

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/22/3294259

26 Norman Road, Southsea PO4 0LP

- 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 Applecore Living Ltd against Portsmouth City Council.
 - The application Ref 21/01732/FUL, is dated 29 November 2021.
 - The development proposed is change of use from C4 6 bedroom HMO to Sui Generis 7 bedroom HMO.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use from C4 6 bedroom HMO to Sui Generis 7 bedroom HMO at 26 Norman Road, Southsea PO4 0LP in accordance with the terms of the application, Ref 21/01732/FUL, dated 29 November 2021, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 1 year from the date of this decision.
 - 2) Unless otherwise agreed in writing by the Local Planning Authority, the development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Proposed SUI GEN Plans (Drawing No.PG.5034.20.6).
 - 3) The premises shall only be used as a House in Multiple Occupation for a maximum of 7 residents.

Preliminary Matters

2. Planning permission¹ has previously been granted to change the use of the appeal building to purposes falling within Class C4 House in Multiple Occupation (HMO) and Class C3 (Dwellinghouses), and at the time of my visit, the premises appeared to be occupied as a C4 HMO. Within his submissions, the appellant has suggested that the proposed occupancy increase would not constitute a material change of use and that planning permission is therefore not required. This statement is supported by a number of appeal decisions in respect of changes of use to 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).

¹ Local Planning Authority Reference 19/01777/FUL.

3. The appeal was made against a failure to give notice of a decision on the planning application within the prescribed period but, following the submission of the appeal, the application was brought to the Planning Committee. Having regard to the Minutes of the Meeting, it is clear that had it been in a position to determine the application, the Council would have refused to grant planning permission for the development.

Main Issues

4. Having regard to the Council's putative reasons for refusal, the main issues are:
 - Whether the proposal would provide a satisfactory living environment for the intended occupiers of the development; and
 - The effect of the proposal on the integrity of the Solent Special Protection Areas.

Reasons

Living conditions

5. The appeal scheme seeks to convert the lounge sited at ground floor level into an additional bedroom. The existing and proposed bedrooms all appear relatively spacious and exceed the minimum sizes prescribed within the Council's HMOs Supplementary Planning Document (SPD). Similarly, and whilst the proposal would result in the loss of a lounge, the combined living space would exceed the size required by the HMO SPD. There are shower rooms and toilet facilities at ground, first and second floor levels, and the overall provision is considered suitable for the proposed number of occupants.
6. Given the above, I am satisfied that the proposal would provide satisfactory living conditions for the intended occupiers of the development and therefore find no conflict with Policies PCS20 and PCS23 of the Portsmouth Plan (Portsmouth's Core Strategy) and the HMOs SPD. Policies PCS20 and PCS23 notably seek to ensure that new development is well designed and that a range of household needs continue to be accommodated throughout the city.

Integrity of the Solent 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. The increased number of residents could have a likely significant effect on the integrity of these sensitive areas (either individually or in combination with other plans or projects) notably by reason of additional recreational pressures, unless suitable mitigation is provided.
8. As detailed within the Solent Recreation Mitigation Strategy (SRMS) adopted by the Council, development proposals are required to make a financial contribution towards mitigation measures, which are normally secured through the completion of a planning obligation. These financial contributions support a package of mitigation measures such as a team of rangers, initiatives to facilitate and encourage responsible dog walking, site-specific visitor

management and bird refuge projects, new/enhanced strategic greenspaces, etc.

9. There are also concerns in respect of the high levels of nitrogen and phosphorous entering the Solent Marine Habitats Sites, which are caused by additional wastewater outputs. As a result some areas of the internationally designated Solent habitats sites presently have an 'unfavourable' conservation status. For these reasons, the appeal development could compromise the integrity of the Solent SPAs, unless suitable mitigation measures are secured.
10. In such circumstances, I am required, when evaluating the effects that a proposal might have on a European site, to consider avoidance and reduction measures through an Appropriate Assessment (AA), rather than at the screening stage. As the Statutory Nature Conservation Body, Natural England was consulted as part of the AA and thus had the opportunity to make comments regarding the proposed mitigation measures.
11. A Unilateral Undertaking pursuant to Section 111 of the Local Government Act 1972, signed and dated 9 September 2022, was submitted during the course of the appeal. The Planning Obligation would secure financial contributions towards the Solent Recreation Mitigation and the Nutrient Neutrality Mitigation schemes, and a direct payment has been made by the appellants.
12. I am satisfied that the financial contributions as set out within the submitted planning obligation are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations are therefore met. Consequently, the secured measures would ensure that there would be no likely significant adverse effect on the integrity of the Solent SPAs (either individually or in combination with other plans or projects), as a result of the proposed development. There would therefore be no conflict with Policy PCS13 of the Portsmouth Plan (Portsmouth's Core Strategy) and the Habitats Regulations.

Conditions

13. I shall impose conditions specifying the time limit for implementing the development and the relevant drawings which the development must accord with, in the interests of certainty and to provide clarity. It is considered necessary to reduce the implementation period, to prevent an accumulation of unimplemented planning permissions given the limited supply of available 'credits' which provide mitigation to protect the integrity of the SPAs. Furthermore, a condition limiting the number of occupiers is needed to maintain a satisfactory living environment for the occupiers of the appeal premises and protect the living conditions of neighbouring residents.

Conclusion

14. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

S Edwards

INSPECTOR