



Appeal Decision

Site Visit made on 10 November 2020

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd December 2020

Appeal Ref: APP/Z1775/W/20/3256990

305 Fawcett Road, Southsea, PO4 0LE

- 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 19/01815/FUL, is dated 29 November 2019.
 - The development proposed is change of use from purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a Sui Generis house of multiple occupation.
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Decision

1. The appeal is dismissed and planning permission is refused for a change of use from purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a Sui Generis house of multiple occupation at 305 Fawcett Road, Southsea, PO4 0LE in accordance with the terms of the application Ref 19/01815/FUL, dated 29 November 2019, and the plans submitted with it.

Procedural Matters

2. The Council has confirmed that, had it been in a position to determine the application, it would have refused planning permission for 2 reasons. These would have related to the quality of the living accommodation and the need for mitigation of the effects of additional nutrient output from the development on the Solent Special Protection Areas (SPAs).
3. During the appeal process, the appellant submitted an updated financial contribution towards the mitigation of recreational pressure on the SPAs arising from the development and a S.106 agreement relating to a financial contribution towards the mitigation of the effects of additional nutrient output. I return to the matter of the SPAs below.
4. A previous appeal against the non-determination of an application for the same development as that before me at the appeal property was dismissed. The Inspector was unable to be satisfied that the change of use would be achievable within the built form as it would be dependent on a roof extension that exceeded that allowed as permitted development and which had been constructed without the benefit of planning permission¹. The parties have confirmed that the size of the extension has since been reduced so that it complies with the limitations of permitted development. This previous appeal decision is therefore of little relevance to the appeal before me.

¹ APP/Z1775/W/18/3201614

5. I noted during my site visit that 7 rooms, including the room annotated as 'Bed 7' on the proposed floor plan drawing, were in use as bedrooms. Therefore, I have determined this appeal on the basis that the change of use has already taken place and that occupancy will be limited to 7 people.

Application for costs

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

Main Issue

7. The main issue is whether the development provides adequate living conditions for its occupiers in respect of communal space.

Reasons

8. The room marked as 'Lounge' on the existing ground floor plan has been converted to a bedroom. Although only increasing the occupancy of the property by one person, the development has therefore also resulted in the loss of useable communal space. As a result, the communal living area consists only of a lounge / kitchen to the rear of the property.
9. The Council's revised "Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities" Supplementary Planning Document (SPD) sets out a standard of 34 m² for a combined living space for 6 or more persons. The communal combined lounge / kitchen area in the appeal property is approximately 27 m² and is therefore significantly smaller than this standard, although the SPD is only guidance and there may be circumstances where a departure from it would be appropriate.
10. The kitchen is of a high standard with fitted cupboards and appliances and is well lit by a window in the rear elevation. A door provides access to the rear garden which, although small, could provide additional space in fine weather. However, the lounge area is narrow with seating for only 4 people in reasonable comfort. It is the thoroughfare to the kitchen and door to the rear garden, and access to both is impeded by furniture.
11. Furthermore, there is limited room for dining with no formal dining table at which to sit and eat. In these circumstances, occupants wishing to sit and relax in the lounge may find themselves adjacent to someone eating a meal. This is far from ideal and indicative of the inadequate nature of the space. The use of the area for drying clothes further reduces the useable area. The communal area is thus inconvenient and functionally poor.
12. The appellant has drawn my attention to the granting of permission by the Council for another Sui Generis HMO with a smaller communal area than the appeal property. Both parties have referred to previous appeal decisions, with the appellant referring to previous appeals that have been allowed for properties with a smaller communal floorspace than the standard in the SPD². However, the appeals to which the appellant refers relate to different properties and 4 of them were determined in the context of the previous version of the SPD, in which the standard for a combined living space was 27 m².

² APP/Z1775/W/18/3198506, APP/Z1775/W/18/3208412, APP/Z1775/W/18/3217420, APP/Z1775/W/17/3185652, APP/Z1775/W/20/3246589, APP/Z1775/W/20/3246262, APP/Z1775/W/20/3246266

13. As the Inspector that determined the 3 appeals that post-date the adoption of the revised SPD, I am familiar with the communal space provision in those properties. I was satisfied that they were acceptable in terms of their quality and layout even though they fell short of the standard. These previous decisions are therefore all distinguishable from the change of use now before me which I have determined on its individual merits having regard to the site specific circumstances.
14. I acknowledge that the size of the bedrooms in the property exceed the minimum standard in the SPD and, with the exception of Bedroom 2, all are reasonably generous, exceeding 10 m². However, the SPD allows a reduced communal area only where *all* bedrooms are of 10 m² or more, which is not the case in the appeal property. The lack of adequate communal space would impact particularly on the occupier of Bedroom 2. Accordingly, the over provision of individual space does not compensate for the under provision of communal space.
15. The appeal property is licensed for occupation by 7 people and the Council's Private Sector Housing Team raised no objections to the layout or room sizes. However, the licensing regime is separate to the planning process and does not form part of the development plan. The granting of an HMO licence is not a reason to set aside the requirements of the development plan. Whilst Brighton and Southampton have lower communal floorspace standards, these are not applicable to the appeal proposal.
16. The appellant has provided no conclusive evidence to support the contention that the increased standard for communal space in the revised SPD will be almost impossible to achieve within the housing type in the Southsea area. The potential adoption by the Council of revised HMO guidance in the future with increased communal space standards is not pertinent to this appeal, which must be determined with regard to the current adopted SPD.
17. I therefore conclude that the change of use has resulted in inadequate living conditions for the occupiers of the property. Accordingly, in this respect it conflicts with Policy PCS23 of The Portsmouth Plan Portsmouth's Core Strategy (2012) which, amongst other things, requires that new development provides a good standard of living environment for future occupiers. The development also conflicts with paragraph 127 f) of the National Planning Policy Framework which requires developments to create places with a high standard of amenity for existing and future users.

Other Matters

18. The appeal property is within 5.6 km of the Portsmouth Harbour, Chichester and Langstone Harbours and Solent and Southampton Water Special Protection Areas (the SPAs). The mudflats, shingle and saltmarshes within 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 the SPAs are, in summary, to ensure that the integrity of the sites is maintained or restored in order to protect the habitats and the birds that depend on them.
19. Research undertaken during 2009-2013 that increased recreation by the occupiers of new housing around the Solent would lead to more people visiting

- the coast for leisure³. This increased recreation has the potential to cause more disturbance to the birds, thus threatening their survival and the achievement of the conservation objectives for the SPAs.
20. 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 Solent⁴. 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.
21. The development has resulted in an additional occupant, with consequent likely additional recreational activity and wastewater. Whilst considered in isolation this increase would be small, when considered in combination with other projects, it is likely to have a significant effect on the SPAs. The Conservation of Habitats and Species Regulations 2017 (as amended) require a decision maker to undertake an appropriate assessment (AA) before giving any permission where there are likely significant effects on the integrity of designated habitats sites from the proposal, either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal.
22. Therefore, had I reached a different conclusion on the main issue, it would have been necessary for me to undertake an AA and give further consideration to the likely effectiveness of mitigation measures. In doing so I would have had regard to the updated financial contribution towards the mitigation measures set out in the Solent Recreation Mitigation Strategy (2017) with regard to the recreational pressure arising from the development. I would also have had regard to the S.106 agreement provided to me securing a financial contribution for the purchase of nutrient mitigation credits in line with the Council's Interim Nutrient Neutral Mitigation Strategy (2019). However, as I am dismissing this appeal for another reason, this has not been necessary.

Conclusion

23. For the reasons given above, and having had regard to the other matter raised, the appeal is dismissed.

Martin Small

INSPECTOR

³ Liley D & Tyldesley D (2013) Solent Disturbance & Mitigation Project Phase III Towards an Avoidance and Mitigation Strategy

⁴ Advice on Achieving Nutrient Neutrality for New Development in the Solent Region' (version 5) June 2020