



Appeal Decision

Site visit made on 7 May 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2019

Appeal Ref: APP/Z1775/W/18/3217420

32 Norman Road, Southsea PO4 0LP

- 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 Robert Leatherland against the decision of Portsmouth City Council.
 - The application Ref 18/01429/FUL, dated 20 August 2018, was refused by notice dated 30 October 2018.
 - The development proposed is change of use from C4 (house in multiple occupation) to 7 person, seven bedroom, Sui Generis (house in multiple occupation for more than 6 persons).
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Decision

1. The appeal is dismissed.

Application for costs

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

Main Issues

3. The main issues are:
 - (a) the effect on the Solent Special Protection Areas (SPAs);
 - (b) whether there would be an imbalance of houses in multiple occupation (HMOs) in the surrounding community; and
 - (c) the effect of the proposal on the living conditions of future residents of the HMO, having regard to communal internal space provision.

Reasons

SPAs

4. The site lies within the 5.6 kilometre zone around the Portsmouth Harbour SPA, Chichester and Langstone Harbours SPA and Solent and Southampton Water SPA (hereafter collectively referred to as the SPAs) which are designated in accordance with the Habitats Directive as transposed in the UK by the Conservation of Habitats and Species Regulations 2017 (Habitat Regulations). The SPAs comprise a coastline that has a network of mudflats, shingle and saltmarshes which support internationally important numbers of bird species: Dark-bellied brent goose, Mediterranean gull, Eurasian wigeon, Ringed plover, Bar-tailed godwit, Grey plover, Sandwich tern, Roseate tern, Common tern and Little tern. These birds feed and roost on or near the ground and as a result

they are very susceptible to disturbance from informal recreational use, especially walking and dog walking. Any proposal which by reason of its proximity of the SPAs, within this "Zone of Influence", that may result in additional recreational disturbance is likely to have an adverse effect on the integrity of the SPA. Natural England has also advised that high levels of nitrogen and phosphorus input to the water environment in the Solent is causing eutrophication. All types of development that would result in a net increase in population served by a wastewater system, including new homes, student accommodation, tourism attractions and tourist accommodation would create additional levels of nitrogen and phosphorus.

5. The conservation objectives for the SPAs are to "Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring; the extent and distribution of the habitats of the qualifying features; the structure and function of the habitats of the qualifying features; the supporting processes on which the habitats of the qualifying features rely; the population of each of the qualifying features, and, the distribution of the qualifying features within the site." I have had regard to these objectives in undertaking my duties in accordance with the Conservation of Habitats and Species Regulations 2017.
6. Where the determining authority decides that a proposed development is likely to have a significant effect on the SPA it must make an Appropriate Assessment (AA) of the implications for the site in view of that site's conservation objectives. Consequently, it is necessary for me to undertake an AA.
7. The characteristics of the proposed development coupled with its proximity to the SPA within its 'Zone of Influence' present an increased risk of harm and disturbance to its qualifying features. This risk is due to the potential for increased visitor pressure and recreational activities undertaken at the SPAs by the additional resident at the appeal site. The risk also stems from the additional waste water created by additional residents at the site. There are not considered to be any other likely significant effects on the SPA from the appeal proposal. It is acknowledged that without mitigation the proposals present a likely significant effect, particularly when the impacts are considered in combination with other residential developments located within the SPA's 5km Buffer Zone to the SPA.
8. In 2017 the Council adopted the Solent Recreation Mitigation Strategy (Mitigation Strategy) which provides for the payment of a mitigation contribution to offset the effects of an increased population on the SPAs. Contributions made under the Mitigation Strategy are put towards the Strategic Access Management and Monitoring (SAMM) of the SPAs and towards its maintenance, the employment of rangers to reduce disturbance levels and initiate specific measures at the sites, a delivery officer to oversee the mitigation scheme as a whole and a coastal dogs project.
9. The appellant has provided evidence to show that the mitigation payment of £337 has been made to offset those effects and therefore, the proposal would not harm the integrity of the SPAs in this regard. This level of contribution is acceptable in accordance with the Mitigation Strategy and Natural England has

agreed that proof of payment is sufficient to secure the appropriate mitigation measures for the proposed development relative to its recreational effects.

10. I am satisfied that the contribution is not towards the provision of infrastructure, as defined in the CiL Regulations, and is therefore not affected by the pooling restrictions in the CiL regulations. The contribution is necessary, directly related to the development and fair and reasonable in scale and kind to the development proposed. I am therefore satisfied that it meets the appropriate tests and is therefore a contribution I can take into account.
11. However, Natural England have highlighted that the increase in occupation and the associated waste water implications from the proposal would be likely to have an in-combination effect on the SPAs in association with other projects and plans. The 'Methodology to calculate the nitrogen budget for development in the Solent and achieve nitrogen neutrality' (Working Draft August 2018) has been provided to me. However, whilst the appellant has provided comments in respect of the potential effects on the SPA in this regard, there is currently no agreed strategy for collecting contributions using this approach and nor has any mitigation been paid or secured by legal obligation.
12. As such, whilst I have had due regard to the contribution paid to the Council for mitigation of recreation effects on the SPA, in the absence of evidence to the contrary, the proposed development would adversely affect the integrity of the SPAs, either alone or in combination with other development, as a result of additional nitrogen and phosphorous from additional waste water generated by the increased population. The proposal would therefore conflict with the Habitats Regulations and PP Policy PCS13, which, amongst other things, seeks to ensure that any unavoidable negative impacts on biodiversity are appropriately mitigated. For similar reasons, the proposal would also conflict with paragraph 175 of the National Planning Policy Framework.

Imbalance of HMOs

13. The appeal property is a mid-terraced dwelling that benefits from a flexible permission which allows it to be used as either a dwellinghouse (Use Class C3) or a house in multiple occupation (HMO) for up to six residents (Use Class C4). The proposal seeks to change the use of the property to a Sui Generis HMO for up to seven residents through provision of another bedroom created by relocating the combined living/kitchen space.
14. Policy PCS20 of the Portsmouth Plan¹ (PP) sets out 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.
15. The Council state that 22 of the 66 properties within a 50 metre radius of the site are in use as a HMO, equating to 33.33%. This level far exceeds the 10% figure set out in the Houses in Multiple Occupation Supplementary Planning Document (updated 2018) (HMO SPD); above which there is considered to be an imbalance. It is however accepted by the Council that the appeal property is already in lawful use as a HMO.

¹ The Portsmouth Plan – Portsmouth's Core Strategy (adopted April 2014)

16. Whilst the increase in concentration of HMOs may otherwise affect the quantity of family housing in the area and alter the demand and price of rented or market housing and local services, including leisure services, schools and other community infrastructure, the proposed change of use to a larger HMO would not result in a change to the balance of uses in the context of the surrounding area.
17. In terms of the point in contention in relation to the addition of one resident at the appeal building, whilst I accept that there could in the future be an issue with cumulative impacts, I have not been provided with evidence to substantiate that such intensification has occurred in the vicinity of the appeal site to conclude that there would be harm from allowing the proposal. As such, I have attached significant weight to the numerous decisions and appeal decisions to which my attention has been drawn relating to very similar proposals across a broad geographic area of the city. Whilst this may not be the total number of such similar proposals having been given permission, it is a small number relative to the number of HMOs in the city and the anticipated future need for HMO accommodation as set out in the SPD.
18. I note the comments relating to the potential for the creation of a precedent that may result in the potential doubling of the population in Norman Road. Whilst I am unconvinced that there is presently an issue with HMO intensification issue in the vicinity of the appeal site, this is a more general concern of the Council that could be illustrated through the compilation of data on the number and location of HMOs that have been intensified and any associated problems therewith. Until such time, this does not alter the general principle that each application is to be treated on its own merits and there is no evidence that allowing this appeal would result in a significant number of other similar proposals coming forward in Norman Road in particular.
19. As such, I find 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 surrounding area. Consequently, in view of this main issue, the appeal proposal would not result in any further imbalance in the community and therefore, I find no conflict with PP Policy PCS20 or any other consideration of sufficient weight to lead me to refuse the proposal on this basis.

Living conditions of future residents

20. The proposal seeks to provide a seventh bedroom measuring 10.22 sqm, which would exceed the minimum space standards set out in the HMO SPD. Each of the other existing bedrooms exceeds the minimum bedroom size requirements. The combined living space to serve all of the residents would be 25.78 sqm which would fall marginally short of the HMO SPD standard of 27sqm for seven or more people. The kitchen/dining component of this space would be marginally undersized, whereas the lounge space is considered to meet the HMO SPD guidance.
21. Whilst there may be a demand for the kitchen cooking space that could not always be satisfied, this would appear to be the case with the six people who can already lawfully live in the property. I am unconvinced from the submitted evidence that not meeting the HMO SPD guidance in this particular respect would make a critical difference to the quality of living environment with one additional resident. As such, in my judgement, given that the proposal relates

to only one additional resident, the marginal under provision of the combined living/kitchen space would not create a harmful living environment for future residents and is partly mitigated by the suitability of the bedroom sizes.

22. I have had regard to another appeal decision for a similar proposal which was dismissed on the basis of the harm to the living conditions of future residents from the provision of under-sized rooms². In that case, there were a higher proportion of rooms, including bedrooms, which failed to accord with the guidance. In this case, there is just one undersized room and the degree of shortfall in its floorspace is more limited when considered against the guidance.
23. 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 not harm the living conditions of future residents with regard to the communal living space provision. As such, I find no conflict with PP Policy PCS23 which, amongst other things, requires that new development provides a good standard of living environment for neighbouring and future occupiers. PP Policy PCS20 does not refer to living standards in HMOs and is not therefore relevant to this issue.

Other Matters

24. Notwithstanding my conclusion in respect of the integrity of the SPAs, there is little evidence in relation to waste water services so as to suggest that there is insufficient capacity in the system to deal with one additional resident. Similarly, the issue of recycling and waste disposal is unlikely to be materially altered from the addition of one resident within an existing HMO.
25. Whilst I accept that some neighbouring residents will experience noisy behaviour from comings and goings and use of the gardens by tenants from time to time, this type of behaviour is not limited to occupiers of HMOs and is unlikely to be exacerbated by the increase of one tenant in an existing HMO.
26. The issue of parking can understandably be problematic in tight-knit terraces where dwellings do not have any dedicated parking. I am mindful from the comments that a parking scheme has been implemented locally which should ease some parking pressures. I also note that the Council highlights that the parking standards would not require any more provision as a result of the change of use. The issue of cycle parking is also addressed in the conditions below in order to reduce the reliance on private vehicle.

Conclusion

27. Whilst the proposal would not lead to an imbalance in the HMOs in the surrounding community and would not harmfully affect the living conditions of future residents with regard to communal internal space provision, the proposal would be likely to harmfully affect the integrity of the SPAs considered in combination with other projects and plans.
28. For the reasons set out above, and having regard to all other matters raised, the appeal is dismissed.

Hollie Nicholls

INSPECTOR

² APP/Z1775/W/17/3188485