



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: 07 January 2022

Appeal Ref: APP/Z1775/W/21/3280800

51 Farlington Road, Portsmouth PO2 0DS

- 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 Rob Vandenberghe against the decision of Portsmouth City Council.
 - The application, Ref 21/00366/FUL, is dated 10 March 2021.
 - The development proposed is change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwellinghouse) and Class C4 (house in multiple occupation).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwellinghouse) and Class C4 (house in multiple occupation) at 51 Farlington Road, Portsmouth PO2 0DS, in accordance with the terms of application Ref 21/00366/FUL, dated 10 March 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 Council's description of development and the appeal form, since it more fully describes the proposal than that on the planning application form.
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 part-occupied. I have dealt with the appeal accordingly.

Main Issue

4. The Council failed to determine the planning application within the prescribed period, but has sought a resolution from the Planning Committee as to its likely determination should it have retained jurisdiction over the application. The submitted Officer Report confirms that the main issue is whether the appeal scheme provides appropriate living conditions for future occupants, having regard to communal living space provision.

Reasons

5. The appeal property is a two-storey, mid-terraced property located on the west side of Farlington Road, within an established residential area in the northern part of the City. The information before me is that the lawful use of the

property is as a Class C3 dwellinghouse. It has been extended by means of rear single storey and dormer roof additions, which the Council has confirmed were undertaken under permitted development.

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 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.
9. The appeal scheme layout includes 6 single-occupancy bedrooms and a communal living space comprising a combined kitchen/dining room. The HMO SPD indicates that single bedrooms must have a minimum Gross Internal Floor Area (GIA) of 6.51sqm. In the case of HMOs comprising 6 or more persons, there is a GIA requirement of 34sqm for 'combined living space', defined as a single, typically open plan space, usually containing a kitchen, dining area and living room, laundry and utility space. The Council's putative reason for refusal is that the scheme fails to provide an acceptable standard of living accommodation as, the combined living space GIA of 25.6sqm falls significantly below this GIA requirement.
10. However, the appellant has drawn my attention to Paragraph 2.7 and associated footnote 3 of the HMO SPD which refers to circumstances in which bedrooms comprising a minimum of 10sqm GIA, require a combined living space minimum GIA of 22.5sqm, through reference to the Council's '*Standards for Houses in Multiple Occupation*' (September 2018) guidance document.
11. All six proposed single-occupancy bedrooms would have a floor area which exceeds 10 sqm, and the appeal scheme therefore meets the Council's adopted floorspace requirements for bedrooms and combined living space.
12. The combined kitchen/dining room is of a high standard with fitted cupboards and appliances. It is light and airy due to a roof light, and a window and a door in the west-facing rear elevation. The open plan rectangular shaped room configuration provides ample space to provide cooking and washing and drying facilities as well as seating and dining space. There is also a rear garden area,

accessed directly via the kitchen/dining room, which enhances the communal living space, particularly during good weather.

13. Moreover, all of the proposed bedrooms would comfortably exceed the minimum floorspace requirements of the HMO SPD and would benefit from windows providing natural light and air. They would all also include en-suite facilities which are in excess of the WC/bathroom facilities required by the Council's standards. In my opinion, the bedrooms provide an environment in which residents would be comfortable spending time within their rooms, using the communal living space primarily for cooking, eating and laundry related activities.
14. The proposed positioning of the kitchen/dining room 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 2, having regard to noise disturbance.
15. In addition to compliance with the Council's minimum room size standards, I have considered the quality and spaciousness of the property as a whole, and I am satisfied that, overall, a good standard of accommodation would be provided.
16. 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 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.
17. 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

18. I have had regard to third-party concerns in respect of the amount of HMOs within the area, and an associated impact on the supply of family homes and on community living conditions. The Officer Report confirms how, and taking account of existing HMOs brought to its attention by third parties, 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.
19. I have had regard to third party concerns in respect of exacerbation of parking problems within the site vicinity. I did not experience any parking 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.
20. Whilst there is no on-site parking, I find that the parking requirements associated with the lawful use of the property as a recently enlarged 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.

21. 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.
22. 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.
23. I have had regard to neighbour concerns regarding loss of privacy. However, I am not persuaded, on the basis of the evidence before me, that the occupation of bedrooms as part of a Class C4 HMO use would result in a materially greater amount of overlooking to neighbouring properties than if the bedrooms were occupied as part of a Class C3 dwellinghouse.
24. 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.
25. 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.
26. Also, third party concerns regarding utility supplies, Party Wall Agreement and the appellant's motives for the appeal scheme are not determining factors in the consideration of this appeal.
27. 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

28. 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.
29. 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.
30. 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.5141.21.2 Rev B 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.

31. I saw during my site inspection, that the proposed cycle storage shown on approved drawing Ref PG.5141.21.2 Rev B 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.
32. 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.
33. 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

34. 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: TQRQM20246130345216, TQRQM20356111444327 and PG.5154.21.2 Rev B.
- 2) The ground floor room annotated as 'kitchen/dining' on drawing Ref PG.5154.21.2 Rev B, 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.5154.21.2 Rev B 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*****