



Appeal Decision

Site visit made on 13 February 2024

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2024

Appeal Ref: APP/Z1775/W/23/3319802

36 Montgomerie Road, Southsea, Portsmouth PO5 1ED

- 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 James Oliver against Portsmouth City Council.
 - The application Ref 23/00089/FUL, is dated 20 January 2023.
 - The development proposed is change of use from C4 planning use to Sui Generis HMO use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At the time of the site visit, the property appeared to be functioning as an HMO with the internal communal living space limited to an open plan kitchen/diner area on the ground floor, at the rear of the property. The other ground floor rooms were being used as bedrooms.
3. The appellant questions whether planning permission is required. With reference to this, appeal decisions relating to several houses in multiple occupation (HMOs) in the Southsea area have been highlighted. This includes a number of appeal decisions addressing enforcement matters. The Inspector, in those decisions, clarified that for those appeals to succeed the onus was on the appellant to demonstrate that there had not been a breach of planning control. Planning policy considerations or the planning merits arising from the use of the properties were therefore not relevant. He also concluded that in those cases it was too late to take enforcement action against the matters stated in the notices.
4. Attention is also drawn to an Inspector's decision for a change of use from C4 planning use to Sui Generis HMO use at 123 Talbot Road and 48 and 56 Jessie Road. The Inspector in those cases concluded that the works that had been carried out did not constitute 'development' in the terms of section 55 of the Town and Country Planning Act 1990. Costs may have been awarded against the Council. However, the Inspector did consider the planning merits of those proposals, did not find significant harm, and went on to grant planning permissions accordingly.
5. In any event, within the context of an appeal under section 78 of the Act it is not within my remit to formally determine whether the proposal requires planning permission. However, I have considered the evidence as to whether permission is required so far as it is material to this appeal. If the appellant

wishes to ascertain whether development is lawful, they may make an application under section 191 or 192 of the Act.

Background and Main Issues

6. The Council failed to give notice of its decision within the prescribed period. However, following the submission of this appeal, the Council identified reasons for refusing planning permission.
7. In light of the evidence before me, the main issues in this case are:
 - Whether the proposal would provide satisfactory living conditions for future occupants, with regards internal communal living space; and
 - The effect of the proposal on the character and appearance of the area.

Reasons

Living Conditions

8. It is understood that the appeal property previously operated as a six bedroomed HMO, accommodating six individuals living independently. The submitted plans show that those bedrooms were confined to the first and second floor of the property, with the whole of the ground floor available as internal communal living space. Indeed, the ground floor comprised an open plan kitchen/diner and two further separate living rooms that could be used by the occupants of the HMO and their guests.
9. It is asserted that the six original bedrooms (shown as existing on the submitted plans) exceeds the size of bedrooms advised in the Houses in Multiple Occupation - Ensuring Mixed and Balanced Communities Supplementary Planning Document (SPD). Be this as it may, these rooms are of a modest size such that they can only just accommodate a bed, desk and some storage space.
10. With limited space beyond this for circulation around the rooms, the bedrooms feel compact. However, occupants of those six original bedrooms previously had the use of three communal living rooms, and this compensated for the limited space in the bedrooms. With reasonably spacious internal living space elsewhere in the property, the property provided satisfactory living conditions for its occupants when functioning as a small HMO.
11. The proposal before me, converts the previously existing front lounge and the separate dining room on the ground floor to two additional bedrooms, each with ensuite facilities. Under this scheme, the property would have eight bedrooms, and the only internal communal space for the occupants would be the open plan kitchen/diner. The only other shared space available to future occupants would be the small outside yard at the rear of the property.
12. The proposed front bedroom on the ground floor (former lounge) would be a good-sized bedroom. However, the second bedroom in the middle of the ground floor would be similar in size to the existing bedrooms at the first and second floor of the property. As such the property would comprise seven compact bedrooms as well as one additional, more spacious bedroom.
13. The number of individuals living at the property would increase by two. The appellant asserts this should not be considered a significant increase.

However, seven of the eight occupants would have relatively small bedrooms. Moreover, this scheme would result in the loss of two communal living rooms such that future occupants would only have the use of the kitchen/diner in addition to their small bedrooms. In this regard the living conditions for occupants would be significantly less spacious and pleasant than was the case when the property functioned as a six-bedroom HMO.

14. It is asserted that the internal communal room would satisfy the space standards set out in the Council's Standards for Houses in Multiple Occupation. However, this guidance advises HMO licensing which is a separate regime to the planning system. This aside, the kitchen appears well equipped with appliances and worktops. However, while the kitchen would be a reasonable size for a family home, functioning as a facility for eight individuals to prepare food, cook, eat meals and washup, this space would feel very limited.
15. Even if I accept that it would be unlikely that all the residents would wish to use the kitchen at the same time, if only half the occupants used the facilities at one time, this relatively narrow kitchen would still feel congested. There is additional space at the end of this room. However, this is a relatively small space that could only accommodate a small table and sofa such that even with only six individuals using this modestly sized open plan room, it would feel cramped and unpleasant.
16. It is highlighted that the property benefits from more toilet and bathroom facilities than is advised in the Council's guidance. However, the availability of ensuite facilities for all occupants would not be suitable compensation for the very limited amount of communal living space that would be provided in this case. The proposal would not provide good living accommodation for future occupants in this regard.
17. Attention is drawn to a number of appeal decisions, relating to large HMOs in the district. However, the HMOs at No 72, Walmer Road and Hudson Road have much larger communal rooms than is proposed in this case. Also, while noting the smaller size of communal rooms at the HMOs on Talbot Road, St Andrew's Road and Jessie Road, those communal spaces are still larger than the communal room that would be available at the appeal property. Moreover, all those HMOs have seven bedrooms. Those HMOs are not directly comparable to this scheme in this regard, and the decisions in those cases attract limited weight for the reasons stated.
18. Another example of an HMO at No 36 has also been highlighted. However, limited details on that decision has been provided and it does not appear to be subject to appeal. In any event, development elsewhere should not justify proposals which would provide unsatisfactory living conditions at the appeal property. The decisions cited have not altered my findings.
19. In light of the above, I find that the proposal would fail to provide satisfactory living conditions for future occupants, with regards internal communal living space. In this respect the proposal would conflict with Policy PCS23 of the Portsmouth Plan – Portsmouth's Core Strategy(Core Strategy). This Policy, amongst other matters, requires the protection of amenity and the provision of a good standard of living environment for neighbouring and local occupiers as well as future residents and users of the development.

20. The proposal would not be consistent with the advice set out in the SPD, which amongst other matters, seeks a good standard of living accommodation.
21. The proposal would also fail to accord with provisions of the National Planning Policy Framework December 2023 (the Framework) which requires a high standard of amenity for existing and future users.

Character and Appearance

22. The appeal property is a mid-terrace dwelling in a long street of terraced properties. While a number of the properties operate as HMOs, the street retains a distinct residential character.
23. A concentration of HMOs can have a negative effect on the appearance of an area with regards, amongst other matters, the presence of a large number of waste bins or congested parking at the front of properties. Policy PCS20 of the Core Strategy recognises the role that HMOs has in the supply of homes but also seeks to ensure a mix and balance of accommodation in residential areas.
24. The property subject of this appeal already functions as an HMO in this residential setting. With the exception of the proposed cycle store, no external changes are proposed to the property. Moreover, the cycle store would be in the rear yard of the property such that this new addition would not harm the street scene.
25. The appeal property has a small walled area at its front elevation, and waste bins are visible in this front space. While this is not an ideal arrangement, the waste bins appear contained by the wall and as such the bins can be safely stored without blocking or harmfully cluttering the pavement.
26. With an increased capacity at the HMO, the volume of waste would increase at the property. However, waste generated by two individuals could be accommodated in the existing bins that are currently available for the six bedroomed HMO.
27. The property does not have off-street parking provision and no proposals are made for off-street parking under this scheme. Therefore, future occupants would need to park their vehicles on the street. However, the likely increase in parked vehicles in this area resulting from this development would be small given the scale of the proposal. As such, the external appearance of the property and the street scene would remain relatively unaltered.
28. For the reasons outlined, the proposal would not have a significant harmful effect on the character and appearance of the area. In respect of this matter, the proposal would be consistent with Policy PCS23 of the Core Strategy, which requires development to respect the character of the City.

Other Matters

29. The appeal property is in the zone of influence (ZoI) for the Solent Special Protection Areas (SPAs). These protected habitats support a range of rare birds and evidence has found that they are in unfavourable condition as a result of human activities, including from recreational pressure and increased nutrients in riverine environments. Natural England states that any net increase in residential units in the ZoI would result in likely significant adverse impacts on these habitats, either alone or in combination with other projects.

30. This proposal would result in a net gain of two bedrooms for independent living and therefore likely significant adverse impacts cannot be ruled out. A form related to an agreement under section 111 of the Local Government Act has been submitted in relation to this matter. However, as I am dismissing on other grounds, it is not necessary to consider this matter further in this appeal.
31. The Council has not raised concerns about highways, compliance with Core Strategy Policy PCS17 or impacts on neighbours, and I have not found significant harm in respect of appearance. However, such harms should not arise from development and therefore these are neutral factors in this case.
32. Attention is drawn to evidence suggesting that there is a growth in one person households, and Core Strategy Policies acknowledge the role that HMOs have in providing a source of low income and student accommodation. However, this proposal would provide just two additional bedrooms for independent living and would therefore make a small contribution to the supply and mix of accommodation in the area. Moreover, the HMO proposed in this case would not offer satisfactory living conditions for future occupants for the reasons outlined and this substantially counters any benefits of this proposal.
33. I note the Council officer's comments regarding the fallback position for development at No 72. However, the Council is not bound by officers' comments, and this is a matter that the appellant should raise with the Council. Moreover, the appellant has submitted a planning application for this use at the appeal property and accordingly I have considered this proposal on that basis. This matter has not altered my findings for these reasons.
34. Reference is made to the Housing Act. However, that Act deals with a regime separate to the planning system and is therefore not determinative in this case.

Conclusion

35. For the reasons stated above and having regard to the development plan, the Framework and other material considerations, the appeal should be dismissed.

A J Sutton

INSPECTOR