



Appeal Decision

Site visit made on 7 November 2022

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2022.

Appeal Ref: APP/Z1775/W/22/3296133

13 Shadwell Road, Portsmouth, Hampshire PO2 9EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 'Act') 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 Christian Reynolds against Portsmouth City Council.
 - The application Ref 21/01622/FUL, is dated 3 November 2021.
 - The development proposed is change of use from dual use dwellinghouse (Class C3)/house in multiple occupation (Class C4) to house in multiple occupation for more than six people (*sui generis*).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description on the appeal form as a more comprehensive description of the development than that given on the application form.
3. The Council has resolved that, had the appeal not been lodged, it would have granted planning permission, subject to conditions and a legal agreement. I have taken that resolution into account in my determination of the appeal.
4. At the time of my visit, the property was in use as a house in multiple occupation with both rooms denoted as 'lounge' and 'study' on the existing floorplans being used as bedrooms. When taken with the 6 rooms denoted as 'bedrooms' on the existing plan, a total of 8 bedrooms were being occupied. This differs from the appellant's statements made at the application and appeal stages which propose 7 bedrooms with the rear ground floor room used as a communal study. The Council also made its resolution based on a 7 bedroom occupancy. The description of the development for which planning permission is sought is not so constrained. The discrepancy between the description of development for which permission is sought, what is proposed in the accompanying documents, and the current occupancy arrangements has implications for my consideration of the appeal, which I explain in more detail in my reasoning.
5. The appellant has questioned the need for planning permission, referring in support to previous enforcement appeal decisions on the change of use to or enlargement of houses in multiple occupation (HMO)s in the Portsmouth area¹, and the recommendation in the committee report for this case. However, it is not within the remit of this appeal, which has been made under section 78 of

¹ APP/Z1775/C/20/3245106 and other conjoined appeals

the Act, to determine whether planning permission is required. If the appellant wishes to determine whether the proposed use would be lawful, the correct procedure would be to make an application under section 191 or 192 of the Act for a certificate of lawfulness. For the purposes of this appeal, I shall assume the proposal to amount to a material change of use for which planning permission is required.

Main Issues

6. Although the Council has resolved that it would have granted planning permission for the development subject to an agreement and conditions, several representations have been received at the application and appeal stages that object to the proposal on a number of grounds. I have had regard to these representations as well as the Council's submitted documents in determining what I consider to be the main issues in this case.
7. The main issues are the effect of the proposed change of use on:
 - The impact on the Solent special protection areas
 - The mix and balance of housing in the area
 - The standard of accommodation for future occupants
 - The living conditions of neighbouring occupants
 - The need and availability of parking space.

Reasons

Solent Special Protection Areas

8. Several areas of international ecological importance in and around the Solent are experiencing eutrophication from increased nutrients in waste water, which includes waste water generated by properties in Shadwell Road. As there may be a potential to increase waste water discharge from the property, it is necessary for me to undertake an appropriate assessment under the terms of the Conservation of Habitats and Species Regulations 2017 (as amended) to determine whether the development would be likely to have a significant effect on the special protection areas, and if so whether that effect could be mitigated.

Appropriate assessment

9. The proposed 'sui generis' HMO use would enable a greater level of occupancy than that associated with a Class C4 HMO use or a Class C3 dwellinghouse use with no more than 6 people living together as a household. The Portsmouth City Council Updated Interim Nutrient Mitigation Strategy for new Dwellings, June 2022 recognises that distinction, recommending that enlargements from a Class C4 HMO to a sui generis HMO use fall within the types of development for which mitigation is required because it would result in a net increase in population.
10. In this case the increase in waste water discharge is likely to be modest because the increase in occupancy would be small. However, some parts of the special protection areas are in unfavourable conservation status and any additional nutrient discharge could worsen the current situation, even if only to

a small extent. There is also the possibility of greater recreational pressure disturbing the feeding grounds of internationally important bird populations. Harm to the ecological value of the Solent therefore cannot be ruled out and, adopting the precautionary approach taken by the Regulations, I conclude that there is the possibility of a significant adverse effect on the integrity of the special protection areas.

11. The Council, in partnership with other organisations including Natural England, has sought to address this adverse effect by providing developers with the opportunity to buy 'mitigation credits' that would be used to provide mitigation measures to achieve nutrient neutrality in the Solent. It also provides mitigation measures to reduce recreational pressures, for which contributions are also sought.
12. The appellant has indicated a willingness to enter into an agreement to contribute to the mitigation schemes. However, no such agreement has been drawn up or included with the appeal. I cannot therefore be certain that the necessary mitigation measures would be carried out as part of the development.
13. The appellant has suggested that if it is needed such an agreement could be required by condition or, alternatively, a decision on the appeal delayed until such an agreement is in place.
14. With regard to the first suggestion, the Planning Practice Guidance advises that no payment of money or other consideration can be required when granting planning permission, and a condition which requires an applicant or appellant to enter into a planning obligation is unlikely to pass the test of enforceability. A negatively worded condition limiting the development that can take place until an agreement has been entered into is also unlikely to be appropriate in the majority of cases. For those reasons, and notwithstanding the appeal decision to which I have been referred², I do not consider a condition requiring contributions towards mitigation would meet the tests set out in paragraph 56 of the Framework.
15. With regard to the second suggestion, the Planning Appeals: Procedural Guide advises that where it is needed, an executed and certified copy of a planning agreement or obligation should be submitted as part of the appeal no later than 7 weeks from the start date. This has not happened.
16. In this case, there is also the further complication as to what mitigation is required. Although the application and appeal statements are predicated on an increase of 1 bedroom to 7 bedrooms in total, the property is currently being occupied as 8 bedrooms, which would be allowed by the description of the development for which permission is sought. Although it would be possible to impose a condition restricting occupation to 7 people as suggested by the Council, that would conflict with what I observed on site and, presumably, how the property would be operated were permission to be granted. This discrepancy needs to be resolved before the appropriate level of mitigation could be determined. For that reason, delaying a decision to allow an agreement to be drafted would not necessarily resolve this issue. This

² APP/Z1775/W/20/3245978:66 Margate Road, Southsea

circumstance differs from that considered in an appeal decision to which my attention has been drawn³.

17. I conclude that in the absence of agreed and enforceable mitigation measures, the development would conflict with the Habitats Regulations and paragraph 180 of the National Planning Policy Framework (the 'Framework'), which resists development which is likely to have an adverse effect on designated sites of special scientific interest, such as the Solent special protection areas.

Mix and balance of housing

18. Policy PCS20 of the Portsmouth Plan 2012 permits changes of use to a house in multiple occupation (HMO) where the community in which it is situated is not already imbalanced by a concentration of such uses or where the development would not create such an imbalance. The 'Houses in multiple occupation (HMOs) – ensuring mixed and balanced communities' Supplementary Planning Document 2019 provides guidance on the interpretation of Policy PCS20. It says that a community is considered to be imbalanced where more than 10% of residential properties within a 50m radius of the application property would be in HMO use.
19. In this case the existing lawful use of the property is a dual use as a dwellinghouse or as an HMO under Use Class C4, which allows between 3 and 6 unrelated people sharing amenities. The proposed change of use would increase occupation but would not alter the number of HMOs within the area. The Council reports that the property is not currently licensed as an HMO but that does not alter its lawful use for planning purposes.
20. Where planning permission is sought to change the use of a Class C4 or mixed C3/C4 use to an HMO in '*sui generis*' use, the supplementary planning document on HMOs advises that in areas where concentrations of HMOs exceed the 10% threshold, the potential harm to amenity caused by the increase in the number of bedrooms in an already unbalanced community should be considered.
21. The information submitted by the Council on whether the community is unbalanced is contradictory in that the committee report states that there are 42 HMOs out of 75 properties within a 50m radius, while the minutes of the meeting at which the case was discussed state that there is 1 other HMO within a 50m radius. I give greater weight to the latter figure as being more recent, but irrespective of whichever is correct I consider the use of 1 more bedroom as proposed by the appellant would be unlikely to significantly alter the balance within the community or harm amenity. Neither I nor the Council have been asked to judge on the use of 2 more bedrooms and so I shall not do so here.
22. In addition to the number of HMOs in the locality, the supplementary planning guidance also seeks to avoid situations where a dwellinghouse would be sandwiched between 2 HMOs, or where there would be a concentration of 3 or more HMOs alongside one another. I note in the representations it is alleged that there are 3 HMOs alongside one another although this is not accepted by the Council. However, as the property is already in HMO use, it would not increase the number of properties in HMO use and would therefore not result in a greater concentration of properties in HMO use than existing.

³ APP/Z1775/W/21/3277766: 72 Montgomerie Road, Southsea

23. Having regard to the supplementary planning guidance on HMOs, I am satisfied that the proposal would not have a harmful effect on the mix and balance of housing in the area and would therefore accord with Policy PCS20 of the Portsmouth Plan 2012, which supports mixed and balanced communities and seeks to ensure that a range of household needs continues to be accommodated throughout the city.

Standard of accommodation for future occupants

24. Policy PCS23 of the Portsmouth Plan 2012 requires, amongst other criteria, a good standard of living environment for future residents and users of the development, and secure cycle storage. The supplementary planning guidance on HMOs and further guidance given in the document 'Standards for Housing in Multiple Occupation 2018' assist with interpretation of the policy by providing minimum standards for room sizes for bedrooms, bathrooms and communal spaces.
25. The proposed accommodation meets or exceeds the suggested minimum room sizes. There is sufficient space in the rear garden area to accommodate secure cycle storage, which could be required by condition. Bicycles would have to be taken through the house but that is no different to the current arrangement.
26. The resolution of the Council was made subject to an informative that the communal space provided in the kitchen/dining area would have been found insufficient because of its layout and the narrowness of the corridor leading to it. I disagree. Having viewed the space, I consider it to be usable and adequate for its intended purpose. The entrance to the kitchen area is relatively narrow but no more so than in many kitchens in similar properties, and all of the appliances and worktops are easily accessible.
27. Having regard to all of the above considerations, I conclude that a good standard of accommodation for future occupants would be provided by the development, and it would therefore accord with Policy PCS23 of the Portsmouth Plan 2012, which promotes good design and attractive living environments.

Living conditions of neighbouring occupants

28. The increase in the number of occupants in a property that is already being used as an HMO may increase the amount of activity to some degree, but it would be modest and in proportion to the existing pattern of activities, and unlikely to be significant. I have no reason to believe that occupiers of this particular development would generate more noise or be more anti-social than other residential occupants. I do not consider that the use of the property as a 'sui generis' HMO would give rise to a form or level of activity that would be harmful to neighbouring properties in the area.
29. The more general concerns that have been expressed relate to the concentration of HMO uses eroding the community values of the area by introducing a more transient population of mostly single individuals into what is a predominantly family orientated neighbourhood. While the conversion of some properties to HMOs may result in a more diverse local population, such uses are responding to the need for HMO accommodation in the city. The policy introduced by the Council to limit the concentration of HMO uses in one place is intended to strike an appropriate balance between these competing needs.

30. Having found above that the proposed use would not conflict with Policy PCS20 of the Portsmouth Plan 2012, I conclude that the proposed use would not harm the living conditions of neighbouring occupants. For the same reasons it would not conflict with Policy PCS23 of the Portsmouth Plan 2012, which requires a good standard of living environment for neighbouring and local occupiers.

Parking

31. No dedicated parking space is provided at the property, and therefore increasing the number of occupants may result in some additional pressure on existing on-street parking capacity. However, the increase would be very modest and unlikely to significantly add to pressure for on-street parking. It is also the case that Policy PCS20 seeks to control an undue concentration of such HMO uses in any one area, such that any additional pressure for on-street parking would be limited. The parking standard for a Class C4 HMO and a 'sui generis' HMO are the same. Additional demand for on-street parking would not therefore be so pressing as to amount to a reason for resisting the proposed change of use.
32. Attention is drawn in a representation to a recent fatal accident involving a pedestrian in Shadwell Road. While any accident of this nature is regrettable, I have been given no evidence that it could be attributed to the presence of HMOs in the road. I therefore place little weight on the incident in relation to this particular proposal.

Conclusion

33. Although I have found that the mix and balance of housing in the area, the standard of accommodation for future occupants, the living conditions of neighbouring occupants and parking is all acceptable within the policy framework adopted by the Council for assessing HMO uses, because of the lack of suitable mitigation I am unable to conclude that the development would have no adverse effect on the Solent special protection areas. The development would therefore conflict with the Habitat Regulations and the Framework. I consider these are material considerations that outweigh the other matters which accord with the development plan.
34. Consequently, I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR