

Appeal Decision

Site visit made on 4 January 2017

by R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

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

Decision date: 17th February 2017

Appeal Ref: APP/Z1775/W/16/3158162

11 Malvern Road, Southsea, Portsmouth PO5 2LZ

- 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 Adam Papierzynski against the decision of Portsmouth City Council.
 - The application Ref 16/00839/FUL, dated 25 May 2016 was refused by notice dated 21 July 2016.
 - The development proposed is 'Continued as a house in multiple occupation and construction of garage to the rear'.
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Decision

1. The appeal is allowed and planning permission is granted for change of use to a 9 bed House in Multiple Occupation (HMO) (Sui Generis) and construction of new garage to the rear of property at 11 Malvern Road, Southsea, Portsmouth PO5 2LZ, in accordance with planning application Ref 16/00839/FUL, dated 25 May 2016, subject to the conditions set out in Annex A to my decision.

Procedural Matter

2. I noted on my site visit that, although the appeal site was in multiple occupation, the proposed development, as indicated on the appeal plans, had not been fully carried out. I have therefore used the Council's description of development, in the banner heading above and in my formal decision, as that more accurately reflects the development sought. I have determined the appeal in accordance with it.

Main Issues

3. The effect of the appeal development on the living conditions of neighbouring residents, with regard to noise, disturbance and anti-social behaviour and on hotels operating in the locality.

Background

4. The appeal property has previously been used as a guest house; a use for which an Established Use Certificate was granted in 1970¹. Whilst a Lawful Development Certificate for the use of the appeal site as an HMO was refused in June 2015², the Council accepts that the appeal site has been used in the past as a HMO and as a mix of an HMO and self-contained units since at least 2007 and possibly as early as 1991. The Council accepts that until about July

¹ Ref A*27561

² Ref 15/00482/CPE

2016, there is limited evidence of noise and disturbance to local residents and businesses as a consequence of that use.

Reasons

Living Conditions-Neighbouring Residents

5. The appeal site includes a terraced property in a road of similar properties. The locality is generally residential, although it includes some hotels and shops. It has a generally quiet feel. At the time of my site visit, the appeal property was occupied by a number of people.
6. Houses in the locality are large and could accommodate large families. Some are subdivided into flats and there are some hotels and commercial uses. Whilst the proposed use would be likely to generate more activity than a typical family, it would be roughly the same as that for a large family. Moreover, on the basis of the mix of uses in the locality and the juxtaposition of some hotels, flat conversions and HMOs next to single family dwellings, I am not convinced that the comings and goings and general activity that would be generated by the appeal site in use as an HMO would be harmfully out of place in this locality. Furthermore, for the same reasons, I am not persuaded that the appeal development would result in a harmful increase in noise and disturbance, such that the living conditions of neighbouring residents would be adversely affected.
7. In any event, the appeal property could be used as a guest house without the need for planning permission. Such a use would be likely to generate similar or greater levels of comings and goings and activity at the appeal site. This is a fall-back position to which I attach significant weight. Moreover, I am aware that the appeal site operated as an HMO from 2007 and there is limited evidence of complaints of noise and disturbance from neighbouring occupiers or businesses until recently. These matters add significant weight to my previous findings.
8. I have noted the evidence before me of incidents of anti-social behaviour and noise and disturbance at the appeal site and the concern of neighbours and local hotels that the appeal site has been a source of noise, disturbance and anti-social behaviour in the past and has resulted in a fear of crime in the locality. However, such matters are a consequence of the behaviour of the occupants, which is a matter that is not controlled under the planning regime. The behaviour of future occupants is controlled by other legislation and I am making a decision on the basis of the planning merits of the appeal alone. If those matters were controlled through the appropriate legislation, the appeal development could contribute towards promoting safe and accessible environments where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion as set out in paragraph 69 of the National Planning Policy Framework (the Framework).
9. I also note the concern of local residents and hotels that the appeal development would result in a local concentration of HMOs. However, as a result of this appeal, the concentration of residential properties within the area surrounding the appeal property already in HMO use would be well below the 10% stated in the Portsmouth City Council HMO Supplementary Planning Document (2012) (HMO SPD). I have noted that the property next door, No.

- 9, is an HMO. However, this, in itself would not result in a local imbalance, as defined within the HMO SPD.
10. In any event, planning permission was granted in 2014 for a change of use of No 9 from a hotel to an HMO and in 2015 to an 11 bedroom HMO³. Therefore, both the appeal site and No 9 have a previous use that would be likely to generate more activity than their use as an HMO. Therefore, cumulatively, there would be unlikely to be a material change in their generated noise and disturbance, above those previous uses, as a result of this appeal.
11. I conclude that the appeal proposal would not adversely affect the living conditions of neighbouring occupiers, with regard to noise, disturbance and anti-social behaviour. For this reason, it would generally accord with Policy PCS20 of The Portsmouth Plan (2012) and paragraphs 17 and 19 of the Framework. These, together, seek to encourage HMOs which do not result in negative social, environmental and economic impacts of high concentrations of HMOs on communities and to secure a high quality of design and a good standard of amenity for all existing and future occupants of land and buildings.

Economic Impact

12. I acknowledge the contribution that hotels make to the local economy, in particular small boutique hotels such as those close to the appeal site. I also note the evidence of further growth in demand for hotel accommodation before me. The appeal site is located close to a number of small hotels and I accept the evidence of the impact that anti-social behaviour and noise and disturbance at the appeal site has had on those businesses in the recent past. However, that impact has been due to the behaviour of the occupants, rather than the use of the appeal site as an HMO in itself. The behaviour of future occupants is controlled under other legislation and is not a matter for me.
13. On the basis of my previous findings, I am unconvinced that the use of the appeal site as an HMO would adversely affect local hotel businesses and thereby the economic growth of the City. The appeal would, therefore, generally accord with paragraph 19 of the Framework, which supports sustainable economic growth.

Other Matters

14. The appeal site is included within the East Southsea Conservation Area. That Conservation Area has a mixed character and appearance, including residential, and some commercial uses, such as shops and hotels. The residential properties include large houses, flats and some HMOs, generally in terraces of attractive Victorian villas, with some similarities in size, design and detail. The appeal development would generally preserve the mixed character and appearance that I have identified. As the proposed garage would be sited at the end of the rear garden and would be similar in size and design to others I saw in the locality, it would not appear out of place. As the appeal development would include limited alterations to the exterior of the main appeal property, all in all, it would preserve the generally Victorian mixed character and appearance of the Conservation Area.
15. Although not a reason for refusal, the Council suggests that the proposed internal layout would not provide an enhanced standard of living

³ Ref: 14/00008/FUL and 15/00402/FUL

accommodation for occupiers beyond that required by the HMO licence regime. It refers to the Technical Housing Standards-nationally described standards. I have limited substantive evidence to demonstrate compliance or otherwise with those standards. However, I was able to assess the proposed layout on my site visit. The rooms would generally be generous in size, regular in shape and provide adequate usable space, taking into account some internal storage space. The communal areas would be large enough to accommodate cooking, circulation and sitting and eating. There would be at least one bathroom/toilet on each floor. The layout would be usable and the circulation space generally adequate. Overall, I consider that it would provide satisfactory living conditions.

16. I have noted the concern of some local residents that the proposed garage could be used for additional living accommodation. As designed it would not be appropriate for living accommodation, in as much as it does not include any windows. In any event, I have no assurance that this would occur. If it were used in that way or adapted to accommodate such a use, it would be open to the Council to consider action through the planning regime or HMO licensing regime, as appropriate.
17. Any effect on property values is not a planning matter to which I can give weight.

Planning Conditions

18. A list of suggested conditions is before me. I have agreed with the imposition of most of these, subject to refinement to improve clarity and ensure consistency with national policy and guidance.⁴ A list of conditions to be imposed is set out in Annex A to my decision.
19. Standard time and plans conditions are required to ensure clarity and in the interests of proper planning. A condition requiring samples of materials to be used in the construction of the garage is necessary to ensure that the development blends in.
20. The Council considers that there is little capacity to accommodate additional on-street parking in the locality. However, on the basis of the previous use of the appeal site as a guest house, it considers that there is unlikely to be a material increase in the parking demand generated from the appeal site. On the basis of the previous use of the appeal site, I have no reason to take a different view. As off-street parking is not required as part of this appeal development, a condition to require that the garage is used for vehicle parking is not necessary. However, conditions to ensure that adequate cycle storage is provided are necessary to promote sustainable forms of transport.

Conclusion

21. The appeal development would accord with the development plan. No material considerations are before me to lead me to a different conclusion other than to determine this appeal in accordance with the development plan. Therefore, it follows that the appeal development would fall within the wide definition of sustainable development, as set out throughout the Framework.

⁴ Paragraphs 203 and 206 of the Framework and PPG paragraphs 21a-001-034

22. For the above reasons, and taking all other matters raised into consideration, I conclude that the appeal should be allowed.

R Barrett

INSPECTOR

Annex A

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with approved plan 0255-D-002C.
- 3) No development relating to the construction of the garage hereby permitted shall take place until samples of the materials to be used in the construction of the external surfaces of the garage hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The garage hereby permitted shall be retained thereafter at all times for parking of four bicycles by the occupants of 11 Malvern Road.
- 5) Should the garage hereby permitted not be constructed, alternative secure and waterproof bicycle storage facilities for at least 4 bicycles, shall be provided within three calendar months of the date of this decision or such other period as may be agreed with the local planning authority. Such facilities shall be provided in accordance with a detailed scheme to be submitted to and approved by the local planning authority. Those facilities shall thereafter be retained for parking of bicycles by the occupants of 11 Malvern Road at all times.