
Appeal Decision

Site visit made on 15 June 2020

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2020

Appeal Ref: APP/Z1775/W/20/3247210

12 Malthouse Road, Portsmouth PO2 7EH

- 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 Stuart McCord of Malthouse Road Properties Ltd against Portsmouth City Council.
 - The application ref 19/01057/FUL, is dated 8 July 2019.
 - The development proposed is change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwellinghouse) or Class 4 (house in multiple occupation).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwellinghouse) or Class 4 (house in multiple occupation) at 12 Malthouse Road, Portsmouth PO2 7EH in accordance with the terms of the application, ref 19/01057/FUL, dated 8 July 2019, subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.
 - 2) Prior to first occupation of the property as a house in multiple occupation within Use Class C4, secure and weatherproof bicycle storage facilities for 5 bicycles shall be provided at the site and shall thereafter be retained for the storage of bicycles at all times.

Main Issue

2. The main issue is the effect of the proposed change of use on the mix and balance of housing in the area.

Procedural Matter

3. I have taken the description of development from the appeal form as being a more comprehensive description of the development proposed than on the application form.

Reasons

4. Policy PCS20 of the Portsmouth Plan 2012 permits changes of use to a house in multiple occupation (HMO)¹ where the community is not already imbalanced by

¹ For the purposes of the policy dwellings in use as Class C4, mixed C3/C4 and HMOs in *sui generis* use are considered to be HMOs.

- a concentration of such uses or where the development would not create an imbalance. Supplementary planning guidance² suggests that a community is considered to be imbalanced where more than 10% of residential properties within a 50m radius of the application property are or would be in HMO use.
5. The purpose of the policy is to ensure mixed and balanced communities. While recognising the benefits of HMOs as a source of accommodation including for people on low incomes and benefit payments, young professionals, students and one-person households, there are also potential negative social, environmental and economic impacts. There is also a need for family accommodation (three or more bedroom dwellings) in the city, the supply of which is reduced by conversion to HMOs. The policy seeks to balance these competing needs by limiting the proportion of HMOs in any one residential area.
 6. The Council argues that there are five existing HMOs among 42 residential properties within a 50m radius of the appeal site, amounting to 11.9% of properties being HMOs. The number of properties includes 26 Malthouse Road which the Council accepts should be included. Two of the HMOs are registered, while three are not. The Council has carried out an investigation and considers that, on the balance of probability, the three unregistered HMOs are lawful. The Council therefore argues that conversion of the appeal property to an HMO would bring the proportion up to 14.3% of properties in HMO use within the vicinity.
 7. The appellant has argued that if other people have not been following due process that is something that should be dealt with separately and should not be allowed to disadvantage an application for conversion made in the proper way. Had the unregistered HMOs been unlawful I would indeed have had sympathy with that argument. However, I note that an attempt to register them was made in 2012 when the Council's database on HMOs was first introduced, and in response to the recent investigation their owner has confirmed that they remain in use as HMOs. Based on the available evidence, I am satisfied that they are lawful and should be taken into account.
 8. The appellant has also argued that the Council's figures on the number of residential properties within 50m of the appeal property are wrong, and that 1-11 Whitehall Apartments and 223 Kingston Road should be included. It is reasonable to include some of the flats in Whitehall Apartments as the building partly falls within the 50m radius. I note that the front door giving access to 6 of the flats is inside or very close to the radius submitted by the Council and therefore consider these flats should be counted. The appellant has provided evidence that a unit of accommodation at 223 Kingston Road exists. In the absence of any contrary evidence, I consider this should be included as well.
 9. Based on a revised count of 49 residential dwellings within a 50m radius of the appeal site, the existing and proposed proportions of HMO to non-HMO dwellings is 10.2% and 12.2% respectively. These both exceed the 10% threshold suggested in supplementary planning guidance, but the degree of variance is small.

² Portsmouth City Council: Houses in multiple occupation (HMOs) – ensuring mixed and balanced communities Supplementary Planning Guidance, October 2019.

10. The use of a 50m radius to determine proximity has to be used with some caution as it is only an approximation of dwelling mix within any particular area. I note that the radius drawn by the Council is centred on the middle of the building rather than the mid-point of the property's frontage as recommended in the supplementary planning guidance, and this in itself might alter the figures to some extent. Given the degree of subjectivity that is inevitable in a method of calculation such as this, I consider a variation of some 2% is not determinative on its own and other factors need to be taken into account in reaching a decision on whether the proposal would cause an imbalance to the housing mix of the area.
11. In terms of the practical impacts of HMOs on the amenity of neighbours and local occupiers, paragraphs 2.17-2.18 of the supplementary planning guidance sets out some criteria for consideration. Assessed against those criteria, the proposal would not result in a concentration of HMOs alongside one another in the manner described in Appendix 6 of the guidance, nor would it create the potential for 'sandwiching' of a non-HMO property. There would be no changes in overlooking, privacy, daylight, sunlight or outlook. The proposal is for a small HMO (Class C4) rather than a large HMO (sui generis), and therefore would have a pattern of activities more closely resembling that of a single family dwelling. The appellant has also indicated that he is aware of the potential for disturbance, which could be addressed through normal management arrangements. The Council is satisfied that the property would provide a good standard of accommodation for future occupiers, and there is adequate space for parking, cycle and refuse storage.
12. Conversion of the property to an HMO would bring the proportion of HMOs in the area marginally over the threshold suggested in supplementary planning guidance, although for the reasons set out above I do not consider that to be determinative in this case. Conflict with the supplementary planning guidance is not in itself a planning harm nor does it necessarily equate to a breach of the policy, which must be read on its face. In its favour, the proposal would provide good quality accommodation for a range of single people and those seeking low cost accommodation, which is in demand. The property meets the requirements for such accommodation as set out in the Council's supplementary planning guidance. While it would result in the loss of one unit of family accommodation, there would continue to be what I consider a reasonable mix of residential properties in Malthouse Road and the surrounding area.
13. My attention has been drawn by both parties to other decisions where either appeals against changes of use to HMOs have been dismissed, or an application where an HMO above the 10% threshold has been granted. While recognising the importance of maintaining mixed and balanced communities it is necessary to consider the individual circumstances of each case. As these other examples are in different parts of the city where individual circumstances will differ from those found in this case, I give them only limited weight.
14. Having regard to all these factors, I consider that the proposal would not have a harmful effect on the mix and balance of housing in the area and would therefore accord with the aims of Policy PCS20 of the Portsmouth Plan 2012, which supports mixed and balanced communities and seeks to ensure that a range of household needs continues to be accommodated throughout the city.

Conditions

15. In addition to the standard time limit condition, I have also included a condition requiring bicycle storage to be provided in the interests of encouraging sustainable modes of transport other than the motor car. I consider these conditions meet the guidance in paragraph 55 of the National Planning Policy Framework 2019.
16. There is no need for a condition specifying the approved plans as suggested by the Council, as the development is for a change of use only with no physical alterations to the building.

Conclusion

17. For the reasons set out above, I conclude that the appeal is allowed and planning permission is granted.

Guy Davies

INSPECTOR