

Appeal Decisions

Site Inspection on 13 March 2017

by Graham Self MA MSc FRTPI

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

Decision date: 17 March 2017

Appeal Reference: APP/Z1775/C/16/3151969

Site at: 1 Havant Street, Portsmouth PO1 3EG

- The appeal is made by Mr Leslie Zuker under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Portsmouth City Council.
- The council's reference is 15/00036/ENF.
- The notice is dated 17 May 2016.
- The breach of planning control alleged in the notice is: "Without planning permission, the material change of use of the Property from the authorised planning use as a social club with ancillary accommodation, within Class D1 of the Town and Country Planning (Use Classes) Order 1987 ('the Use Classes Order') to the use as 8 separate self-contained flats."
- The requirements of the notice are: "Cease the use of the Property as 8 self-contained flats".
- The period for compliance is six months.
- The appeal was originally made on grounds (a), (b) and (g) as set out in Section 174(2) of the 1990 Act; but ground (a) later lapsed as the fee due for the application for planning permission deemed to have been made under Section 177(5) was not paid.¹

Summary of Decision: The enforcement notice is corrected and upheld as corrected. The appeal fails.

Appeal Reference: APP/Z1775/W/16/3150544

- The appeal is made by Mr Chris Hunt under section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against the decision by Portsmouth City Council to refuse planning permission.
- The council's reference is 15/00036/ENF16/00026/PLAREG.
- The application was dated 7 January 2016. The council's decision notice was dated 15 March 2016.
- The development was described in the application as: "Retention of conversion of existing Sailor Rest (Hostel) to 8 studio flats".

Summary of Decision: The appeal fails.

Procedural Matters

¹ The deemed application was not "fee exempt" because the appellant was not the same as the applicant and appellant for the Section 78 appeal.

1. I consider ground (b) of the enforcement appeal first, then the Section 78 appeal against the refusal of planning permission, then ground (g) of the enforcement appeal. This is the most logical sequence for considering the linked appeals.

Section 174 Appeal, Ground (b)

2. This ground of appeal is a claim that what is alleged in the enforcement notice has not occurred, as a matter of fact. The basis of the appellant's case is that the former use of the property was not a social club with warden's flat and ancillary accommodation as stated in the enforcement notice, but was a hostel type use.
3. Both sides in this case are wrong. The council are wrong because when defining a previous (or "from") use in order to describe a material change of use in an enforcement notice, the "authorised planning use" is irrelevant. What is relevant is the use immediately preceding the alleged unauthorised use (assuming there was a material change of use). The appellant is wrong because it is clear from the available evidence that the immediately preceding use was not use as a hostel.
4. The evidence placed before me about the use of the appeal property before it became eight studio flats is inconclusive, but the preceding use was certainly not use as a hostel. There appears to have been some partial hostel use many years ago, but even then it is doubtful that hostel accommodation was anything more than a subsidiary component of a mixed use or a use primarily as a social club. Intervening uses appear to have been carried on since then. In an application made in 2002, the existing use of the premises was evidently described as a leisure centre. It seems that the ground floor was boarded up and it appears likely that the building had been vacant and disused for some time before the unauthorised conversion and change of use occurred. Any previous use rights may well have been abandoned (through a period of disuse and/or because of intervening uses), in which case the building would have had no use rights.
5. I am satisfied that whatever the previous use might have been, a material change of use occurred when the use as eight studio flats began. An enforcement notice alleging an unauthorised material change of use need not recite the previous use.² Therefore I shall use the powers available to me under Section 176 of the 1990 Act to correct the allegation, by deleting the description of the former use. Subject to that correction, the appeal on ground (b) does not succeed.

Section 78 Appeal

6. The application now subject to the Section 78 appeal was made retrospectively and, as noted in the summary details above, sought permission for: "Retention of conversion of existing Sailor Rest (Hostel) to 8 studio flats". By setting out the terms of the application in that way, the applicant (now the appellant) has created a problem for himself, since as I have explained, the development which has been carried out was not the "conversion of an existing sailor rest hostel".
7. I note that the development was described in the council's refusal notice as: "Retrospective application for conversion of building to form 8 studio flats". There is no evidence that the then applicant agreed in writing with the altered description used by the council, so it appears that no such agreement was sought or provided.³

² Two court judgments confirming this point are: *Westminster CC v SSE and Arbora* [1983] JPL 602, and *Ferris v SSE* [1998] JPL 777.

³ The appellant's statement dated 22 April 2016 maintains the description of the development specified in the application - this is further evidence that the applicant did not agree to any change.

8. In summary, the application purported to be a retrospective application for something which has not happened, which is a nonsense. I have therefore come very close to dismissing the appeal on the ground that it cannot be properly determined, since judging whether planning permission should be granted retrospectively for something which has not happened would be equally nonsensical. The fact that the application plans are incorrect (the layout of several of the units, the entrance arrangements and other features are not as depicted on the drawings) is a further point which does not help the appellant.⁴
9. On balance, in an attempt to be as fair as possible to the appellant and taking into account the way the council changed the description of the development in their refusal notice, I have decided to treat the appeal as seeking planning permission for the conversion and material change of use of the property to use as eight studio flats (that is to say, without reference to the preceding use), laid out as appears to have existed at the date of the application and of my site inspection, not as shown in the application plans. I give no weight to the appellant's arguments about the benefits of a change from a 14-bedroom hostel to eight flats, since as just explained there was no such change from the preceding use and I do not consider that there are reversion rights to a 14-bedroom residential hostel.
10. Three main issues arise: first, the standard of space provided by the units; second, the provision of affordable housing; third, mitigation in respect of the effect of the development on habitat and species conservation interests with regard to the Solent Special Protection Areas. In considering these matters it is necessary to have regard to relevant planning policies.
11. On the first issue, neither the development plan for this area nor the National Planning Policy Framework contain policies on space standards for self-contained dwellings having only one main room (sometimes described as "studio dwellings" or "studio flats")⁵. To an extent, acceptable standards can be inferred from published standards for one-bedroomed flats intended for occupation by one person, but each case has to be considered on its merits. In this instance, one of the units has a separate bedroom (not shown on the application drawing); all the others have one room plus a shower room with washbasin and toilet. Kitchen fittings are installed in the main room. The size of this room varies from about 13 to 19 square metres. Most of the shower rooms have an area of around 3 - 3.5 square metres, though one on the second floor is about 5.25 square metres in size.
12. The rooms in the building have a reasonably pleasant outlook and natural light through windows facing Havant Street or Queen Street. However, the space provision is far below the minimum 37 square metre standard for one-bedroom single-occupancy flats referred to by both sides in their representations.⁶ The amount of space for furniture such as a table and seating suitable for eating meals, for lounge seating, and for purposes such as clothes storage is so limited in some of the units as would make it impossible to accommodate all such items with space to move around the room in a normal way.

⁴ The council's statement refers to incorrect plans, so I have no reason to think that the layout of the building has changed between the date of the application and the date of my inspection.

⁵ The point is made on the appellant's behalf that a "studio apartment" is known as a self-contained apartment in Nigeria, but since Portsmouth is a long way from West Africa the relevance of this point escapes me.

⁶ This is the figure for one-bedroomed flats intended for occupation by one person where a shower room is provided instead of a bathroom, as set out in national technical housing standards.

13. Size is not the only criterion. Even quite small studio flats can provide a reasonable standard of accommodation if the layout is designed to provide a satisfactory environment for all the normal day-to-day activities normally carried on in a dwelling. Sometimes this can be achieved by providing a degree of separation between a sleeping area and an area used for other activities, for example by positioning a kitchen in part of an L-shaped room well away from the sleeping area. In this instance, such separation is not achieved in most of the units. Because of their layout as well as their limited size, all the activities normally associated with a dwelling including storing, preparing and cooking food, eating meals, storage, and relaxing would all have to be carried out in the same area as is used for sleeping, in most units within about 2 metres of the bed itself and with no perception of separation. The situation is not improved by the lack of any garden or other such outside space for occupiers, and there appears to be little provision within the building for the storage of personal possessions.
14. The units appear to be all occupied and no doubt there is a market for them; but safeguarding the quality of living conditions in new dwellings is a proper purpose of planning control. National and local planning policies are aimed at securing a high quality of design and good standard of amenity for existing and future occupiers of buildings. In particular, policies PCS 19 and PCS 23 of the Portsmouth Plan seek to improve the quality of residential accommodation within the city and I judge that this scheme conflicts with that aim. Several of the smaller units formed here (in effect bed-sits with en-suite shower and toilet) provide a low standard of residential amenity when regarded as self-contained dwellings. I conclude on this issue that there is good reason to refuse planning permission.
15. As regards the matter of affordable housing, the material considerations include the provisions of the development plan for this area and a written Ministerial Statement in 2014 which has been the subject of court judgments. Part of the dispute in this case concerns whether a financial contribution should be made to the provision of "affordable housing". Taking into account my earlier finding about the previous use of the building, the development has resulted in a net increase of eight dwellings. Under locally adopted policy, this increase would normally require a contribution to affordable housing (although the policy does allow for exceptions). Under national policy as set out in the Ministerial statement upheld by the Court of Appeal, such contributions are not required where a development would provide less than ten new dwellings, subject to other provisos.
16. In this instance, although locally adopted policy remains a material consideration, I place more weight on the Ministerial statement. The development is below the threshold limits set out in that statement. Therefore I judge that the absence of any financial contribution to the provision of affordable housing is not sufficient justification for refusing planning permission.
17. Turning to the issue of habitat and species conservation, the link between wildlife and this scheme within the built-up area of Portsmouth may appear rather remote. Nevertheless the issue is relevant and has to be considered because of related legislation and policy. The Solent Special Protection Areas Supplementary Planning Document was evidently adopted in 2014, and contains provisions under which developments causing an increase in population should provide mitigation for their potential effect on designated Special Protection Areas (in particular, the Portsmouth Harbour and Chichester and Langstone SPAs).
18. No legal undertaking or other provision has been supplied to make the development compliant with policy PCS 13 of the development plan or the related

SPD and Habitat Regulations. The appellant contends that the development would result in a net reduction in the number of residents occupying the building, so the development would place less stress on the SPA and no mitigation payment is due. This contention is based on the premise that the number of people living in the building is less with eight flats than with a 14-bedroomed hostel which is described for the appellant as "the authorised use".

19. I do not accept this argument for the reasons I have already explained. The lack of any proposal for mitigation to meet policies on Special Protection Areas is a supplementary objection to the development.
20. In reaching my decision I have had regard to all the other issues mentioned in evidence on which I have not specifically commented, including the representations about development elsewhere, about the covered yard within the appeal site and about matters such as bicycle storage. I am also aware that a planning application has recently been submitted to the council for development including a hotel on land which includes the appeal site - a public notice about the proposal was displayed in the street at the time of my inspection. These matters have not affected my decision.
21. I find that although not all of the council's reasons for refusal should count against the development, there are sound objections on amenity and policy grounds, and I conclude that planning permission should not be granted.

Section 174 Appeal, Ground (g)

22. This ground of appeal relates to the period for compliance with the enforcement notice. The appellant suggests that a 12 month period should be allowed to avoid the prospect of tenants having to face a forced eviction. The council say that they do not intend to displace existing occupiers and that they could if appropriate exercise their powers to waive or relax the requirements of the notice so as to avoid any need for re-housing.
23. As the council point out, no supporting evidence has been provided on behalf of the appellant to show that existing tenants occupy the building on 12 month shorthold tenancies. Even assuming that they are all on such terms, I do not know the start dates of any tenancies. Bearing in mind the time which has elapsed since the appeal against the enforcement notice was lodged in June 2016, some or all occupiers may well have less than six months left on their tenancies. In the circumstances the case for extending the compliance period is weak. I conclude that the appeal under ground (g) against the enforcement notice fails.

Costs

24. Both sides in this case have mentioned costs. The appellants (through their agent) say they "note that it remains open for the inspector to award costs against the council in the event that a substantive failing is identified". In response, the council "would remind the appellant" [which I take to mean both appellants] "that in the absence of any evidence to substantiate their claims within both appeals, they will equally open themselves to a potential award of cost".
25. Neither the appellants nor the council have actually applied for an award of costs; they seem to be merely carrying on a spat between themselves, started by a pointlessly empty threat made on behalf of the appellants. Inspectors deciding planning appeals can initiate awards of costs but if any of the three parties (the

two appellants and the council) wanted to apply for costs, they should have done so with proper supporting reasons.

Formal Decisions

Section 174 Appeal

26. I direct that the enforcement notice be corrected by deleting from the allegation all the words after "Property" and substituting instead: "to use as eight separate self-contained flats". Subject to that correction, I dismiss the appeal and uphold the notice as corrected.

Section 78 Appeal

27. I dismiss the appeal.

G F Self

Inspector