



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: 22 March 2023

Appeal Ref: APP/Z1775/W/22/3301371 54 Sheffield Road, Portsmouth PO1 5DP

- 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 S Lees (Staltosi Property Ltd) against Portsmouth City Council.
 - The application Ref 22/00449/FUL, is dated 1 April 2022.
 - The development proposed is change of use from house in multiple occupation (Class C4) to seven bedroom house in multiple occupation (Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from house in multiple occupation (Class C4) to seven bedroom house in multiple occupation (Sui Generis) at 54 Sheffield Road, Portsmouth PO1 5DP, in accordance with the terms of the application, Ref 22/00449/FUL, dated 1 April 2022 and the plans submitted with it, subject to the attached schedule of conditions.

Procedural Matters

2. The description of development is taken from the Council's description of development, since this more comprehensively describes the appeal scheme than the descriptions given on the application and appeal forms.
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, and on the merits of the appeal scheme.
4. The site lies within 5.6 km of the Solent Special Protection Areas (the SPAs). During the course of the appeal, the appellant has submitted a legal agreement under S.111 in respect of financial contributions towards mitigating the effects of the development on the SPAs. This is a matter to which I later return.

Background and Main Issue

5. 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 granted planning permission, subject to conditions and a legal agreement to secure mitigation of the effects of recreational impacts and additional nutrient output arising from the development, upon the

Solent Special Protection Areas (SPAs). I have taken the committee resolution to grant permission into account in my determination of the appeal.

6. The Council has confirmed that the appeal scheme accords with the relevant Policies PCS17 (Transport), PCS20 (Houses in Multiple Occupation) and PCS23 (Design and Conservation) of the *Portsmouth Plan* (2012) (the PP), the Council's *Houses in Multiple Occupation (HMOs) – Ensuring Mixed and Balanced Communities Supplementary Planning Document* (updated October 2019) (the HMO SPD), and the *Parking Standards and Transport Assessments Supplementary Planning Document* (2014) (the PSTA SPD), in respect of the effect of the appeal scheme on the balance of the community in the area, neighbouring living conditions and car parking provision/highway safety.
7. I have noted that third party concerns have been raised in respect of the above matters. However, I find no reason to disagree with the Council, on the basis of the written evidence before me and my site inspection.
8. In particular, I have taken account of agreement by both main parties that the existing use of the premises, and, as such, the starting point for consideration of the appeal scheme, is that of a six-bedroom HMO (Class C4). Therefore, whilst the Council has confirmed that the percentage of existing HMOs already exceeds 10% of properties within the relevant 50m radius of the site for the purposes of the HMO SPD, no additional HMOs would result from the appeal scheme. As such, I am satisfied that the appeal scheme would not materially harm the mix and balance of the local community.
9. I have also had regard to the resulting small increase in residential occupancy of one person. I am not persuaded that such an increase in occupation would result in an increase in noise levels that would be significantly greater than those associated with the existing lawful use as a Class C4 HMO, nor that demonstrable harm to neighbouring living conditions would result.
10. Whilst there is no on-site parking, I find that the Council's parking requirements associated with the existing lawful use would not differ from those of the appeal scheme. As such, and having regard to the availability of on-street parking in the road, and the accessible location of the site in relation to facilities and services and public transport connections, I am satisfied that this matter does not constitute a reason for dismissing the appeal.
11. The Council has also confirmed that the appeal scheme accords with its adopted HMO minimum room size standards. On this basis, I concur with the Council that the appeal scheme would provide acceptable living conditions for future occupants of the property.
12. Having regard to the above, I find that the main issue in respect of this appeal is whether the appeal scheme provides adequate mitigation for the Solent SPAs.

Reasons

SPAs

13. 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.
14. The appeal scheme results in an increase of one HMO bedroom within the 5.6km 'Zone of Influence' of the SPAs. This net increase in residential development 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 an increase in residents at the site.
 15. As such, although relating to a small increase in the number of residents, without mitigation, the appeal scheme presents a likely significant effect upon the integrity of the SPAs, particularly when the impacts are considered in combination with other residential developments located within the 5.6km Buffer Zone to the SPAs.
 16. Therefore, it is necessary for me, as the competent authority, to undertake an Appropriate Assessment (AA) under the Habitats Regulations, of the implications for the sites in view of the conservation objectives of the SPAs. I have undertaken this on a proportionate basis, with regard to the evidence submitted by the main parties, which includes the Council's AA, which sets out the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, and confirmation from Natural England (NE) that no objection is raised, subject to appropriate mechanisms being put in place to secure such mitigation measures.
 17. In 2017 the Council adopted the *Solent Recreation Mitigation Strategy* (SRMS) which provides a strategic solution to ensure that the requirements of the Habitats Regulations with regard to the in-combination effects of increased recreational pressure on the SPAs arising from new residential development are met through mitigation measures.
 18. The SRMS provides for the payment of a mitigation contribution, in this case £390, to offset the effects of an increased population on the SPAs. Contributions made under the SRMS are put towards a package of mitigation measures including a team of rangers, communications marketing and education initiatives, the facilitation and encouragement of responsible dog walking, codes of conduct, site-specific visitor management and bird refuge projects, new/enhanced strategic greenspaces, a delivery officer and monitoring of the mitigation measures.
 19. The Council's updated *Interim Nutrient-Neutral Mitigation Strategy for new dwellings* (June 2022) (the INNMS), recognises that changes of use from Class C4 HMOs to Sui Generis HMOs comprise developments for which mitigation is required in respect of the associated increase in waste water discharge, regardless of how small the increase in occupancy, since parts of the SPAs are currently in unfavourable conservation status and any additional nutrient discharge has the potential to worsen the existing situation.
 20. The INNMS allows developers to purchase 'mitigation credits' from the Council's Mitigation Credit Bank, which would be used to provide mitigation measures to achieve nutrient neutrality in the Solent.

21. I concur with the opinion of Natural England, that the SRMS and INNMS set out suitable measures for the mitigation of the likely significant effects of the development on the SPAs, and that the contributions secured by the above means 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, and therefore meet the statutory tests set out in regulation 122 of the CIL Regulations.
22. The appellant, on 6 December 2022, paid £390 to mitigate the likely significant effect of the proposal on the SPAs due to increased recreation disturbance of wading birds around the shorelines of the harbours, and £900 to purchase mitigation credits in accordance with the INNMS.
23. These contributions were paid pursuant to section 111 of the Local Government Act 1972¹, and as an alternative to the appellant entering into a planning obligation under section 106 of the Town and Country Planning Act 1990 (TCPA 1990). This has been acknowledged by the Council as a satisfactory means of addressing this matter.
24. In line with the guidance in the Planning Practice Guidance² measures intended to inform decisions about the effects on the integrity of habitats, such as an SPA, need to be sufficiently secured and likely to work in practice. It is usual for financial contributions intended to mitigate the effects of new development to be secured through the making of a planning obligation under section 106 of the TCPA 1990. Although the SPA contributions that have been paid have not been secured through the operation of a planning obligation, I am content through the provisions of the submitted Section 111 Agreement that the appellant has submitted to the Council that the Solent Recreational Mitigation Contribution and the Nutrient Neutrality Mitigation Contribution could only be used by the Council for the purposes of mitigating the development's effect on the SPAs.
25. Accordingly, I conclude that the appeal scheme provides adequate measures to avoid and mitigate its potential adverse impacts on the integrity of the SPAs, and that, with the payment of the Solent Recreation Mitigation Contribution and the Nutrient Neutrality Mitigation Contribution, that the requirements of the Habitats Regulations have been fulfilled. The appeal scheme would therefore accord with PP Policy PCS13, which amongst other things, seeks to ensure that unavoidable negative impacts on biodiversity are appropriately mitigated, and Paragraph 180 of the Framework. That is because mitigation would be available to conserve the natural environment, most particularly the integrity of the SPA.

Other Matters

26. 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

¹ As explained in a 'Section 111 Agreement' completed by the appellant on 6 December 2022

² Paragraph 4 in section 65 of the Planning Practice Guidance, published by the Government on 22 July 2019

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.

27. I have had regard to third party objections in respect of the ongoing maintenance of the property and loss of neighbouring property values. These are not determining factors in the consideration of this appeal. Concerns raised about refuse storage are capable of being addressed by means of a planning condition to ensure appropriate on-site refuse storage facilities.

Conditions

28. I have considered the Council's suggested conditions in the light of the tests set out in Paragraph 56 of the Framework and the National Planning Practice Guidance (PPG) and imposed them where I consider them to be necessary and reasonable, and altered, amended or deleted conditions where appropriate.
29. Given that the development has already been implemented, there is no requirement for a condition setting a timescale for the commencement of the approved development. It is necessary to define the plans for certainty (1).
30. A condition is necessary to limit the number of residents to a maximum of 7 at any one time (2). That accords with the details of the planning application, and is necessary, since, whilst I have found that number of residents not to be harmful, having regard to mitigation against potential harm to the SPAs, any increase above this would have to be assessed against relevant development plan policies and the Habitats Regulations.
31. A condition is required to ensure that the communal kitchen/lounge on the ground floor is retained as communal living space to ensure appropriate living conditions for the occupiers of the HMO (3). Notwithstanding the Council's HMO Licensing requirements, Licensing and Planning are the subject of separate regulations. The communal living space shown on drawing Ref PG.4127.19.04 Rev A accords with the details of the planning application. Whilst I have found that amount of communal living space not to be harmful, any reduction would need to be assessed against relevant development plan policies and the HMO SPD.
32. I saw during my site inspection, that the proposed bike store shown on approved drawing Ref PG.4127.19.04 Rev A has not been provided on site. Therefore, a condition to ensure the provision of secure on-site cycle parking is justified in the interests of promoting sustainable travel in the city (4).
33. In the interests of the living conditions of the occupiers of the site and neighbouring occupiers, and the character and appearance of the area, a condition is justified to ensure the provision of adequate refuse storage facilities (5).
34. The purpose of conditions 4 and 5 is to require the appellant to comply with a strict timetable for dealing with cycle and waste storage, which need to be addressed in order to make the development acceptable. The conditions are drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of

permission, it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters, because the development has already taken place. The purpose and effect of the conditions is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

Conclusion

35. For the above reasons, I conclude that the appeal should succeed, and planning permission be granted subject to conditions.

S Leonard

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: TQRQM19232122011327, TQRQM19232121757092 and PG.4127.19.04 Rev A.
- 2) The occupation of the HMO hereby permitted shall be limited to a maximum of 7 persons at any one time.
- 3) The ground floor room annotated as 'kitchen/lounge communal' as set out on drawing PG.4127.19.04 Rev A shall be retained as communal space at all times and shall not be used for any other purposes.
- 4) Unless within one month of the date of this decision a scheme for secure cycle storage is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within one month of the local planning authority's approval, the use of the site as a seven bedroom house in multiple occupation (Sui Generis) shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved cycle storage provision in this condition, that provision shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) Unless within one month of the date of this decision a scheme for waste storage is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within one month of the local planning authority's approval, the use of the site as a seven bedroom house in multiple occupation (Sui Generis) shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved waste storage provision in this condition, that provision shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

*****End of Conditions*****