

---

## Appeal Decision

Site visit made on 2 May 2017

**by JP Roberts BSc(Hons), LLB(Hons), MRTPI**

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

**Decision date: 22 May 2017**

---

**Appeal Ref: APP/Z1775/W/16/3165136**

**24 Merton Road, Southsea, Portsmouth PO5 2AQ**

- 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 R Singh against the decision of Portsmouth City Council.
  - The application Ref 16/01532/FUL, dated 13 September 2016, was refused by notice dated 16 November 2016.
  - The development proposed is a change of use from C3 to Sui Generis to support student accommodation with refuse and cycle storage and landscaping.
- 

### Decision

1. The appeal is allowed and planning permission is granted for a change of use from C3 to Sui Generis to support student accommodation with refuse and cycle storage and landscaping at 24 Merton Road, Southsea, Portsmouth PO5 2AQ in accordance with the terms of the application, Ref 16/01532/FUL, dated 13 September 2016, subject to the conditions set out in the Annex to this decision.

### Application for costs

2. An application for costs was made by Mr R Singh against Portsmouth City Council. This application will be the subject of a separate Decision.

### Main Issues

3. The main issues are:
  - i) whether the proposal would preserve or enhance the character or appearance of the Owen's Southsea Conservation Area;
  - ii) the effect of the proposal on highway safety, and
  - iii) the effect of the proposal on the living conditions of the occupiers of nearby residential properties with particular regard to smell, outlook, noise and disturbance

### Reasons

#### *Character and appearance*

4. The site lies in a central part of the Owen's Southsea Conservation Area, characterised by a range of Victorian buildings, many of which display the high quality ornamentation typical of the era.
-

5. The appeal site is occupied by a Victorian four storey building, which until recently formed part of a nursing home, along with 26 Merton Road, the adjoining property. It is a large villa-style building, set amongst an attractive tree-lined network of roads consisting of similarly sized properties, and the property has group value which contributes to the significance of the area.
6. The building possesses some architectural features of interest such as a Dutch gable, quoins and cornicing, but the integrity of the building has been marred by the use of poorly designed replacement windows evident on the whole of the front elevation. This reduces the value of this particular building to the significance of the area.
7. The proposal would involve infilling a large part of the excavated lightwell between the front elevation and the footway. However, large lightwells are not characteristic of the area. Only some properties have lightwells at all, and these tend to be small and are not close to the appeal site. Neither of the immediate neighbours has a lightwell, and thus I consider that the proposal would not appear as incongruous as alleged by the Council. As it is, the proposal would retain a significant part of the lightwell, and thus the infilling proposed would preserve the overall character and appearance of the area.
8. In respect of the use of the building as a house in multiple occupation (HMO), there are no specific development plan policies which seek to control such uses. In July 2016 planning permission was granted on appeal<sup>1</sup> for a change of use of 26 Merton Road from a nursing home (Class C2) to a house in multiple occupation (HMO) for 12 persons (sui generis) to include alterations to the front boundary wall, the provision of refuse and cycle storage and landscaping.
9. One of the reasons for refusal for that proposal related to the use of the building on the character and appearance of the conservation area. The Inspector in that case found that the change of use would preserve the character and appearance of the Owen's Southsea Conservation Area, and comply with the requirements of Policy PCS23 of The Portsmouth Plan (the Portsmouth Core Strategy (CS)).
10. No evidence has been provided to show how this proposal would differ from that found to be acceptable by the previous Inspector. I saw the other HMOs within the 50m radius of the appeal site referred to by the Council, but it is difficult to differentiate these properties from others nearby which have been converted into flats. Whilst there may be more comings and goings in an HMO compared to a family dwelling, the lawful use as a nursing home would no doubt also have generated more comings and goings and deliveries than would a family home. There is nothing which leads me to conclude that the change in activity would be sufficient to harm the character and appearance of the conservation area.
11. Objectors have also raised the impact of cycle and bin storage on the character and appearance of the area. Large parts of front gardens of many properties in the area have been given over to car parking and bin storage, and I consider that the proposal would not be markedly different in this respect. The submitted plans show space for 13 cycle spaces, although the Highway Authority comments that only 4 are necessary. Details of suitable cycle storage can be made the subject of a condition to allow the Council to decide

---

<sup>1</sup> Ref: APP/Z1775/W/16/3145065

on an appropriate number of spaces and the design of enclosures. Having regard to the somewhat austere appearance of the existing lightwell, I consider that these features would not result in harm to the character or appearance of the area.

12. The Inspector who allowed the previous appeal gave no indication that her decision on this issue was a finely balanced one. I therefore conclude on this issue that the proposal would not be harmful to the character and appearance of the conservation area, or conflict with CS Policy BCS23, which deals with design and conservation.

#### *Highway safety*

13. The Highway Authority has confirmed that the proposed use would fall within the same category as the existing use and as such would not need to provide any further parking spaces.
14. There are no controlled parking zones in Merton Road or in nearby roads, and other than where parking is restricted by yellow lines, or where there are crossovers, on-street parking is extensive. However, it appears to be common ground that there is little or no spare on-street parking capacity in the vicinity of the appeal site. On my visit, around lunchtime, I noted that there were no empty spaces in Merton Road or in the roads nearest to the appeal site. I would not envisage the position changing much in the evening when people return home from work. In such circumstances, it seems to me to be unlikely that people owning cars would be interested in occupying the appeal property, as there are clearly difficulties in being able to park near the site.
15. On the other hand, the area has good accessibility to shops, services, employment and public transport links, with bus services operating nearby, and the Fratton railway station a mile away. It is proposed to provide cycle stands for occupiers, and I consider that the site is in a suitable location for car-free development.
16. Having regard to the previous use of the site as part of a nursing home, which would have the potential to place demands on on-street parking from staff and visitors, I consider that the lack of off-street parking would not result in a significant difference in on-street parking. The lack of objection from the Highway authority reinforces my conclusion that the proposal would not result in material harm to highway safety or conflict with CS Policies BCS23 or BCS17, the latter dealing with transport.

#### *Living conditions*

17. The explanatory text to CS Policy PCS20 recognises the contribution of HMOs to meeting the city's accommodation needs. The policy aims to prevent imbalanced communities, although the policy is silent as to what might constitute an "imbalance". A local Councillor has suggested that there are 20 HMOs along a 140m length of Merton Road, but does not identify which ones these are. There are only a dozen or so buildings in the 140m length of Merton Road from its junction with Victoria Road South to the intersection with Nelson Road, and thus I am unclear as to which properties are being referred to. Another resident claims that HMOs comprise 30% of the properties, but most of those that are referred to are flats, rather than HMOs.

18. I therefore prefer the Council's evidence which suggests that within a 50m radius of the appeal site there are only 6 HMOs (including the yet to be implemented one at No 26), amounting to less than 8% of total properties. I do not consider this to be evidence of an imbalanced community, and thus the proposal would accord with the development plan policy.
19. The Council has produced no evidence to show that HMOs in the area result in material harm to residents' living conditions. Clearly the more intensive occupation of an HMO will result in more comings and goings than would a family home, but in an area where many of the properties have been converted into flats and where the previous use was as a nursing home, I consider that it is unlikely that there would be a marked difference in the noise and disturbance generated by occupiers.
20. I recognise that disruptive neighbours can be found in any kind of accommodation, regardless of tenure. However, it would be wrong to demonise all HMOs, or to proceed on the basis that tenants will be noisy, disruptive, anti-social or otherwise unneighbourly. One neighbour suggested that the property would be occupied by students, but there is no evidence to suggest that this will necessarily be the case, and the appellant has indicated that the property will be aimed at young professionals.
21. There are now stronger powers for both landlords and local authorities to deal with these kinds of issues, and on the basis of the evidence before me, there is no reason to object to the principle of the development on the basis of noise and disturbance.
22. A local councillor and the neighbours at 22 Merton Road have expressed concerns about the passage of sound from the property to that at 22 Merton Road. However, there would be only 4 habitable rooms over the 4 floors which would abut the party wall with No 22, the remainder being bathrooms or a corridor, which would not be materially different from a family home or use as flats. The proposal would also need to comply with any relevant Building Regulations concerning resistance to the passage of sound.
23. The Council also objects to the proposed siting of the bin store, which would be within 2.5m of so of the ground floor window of the house at 22 Merton Road. A boundary wall somewhat over 1m high at the junction with the main wall of the property would provide an intervening feature, but the lowest part of the bay window is approximately level with the wall, and so it would only have a limited effect as a barrier to smell.
24. However, a bin store enclosure would be a more effective means of containing any residual odour from refuse awaiting collection, and I am satisfied that this would ensure that the living conditions of the occupiers of No 22 would be adequately protected.
25. I therefore conclude on this issue that the proposal would not materially harm the living conditions of the occupiers of nearby residential properties with particular regard to smell, outlook, noise and disturbance. Nor would it conflict with CS Policy BCS23, which includes an aim to protect amenity.

#### **Other matters**

26. I have had regard to the personal health circumstances referred to by the occupier of the ground floor flat of 22 Merton Road, and whilst I am

sympathetic towards his needs, they are insufficient to outweigh the wider planning merits of the proposal.

**Conditions**

27. The Council has suggested a number of conditions which I have assessed in the light of national guidance. A condition to require the development to be carried out in accordance with the approved plans is needed to achieve certainty. Conditions relating to cycle and bin storage are needed in the interests of promoting travel other than by car, and for reasons of appearance and the protection of neighbours' living conditions. As suggested by the appellant, I shall also impose a condition to require details to be submitted of the materials to be used in the infilling of the lightwell, in the interests of appearance.

**Conclusion**

28. For the reasons given above, I conclude that the appeal should be allowed.

*JP Roberts*

INSPECTOR

## **ANNEX**

### **CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans Refs: CFA/FULL/04, CFA/FULL/01, Rev A4, and CFA/FULL/03, Rev 02.
- 3) No infilling of the lightwell shall take place until samples of all external materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.
- 4) Prior to the commencement of the use hereby approved, secure and weatherproof cycle storage facilities shall be provided in accordance with details which shall previously have been submitted and approved in writing by the local planning authority. The cycle storage facilities shall thereafter be retained as approved.
- 5) Prior to the commencement of the use hereby approved, weatherproof refuse storage facilities shall be provided in accordance with details which shall previously have been submitted and approved in writing by the local planning authority. The refuse storage facilities shall thereafter be retained as approved.