



Appeal Decision

Site Visit made on 22 June 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

Appeal Ref: APP/Z1775/W/20/3265839

36 Pains Road, Southsea PO5 1HE

- 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 Simon Birmingham against the decision of Portsmouth City Council.
 - The application Ref 19/01395/FUL, dated 11 September 2019, was refused by notice dated 20 November 2020.
 - The development proposed is described as 'C4 use (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 invalid and I am unable to proceed to consider the planning merits of the case.

Preliminary Matter

2. In the banner heading above, I have taken the appeal site address, 36 Pains Road, from the planning application form. According to the planning application 'Floor Plans'¹, at the date of the application the appeal property contained six bedrooms and the application form indicated that the change of use sought had not already started. The application included the use of a ground floor lounge as a seventh bedroom. At my site visit I was able to view 36 Pains Road internally, with the appellant, and saw that the development had already occurred.

Reasons

3. The planning application included a 1:1250 scale 'Location Plan'² which has a heading '36 Pains Road'. It also included a 1:500 scale plan with a heading '36 Pains Road', referenced in the appeal submission by an electronic file name as a 'Block Plan'³. Both of these plans identified the same application site in Pains Road edged with a red line.
4. Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Order), which was the Order in force at the time the scheme was submitted, sets out that an application for planning permission 'must' be accompanied by a plan which identifies the land to which the application relates. In addition, the Government provides advice on validity requirements in Planning Practice Guidance (PPG). It explains that the submission of a valid application for planning permission requires, amongst

¹ Drawing number PG.4000.19.5 Rev B, Feb 19

² Plan Number TQRQM190151154258905, 15 January 2019

³ Plan Number TQRQM190151153211535, 15 January 2019

other things, compliance with national information requirements. In this case, PPG⁴ stipulates that 'The application site should be edged clearly with a red line on the location plan' and that 'it should include all land necessary to carry out the proposed development'.

5. At my site visit I was able to verify that the appeal site is 36 Pains Road. This property address is therefore consistent with the headings in the Location Plan and the Block Plan. However, according to the property address numbering shown in both of these plans, the red line in both plans is drawn around 24 Pains Road. I was able to confirm this by visual observation of the location of properties in Pains Road and their address numbers at my site visit.
6. I also saw that 24 Pains Road is a significant distance away from 36 Pains Road and that while it is a similar type of property, it may not be identical. Moreover, it does not face towards, or adjoin, the same properties in Pains Road as does 36 Pains Road, nor does it back onto the same nearby properties in Hudson Road to the rear. Consequently, I am also concerned that it is at least possible that this material discrepancy in the identification of the application site may have prejudiced some interested parties.
7. Section 79 of the Town and Country Planning Act 1990 (the TCPA) empowers the Secretary of State to deal with the application as if it had been made to him in the first instance. It follows that I am entitled to make a fresh judgement on validity. With regard to Article 7 of the Order, there is a fundamental inconsistency in the Location Plan and in the Block Plan between the identification of the appeal site as referred to by the headings and as referred to by the red lines in these plans. Furthermore, to reflect PPG the red lines in both plans must edge 36 Pains Road, but they do not.
8. I find that the failure to comply with Article 7 of the Order and with PPG, in this case due to the incorrect red line in the application plans, means that the application is invalid. Consequently, having regard to Section 79 of the TCPA, planning permission could not have been granted by the Council.

Conclusion

9. For the reasons given above, I conclude that the appeal should not continue.

Robin Buchanan

INSPECTOR

⁴ PPG paragraph ID: 14-024-20140306