

---

## Appeal Decision

Site visit made on 23 November 2021

**by S Leonard BA (Hons) BTP MRTPI**

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

**Decision date: 6<sup>th</sup> December 2021**

---

**Appeal Ref: APP/Z1775/W/21/3279063**

**73 Ophir Road, Portsmouth PO2 9ER**

- 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 Rob Vandenberghe against the decision of Portsmouth City Council.
  - The application Ref 21/00252/FUL, dated 15 February 2021, was refused by notice dated 7 July 2021.
  - The development proposed is change of use from dwellinghouse (Class C3) to purposes falling within Class C4 (house of multiple occupation) or Class C3 (dwellinghouse).
- 

### Decision

1. The appeal is allowed and planning permission is granted for change of use from dwellinghouse (Class C3) to purposes falling within Class C4 (house of multiple occupation) or Class C3 (dwellinghouse) at 73 Ophir Road, Portsmouth PO2 9ER, in accordance with the terms of the application Ref 21/00252/FUL, dated 15 February 2021, and the plans submitted with it, subject to the attached schedule of conditions.

### Procedural Matters

2. The description of development is taken from the appeal form and decision notice, as it more fully describes the proposal than that on the planning application form.
3. Since the refusal of the planning application and the submission of this appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published on 20 July 2021. I have taken the revised Framework into account where relevant to my decision.
4. The planning application was not submitted retrospectively, but I saw during my site visit that development has commenced on the appeal scheme. It has not been completed, and the property is not occupied. I have dealt with the appeal accordingly.
5. As part of this appeal, the appellant has submitted an amended drawing, Ref PG.5078.20.1 rev B, indicating a revised ground floor layout in respect of the proposed kitchen/lounge and shared WC. It also includes an additional rear single storey extension beyond the rear extension shown on the submitted planning application drawing. This would provide extra internal communal amenity floorspace. I saw during my site visit that both rear additions have been built.

6. The planning appeals procedural guidance<sup>1</sup> (Annexe M) advises that, if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh planning application. Moreover, if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
7. The appellant states that the further 3m deep rear extension has been added under permitted development. However, the determination of what could potentially be built under permitted development rights is not a matter for me to decide within the context of an appeal made under Section 78 of the Act. To that end it is open to the appellant to apply for a determination under sections 191/192 of the Act, and my determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome of this appeal.
8. The additional rear extension did not form part of the scheme upon which the Council made their decision, and interested parties have not had the opportunity to comment on the revised scheme. Accordingly, and having regard to the large amount of third party interest in the planning application, I have determined the appeal on the basis of the scheme which was refused by the council and the plans listed on the decision notice, which include drawing Ref PG.5078.20.1 Rev A.

### **Main Issue**

9. The main issue is whether the appeal scheme provides appropriate living conditions for future occupants, having regard to communal living space provision.

### **Reasons**

10. The appeal property is a two-storey, mid-terraced property located on the south side of Ophir Road, within an established residential area in the northern part of the City. The lawful use of the property is as a Class C3 dwellinghouse.
11. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) provides for the use of a dwelling house as a HMO by not more than 6 residents; that is, up to 6 unrelated individuals who share basic amenities.
12. The Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants planning permission, under Part 3 Class L, for a change of use from Use Class C3 (use as a dwelling house for up to 6 people living as a single household) to Use Class C4. However, the Council has, from 1 November 2011, put in force a citywide Direction under Article 4 of the Town and Country Planning Act 1990 (as amended) (TCPA), that removes this permitted development right.
13. The Council has also adopted a Supplementary Planning Document titled '*Houses in Multiple Occupation (HMOs) – Ensuring Mixed and Balanced Communities*' (the HMO SPD) (updated in October 2019) which seeks to prevent an oversaturation of HMOs in the City's communities by setting

---

<sup>1</sup> Procedural Guide. Planning Appeals – England. The Planning Inspectorate August 2019.

guidance for applications for change of use to C4 and/or Sui Generis use, as well as ensuring those living in HMOs benefit from good standards of living by setting space standards for bedroom areas and communal living areas. The SPD was adopted following public consultation, and I therefore give it significant weight.

14. All six proposed single-occupancy bedrooms would have a floor area which exceeds 10 sqm. In this instance, for HMOs for 6 or more persons, the HMO SPD requires a minimum floor area of 22.5 sqm for internal communal amenity space, where the kitchen and lounge comprise a combined use room. The proposal would provide a communal area of 24.8 sqm, and therefore meets the Council's adopted floorspace requirement.
15. The appellant states that the kitchen layout shown on the application drawing No. PG.5078.20.1 Rev A is indicative, and that no final kitchen design had been agreed, pending liaison with the Council's Licensing section in respect of the requirements of the Housing Licence. Having regard to the proposed communal living space room size and shape, whilst part of the room would be narrower than the single storey element at the rear, I am satisfied that there would be sufficient space to arrange kitchen, dining area/lounge, laundry and utility space facilities within the room, which would satisfy the requirements of a maximum of 6 residents.
16. I also note that the kitchen/lounge would be light and airy due to south-facing patio doors and a window. There is also a rear garden area which would be accessed via the proposed kitchen/lounge, and this would enhance the communal living space, particularly during good weather.
17. Moreover, all of the proposed bedrooms would comfortably exceed the minimum floorspace requirements of the HMO SPD, would benefit from natural light, and would include en-suite facilities which are in excess of the WC/bathroom facilities required by the Council's standards. As such, there is a reasonable likelihood of residents preferring to spend time in their bedrooms rather than in the communal lounge, and using the shared facilities for cooking and laundry purposes rather than as a sitting room.
18. The proposed positioning of the lounge/kitchen adjacent to a bedroom is not an uncommon arrangement within HMO accommodation, I have no compelling evidence before me that this room layout would result in materially harmful living conditions for the occupiers of bedroom 6, having regard to noise disturbance.
19. For the above reasons, I therefore conclude that the appeal scheme would provide appropriate living conditions for future occupants, having regard to communal living space provision. As such, the development accords with Policy PCS23 of *The Portsmouth Plan (2012)* and the HMO SPD, in so much as this policy and guidance aim to ensure that new development protects amenity, and provides a good standard of living environment for future residents and users of new development.
20. This is generally consistent with Paragraph 130 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

## Other Matters

21. I have had regard to third-party concerns in respect of the amount of HMOs within the area, and an associated impact on community living conditions. The Officer Report confirms how the proposal accords with the Council's adopted HMO SPD which sets a 10% threshold for the number of HMOs within a 50m radius of the site in order to ensure a balanced community, and places restrictions on the location of HMOs in relation to each other and to existing residential properties in the interests of amenity and the living conditions of neighbours. On this basis, I am satisfied that these matters have been satisfactorily addressed.
22. I have taken account of neighbour concerns in respect of carparking. The Council has raised no objection in this regard, noting that the proposed Class C4 HMO would require 2 parking spaces to accord with the Council's parking standards. I do not find this to be significantly greater than the expected carparking requirements associated with the existing family-sized dwellinghouse. As such, and having regard to the availability of on-street parking in the road and the accessible location of the site in relation to facilities and services and public transport connections, I am satisfied that this matter does not constitute a reason for dismissing the appeal.
23. Third party objections on the basis of noise disturbance are acknowledged. The Council has not raised an objection in this respect, and on the basis of the information before me and my site inspection, neither do I. The proposed Class C4 HMO use would accommodate a maximum of 6 residents. I am not persuaded that such occupation would result in an increase in noise levels that would be significantly greater than those associated with the existing lawful use as a dwellinghouse, enlarged through permitted roof and rear additions, which does not have an occupancy number restriction.
24. Third-party concerns have been raised that work has already commenced on the appeal scheme. I saw that alterations to the internal room layouts are currently underway, and the information before me is that the rear dormer and single storey extension shown on the planning application drawing Ref PG.5078.20.1 Rev A, upon which my decision is based, were, respectively, constructed under permitted development, as set out within Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) Order 2015, and in accordance with Prior Approval consent Ref 21/00008/GPDC.
25. In any event, prior implementation of the development would not affect my conclusions in respect of the main issue, as I must determine the appeal on the merits of the scheme before me.
26. I have acknowledged the neighbour concerns regarding sewage disposal. I have not been presented with any evidence of localised sewage issues. I do not, therefore, consider that this is a determining factor in the consideration of this appeal.
27. I have noted third-party concerns about antisocial behaviour and crime. However, there is no evidence before me that it is likely that these matters would arise as a result of the proposed HMO use of the property.

28. Some other matters raised by third parties, including utility supplies, neighbouring property devaluation and party wall responsibilities, are not determining factors in the consideration of this appeal.

### **Conditions**

29. I have considered the Council's suggested conditions in the light of the tests set out in Paragraph 56 of the Framework and the National Planning Practice Guidance (PPG) and imposed them where I consider them to be necessary and reasonable, incorporating amendments for the sake of clarity and precision.
30. Given that the development has already started, I do not consider a condition setting a timescale for the commencement of the approved development to meet the conditions set out in the Framework. It is necessary to define the plans for certainty. A condition is required to ensure that the communal kitchen/lounge on the ground floor is retained as communal living space whilst the property is occupied as a HMO, to ensure appropriate living conditions for the occupiers of the HMO. A condition to ensure the provision of secure on-site cycle parking is justified in the interests of promoting sustainable travel in the city.

### **Conclusion**

31. For the above reasons, I conclude that the appeal should succeed, and planning permission be granted subject to conditions.

*S Leonard*

INSPECTOR

### **Annex A**

#### **Schedule of conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: TQRQM20140124154542, TQRQM20356111046987 and PG.5078.20.1 Rev A.
- 2) The ground floor room annotated as 'kitchen/lounge' as set out on drawing Ref PG.5078.20.1 Rev A shall be retained as communal space at all times, and shall not be used for any other purposes, whilst the property is in use as a Class C4 (house of multiple occupation).
- 3) Prior to first occupation of the property as a house in multiple occupation within Class C4, secure and weatherproof bicycle storage provision for 4 bicycles, as set out on drawing Ref PG.5078.20.1 Rev A, shall be provided at the site, and shall thereafter be kept available for the parking of bicycles.

**\*\*\*End of Conditions\*\*\***