



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: 11 December 2020

Appeal Ref: APP/Z1775/W/20/3252500

130 St Andrews Road, Southsea PO5 1EX

- 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 L Harmer against the decision of Portsmouth City Council.
 - The application Ref 20/00091/FUL, dated 24 January 2020, was refused by notice dated 12 March 2020.
 - The development proposed is change of use from a dwellinghouse (Class C3) or house in multiple occupation (Class C4) to 8 bedroom/8 person house in multiple occupation (Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a dwellinghouse (Class C3) or house in multiple occupation (Class C4) to 8 bedroom/8 person house in multiple occupation (Sui Generis) at 130 St Andrews Road, Southsea PO5 1EX in accordance with the terms of the application, Ref 20/00091/FUL, dated 24 January 2020, subject to the conditions in the Schedule to this decision.

Application for costs

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

Preliminary Matters

3. The appeal was accompanied by a document entitled "Habitats Mitigation Contribution" dated 9 November 2020 along with a receipt dated 28 January 2020, and a Planning Obligation by agreement dated 7 October 2020 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) relating to a contribution towards a Nutrient Neutrality Strategy. I will discuss these below.

Main Issue

4. The main issue is whether the proposed development would provide a good standard of living environment for future residents.

Reasons

5. 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 proposal is to utilise two of the ground floor rooms identified as 'living' and 'lounge' as

- bedrooms and thus increase the potential occupation to eight persons in eight bedrooms.
6. 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. It is not appropriate in a Section 78 appeal to go behind the HMO SPD or compare it with similar documents applicable in other local planning authority areas as these will be responding to different circumstances.
 7. 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.
 8. The Council's Statement of Case refers to a "required standard" of 22.5 m² for a kitchen/diner where bedrooms are greater than 10 m². I have carefully looked through the HMO SPD and can find no reference to this figure. There is reference to a metric of 11 m² for a kitchen for six or more persons, and another of 14 m² for a living room for six or more persons. There is also a metric of 14 m² for a dining room for six or more persons.
 9. I have been provided with a document entitled "Standards for Houses in Multiple Occupation" dated September 2018, which does include reference to a 22.5 m² figure for "Open plan/combined into a single room" where bedrooms are 10 m² in size. This document appears to be dealing with HMO licencing rather than being a planning document.
 10. If permitted all the bedrooms would have a GIA in excess of 10 m². The dispute relates to the usability of the communal space and whether it would provide a good standard of accommodation. The Council argues that the 25.61 m² for the kitchen/dining room is insufficient, particularly as it partially provides a corridor from the rest of the building into the kitchen area and that only 18.6 m² is unimpeded by kitchen units/fridge.
 11. To deal with this second point. The floor areas for the rooms are set out as GIA figures. There is no reference in the HMO SPD to a calculation for furniture or appliances. The only situation where there the GIA figure is reduced is where there is a limited ceiling height and that does not apply in this ground floor room. I am therefore satisfied that no variation to the GIA figure is necessary in this case.
 12. Where bedrooms are larger, less communal floorspace is necessary to ensure a good standard of living environment overall. Further the GIA of the kitchen/

diner exceeds the floorspace figures for a kitchen and dining room added together, or for a kitchen and living room added together. While an extremely narrow space that also had to be used for circulation could mean that more floorspace was necessary to provide an appropriate standard I am satisfied that the kitchen/dining room is sufficiently wide so as that would not be an issue. Although the communal area is less than the 34m² set out in the HMO SPD given the sizes of all the bedrooms I am satisfied that, overall, a good standard of accommodation would be provided.

13. As such the proposal would comply with Policy PCS23 of the Portsmouth Plan and the aims of the HMO SPD, and would also comply with paragraph 127 of the National Planning Policy Framework (the Framework) which indicates that planning decisions should create places with a high standard of amenity for future users.

Other Matters

14. The site lies within 5.6 km of the Solent Special Protection Areas (the SPAs), that is Chichester and Langstone Harbours Special Protection Area, Portsmouth Harbour Special Protection Area and Solent and Southampton Water Special Protection Area. I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
15. The proposed development would result in an increase in the number of people living in proximity to the SPAs. It is not in dispute that this proposal, in combination with other plans and projects, is likely to have a significant effect on the SPAs through increased recreational activity and increased nutrient load. As the proposal is not directly connected with or necessary for the management of the SPAs it is therefore necessary for me to undertake an appropriate assessment of the implication of the proposal for the SPAs in view of their conservation objectives. I can only grant planning permission if I ascertain in that appropriate assessment the integrity of the sites would not be adversely affected.
16. To address recreational disturbance the Council has adopted a Solent Recreation Mitigation Strategy. This seeks contributions towards a range of mitigation measures to manage visitors to the coast so as to modify behaviours. This has been found through empirical research to be effective on levels of disturbance.
17. I have been referred to the Habitats Mitigation Contribution document. This provided the appropriate contribution as set out in the Solent Recreation Mitigation Strategy. Although the date of the receipt pre-dates the signed document I am satisfied that the relevant contribution has been made.
18. Turning to nutrient load, the Council has set out a cascade of mitigations, with the final option of purchasing 'credits' from the Council's Mitigation Credit Bank. These credits are accrued by the Council's continuous programme of installation of water efficiencies into its own housing stock and then making these credits available to new development.
19. The Planning Obligation provides for the purchasing of such credits as are necessary to mitigate the effects of the proposal, thus ensuring that the proposal would have no greater nutrient load effect on the SPA.

20. Pursuant to Regulation 63(3) of the Habitats Regulations I have consulted the relevant nature conservation body, in this case Natural England, and it has confirmed that, subject to these two mitigations being secured, it is content that the two contributions are sufficient to avoid an adverse impact on the integrity of the European sites and their relevant features. I am satisfied that the two agreements provide those mitigations.
21. Consequently, I am able to make as an appropriate assessment so as to be satisfied to the appropriate level of certainty that the proposal with the mitigations secured will not adversely affect the integrity of the SPAs. Therefore, this issue does not represent an impediment to the grant of planning permission.
22. Both the Council and the appellant have 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. Some deal with earlier iterations of the HMO SPD, which is no longer relevant, and others deal with the principle of the use of the building as an HMO which is not in dispute.

Conditions

23. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. In addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings as this provides certainty.
24. I have also imposed a condition restricting the number of people who can live on the site, since a greater number would have greater effects and several of the rooms do not have 14 m² GIA which is the appropriate size for double bedrooms as set out in the HMO SPD.
25. In order to ensure that adequate provision for cycle parking/storage and waste storage is made in the interests of the amenity for the occupiers, I have imposed conditions requiring schemes for each to be delivered.
26. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Conclusion

27. For the reasons given above I conclude that the appeal should be allowed.

R J Jackson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan - 1:1250; Block Plan - 1:500; and Floor Plans - PG.4020·19·SUI Rev A.
- 3) The premises shall only be used as a house in multiple occupation for a maximum of 8 residents.
- 4) The development hereby permitted shall not be used until a scheme for secure and weatherproof bicycle storage facilities for four bicycles has been submitted to and approved in writing by the local planning authority, and fully installed in accordance with the approved scheme. The approved scheme shall thereafter be retained and kept available for the intended purpose.
- 5) The development hereby permitted shall not be used until a scheme for refuse and recycling storage has been submitted to and approved in writing by the local planning authority, and fully installed in accordance with the approved scheme. The approved scheme shall thereafter be retained and kept available for the intended purpose.

END OF SCHEDULE