

Appeal Decision

Site visit made on 5 October 2022

by S Edwards BA MA TCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/Z1775/W/22/3297557
22 Montgomerie Road, Southsea PO5 1ED

- 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 21/01733/FUL, is dated 29 November 2021.
 - The development proposed is 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 appeal results from the Council's failure to determine the application within the prescribed period. Although the proposed development was considered by the Council's Planning Committee and a Decision Notice was issued after the appeal was lodged, the jurisdiction to determine the application was transferred to the Planning Inspectorate upon valid receipt of the appeal. Notwithstanding the above, I have taken into consideration the concerns raised by Members of the Planning Committee and reasons for refusal to define the main issues and for the determination of this appeal.
3. Within the submissions made by the main parties, there has been some discussion as to whether or not the appeal scheme constitutes a material change of use, and whether or not planning permission would as a result be required for the development. The appellant's statement is supported by a number of appeal decisions in respect of changes of use to Houses in Multiple Occupation (HMOs), where enforcement notices were quashed. However, whether or not a material change of use has occurred is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990 (as amended).
4. At the time of my site visit, the lounge had been converted into a bedroom, and I have therefore considered this appeal on the basis that the development is part retrospective.

Main Issues

5. The main issues are:

- The effect of the development on the integrity of the Special Protection Areas (SPAs); and
- Whether the development provides satisfactory living conditions for the occupiers of the premises.

Reasons

Special Protection Areas

6. The appeal site lies within proximity to the internationally designated Solent habitat sites (collectively known as the Solent SPAs), which support significant numbers of overwintering bird species. Some of these areas are presently in an 'unfavourable' condition due to existing levels of nutrients entering the Solent's water environment, which are causing eutrophication. As well as favouring the dense growth of certain plants, eutrophication also restricts the growth, distribution and variety of food available for wading birds, which are protected under the Habitats Regulations.
7. Natural England has therefore advised Local Planning Authorities in this area that all new development involving, or generating additional, overnight stays should be 'nutrient neutral'. As a result of the increased number of occupiers, 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.
8. In such circumstances, I am required, when evaluating the effects that a proposal might have or has on SPAs, to consider avoidance and reduction measures through an Appropriate Assessment (AA), rather than at the screening stage. No evidence of consultation with Natural England during the course of the planning application has been presented, and I shall therefore adopt a precautionary approach.
9. For small scale proposals such as the appeal development, the Council has implemented a scheme enabling applicants or appellants to purchase nitrate neutral mitigation credits, which have to be secured through the completion of a planning obligation, prior to occupation of the development. In addition to this, standard conditions are normally required to ensure higher levels of water efficiency and prevent occupation until such time as the 'Nutrient Neutral' mitigation credit has been funded through the planning obligation. The appellant has confirmed that he would like to purchase mitigation credits and is willing to enter into a Section 106.
10. There is no planning obligation before me, but the appellant suggests that this matter could be addressed by conditions. However, as emphasised by the national Planning Practice Guidance chapter on the use of planning conditions¹, a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to the grant of planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. Whilst I have had regard to the appeal decisions to which the appellant has referred, no very exceptional circumstances have been

¹ Paragraph: 010 Reference ID: 21a-010-20190723.

presented in this particular instance to justify delaying the issuing of the appeal decision.

11. Without evidence of appropriately secured mitigation measures, significant adverse effects on the integrity of the Solent water environment caused by the appeal development, in combination with other plans and projects, cannot be excluded. Consequently, I cannot be satisfied that the appeal development complies with Policy PSC13 of the Portsmouth Plan – Portsmouth’s Core Strategy, which states that any unavoidable impacts on biodiversity as a result of development should be appropriately mitigated. Furthermore, the appeal scheme fails to comply with the requirements of the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 and Section 15 of the National Planning Policy Framework.

Living conditions

12. The appeal premises have a lawful use as a C4 HMO and, as noted above, the lounge has been converted into an additional bedroom to enable the property’s occupation by up to seven individuals. This has in turn resulted in the loss of communal space available for the occupiers of the HMO. The Council’s HMOs – Ensuring mixed and balanced communities Supplementary Planning Document (SPD) seeks to secure the provision of a good standard of living environment for future occupiers, and notably sets out minimum sizes for bedrooms, kitchens, dining areas and combined living spaces².
13. The existing kitchen/dining area is approximately 23 square metres and falls significantly short of the requirements of the SPD, which states that combined living spaces for 6 persons or more should be at least 34 square metres. However, the main parties have also referred to the Council’s Standards for HMOs³, which requires open plan or combined living areas for 6 to 10 individuals to be at least 22.5 square metres in instances where bedrooms are 10 square metres.
14. No substantive evidence has been presented to suggest that these Standards have been superseded by the HMO SPD, and I have therefore no reason not to afford weight to this document. As all the bedrooms are reasonably sized, a smaller combined living area is considered acceptable in this particular case, given that there is a greater likelihood that residents spend more time in their respective bedrooms. Though it is suggested that bedrooms 6 and 7 are actually 9.5 and 9.6 square metres, this does not fall significantly below the 10 square metres threshold. On this basis, I find that communal areas of a smaller size are considered acceptable in this instance.
15. Given the above, I am satisfied that the development provides satisfactory living conditions for the occupiers of the premises. Consequently, there is no conflict with Policy PCS23 of the Portsmouth Plan – Portsmouth’s Core Strategy (2012), which notably seeks to ensure that proposals provide a good standard of living environment for future residents and users of the development.

² Combined living space is defined as a single, typically open plan space, usually containing a kitchen, dining area and living area, laundry and utility space.

³ A Guide to understanding the basic standards for HMOs – September 2018.

Conclusion

16. Whilst I have found that the development provides satisfactory living conditions for existing and future occupiers, this does not outweigh the conflict which I have identified with the development plan and the Habitats Regulations. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR