



Appeal Decision

Site visit made on 15 October 2018

by **S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th November 2018

Appeal Ref: APP/D1780/W/18/3195952

128-130 West End Road, Southampton SO18 6PH

- 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 Burke of MHH Poole Ltd against the decision of Southampton City Council.
 - The application Ref 17/00750/FUL, dated 8 May 2017, was refused by notice dated 12 January 2018.
 - The development proposed is to demolish existing vacant public house and construct a terrace of 5, a terrace of 3 and a pair of semi-detached dwellings. All dwellings to include 3 bedrooms and are 2 and ½ storeys high. All with associated parking and private gardens with sufficient space for cycle and bin storage.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Burke of MHH Poole Ltd against Southampton City Council. This application is the subject of a separate decision.

Procedural Matters

3. The Government has published its revised National Planning Policy Framework (the revised Framework). The parties were given an opportunity to comment on the revisions and I have taken these into account in reaching my decision.
4. The Council refused the application in the absence of a planning obligation to address the effects of the proposal on local infrastructure and facilities. However, the appellant submitted a completed Unilateral Undertaking (UU) with the appeal. This addressed the need to repair of any damage to the adjacent highway network caused by the construction of the proposed development and would provide contributions towards site specific transport improvements, a local employment training and skills initiative, and mitigation measures against the impacts of the development on the Solent Special Protection Areas (SPAs). The Council has confirmed that this UU met its requirements.
5. I am satisfied that the UU meets the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and Paragraph 56 of the revised Framework in respect of highway repairs, transport improvements and local employment. However, the judgment of the Court of Justice of the European Union (CJEU) in *People over Wind, Peter Sweetman v Coilite Teoranta* has

implications for the assessment of the effect of the proposal on the SPAs. I will return to this matter the later in my decision.

Main Issue

6. The main issue is whether or not the proposed development would provide satisfactory living conditions for future occupants in relation to private amenity space, noise, disturbance and light pollution.

Reasons

Living conditions

7. The appeal site is an area of 0.2 hectares currently occupied by a vacant public house and its associated car park and garden. It is immediately adjacent to a large, busy five-arm roundabout serving West End Road, Mousehole Lane, Townhill Way and Dean Road. The existing access is from the eastern arm of West End Road. Mature trees and vegetation enclose the site's side and rear boundaries along Dean Road and Tenby Close. Some of the trees are protected by a Tree Preservation Order (TPO).
8. In order to retain the protected trees the layout of the proposed development has seven dwellings (one pair of semis and a terrace of five) fronting West End Road and a terrace of three facing a parking court situated towards the rear of the site. All the dwellings would be two-storey with additional accommodation in the roof space to enable them to be family homes with three bedrooms.
9. Seven of the ten dwellings would be provided with rear gardens that would be 10m deep. However, the gardens associated with plots 1-3 would be considerably smaller, each providing an area of between 36.81-37.69sqm. These gardens were shortened in order to provide the site as a whole with sufficient parking. The plan shows that some space within them would be required for bin storage and provision of a shed, which would include somewhere secure in which to keep a bike. This would significantly limit the amount of useable space available, reducing the suitability of these gardens as an area in which children could play. Since the proposal seeks to provide family homes, all with three bedrooms, I consider the provision of adequate garden space to be particularly important.
10. Although not cited in the Council's reasons for refusal Policy CS 16 of the Southampton City Council Core Strategy (Core Strategy) has been brought to my attention. This policy defines a family home as a dwelling of three or more bedrooms with direct access to private amenity space. Both Policy CS 16 and the Council's Supplementary Planning Document: Residential Design Guide (SPD) advise that the minimum garden size for a terraced dwelling should be 50sqm. The SPD also states that careful consideration should be given to the quality and amount of land allocated for access roads and car parking so that land for gardens and play space can be maximised.
11. Although the appeal site is small and not required to provide at least 30% of dwellings as family homes to meet the requirements of Policy CS 16, it is promoted as a scheme to provide such accommodation. In this situation dwellings with three bedrooms but with a shortfall of garden space would be likely to compromise the living conditions of future occupants. I therefore consider that the proposal has failed to find an appropriate balance between

- the number of homes, the requirement for an adequate number of parking spaces and the need to provide a high quality environment for future residents.
12. In coming to this view I am mindful that the possibility of moving the houses closer to the street frontage was discussed with Council officers. However, this was considered to have an unacceptable effect on the street scene, as all other existing development in the vicinity is sited further back from West End Road. I also note that the Council suggested a condition requiring double glazing to mitigate the effects of traffic noise, in the event that the appeal had been allowed. It therefore seems likely to me that reducing the size of the front gardens could also increase the disturbance caused by traffic noise for future residents.
 13. The proposal would have five parking spaces located in front of the houses on Plots 8-10. However, they would be separated from them by a footway and some limited landscaping. As these spaces would be at the rear of the site, the number of movements from them that would generate noise, disturbance and light pollution would be small. These dwellings would also be further from the adjoining busy streets and the roundabout than the remainder of the development. Furthermore, the rooms which face the rear gardens of these dwellings would be unaffected by comings and goings at the front. I am therefore not persuaded that the proposal would give rise to unacceptable noise, disturbance or light pollution for future occupiers of the dwellings on Plots 8-10.
 14. Concerns were raised about the proportion of the site that would be used for buildings and hardstanding. However, it would appear that although the amount of built development would increase there would be a significant reduction in the amount of hard surfacing. In addition, there would be a modest increase in the amount of green space with the creation of gardens and associated landscaping. However, the determining factor in this case is not the proportion of the site given over to particular uses, or the density of the development, but whether or not the proposed layout and design would provide acceptable living conditions for future occupants.
 15. For the reasons given above, I conclude that the proposal would provide unsatisfactory living conditions for occupants of the houses on Plots 1-3 arising from inadequate private amenity space. The proposal would be contrary to saved Policy SDP1 of the City of Southampton Local Plan Review (2015) and Policy CS 13 of the Core Strategy which, amongst other things, seek to protect the health, safety and amenity of the city and its citizens. It would also conflict with the SPD's requirements for amenity space associated with terraced dwellings.

Other Matters

Asset of Community Value

16. The Council listed the public house as an Asset of Community Value (ACV) in April 2017 in response to local people's concerns about its loss. The community were given the opportunity to purchase the building by 18 November 2017 and consideration of the planning application was suspended until after that date. However, when no bid was received the Council proceeded to determine the application, as the owner was then free to sell the site on the open market.

17. The revised Framework (Paragraph 92) advises that planning decisions should guard against the unnecessary loss of valued facilities and services. Having given the community time to acquire the site, the Council was reasonable in giving only limited weight to the site's status as an ACV in its assessment of the application. It also took into account that there are a number of other public houses and community facilities within the same area of the city, so its loss would not adversely affect the community's ability to meet its day-to-day needs. In these circumstances the aspiration of local people to retain the public house is not a determining factor in my assessment of the appeal proposal.

Solent SPAs

18. There is agreement between the parties that additional residential development will impact on the three Solent SPAs, which would increase disturbance to waders and waterfowl. Mitigation measures are, therefore, required to prevent adverse effects to the SPAs. I note that the Core Strategy and associated Developer Contributions SPD set out a tariff based approach to securing mitigation measures. The need for contributions, which would fund visitor management rather than infrastructure, has been supported by Inspectors in a number of decisions¹ to which I have been referred. However, these pre-date the CJEU judgment referred to earlier.

19. The implication of the CJEU judgment is that I cannot take account of mitigation measures which may have been identified at the screening stage. Therefore, if I had been minded to allow the appeal, it may have been necessary for me to go back to the parties to seek further information in order to complete an Appropriate Assessment for this particular scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Conclusions

20. The proposal would provide the area with much needed family housing. This factor weighs in the scheme's favour. However, I have found that the proposed layout would result in unsatisfactory living conditions for future occupants, due to a lack of private amenity space.

21. The scheme would therefore conflict with the requirements of the development plan and the aim of the revised Framework's to ensure that the quantity of new homes does not result in them being of an unacceptable quality. For this reason, I therefore conclude that the appeal should be dismissed.

Sheila Holden

INSPECTOR

¹ APP/D1780/A/14/2228796, APP/J1725/A/14/2214722 and APP/A1720/A/14/2223314