
Appeal Decision

Site Visit made on 12 October 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2021

Appeal Ref: APP/Z1775/W/20/3253373

28 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 Simon Birmingham against Portsmouth City Council.
 - The application Ref 19/01398/FUL is dated 11 September 2019.
 - 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 dismissed and planning permission is refused for change of use from purposes falling within Class C4 (house in multiple occupation) to a 7-bedroom house in multiple occupation (sui generis) at 28 Hudson Road, Southsea, PO5 1HD in accordance with the terms of the application, Ref 19/01398/FUL, dated 11 September 2019, and the plans submitted with it.

Application for costs

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

Procedural Matters

3. The description of the development in the banner heading above is taken from the application form. However, I have used the description from the Council's acknowledgement of receipt of the application and the appeal form in my formal decision as more accurately describing the development.
4. The Council has advised that had it been in a position to determine the application prior to the submission of the appeal, it would have refused planning permission. I have had regard to the Council's indicated reasons for refusal which relate to the quality of the living accommodation and the need for mitigation to protect the Solent Special Protection Areas (SPAs)¹.
5. I observed during my site visit that the room annotated as 'Lounge' on the existing ground floor plan was in use as a bedroom. I have therefore determined this appeal on the basis that the development has taken place. With the description of the development on the appeal form and 7 bedrooms shown on the proposed floor plans I have considered this appeal on the basis of an assumed occupancy of 7 persons, as confirmed by the appellant.

¹ Portsmouth Harbour SPA, Chichester and Langston 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

6. The main issue is whether the development provides satisfactory living conditions for the occupants in respect of communal space and whether or not it represents an over intensive use of the property.

Reasons

7. Although only increasing the occupancy of the appeal property by one person, the conversion of the room marked as 'Lounge' on the existing plans drawing to a bedroom has resulted in the loss of useable communal space. As a result, the communal living area would comprise the area marked as "kitchen / dining" to the rear of the property. This area also includes a small lounge area.
8. The Council's "Housing 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 - 10 persons. The main parties accept that the combined kitchen / dining area is approximately 27.7 m² and I have no basis to consider otherwise. I acknowledge that the communal space standard in the SPD applies to 6 - 10 persons with no sliding scale and that the SPD is only guidance and does not carry the full weight of the development plan. Nevertheless, the communal space would fall significantly short of the adopted standard.
9. The kitchen is of a good standard with fitted cupboards and appliances. The kitchen, dining area and lounge area are well lit by windows in the rear and side elevations. A glazed door provides access to a small paved rear courtyard which could provide additional space for sitting out and drying washing in fine weather. However, the current lounge area is narrow, with seating for only 4 in comfort on two sofas. The furnishing of this area partially obstructs access to the dining area and kitchen through the lounge area. This further reduces the utility and comfort of the lounge area.
10. Whilst a dining table is provided with seating for 5 the need to retain access to the kitchen restricts access to one side of the table. Furthermore, the table is immediately adjacent to the small lounge area so that occupants wishing to sit and relax in the lounge area may find themselves in proximity to someone eating a meal, which would not be ideal. These factors all lead me to the conclusion that the communal lounge and dining area is cramped, inconvenient and functionally poor.
11. Although the floor plans are not annotated with room sizes, the main parties accept that the size of the bedrooms in the property all exceed the minimum standard set out in the SPD and that 4 of the rooms exceed 10 m². I have no reason to consider otherwise. However, the SPD allows for a reduction in the communal area only where *all* the bedrooms are of 10 m² or more, which is not the case with the appeal property. The lack of adequate communal space impacts particularly on the occupiers of the 3 smallest bedrooms. Accordingly, the over provision of personal space does not compensate for the under provision of communal space.

12. Both main parties have referred to previous appeal decisions for similar developments elsewhere in Southsea². In those decisions to which the appellant refers smaller communal floorspace than the standard in the current SPD was considered acceptable by the Inspectors determining those appeals. These include an appeal for the neighbouring property to the appeal property, No 30 Hudson Road, for occupancy by 8 persons.
13. However, these decisions relate to different properties and 5 of the appeals were determined in the context of the previous version of the SPD, in which the standard for a combined living space was 27 m². These include the appeal for No 30 where the Inspector noted that the combined floor area of the dining / kitchen and study would meet the then standard in the SPD and was satisfied that a good standard of communal facilities would be available.
14. Whilst acknowledging the similarities in the area of communal space between that appeal and that before me I have reached a different conclusion based on my assessment of the quality and functionality of the communal space in the property before me. Moreover, the adoption of the revised SPD since the previous appeal decision and subsequent granting of permission for the change of use of No 30 to an eight bedroom HMO is a significant material change in circumstances.
15. As the Inspector that determined the 3 appeals to which the appellant refers 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 distinguishable from the change of use now before me which I have determined on its individual merits having regard to the site specific circumstances.
16. Although the copy of the HMO licence provided by the appellant relates to 74 Jessie Road rather than to the appeal property, I have no reason to doubt the appellant's contention that the latter is licensed for 7 persons. The Council's Private Sector Housing Team raised no objection to the development. 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 thus no reason to set aside the requirements of the development plan.
17. Whilst Brighton and Southampton have lower communal floorspace standards for HMOs, these are not applicable to the appeal proposal. I have no conclusive evidence to support the appellant's contention that the increased standard for communal floorspace 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. The proximity of the appeal property to the University and its consequent likely attraction to students does not outweigh the deficiency in communal space.
18. For the reasons given above, I conclude that the change of use has resulted in unsatisfactory living conditions for the occupiers and represents an over

² APP/Z1775/W/18/3208412, APP/Z1775/W/18/3198506, APP/Z1775/W/18/3217420, APP/Z1775/W/18/3185652, APP/Z1775/W/17/3189601, APP/Z1775/W/20/3246266, APP/Z1775/W/20/3246262, APP/Z1775/W/20/3246589, APP/Z1775/W/20/3248561, APP/Z1775/W/20/3247887

intensive use 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 130 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.

19. 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 was 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. This is consistent with the decisions of other Inspectors to which the appellant also draws my attention³.

Other Matters

Solent SPAs

20. The appeal property is within 5.6 km of the Solent 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 birds are vulnerable to disturbance from recreational activity by occupiers of new housing within 5.6 km of the designated sites. In addition, high levels of nitrogen and phosphorus, mostly from agricultural sources or wastewater from development, are being discharged to the water environment in the Solent which adversely impacts the birds through eutrophication.
21. The development has resulted in an additional occupant, with consequent likely additional recreational activity and wastewater. Whilst this increase would be small in isolation, 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.
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 regard to the indication in the Planning Officer's report and Council's AA that a payment by the appellant of a contribution towards mitigation of the recreational impacts has been secured. I would also have had regard to the appellant's willingness to apply for the purchase of mitigation credits to mitigate against the additional nutrient discharge. However, as I am dismissing this appeal for another reason, this has not been necessary.

³ APP/Z1775/W/18/3213995, APP/Z1775/W/18/3217420, APP/Z1775/W/18/3198506,

Other considerations

23. I understand the appellant's frustration that the renovations to the appeal property were guided by and the planning application submitted under the provisions of the previous version of the SPD. However, I must determine this appeal in the context of the current adopted guidance.
24. I note the objections submitted by multiple members of the East St Thomas Residents Forum (the Forum). The locality has a high proportion of HMOs. However, the property was already in use as an HMO and the development has not increased the proportion of HMOs in the area. The SPD sets out that with proposals to change the use of a Class C4 HMO to a Sui Generis HMO in areas with an existing imbalance of HMOs the Council will consider the potential harm caused by an increase in the number of bedrooms. I have no evidence that the one additional bedroom / occupant at the appeal property has resulted in significant further harm to the already unbalanced community.
25. It has not been demonstrated that the circumstances of the appeal at 13 Wyndcliffe Road, Southsea, to which some members of the Forum refer, are comparable to those in the appeal before me. No evidence has been provided either to corroborate the claims of issues with parking, noise, disturbance, antisocial behaviour, litter or rubbish with the occupation of the appeal property or other HMOs in the area. I am thus not persuaded that the change of use with one additional occupant is harmful to the living conditions of the occupiers of nearby properties. I therefore find no conflict with the SPD in this respect. Therefore none of the matters raised by members of the Forum have been determinative in this appeal.

Conclusion

26. I have found above that the development conflicts with the development plan taken as a whole. There are no considerations that indicate that a decision should be made other than in accordance with the development plan.
27. Therefore, and having regard to the other matters raised, the appeal is dismissed and planning permission is refused.

Martin Small

INSPECTOR