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# Appeal Decision

Site Visit made on 8 June 2021

**by Martin Small BA(Hons) BPI DipCM MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18<sup>th</sup> June 2021**

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**Appeal Ref: APP/Z1775/W/21/3271224**

**14 Hudson Road, Southsea, PO5 1HD**

- 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 James Oliver against Portsmouth City Council.
  - The application Ref 20/01001/FUL, is dated 4 September 2020.
  - The development proposed is described as C4 HMO Use to Sui Generis HMO use for more than 6 persons.
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## Decision

1. The appeal is dismissed and planning permission is refused for C4 HMO Use to Sui Generis HMO use for more than 6 persons at 14 Hudson Road, Southsea, PO5 1HD in accordance with the terms of the application, Ref 20/01001/FUL dated 4 September 2020, and the plans submitted with it.

## Procedural Matters

2. I observed during my site visit that the room annotated as 'Lounge' on the existing floor plans had been furnished as a bedroom. I have therefore determined this appeal on the basis that the development has taken place. As 7 rooms are indicated as bedrooms on the proposed floor plans and the plans drawing indicates that all rooms are for single use, I have considered this appeal on the basis of an assumed occupancy of 7 people.

## Main Issues

3. The Council failed to determine the appeal within the prescribed period, has provided no appeal statement within the required timescale nor given any indication of what its decision would have been had it been in a position to determine the application. However, having considered the written evidence, undertaken a site visit and determined previous appeals for similar developments within the city<sup>1</sup>, I consider the main issues to be:
  - i) the effect of the development on the integrity of the Portsmouth Harbour, Chichester and Langstone Harbours and Solent & Southampton Water Special Protection Areas (the SPAs); and
  - ii) whether the development provides adequate living conditions, with particular regard to communal space.

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<sup>1</sup>APP/Z1775/W/20/3246589, APP/Z1775/W/20/3246262, APP/Z1775/W/20/3246266, APP/Z1775/W/20/3256990 and APP/Z1775/W/20/3252733

## Reasons

### *The SPAs*

4. The mudflats, shingle and saltmarshes of 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 each of the SPAs are to ensure that the integrity of the site is maintained and restored in order to protect the habitats and the birds that depend on them.
5. Research undertaken during 2009-2013 predicted that new housing around the Solent would lead to more people visiting the coast for leisure, the majority from within a 5.6 km straight line distance of the SPAs<sup>2</sup>. This increased recreation has the potential to cause more disturbance to the birds, thus threatening their survival.
6. 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 Solent<sup>3</sup>. 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.
7. The appeal property is within 5.6 km of the SPAs. There is likely to be additional recreational activity and wastewater arising from the additional occupant. Whilst considered in isolation this change would be small, when considered in combination with other projects, it is likely to have a significant effect on the integrity of the SPAs. It is therefore necessary for me, as the competent authority, to undertake an appropriate assessment (AA) and consider whether or not mitigation could reduce any adverse effects on the protected areas.
8. The Solent Recreation Mitigation Strategy (2017) (the SRMS) provides a strategic solution to ensure that the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) with regard to the in-combination effects of increased recreational pressure on the SPAs arising from new residential development are met through mitigation measures.
9. The Strategic Access Management and Monitoring mitigation measures include a team of rangers to help coastal visitors and communities understand the importance of the different bird species and the impact of disturbance. The measures are funded by contributions from all new residential dwellings within 5.6 km of the SPAs, usually secured through a legal agreement.
10. As regards nutrients, NE explains that one way to address the uncertainty over potential impacts is for new developments to achieve nutrient neutrality. NE appreciates that it may be difficult for smaller developments to achieve nutrient neutrality and states that it is working with a number of Councils to progress mitigation strategies that cover the Councils' areas and include more strategic

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<sup>2</sup> Liley D and Tyldesley D (2013) Solent Disturbance & Mitigation Project Phase III Towards an Avoidance and Mitigation Strategy.

<sup>3</sup> Advice on Achieving Nutrient Neutrality for New Development in the Solent Region (version 5 June 2020)

options. NE suggests that these may include a scheme collecting financial contributions from developers.

11. The Council has published an Interim Nutrient Neutral Mitigation Strategy (2019) (INNMS). The INNMS sets out three possible mitigation options including *"Purchasing of 'mitigation credit' from the control of, and eater efficiency improvement works to, the Council's own property assets or other recognised source of 'credit' in perpetuity"*. The INNMS explains that the Council is currently able to accumulate 'mitigation credit' to help offset new development through water efficiency improvements to the Council's housing stock and by holding vacant Council assets due for redevelopment.
12. This mitigation option is to be funded through a proportionate contribution from developers as appropriate, collected and pooled through S.106 agreements. For smaller development proposals that are seeking to use the mitigation credit, the Council will offer such credit in perpetuity for an appropriate administration and monitoring fee, to be secured through a planning obligation.
13. I consider that the SRMS and INNMS set out suitable measures for the mitigation of the likely significant effects of the development on the SPAs and that contributions towards this mitigation are necessary to make the development acceptable in planning terms. The appellant submitted a statement with the application confirming his agreement to a payment and a S.106 agreement in respect of the additional wastewater discharge. The appellant subsequently indicated that he would look to do this throughout the appeal process.
14. However, I have no evidence that any payments have been made and no planning obligations have been provided to me for the contributions towards either mitigation measures for the recreational disturbance or the nutrient discharge. I cannot be certain therefore that the necessary mitigation has been secured.
15. I have considered whether a condition were planning permission to be granted, such as that imposed by the Inspector that determined the appeal for another Sui Generis HMO within Southsea to which the appellant draws my attention<sup>4</sup>, would be an appropriate means of securing the requisite contributions to mitigation measures. However, in that other appeal the appellant submitted a payment towards mitigation for the recreational disturbance and a S.106 Agreement for mitigation of the nutrient discharge. The Inspector for that case noted that the condition was required in conjunction with the S.106 Agreement. The circumstances for that appeal were therefore materially different to those for the appeal before me.
16. The Planning Practice Guidance advises that a negatively-worded condition requiring the applicant to enter into a planning obligation is unlikely to be appropriate in the majority of cases. Such a condition may be appropriate in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk, for example, in the case of particularly complex development schemes. However, I have no evidence that this is applicable to this proposal. A condition requiring a planning obligation or obligations would therefore not be appropriate, in my view, in the circumstances of this appeal.

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<sup>4</sup> APP/Z1775/W/20/3245978

17. I therefore conclude that, without suitable mechanisms to secure appropriate mitigation for the effects arising from the occupation of the additional bedroom through additional recreational activity and wastewater discharge, the development is likely to have an in-combination adverse effect on the integrity of the SPAs.
18. Accordingly, in this respect, the development conflicts with the Habitats Regulations and Policy PCS13 of The Portsmouth Plan Portsmouth's Core Strategy (2012) (the Core Strategy). Policy PCS13 sets out that green infrastructure will be protected by, amongst other things, refusing developments that would have an adverse effect on a habitats site either alone or in combination with other plans and projects.

#### *Living conditions*

19. The development has resulted in the loss of a communal lounge. Although only increasing the occupancy of the property by one person, the development has therefore resulted in the loss of useable communal space.
20. However, the property has a lounge area with seating for 4 persons in comfort and a kitchen / dining area with a dining table also for 4 persons. Although the lounge is partially separated from the kitchen / dining area by a screen, they effectively function as a combined communal area. Their combined floorspace is shown on the application drawings as approximately 34 m<sup>2</sup> which is the standard set out in the Council's "Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities" Supplementary Planning Document (2019) (SPD). The development therefore accords with the SPD guidance on the extent of communal floorspace.
21. Although it is necessary to pass through the lounge area to access the kitchen / dining area, this can be done with reasonable ease. The communal areas have adequate natural light from windows, a glazed door and a rooflight. The kitchen is of a high standard with fitted cupboards and appliances. Furthermore, I observed that all the bedrooms are of a reasonable size and they exceed the minimum standard in the SPD. While some of the floor area of Bedroom 1 on the top floor has a reduced floor to ceiling height due to the slope of the roof, it is nevertheless of a reasonable size with adequate useable space. All the bedrooms have ensuite facilities.
22. I therefore conclude that the development provides adequate living conditions for the occupiers of the property with regard to the provision of both communal and personal space. Accordingly, I find no conflict in this respect with Policy PCS23 of the Core Strategy which, amongst other things, requires that new development provides a good standard of living environment for occupiers.

#### **Other Matters**

23. I acknowledge the appellant's contention that the property has an HMO licence for no more than 7 persons and I observed during my site visit that the accommodation is of high quality. However, these matters do not outweigh the likely significant effect on the integrity of designated habitats sites which would be adverse and for which there is no adequate mitigation before me.
24. The standards for HMOs adopted in Brighton and Southampton are not relevant to Portsmouth and Southsea. Whether or not the Council will revise the SPD in

the future is not a consideration for this appeal, which I have determined in accordance with the current planning policy context.

25. I note the objections raised by local residents. However, the property was already in use as a HMO and the development has not increased the proportion of HMOs in the area. No evidence has been provided that the increase to 7 occupants has led to any harm in respect of parking, refuse, or water or sewerage capacity or increased anti-social behaviour. These matters have therefore not been determinative in this appeal.

### **Conclusion**

26. Although I have found that the development provides adequate living conditions for 7 persons, this is not sufficient to outweigh the conflict with the development plan and the Habitats Regulations I have identified above. Therefore, and having regard to the other matters raised, the appeal is dismissed and planning permission is refused.

*Martin Small*

INSPECTOR