

---

# Appeal Decision

Site visit made on 4 January 2023

**by S Leonard BA (Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 January 2023**

---

**Appeal Ref: APP/Z1775/W/22/3301636**

**19 Lawson Road, Southsea, Portsmouth PO5 1SD**

- 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 N Rowe (NJR Accommodation Ltd) against Portsmouth City Council.
  - The application Ref 22/00446/FUL, is dated 1 April 2022.
  - The development proposed is change of use from house in multiple occupancy (Class C4) to house in multiple occupancy for seven people (Sui Generis).
- 

## Decision

1. The appeal is dismissed and planning permission is refused for change of use from house in multiple occupancy (Class C4) to house in multiple occupancy for seven people (Sui Generis) at 19 Lawson Road, Southsea, Portsmouth PO5 1SD, in accordance with the terms of the application Ref 22/00446/FUL, dated 1 April 2022, and the plans submitted with it.

## Procedural Matters

2. The description of development is taken from the Council's description of development and the appeal form, since this more accurately describes the appeal scheme than the description on the application form.
3. The planning application was not submitted retrospectively, but I saw during my site visit that the proposed Sui Generis HMO use has taken place, and that the property is currently occupied as such. I have dealt with the appeal accordingly, on the basis of the merits of the appeal scheme.

## Background and Main Issues

4. The Council failed to determine the planning application within the prescribed period. Since the appeal submission, the Council has confirmed that, had the appeal not been lodged and it had been in a position to determine the application, it would have refused planning permission for two reasons. These relate to the standard of communal living accommodation and a requirement to mitigate the effects of additional nutrient output from the development upon the Solent Special Protection Areas (SPAs).
5. During the course of the appeal, the appellant submitted a S.111 Agreement relating to financial contributions towards mitigating the effects of recreational impacts and additional nutrient output arising from the development, upon the SPAs. This is a matter to which I later return.

6. Having regard to the above, the main issues are:

- whether the appeal scheme provides appropriate living conditions for future occupants, having regard to communal living space provision; and
- whether the appeal scheme provides adequate mitigation for the Solent Special Protection Areas (SPAs).

## **Reasons**

### *Living conditions of future occupants*

7. The appeal property is a two-storey, mid-terraced property located on the southern side of Lawson Road, within an established residential area in the Southsea part of the City. The property benefits from planning permission<sup>1</sup>, granted in 2012, for change of use from a Class C4 HMO to a flexible use between Class C4 (HMO) and Class C3 (dwellinghouse).
8. Since that permission, the property has been extended by means of a rear single storey addition and roof extensions facilitating 3 bedrooms within the roof space. Both parties are agreed that these works were carried out as permitted development, and they are shown on both the existing and proposed plans submitted with the planning application. As such, the merits of these works are not for determination as part of this appeal.
9. The Council has adopted a Supplementary Planning Document<sup>2</sup> (the HMO SPD), 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 that those living in HMOs benefit from good standards of living, by setting space standards for bedroom areas and communal living areas.
10. I acknowledge that it is 'guidance' as stated by the appellant. However, it comprises the Council's current articulation of what it considers to be a good standard of living accommodation for the purposes of the relevant development plan policy in its first putative reason for refusal. Moreover, the HMO SPD was adopted following public consultation, and I therefore give it significant weight.
11. The appeal scheme is achieved through the conversion of a ground floor lounge to a bedroom, thereby increasing the occupancy of the HMO from 6 to 7 residents, as well as resulting in a reduction in useable communal living space. The layout of the remainder of the property would remain unaltered.
12. The communal living area would comprise a combined kitchen/diner, together with another room described as a 'cinema room' on the application drawings. I saw, during my site visit, that the latter is furnished as a living room, incorporating a large wall-mounted television. As such, it functions as a separate lounge, and I have treated it as such for the purposes of this appeal.
13. I also saw that the layout and detailed provision of kitchen units and appliances differ from those shown on the appeal drawings. For the avoidance of doubt, I have dealt with the appeal on the basis of the plans before me, which were

---

<sup>1</sup> Ref 12/01133/FUL

<sup>2</sup> Houses in Multiple Occupation (HMOs) – Ensuring Mixed and Balanced Communities, Supplementary Planning Document (SPD), updated October 2019

those before the Council and were the subject of planning application and appeal consultation.

14. The HMO SPD floor area standards, in respect of HMOs of 6 or more persons where the bedroom sizes are at least 6.51 sqm and less than 10 sqm, total 39 sqm in the case of separate dining room, living room and kitchens. Where there is a 'combined living space', defined as 'a single, typically open plan space, usually containing a kitchen, dining area and living area, laundry and utility space', a lesser floor area of 34 sqm is required.
15. Both parties are agreed that the combined floor area of the kitchen/dining room and lounge amounts to 34.37 sqm of communal living space, and that it meets the 'combined living space' standard. On the basis of the evidence before me, I have no reason to disagree.
16. However, the communal space does not comprise an open plan 'combined living space', but instead is made up of two distinct elements, which are clearly separated by a shower room/wc, part of the hallway and the communal staircase to the upper floors. As such, they operate as functionally separate entities.
17. Accepting the room sizes agreed by both parties, the kitchen/dining room floor area of 21.20 sqm fails to meet the required total space standard of 25 sqm reached by amalgamating the separate 11 sqm kitchen and 14 sqm dining room HMO SPD standards. However, the weight I attach to this identified floor area deficiency is reduced by the fact that the HMO SPD does not provide clear guidance on a floor area standard for an open plan kitchen/dining room for six or more residents, which in the case of the appeal scheme is not a 'living area' given the separate lounge.
18. Moreover, there is no persuasive reason before me to justify the cojoining of the separate kitchen and dining room standards, noting that the HMO SPD, in my view reasonably, accepts a lower standard in respect of other types of combined living spaces. As such, the identified under-provision of floor area in accordance with the Council's suggested standard in this instance, would not, on its own, justify dismissal of the appeal.
19. However, I have also taken into account the proposed room layout and effective use of the room for its identified purposes. The appellant has not specified individual kitchen and dining floor areas on the plans. The room is of an efficient rectangular shape, well-lit and ventilated by windows and a door, and it includes requisite worktops, cupboards and appliances. As such, it is capable of providing sufficient kitchen facilities for 7 residents at once.
20. However, notwithstanding the above, the elongated nature of the kitchen/dining room, combined with its relatively narrow width in comparison with the original part of the property, means that positioning a dining table alongside the kitchen units is likely to result in an unduly cramped layout which would hinder effective use of this area as a kitchen incorporating various functions including meal preparation, washing up and doing laundry.
21. Therefore, for the room to function effectively overall, on the basis of the kitchen as proposed, which occupies the part of the room facing the rear garden, it is reasonable to position the dining facilities away from the kitchen units in the half of the room next to the shower room, as is currently proposed.

22. I have considered the quality and layout of space within the dining area section of the room. This part includes a side door providing sole access for the residents to the side passageway, rear garden and proposed bin and cycle storage at the rear of the building. Access to it from the bedrooms and hallway involves traversing across the proposed dining end of the room. This would diminish the usability of this part of the room for its purpose of consuming meals, since a significant part of the floorspace would need to be kept free of obstruction in order to enable convenient access from the hall to the back door by the HMO occupiers and their visitors. In this respect I have noted the position of the door a distance away from the shower room wall, so that it would be natural to cross the dining area from the hallway at roughly a 45 degree angle away from the end of the hall.
23. Moreover, this access space would need to incorporate sufficient manoeuvring room to accommodate the movement of cycles through this area as well as occupants, having regard to the proposed location of cycle storage in the rear garden. I saw, during my visit, that the limited property frontage would prevent positioning the cycle parking in that alternative location instead.
24. The proposed seating arrangements for the dining area comprise a round table for four residents which would be positioned close to the kitchen facilities and both side walls. This table, particularly when occupied, would impinge upon access to the kitchen part of the room resulting in a congested layout. This inconvenient and cramped seating layout would be compounded by a narrow table positioned next to one of the side walls, which would provide wall-facing seating in a side-by-side arrangement which would be tight if occupied by three persons.
25. Having regard to the above, together with the effective loss of useable dining room space resulting from the need to ensure convenient and safe passage across the room from the hall to the outside doorway and to provide circulation space around the doorway, I am not persuaded, on the basis of the information before me, that there is enough space within the dining section of the room to provide appropriately designed and positioned furniture that would provide a good quality and functional dining area for the needs of 7 residents, whilst also being sufficiently positioned away from the kitchen, so as not to impede upon the functionality of that part of the room.
26. I have considered whether the layout of the remainder of the property could reasonably address this issue. However, the 'cinema room' would fail to meet the 14 sqm lounge room size standard by 0.83 sqm. Whilst this room can currently competently provide living room facilities which are appropriate to the needs of 7 residents, the extent to which the room is taken up with living room furniture to accommodate this, does not allow for space to conveniently include dining room facilities to offset the deficiency I have identified above.
27. Neither, on the basis of the plans before me and my site inspection do I find the bedroom sizes and availability of outdoor amenity space to be of sufficient size such that residents would reasonably be likely to use them as alternative dining areas.
28. For the above reasons, I therefore conclude that the appeal scheme does not provide adequate living conditions for the future occupants in respect of communal living space provision. The development is therefore contrary to Policy PCS23 of *The Portsmouth Plan (2012)* (PP), in so far as it requires

protection of amenity and the provision of a good standard of living environment for future residents and users of new development.

29. 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.
30. The appellant has drawn my attention to an approved planning application<sup>3</sup> and a number of allowed appeals<sup>4</sup> within the City in respect of proposals for Sui Generis HMO use. I note the similarities between these schemes and the appeal development in respect of the main issue of communal living space. However, there is insufficient evidence before me that the detailed room sizes, layouts and standard of living conditions within the communal living space and the HMO as a whole within the other appeal properties are identical to those of the current appeal premises. I must determine this appeal on the basis of the circumstances of the current appeal property and the merits of the scheme before me, and having regard to the standard of living conditions that I found during my site inspection.

### SPAs

31. The SPAs comprise a coastline that has a network of mudflats, shingle and saltmarshes which provide essential winter feeding and roosting grounds for birds that spend the winter here, including more than 90,000 waders and wildfowl including 10 per cent of the global population of brent geese. The SPAs were designated by the Government to protect these over-wintering birds.
32. The appeal scheme results in an increase in bedroom provision within the 5.6km 'Zone of Influence' of the SPAs. This net increase of residential occupation has a potential two-fold impact upon the SPAs arising from, firstly, possible disturbance to the birds arising from increased recreational activity around the shorelines of the harbours, and, secondly, the prospect of increased levels of nitrogen and phosphorus entering the water and resulting eutrophication, arising from additional waste-water created by additional residential occupation of the site.
33. As such, without mitigation, the appeal scheme presents a likely significant effect upon the integrity of these sites, particularly when the impacts are considered in combination with other residential developments located within the 5.6km Buffer Zone to the SPAs.
34. The *Conservation of Habitats and Species Regulations 2017* (as amended) require a decision maker to undertake an appropriate assessment (AA) before giving any permission where there are likely significant effects on the integrity of the designated habitats sites from the proposal. This is either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal.
35. Therefore, had I reached a different conclusion on the main issue, it would have been necessary for me to undertake an AA and give further consideration to the likely effectiveness of mitigation measures. In doing so, I would have

---

<sup>3</sup> Ref 20/00271/FUL

<sup>4</sup> APP/Z1775/W/21/3277766, APP/Z1775/W/20/3246589, APP/Z1775/W/20/3252500, APP/Z1775/W/20/3246266, APP/Z1775/W/21/3271224, APP/Z1775/W/18/3217420 and APP/Z1775/W/17/3187443

had regard to the S.111 Agreement provided by the appellant to secure financial contributions in accordance with the Council's *Solent Recreation Mitigation Strategy* (2017) and *Interim Nutrient Neutral Mitigation Strategy* (June 2022 update). However, since the first main issue provides clear reasons for dismissing the appeal, I have not had cause to pursue these matters further, since any findings on these issues would not change the appeal outcome.

### **Other Matters**

36. I have noted that the property benefits from a seven person HMO licence. However, the standards that apply to Licensing and Planning are the subject of separate regulations, and my decision must be based solely upon the planning merits of the scheme that is before me.
37. My conclusions in respect of the main issue are not altered by the fact that the officer committee report recommended approval, since the planning committee's resolution is one which is a matter of judgement. The Council members in this case were entitled not to accept the professional advice of officers, so long as a case could be made for the contrary view.
38. My attention has been drawn to the matter of whether the appeal scheme constitutes a material change of use requiring planning permission. It is not for me, under a Section 78 appeal, to determine whether or not the existing Sui Generis HMO use of the property is lawful. To that end, it is open to the appellant to apply for a determination under sections 191/192 of the Act, and my determination of this appeal under Section 78 does not affect the issuing of a determination under section 191/192 regardless of the outcome of this appeal. I have no information before me that such an application, in respect of the appeal site, has been formally determined by the Council. With the above in mind, I am not persuaded that there is a fall-back position that warrants unconditional approval of the appeal scheme or negates the requirement for SPA mitigation measures.
39. I have had regard to third party concerns, including the existing number of HMOs, effect on the character of the area, noise disturbance, parking impacts, and provision for refuse storage. The Council has not raised any objection in respect of these issues. On the basis of the written evidence before me and my site inspection, I find no reason to disagree. This includes having regard to the existing lawful use of the property as a HMO, the resulting number of additional occupiers, the Council's adopted parking standards and the availability of on-street parking and the proposed provision of refuse storage to the rear of the building.

### **Conclusion**

40. For the above reasons, I conclude that the appeal should be dismissed.

*S Leonard*

INSPECTOR