



Appeal Decision

Site Visit made on 27 October 2020

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 27th November 2020

Appeal Ref: APP/Z1775/W/20/3253203

74 Jessie Road, Southsea, Portsmouth, PO4 0AN

- 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 Simon Birmingham against Portsmouth City Council.
 - The application Ref 19/01483/FUL, is dated 2 October 2019.
 - 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 dismissed and planning permission for change of use from class C4 (house in multiple occupation) to Sui Generis (house in multiple occupation for more than 6 persons) is refused.

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.

Preliminary Matters

3. Following the lodging of the appeal the Council indicated that, had it been in a position to do so, it would have refused the application on the basis that it considered that the proposal would not have provided a good standard of accommodation for the occupiers and would have a harmful effect on the Solent Special Protection Areas.
4. In the appeal documentation I have been provided with a document entitled "Habitats Mitigation Contribution" dated 29 November 2019 and a Planning Obligation by agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 20 November 2020 which provides for a payment for a "PCC Nutrient Neutrality Credit Contribution". These relate to asserted mitigation for the effects on the Solent Special Protection Areas. I will refer to them below.
5. In visiting the property it was clear that the additional bedroom referred to below was being occupied as such and consequently the change of use applied for has taken place.

Main Issues

6. The main issues are:
 - whether the proposed development would provide a good standard of living environment for current and future residents; and

- the effect on the Solent Special Protection Areas.

Reasons

Living conditions

7. The appeal property has planning permission for use as a house in multiple occupation (HMO) under Class C4 of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (as amended). This allows for occupation for up to six persons as a house in multiple occupation. The development utilises a room identified on the plans as a 'study' on the first floor as an additional bedroom and thus has increased the potential occupation to seven persons in seven bedrooms.
8. The Council has published a "Houses in multiple occupations (HMOs) – Ensuring mixed and balanced communities" Supplementary Planning Document (the HMO SPD) dated October 2019. This sets out to ensure, amongst other matters, that those living in HMOs are doing so under good standards of living by setting space standards for bedroom areas and communal living areas. As this is in accordance with Policy PCS23 of The Portsmouth Plan, which requires all development to be well designed providing a good standard of living environment for future residents, I am able to give the HMO SPD significant weight, although it cannot be determinative as all material considerations need to be taken into account.
9. The HMO SPD indicates that single bedrooms must have a minimum Gross Internal Floor area (GIA) of 6.5 m², or 10 m² where no separate living space is provided, and there is reference to "Houses in Multiple Occupation Guidance (September 2018)". Further, the HMO SPD also sets out various amenity spaces and gives a "metric" for a "Combined living space (6 or more persons)" of 34 m². The Combined living spaces is defined as a single, typically open plan space, usually containing a kitchen, dining area and living area, laundry and utility space.
10. In this case five of the bedrooms have floorspaces of less than 10 m². I therefore conclude that in order to provide a good standard of accommodation for the occupiers that appropriate and useable communal space should also be provided. The issue is whether the 28.25 m² in the communal living space provides that, taking also into account that, as the kitchen element is at the far end, part of the space provides a way between the bedrooms and the kitchen area.
11. The nature of the space is elongated, being nearly five times its width, and the narrow width is effectively further reduced by the need to ensure passage through it. This means that, while some residents may choose to congregate, there is insufficient room for sufficient furniture for them to all sit down and interact easily. I noted that there was only room for a three person sofa on one side of the room. I therefore conclude that due to the width of the space there is insufficient communal space to provide a good standard of living accommodation for all the occupants.
12. The appellant has referred to an earlier version of the HMO SPD which would have sought a smaller communal area and less than that which has been provided for in this application. Be that as it may, the Council has adopted a revised SPD and withdrawn the earlier version, and that earlier version is no

longer material. In any event it is not appropriate in a Section 78 appeal to go behind an adopted SPD or compare it with similar documents applicable in other local planning authority areas as these will be responding to different circumstances.

13. The appellant has referred to various appeal decisions in the vicinity relating to HMOs. I have taken these into account, but they do not alter my overall conclusions which relate specifically to the facts of this case, and in particular the shape of the room in question; from the information available it appears that is different in those appeal examples.
14. I therefore conclude that the space provided is not sufficient to provide a good standard of accommodation for current and future users. As such the proposal is contrary to Policy PCS23 of the Portsmouth Plan and the HMO SPD as set out above. It is also contrary to paragraph 127 of the National Planning Policy Framework which indicates that planning decisions should create places with a high standard of amenity for future users.

Habitat sites

15. The site lies within 5.6 km of the Solent Special Protection Areas (the SPA). I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended).
16. The proposed development would result in an increase in the number of people living in proximity to the SPA. It is not in dispute that this proposal, in combination with other plans and projects, is likely to have a significant effect on the SPA through increased recreational activity and increased nutrient load. As the proposal is not directly connected with or necessary for the management of the SPA, I can only grant planning permission if I ascertain in an appropriate assessment that the integrity of the site would not be adversely affected.
17. However, as I am going to dismiss this appeal for other reasons, it is not necessary for me to undertake an appropriate assessment or consider this matter further.

Conclusion

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

RJ Jackson

INSPECTOR