



Appeal Decision

Site visit made on 21 August 2023

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Appeal Ref: APP/Z1775/W/22/3306156

10 Rampart Gardens, Portsmouth PO3 5LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Karrie Mellor against the decision of Portsmouth City Council.
 - The application Ref 22/00810/FUL, dated 29 May 2022, was refused by notice dated 30 August 2022.
 - The development proposed is change of use from 5-bed dwelling (Class C3) to 4-bed house in multiple occupation (Class C4).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from 5-bed dwelling (Class C3) to 4-bed house in multiple occupation (Class C4) at 10 Rampart Gardens, Portsmouth PO3 5LR in accordance with the terms of the application, Ref 22/00810/FUL, dated 29 May 2022, and the plans submitted with it, subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1250 scale Site Location Plan; 1:500 scale Site Plan; Existing Floor Plans; Proposed Floor Plans.

Preliminary Matters

2. Although the application form states that the proposed use has not commenced, the evidence indicates that the property was in use as a house in multiple occupation (HMO) prior to submission of the application. I saw at my visit that the internal layout is in accordance with the proposed plan that accompanied the application. I am, therefore, dealing with the appeal retrospectively.

Main Issue

3. The main issue is the effect of the development on the living conditions of the occupants of nearby residential properties with regard to noise and disturbance.

Reasons

4. 10 Rampart Gardens is a 3-storey end-terraced house in one of three blocks of similar buildings that front a residential cul de sac off Military Road. It is part of an enclave of housing that lies near the junction of the M27 to the north and the A3 to the west. However, the presence of these major road corridors is screened by a belt of trees. The cul de sac is also well-screened from the commercial uses on the southern side of Military Road, so it has a relatively quiet residential character.

5. It is proposed to change the use of the property from a dwelling to a 4-bed HMO within Class C4 of The Town and Country Planning (Use Classes) Order 1987 (as amended). This would allow the property to be occupied by not more than six residents who do not form a single household, and where the occupants share parts of the accommodation. The use would not involve any external changes, so would have no impact on the physical appearance of the building or its surroundings.
6. The Council's approach to proposals for new HMOs is set out in Policy PCS20 of the Portsmouth Plan (adopted 2012). The supporting text to the Policy recognises the contribution HMOs make in meeting the city's accommodation needs, particularly as a source of housing for people on low incomes, those on benefit payments, and those starting off in the economy as young professionals. However, it also identifies that high concentrations of such uses can have potential negative social, environmental, and economic impacts on communities. Therefore, to support mixed and balanced communities, and to ensure that a range of household needs continue to be accommodated throughout the city, the Policy says that changes of use to HMOs will only be permitted where the community is not already imbalanced by a concentration of such uses, or where the development would not create an imbalance.
7. Further guidance on the operation of Policy PCS20 is contained in the Council's *Houses in Multiple Occupation (HMOs) - Ensuring mixed and balanced communities Supplementary Planning Document, October 2019* (the SPD). For the purposes of Policy PCS20, the SPD advises that a community will be considered to be imbalanced where more than 10% of residential properties within a 50-metre radius of the area surrounding the application property are already in HMO use. In this case, the evidence indicates that there are no other HMOs within 50 metres, so the proposal would result in 1.17% of properties being in HMO use – well below the 10% threshold identified in the SPD. The SPD also identifies two scenarios which may give rise to a particular risk of harm to existing residential amenity. In this case, as the proposal would not result in three or more HMOs adjacent to each other, or a dwelling being sandwiched between two HMOs, neither scenario applies. Consequently, it is not disputed that the proposal complies with Policy PCS20.
8. In view of these considerations, a previous planning application¹ to change the use of the property to a 5-bed HMO, was refused in May 2022, solely because the lack of a window in bedroom 4 would result in poor living conditions for occupants of that room. The appeal proposal sought to overcome that reason for refusal, by reducing the number of bedrooms through the omission of bedroom 4, and the use of this room as a store instead. It is now not disputed that the proposal would provide future occupants with a suitable standard of accommodation. However, despite the reduction in the number of bedrooms, it is now contended that the use would result in harm to the living conditions of the existing occupants of nearby houses.
9. The evidence indicates that all the other properties in the cul de sac are self-contained dwellings. It has therefore been put to me that the locality is family-orientated, and that the proposed HMO would be discordant with this prevalent character. Paragraph 124 of the National Planning Policy Framework says that planning decisions should take into account the desirability of maintaining an

¹ LPA Reference No: 22/00105/FUL

area's prevailing character. However, it also says that they should take account of the need for different types of housing, and the availability of land suitable for accommodating it. Policy PCS20 seeks to strike a balance between these competing aims, by accommodating the need and demand for HMOs, whilst avoiding high concentrations of such uses. This approach necessarily means that new HMOs will be located in areas where few, or none, currently exist. Against this background, and bearing in mind that the use would not involve any external alterations, I find that the proposal would not significantly alter the residential character of the area.

10. The lawful use of the property is as a dwelling, and the existing layout shows five bedrooms. It could, therefore, be occupied by a large family, which could comprise working parents and young children. This would generate traffic movements for work purposes and the school run, and could result in a degree of noise through children playing in the house and garden. An older family may have teenage children, with televisions, gaming, and music equipment in their bedrooms. Alternatively, a multi-generational family, with working parents and young adults, living independent lives, could give rise to a significant level of traffic movements at various times of the day. Whatever the composition of the occupants, the residential use would give rise to a degree of activity. The extent to which this would disturb neighbouring residents would be largely dependent on the behaviour of the residents.
11. The proposed HMO would have four bedrooms, and the C4 use would allow up to six people to occupy the property. However, the nature of the accommodation means that it is more likely that the rooms would be occupied individually. In any event, the proposal would not, necessarily, involve an increase in the number of people living in the building, compared with its lawful use as a dwelling. The occupants of the HMO would be unrelated adults, so would be likely to be leading independent lives, with little in the way of car-sharing. This could give rise to additional vehicle movements, but this is an accessible location where residents would not be dependent on car-ownership. Furthermore, the level of activity would not inevitably be greater than that of a large multi-generational family occupying the property as a dwelling.
12. It is clear from the evidence that the past and current use of the appeal premises as an HMO has given rise to complaints from local residents relating to harm to their residential amenity. However, much of this evidence relates to the employment and behaviour of the current tenants, rather than impacts that would inevitably follow from the use of the property as an HMO. There is, therefore, no specific and robust evidence before me to demonstrate that the residential use of the building as an HMO, would necessarily lead to an increase in noise and disturbance, compared with a residential use by a similar number of occupants in a single dwellinghouse.
13. The SPD includes evidence that, in general, HMOs across the city give rise to more complaints from occupants of neighbouring properties than self-contained dwellings. In the light of this evidence, it provides advice on how Policy PCS23 of the Portsmouth Plan will be implemented with regard to HMOs. The relevant factors to be considered are summarised at paragraph 2.18 as, whether the proportion of HMOs exceeds the 10% threshold; the increase in the number of bedrooms sought; and the impact that the proposed intensification would have on the residential character of the area. In this case, the proportion of HMOs would be well below the threshold, and there would be a reduction in the

number of bedrooms proposed. Consequently, there would not be an intensification of use that would impact on the residential character of the area.

14. I therefore conclude that there is no cogent evidence to indicate that the proposed use would inevitably result in an increase in noise and disturbance that would be harmful to the living conditions of nearby properties. In coming to this conclusion, I am mindful that the recent occupation of the property has given rise to a considerable level of complaints and tension with neighbouring residents. However, the evidence indicates that this results from the particular composition and behaviour of the tenants, rather than from a predictable outcome of the use of the property as an HMO. Similar tensions could also arise from the use of the building as a single dwellinghouse. In view of all the above considerations I find that the proposal would accord with Policies PCS20 and PCS23 of the Portsmouth Plan, which seek to support mixed and balanced communities, and protect residential amenity, by avoiding high concentrations of HMOs.

Other Matters

15. I have had regard to the representations received in response to the original application and the appeal. Many of these refer to parking issues, partly resulting from the occupants' employment as taxi drivers. However, the property has two off-street car-parking spaces, which meets the requirement of the Council's Parking Standards and Transport Assessments Supplementary Planning Document - July 2014 for an HMO within Use Class C4. Furthermore, I saw that there was available unrestricted on-street car-parking available both in the cul de sac and in Military Road at the time of my visit.
16. Concerns have also been raised regarding the potential for increased litter/waste/vermin as a result of the proposal. However, as the use would not necessarily result in an increase in occupancy, there is no reason for me to conclude that there would be any resultant problems in these regards. I saw no evidence of any such issues at the time of my visit.
17. I acknowledge the concerns that have been raised regarding anti-social behaviour and poor management of the property. However, these are matters that lie outside the remit of this appeal, as they are covered by other legislative jurisdictions.
18. It has been alleged that the use of the property for business purposes would contravene covenants relating to the property. However, the proposal before me is for a residential use. It is a matter for the Council, in the first instance, to determine whether the property is being occupied in a manner that would not accord with its lawful planning use.
19. The Planning Practice Guidance advises that the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests, such as the impact of a development on the value of a neighbouring property, is not a material consideration.

Conditions

20. As the use has already commenced, it is not necessary to impose a condition limiting the period within which the development must be implemented. I have, however, imposed a condition specifying the relevant plans, as this provides certainty. Neither party has suggested any other conditions in their appeal

documents. The Council's Committee Report recommended a condition requiring the provision of secure and weatherproof storage for four bicycles. However, I have concluded that the proposed use would be unlikely to result in an increase in occupancy or travel movements compared to its use as a dwellinghouse. Consequently, such a condition would not be necessary or reasonable. In any event, I saw that the property already has a rear garden with a shed which would be suitable for bicycle storage.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed.

Nick Davies

INSPECTOR