



Appeal Decision

Site visit made on 20 April 2022

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 July 2022

Appeal Ref: APP/D1780/W/21/3282523
24 Wilton Avenue, Southampton SO15 2HJ

- 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 Durrant against the decision of Southampton City Council.
 - The application Ref 21/00871/FUL, dated 2 June 2021, was refused by notice dated 30 July 2021.
 - The development proposed is change of use from 6-bed HMO to 7-bed HMO and erection of rear dormer.
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Decision

1. The appeal is dismissed.

Main Issues

2. The Council refused planning permission for a single reason relating to neighbour living conditions. The site lies within the 'Zones of Influence' of the Solent and New Forest European Sites (the EPS), where new residential development has the potential to harm the integrity of the EPS as a result of increased levels of nutrients from wastewater entering into the Solent water environment and increased recreational usage associated with new residential developments.
3. Whilst this matter does not constitute a reason for refusal, within the context of this appeal, the responsibility for assessing the effects of the proposal on the EPS falls to me as the competent authority. Having regard to my findings on the Council's main issue, which follow below, it is necessary for me to examine this matter further, and to undertake an Appropriate Assessment (AA), under the *Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations 2017), of the implications of the appeal scheme for the EPS.
4. I have therefore raised this matter to a main issue. In so doing, I have consulted Natural England, as the statutory nature conservation organisation (SNCO), and the main parties have had the opportunity to comment on their response. As such, there is no breach of natural justice.
5. Accordingly, the main issues are:
 - the effect of the proposal on the integrity of the EPS; and
 - the effect of the proposal on the living conditions of the occupiers of neighbouring properties, having regard to noise and disturbance impacts.

Reasons

EPS – recreational activity

6. The appeal site lies within the 5.6km 'Zone of Influence' of the Solent and Dorset Coast SPA and the Solent and Southampton Water SPA and Ramsar site (the EPS). These protected sites comprise a coastline that has a network of mudflats, shingle and saltmarshes which provide essential winter feeding and roosting grounds for birds that spend the winter here, including more than 90,000 waders and wildfowl including 10 per cent of the global population of brent geese. The SPAs were designated by the Government to protect these over-wintering birds.
7. It has been identified that current levels of recreational activity around the shorelines of the harbour are having a significant adverse effect on certain bird species for which the EPS are designated. The proposed one bedroom net increase in residential development, albeit small, has a potential impact upon the EPS arising from possible disturbance to the birds due to increased recreational activity, such as walking, dog walking, boating and other water sports, around the shorelines of the EPS.
8. As such, without mitigation, the appeal scheme presents a likely small, but significant, effect upon the integrity of the EPS, particularly when the impacts are considered in combination with other residential developments located within the 5.6km Buffer Zone to the EPS. Therefore, as the conservation objectives of the habitat sites may be undermined, as the decision maker, it is necessary for me to undertake an AA in relation to the effect of the development on the integrity of the EPS. I have undertaken this on a proportionate basis, with regard to the evidence submitted by the main parties and consultation responses from Natural England.
9. Natural England's view is that a financial contribution is required to contribute towards a package of mitigation measures to off-set the effects of increased population on the EPS, as part of the *Bird Aware Solent* scheme, delivered by the *Solent Recreation Mitigation Partnership* (SRMP).
10. Since this payment would contribute to agreed projects that would address the effects of the proposed development on the Solent EPS, in terms of recreational pressure, and is in accordance with a strategic solution that is supported by Natural England, I am satisfied that, subject to a S106 planning obligation to secure the payment, that this would enable the delivery of mitigation sufficient to address the level of harm likely to be caused by the proposed development and would be pursuant to the Council's adopted strategy.
11. The shared view of both main parties is that a financial contribution is not required, on the basis that the property is already an existing dwelling, and the SRMP relates to new dwellings, whereas none are proposed. Consequently, there is no completed S106 Agreement before me as part of this appeal.
12. However, I find that, whilst the SRMP references a scale of financial contributions according to the number of bedrooms in new dwellings, on the evidence before me, it does not specifically exclude HMO proposals from a need to provide EPS mitigation. Moreover, the SRMP recognises that mitigation for the recreational impact of other types of residential accommodation other than those specifically referred to the SRMP will be assessed on a case-by-case

basis, with the key test being the likelihood of generating additional recreational visits to the EPS.

13. I have no cogent evidence before me to suggest that the proposed additional bedroom would be occupied in a manner, for example by geographically or mobility restricted residents, that would preclude the potential for recreational impacts on the EPS.
14. In addition, the appeal site lies within the 13.8km Buffer Zone of the New Forest SAC, SPA and Ramsar site, where Natural England has advised that recreational impacts from new residential development, alone and/or in combination with other plans and projects, including disturbance, trampling and eutrophication, are likely to have a significant impact on the integrity of the EPS.
15. The Council's mitigation strategy in respect of these impacts on the New Forest EPS comprises a Community Infrastructure Levy (CIL) contribution. The Council has confirmed that the appeal scheme is not CIL liable. No alternative mitigation measures have been put to me.
16. The appellant has likened the proposal to a roof conversion to an existing house. However, whilst most householder planning applications can be screened out as not having a significant effect on the habitat sites, this has no bearing on the appeal scheme which is a change of use, rather than a householder, development.
17. As such, notwithstanding the views of the main parties on this matter, and having regard to the opinion of Natural England, since the proposal would result in a net increase in population, I find that appropriate mitigation is required to address the in-combination impacts of recreation effecting the Solent and New Forest EPS. As there is no detailed scheme of mitigation, and the necessary mechanisms for achieving it, before me, I am not satisfied that the proposal would not affect the integrity of the Solent and New Forest EPS.
18. As a result, the proposal would conflict with Paragraphs 174 and 180 of the *National Planning Policy Framework 2021* (the Framework), which indicate that development should protect sites of biodiversity value, minimise impacts and be adequately mitigated. The precautionary approach I have adopted is in line with the requirements of the Habitats Regulations.

EPS – nutrients

19. Natural England has advised that additional development that will result in a net increase in population served by a wastewater system within the Council area could harm the integrity of the Solent EPS due to the prospect of increased levels of nitrogen and phosphorus entering the water from wastewater from the residential development. Such 'in combination' effects result in eutrophication, whereby the resulting thick mats of algae can cause important habitat and bird feeding grounds to be unavailable for use, thereby affecting the status and distribution of key bird species against the stated conservation objectives of the EPS.
20. Achieving nutrient neutrality for the development has been identified by Natural England as a potential mitigation solution to enable new residential development to proceed. In respect of this appeal, Natural England has confirmed that nutrient neutrality is only required for applications that create

new dwellings, as mitigation is calculated on a per dwelling basis. On this basis, Natural England and the Council are satisfied that no detailed scheme of mitigation is required in respect of this matter.

21. Within the context of this appeal, the responsibility for assessing the effects of the proposal on the EPS falls to me as the competent authority. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine this matter further, and to undertake AA in respect of the implications of nutrient impacts arising from the appeal scheme for the EPS.
22. However, as the matter of recreational impacts provides clear reasons for dismissing the appeal, the outcome of any such AA would have no bearing on the overall outcome of this appeal. There is, therefore, no need for me to consider this matter any further as part of my decision, since any findings on this issue would not change the appeal outcome.

Living conditions

23. The appeal site is occupied by a two storey, mid-terrace, residential property, which is sited on the south side of Wilton Avenue, within an established residential area of similar properties.
24. I observed during my site visit that the building is used as a 6-bedroom House in Multiple Occupation (HMO) (Use Class C4), notwithstanding that the evidence before me is that there is no Certificate of Lawfulness for this use.
25. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) provides for the use of a dwelling house as a HMO by not more than 6 residents; that is, up to 6 unrelated individuals who share basic amenities.
26. The Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants planning permission, under Part 3 Class L, for a change of use from Use Class C3 (use as a dwelling house for up to 6 people living as a single household) to Use Class C4. However, the Council has, from 23 March 2012, put in force a city-wide Direction under Article 4 of the Town and Country Planning Act 1990 (as amended) (TCPA), that removes this permitted development right.
27. At the same time, the Council also adopted a Supplementary Planning Document titled '*Houses in Multiple Occupation*' (HMO SPD), which has since been updated in 2016. This was done to establish a tool which would assist the Council in addressing high concentrations of HMOs across the city. The SPD was adopted following detailed public consultation, and I therefore give it significant weight.
28. The information before me is that the property has been used as a HMO since July 1999, and that the Council informally accepts that it has been so used. This predates the introduction of the relevant Article 4 Direction and the HMO SPD. Moreover, the Council has not disputed the appellant's description of the proposed development, and has assessed the planning application on the basis that the proposal comprises a change of use from a 6-bedroom HMO to a large 7-bedroom HMO (Sui Generis Use). I have dealt with the appeal accordingly.

29. The proposal would be achieved by providing an additional bedroom, with ensuite facilities, within the roof space, replacing an existing store, bathroom and loft space. It would be served by front elevation roof lights and an enlarged dormer window on the rear elevation.
30. Saved Policy H4 of the *City of Southampton Local Plan Review (2015)* (LP) and the HMO SPD recognise that a large number of HMOs in one area have the potential to harm the physical character of a residential area and the balance of a local community, and can lead to conflict within the existing community, as a result of the intensification of use of a home by the greater number of comings and goings associated with the occupiers living independently of each other and increased pressure on parking provision.
31. Therefore, notwithstanding that the HMO SPD recognises that HMOs provide much-needed housing accommodation, it seeks to prevent excessive concentrations of HMOs, and encourages a more even distribution across the city. To do this, it provides a definitive threshold, stating that planning permission will not be granted for new HMOs where the proportion of HMOs would exceed 10% of the residential properties within a 40 metre radius of the site, measured from the front door of the application site, unless exceptional circumstances apply (where 80% of existing properties surrounding the site within the 40 metre radius are HMOs, and provided that, in addition, the applicant has demonstrated that there is no reasonable demand for the residential property as a continued Class C3 dwelling house). A revision to the HMO SPD also introduced a policy preventing the 'sandwiching' of Class C3 dwelling houses between two HMOs, having regard to the identified conflicts arising from a concentration of HMOs in an area.
32. In this instance, the Council has confirmed that the 10% threshold test as set out in the HMO SPD is not relevant, since the property is already in HMO use, so that the local concentration of properties occupied as HMOs would not be altered, and there would be no further imbalance of household mix within the community.
33. As such, the appeal property is already occupied in a manner that is materially different from the use of the building as a single household dwelling house, due to the fact that the 6 households typical of the existing HMO use of the site are highly likely to be unrelated. The number of individual households associated with the existing HMO use is very likely to cumulatively result in a much greater level of comings and goings, including visitors, social activities, vehicles and deliveries associated with each separate household, with associated noise and disturbance impacts, than would occur if the property were occupied as a C3 dwelling house by a single household.
34. This is the starting point for considering the impact of the appeal scheme upon the living conditions of neighbouring property occupiers. I find that the addition of one extra bedroom within the existing 6-bedroom property would reasonably be expected to result in an associated small proportionate increase in the aforementioned typical comings and goings connected with the existing occupants of the appeal property.
35. The existing communal kitchen/dining/lounge and rear outside garden would remain in the same positions within the appeal site, and, whilst these communal areas are positioned in close proximity to neighbouring properties, given the relatively high density back-to-back terraced nature of built

development within the locality of the appeal site, I find that the proposed occupation of the building by one additional resident would be unlikely to result in a significantly discernible increase in noise and disturbance emanating from these communal areas, such that it would materially harm the living conditions of neighbouring occupants.

36. In addition, I have taken account of the prevailing conditions within the site locality, having regard to the location of the appeal site near the eastern end of Wilton Avenue, which is a wide, straight, well-trafficked road, with on-street parking on both sides and providing access to the nearby local community facilities and services along Bedford Place and the adjacent public car park.
37. In addition to being a busy road, the evidence before me is that a large number of properties within the road, including close to the appeal site, are within HMO use, so that existing occupancy within the street is of a largely transient nature, as opposed to comprising family houses. The evidence from the appellant and third parties in this respect is supported by what I witnessed on my site visit, including a preponderance of refuse bins located within front gardens and multiple door bells on properties.
38. Moreover, I have also taken account that, whilst the appeal property is terraced, both adjoining properties are occupied as two flats, thereby reducing the difference between the number comings and goings associated with their occupation and that of the proposal compared to if these properties were in use as family houses.
39. Taking all the above factors into account, I find that any increase in noise and activity arising from the appeal scheme would not be greatly discernible within the existing context of people and vehicular comings and goings within this busy, multi-household part of the street.
40. For the above reasons, on the basis of the information before me, I therefore conclude that the proposed development would not result in material harm to the living conditions of the occupiers of neighbouring properties in respect of noise and disturbance impacts. As such, the development would accord with Saved Policies H4 and SDP1 of the *City of Southampton Local Plan Review* (2015) (the LPR), which require HMOs to protect the amenities of the residents of adjacent or nearby properties and ensure that new developments do not unacceptably affect the health, safety and amenity of the city and its citizens.
41. This is generally consistent with paragraph 130 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

Other Matters

42. I have had regard to third party concerns in respect of increased crime, anti-social behaviour, late-night disturbance, poor refuse management and a deterioration in property maintenance. However, I have no compelling evidence before me that such issues are likely to occur as a result of the appeal scheme.
43. I also acknowledge concerns raised in respect of inadequate parking. Whilst there is no on-site parking, there is parking available on the street and in a public car park within the locality of the appeal site. Moreover, I find that the parking requirements associated with the existing 6-bedroom C4 use would not differ significantly from those associated with the proposed 7-bedroom Sui

Generis Use. As such, and having regard to the availability of off-site parking within the site vicinity, and the accessible location of the site in relation to facilities and services and public transport connections, I am satisfied that this matter does not constitute a reason for dismissing the appeal.

44. I have noted the neighbour concerns regarding loss of privacy. In this respect I am satisfied that the proposed occupation of the second floor as an additional bedroom and the associated changes to the roof level fenestration would not result in a materially greater amount of overlooking to neighbouring properties than currently exists.

Conclusion

45. Whilst I have found the appeal scheme to be acceptable having regard to the second main issue, I cannot allow the appeal in the absence of a favourable Appropriate Assessment.
46. For the above reasons, I therefore conclude that the appeal should be dismissed.

S Leonard

INSPECTOR