



Appeal Decision

Site visit made on 20 February 2024

by **C Carpenter BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 May 2024

Appeal Ref: APP/Z1775/W/23/3319595

41 Margate Road, Southsea, Portsmouth PO5 1EY

- 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 Birmingham (Bunked) against the decision of Portsmouth City Council.
 - The application Ref is 22/01607/FUL.
 - The development proposed is change of use from C4 HMO to *sui generis* HMO 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 C4 HMO to *sui generis* HMO for more than 6 persons at 41 Margate Road, Southsea, Portsmouth PO5 1EY in accordance with the terms of the application, Ref 22/01607/FUL, and the plans submitted with it, subject to the following 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: 1-1250 Location Plan; 1-500 Block Plan; PG.4007.19.4 REV D Existing & Proposed Plans.

Preliminary Matters

2. The description in the heading above has been taken from the planning application form. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. The National Planning Policy Framework (the Framework) was updated in December 2023, during the course of this appeal. However, insofar as the contents are relevant to this appeal, the Framework has not changed. Therefore, I am satisfied no party would be disadvantaged by not having the opportunity to comment on the revised Framework.

Main Issues

4. The main issues are:

- whether the development would provide adequate living conditions for future occupiers of the HMO, with particular reference to toilet and bathroom facilities; and
- the effect of the proposal on the integrity of protected European sites.

Reasons

Living conditions

5. The Council's 'Houses in multiple occupation – Ensuring mixed and balanced communities' Supplementary Planning Document 2019 (HMO SPD) sets standards for toilet and bathroom provision in HMOs of different sizes. In the case of an HMO accommodating 6-10 persons, it requires two separate bathrooms and two separate WCs with wash-hand basin, one of which can be contained within a bathroom. The SPD does not specify where in an HMO these facilities should be located.
6. The proposed development would include a shower-room with toilet and wash-hand basin on both the first and second floors, and an additional separate toilet and wash-hand basin on the second floor. This would comply with the SPD standard. There would be a relatively short distance between the ground floor bedrooms and the first-floor facilities. There is no pertinent evidence before me to demonstrate why this arrangement would be harmful to the living conditions of future occupiers of the HMO.
7. I therefore conclude the development would provide adequate living conditions for existing and future occupiers of the HMO, with particular reference to toilet and bathroom provision. Accordingly, I find no conflict with Policy PCS23 of The Portsmouth Plan – Portsmouth's Core Strategy (PP), which requires a good standard of living environment for future residents of the development. I also find no conflict with the Framework, where it seeks a high standard of amenity for future users of development. I also find no conflict with the HMO SPD.

Integrity of protected European sites

8. The appeal site lies within the Zone of Influence of the Portsmouth Harbour, Chichester and Langstone Harbours, Solent and Dorset Coast, and Solent and Southampton Waters Special Protection Areas (the SPAs); and the Solent Maritime and Solent and Isle of Wight Lagoons Special Areas of Conservation (the SACs). The SPAs and SACs are European sites protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
9. The SPAs and SACs encompass a major estuarine system comprising extensive mudflats, sandflats, sand banks and salt meadows together with adjacent coastal habitats including saline lagoons, shingle beaches, reedbeds, damp woodland and grazing marsh. These habitats support a rich variety of flora and fauna that form the food resource for estuarine birds. In summer, the sites are important for breeding seabirds, including Gulls and four species of Tern. In winter, the sites hold a large and diverse assemblage of waterbirds, including the Black-tailed godwit, Dark-bellied Brent goose, Ringed plover and Teal.

10. The SPAs and SACs provide an important recreational and economic resource. On the evidence before me, the proposal, particularly when combined with other development in the area, would be likely to have a significant effect on these protected European sites. Consequently, under the Habitats Regulations, an appropriate assessment is required in relation to the effect of the development on the integrity of the sites. This responsibility falls to me as competent authority in the context of this appeal.

Appropriate Assessment

11. The conservation objectives of the SPAs and SACs aim to ensure the integrity of the sites is maintained or restored. This includes maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats; and the population and distribution of each of the qualifying features within the sites.
12. There is a threat to the integrity of the SPAs and SACs from public access and disturbance, including from recreational activities such as walking, dog walking, wildlife watching and water sports.
13. Nutrient pollution is a problem for the habitats in the SPAs and SACs because excessive levels of nutrients contained in nitrogen and phosphorus can cause the rapid growth of certain plants and algae through the process of eutrophication. This can displace species that are either important in their own right or which act as sources of food and shelter for other species, thereby adversely affecting the qualifying features of the European sites.
14. It is likely the HMO's additional occupants could visit the SPAs and SACs, resulting in increased recreational activity that would disturb the protected habitats and birds within the sites. It is also likely the proposed larger HMO would generate more wastewater, which would increase levels of nitrogen and phosphorus entering the protected sites. Therefore, the development, alone and in combination with other development, would be likely to have significant adverse effects on the integrity and conservation objectives of the SPAs and SAC.
15. The parties have agreed a financial sum in accordance with the Solent Recreation Mitigation Strategy 2017, the Council's Updated Interim Nutrient Neutral Mitigation Strategy for New Dwellings 2022 and the Solent Nutrient Neutrality Calculator. Natural England has been consulted as part of this appropriate assessment and has confirmed that contributions that accord with the above documents would be sufficient to avoid an adverse impact on the integrity of the SPAs and SACs.
16. I am satisfied on the evidence before me that the agreed sum has been received by the Council by way of a section 111 agreement, for the purposes of contributing to the strategic mitigation measures described above. I therefore find there would be no adverse effect from the proposed development on the integrity of the SPAs and SAC as protected European sites. Accordingly, I find no conflict with Policy PCS13 of the PP, which reflects the requirement of the Habitats Regulations. The proposed development would also be consistent with the Framework, which requires adequate mitigation if significant harm to sites protected under the Habitats Regulations cannot be avoided.

Conclusion

17. For the reasons set out above, I conclude the proposed development would not have an adverse effect on the integrity of protected European sites.

Other Matters

18. The premises is already in HMO use, so the proposal would not change the proportion of HMOs to C3 dwellings in the neighbourhood. There is no pertinent evidence to suggest the larger HMO is not needed because of high levels of vacancy in other premises let to students. There is also little to substantiate concerns that the HMO use at 41 Margate Road causes noise, crime, anti-social behaviour, litter or parking problems in the street. The Council is satisfied the addition of one single-person room would have little material effect on the living conditions of neighbouring occupiers or on levels of car parking in the street. On the evidence before me, I see no reason to disagree.
19. The number of premises owned by the appellant is a private matter with no material bearing on my assessment of the planning issues in this appeal. The Council's approach to notifying residents of planning applications and its decision-making timescales are outside my jurisdiction.

Conditions

20. The Council has not put forward conditions. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.

Conclusion

21. For the above reasons the proposal accords with the development plan, read as a whole. Material considerations, including the Framework, do not indicate that a decision should be taken otherwise than in accordance with it. I therefore conclude the appeal should be allowed.

C Carpenter

INSPECTOR