

Appeal Decision

Site visit made on 11 October 2021

by S Edwards BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal Ref: APP/Z1775/W/21/3272718

18 Pains Road, Southsea PO5 1HE

- 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 20/00996/FUL, is dated 1 February 2021.
 - 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 for 'C4 HMO Use to Sui Generis HMO Use for more than 6 persons' is refused.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) published on 20 July 2021 sets out the Government's planning policies for England. Policies within the Framework are material considerations which should be taken into account for the purposes of decision-making from the date of its publication. The parties were given the opportunity to comment on this matter, and I have had regard to the updated Framework in determining this appeal.
3. The name of the appellant as stated on the appeal form differs from the name of the applicant detailed on the application form submitted as part of this appeal. The Council was notified that Mr Simon Birmingham owned the appeal property and the application form was amended accordingly as part of the application process. I have proceeded on this basis.
4. At the time of my site visit, the ground floor rooms were occupied as bedrooms, and I have therefore considered this appeal on the basis that the development is part retrospective.
5. The appeal is against the Council's failure to give notice, within the prescribed timescales, of a decision on an application for planning permission. As the Council has provided no putative reasons for refusal, I have relied on the appellant's submissions and concerns expressed by interested parties to identify the main issues.

Main Issues

6. Given the above, the main issues are:

- The effect of the development on the water quality of the Solent environment; and
- The effect of the development on the mix and balance of households in the local community, with particular regard to noise and disturbance.

Reasons

Solent environment

7. As detailed within the supporting text to Policy PCS13 of the Portsmouth Plan – Portsmouth’s Core Strategy (CS), the area administered by the Council includes a number of nature conservation sites which have been designated in accordance with the Habitats Regulations. The appeal site lies within relative proximity to the Solent River, which forms part of the areas covered by statutory nature conservation designations due to its rich biodiversity variety.
8. There are however increasing concerns that high levels of nutrients, such as nitrates and phosphates, are entering the Solent water environment. This is believed to cause a dense growth of certain plants, otherwise known as eutrophication, which is having a detrimental impact on protected habitats and bird species living in this area. Plans and projects that could increase nutrient loading typically result in the generation of wastewater, change in land use or through activities involving the management of organic matter.
9. The number of individuals living within the Solent catchment area has increased as a result of the development subject to this appeal. Consequently, there is a risk that the appeal scheme could have, for the reasons detailed above, a likely significant effect on the integrity of the Solent water environment, either individually or in combination with other plans and projects, unless suitable mitigation is provided. However, in the absence of sufficient information to the contrary and evidence of consultation with Natural England, I am required to exercise a precautionary approach.
10. I understand that the Council has implemented a scheme, whereby ‘nitrate credits’ can be purchased as a form of mitigation to offset the effect of small developments. The appellant has confirmed his intention to apply for the purchase of mitigation credits to mitigate against the additional accommodation, and is willing to enter into a Section 106 Legal Agreement. However, I have not been presented with a duly completed planning obligation to secure such mitigation measures, and there is therefore no guarantee that the contribution would be used for its intended purpose.
11. Whilst the appellant has referred to an appeal decision¹ where the matter was issued by the imposition of conditions, limited information has been presented regarding the details of this particular scheme, and I cannot therefore be certain that the circumstances constitute a direct parallel to the proposal before me, which I am required to assess on its individual merits.
12. Having regard to the available evidence, and in the absence of completed planning obligation, the existence of significant adverse effects on the integrity of the Solent water environment resulting from the proposal, in combination with other plans and projects, cannot be excluded. Accordingly, I cannot be satisfied that the appeal scheme would accord with Policy PSC13 of the CS.

¹ APP/Z1775/W/20/3245978.

Mix and balance of households

13. The appeal site forms part of an established residential area predominantly characterised by long terraces of properties set within proximity to the road frontage. The appeal property is itself a two-storey terraced dwelling, which includes additional accommodation within the roofspace. The property appears to have been occupied as a C4 House in Multiple Occupation (HMO) for a number of years, and this is not disputed by the Council. The appeal scheme seeks to change the use of the premises to a Sui Generis HMO by converting two of the ground floor rooms into additional accommodation.
14. As detailed within the supporting text to Policy PCS20 of the CS, there are significant numbers of HMOs in Portsmouth. Whilst the contribution that this type of accommodation makes to meeting current and future housing need is recognised, the Council's HMO Supplementary Planning Document² (SPD) explains that there is a correlation between the concentration of HMOs and the effect it has on local communities. This prompted the Council to introduce an Article 4 Direction removing permitted development rights, which would otherwise allow changes of use from Class C3 to Class C4.
15. As set out within the HMO SPD, a community is considered to be imbalanced where more than 10% of residential properties within a 50m radius of the area surrounding the application property are already in HMO use. I have been presented with limited information regarding the proportion of properties in use as HMOs in the area, but representations made by interested parties suggest that there is already a high number of properties in multiple occupation within the vicinity of the appeal site.
16. However, it is of note that the appeal scheme would not lead in the loss of an additional family dwelling and would not increase the proportion of HMOs in the area. The bedrooms are not particularly spacious, but remain of an adequate size for single occupancy. All bedrooms benefit from washing facilities and the communal space is considered of an appropriate size for the number of occupants. Whilst the number of occupants has increased to 8, the intensification resulting from the additional comings and goings is likely to remain limited. Had the development been considered acceptable in all other respects, it would have nevertheless been necessary to impose a condition restricting the number of residents to control future occupation of the development, and in order to support mixed and balanced communities.
17. Given the above, the appeal development would not adversely erode the mix and balance of households in the local community or cause harm to residential amenity, having particular regard to noise and disturbance. I therefore find no conflict with Policy PCS20 of the CS and the HMO SPD. The appeal development is also considered in accordance with Policy PCS23 of the CS, which notably requires proposals to provide a good standard of living environment for neighbouring occupiers and future residents of the development.

Other Matters

18. Other concerns have been raised by interested parties, notably in respect of the effect of the development on parking provision in the area. However, I have not been provided with substantive evidence that there would be

² House in Multiple Occupation (HMOs) – Ensuring mixed and balanced communities SPD (as amended in October 2019).

unacceptable parking issues as a result of the development, or that the Local Highway Authority objected on such grounds, and I therefore find no harm in that regard.

Conclusion

19. There are no material considerations, which indicate that the appeal should be determined, other than in accordance with the development plan. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR