of outdoor sports facilities. It also highlights the Green Spaces Strategy which found that the amount of outdoor sports facilities is under the minimum standard and notes that there is little opportunity to increase the provision of open space in the city.
9. In terms of the public value of the open space, I concur with the findings of the previous Inspector that whilst the main views of the site are from private property and the adjacent bowling club, the openness of the land provides a collective public value and it is of benefit to the environment. Though it is not identified as open space in the Council's Core Strategy and has not been available for public use, the site has value in terms of both its openness and the possibility of its future use by either private or public sports or recreational facilities. Whilst the site does not contain any changing or storage facilities, this does not necessarily preclude its future use for sport or recreation, nor does this prejudice its collective public value as open space.
10. The appellant has drawn attention to several tennis clubs in Southampton which are understood to have vacancies for membership. However, no specific details have been provided on the demand and supply for such facilities and, in any case, it is also necessary to consider its use by other outdoor sports or recreational facilities and not just the previous sporting activity for which the land was used. Whilst there are also other areas of open space in the area, this does not outweigh the previous findings of the Council on the overall low provision of outdoor facilities in the area. Although the site was sold by the Education Authority in 2011, this does not negate the need for subsequent development proposals to demonstrate compliance with the relevant planning policies. I am not aware of the full details and terms of the Council's sale of the site. In any case, from the information before me, I am not persuaded that the open space has been shown to be surplus to requirements taking account of both paragraph 74 Framework and policy CS21 of the Core Strategy.

¹ APP/D1780/A/13/2199299

11. The appellant has submitted a Unilateral Undertaking to provide for financial contributions of £10,000 each towards the provision and/or improvement of social and recreational facilities, and public open space in the locality of the site. In appropriate circumstances, financial contributions can be a way of mitigating the impact of a development. I note that the Council has not provided any comment on the acceptability or otherwise of the appellant's undertaking. Nevertheless, it falls for me to consider the acceptability of the obligation and whether it mitigates against the harm arising from the proposal.
12. In this case, no methodology has been provided showing how the contributions have been calculated or quantifiable evidence of how they would reasonably and proportionately mitigate for the loss of the open space arising from the proposal, nor are there any specific or quantifiable details of how the contributions would be spent. Therefore, whilst the contributions would no doubt provide opportunity for some benefits in terms of the quality and/or quantity of space provided elsewhere, it has not been satisfactorily demonstrated that they would fairly or reasonably relate to the loss of open space and recreational provision that would result in this case. I therefore cannot conclude that the planning obligation would pass the tests in Regulation 122 of the Community Infrastructure Level Regulations and paragraph 204 of the Framework. Therefore I cannot take it into account.
13. I have considered the supporting information provided by the applicant, including a Unilateral Undertaking, in seeking to address the reasons for the dismissal of the previous appeal. However, I conclude on this issue that the proposal would result in unacceptable harm from the loss of open space and potential recreational facilities, contrary to paragraph 74 of the Framework and policy CS21 of the Southampton Core Strategy which aims to protect and enhance open space in the city.

Special Protection Areas

14. Policy CS22 of the Core Strategy includes the aim of protecting the integrity of international designations and requires that necessary mitigation measures are provided. The Council has raised objection to there being no mechanism for a financial contribution of £174 per dwelling to be made towards the Solent Disturbance Mitigation Project (SDMP) to ensure that the development (located within 5.6km of the Solent coastline) and the additional recreational pressures arising from it, along with other developments, would not result in increasing disturbance to waders and wildfowl within the Solent Coastline SPAs. Such disturbance reduces the birds' opportunities to feed and impacts on their winter survival and completion of their migratory journey to their summer time habitats. On the basis of the evidence before me and acting in accordance with the precautionary principle, I am satisfied that the proposal in combination with other developments has the potential to result in significant adverse impacts upon the SPAs.
15. The appellant has indicated a willingness to make provision for a financial contribution to address this issue but there is no formal means of doing that, such a planning obligation, before me. As I have found harm in relation to the first main issue, and given that the resolution of the protected species issue would not outweigh that harm, I have not provided additional time for the appellant to submit a further planning obligation. To have done so would have

resulted in the likelihood of unnecessary additional cost being incurred by the appellant for no overall positive appeal outcome.

16. I am therefore unable to conclude that the proposal, in combination with other development, would not adversely affect the integrity of the Solent Coastline SPAs. In these circumstances, acting in accordance with the precautionary principle, I find the appeal scheme unacceptable in relation to this issue and contrary to Core Strategy policy CS22.

Other Matters

17. The development would provide four new family dwellings in a location which has good accessibility to day to day facilities and services. However this provision would be clearly outweighed by the harm I have identified in terms of the main issues. The proposal would not therefore amount to sustainable development as defined by the National Planning Policy Framework.
18. In terms of highway impacts, the Inspector in determining the previous appeal found there to be no harm in this regard and I see no reason to disagree.

Conclusion

19. For the above reasons, having had regard to all other matters raised, I conclude that the appeal should be dismissed.

David Cliff

INSPECTOR