
Appeal Decision

Site visit made on 25 February 2019

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2019

Appeal Ref: APP/Z1775/W/18/3198506

11 Playfair Road, Southsea PO5 1EQ

- 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 A Pandya against the decision of Portsmouth City Council.
 - The application Ref 17/01235/FUL, dated 17 July 2017, was refused by notice dated 14 December 2017.
 - The development proposed is the change of use from purposes falling within a C4 (house in multiple occupation) to a house in multiple occupancy for more than 6 persons (*sui generis*).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. At the time of my visit, the change of use appeared to have been made.

Application for costs

3. An application for costs was made by Mr A Pandya against Portsmouth City Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues are:
 - the effect of the development on the mix and balance of the community;
 - whether the development provides an adequate standard of accommodation for occupiers; and,
 - its effect on the Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas (SPAs).

Reasons

The effect on the mix and balance of the community

5. Policy PCS20 of Portsmouth's Core Strategy (CS) restricts the changes of use to HMOs to areas where the community is not already imbalanced by a concentration of such uses or where the development would not create an imbalance. Its definition of an HMO includes large HMOs. The Council's HMO
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guidance¹ defines an imbalanced community as one where more than 10% of properties within a 50m radius of the proposal are already in HMO use. It indicates that the Council will refuse applications to change the use of a Class C4 or mixed C3/C4 use to a large HMO, where the concentration of HMOs already exceeds the 10% threshold. I give significant weight to the guidance, however conflict with it is not on its own a planning harm, nor does it automatically follow that development plan policy is breached.

6. The Council indicates that 14 of the 60 residential properties surrounding the appeal site, or 23%, are in Class C4 HMO use. It considers that the intensification of this HMO worsens the imbalance. I acknowledge the appeal² in Manners Road, however, unlike in that case, the evidence in this appeal suggests that there has not been a significant intensification in the use of the HMOs around this site.
7. I acknowledge the list of impacts which the Council suggests this intensification could have on the community. However, the number of houses in the area has not been reduced so I cannot see how the additional bedroom increases the competition for rented houses or inflates house prices. There is no substantive evidence that it reduces the affordability of housing or decreases the demand for services.
8. I acknowledge that consultations with residents suggest that problems occur at a greater rate in areas with high concentrations of HMOs or where the numbers of occupants within large HMOs exceed a family dwelling. However, the proposal would not increase the number of HMOs, and there is no evidence of the occupancy of those in the area which might lead to the harm described from this development, either in isolation, or cumulatively with the other HMOs. Moreover, there is no evidence of the problems referred to occurring in this area, nor any indication that the increase of 1 additional bedroom would either singly or cumulatively exacerbate any ill effect, including community cohesion and the quality of the local environment.
9. I conclude on this issue that while I give significant weight to the Council's guidance, the house is already in HMO use and no material change to the balance of uses in the area has occurred. There is no substantive evidence that the development has resulted in harm to the mix and balance of the community. It does not therefore conflict with CS policy PCS20.

The standard of accommodation for occupiers

10. The area of the kitchen/dining/living room, at around 23m², is around 4m² below the minimum area indicated in the Council's HMO guidance of 27m². However, having regard to the overall spaciousness of the rest of the accommodation within the house, as well as the arrangement, utility and standard of the kitchen/dining/living room, in my judgement the shortfall in this case does not lead to an inadequate standard of accommodation.
11. The Council refers to a dismissed appeal³ at Pitcroft Road which had a similar shortfall of living room space; however, unlike in this case, some of the bedrooms in that appeal were below the minimum floor area. There was no

¹ Houses in multiple occupation (HMOs) Supplementary Planning Document, revised July 2018

² Appeal Ref APP/Z1775/W/17/3187443

³ Appeal Ref: APP/Z1775/W/17/3188485

surplus of space to offset the shortfall. The parallel is therefore limited and not determinative.

12. I conclude that the development provides an adequate standard of accommodation for occupiers and is not an over-intensive use of the house. It does not conflict with CS policy PCS23 where it seeks a good standard of living environment for future residents and users of a development.

The SPAs

13. The Solent Recreation Mitigation Strategy 2017 has been adopted by the Council. It describes how, without mitigation, new residential development in Portsmouth will result in a significant effect on the Solent Coast Special Protection Areas (SPAs). It sets out how developer contributions, based on the number of bedrooms and collected by the Council, towards a range of management measures and projects to be implemented by the Solent Recreation Mitigation Partnership, can mitigate the effect of development on the SPAs.
14. While the development results in only 1 additional bedroom, the additional activity from this development would have the potential, either alone or in combination with other development in the area, to have a significant effect on the habitats site. Accordingly, a Habitats Regulations Assessment should be undertaken.
15. The appellant has referred to the Council's SPD which provides mitigation measures to protect the SPAs, funded by developer contributions. He has indicated that he is willing to make the appropriate contribution after planning permission is granted. However, the Habitats Regulations require that permission may only be granted after having ascertained that the development will not affect the integrity of the habitats site. Moreover, in this case the development appears to have been already implemented.
16. While I may consider avoidance or reduction measures which could secure mitigation for the development to avoid adversely affecting the integrity of the habitats site, no evidence of mitigation measures or any mechanism to effectively secure them has been advanced by the appellant. While the proposal would provide additional accommodation, this does not amount to an imperative reason of overriding public interest in favour of the proposal.
17. Accordingly, the failure to mitigate the effect of the development on the SPAs means that I cannot be certain that there is no significant effect on them. I am therefore unable to conclude other than that the proposal conflicts with CS policy PCS13 which protects habitats sites from developments which would adversely affect them, as well as paragraph 175 of the National Planning Policy Framework, and the Conservation of Habitats and Species Regulations 2010.

Other Matters

18. I understand the concerns of neighbours which include additional parking demand, noise and smoking, litter and refuse generation. However, the additional bedroom is unlikely to place unsustainable pressure on the surrounding street parking or cause environmental harm from waste storage. I note that the highways authority considered the change to a large HMO would not conflict with the Council's Parking Standards, and it did not object. The risk of smoking or noise from occupiers disturbing neighbours would not be

significantly greater than the present use of the house, and would be subject to local environmental controls.

Conclusion

19. I have found that the development does not result in harm to the mix and balance of the community and it provides an adequate standard of accommodation for the occupiers. While it provides additional accommodation, this does not outweigh its failure to mitigate its effect on the SPAs. For the reasons given above, and taking account of all matters raised, I conclude that the appeal should be dismissed.

Patrick Whelan

INSPECTOR