



Appeal Decision

Site visit made on 11 February 2025

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2025

Appeal Ref: APP/Z1775/W/24/3351325

38 Laburnum Grove, City of Portsmouth PO2 0EP

- 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 Mrs Fei Xiaoyu against the decision of Portsmouth City Council.
 - The application Ref is 23/01431/FUL.
 - The development proposed is the change of use from C4 HMO to Sui Generis (8 Bedroom HMO).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from C4 HMO to Sui Generis (8 Bedroom HMO) at 38 Laburnum Grove, City of Portsmouth PO2 0EP in accordance with the terms of the application, Ref 23/01431/FUL, subject to the following 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 Dwg No.119-PL04C - Proposed Floor Plans and Location Plans.
 - 3) Prior to the occupation of the property as an eight person/eight-bedroom Sui Generis Home in Multiple Occupation, the proposed bike store for four bicycles shall be provided, in accordance with Drg No.119-PL04C - Proposed Floor Plans and Location Plans and shall thereafter be maintained and retained for the storage of bicycles.

Application for costs

2. An application for costs was made by Mrs Fei Xiaoyu against Portsmouth City Council. This is the subject of a separate decision.

Preliminary matters

3. At the time of my site visit I observed that the living room had been converted into a bedroom. However, as I cannot be certain that the works to create the additional bedrooms (referred to as Bedroom 2 and Bedroom 3) reflect the appeal scheme, I have based my assessment on the development as proposed on the submitted plans.

Main Issues

4. The main issues are whether:
 - future occupiers of the proposed development would be likely to experience acceptable living conditions, with specific regard to daylight; and

- the proposed development would be likely to have a significant effect on the integrity of the Solent Special Protection Area (the Solent) with particular regard to nitrates and recreational disturbance.

Reasons

Living conditions

5. The proposed development includes the conversion of the former living room into Bedroom 2. This room is served by a fully glazed door which opens onto a small, enclosure courtyard. Above the door and to one side, panels are also glazed providing a floor to ceiling glazed section to this part of the room. During my site visit at 15:00, I observed the room to be lit by natural light coming through the door and the surrounding panels, despite the weather being overcast at the time. The room was not, therefore, dark or uninviting. As such, future occupiers would be provided with sufficient daylight to support their day-to-day activities in this bedroom.
6. Occupants of Bedroom 2 may experience cooking smells should the door to the courtyard and the window to the dining area be open at the same time. However, given the distance between the source of such smells and the bedroom, including across the external courtyard, it is unlikely that such smells would be beyond what future occupants of Bedroom 2 would reasonably expect to experience.
7. Whilst reference is made to the outlook from Bedroom 2 being restricted by the size and enclosure of the courtyard, it does not form part of the reasons for refusal on the decision notice. Nonetheless, this outlook remains unchanged and, whilst restricted, views from this window are not uncommon within other similarly built-up environments.
8. I conclude that the proposed development would not harm the living conditions of future occupiers, with specific regard to daylight and ventilation. It accords with Policy PCS23 of the Portsmouth Local Plan (the Local Plan) which, amongst other provisions, requires new development to provide a good standard of living for future residents.

Integrity of the Solent SPA

9. Special Protection Areas (SPA) are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). The natural conservation interest of the Solent SPA results from the various birds supported by the habitat, particularly during the winter months. The protection of the Solent seeks to ensure that migratory birds can feed undisturbed whilst they build up energy reserves to survive the winter before journeying back to their breeding grounds. Two key issues which prevent the Solent from meeting this objective relate to an increase in wastewater being discharged into it and additional recreational pressures placed on the area.
10. Wastewater can include pollutants or nutrients, such as nitrates and phosphates, which affect water quality. This can result in a process known as eutrophication which speeds up the growth of certain plants, threatening the aquatic ecosystem by damaging the Solent's plants and wildlife, including the habitats and food available for the protected birds. Public access to the Solent increases the risk of disturbance to the birds and this can lead to increased bird mortality or a reduction

in amount of energy an individual bird has available at the end of the winter should the birds move away from the feeding ground.

11. As the proposed development would add to the number of people living within the area, it would also increase the amount of wastewater being discharged into the Solent. It is therefore likely that the proposed development, taken both in isolation and cumulatively with other projects, would have a significant adverse effect on the integrity of the Solent. Consequently, it is necessary for me, as the competent authority, to conduct an Appropriate Assessment concerning the effect of the development on the integrity of the Solent.
12. The approach to avoiding or mitigating significant effects to the Solent comprises securing contributions towards the Council's nutrient neutral¹ and recreation² mitigation strategies. These are calculated on the increase in annual nitrogen and prosperous input resulting from the proposed development and the number of additional bedrooms proposed.
13. Contributions can be paid either prior to the grant of planning permission as an upfront payment or prior to commencement if secured by an appropriate legal agreement. The SPD, therefore, provides sufficient information for me to conclude that the obligations sought are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the Framework's planning obligations tests. Natural England was consulted during the determination of the planning application, raising no objection subject to appropriate mitigation being secured.
14. During the appeal, a copy of a signed and dated S111 Agreement between the appellant and the Council was submitted, including evidence that the appropriate contributions had been paid directly to the Council. Therefore, I am satisfied that the S111 Agreement secures the necessary contributions which would enable the delivery of mitigation sufficient to address the level of harm likely to be caused by the development. I therefore find that, subject to the agreed mitigation, the proposed development would not result in an adverse effect on the integrity of the Solent, with particular regard to nitrates and recreational disturbance. In this respect, it accords with Policy PCS13 of the Local Plan.

Other Matters

15. Interested parties have raised various concerns regarding the availability of parking spaces and the capacity of existing community facilities and services in the area given the proposed development would increase the number of people living in the property. However, no compelling evidence has been provided to substantiate these comments. Furthermore, the evidence before me indicates that there is no policy requirement for additional parking spaces as a result of the proposed development. Combined with the property's location within walking distance of a range of services and facilities, including public transport routes, and the conditional provision of a cycle store, the concerns raised are not reasons which lead to a refusal of planning permission in this case.

¹ Interim Nutrient Neutral Mitigation Strategy for New Dwellings, dated November 2019

² Solent Recreation Mitigation Strategy, dated December 2017

16. Whilst there may be other HMOs located nearby, this amount would not be increased by the proposed development, just the number of residents. I have no further information before me to substantiate the anecdotal comment regarding past issues with the sewers in the area. The financial circumstance of the appellant is not a determinative matter in my decision.

Conditions

17. In addition to the standard conditions relating to the timescale and approved plans, I have imposed a condition requiring the bicycle store to be erected prior to the occupation of development permitted to support the use of alternative methods of transport to the private car. It is not necessary for the plans and bicycle storage conditions to include the tail piece wording suggested as any deviations from them would need to be approved by the Council in any event.
18. As the plans listed include the works to be carried out under permitted development rights, it is not necessary for me to attach a separate condition requiring these works to be completed prior to occupation.
19. I have not imposed the water efficiency condition as this relates to a matter which is covered by Building Regulations and is not, therefore, required to make the proposed development acceptable in planning terms.

Conclusion

20. For the reasons given above the appeal should be allowed.

Juliet Rogers

INSPECTOR