



Appeal Decision

Site Visit made on 5 January 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th January 2021

Appeal Ref: APP/Z1775/W/20/3252733

20 Montgomerie Road, Southsea, PO5 1ED

- 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 Kevin Zahra against Portsmouth City Council.
 - The application Ref 19/01866/FUL, is dated 29 November 2019.
 - The development proposed is change of use from purposes falling within a C4 (house in multiple occupancy) to a seven person, seven bedroom house in multiple occupancy for more than 6 persons (Sui Generis).
-

Decision

1. The appeal is dismissed and planning permission is refused for a change of use from purposes falling within a C4 (house in multiple occupancy) to a seven person, seven bedroom house in multiple occupancy for more than 6 persons (Sui Generis) at 20 Montgomerie Road, Southsea, PO5 1ED in accordance with the terms of the application Ref 19/01866/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 standard of the living accommodation and the need for mitigation of the effects of the additional nutrient output from the development on the Solent Special Protection Areas (SPAs)¹. During the appeal process the appellant submitted 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.
3. I noted during my site visit that 5 of the rooms in the appeal property, including the room annotated as 'Bedroom 2' on the proposed floor plan drawings, were in use as bedrooms. Two other rooms were vacant at the time of my visit but were furnished 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 as per the description of the proposal.

Application for costs

4. An application for costs was made by Mr Kevin Zahra against Portsmouth City Council. This application is the subject of a separate Decision.

¹ Portsmouth Harbour SPA, Chichester and Langstone Harbours SPA, Solent and Southampton Water SPA, Solent and Dorset Coast potential SPA, Solent and Isle of Wight Lagoons Special Area of Conservation and Solent Maritime Special Area of Conservation.

Main Issue

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

Reasons

6. The room marked as 'Lounge' on the existing ground floor plan drawing has been converted to a bedroom. Although only increasing the occupancy of the property by one person, the development has therefore 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.
7. The Council's revised "Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities" Supplementary Planning Document (2019) (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 23 m² and is therefore substantially smaller than this standard, although the SPD is only guidance and does not carry the full weight of a development plan policy.
8. The kitchen is of a good standard with fitted cupboards and cooker. Both it and the lounge area are well lit by windows in the rear and side elevations. A door provides access to the rear garden which could provide additional space for sitting out in fine weather. However, the lounge is narrow with seating for only 4 or 5 in comfort. The wall-mounted boiler intrudes awkwardly into the space. The lounge is also the thoroughfare to the kitchen and rear garden which, whilst access is not significantly obstructed by furniture, further reduces the utility and comfort of the lounge area.
9. Furthermore, there is limited room for dining with no formal dining table or worktop 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 communal area is thus inconvenient and functionally poor.
10. I acknowledge that the size of the bedrooms in the property all exceed the minimum standard in the SPD and, with the exception of Bedrooms 5 and 7, are reasonably generous, exceeding 10m². However, the SPD allows for a reduction in the communal area only where *all* the bedrooms are of 10m² or more which is not the case in the appeal property. The lack of adequate communal space impacts particularly on the occupiers of Bedrooms 5 and 7. Accordingly, the over provision of individual space does not compensate for the under provision of communal space.
11. I note that a previous appeal for the use of the appeal property as an HMO for 7 persons was dismissed only on the basis of an uncertainty that the proposal would not adversely affect the integrity of the SPAs². However, that appeal was determined in the context of the previous version of the SPD, in which the standard for a combined living space was 27 m². Although the proposal still fell short of that standard, the adequacy of the internal communal living space was not a matter of contention and was not considered by the Inspector that determined the appeal. I have therefore given that decision little weight in my decision.

² APP/Z1775/W/18/3213995

12. In addition, both parties have referred to other previous appeal decisions, with the appellant referring to 6 previous appeals that have been allowed for properties with a smaller communal floorspace than the standard in the SPD³. However, these relate to different properties and 3 of them were determined in the context of the previous version of the SPD. Moreover, I note that the additional bedroom in the appeal for 103 Manners Road, Southsea was achieved by the subdivision of a large bedroom into two rooms rather than the conversion and loss of communal space.
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. 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 therefore no reason to set aside the requirements of the development plan. Whilst Brighton and Southampton have lower communal floorspace standards for HMOs, these are not applicable to the appeal proposal.
15. I therefore conclude that the change of use has resulted in inadequate living conditions for the occupiers of the property. Accordingly, in this respect, the development conflicts with Policy PCS23 of The Portsmouth Plan Portsmouth's Core Strategy (2012) (the Core Strategy) which, amongst other things, requires that new development provides a good standard of living environment for future occupiers. This policy is consistent with paragraph 127 f) of the National Planning Policy Framework (the Framework) which requires developments to create places with a high standard of amenity for existing and future users, and with which the development therefore also conflicts.
16. The Planning Officer's report concludes that the proposal would conflict with Policy PCS20 of the Core Strategy although this is not cited in the Council's indicated reasons for refusal. Policy PCS20 seeks to ensure mixed and balanced communities through restricting an overprovision of HMOs. It is therefore not relevant to the issue of the adequacy of the living accommodation for the occupiers of the property. In any event, the appeal property is already in use as an HMO and consequently the development has not resulted in an additional HMO in the area. Accordingly, I find no conflict with Policy PCS20.

Other Matters

The SPAs

17. The appeal property is within 5.6 km of the Solent SPAs. The mudflats, shingle and salt marshes within the SPAs provide essential feeding and roosting grounds for an assemblage of internationally important numbers of wading birds which together comprise the qualifying features of the SPAs. The conservation objectives for the SPAs are, in summary, to ensure that the

³ APP/Z1775/W/18/3198506, APP/Z1775/W/18/3217420, APP/Z1775/W/17/3187443, APP/Z1775/W/20/3246266, APP/Z1775/W/20/3246262, APP/Z1775/W/20/3266589

integrity of the sites is maintained or restored in order to protect the habitats and the birds that depend on them.

18. Research undertaken during 2009-2013 found that increased recreation by the occupiers of new housing around the Solent would lead to more people visiting the coast for leisure. 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.
19. 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 populations. NE considers that there is a likely significant effect on the SPAs due to the increase in wastewater from new developments coming forward.
20. 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 the designated habitats sites from the proposal. This is either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal.
21. 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 appellant's financial contribution towards the mitigation measures set out in the Solent Recreation Mitigation Strategy 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.

Other considerations

22. I understand the appellant's disappointment with the Council's position having sought to address the Council's previous concerns through resubmitted applications and the Planning Officer's indication of a recommendation of approval. However, the Council has confirmed that the application would have been refused and this is the basis on which I must determine this appeal.

Conclusion

23. For the reasons given above and having had regard to the other matters raised, I conclude that the appeal should be dismissed.

Martin Small INSPECTOR

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