
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: 05 August 2020

Appeal Ref: APP/Z1775/W/20/3248561

7 Beatrice Road, Southsea PO4 0JY

- 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 Chris Olive against Portsmouth City Council.
 - The application Ref 19/00601/FUL, is dated 10 April 2019.
 - The development proposed is change of use from C4 Use (house in multiple occupation) for 6 persons to a seven bedroom, seven person house in multiple occupation (Sui Generis).
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

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

Procedural Matters

3. The appeal is against the Council's failure to give notice of its decision within the appropriate period on an application for planning permission.
4. The Council's officer report, and correspondence¹ between the Council and the appellant's agent, outlines what decision it would have made had it been able to do so and this has formed the basis of the main issue as detailed below.
5. The Council's officer report also refers to the impact of the proposal on the Solent Special Protection Areas (SPAs). It 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 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

¹ Email from Portsmouth City Council dated 3 March 2020.

significant effect of the proposal on the Solent SPAs. I shall return to this matter later.

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

Main Issue

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

Reasons

8. The appeal property is a mid-terraced house with accommodation arranged over three floors and is situated on the east side of Beatrice Road. Notwithstanding what I saw at the time of my site visit, the proposal is for change of use from Class C4 house in multiple occupation (HMO) for 6 persons to a seven bedroom, seven person HMO (Sui Generis).
9. The Council's HMO Supplementary Planning Document² (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 Plan³, 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*'.
10. The HMO SPD provides two different ways of assessing internal communal living space. The first is where the living room, dining room and kitchen are assessed individually and the second is where they are assessed as a combined living space. In this case the communal living space amounts to one room; in effect a combined living room/dining room/kitchen. Whilst the room would remain unaltered, by virtue of the proposal to increase the number of bedrooms from 6 to 7, it would be required to be of an adequate size to provide a good standard of living environment for 7 persons.
11. The area of the communal living space, shown as the 'kitchen/dining' room on the submitted plans, at around 26.2 m², is about 7.8 m² below the minimum of 34 m² for a combined living space for 6 or more persons indicated in the HMO SPD.
12. I recognise that the proposal relates to only one additional occupier and that the proposal is for seven persons and therefore towards the lower end of the 6 or more number of persons range. However, the shortfall in space would, in my judgement, lead to an inadequate standard of accommodation for 7 persons within the context of the Council's stated aim in the HMO SPD to secure a good standard of living accommodation within Sui Generis HMOs, which includes a minimum of 34 m² of combined living space for 6 or more persons.
13. The appellant says that the property has already been granted a 7 bedroom, 7 persons HMO licence. 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

² Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities, Supplementary Planning Document (SPD), October 2019

³ The Portsmouth Plan – Portsmouth's Core Strategy (adopted January 2012)

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 drawn my attention to other Council's HMO guidance, specifically the neighbouring university cities of Brighton and Southampton, where he says that the communal space required for 7 persons is just 14 m² and 15 m² respectively. Be that as it may, the appeal site is located in Portsmouth and therefore the appeal is required to be determined in accordance with Portsmouth City Council's adopted HMO SPD. I do not know the circumstances which led to the different policies in neighbouring Council's being adopted and, in any event, I have determined the appeal proposal in accordance with the prevailing policies relating to the site and the area within which it lies.
15. I acknowledge the appellant's point that he was guided by the Council's July 2018 HMO SPD⁴ current at the time he submitted the application and sought to provide an open communal space close to 27 m² as required for 7 or more persons in the 2018 guidance. However, the current HMO SPD was adopted as planning guidance by the Council in October 2019 and is, therefore, applicable in the determination of this appeal proposal and it states that a minimum area of 34 m² is required for a combined living space for 6 or more persons. I have determined the appeal proposal in accordance with the Council's current HMO SPD.
16. The appellant has referred to other appeal decisions⁵ in the area for apparently similar development proposals where 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 the proposals 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. 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 about the under provision of communal living space as outlined above.
17. For the above reasons, notwithstanding that the appellant has provided an extra shower room and only seeks to change the use of an underused study, as a result of the proposal I conclude that an adequate standard of living conditions for future occupiers would not be provided for in respect of internal communal living space provision. 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 other things, seek to ensure that new development provides a good standard of living environment for future residents and users of the development.

⁴ Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities, Supplementary Planning Document (SPD) – revised July 2018

⁵ References APP/Z1775/W/18/3208412, APP/Z1775/W/18/3198506, APP/Z1775/W/17/3185652 and APP/Z1775/W/18/3217420.

Other Matters

18. The appellant points out that the proposed seventh bedroom on the second floor of the property would be 7.7 m² and therefore complies with the HMO SPD which requires the bedroom size to be at least 6.51 m². However, the fact that bedroom seven would exceed the minimum space standard, by about 1.19 m², in the context that the HMO SPD seeks to secure a good standard of living accommodation within HMOs is a matter that, in this case, attracts neutral weight in decision making terms.
19. The appeal site is located within the 5.6 km buffer zone of the SPAs along the Solent coast. As noted above in paragraph 5 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

20. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed and planning permission refused.

Andrew Bremford

INSPECTOR