



Appeal Decision

Site visit made on 30 July 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2019

Appeal Ref: APP/Z1775/W/19/3227030

14 Wisborough Road, St Jude, Southsea PO5 2RE

- 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 planning permission.
 - The appeal is made by Mr Anthony Lane against Portsmouth City Council.
 - The application Ref 18/02058/FUL is dated 13 December 2018.
 - The development proposed is described as change of use from purposes falling within a C4 (house in multiple occupancy) to house in multiple occupancy for more than 6 persons (Sui Generis).
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Decision

1. The appeal is dismissed.

Application for costs

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

Procedural Matters

3. Following the submission of the appeal against the Council's failure to determine the application, further information came to light regarding the potential effect on designated nature conservation sites from wastewater associated with the development. The main parties had the opportunity to comment on this in their appeal statements. The appellant was also given an opportunity to comment on the submission of additional information provided by the Council following my request for clarification on certain aspects regarding this issue. I have determined the appeal on the submissions and evidence before me.

Main Issue

4. Following the Council's Planning Committee initially deferring a decision on the planning application and the subsequent submission of the appeal, the Council's Planning Committee determined that the application should be refused. The reason given by the Council is: 'In the absence of a suitable agreement to secure appropriate mitigation measures for the increased discharge of nitrogen and phosphorus into the Solent, the development would be likely to have a significant effect on the Solent Special Protection Areas and is therefore contrary to the NPPF, policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended).'

5. From the evidence before me, I therefore consider that the main issue to be the effect of the development on designated nature conservation sites, with particular regard to the discharge of nitrogen and phosphorus into the Solent.

Reasons

6. The Council indicates that Natural England has recently identified that wastewater implications associated with increases in residential occupation are likely to have an in-combination effect on nearby Special Protection Areas (SPAs) in association with other plans and projects. This includes the Portsmouth Harbour SPA, Chichester and Langstone Harbours SPA and the Solent and Southampton Water SPA.
7. The advice from Natural England indicates that high levels of nitrogen and phosphorus input to the water environment in the Solent are causing eutrophication of the SPAs. All types of development that would result in a net increase in population served by a wastewater system would create additional levels of nitrogen and phosphorus. This could affect water quality in the SPAs which could in turn harm their integrity, contrary to the sites' conservation objectives to maintain or restore habitats, supporting processes and the population and distribution of the qualifying features.
8. A Natural England guidance document to Local Planning Authorities on this issue has been submitted with the appeal¹. Amongst other aspects, this sets out that: there is uncertainty as to whether new residential accommodation will further deteriorate designated sites; the issue is subject to on-going strategic work; the potential for housing developments and increases in accommodation across the Solent region to exacerbate these impacts creates a risk to the potential future conservation status of designated sites; and one way to address this uncertainty is for development to achieve nutrient neutrality.
9. The document defines nutrient neutrality as 'a means of ensuring that development does not add to existing nutrient burdens and this provides certainty that the whole of the scheme is deliverable in line with the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended)' (the Habitats Regulations). It states that this may be difficult for smaller developments and that Natural England is working closely with local planning authorities to progress options that achieve nutrient neutrality. I understand that this may include a financial contribution scheme.
10. The appeal proposal would result in an additional occupier residing at the site. Although the effect of this would be likely to be limited, the evidence before me indicates that it cannot be concluded that the additional wastewater created by the extra resident would not have a likely significant effect, in-combination with other plans and projects, on the SPAs. There is currently no agreed strategy for mitigating the wastewater implications of additional accommodation in the Council's area. There is also nothing before me which indicates that the development could achieve nutrient neutrality or in some other way mitigate the potential effects of increased wastewater on the SPAs.
11. The Planning Practice Guidance (PPG) sets out that it may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example, the

¹ Titled 'ADVICE ON ACHIEVING NUTRIENT NEUTRALITY FOR NEW DEVELOPMENT IN THE SOLENT REGION', (Version 2, June 2019).

entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure)². It indicates that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. However, it sets out that in exceptional circumstances, such a condition may be appropriate where there is clear evidence that the delivery of the development would otherwise be at serious risk³.

12. In this instance, it has not been put to me that there are any exceptional circumstances that would warrant the use of such a condition. I also have limited evidence as to exactly how and when it would be possible to mitigate the wastewater implications associated with increases in residential occupation. I therefore cannot be certain that a condition would mitigate the wastewater effects of the development.
13. Accordingly, and as the competent authority undertaking Appropriate Assessment, I cannot ascertain that the integrity of the SPAs would not be adversely affected by the development, with particular regard to the discharge of nitrogen and phosphorus into the Solent. In coming to this view, I have taken account of Natural England's comments on the Council's Appropriate Assessment that there is not enough information and/or certainty to enable adverse effects on site integrity to be ruled out.
14. In the light of a negative assessment on the implications on designated sites, the Habitats Regulations require consideration as to whether there are any alternative solutions and if not, whether there are any imperative reasons of overriding public interest. While no alternative solutions have been put forward for my consideration, the provision of one additional bedroom is not sufficient to amount to imperative reasons of overriding public interest. The Habitats Regulations indicate that permission must therefore not be granted.
15. I sympathise with the appellant and recognise his frustration that this matter has arisen during the determination of the proposed development. However, while this is an unfortunate situation, it would not be reasonable for me to delay this appeal indefinitely until a strategy for nutrient neutrality or some other mitigation mechanism has been established.
16. For the above reasons, I find that the proposed development would harm designated nature conservation sites, with particular regard to the discharge of nitrogen and phosphorus into the Solent. It would therefore conflict with Policy PCS13 of The Portsmouth Plan, Portsmouth's Core Strategy. Amongst other aspects, this seeks to ensure that unavoidable negative impacts on biodiversity are appropriately mitigated. The proposal would also be inconsistent with the provisions in the Framework in relation to conserving and enhancing the natural environment, and would not accord with the Conservation of Habitats and Species Regulations 2017.
17. The site is located within 5.6 kilometres of the Solent SPAs. Additional accommodation within this area has the potential to increase recreational pressure on the SPAs, resulting in disturbance to the sites and their species. The appellant has provided a financial contribution to the Council to mitigate

² Paragraph: 005 Reference ID: 21a-005-20190723. Revision date: 23 07 2019.

³ Paragraph: 010 Reference ID: 21a-010-20190723. Revision date: 23 07 2019.

this, in accordance with the Solent Recreation Mitigation Strategy (SRMS). I note that the appellant disputes whether the contribution needs to be as much as he has provided, but irrespective of this, it appears that it would be sufficient to mitigate the recreational disturbance effects of the development. However, this does not change my conclusion that the development would be unacceptable in relation to the discharge of nitrogen and phosphorus into the Solent.

Other matters

18. I recognise that a previous appeal decision⁴ for a similar increase in residential occupation at the site was only dismissed on the basis of insufficient mitigation relating to recreational disturbance effects on designated sites. I acknowledge that the appellant considers that the application now the subject of this appeal, which included a financial contribution covering recreational disturbance and was recommended for approval by Planning Officers at planning committee, should have been approved by the Council without deferring it. Had that happened, the wastewater issue would not have been a consideration because it appears that concerns about it had not materialised at that point. Be that as it may, I am required to determine the appeal proposal on the basis of the evidence before me and in accordance with the development plan unless material considerations indicate otherwise.
19. I appreciate that the resubmitted planning application and the subsequent appeal has involved considerable time and resource on the part of the appellant, and that they have asked if my decision can be delayed until the wastewater issue has been resolved. However, the Framework sets out that decisions should be made as quickly as possible and it would not be reasonable for me to delay this appeal indefinitely.
20. It has been put to me that the Council is not taking a consistent approach to this and other similar applications, including with respect to the recent approval of an application at 59 Chichester Road and that a number of Sui Generis applications are being kept on hold by the Council until the wastewater issue has been resolved. However, as I do not have the full details of those schemes, I am unable to draw a direct comparison between them and this appeal proposal. Consequently, I give the examples limited weight. In any event, it is necessary to determine this appeal on its own merits.
21. I recognise that the appellant has an HMO licence for the property and I observed on my site visit that the accommodation is of a high quality. There may also be a need for this type of accommodation in the area. However, these matters do not provide justification for development that conflicts with the development plan and the Habitats Regulations.

Conclusion

22. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR

⁴ Ref APP/Z1775/W/18/3208412.