



Appeal Decision

Site visit made on 1 July 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th November 2020

Appeal Ref: APP/Z1775/W/20/3245978

66 Margate Road, Southsea PO5 1EZ

- 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 Simon Birmingham against the decision of Portsmouth City Council.
 - The application Ref 19/00806/FUL, dated 20 May 2019, was refused by notice dated 28 January 2020.
 - The development proposed is change of use from Class C4 (house in multiple occupation) to Sui Generis (house in multiple occupation for more than 6 persons).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from Class C4 (house in multiple occupation) to Sui Generis (house in multiple occupation for more than 6 persons) at 66 Margate Road, Southsea, PO5 1EZ, in accordance with the terms of the application, Ref 19/00806/FUL, dated 20 May 2019, and the plans submitted with it, subject to the attached schedule of conditions.

Application for costs

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

Procedural Matters

3. The description of development differs slightly between that used on the planning application form, decision notice and appeal form. I have used the description on the decision notice, since it concisely and accurately describes the development.
4. At the time of my site visit, the change of use appeared to have been made.

Main Issues

5. The Council refused planning permission for a single reason relating to the living conditions of future occupiers of the HMO. The Officer Report recommended granting Conditional Permission of the application, subject to securing adequate mitigation for the impact of the development on the Solent Special Protection Areas (SPAs) by means of a Section 106 Legal Agreement to secure the development as Nutrient-Neutral, and the potential Recreational Disturbance – Wading Birds mitigation. This accords with the Council's *Interim Nutrient-Neutral Mitigation Strategy (2019)* (INNMS) and *Solent Recreation Mitigation Strategy (2017)* (SRMS). The Officer Report confirmed that if the

S106 Agreement was not completed within 4 months of the Planning Committee, the application would be refused under delegated authority. This is a matter to which I later return.

6. Accordingly, the main issues are:

- whether the appeal scheme provides appropriate living conditions for future occupants, having regard to communal living space provision; and
- whether the appeal scheme provides adequate mitigation for the Solent Special Protection Areas (SPAs).

Reasons

Living conditions of future occupants

7. The proposal provides a seventh bedroom in place of a living room. With a floor area measuring 13.23 sqm, this is double that of the minimum floor space standard for single bedrooms set out in the Council's HMO guidance¹, but results in the combined living space of the kitchen/dining room falling below the HMO guidance by 5.88 sqm. In all other respects, the development meets the Council's HMO room standards for HMOs with 6 or more persons. All bedrooms significantly exceed the minimum room size requirements, so that the total internal floor space of 125.44 sqm markedly exceeds the SPD minimum requirement of 87.05 sqm.
8. The kitchen/dining room remains unaltered. I found on my site visit that this room comprises a well-laid out good standard of utility including seating/dining space. I am not convinced by the evidence before me that these facilities are not capable of accommodating use by one additional resident without detrimentally impacting on the living conditions of the residents.
9. The Council's HMO guidance confirms that, where single bedroom sizes exceed 10 sqm floorspace, no separate living room would be required, and the minimum floorspace standard for an open plan kitchen/dining room would be 22.5 sqm. This communal room size requirement is exceeded by the existing kitchen/dining room. Six of the proposed seven bedrooms have a floor area in excess of 10 sqm and the remaining bedroom, no.2, is only marginally less, at 9.54 sqm.
10. During my site inspection I found that the property has been finished to a high standard of decoration and that the bedrooms are of a generous size and well laid out, with windows providing an outlook and access to natural light and air. In my opinion, the bedrooms provide an environment in which residents would be comfortable spending time within their rooms.
11. As such, having regard to the evidence before me, my site inspection, and compliance with the Council's HMO guidance standards for living space should bedroom 2 be only marginally larger, I find that, notwithstanding the lack of a separate living room, the appeal scheme provides acceptable living conditions for seven occupants and does not result in an over-intensive use of the appeal site.

¹ Houses in Multiple Occupation (HMOs) – Ensuring Mixed and Balanced Communities Supplementary Planning Document (October 2019)

12. I have had regard to 2 recent dismissed appeals for similar schemes which have been drawn to my attention by the Council.² I note the similarities between these appeals and the current appeal proposal, in respect of the main issue. However, the detailed room sizes and standard of living conditions within the other appeal properties are not identical to those of the current appeal premises. I must determine this appeal on the basis of the circumstances of the appeal property and the merits of the scheme before me, and having regard to the standard of living conditions that I found during my site inspection.
13. For the above reasons, taking into account the proposed increase of one occupant, and the living environment of the property as a whole, I therefore conclude that the appeal scheme provides appropriate living conditions for future occupants, having regard to communal living space provision. As such, the development accords with Policy PCS23 of *The Portsmouth Plan (2012)* (PP) where it requires a good standard of living environment for future residents and users of new development.

SPAs

14. The SPAs comprise a coastline that has a network of mudflats, shingle and saltmarshes which provide essential winter feeding and roosting grounds for birds that spend the winter here, including more than 90,000 waders and wildfowl including 10 per cent of the global population of brent geese. The SPAs were designated by the Government to protect these over-wintering birds.
15. The appeal scheme results in an increase in 1 bedroom within the 5.6km 'Zone of Influence' of the SPAs. This net increase in residential development has a potential two-fold impact upon the SPAs arising from, firstly, possible disturbance to the birds arising from increased recreational activity around the shorelines of the harbours, and, secondly, the prospect of increased levels of nitrogen and phosphorus entering the water and resulting eutrophication, arising from additional waste-water created by additional residents at the site.
16. As such, without mitigation, the appeal scheme presents a likely significant effect upon the integrity of these sites, particularly when the impacts are considered in combination with other residential developments located within the 5.6km Buffer Zone to the SPAs. Therefore, it is necessary for me to undertake an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations 2017), of the implications for the sites in view of the conservation objectives of the SPAs. I have undertaken this on a proportionate basis with regard to the evidence submitted by the Council.
17. Following the appeal submission, the Council has carried out an Appropriate Assessment under the Habitats Regulations 2017, which has been approved by Natural England.
18. In 2017 the Council adopted the SRMS which provides for the payment of a mitigation contribution to offset the effects of an increased population on the SPAs. Contributions made under the Mitigation Strategy are put towards a package of mitigation measures including a team of rangers, communications marketing and education initiatives, the facilitation and encouragement of

² APP/Z1775/W/20/3248561 and APP/Z1775/W/20/3247887

responsible dog walking, codes of conduct, site-specific visitor management and bird refuge projects, new/enhanced strategic greenspaces, a delivery officer and monitoring of the mitigation measures.

19. The Council's appeal statement confirms that the appellant has provided a payment to the value of £356 to mitigate, in terms of an increase in recreation disturbance of wading birds around the shorelines of the harbours, the likely significant effect of the proposal on the SPAs. The Council has confirmed that this is an appropriate form of mitigation in accordance with the SRMS.
20. The Council has confirmed that, whilst a sub-regional strategy to deal with the nitrates issue is currently being developed by the Partnership for South Hampshire, Natural England and other partners and interested parties, in 2019 Portsmouth City Council adopted the INNMS which expects developers firstly consider their own form of mitigation such as 'off-setting' against existing land-use, extant planning permission or other land within their control, or the implementation of mitigation measures such as Sustainable Urban Drainage Systems, interception or wetland creation. Then if not feasible, purchasing 'credits' from the Council's Mitigation Credit Bank which are accrued by the Council's continuous programme of the installation of water efficiencies into its own housing stock and making these credits available to new development. The appellant has entered into a Section 106 Agreement, dated 15 October 2020, to secure the required 'credit', involving a payment of £200, in accordance with the INNMS.
21. I consider that the contributions secured by the above means are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, and therefore meet the statutory tests set out in regulation 122 of the CIL Regulations.
22. I am therefore satisfied that the appeal scheme provides adequate measures to avoid and mitigate its potential adverse impacts on the integrity of the SPAs, in accordance with PP Policy PCS13, which amongst other things, seeks to ensure that unavoidable negative impacts on biodiversity are appropriately mitigated. This would also accord with the Habitats Regulations 2017, which seek to ensure that development does not adversely affect European sites and species.

Other Matters

23. I have had regard to the third party concerns in respect of noise disturbance, impact on parking, antisocial behaviour and the existing concentration of HMOs within the area. The Council has not raised any objection in respect of these issues, and neither do I, on the basis that the appeal scheme relates to the provision of one additional bedroom to an existing HMO.

Conditions

24. In the event that the appeal was allowed, the Council has suggested a number of conditions. I have considered these in the light of the tests set out in Paragraph 55 of the Framework and the National Planning Practice Guidance (PPG) and imposed them where I consider them to be necessary and reasonable, incorporating amendments for the sake of clarity and precision.

25. Given that the development has already taken place, I do not consider a condition setting a timescale for the commencement of the approved development to meet the conditions set out in the Framework. It is necessary to define the plans for certainty (1).
26. In the interests of clarity, and ensuring appropriate living conditions for future occupants of the HMO and the occupiers of neighbouring properties, a condition is necessary to limit the number of residents to 7 at any one time (2). That accords with the details of the planning application, and is necessary, since, whilst I have found that number of residents not to be harmful, any increase above this would need to be assessed against relevant development plan policies.
27. A condition to ensure the provision of secure on-site cycle parking (3) is justified in the interests of promoting sustainable travel in the city. I have amended the Council's suggested wording, having regard to the development that has already been carried out.
28. A condition to ensure the provision of on-site waste storage facilities (4) is justified in the interests of the living conditions of the occupiers of the site and neighbouring occupiers. I have amended the Council's suggested wording, having regard to the development that has already been carried out.
29. Having regard to the finite size of the Council's Mitigation Credit Bank, a condition is required, in conjunction with the Section 106 Agreement, to ensure the implementation of the nitrates mitigation measures in accordance with the INNMS (5). This relates to the actual purchase of the 'credits', and would normally be required just prior to the occupation of the development. However, I have amended the Council's suggested condition, having regard to the development that has already been carried out. I have also omitted reference to wading birds mitigation, having regard to the mitigation that has been secured in this respect.
30. In addition to the conditions suggested by the Council, I consider that a condition is required to ensure that the communal kitchen/dining room on the ground floor is retained as communal living space to ensure appropriate living conditions for the occupiers of the HMO (6).
31. The purpose of conditions 3, 4 and 5 is to require the appellant to comply with a strict timetable for dealing with cycle storage, waste storage and nitrogen and phosphorus mitigation, which need to be addressed in order to make the development acceptable. The conditions are drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission, it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters, because the development has already taken place. The purpose and effect of the conditions is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

Conclusion

32. For the above reasons, I conclude that the appeal should succeed and planning permission be granted subject to conditions.

S Leonard

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: TQRQM18285113852717, TQRQM18285113719981, PG.3124.18.1 and untitled kitchen layout plan.
- 2) The occupation of the HMO hereby permitted shall be limited to a maximum of 7 persons at any one time.
- 3) Unless within one month of the date of this decision a scheme for secure cycle storage is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within one month of the local planning authority's approval, the use of the site as a HMO for more than 6 persons shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved cycle storage provision in this condition, that provision shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) Unless within one month of the date of this decision a scheme for waste storage is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within one month of the local planning authority's approval, the use of the site as a HMO for more than 6 persons shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved waste storage provision in this condition, that provision shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) Unless within one month of the date of this decision a scheme for the mitigation of increased nitrogen and phosphorus levels resulting from the development is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within one month of the local planning authority's approval, the use of the site as a HMO for more than 6 persons shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the

time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) The ground floor room annotated as 'kitchen/dining' as set out on drawing Ref PG.3124.18.1 shall be retained as communal space at all times and shall not be used for any other purposes.

*****End of Conditions*****