
Appeal Decision

Site visit made on 16 November 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2021

Appeal Ref: APP/Z1775/W/21/3278212

5 Vernon Road, Portsmouth PO3 5DR

- 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 (OMPD Ltd) against the decision of Portsmouth City Council.
 - The application Ref 20/01052/FUL is dated 15 September 2020.
 - The development proposed is change of use from dwellinghouse (Class C3) to mixed use purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse) including bicycle shed.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from dwellinghouse (Class C3) to mixed use purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse) including bicycle shed at 5 Vernon Road, Portsmouth PO3 5DR, in accordance with the terms of application Ref 20/01052/FUL dated 15 September 2020, and the plans submitted with it, subject to the attached schedule of conditions.

Procedural Matters

2. Since the submission of the planning application and 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.
3. The planning application was not submitted retrospectively, but I saw during my site visit that the appeal scheme has been carried out and the property is occupied. I have dealt with the appeal accordingly.

Main Issues

4. The Council failed to determine the appeal within the prescribed period, has provided no appeal statement within the required timescale, nor indicated what its decision would have been had it been in a position to determine the application. However, on the basis of considering the written evidence before me, including the development plan policies and supplementary planning document provided by the main parties, and determining recent appeals¹ for similar developments within the city, as well as having carried out a site visit, I consider the main issues to be:

¹ APP/Z1775/W/21/3279063, APP/Z1775/W/21/3280800 and APP/Z1775/W/21/3268630

- The effect of the development on the mix and balance of households in the local community and the resulting effect on the character of the surrounding area and living conditions of neighbouring occupiers; and
- Whether the appeal scheme provides appropriate living conditions for future occupants, having regard to private and communal living space.

Reasons

5. The appeal property is a two-storey, mid-terraced property located on the west side of Vernon Road within an established residential area in the northern part of the city. The evidence before me, based on the description of development agreed by the main parties, is that the lawful use of the property is as a Class C3 dwellinghouse.
6. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) 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.
7. 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.
8. 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 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 HMO SPD was adopted following public consultation, and it accords with Policies PCS20 and PCS23 of *The Portsmouth Plan* (2012) (the PP), which, respectively, seek to ensure that a range of household needs continue to be accommodated throughout the city, and that new development respects the character of the city and protects amenity. I therefore afford significant weight to the HMO SPD.

Mix and balance of households

9. The HMO SPD recognises that HMOs are an important type of accommodation for Portsmouth residents, including people on low incomes, young professionals, students, and single-person households. However, the conversion of high-density Victorian terraces, which are prevalent within the city, into HMOs has the potential to harm community cohesion and sustainability, as well as reducing the availability of family-sized dwellings with 3 or more bedrooms. The HMO SPD also notes that there is strong correlation between amenity complaints and the number of HMOs in a community.
10. The HMO SPD therefore seeks to prevent excessive concentrations of HMOs, and ensure the future provision of mixed and balanced communities. To do this, it provides a definitive threshold, stating that planning permission will not be granted for new HMOs where the proportion of HMOs would exceed 10% of the residential properties within a 50-metre radius of the site.

11. The appellant states that there is only one other HMO property, 22 Dartmouth Road, within the 50-metre radius, so that the appeal scheme raises the HMO percentage to 3.07% within the defined radius. The Council has provided no evidence to contradict this figure, and I have no reason to disagree. Third party comments have stated that 54 Vernon Road is a HMO. However, I have no robust evidence before me to confirm that this property comprises an existing HMO located within the 50-metre radius. In any event, an additional HMO within the radius would not be sufficient to raise the percentage of HMOs to 10%.
12. The HMO SPD also advises that a concentration of HMOs in a local area in relation to adjacent dwellings can give rise to harm to amenity and disturbance. Appendix 6 of the HMO SPD explains that such circumstances which may cause these effects are where proposals would result in 3 or more adjacent HMOs or the 'sandwiching' of residential property between 2 HMOs. The appeal scheme does not result in either of these situations.
13. For the above reasons, on the basis of the evidence before me, and having regard to the methodology in the HMO SPD, I therefore conclude that the appeal scheme does not have a harmful effect on the mix and balance of households in the local community such that it would cause subsequent harm to the character of the surrounding area and living conditions of neighbouring occupiers.
14. The appeal scheme therefore accords with PP Policies PCS20 and PCS23 and the HMO SPD, which taken together, seek to ensure that a range of household needs continue to be accommodated within the city, and only allow changes of use to a HMO where the community is not already imbalanced by a concentration of such uses, or where the development would not create an imbalance, and that new development respects the character of the city and provides a good standard of living environment for neighbouring and local occupiers.
15. This is generally consistent with advice in Chapter 5 of the Framework, which encourages the provision of a mix of housing types to satisfy the needs of various community groups, and Paragraph 130 of the Framework which seeks to ensure that developments create places that promote a high standard of amenity, health and well-being for existing and future users.

Living conditions

16. All five bedrooms would meet the HMO SPD bedroom space standards for single (6.51sqm) or double (11sqm) bedrooms. Where single bedrooms exceed 10sqm and double bedrooms exceed 14sqm, the HMO SPD allows for a combined communal living space with a minimum floor area of 15.5sqm for HMOs with between 3 and 5 persons and 22.5sqm for HMOs for 6 or more persons. This would comprise a single, typically open plan space, usually containing a kitchen, dining area and living area, laundry and utility space.
17. The appeal scheme provides for an open plan combined internal living space area of 23.83sqm. This would enable the property to be occupied as either 5 single-occupancy rooms or as a 6-resident HMO through the occupation of bedroom 4 as a double room, whilst meeting the HMO SPD combined communal living space floor area requirements.

18. I found on my site visit, that the communal living space comprises a well-laid out good standard of utility, including cooking and washing and drying facilities, and seating and dining space. It is light and airy due to a large bay window at the front and an open plan layout. There is also a rear garden area, incorporating outdoor seating and drying facilities which would enhance the communal living space, particularly during good weather.
19. Moreover, the bedrooms are of a generous size, with each benefitting from an en-suite. Windows provide light and air and there is space to accommodate furniture, including desks and sofas, in addition to double beds. In my opinion, the bedrooms provide an environment in which residents would be comfortable spending time within their rooms.
20. For the above reasons, I therefore conclude that the appeal scheme provides appropriate living conditions for future occupants, having regard to private and communal living space provision. As such, the development accords with PP Policy PCS23 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.
21. 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

22. I have had regard to third party concerns in respect of carparking capacity within the vicinity of the site and exacerbation of traffic congestion. I did not experience any such issues during my site inspection, which took place during a weekday morning, although I recognise that this represents a snapshot in time and the situation may be different at other times such as evenings and weekends.
23. However, whilst there is no on-site parking, I find that the parking requirements associated with the lawful use of the property as a family-sized dwelling with an unrestricted number of residents, would not differ significantly from those associated with the Class C4 HMO appeal scheme, which, by definition, would be occupied by a maximum of 6 persons.
24. 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.
25. Third party objections on the basis of noise disturbance are acknowledged. The appeal scheme 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, which does not have an occupancy number restriction.
26. 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 Class C4 HMO use of the property.
27. In respect of neighbour concerns regarding the demand for new infrastructure arising from the development, this matter is dealt with by means of the

Council's Community Infrastructure Levy (CIL) requirements. Also, third party concerns regarding utility supplies are not determining factors in the consideration of this appeal.

28. I have noted neighbour concerns that the development has been carried out. However, implementation of the appeal scheme would not affect my conclusions in respect of the main issues, as I must determine the appeal on the merits of the scheme before me.

Conditions

29. I have considered the requirement for 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.
30. Given that the development has already been implemented, there is no requirement for a condition setting a timescale for the commencement of the approved development. It is necessary to define the plans for certainty. A revised drawing, Ref PG.5140.20.4, was submitted during the course of the determination of the planning application. Both main parties have confirmed agreement that this drawing is relevant for the purposes of this condition.
31. A condition is required to ensure that the communal kitchen/dining room on the ground floor is retained as communal living space to ensure appropriate living conditions for the occupiers of the HMO. Notwithstanding the Council's HMO Licensing requirements, Licensing and Planning are the subject of separate regulations. The communal living space shown on drawing Ref PG.5140.20.4 accords with the details of the planning application. Whilst I have found that amount of communal living space not to be harmful, any reduction would need to be assessed against relevant development plan policies and the HMO SPD.
32. I saw during my site inspection, that the proposed cycle storage shown on the approved plans has not been provided on site. Therefore, a condition to ensure the provision of secure on-site cycle parking is justified in the interests of promoting sustainable travel in the city.
33. In the interests of protecting the character and appearance of the area and the living conditions of occupiers of the appeal scheme and neighbouring properties, I have also imposed a condition to ensure the provision of adequate refuse storage facilities.
34. The purpose of conditions 3 and 4 is to require the appellant to comply with a strict timetable for dealing with cycle storage and waste storage, which need to be addressed in order to make the development acceptable. The conditions are drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission, it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters, because the development has already taken place. The purpose and effect of the conditions is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

Conclusion

35. 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: TQRQM20259115755551, TQRQM20259115631635 and PG.5140.20.4.
- 2) The ground floor room annotated as 'kitchen/dining' on drawing Ref PG.5140.20.4, shall be retained as communal space at all times and shall not be used for any other purposes whilst the property is occupied as a HMO.
- 3) Unless the approved cycle storage scheme as shown on drawing Ref PG.5140.20.4 is implemented within one month of the date of this decision, the use of the site as a HMO shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as the cycle parking is implemented.

Upon implementation of the approved cycle storage provision in this condition, that provision shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) Unless within one month of the date of this decision a scheme for waste storage is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within one month of the local planning authority's approval, the use of the site as a HMO shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved waste storage provision in this condition, that provision shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

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