



Appeal Decision

Site visit made on 20 February 2025

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2025

Appeal Ref: APP/P2114/W/24/3353732

Rowborough, 32 Arthurs Hill, Shanklin, Isle of Wight PO37 6EX

- 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 Patrick Murtagh (Hartford Care) against the decision of the Isle of Wight Council.
 - The application Ref is 24/00578/FUL.
 - The development proposed is change of use from hotel/boarding house to house in multiple occupation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the refusal of the planning application and the submission of the appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published on 12 December 2024. I have sought the views of the main parties on this matter, and I have taken the revised Framework into account where relevant to my decision.
3. A review of the Council's Development Plan, the *Isle of Wight Core Strategy (including Waste and Minerals) and Development Management Development Plan Document* (March 2012) (the Island Plan) is underway. The Council has confirmed that the emerging Isle of Wight Local Plan, the *Island Planning Strategy 2022-2037* (the eIPS) was submitted for examination on 31 October 2024 and that the Examination Hearings commenced on 25 February 2025.
4. As such, the Council considers that Island Plan Policy SP4, referred to in the Council's reason for refusal, is the relevant policy for the determination of this appeal.
5. I have not been provided with sufficient information from which to establish when the Examining Inspector's Report is likely to be issued or when or whether the eIPS is likely to be adopted. Accordingly, based on the evidence before me and the on-going Examination of the eIPS, I attach limited weight to the emerging policies of the eIPS.

Main Issue

6. The main issue is whether the appeal scheme would result in the harmful loss of tourist accommodation.

Reasons

7. The Rowborough comprises a detached 2-storey Victorian property located in a prominent position on the corner of Arthurs Hill and Wilton Park Road and within the designated settlement boundary of Shanklin.
8. The evidence before me is that it comprised a 4-star guesthouse which had achieved good reviews while trading, including achieving a 'Travellers Choice' recognition from Tripadvisor for 8 consecutive years as well as receiving notable Tripadvisor awards in 2020, as reported in the County Press. As such, there is cogent evidence that the premises were competently managed, and that the former hotel business had a successful reputation.
9. I observed during my site visit that the external appearance and internal layout of the property do not appear to have been much altered since the appellant's purchase of the premises, including the retention of dining room, kitchen and lounge facilities and a manager's flat on the ground floor, as well as former hotel fixtures and fittings.
10. The evidence before me is that the hotel use ceased in September 2022 and the appellant purchased the property in October 2022 with the intention of using it to provide short term temporary accommodation, primarily in connection with the operation of its care home properties on the Island. The appellant has confirmed that it has not marketed the property to tourists during its ownership or offered it for sale to a potential tourism operator. Rather, the evidence before me is that, since March 2023 the premises have been used to accommodate Ukrainian refugees, builders working on the refurbishment of an adjacent care home within the appellant's ownership and visiting families of residents of the care home.
11. The appellant contends that it has used the premises as a boarding house within Use Class C1, rather than as a tourist hotel, the latter use which the appellant contends was clearly unviable. In so doing, the appellant states that attempts were made to 'save or reposition the business' in accordance with the first criterion of paragraph 5.166. However, the Council's view is that the property is operating as a Sui Generis HMO, hence the requirement for a change of use application.
12. I have no evidence before me that a formal application for a certificate of lawfulness with respect to the existing use of the building has been determined by the Council prior to the appeal planning application. Moreover, it is not for me, under a section 78 appeal, to determine whether or not the existing use of the property is lawful. To that end, it is open to the appellant to apply for a determination under sections 191/192 of the Act, and my determination of this appeal under section 78 does not affect the issuing of a determination under section 191/192 regardless of the outcome of this appeal.
13. Notwithstanding how the premises are presently occupied, and the lawfulness or not of this use, my determination of this appeal is based upon the description of development of the planning application, which accords with the use refused by the Council, which is that of large HMO. The documents before me confirm that the HMO use would provide 8 dependently let bedrooms, including one designated as a 'guest room', with residents sharing communal facilities on the remainder of the ground floor, including a kitchen/dining room, games room, study and several lounges. The appellant intends to let the rooms to workers employed in the appellant's care home group and other guests.

14. The appeal scheme results in the loss of an entire hotel premises, involving the loss of 9 hotel rooms, within a popular tourist resort, where tourism continues to play an important economic role.
15. The supporting text to Island Plan Policy SP4 explains the importance of tourism to the economy of the Island (paragraph 5.169). This includes emphasising the important contribution made by visitors who stay for longer than a day, and a recognition that planning policies should allow tourism destinations and facilities to accommodate longer staying visitors, and for the sector to encourage more people to stay on the Island rather than visit for just a day (paragraph 5.172).
16. Accordingly, a stated objective of Policy SP4 is to improve and maintain the quality of existing tourism destinations and accommodation. The policy pragmatically acknowledges that changes to the tourism offer on the Island have taken place over the years so that there has been a cessation of tourism use on a number of sites and some sites have become unsuitable to carry on in their current form. Accordingly, the policy permits a loss of tourist bedspaces through redevelopment or conversion to other uses where it can be demonstrated that the use is no longer viable and that the premises/site has been marketed for at least 12 months at an appropriate market price.
17. The supporting text in paragraph 5.166 sets out the criteria that the Council will use to establish the viability of tourist accommodation. In addition to the aforesaid proof of marketing these include evidence of attempts to save or reposition the business; evidence of business performance when set against local and regional benchmarks, such as the levels of occupancy relevant to Southeast average; and evidence of professional and competent management.
18. The wording of Policy SP4 does not explicitly state that all the criteria of paragraph 5.166 must be met in order to permit the conversion to a different use. However, the policy clearly seeks to ensure that no tourist accommodation is lost without justification and that proposals are expected to justify why the continued use as tourist accommodation is economically unviable (paragraph 5.164).
19. I find that activities such as marketing the business for sale and providing trading accounts outlining any profits and losses are sensible and practical methods of testing whether the business is viable.
20. Whilst the appellant has provided some information in respect of the hotel accounts, these are limited to the period comprising 2015-2018 and 2020-2021. Notably, whilst the previous owners operated the business on a self-employed basis for about 10 years, no hotel accounts have been provided for the years prior to 2015, 2019, or 2022-2023. Moreover, the collapse in revenue in the year up to 31 March 2021 and associated need for income subsidy grants would have reasonably related to the impact of the Pandemic and as such, would not have comprised a reflection of a normal trading year.
21. I acknowledge the appellant's assertion that, the accounts suggest that the previous proprietors single-handedly ran the business without employing any additional staff, whilst earning less than the minimum wage due to having to undertake a long working week, and that they appear to have funded the purchase of the building themselves with no return on that investment shown in the accounts.

22. As such, the appellant's view is that if the available accounts had included the costs of acquiring the building and provisions for reserves or ongoing capital investment, then the business would have been demonstrated to be unviable. Moreover, the appellant concludes that, based on the available accounts, the hotel business would have been unattractive to a tourism investor, who would have to acquire the site, appoint a suitable manager and meet the current minimum wage and employers National Insurance and pension contribution requirements.
23. However, the evidence before me is not sufficiently robust to support the above, as it largely relies upon supposition rather than empirical financial information and/or verification of the facts from the former owners. As such and having regard to the significant gaps within the submitted accounts and lack of information regarding any marketing of the property, including that associated with the appellant's purchase of the site and any marketing since then, I am not persuaded that the appellant has satisfactorily demonstrated that a tourist hotel use of the appeal site would not be viable.
24. I have noted that the increase in the sale price of the property between May 2006 and October 2022 amounted to less than the average percentage increase in the value of a detached house within the Council's area. However, this, without details of the marketing undertaken and the responses received does not demonstrably confirm a lack of viability of the business.
25. Moreover, there is no substantive evidence before me that the appellant, as a care home operator seeking to use the premises to accommodate persons in connection with the operation of other business properties it owns, has attempted to run the property as a tourist hotel.
26. Whilst the property dates to the Victorian era, there is no substantive information before me regarding any extraordinary costs associated with the ongoing repair/upgrade works to the building and I did not observe any noticeable evidence that the property has not been maintained in a good state of repair when undertaking my site visit.
27. Whilst the site lies on a busy road and has no sea or country views, its location is not inappropriate for a hotel use. As well as providing easy road access and on-site parking for carborne clientele, the site is also accessible on foot to tourist associated locations including beaches, gardens, shops and restaurants, and Shanklin railway station is also within easy walking distance. As such, I am not persuaded that the location of the site would act as a significant deterrent to its use as a tourist hotel.
28. Moreover, whilst competition from national chain hotels could reasonably be expected to affect the viability of some smaller hotels such as the appeal premises, I have not been provided with any specific examples of such hotels operating within a location which would directly impact upon the viability of the Rowborough.
29. My attention has been drawn to Policy E8 (Supporting High Quality Tourism) of the eIPS which refers to visitor accommodation. This indicates an intended change in the Council's approach to the retention of existing tourist accommodation. The requirement to demonstrate that the hotel is no longer financially viable would apply to the designated 'core tourist accommodation areas', outside of which the appeal site lies. However, I am unaware whether there are any outstanding objections to

the eIPS and given the stage of its preparation and that it may be subject to change, I afford limited weight to emerging Policy E8.

30. For the above reasons, I therefore conclude that insufficient evidence has been provided to justify the appeal scheme and that, as such, the development would result in the harmful loss of tourist accommodation which would be detrimental to the local tourist economy.

Other Matters

31. The Council does not have a 5-year housing land supply. Its latest published figures, dated April 2024, indicated a 3.5-year supply. This has not been calculated, taking account of the updated standard method outlined in the updated Framework, and it is likely that its supply is less.
32. As such, the Framework advises that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
33. The appeal scheme provides an additional HMO in a highly sustainable location which would assist, to a limited degree, in boosting the supply of housing and range of housing choice in the area. This would be a benefit of the scheme. There would also be economic and social benefits associated with the ongoing occupation of the property by occupiers using local facilities and contributing to the local workforce. However, these benefits are limited by the small scale of the proposal. On the other side of the balance, I have found that the appeal scheme would cause harm to the local tourist economy. Having regard to the important contribution tourism makes to the economy of the Island (noting paragraph 15 above), in my view, the adverse effects of the appeal scheme would significantly and demonstrably outweigh the benefits.
34. The site lies within the Zone of Influence of the Southampton and Solent Waters Special Protection Area (SPA). The SPA comprises 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. The SPAs were designated by the Government to protect these over-wintering birds.
35. The appeal scheme has a potential two-fold impact upon the SPA 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 wastewater created by the development.
36. As such, without mitigation, the appeal scheme presents a likely significant effect upon the integrity of the SPA, particularly when the impacts are considered in combination with other residential developments located within the 5.6km Buffer Zone to the SPAs.
37. Within the context of this appeal, the responsibility for assessing the effects of the proposal on the European designated sites fall to me as the competent authority. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine the above matters further, including seeking further information from

both main parties and, potentially, consulting Natural England, and to undertake an Appropriate Assessment (AA) of the implications of the appeal scheme for the EPS.

38. However, as there is another clear reason for dismissing the appeal, the outcome of any such AA would have no bearing on the overall outcome of this appeal. Therefore, I do not need to consider these matters any further as part of my decision.
39. My attention has been drawn to a lack of any objections to the appeal scheme from third parties and consultees, including the council's environmental health officer. However, this does not alter my findings in respect of the main issue.

Conclusion

40. The appeal scheme would conflict with the adopted development plan when considered as a whole, and there are no material considerations, including the Framework, that indicate that the proposal should be determined other than in accordance with the development plan.
41. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR