
Appeal Decision

Site visit made on 20 July 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 04 August 2020.

Appeal Ref: APP/Z1775/W/20/3247887
32 Montgomerie Road, Southsea PO5 1ED

- 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 John Harmer against the decision of Portsmouth City Council.
 - The application Ref 19/00013/FUL, dated 7 January 2019, was refused by notice dated 24 February 2020.
 - 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 dismissed.

Application for costs

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

Procedural Matters

3. The Council's appeal statement confirms that the appellant, at the planning application stage, provided a payment to the value of £346 to mitigate, in terms of an increase in recreational disturbance of wading birds around the shorelines of the harbours, the likely significant effect of the proposal on the Solent Special Protection Areas (SPAs). Furthermore, at the planning application stage, the appellant submitted a Nitrate Statement setting out how the proposal would achieve 'nutrient neutrality'. It states that the appellant has agreed to purchase 'credits', secured through a S106 agreement, from the Council's Mitigation Credit Bank. This would be required to mitigate, in terms of an increase in nitrogen and phosphorus input to the Solent water environment, which is causing eutrophication at internationally designated sites, the likely significant effect of the proposal on the Solent SPAs. I shall return to this matter later.
4. At the time of my site visit, the change of use appeared to have been made.

Main Issue

5. The main issue is whether the proposed development would provide an adequate standard of living conditions for future occupiers, having regard to internal space provision.

Reasons

6. The appeal property is a mid-terraced house with accommodation arranged over three floors. It is situated on the north side of Montgomerie Road close to the junction with St. Andrews Road. Notwithstanding what I saw at the time of my site visit, the proposal is for change of use from purposes falling within a Class C4 house in multiple occupation (HMO) to a seven bedroom seven person HMO (Sui Generis).
7. The Council's HMO Supplementary Planning Document¹ (HMO SPD) establishes that in order to secure a good standard of living accommodation within Sui Generis HMOs, and in accordance with Policy PCS23 of The Portsmouth Plan², the Council '*will ensure applications for HMO development will protect the amenity of, and the provision of a good standard of living environment for future occupiers*'.
8. The evidence before me indicates that all the bedrooms have a Gross Internal Floor Area (GIA) greater than 6.51 m² and therefore, in this regard, meet the minimum space standard for single bedrooms as set out in the HMO SPD.
9. In regard to amenity space, the HMO SPD indicates that a room that provides a combined living space for six or more persons is required to have a GIA of at least 34 m². The evidence indicates that the lounge/kitchen on the ground floor of the property has a GIA of around 25 m² and therefore, in terms of size, is significantly less than the requirement set out in the HMO SPD.
10. The appellant points out that the proposed communal space amounts to 30 m². However, this would include the utility room located on the first floor of the property, which has a GIA of about 5 m². The HMO SPD states that a combined living space is defined as a single, typically open plan space, usually containing a kitchen, dining area and living area, laundry and utility space. The utility room on the first floor would not, therefore, form part of the single open plan communal space on the ground floor of the building. Even if I were to accept that it did form part of the combined living space the proposal would still fall short, by around 4 m², in terms of amenity space provision for seven persons.
11. The appellant contends that in regard to communal space provision some leeway could be afforded given that six of the seven bedrooms are greater than 10 m². He cites the Council's Standards for Houses in Multiple Occupation³ (SHMO) which advises that for between six and ten people, based on 10 m² sized bedrooms, the minimum requirement for an open plan room is 22.5 m². The evidence indicates that after taking into account its reduced ceiling height, the bedroom on the second floor at the front of the house is only around 9 m² in size. I recognise that it is only a little smaller than 10 m² and that the proposal is for seven people and therefore towards the lower end of the six to ten number of people range. However, the SHMO establishes, on page 7, that the minimum requirement of 22.5 m², in terms of an open planned kitchen, lounge and dining area, is based on *all* the bedrooms being at least 10 m² in size, which would not be the case.

¹ Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities, Supplementary Planning Document (SPD), October 2019

² The Portsmouth Plan – Portsmouth's Core Strategy (adopted January 2012).

³ Full title: Portsmouth City Council, Standards for Houses in Multiple Occupation, A guide to understanding the basic standards for Houses in Multiple Occupation, September 2018.

12. I recognise that the size of the bedrooms in the property would exceed the minimum space standard for single bedrooms as set out in the HMO SPD; and by as much as 8.49 m² in the case of bedrooms 1 and 5 on the second and first floors respectively. However, notwithstanding the guidance in the SHMO, the HMO SPD does not explicitly include any provision for offsetting the 'over provision' of bedroom space against the shortfall of combined communal living space provision. Indeed, in the context that the HMO SPD seeks to secure a good standard of living accommodation within HMOs, the fact that the size of the bedrooms in the property would exceed the *minimum* space standard is a matter that, in this case, attracts neutral weight in decision making terms.
13. The appellant states that as the property has already been granted a seven bedroom seven person HMO licence it meets the required criteria in terms of size standards. However, I am required to consider the appeal proposal against the development plan as per Section 38(6) of the Planning and Compulsory Purchase Act 2004. Thus, it must be determined against relevant planning policies, which may require adherence to standards different from the HMO licence. Therefore, in this planning context, I attach little weight to the HMO licence held by the appeal property under the Housing Act 2004.
14. The appellant has referred to other appeal decisions⁴ in the area for apparently similar development proposals where one additional person and smaller than required communal spaces has been accepted. I am not aware of the full circumstances of these other cases. However, based on the information before me they would appear to have been considered against the Council's earlier HMO guidance which required a combined living space of 27 m² for seven or more persons. Consequently, they are not directly comparable to the case before me, which is required to be considered against the guidance set out in the Council's current 2019 HMO SPD and it indicates that a room that provides a combined living space for six or more persons is required to be at least 34 m² in size. I have, in any event, reached my own conclusions on the appeal proposal based on the evidence before me and the existence of the referenced developments does not alter my views regarding the under provision of communal living space as outlined above.
15. The Council's refusal notice also refers to the "*restricted ceiling height of the second floor front bedroom*". I acknowledge that this bedroom is within the roof space of the house and part of the ceiling is sloped. However, I have not been presented with any substantive evidence, in terms of ceiling heights, or any other information, to demonstrate that the bedroom, which is around 9 m² and thus greater in size than the minimum requirement of 6.51 m² for a single bedroom as set out in the HMO SPD, would fail to provide an adequate standard of living accommodation.
16. However, for the above reasons, I conclude that the under provision of communal living space would, in this case, lead to an inadequate standard of living conditions for future occupiers and represent an over intensive use of the site. Consequently, in this regard, the proposed development would not accord with Policy PCS23 of The Portsmouth Plan, the HMO SPD, and paragraph 127 f) of the National Planning Policy Framework which taken together, and amongst

⁴ References APP/Z1775/W/18/3208412, APP/Z1775/W/18/3198506, APP/Z1775/W/17/3185768, APP/Z1775/W/17/3185758, APP/Z1775/W/17/3185652, APP/Z1775/W/18/3193995, APP/Z1775/W/17/3187443, APP/Z1775/W/18/3217420 and APP/Z1775/W/18/3213995.

other things, seek to ensure that new development provides a good standard of living environment for future residents and users of the development.

Other Matter

17. The appeal site is located within the 5.6 km buffer zone of the SPAs along the Solent coast. As noted above in paragraph 3 the appellant has made a payment to the Council and agreed to purchase 'credits' from the Council's Mitigation Credit Bank to mitigate the likely significant effect of the proposal on the Solent SPAs. Notwithstanding the payment and agreement to purchase 'credits', there would still be a requirement to carry out an Appropriate Assessment. However, regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to approve planning permission. Thus, given my overall conclusion on the main issue it has not been necessary for me to pursue this matter any further.

Conclusion

18. For the reasons given above, I conclude that the appeal should be dismissed.

Andrew Bremford

INSPECTOR