

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/22/3298111

3 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 Lees against Portsmouth City Council.
 - The application Ref 21/01615/FUL, is dated 3 November 2021.
 - The development proposed is "change of use from C4 House of Multiple Occupation to Sui Generis House of Multiple Occupation for more than 6 persons".
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Decision

1. The appeal is dismissed and planning permission for change of use from C4 House of Multiple Occupation to Sui Generis House of Multiple Occupation for more than 6 persons is refused.

Application for costs

2. An application for costs was made by Mr Simon Lees against Portsmouth City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal results from the Council's failure to determine the application within the prescribed period. Whilst the proposal 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. Nevertheless, I have had regard to the concerns raised by Members of the Planning Committee and reasons for refusal to define the main issues for the purposes of this appeal.
4. An amended plan (drawing no.PG3135.18.5 Rev.H) was submitted as part of this appeal, which did not form part of the documents considered by the Planning Committee. This plan shows additional showering facilities and WCs being provided at ground floor level. Having regard to the Wheatcroft principles¹, I consider that these additions do not fundamentally alter the nature of the proposed development consulted upon by the Council. As such, I am satisfied that my consideration of this amended plan would not prejudice anyone's case in the appeal. I shall therefore determine the appeal on the basis of the submitted drawings, together with the amended plan.
5. Within his submissions, the appellant has suggested that the proposed occupancy increase would not constitute a material change of use and that

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].

planning permission is therefore not required. This 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).

Main Issues

6. The main issues are:

- The effect of the proposal on the integrity of the Special Protection Areas; and
- Whether the proposal would provide satisfactory living conditions for future occupiers of the development.

Reasons

Special Protection Areas

7. The appeal site lies within proximity to the Solent Special Protection Areas (SPAs), which are recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance for supporting significant numbers of overwintering bird species. However, there is evidence that high levels of nitrogen draining from the Solent catchment area have caused an excessive growth of green algae, known as eutrophication. This is having a detrimental effect upon the region's internationally protected habitats and this could therefore compromise the integrity of the Solent SPAs.
8. The additional wastewater arising from the increased number of occupants could have 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. In such circumstances, I am therefore required, when evaluating the effects that a proposal might have on a European site, to consider avoidance and reduction measures through an Appropriate Assessment, rather than at the screening stage.
9. The appellant has confirmed that he is willing to enter into a Section 106 Legal Agreement and make a financial contribution which would be used towards mitigation measures. However, I have not been presented with a duly completed planning obligation to secure such mitigation measures, and there is therefore no guarantee that this contribution would be used for its intended purpose.
10. I understand the appellant's frustration, who has experienced difficulties in getting the Council to assist with the preparation of the planning obligation required as part of the development. That said, it is not the role of the Inspector to instruct the parties to prepare and finalise a planning obligation, a certified copy of which should have been received by the Inspectorate no later than 7 weeks from the start date of the appeal, as detailed in the Procedural Guide for Planning Appeals.
11. For the foregoing reasons, and in the absence of satisfactorily secured mitigation measures, the existence of 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. Accordingly, there is no certainty that the appeal scheme would accord with Policy PSC13 of the Portsmouth Plan – Portsmouth’s Core Strategy, which seeks to ensure that any unavoidable impacts on biodiversity as a result of development should be appropriately mitigated. Furthermore, the appeal scheme would fail 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 with not more than six residents, and the appellant seeks to increase the occupancy to enable up to seven individuals to live together as a Sui Generis HMO. This scheme has already been considered as part of an earlier appeal, the Inspector finding that “the development provides satisfactory living conditions for the occupiers of the property with regard to the provision of both personal and communal space and access to bathroom facilities”.
13. Having regard to the available evidence, there are no reasons for me to reach an alternative view to the previous Inspector. The study shown on the existing floor plans is proposed to be converted into an additional bedroom. Whilst this would result in the loss of communal space, the living accommodation includes a kitchen and a dining area at ground floor level, as well as an entertainment room/lounge within the basement.
14. Looking at the proposed floor plans, all the bedrooms and communal facilities appear to be of an adequate size, and in compliance with the requirements of the Council’s HMOs – Ensuring mixed and balanced communities Supplementary Planning Document. Moreover, the plans show that there are toilet and shower facilities at ground, floor and second floor levels. Though the occupier of bedroom 7 would have to go through the kitchen and dining area to access the nearest toilets and shower facilities, the distance is not considered excessive. This arrangement therefore provides no justification to withhold the grant of planning permission.
15. Given the above, the layout and size of the accommodation are considered suitable for the premises to be occupied by up to seven individuals. The appeal scheme would provide satisfactory living conditions for the intended occupiers of the development and accordingly, there would be no conflict with the design aims of Policy PCS23 of the Portsmouth Plan: Portsmouth’s Core Strategy, which notably seeks to ensure that proposals provide a good standard of living environment for future residents and users of the development.

Conclusion

16. Whilst I have found that the development would provide 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