



Appeal Decision

Site visit made on 9 April 2024

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2024

Appeal Ref: APP/Z1775/W/23/3331067

16 North End Avenue, Portsmouth PO2 9EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr C Reynolds (CER Property Ltd) against the decision of Portsmouth City Council.
 - The application Ref is 23/00498/FUL.
 - The development proposed is change of use from dwellinghouse (Class C3) to a 7-bed/7-person House in Multiple Occupation, with changes to rear fenestration.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from dwellinghouse (Class C3) to a 7-bed/7-person House in Multiple Occupation, with changes to rear fenestration at 16 North End Avenue, Portsmouth PO2 9EB in accordance with the terms of the application, Ref 23/00498/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have used the description given on the appeal form, as it describes the proposal more accurately than that given on the application form.
3. 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 Section 111 of the Local Government Act 1972 (the S111 agreement) in respect of financial contributions towards mitigating the effects of the development on the SPAs. This is a matter which I will return to later.

Main Issues

4. The main issues are:
 - a) Whether the development would provide suitable living conditions for future occupants; and,
 - b) The effect of the development on the integrity of the SPAs.

Reasons

5. 16 North End Avenue is a two-storey dwelling on the northern side of a road that is predominantly residential in character. There is a mix of terraced and semi-detached houses, some of which have been converted to flats, and there is also a commercial car repair garage on the opposite side of the road. The house currently has living accommodation on the ground floor and three

bedrooms on the first floor. The proposed change of use to a House in Multiple Occupation (HMO) would comprise two bedrooms and a communal kitchen/dining area on the ground floor, and three bedrooms on the first floor. Two further bedrooms would be provided in a new second floor, which would be created through a hip to gable extension of the existing roof. It is not disputed that these works of extension could be achieved through permitted development rights.

Living conditions for future occupants

6. Policy PCS23 of the Portsmouth Plan (2012) requires the provision of a good standard of living environment for future residents of new development. Detailed advice on how this policy will be applied in proposals for HMOs is contained in the *Council's Houses in Multiple Occupation (HMOs) – Ensuring Mixed and Balanced Communities Supplementary Planning Document (October 2019)* (the HMO SPD). It is not disputed that the proposed bedrooms would comfortably meet the minimum floor areas specified in the HMO SPD. The HMO SPD advises that the Council's *Standards for Houses in Multiple Occupation Guidance (September 2018)* (the HMO Standards) should be the document referred to for more detailed requirements. All of the bedrooms would have ensuite shower rooms, which would meet these more detailed requirements.
7. As all of the bedrooms would exceed ten square metres, the HMO Standards specify that the minimum floorspace for the open plan communal kitchen/dining room to serve 6-10 people should be 22.5 square metres. It is not disputed that the area of the proposed kitchen/dining space would be 28.19 square metres, thus exceeding the minimum standard. Part of this space would comprise of a narrow area between two walls, which would accommodate a washing machine and tumble dryer. It is contended that this configuration would make the space unusable. However, even if this narrow section were entirely discounted, the remaining room area would still exceed the required standard. Furthermore, the drawings show that the room could comfortably accommodate the necessary kitchen appliances and a dining table with six chairs, with further space for seating with an outlook to the rear garden.
8. In view of the spacious nature of most of the bedrooms, it is unlikely that all of the residents would congregate in the communal kitchen/dining area on many occasions. In any event, the room would exceed the minimum space standards, and its shape would allow for a workable layout of the necessary facilities to allow residents to use it conveniently. Consequently, the development would provide suitable living conditions for future occupants. It would, therefore, comply with Policy PCS23 of the Portsmouth Plan (2012) and the advice in the HMO SPD.

The SPAs

9. The SPAs comprise a coastline of mudflats, shingle and saltmarshes which provide essential feeding and roosting grounds for over-wintering birds, including more than 90,000 waders and wildfowl, and 10% of the global population of brent geese. The SPAs were designated by the Government predominantly to protect these over-wintering birds.
10. Recreational activities which take place on this coastline can result in disturbance to the birds. Furthermore, evidence shows that some areas of the SPAs are in an 'unfavourable' condition due to nutrient levels causing

eutrophication. The appeal scheme would result in an increase in residents within the 5.6km 'Zone of Influence' of the SPAs. This has the potential to increase recreational activity around the shorelines, and to raise levels of nitrogen and phosphorus entering the water through the additional wastewater created. When considered alone or cumulatively with other schemes, there would be a likely significant effect on the integrity of the SPAs. Accordingly, under the Conservation of Habitats and Species Regulations 2017, Appropriate Assessment (AA) of the implications of the project for the designated sites is required.

11. As there is no dispute between the parties regarding the need for mitigating measures to avoid harm to the SPAs, I have carried out my AA on a proportionate basis, with regard to the evidence before me. This evidence includes the Council's AA, which concludes that there would be no adverse effect on the integrity of the SPAs, providing that appropriate financial contributions are secured in accordance with the Solent Recreation Mitigation Strategy (December 2017) (the Recreation Strategy) and the Updated Interim Nutrient Neutral Mitigation Strategy for New Dwellings (June 2022) (the Nutrient Strategy). The evidence also includes Natural England's consultation reply in respect of the Council's AA, which concurred with its conclusions, and raised no objection to the granting of permission.
12. The Recreation Strategy provides a strategic solution to mitigate the impact of increased recreational pressure on the SPAs arising from new residential development. It identifies a package of mitigation measures, including a team of rangers; communications, marketing, and education initiatives; facilitation and encouragement of responsible dog walking; codes of conduct; site-specific visitor management; secure habitats for birds; new/enhanced strategic greenspaces; and a manager to co-ordinate the actions. These measures are to be funded by pooled contributions from individual developments. In this case, the contribution secured through the S111 agreement is £980, which has been calculated on the basis of four additional bedrooms. The Council has confirmed that this is the appropriate sum.
13. The Nutrient Strategy indicates the routes available to applicants to secure appropriate mitigation for proposals. These include provisions for purchasing 'mitigation credit' from the Council's Mitigation Credit Bank, which would be used to provide mitigation measures to achieve nutrient neutrality in the Solent. The S111 agreement secures a contribution of £4,200 towards these measures, and the Council has confirmed that this is the correct amount.
14. The Recreation and Nutrient Strategies set out suitable measures for the mitigation of the likely significant effects of the development on the SPAs, and the financial contributions identified above are necessary to make the development acceptable in planning terms; directly related to the development; and are fairly and reasonably related in scale and kind. They therefore meet the statutory tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010.
15. Evidence, in the form of receipts, has been provided to show that the contributions were paid to the Council, pursuant to the S111 agreement, on 4 October 2023. I am satisfied that the provisions of the S111 agreement mean that the contributions could only be used by the Council for the purposes of mitigating the effect of the development on the SPAs.

16. Consequently, I am assured, based on the specific evidence before me, that sufficient measures are in place to secure the delivery of proportionate and relevant mitigation pursuant to the Strategies. I therefore find within my AA that, with the provided mitigation, the proposal would not result in a significant harmful effect on the integrity of the SPAs. The proposal would, therefore, comply with Policy PCS13 of the Portsmouth Plan (2012), which amongst other things, seeks to avoid adverse effects on European sites. The development would also accord with the aim of the National Planning Policy Framework to conserve and enhance the natural environment.

Other Matters

17. In arriving at my decision, I have had regard to the letters of representation that raise issues relating to the potential for anti-social behaviour, increased noise and waste, and additional strain on local services as a result of the development. Policy PCS20 of the Portsmouth Plan (2012) seeks to avoid such harm from arising by ensuring that proposals do not lead to a concentration of HMOs in any particular community. It is not disputed by the main parties that there are no other HMOs within a 50-metre radius of the appeal site, and that the proposal therefore accords with Policy PCS20. Whilst some representations claim that there are other HMOs in close proximity, I saw no evidence to support that contention at my visit.
18. The property has no off-street parking, so residents of the existing dwelling rely on on-street parking, which is unrestricted. The evidence indicates that there is considerable competition for parking in the surrounding streets, and concerns have been raised that the proposal would exacerbate this issue. However, it is unlikely that the proposed use would lead to a material increase in the requirement for car parking above that of a large family occupying the property. The required parking standards for a large dwelling and the proposed use are similar, and the site is in an accessible location, where residents would not be reliant on private transport. Furthermore, I note that the Highway Authority did not object to the proposal. I am therefore satisfied that the proposal would not have a significant impact on competition for parking in the locality.
19. Concern has been raised about the impact of the roof extension on privacy and light to nearby properties, and the effect of construction noise. However, it is not disputed that these works would amount to permitted development, so could be carried out regardless of my decision on this appeal.

Conditions

20. In accordance with the legislation, I have imposed a condition limiting the period within which the development must commence. I have also included a condition specifying the relevant plans, as this provides certainty. The Council's Committee Report suggested three conditions to cover other matters. I have considered these against the advice in the Planning Practice Guidance and agree that they meet the relevant tests. However, I have altered them, in the interests of clarity and precision, to better reflect the guidance.
21. A condition requiring the provision of secure cycle storage is necessary to encourage the use of alternative means of transport to the private car, and to comply with Policy PCS23 of the Portsmouth Plan (2012). A condition to minimise water usage is necessary to ensure that the lower threshold under

the Building Regulations is applicable, in accordance with paragraph 4.8 of the Nutrient Strategy. As the additional floorspace created by the physical works is needed to ensure a good standard of living accommodation for future residents, a condition requiring the works to be completed prior to occupation is justified.

Conclusion

22. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be allowed.

Nick Davies

INSPECTOR

Schedule of Conditions

- 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: TQRQM23053152218289 – Location Plan; TQRQM23110095415506 – Block Plan; PG.8035.23.4 Rev D – Existing and Proposed Plans and Elevations.
- 3) The use hereby permitted shall not commence until secure and weatherproof storage facilities for four bicycles have been provided at the site, in accordance with details that have first been submitted to, and approved in writing by, the local planning authority. The approved facilities shall thereafter be retained for the parking of bicycles at all times.
- 4) The use hereby permitted shall not commence until the optional requirement for water efficiency of 110 litres per occupant per day, as set out in Regulation 36(2)(b) of the Building Regulations 2010 (as amended) and part G2 of Approved Document 2015, has been complied with.
- 5) The use hereby permitted shall not commence until all of the physical alterations and extensions to the building shown on approved drawing no PG.8035.23.4 Rev D have been completed.