

Appeal Decision

Site visit made on 8 August 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 27 September 2016

Appeal Ref: APP/Z1775/W/16/3147863

48 Laburnum Grove, Copnor, Portsmouth PO2 0EP

- 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 J Wormington against the decision of Portsmouth City Council.
 - The application Ref 16/00088/FUL, dated 19 January 2016, was refused by notice dated 31 March 2016.
 - The development proposed is the change of use from 4 bed house to 7 bed HMO.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from a 4 bed house to 7 bed house in multiple occupation (HMO) at 48 Laburnum Grove, Copnor, Portsmouth PO2 0EP in accordance with the terms of the application Ref 16/00088/FUL, dated 19 January 2016, subject to the schedule of conditions in this decision.

Application for Costs

2. An application for costs was made by Mr J Wormington against Portsmouth City Council which is the subject of a separate decision.

Procedural Matters

3. Whilst the proposal does not entail external alterations, several nearby residents have expressed concern that the property has already been converted internally to a 7 bedroom property from what was previously a 3 bedroom house, potentially without appropriate consents. At the time of my site visit works necessary to facilitate the conversion of no 48 to a 7 bed property were largely complete, and several rooms appeared to be occupied.
 4. However the lawful use of the property is as a dwellinghouse, use class 'C3' as defined in Part C of the Schedule to the *Town and Country Planning (Use Classes) Order 1987* as amended (the 'UCO'), internal alterations do not form part of the Council's case in respect of this appeal, and the application was not made retrospectively. Consequently any internal alterations undertaken to date and the use to which the property is currently put are of limited significance in this decision.
 5. The appellant has submitted a plan at appeal entitled '1601-401 A', which was not before the Council during their determination of the application. This plan is largely factual in illustrating the floorspaces of the rooms of the property. It
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does, however, show a revised arrangement of rooms within the second floor of the property compared to that shown on plan entitled '160-201 0' supporting the original application, which the appellant explains relates to the 'as built' layout.¹ Works affecting only the interior of a building are not development,² and the revised layout illustrated on plan '1601-401 A' would not alter the proposed use or number of habitable rooms within the property. As such, and with regard to the principles established in *Wheatcroft* in respect of procedural fairness,³ I have determined this appeal with reference to plan '1601-401 A'.⁴

Planning Background

6. A small HMO, i.e. the use of a dwellinghouse by not more than six residents as a house in multiple occupation, falls within use class C4 as defined in Part C of the Schedule to the UCO. A large HMO with 7 occupants, as is proposed here, or more constitutes a *Sui Generis* use. As such that a direction under article 4 of *The Town and Country Planning (General Permitted Development) (England) Order 2015* (the 'GPDO') withdrawing the permitted development right to change use from C3 to C4 generally enabled by Schedule 2, Part 3, Class L of the GPDO applies in this location is of limited relevance.
7. Supporting paragraph 5.27 to policy PCS20 'houses in multiple occupation' of *The Portsmouth Plan (Portsmouth's Core Strategy)* adopted on 24 January 2012 (the 'Core Strategy'), however, recognises that there is both a need and demand for HMOs in the City. Similarly paragraph 1.7 of the Council's *Houses in Multiple Occupation (HMOs): Ensuring Mixed and Balanced Communities, Supplementary Planning Document* adopted in October 2012 (the 'SPD') sets out that HMOs play a significant role in contributing to meeting the City's current and future housing needs.
8. Policy PCS20 establishes that HMOs will only be permitted 'where the community is not already imbalanced by a concentration of such uses or where the development would not create an imbalance'. The *National Planning Policy Framework* (the 'Framework') likewise establishes that local authorities should seek to create mixed communities.⁵ Therefore whilst I note the concerns of several nearby residents that the proposal would reduce the number of dwellinghouses in the area, this consequence of the proposal is offset by the provision of accommodation for which there is a locally acknowledged need.
9. Paragraphs 1.13- 1.15 of the SPD set out that the area surrounding the proposal for the purposes of policy PCS20 is that which falls within a radius of 50 metres from the mid-point of the application property's frontage, and that an 'imbalanced community' in this context is where 10% or more of properties within this area are HMOs. The officer report associated with the original application sets out that there are only two other HMOs within 50 metres of No 48, amounting to a two per cent concentration of HMOs at present, and four per cent concentration were the proposal to be effected.

¹ In correspondence submitted at appeal, dated 8 August 2016.

² By virtue of Section 55(2)(a)(i) of the *Town and Country Planning Act 1990* as amended.

³ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982].

⁴ As such the plans relevant to this decision are entitled: 'Appeal Site Plan No. 48 Laburnum Grove, Portsmouth PO2 0EP', '1601-101 0', '1601-201 0' and '1601-401 A'.

⁵ At paragraph 50 of the Framework.

10. Nearby residents, however, contend that there are additional HMOs within this area, citing that No 40 Laburnum Grove has recently secured permission to change use to an HMO,⁶ and that individual rooms for rent are advertised in Nos 5 and 18 Laburnum Grove. However the Council does not comment specifically on the use of these properties, and, moreover, were three further properties within 50 metres of No 48 HMOs in addition to those identified by the Council, the concentration of HMOs in this area would remain below 10%. For these reasons there is consequently nothing before me to lead me to a different view other than that of the Council in respect of the principle of the development proposed, namely that it is supported by policy PCS20 and the approach in the SPD.

Main Issue

11. The main issue in this case is therefore the effect of the proposal on the living conditions of the occupiers of neighbouring properties with regard to noise and disturbance.

Reasons

12. No 48 Laburnum Grove is a traditional mid-terrace property set within a residential area of Portsmouth characterised by a high level of density. Properties nearby are typically similar two storey terraced houses, some of which loft spaces converted to accommodation, arranged around a rectilinear network of carriageways. Many appear to have been extended beyond their original form to provide for greater internal floorspace. Outside spaces associated with properties are generally modest and notably enclosed by surrounding properties. Parking provision is almost entirely on-street, with a large number of vehicles parked either side of nearby carriageways during my site visit.
13. The A2047, a main thoroughfare of the City, and the North End District Centre ('North End'), which comprises various shops, restaurants and public houses, are at a short distance to the west. At the time of my site visit, 1300, the A2047 appeared heavily trafficked and North End benefitted from a high level of footfall. I further observed several instances of parking along Laburnum Grove associated with trips to North End. Consequently the pattern of the surrounding built environment and the proximity of the appeal site to a busy centre hosting uses whose operating hours extend into the evening and night indicates that there is a noticeable level of background noise in the area at most times.
14. Policy PCS23 '*design and conservation*' of the Core Strategy sets out that development should protect amenity and provide for a good standard of living environment for neighbouring and local occupiers. The *National Planning Policy Framework* (the 'Framework') similarly establishes that planning should always seek to ensure a good standard of amenity for all existing and future occupants of land and buildings, and accords great importance to the design of the built environment.⁷
15. The SPD provides further detail as to how the negative effects of HMOs on the surrounding community can be considered. However no definitive metrics are

⁶ Planning application Ref 15/01516/FUL.

⁷ Including at bullet point 4 of paragraph 17 and paragraph 56.

present within the SPD or the *Planning Practice Guidance* (the 'Guidance') to assist in determining whether the noise associated with an HMO would be appropriate with reference to its surrounding context. Whilst the Guidance sets out various considerations related to the noise implications of development, there is no acoustic evidence related to the development proposed in this appeal. Consequently whether the proposal is acceptable in this respect is largely a matter of judgement dependent upon the particular nature of the proposal and the context within which development is proposed.

16. The proposal is for a 7 bed HMO, illustrated on supporting plan '1601-401 A' as single beds. I acknowledge that occupants of HMOs are likely to lead relatively independent lives from one another and therefore tend to keep different schedules. However, given the planning background to this appeal, No 48 could presently be occupied by a similar number of people as is proposed in this appeal were it to remain in C3 use. Similarly, in the absence of definitive metrics relating to the noise likely to be generated by HMOs as explained above, there is no robust evidence before me to indicate that the occupants of an HMO are inherently more likely to generate a greater level of noise, or indeed generate noise at anti-social times, than occupants of dwellinghouses.
17. The appellant has brought my attention to several appeal decisions within Portsmouth City Council's administrative area which relate to proposed changes of use to HMOs,⁸ including appeal Ref APP/Z1775/A/12/2180908 which was referenced in the Council's officer report associated with the original application. It is axiomatic that the planning context relevant to those cases is different to that of this appeal. Nevertheless, in all cases the potential for noise and disturbance associated with the use of a property as an HMO was not found to be significantly different from that associated with the use of a property as a dwellinghouse.
18. I note that the occupant of adjoining No 50 Laburnum Grove has indicated that the noise insulation afforded by the properties' party wall is limited. However the occupant of adjoining No 46 has equally stated that No 48 has '*always been a noisy house*',⁹ which indicates that some level of noise transmission through party walls is inevitable irrespective of use. There is moreover no acoustic evidence related to this appeal, and relevant building works must in any event comply with the requirements of Building Regulations in relation to the level of noise resistance achieved.¹⁰
19. I further note the concerns expressed by several nearby residents in relation to noise and anti-social behaviour which they contend has historically been associated with the occupants of No 48. However there is little information before me in this respect, and indeed no reference is made thereto in the Council's officer report associated with the original application. Moreover *The Environmental Protection Act 1990* as amended requires local authorities to investigate and seek to remedy noise amounting to a statutory nuisance independently of planning.

⁸ Appeals Ref: APP/Z1775/A/12/2180908, APP/Z1775/A/12/2170613, APP/Z1775/A/12/2169595, APP/Z1775/A/12/2169676, APP/Z1775/A/12/2169510, APP/Z1775/A/12/2177272, APP/Z1775/A/13/2200024, APP/Z1775/A/13/2190131.

⁹ In a representation submitted at application stage.

¹⁰ As set out in *Building Regulations Approved Document E: Resistance to the passage of sound*.

20. It therefore appears to me that the level and timing of noise generated by the occupants of the proposed HMO in this case are unlikely to be significantly different from that which would be associated with a dwellinghouse occupied by a similar number of people. The effect of any additional noise and disturbance that would result is furthermore qualified the noticeable level of background noise resulting from the location of No 48 and the nature of the surrounding built environment as set out above. The proximity of No 48 to the services and facilities of North End, and the proposed provision of cycle storage, would furthermore serve to reduce noise arising from vehicular movements associated with the property (and indeed any increased demand for parking in the area that would result).
21. For the above reasons I therefore conclude that the proposal would not entail unacceptable effects in relation to the living conditions of the occupiers of neighbouring properties with regard to noise and disturbance, and consequently that it accords with the relevant provisions of policy PCS23 of the Core Strategy and with relevant elements of the Framework.

Other Matters

22. A number of nearby residents have brought to my attention the Council's *Standards for Houses in Multiple Occupation* dated May 2014 (the 'Standards'). The Standards relate to the provisions of Section 234 of the *Housing Act 2004* as amended and associated regulations, a separate legal regime to planning. Section 3.2 of the Standards explains that the requirements that it establishes in respect of room sizes are not absolutes, but rather that the Council will make a judgement as to whether the property as a whole is fit for purpose. Moreover the implications of the proposal for the living conditions of its intended occupants does not form part of the Council's case. Therefore whilst I note the representations that have been made on this issue, for the above reasons for me to comment on whether the proposal complies with the Standards would be both *ultra vires* and procedurally inappropriate.
23. I have taken account of the letters of objection to the proposal from nearby residents and the concerns raised therein regarding the potential implications of the proposal including in respect of parking pressure, traffic congestion, security, the safety of those occupying No 50, privacy, ventilation, drainage and waste disposal. However these matters do not form part of the Council's case and relevant provisions exist under other legislation in respect of many of these issues (such as Building Regulations requirements of ventilation and drainage and waste disposal). There is consequently neither evidence before me nor reason apparent from my site visit to arrive at a different position in relation to these matters than that of the Council, namely that the proposal would not be unacceptable in these respects.
24. The appeal site falls within the buffer zone of the *Solent Special Protection Areas* (the 'SPAs') where the Council's *Solent Special Protection Areas Supplementary Planning Document* adopted on 16 April 2016 applies (the 'Solent SPD'). This requires a financial contribution to be made to mitigate adverse impacts upon the SPAs pursuant to the requirements of *The Conservation of Habitats and Species Regulations 2010* as amended, and in line with the approach in the Framework to conserving biodiversity. A copy of an

associated contribution is before me, bringing the proposal in compliance with the approach in the Solent SPD.¹¹

25. I further note concerns that a nearby resident has expressed concern that the proposal may be supported by documents which are not publicly accessible. However there is no evidence before me to support this contention, and I have determined the proposal based on the evidence before me which is in the public domain. Consequently neither this, nor any other matter, is so significant as to outweigh my finding on the main issue above.

Conditions

26. It is necessary to impose a condition requiring that development shall be carried out in accordance with the relevant plans for the avoidance of doubt and in the interests of proper planning. It is further necessary to require that the cycle provision proposed is implemented before the HMO is first brought into use as such in order to reduce any additional vehicular movements and demand for parking associated with the intended use of No 48 given its surrounding context as set out above.

Conclusion

27. For the above reasons, and taking all other matters into account, the proposal accords with the development plan taken as a whole and with the approach in the Framework, and I therefore conclude that the appeal should be allowed.

Thomas Bristow

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawing supporting application Ref 16/00088/FUL: '1601-101 O', '1601-401 A'.
- 3) The bicycle storage facilities shown on approved plan '1601-101 O' shall be provided before No 48 is first occupied as a house in multiple occupation. The bicycle storage facilities shall thereafter be retained for continued ancillary storage use by the occupants of the property.

¹¹ Council invoice reference '69 587686', dated 11 March 2016.