



Appeal Decision

Site visit made on 4 August 2020

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2020

Appeal Ref: APP/Z1775/W/20/3246589

123 Talbot Road, Southsea, PO4 0HD

- 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 Antony Lane against Portsmouth City Council.
 - The application Ref: 19/00991/FUL is dated 24 June 2019.
 - The development proposed is described as "C4 house in multiple occupancy to Sui Generis house in multiple occupation for more than 6 persons".
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Decision

1. The appeal is dismissed and planning permission is refused for change of use from purposes falling within a house in multiple occupation (class C4) to a 7 Bedroom house in multiple occupation (Sui Generis) at 123 Talbot Road, Southsea, PO4 0HD in accordance with the terms of the application Ref: 19/00991/FUL dated 24 June 2019, and the plans submitted with it.

Procedural Matters

2. The description of the development in the banner heading is taken from the application form. However, I have used the description of the proposed development from the appeal form in my decision as more accurately and precisely describing the proposal. At the time of my site visit the property was unoccupied but I observed that 7 rooms including the room annotated as 'Bedroom 7' on the submitted proposed floor plans have been furnished as bedrooms. Therefore, I have considered this appeal on the basis of an assumed occupancy of 7 people.
3. The Council has advised that it was not aware that an appeal against non-determination had been lodged and issued a refusal on 26 February 2020. I have had regard to the Council's reasons why it would have refused the application had it retained jurisdiction which relate to the quality of the living space and the need for mitigation to protect three Special Protection Areas.

Application for costs

4. An application for costs was made by Mr Antony Lane against Portsmouth City Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are:

- i) the effect of the development on the integrity of the Portsmouth Harbour, Chichester and Langstone Harbours and Solent & Southampton Water Special Protection Areas (the SPAs); and
- ii) whether the development provides adequate living conditions for its residents in respect of communal space and whether or not it represents an over intensive use of the property.

Reasons

The integrity of the SPAs

6. The mudflats, shingle and saltmarshes with the SPAs provide essential feeding and roosting grounds for an assemblage of internationally important numbers of water birds which together comprise the qualifying features of the SPAs. The conservation objectives for each of the SPAs are to ensure that the integrity of the site is maintained and restored in order to protect the habitats and the birds that depend on them.
7. Research undertaken during 2009-2013 predicted that new housing around the Solent would lead to more people visiting the coast for leisure, the majority from within 5.6 km straight line distance of the SPAs¹. This increased recreation has the potential to cause more disturbance to the birds, thus threatening their survival.
8. Furthermore, Natural England (NE) has identified that high levels of nitrogen and phosphorus, mostly from agricultural sources or wastewater from existing housing or other development, are being discharged to the water environment in the Solent². These levels are causing eutrophication of the SPAs which impacts on their important bird species. NE considers that there is a likely significant effect on the SPAs due to the increase in wastewater from new developments coming forward.
9. The appeal property is within 5.6 km of the SPAs. There would therefore likely to be additional recreational activity and wastewater arising from an additional occupant. Whilst considered in isolation this change would be small, when considered in combination with other projects, it is likely to have a significant effect on the SPAs. It is therefore necessary for me, as the competent authority, to undertake an appropriate assessment (AA) and consider whether or not mitigation could reduce any adverse effects on the protected areas.
10. The Solent Recreation Mitigation Strategy (2017) (the SRMS) provides a strategic solution to ensure that the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) with regard to the in-combination effects of increased recreational pressure on the SPAs arising from new residential development are met through mitigation measures.
11. The Strategic Access Management and Monitoring mitigation measures include a team of rangers to help coastal visitors and communities understand the importance of the different bird species and the impact of disturbance. The measures are funded by contributions from all new residential dwellings within

¹ Liley D & Tyldesley D (2013) Solent Disturbance & Mitigation Project Phase III Towards an Avoidance and Mitigation Strategy

² Advice on Achieving Nutrient Neutrality for New Development in the Solent Region' (version 4) March 2020

5.6 km of the SPAs. The SRMS also sets out that the creation of two new alternative greenspaces and enhancements to existing greenspaces are underway, funded by the Solent Local Growth Deal with complementary funding from the relevant local authority.

12. The evidence before me is that the appellant has opted to make a payment towards mitigation of the recreational effect in accordance with the SRMS through an agreement under S.111 of the Local Government Act 1972. I consider that this would provide adequate mitigation and I note that this is the conclusion of the Council's AA. However, as no agreement was provided with the appeal, I cannot be confident that the necessary mitigation has been secured.
13. As regards nutrients, NE explains that one way to address the uncertainty over potential impacts is for new development to achieve nutrient neutrality. NE appreciates that it may be difficult for smaller developments to achieve nutrient neutrality and states that it is working together with a number of Councils to progress mitigation strategies that cover the Councils' areas and include more strategic options. NE suggests that these may include a scheme collecting financial contributions from developers.
14. The Council has published an Interim Nutrient Neutral Mitigation Strategy (2019) (INNMS). The INNMS sets out three possible mitigation options, including *"Purchasing of 'mitigation credit' from the control of, and water efficiency improvement works to, the Council's own property assets or other recognised source of 'credit' in perpetuity"*. The INNMS explains that the Council is currently able to accumulate 'mitigation credit' to help offset new development through water efficiency improvements to the Council's housing stock and by holding vacant Council assets due for redevelopment.
15. This mitigation option is to be funded through a proportionate contribution from developers as appropriate, collected and pooled through S106 agreements. For smaller development proposals that are seeking to utilise the mitigation credit, the Council will offer such credit in perpetuity for a £200 per unit administration and monitoring fee, to be secured through a planning obligation prior to occupation of the development.
16. The appellant submitted a statement with the application confirming his agreement to the £200 payment and a S106 agreement in respect of mitigation for the additional wastewater discharge. Subject to this payment / agreement and a condition requiring mitigation to be in place prior to the first occupation of the additional bedroom, the development would not result in a net increase in the levels of nitrogen input to the water environment within the SPAs. I note that this is the conclusion of the Council's AA. However, I have no evidence that such a payment has been made and no S106 agreement was provided with the appeal. Therefore, I cannot be confident that the necessary mitigation has been secured.
17. I have considered whether a condition were planning permission to be granted, such as that suggested by the Council, would be an appropriate means of securing the requisite contribution to mitigation measures. Although the Council's suggested condition does not specifically refer to a planning obligation, this is the mechanism through which contributions in line with the SRMS and INNMS are likely to be made.

18. The Planning Practice Guidance advises that a negatively worded condition requiring the appellant to enter into a planning obligation is unlikely to be appropriate in the majority of cases³. Such a condition may be appropriate in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk, for example in the case of particularly complex development schemes. However, I have no evidence that this is applicable to this proposal. A condition requiring a planning obligation or obligations would therefore not be appropriate, in my view, in the circumstances of this appeal.
19. I therefore conclude that, without suitable mechanisms to secure appropriate mitigation for the effects arising from the occupation of the additional bedroom through additional recreational activity and wastewater discharge, the development would be likely to have an in-combination adverse effect on the integrity of the SPAs.
20. Accordingly, in this respect, the development conflicts with the Habitats Regulations and Policy PCS13 of The Portsmouth Plan Portsmouth's Core Strategy (2012) (the Core Strategy). Policy PCS13 sets out that green infrastructure will be protected by, amongst other things, refusing developments that would have an adverse effect on a European site either alone or in combination with other plans and projects. Furthermore, paragraph 175 of the National Planning Policy Framework (the Framework) sets out that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or, as a last resort, compensated for, planning permission should be refused.

Living conditions

21. The Council's revised "Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities" Supplementary Planning Document (2019) (the SPD) sets out a standard of 34 m² for a combined living space for 6 or more persons. The communal combined living / kitchen / dining area in the appeal property, shown as approximately 28 m² on the submitted plans, is significantly smaller than this standard.
22. However, I observed during my site visit that the communal area has seating for 7 persons in reasonable comfort with further seating for dining. There is unimpeded access to the kitchen / dining area, which is reasonably spacious and with a layout that facilitates circulation. Whilst it would be restricted if all 7 persons were to attempt to use it at the same time, this is unlikely and would also be the case for the existing 6 occupiers. The kitchen is of a high standard with fitted cupboards and appliances and the communal area is lit by a large bay window to the front elevation.
23. An additional person would not significantly reduce the quantum or quality of the communal space available. Therefore, having regard to the arrangement and standard of the communal area and its lawful use by 6 persons, in my view the shortfall against the standard in the SPD would not result in an inadequate standard of accommodation for 7 persons in this case.
24. Moreover, as regards the amount of floorspace in the property as a whole, I observed that all the bedrooms are of reasonable size and exceed the minimum

³ Paragraph 010 Reference ID: 21a-010-20190723 Revision date 23 07 2019

standard in the SPD. Whilst some of the floor area of Bedroom 5 on the top floor has a reduced floor to ceiling height due to the slope of the roof, it is nevertheless of a reasonable size with adequate useable space.

25. I therefore conclude that the proposed development would provide adequate living conditions for the occupiers of the property with respect to the provision of communal space and would not represent an over intensive use of the property. Accordingly, I find no conflict in this respect with Policy PCS23 of the Core Strategy which, amongst other things, requires that new development provides a good standard of living environment for future occupiers. Whilst the communal area would not meet the standard in the SPD, this is guidance and I cannot give it the full weight of a development plan policy.
26. Furthermore, I do not find any conflict in this respect with paragraph 127 f) of the Framework, which requires development decisions to ensure that developments create places with a high standard of amenity for existing and future users.

Other Matters

27. I acknowledge that the appellant has an HMO Licence for the property for no more than seven persons and I observed during my site visit that the accommodation is of high quality. There may also be a need for this type of accommodation in the area. However, these matters do not outweigh the conflict with the development plan, the Framework and the Habitats Regulations I have identified above.

Conclusion

28. Although I have found that the development would not result in inadequate living conditions for 7 persons, this is not sufficient to outweigh the likely significant effect on the integrity of designated habitats sites which would be adverse and for which there is no adequate mitigation before me, with consequent conflict with the development plan, the Framework and the Habitats Regulations.
29. Therefore, and having had regard to the other matters raised, the appeal is dismissed, and planning permission is refused.

Martin Small

INSPECTOR