
Appeal Decision

Site visit made on 10 August 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal Ref: APP/Z1775/W/20/3252516

11 Playfair Road, Southsea PO5 1EQ

- 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 A Pandya against the decision of Portsmouth City Council.
 - The application Ref 19/00435/FUL, dated 15 March 2019, was refused by notice dated 27 January 2020.
 - The development proposed is change of use from purposes falling within a C4 (house in multiple occupation) to a house in multiple occupancy for more than 6 persons (Sui Generis).
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Decision

1. The appeal is dismissed.

Application for costs

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

Procedural Matters

3. I have been presented with a 'Habitats Mitigation Contribution' agreement, to the value of £337, towards the cost of measures to mitigate the impact of the proposed development on the Solent Special Protection Areas (SPAs). However, the agreement relates to an earlier planning application¹ at the appeal site. Nonetheless, 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 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.

¹ Reference: 17/01235/FUL

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 communal space provision.

Reasons

6. The appeal property is a mid-terraced house with accommodation arranged over three floors and is situated on the north side of Playfair Road. The property is currently in use as a Class C4 house in multiple occupation (HMO) and the proposal is for a change of use to an HMO for more than 6 persons (Sui Generis). Notwithstanding what I saw at the time of my site visit, the submitted floor plans indicate that the proposal is to convert the ground floor lounge to a bedroom, thereby forming a total of 7 bedrooms, for 7 persons, within the property.
7. The Council's HMO Supplementary Planning Document² (HMO SPD) states, amongst other things, 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*'.
8. 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, where the lounge would be lost, the proposal would result in one living/kitchen room of approximately 22.33 m² in area, thus well below the minimum area of 34 m² for a combined living space for 6 or more persons indicated in the HMO SPD.
9. My attention has been drawn to the previous appeal decision⁴ for the same proposal at the property where the Inspector concluded that the development provides an adequate standard of accommodation for occupiers. However, at the time of that appeal decision the Council's HMO guidance⁵ indicated a minimum area of 27 m² for a combined living space for 7 or more persons. 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 current HMO SPD.
10. I acknowledge that the proposal relates to only one additional occupier. However, the proposed development would result in a shortfall of combined living space of over 11 m² when assessed against the Council's current guidance on this matter. The significant shortfall in space would 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

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)

⁴ Reference: APP/Z1775/W/18/3198506

⁵ Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities, Supplementary Planning Document (SPD) – revised July 2018

accommodation within Sui Generis HMOs, and would represent an over intensive use of the site.

11. The appellant says that the property has been fully assessed by private sector housing and holds an HMO Licence for 7 persons. 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 falls to 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.
12. For the above reasons, 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, amongst other things, seek to ensure that new development provides a good standard of living environment for future residents and users of a development.

Other Matter

13. 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

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

Andrew Bremford

INSPECTOR