



Appeal Decision

Site visit made on 23 July 2024

by S Leonard BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

Appeal Ref: APP/Z1775/W/23/3330214
61 St Chads Avenue, Portsmouth PO2 0SD

- 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 Mr Harfield (GG-726-788 Limited) against the decision of Portsmouth City Council.
 - The application Ref is 23/00676/FUL.
 - The development proposed is change of use from dwellinghouse (Class C3) to 7 person/7-bedroom House in Multiple Occupation (HMO).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from dwellinghouse (Class C3) to 7 person/7-bedroom House in Multiple Occupation at 61 St Chads Avenue, Portsmouth PO2 0SD, in accordance with the terms of the application Ref 23/00676/FUL, dated 1 June 2023, and the plans submitted with it, subject to the conditions set out in the attached schedule of conditions.

Procedural Matters

2. The description of development is taken from the Council's description of development and the appeal form, since this more comprehensively describes the appeal scheme than the description 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 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.
4. Since the refusal of the application, which is the subject of this appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published on 19 December 2023. The main parties have had the opportunity to comment upon the revised Framework in respect of the appeal, and I have taken it into account where relevant to my decision.

Application for costs

5. An application for costs was made by Mr Harfield (GG-726-788 Limited) against Portsmouth City Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues are:

- Whether the proposal would provide inadequate capacity for foul drainage such that it would result in localised flooding; and
- Whether the proposal would provide adequate mitigation for the Solent Special Protection Areas (SPAs).

Reasons

Drainage

7. The Council's statement of case confirms that the first reason for refusal specifically relates to concern that the proposal would result in an increase in localised flooding due to inadequate existing sewer capacity to accommodate the proposed HMO occupation of the appeal site, and insufficient information to demonstrate that additional capacity would be provided prior to the occupation of the appeal scheme.
8. The Council's statement of case and the Planning Committee meeting Minutes indicate that the Council has based the above on evidence provided by third parties, who are of the view that there is an existing serious issue in respect of sewer flooding within the area. References are made to incidents of sewage flowing onto the public highway and associated health risks to residents, including children attending nearby educational establishments.
9. Frequent overflows may potentially indicate that a sewerage system is overloaded and cannot satisfactorily accept any further connections. However, in this instance, the appellant has confirmed that the existing appeal site property connects to the public sewer system and that this arrangement would not change as a result of the appeal scheme.
10. Moreover, the existing dwellinghouse, as enlarged to a potential 5-bedroom dwelling by means of the Permitted Development alterations and extensions which, I saw during my site visit, are currently in the process of being undertaken, would be capable of accommodating the same number of occupants as the 7-person appeal scheme HMO, or possibly more, since the maximum number of occupiers of the existing dwelling is not restricted. In contrast, the appeal scheme would be limited to a maximum of 7 persons. As such, I find that there is no cogent evidence before me that the occupancy of the appeal scheme would result in an increased load upon the existing sewer system such that it would negatively impact upon its existing capacity.
11. The Council's evidence in support of its first reason for refusal comprises third-party reports of localised flooding events. This includes letters of objection received in response to the planning application and appeal, a list of 64 recorded incidents of localised flooding events which occurred between January 2013 and May 2023 within the locality of the appeal site within St Chads Avenue, Battenburg Avenue and Hewett Road, and a photograph which shows sewage flooding from a roadside drain.
12. The provided list of events predominantly relates to public foul or combined sewers and the events appear to be related to incidents of blockages. However, I have not been provided with any detailed analysis of how this data specifically directly relates to the appeal scheme and how it justifies the Council's first reason for refusal. I find that the list of detailed occurrences of flooding due to blockages, none of which have occurred within the past year, and which the statutory sewerage undertaker would be responsible for addressing, does not

- provide credible substantive evidence that the existing local sewerage system is currently operating at inadequate capacity, or that there is inadequate capacity available for drainage from the appeal scheme. Nor does it provide demonstrable evidence that the appeal scheme would result in flood risk due to an unacceptable reduction to the level of foul water disposal service.
13. In addition, the photographic evidence is undated, the precise location is not specified, and the specific relevance of the photograph to the appeal site and appeal proposal and its significance in respect of the appeal scheme foul drainage are not fully explained.
 14. Moreover, I am mindful that the construction, operation and maintenance of an adopted sewerage system is the responsibility of the statutory sewerage undertaker, in this case, Southern Water, and the sewerage undertaker has a legal duty under S94 of the Water Industry Act 1991 (the WIA) to provide an effective system of sewers in its area. These sewers become public sewers to which the owners/occupiers of premises, and the owners of private sewers, have a right to connect and thereby drain foul water regardless of any capacity issues.
 15. Moreover, notwithstanding an anecdotal third-party suggestion that Southern Water privately stated that the aforesaid incidences of localised flooding events are exacerbated by HMO properties, there is no evidence before me that the Council has carried out any direct liaison with Southern Water prior to the determination of the planning application or the submission of its appeal statement, in order to ascertain whether there are any existing sewer capacity problems identified by the responsible sewerage undertaker.
 16. As such, I find that there is no substantive evidence before me that the existing sewerage system is unable to cope with the waste-water flows likely to be generated by the proposed development, which could potentially be because of factors such as limitations in the size of the pipes; in the flow rating of pumping stations; or in the capacity of the Waste Water Treatment Works served by the system.
 17. Moreover, Southern Water has a statutory duty under S94 of the WIA to plan and implement any works that are necessary to ensure that the network of sewers (and sewage treatment facilities) continue to operate satisfactorily once it has received notification that a developer intends to exercise its right to connect. A sewerage undertaker cannot refuse to allow connection, or dictate where such a connection should be made, on the grounds that some part of the sewerage system is overloaded (see *Barratt Homes Ltd v Dwr Cymru Cyfyngedig*¹). Southern Water cannot object, and the Council cannot refuse to grant planning permission simply on the grounds that no improvement works are proposed for a particular area.
 18. For the above reasons, I therefore conclude that there is no clear evidence before me that there is inadequate capacity for the foul drainage that would result from the proposal, such that the proposal would result in local surface water flooding. As such, the proposal accords with Policy PCS12 of the *Portsmouth Plan* (2012) (the PP), in so much as this policy seeks to control

¹ *Barratt Homes Ltd v Dwr Cymru Cyfyngedig* (Welsh Water) [2009] UKSC 13 (09 December 2009)

flood risk, by amongst other things, ensuring necessary foul drainage capacity is available.

SPAs

19. 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.
20. The appeal scheme results in an increase in bedrooms 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.
21. As such, although the change of use from a family dwellinghouse to a 7-person HMO would relate 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.
22. 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.
23. 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.
24. The SRMS provides for the payment of a mitigation contribution, in this case £980, 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.
25. 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.
26. 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.
27. 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.
28. The appellant, on 31 October 2023, paid £980 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 £3600 to purchase mitigation credits in accordance with the INNMS.
29. These contributions were paid pursuant to section 111 of the Local Government Act 1972², 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.
30. In line with the guidance in the Planning Practice Guidance³ 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.
31. 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 186 of the Framework. That is because mitigation would be available to conserve the natural environment, most particularly the integrity of the SPAs.

² As explained in a 'Section 111 Agreement' completed by the appellant on 31 October 2023

³ Paragraph 4 in section 65 of the Planning Practice Guidance, published by the Government on 22 July 2019

Other Matters

32. I have had regard to third-party concerns in respect of the number of HMOs within the area, and an associated impact on community living conditions. The Council's Committee Report confirms how the proposal accords with PP Policy PCS20 and the Council's adopted HMO SPD⁴ which sets a 10% threshold for the number of HMOs within a 50m radius of the site in order to ensure a balanced community, and places restrictions on the location of HMOs in relation to each other and to existing residential properties in the interests of amenity and the living conditions of neighbours. On this basis, I am satisfied that these matters have been satisfactorily addressed.
33. Whilst some representations claim that there are other unrecorded HMOs in close proximity, there is no cogent evidence before me that indicates that the Council's 10% HMO threshold has been exceeded within the adopted 50m radius of the appeal site. Nor am I persuaded, on the basis of the evidence before me, that the application of the aforesaid adopted guidance should be adapted having regard to the appeal site location.
34. Moreover, having particular regard to third party objections on the basis of noise disturbance impacts, I concur with the Council's assessment that the proposed occupation of the property as a 7 person HMO is unlikely to result in a significantly greater level of noise and activity than that associated with the existing dwellinghouse use, as enlarged through permitted roof and rear additions, which does not have an occupancy number restriction.
35. I have noted the third-party concerns about the standard of living accommodation for future residents of the appeal scheme. The Council's Committee Report confirms how the proposal accords with PP Policy PCS23 and the HMO SPD which seek to ensure that those living in HMOs benefit from good standards of living by setting out space standards for bedroom areas and communal living areas.
36. In addition, the HMO licensing regime would ensure that the maximum number of HMO residents does not exceed 7. On the basis that the proposal accords with the Council's adopted room space standards, I am satisfied that this matter has been satisfactorily addressed.
37. I have taken account of neighbour concerns in respect of carparking. The appeal 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 on-street parking, including in association with a school and NHS facilities located at the end of St Chads Avenue. There are third party objections on the basis that the appeal scheme would exacerbate this issue.
38. The proposal would require 2 parking spaces to accord with the Council's parking standards. This is not significantly greater than the required standard for a large dwelling, noting that 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. Moreover, the site is in an accessible location in relation to facilities and services and public transport connections, so that residents would not be reliant upon private transport. Also, the Highway

⁴ 'Houses in Multiple Occupation (HMOs) – Ensuring Mixed and Balanced Communities' (updated in October 2019)

Authority did not object to the proposal. I am therefore satisfied that this matter does not constitute a reason for dismissing the appeal.

39. Noting the concerns that the site cannot accommodate sufficient bicycle storage, I am satisfied that there is adequate space within the rear garden to accommodate storage for 4 cycles to meet the requirement of the Council's adopted parking standards.
40. In respect of third-party objections regarding refuse storage, the Council has raised no object to the proposed positioning of bins within the enclosed front garden. I saw, during my site visit, that this is the existing arrangement and I have no cogent evidence before me to disagree with the Council regarding this matter.
41. Concerns have been raised about the design of the physical alterations and extensions in terms of how they would impact upon the privacy and light to neighbouring properties and the character and appearance of the area. However, it is not disputed that these works would amount to Permitted Development. As such, they could be carried out regardless of my decision on this appeal.
42. Moreover, I am not persuaded that the use of bedrooms within a HMO property would have a materially greater impact upon neighbouring privacy and noise levels than that of bedroom use within a dwellinghouse.
43. There are concerns in respect of the suitability of the building's structure for the proposal. This matter would be dealt with under the Building Regulations, separately from the consideration of this appeal.
44. In respect of neighbour concerns regarding the demand for new infrastructure arising from the development, this matter is dealt with by means of the Council's Community Infrastructure Levy (CIL) requirements.
45. Also, third party concerns regarding devaluation of neighbouring properties and the conduct of the appellant/building contractor during building works which have already taken place in respect of the Permitted Development element of the appeal scheme are not determining factors in the consideration of this appeal.
46. Third party concerns about increased anti-social behaviour and crime and detrimental impact upon mental health and wellbeing are noted. However, there is no substantive evidence before me that it is likely that these matters would arise because of the proposed HMO use of the property.

Conditions

47. The Council has suggested 5 conditions, in the event that the appeal is allowed. I have considered these 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. Where necessary, I have altered them, in the interests of clarity and precision.
48. In addition to the standard implementation condition (1), it is necessary to define the plans for certainty (2). A condition requiring the provision of secure cycle storage (3) is necessary to encourage the use of alternative means of transport to the private car, and to comply with PP Policy PCS23.

49. As the additional floorspace created by the Permitted Development 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 (4). 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 INNMS (5).

Conclusion

50. The development accords with the development plan taken as a whole and there are no material considerations that indicate that the decision should be made other than in accordance with the development plan.
51. Therefore, for the reasons given above, 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 begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: TQRQM23034133702349 – Location Plan; TQRQM23151142703257 – Block Plan; PG.8021.23.1 – Existing Plan; and PG.8021.23.5 Rev A – Sui Gen Plan.
- 3) The use hereby permitted shall not commence until all of the physical alterations and extensions to the building shown on approved drawing Ref PG.8021.23.5 Rev A have been completed.
- 4) 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.
- 5) The use hereby permitted shall not commence until the optional requirements 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), has been complied with.

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