



Appeal Decision

Site visit made on 6 December 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2023

Appeal Ref: APP/Z1775/W/22/3301103

178 Walmer Road, Portsmouth PO1 5AU

- 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 Staltosi Property against Portsmouth City Council.
 - The application Ref 22/00448/FUL, is dated 1 April 2022.
 - The development proposed is described as 'C4 HMO Use to Sui Generis HMO Use for more than 6 persons'.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a house in multiple occupancy (Class C4) to seven person house in multiple occupancy (Sui Generis) at 178 Walmer Road, Portsmouth PO1 5AU in accordance with the terms of the application, Ref 22/00448/FUL, dated 1 April 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The Council did not determine the application within the statutory time limit. I have had regard to the two objections which it has indicated would have been its reasons for refusal, as referred to in its appeal statement. The appellant had the opportunity to consider these objections in making final comments, which I have taken into account.
3. The description of development in the banner above is taken from the application form. In my decision above, I have used the Council's description because it is more precise and accurate. It also reflects what the appellant entered in the appeal form.
4. During the appeal the appellant submitted an agreement under Section 111 of the Local Government Act 1972. It relates to contributions towards mitigation measures in respect of the Solent Special Protection Areas and Marine Habitats Sites. I return to this matter below.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the living conditions of the future occupiers of the appeal property, having regard to internal communal living space; and
 - its effect on the Solent Special Protection Areas and Marine Habitats Sites.

Reasons

Living conditions

6. The appeal property is a terraced house in multiple occupation (HMO) for six unrelated residents living together. The proposal would increase this to seven residents by converting a separate lounge to a bedroom with other internal alterations.
7. A replacement lounge has already been provided at the end of the reconfigured kitchen and dining area shown in the proposed ground floor plan. It is agreed that this new combined open plan communal living space provides 34.01sqm floor area (not 32.34sqm as annotated on this plan) and that the Council's relevant minimum floor area standard is 34sqm.
8. Because the appeal property fronts directly onto the pavement, a bicycle stored in the rear garden would have to be wheeled from the back door, through the kitchen part of this new open plan space to the hallway and front door. The Council considers that a clear corridor of 4sqm kitchen floor area needs to be provided for this purpose.
9. However, this galley kitchen is quite wide with worktops or appliances lined either side and it is unlikely that all seven residents would use it at the same time. A bicycle could be conveniently wheeled through the most direct and unobstructed centre part of it. Even if this happened regularly, each instance would be momentary in duration. This is not unusual or uncommon in terraced houses and does not require mutually exclusive floor area.
10. In practical terms there would not, therefore, be a permanent loss of available kitchen floor area or any undue hinderance or undermining of the useability of the kitchen. Nor would moving a bicycle through the kitchen intrude into the lounge or dining areas or unduly obstruct their use. As such, the new open plan communal living space would not fall below 34sqm.
11. I have been referred to an appeal decision¹. However, in that case it had not been demonstrated that suitable circulation space for residents of a HMO could be achieved through a narrow dining room, taking account of furniture. These circumstances are not comparable to the current appeal.
12. I find that the proposal would provide adequate and functional internal communal living space suitable for the future occupiers of the appeal property. Consequently, it complies with Policy PCS23 of the Portsmouth Plan, January 2012 (PP) which includes that development should provide a good standard of living environment.

Solent Special Protection Areas and Marine Habitats Sites

13. The site is within a zone of influence of the coast and water environments of the Solent Special Protection Areas (SPA)² and Marine Habitats Sites³ (MHS). These European sites have been designated to protect important habitat for bird species. A significant individual or in-combination adverse effect on the

¹ APP/Z1775/W/21/3289027

² Chichester and Langstone Harbours, Portsmouth Harbour and the Solent and Southampton Water

³ Portsmouth Harbour Special Protection Area/RAMSAR site, Chichester and Langstone Harbours Special Protection Area/RAMSAR site, the Solent and Isle of Wight Lagoons Special Area of Conservation and the Solent Maritime Special Area of Conservation

SPA would be likely to occur from residential development due to disturbance from increased population in an area where these inhabitants would be in such proximity to the SPA that they would be likely to visit it for recreational purposes. Similar adverse effects on the MHS would be likely to occur due to increased nitrates from foul wastewater entering the Solent exacerbating eutrophication.

14. In consultation with Natural England (NE) the Council has adopted the Solent Recreation Mitigation Strategy, December 2017 (SRMS) and the Updated Interim Nutrient Neutral Mitigation Strategy for New Dwellings, June 2022 (NNMS). The SRMS requires a financial contribution towards strategic access management and monitoring measures to control activity in the SPA, including on suitable alternative natural greenspace for residents to use. The NNMS allows the appellant to purchase 'mitigation credits' from the Council (accumulated from water efficiency upgrades to its housing stock and by taking land under its control on the Isle of Wight out of agricultural production) to offset increased nitrates from the proposal and achieve 'nutrient neutrality' in the MHS.
15. The Council has provided a detailed explanation of the SRMS and the NNMS and the basis on which these mitigation measures are sought. This includes justification for the respective levels of tariffs and the administrative arrangements for receipt and effective and timely use of the financial contributions for these purposes. The Council has confirmed that the submitted Section 111 agreement is acceptable, the appropriate payments have been made and under the terms of the SRMS and NNMS these payments will be used for these purposes.
16. On this basis the Council carried out a Habitats Regulation Assessment⁴ and consulted NE. Subject to a condition to secure water use of 110 litres per person per day at the appeal property, NE has confirmed that appropriate mitigation would be secured by these means and it does not object to the proposal. A suggested condition to this effect is set out in the NNMS.
17. In these circumstances, as the competent authority in this appeal and after appropriate assessment, I am satisfied that the proposal would not adversely affect the integrity of the SPA or the MHS. Consequently, it complies with PP Policy PCS13 which includes that development should not have an adverse effect on a European site and should mitigate negative impacts on biodiversity.

Conditions

18. The appellant raised no objection to any of the conditions suggested by the Council in the event that the appeal was allowed. Where required, I have considered modified wording of these conditions in the interests of clarity and have had regard to the relevant tests in the Framework and advice in Planning Practice Guidance. I have also considered the need for any other conditions.
19. In addition to the condition that I have referred to earlier, it is necessary to impose the standard implementation time limit condition and a condition to specify the approved plans to provide certainty. Conditions to ensure satisfactory provision is made for bicycle and waste storage are required given that the number of residents at the appeal property would increase. There is,

⁴ The Conservation of Habitats and Species Regulations 2017 (as amended)

though, no evidence that the specific requirements sought by the Council are justified by one additional resident or needed in addition to what must already be provided at the site. I have therefore imposed a condition to require appropriate details to be agreed with the Council. The Council wishes to control the number and size or type of HMOs in its densely developed City area. This is to protect the residential amenity of existing and future occupiers and neighbours and to ensure mixed and balanced communities. Accordingly, a condition to restrict the number of residents to seven is justified.

Planning Balance and Conclusion

20. Subject to conditions the proposed development would accord with the development plan. There are no other material considerations which suggest that the decision should be taken other than in accordance with the development plan. Consequently, for the reasons given above the appeal succeeds.

Robin Buchanan

INSPECTOR

Schedule of Conditions (5)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

TQRQM19248151553116	site location plan
TQRQM19248151516785	block plan
PG.4120 · 19 · 5 Rev E	proposed floor plans
- 3) Prior to the change of use hereby permitted taking place, written documentary evidence shall be submitted to and approved in writing by the local planning authority demonstrating that the appeal property has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a post-internal alterations stage water efficiency calculator.
- 4) Prior to the change of use hereby permitted taking place, details of:
 - (a) Secure and weatherproof storage facilities for bicycles; and
 - (b) Refuse and recycling binsshall be submitted to and approved in writing by the local planning authority and the approved details shall have been carried out. The approved details shall be retained thereafter for these purposes.
- 5) The appeal property shall only be used as a house in multiple occupation for a maximum of 7 residents.