



Appeal Decision

Site visit made on 13 August 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2019

Appeal Ref: APP/Z1775/W/18/3208858 19 Powerscourt Road, Portsmouth PO2 7JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Venables, Woodhenge Property Ltd against the decision of Portsmouth City Council.
 - The application Ref 18/00538/VOC, dated 29 March 2018, was refused by notice dated 26 July 2018.
 - The application sought planning permission for 'change of use from purposes falling within Class C3 (dwelling house) to a 7 person, 7 bedroom house in multiple occupation (Sui Generis)' without complying with a condition attached to planning permission Ref 17/02007/FUL, dated 9 February 2018.
 - The condition in dispute is No 5 which states that: The premises shall only be used as a house in multiple occupation for a maximum of seven residents.
 - The reason given for the condition is: To ensure adequate amenity facilities with suitable natural light, ventilation and outlook are provided and retained for seven persons sharing in accordance with Policy PCS23 of the Portsmouth Plan.
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Decision

1. The appeal is dismissed.

Application for costs

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

Procedural Matters

3. I observed on my site visit that what was the communal ground-floor lounge had been converted to a bedroom. I have determined the appeal on this basis.
4. The planning application form submitted to the Council refers to a previous planning application at the site, Ref 17/01148/FUL. However, the evidence before me indicates that the Council refused that application and that this appeal relates to planning permission Ref 17/02007/FUL. I have determined the appeal on this basis.
5. Although the planning application form states that the application is for the removal of a condition, the appeal form and the Council's Decision Notice describe the proposal as an 'application to vary condition 5 of planning permission 17/02007/FUL increasing the number of occupants to 8 persons'. However, as neither of the main parties has provided written confirmation that it has been agreed that the proposal seeks to vary the condition rather than

remove it, I have dealt with the appeal on the basis of what was originally applied for. Notwithstanding this, it is clear to me that the intention behind the appeal proposal is to increase the number of residents at the property. The effect of this would be similar whether the increase in the number of residents were to be achieved through the removal or the variation of the condition.

6. The National Planning Policy Framework (the Framework) was revised in February 2019. However, as the Framework's policies that are most relevant to this appeal have not materially changed, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.

Background and Main Issue

7. Planning permission was granted under Ref 17/02007/FUL which allowed for the building to be used as a house in multiple occupation (HMO). Condition 5 of that permission limits occupation of the HMO to a maximum of seven residents in order to ensure that they have adequate living conditions. The application form indicates that the appellant is seeking to increase the number of people permitted to reside at the property. The evidence before me indicates that this would be achieved by converting the lounge on the ground-floor to a bedroom.
8. The Council's reason for refusal refers to natural light and ventilation in the shared basement kitchen/communal area and alleges that both would be insufficient. However, the Council's stated reasons for imposing condition 5 include reference to light, ventilation and outlook, and the Council's appeal statement also refers to outlook. Accordingly, the main issue is whether the condition is necessary having regard to the living conditions of the occupants of the property, with particular regard to natural light, ventilation and outlook.

Reasons

9. The appeal site contains a terraced property in use as an HMO. At the time of my site visit, accommodation consisted of a kitchen/communal area in the basement and bedrooms with either en-suite or shared bathrooms on the ground- and upper-floors. There is a garden to the rear and a small area between the front of the property and the highway.
10. The reason for condition 5 is given as 'to ensure adequate amenity facilities with suitable natural light, ventilation and outlook are provided and retained for seven persons sharing in accordance with Policy PCS23 of the Portsmouth Plan'. The evidence before me indicates that prior to the conversion of the ground-floor front room to a bedroom, the property contained, amongst other aspects, internal shared space for seven residents in the form of a ground-floor lounge in the front room and a basement kitchen/dining communal area.
11. The ground-floor front room has a relatively-large, openable bay window which looks out on to the front of the site and street beyond. I observed on my site visit that this room has good levels of light, outlook and ventilation. The kitchen/communal area in the basement contains two openable windows. However, both windows are relatively small and are significantly enclosed by blank walls in close proximity. Consequently, although there is some natural ventilation, I observed on my site visit that the basement room receives limited natural light and its outlook is restricted to blank walls. It seems to me that it is therefore likely to rely heavily on artificial light.

12. Allowing the property to be occupied by eight persons, as per the submitted drawing no. 109021 Rev 00, would mean that the only internal shared space would be the basement kitchen/communal area. However, the poor outlook and the limited natural light in that room indicate that the development would provide a poor living environment.
13. Commenting on the planning application, the Private Sector Housing (PSH) team did not object and stated that their previous concerns regarding the basement have been mitigated. However, their comments indicate that those concerns related to a previous planning application (Ref 17/01148/FUL) which was refused by the Council, and I have not been provided with details of that application or the supplementary information referred to by the PSH team which mitigated their concerns. I therefore attach limited weight to this.
14. I recognise that the internal accommodation may provide a safe environment with sufficient high-quality facilities. All rooms would also exceed the minimum space standards set out in the Council's guidance, 'Houses in Multiple Occupation (HMOs) Supplementary Planning Document (SPD)' (revised 2017), and the comments from the PSH team. However, the SPD refers to the quality of the living environment in addition to room sizes, and Policy PCS23 of the Portsmouth Plan (Portsmouth's Core Strategy) (2012) seeks, amongst other aspects, the provision of a good standard of living environment for future residents and users of the development. Accordingly, meeting minimum room sizes is not the only factor in determining whether the development would provide acceptable living conditions for residents as a whole.
15. My attention has been drawn to an appeal decision at 1 Edmund Road (Ref APP/Z1775/W/17/3185758). However, the evidence before me indicates that that scheme involved, amongst other aspects, an under-provision of internal floor space rather than communal space which is alleged to have insufficient natural light, outlook or ventilation. Accordingly, I do not find the example particularly relevant to the acceptability of the appeal proposal and have therefore determined it on its own merits.
16. The fact that the site could in theory be occupied by a family is not determinative as to whether the appeal proposal would provide an adequate living environment for occupiers of the property as an eight-person HMO. The provision of adequate refuse and recycling facilities does also not lead me to a different conclusion.
17. Taking into account the advice within the Framework and the Planning Practice Guidance on planning conditions, I find that the condition 5 is necessary having regard to the living conditions of the occupants of the property, with particular regard to natural light and outlook. The condition is therefore not ultra vires and its removal – or indeed its variation – to allow for a more intensive use of the property through occupation by eight residents, and the consequent loss of the ground-floor communal lounge, would conflict with Policy PCS23 of the Portsmouth Plan. It would also be inconsistent with the Council's HMO SPD which requires HMO development to provide a good standard of living environment for future occupiers, and the provisions in the Framework in relation to providing a high standard of amenity for existing and future users.

Other matters

18. The Council's appeal statement sets out that after the planning application was refused, Natural England provided new guidance regarding the potential effects on designated nature conservation sites from additional overnight accommodation leading to increased nitrogen and phosphorus levels in the water environment of the Solent. Although Natural England did not provide specific comments related to the appeal proposal, the Council considers that, having regard to similar decisions taken by neighbouring authorities and without a mitigation scheme being in place, it cannot be concluded that the appeal proposal would not have a likely significant effect on designated nature conservation sites in the Solent. However, given that I am dismissing the appeal for other reasons, it has not been necessary for me to consider this matter in greater detail because it could not lead me to a different conclusion.

Conclusion

19. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR