
Appeal Decision

Site visit made on 13 February 2018

by Olivia Spencer BA BSc DipArch

an Inspector appointed by the Secretary of State

Decision date: 28th February 2018

Appeal Ref: APP/Z1775/W/17/3185768
59 Liss Road, Southsea PO4 8AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Dave Stanley against Portsmouth City Council.
 - The application Ref 17/00920/FUL is dated 31 May 2017.
 - The development proposed is Change of use from purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a seven bedroom seven person Sui Generis house in multiple occupation.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a seven bedroom seven person Sui Generis house in multiple occupation at 59 Liss Road, Southsea PO4 8AS in accordance with the terms of the application, Ref 17/00920/FUL dated 31 May 2017, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The premises shall only be used as a house in multiple occupation (HMO) for a maximum of 7 residents.

Application for costs

2. An application for costs was made by Mr Dave Stanley against Portsmouth City Council. This application is the subject of a separate Decision.

Preliminary matters

3. When the Council submitted its Questionnaire to the Planning Inspectorate in response to the appeal it indicated by submission of a draft decision that had the Council reached a decision within the relevant time limit it would have granted permission. Following this, during the course of the appeal, *Houses in Multiple Occupation Supplementary Planning Document 2017* (SPD) was adopted and on 10th January 2018 the Council resolved that had it now still been in a position to do so it would have refused permission for the following reasons:

- The proposed use would fail to support mixed and balanced communities by further imbalancing an area already imbalanced by a high concentration of Houses in Multiple Occupation (HMO) uses contrary to Policy PCS20 of the Portsmouth Plan and the supporting Houses in Multiple Occupation Supplementary Planning Document (November 2017)
- The proposed use of the building as a 7 – bedroom HMO for 7 or more persons sharing would, as a result of the cramped and restricted size of the communal living space facilities (lounge/kitchen/dining room), fail to provide the necessary shared communal space for an adequate standard of living accommodation for future occupiers and would represent an over intensive use of the site. The proposal is therefore contrary to policies PCS20 and PCS23 of the Portsmouth Plan and the supporting Houses in Multiple Occupation Supplementary Planning Document (November 2017).

Main Issues

4. The main issues are firstly, the effect of the proposal on the mix and balance of the community and secondly, whether the proposed use would provide an adequate standard of accommodation for occupiers.

Reasons

Mix and balance of the community

5. The supporting text to Policy PCS20 of the Portsmouth Plan Portsmouth's Core Strategy (CS) explains that the city has a higher percentage of HMOs than the national average. The Policy itself states that in order to support mixed and balanced communities, and to ensure that a range of household needs continue to be accommodated, changes of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses.
6. The Officer's report states that 12 (including the appeal property) of the 86 properties within a 50 metre radius of the site are in use as a HMO. This equates to 13.95% and is thus at a level that marginally exceeds the 10% figure at which the Houses in Multiple Occupation Supplementary Planning Document 2017 (SPD) advises the area is to be considered imbalanced. However, the Council notes that the appeal property is already in lawful use as a Class 4 HMO, that CS Policy PCS20 considers Class C4, mixed C3/C4 use and HMOs in sui generis use all to be HMOs, and that the proposed change of use to a larger HMO would not therefore result in a change to the balance of uses in the context of the surrounding area.
7. Since the quantity of family housing in the area would thus be unaffected there is no reason why there should be any resulting increased competition for private rented houses, rising house prices and corresponding lack of affordability, decreased demand for some local services, change in leisure, entertainment and retail, or the closure of local services, schools and other community infrastructure.
8. I turn therefore to the more nuanced point of the effect of increased numbers of HMO occupiers living in the area. The proposal in this instance is to increase use of the property from 6 to 7 persons. The Officer's report to the September planning committee stated *'In respect of the intensification of use at individual HMO properties and the cumulative impact of similar developments in*

significantly increasing the number of occupants within a given area, regard has been given to an appeal at 37 Margate Road. The Inspector concluded that: '...having regard to the site's urban location and the density of housing in the area, any increase in occupancy at the property derived from such a small increase in bedroom accommodation would not be materially discernible when considered in the context of the existing activity in the surrounding urban area'. On the basis the current proposal seeks an identical increase in occupation, the Inspectors view must be afforded significant weight.'

9. Since that report the 2017 SPD has been adopted and the Council's position in respect on impact on the local community has changed. The Glossary to the National Planning Policy Framework describes supplementary planning documents as: *Documents which add further detail to the policies in the Local Plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan.*
10. Whilst I give significant weight to the SPD, conflict with the guidance is not in itself a planning harm nor does it necessarily equate to a breach of development plan policy. The Council refer to impacts that can arise from an intensification of use. Other than those addressed above these are said to include a change in the nature of communities and the gradually self-reinforcing unpopularity of some areas for families.
11. The Council states that consultations with city residents suggest that problems occur at a much greater rate in areas with high concentrations of HMOs. It goes on to refer to areas of the city where HMOs can exceed 30, 40 and in some cases 70%. However, the proposal would not result in an increased percentage of HMOs in the area, and the streets referred to are at some distance from Liss Road.
12. I have no reason to doubt that problems arising from high levels of HMO occupation in an area could occur. But no evidence has been presented to indicate what the occupation rates in HMOs in the Liss Road area are, whether any of the problems that can occur have occurred in the vicinity of the appeal site, and if so in what way they would be exacerbated by the small increase in occupation proposed. In the absence of any such evidence I agree with the Inspector in the 37 Margate Road appeal, that any increase in occupancy at the property derived from such a small increase in bedroom accommodation would not be materially discernible when considered in the context of the existing activity in the surrounding urban area.
13. To conclude, I have had regard to the guidance in the 2017 SPD that the council will seek to refuse applications for a change of use of a Class C4 or mixed C3/C4 use to a HMO in Sui Generis use in areas where the concentration of HMOs already exceeds the 10% threshold. However, the appeal property is now in HMO use and no change to the balance of uses in the area would therefore occur. Further I have seen no robust evidence that the proposal would result in significant harm, or risk of harm, on its own or cumulatively to the nature of the local community or the popularity of the area. I find no conflict therefore with CS Policy PCS20 and no other consideration of sufficient weight to lead me to refuse the proposal on this basis.

Standard of accommodation

14. The proposal would increase occupation of the house from 6 to 7 persons by creating a further bedroom from the ground floor study. As well as increasing the number of occupants of the house it would thereby also reduce the amount of communal areas leaving only the kitchen/dining/lounge as a combined living space. At some 23.52sqm this would fall short of the 27sqm standard for 7 or more persons given on the SPD and the Council's Private Sector Housing Team has commented that the communal living area, size of the en-suite and size of the ground floor shower room are considered too small for 6 to 10 persons.
15. However, the application is for use of the house for 7 people and I saw at my site visit that the majority of the rooms have on-suite bathroom facilities. In these circumstances the marginal under provision of the shower and bathroom floorspace is unlikely to cause a problem and in my judgement the limited shortfall in common living area would be off-set by the additional space all of the bedrooms offer in excess of the relevant SPD standards.
16. Taking into account the proposed increase of one occupant and the living environment of the house as a whole therefore I conclude that the proposal would provide an adequate standard of accommodation for occupiers. Consequently it would not result in an over-intensive use of the house or a significantly increased risk of disturbance to neighbouring residents. I find no conflict therefore with CS Policy PCS23 which requires amongst other things that new development provides a good standard of living environment for neighbouring and future occupiers. CS Policy PCS20 does not refer to living standards in HMOs and is not therefore relevant to this issue.

Other considerations

17. The Solent Special Protection Areas (SPAs) SPD 2014 identifies that any residential development in the city which would result in a net increase in population will result in a significant effect on the SPAs. The SPAs have been designated mostly for the protection of waders and waterfowl which spend the winter in the Solent. The principal risk is from recreation. An interim mitigation framework has been agreed between the adjoining planning authorities to provide avoidance measures to ensure a significant effect arising from new housing development around the Solent is avoided.
18. Contributions are sought that reflect the scale of the development proposed to provide the scheme of mitigation. Natural England has endorsed the approach as an effective interim solution. A mitigation payment of an appropriate scale in accordance with the SPA SPD has been provided under s111 of the Local Government Act. Consequently I conclude that the proposed development would not be likely to have a significant effect on the interest features of the SPAs, alone or in combination with other plans and projects.

Conditions

19. The development proposed is change of use to a 7 bedroom 7 person HMO and I have found no planning harm would arise on this basis. To ensure this I have imposed a condition limiting occupation to that proposed.
20. No significant changes to the layout of the house are proposed and a condition requiring compliance with the application drawing is not therefore necessary.

Conclusion

21. For the reasons given above and having taken into consideration all matters raised, I conclude that the appeal should be allowed.

Olivia Spencer

INSPECTOR