



Appeal Decision

Site visit made on 3 July 2025

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

an Inspector appointed by the Secretary of State

Decision date: 13 August 2025

Appeal Ref: APP/Z1775/W/24/3356161

36 Montgomerie Road, Southsea, Portsmouth PO5 1ED

- 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 Oliver against the decision of Portsmouth City Council.
 - The application Ref is 24/01044/PLAREG.
 - The development proposed is change of use from Class C4 HMO to 7 bedroom/8-person HMO.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the refusal of the 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 had regard to the latest version in reaching my decision. Whilst paragraph numbers have changed, the policies of the Framework most relevant to the appeal have not altered so substantially as to affect the matters raised by the main parties. Therefore, there is no requirement for me to seek their views on this matter, and I am satisfied that this approach would not prejudice any party's interests.
3. The planning application was submitted retrospectively and at the time of my site visit the property was occupied as an HMO. The existing arrangement of rooms on the ground floor does not accord with either the submitted 'existing ground floor plan' or the 'proposed ground floor plan' as it includes a centrally positioned resident bedroom in place of the room annotated as 'dining' on the submitted existing ground floor plan, making a total of 8 existing bedrooms.
4. For the avoidance of doubt, I have determined the appeal based on the Council's recognised existing use as a 6-bedroomed HMO as shown on the submitted 'existing' drawings. This provides 3 bedrooms on each of the first and second floors with the whole of the ground floor as communal living space, comprising an open plan kitchen/diner/communal living area and two further separate rooms comprising a dining room and lounge.
5. The Council has noted that the rear dormer which accommodates bedrooms 2 and 3 and was built without the benefit of planning permission, may not comply with the relevant permitted development criteria in respect of the glazing of the side facing window. Whilst this matter appears to remain unresolved, the determination of what could potentially be built under permitted development rights is not a matter for me to decide within the context of an appeal made under Section 78 of the Act.

I have, therefore, determined this appeal based on the scheme as originally submitted.

6. During the appeal, the appellant submitted a S.111 Agreement relating to financial contributions towards mitigating the effects of recreational impacts and additional nutrient output arising from the development upon the Solent and Southampton Water Special Protection Area (the SPA). This is a matter to which I later return.

Main Issues

7. The main issues are:

- Whether the appeal scheme would provide satisfactory living conditions for future occupiers, having particular regard to internal and external living space; and
- Whether the appeal scheme would provide adequate mitigation for the SPA.

Reasons

Living space provision

8. The property benefits from planning permission¹ for use as a 'dwellinghouse (Class C3) or House in Multiple Occupation (Class C4)'. Class C4 of the Town and Country Planning (Use Classes) Order 1987, as amended, which is headed 'Houses in Multiple Occupation' indicates that the class applies to the use of a dwellinghouse for this purpose "*by not more than six residents*". It is understood that the appeal property was previously used as a 6-bedroomed, 6-person HMO.
9. The application plans confirm that the bedrooms were located on the first and second floors and that the ground floor was entirely given over to communal living space for the occupants, including an open plan kitchen/dining room/lounge, extending into the rear single storey addition to the original property, and separate rooms used as a dining room and a lounge respectively. A shower room/wc and a separate wc were also located on the ground floor.
10. The appeal scheme replaces the front-facing ground floor lounge and wc with a single occupancy bedroom with en-suite facilities. The separate dining room and shower room is replaced by an extension to the ground floor open plan kitchen/diner/lounge area. The use of the first-floor front-facing single bedroom, annotated as 'bedroom 4' on the submitted drawings, increases to double-occupancy under the appeal scheme.
11. The current scheme differs from that which was the subject of a recent planning application and dismissed appeal² in March 2024 (the 2024 appeal) in that it retains the floor space of the separate dining room and shower room as communal internal living space, albeit reconfigured to form part of a larger communal living area, rather than converting it into a single occupancy bedroom as per the 2024 appeal scheme. Notwithstanding this, both appeal schemes increase the resident bedspaces from 6 to 8.
12. The 2024 appeal Inspector noted the modest sizes of the six bedrooms on the first and second floors, acknowledging that whilst they exceeded the minimum

¹ LPA Ref 22/00358/FUL

² LPA Ref 23/00089/FUL and appeal Ref APP/Z1775/W/23/3319802

bedroom floor size standards as set out in the Council's relevant adopted guidance³ (the HMO SPD), these rooms are only just able to fit a bed, desk and storage furniture within them. I concur with the previous Inspector's view that these rooms feel small because of limited circulation space beyond the furniture.

13. I find that this derives from the room layouts in that a large part of rooms 1, 3 and 6 are taken up by corridor space and rooms 2 and 5 incorporate 'pinch point' areas and a staggered floorspace arrangement which reduces the spaciousness of the rooms. The door opening arrangement within room 4 whereby the entrance door and the ensuite door open into the room and occupy significant proportion of the room depth when open, means that they significantly encroach upon the available space within which to place furniture as well as the circulation space around the furniture.
14. Moreover, the location of the furniture is restricted by the position of these door openings which occupy a large part of the main back wall of the room and the large bay window opening which occupies a large part of the front wall of the room. Combined with a relatively shallow overall room depth, I find that these factors reinforce the stated opinion of the previous Inspector that this room is compact, noting that this was based on the room being occupied by a single resident only.
15. The current appeal scheme increases the occupancy of room 4 to 2 persons, thereby intensifying the feeling of restricted space within the room, particularly noting the increased space that a bed of a minimum double size would occupy compared to a single bed, together with the requirement for sufficient storage space to accommodate the clothes and belongings associated with two people and ideally provide seating for both within the room.
16. I am not persuaded, based on the evidence before me and my site inspection, that my concerns in this respect can be satisfactorily overcome by keeping the room tidy, careful choice of furniture positioning or wall decoration.
17. When occupied as a 6-person small HMO, having access to three communal living rooms on the ground floor as well as a small area of outdoor space to the rear of the building compensated for the limited space in the bedrooms. As such, taken as a whole, the property provided satisfactory living conditions for its 6 occupants.
18. The current appeal scheme is achieved through the conversion of the front-facing communal lounge and wc to a single-occupancy bedroom with an en-suite. As noted by the 2024 appeal Inspector, this bedroom has a more spacious layout than those on the upper floors and is of an acceptable size and layout.
19. The current appeal scheme would retain a larger proportion of the approved ground floor communal living space than the previously dismissed scheme, by incorporating the centrally positioned separate dining room into an extension of the existing kitchen/dining communal area rather than converting it into an additional bedroom. As such, the amount of internal communal living space per resident would be greater than in the case of the dismissed scheme.
20. However, notwithstanding this, as with the previous appeal scheme, seven of the eight occupants would still have relatively small bedrooms as recognised by the previous appeal Inspector. Even with the enlargement to the internal communal

³ Houses in Multiple Occupation (HMOs) – Ensuring Mixed and Balanced Communities Supplementary Planning Document (October 2019)

area, the living conditions for the occupants would still be notably less spacious and pleasant than was the case when the property functioned as a 6-bedroomed HMO.

21. I acknowledge that the open plan internal communal room would accord with the space standards as set out in the HMO SPD. However, as noted in the 2024 appeal decision, this guidance informs HMO licensing which is a separate regime to the planning system. I have also considered the proposed room layout and the effective use of the room for its identified purposes to serve 8 residents.
22. The appellant has not specified individual kitchen, dining and lounge floor areas on the proposed plan, albeit that the kitchen facilities are shown within the central part of the room. Most of the room is of an efficient rectangular shape and is sufficiently well-lit and ventilated by windows and a door. It also includes requisite worktops, cupboards and appliances, some of which because of the incorporation of the former shower room and dining room floorspace could be repositioned along the outer wall to provide more space within the centre of the kitchen area.
23. However, notwithstanding the above, the main part of the kitchen/dining/communal area is long and elongated and has a relatively narrow width in comparison with the front part of the building. It would provide the sole means of access for the residents to the side passageway, rear yard and cycle storage at the rear of the building due to the location of the side access door near the rear end of the building.
24. As such, gaining access to the outside areas from the bedrooms and hallway would involve traversing through the proposed former dining room area and the main kitchen area. This would diminish the usability of these parts of the room, having regard to its purposes of providing sufficient lounge and dining facilities. This is because a significant part of the floorspace would need to be kept free of obstruction to enable convenient access from the hall to the back door by the HMO occupiers and their visitors.
25. Moreover, this access space would need to incorporate sufficient manoeuvring room to accommodate the movement of cycles through this area, as well as occupants, having regard to the proposed location of the cycle storage in the rear garden. I saw during my visit that limited property frontage would prevent positioning the cycle parking in addition to bins in that alternative location instead.
26. The appellant has not detailed the proposed dining and lounge seating arrangements on the drawings. Having regard to the need to ensure convenient and safe passage across the room from the hall to the outside doorway for people and cycles and to provide sufficient circulation space around the doorway, I am not persuaded, on the basis of the information before me, that there is enough space within the areas at both ends of the communal room to provide appropriately designed and positioned furniture that would provide good quality and functional dining and lounge areas for the needs of 8 residents. This takes account of the reasonably likely need to position such seating away from the central kitchen area, so as not to impede upon the functionality of that part of the room.
27. A large part of the ground floor communal living space is contained within a single storey rear extension. This has encroached into the rear garden of the property to the extent that only a small outdoor yard area now remains at the rear of the building. This results in a garden that is significantly smaller than that which

prevails as part of the original terraced housing development which characterises the area.

28. Whilst the Council has not referred me to any adopted minimum garden size standards, and notwithstanding that there may be properties elsewhere that contain no outdoor living space, I nonetheless consider that outdoor living space comprises an important component when assessing the living conditions for future occupiers.
29. The proposed outdoor living space would comprise a small, north-facing yard which is enclosed by high walls/fencing. I am not persuaded that this would provide sufficient space to comfortably provide appropriate outdoor seating, eating space, clothes drying and general recreation space for 8 residents.
30. Moreover, irrespective of the appellant's view of how much ground area of the site could be given over to buildings under Permitted Development, it is not disputed by the main parties that cycle storage would be required to serve the appeal scheme. I concur with this view having regard to the accessible location of the appeal site and national and local planning policies which promote travel by means other than the private car, including by cycling.
31. Whilst the precise details of the cycle storage facilities have not been provided at this stage, the appellant has indicated the approximate size and possible alternative positions within the rear garden of a suitable covered and secure cycle parking unit. To my mind these represent realistic alternative options having regard to size and positioning. From the information before me, it is evident that the incorporation of cycle parking within the rear garden would further notably diminish the available outdoor living space.
32. In addition to reducing the usable garden area, due to the small garden size and therefore resulting proximity of the cycle storage unit to the rear of the building, it would be visible in views from the main rear window of the communal living room. This impact on the outlook from the window, taken together with the outlook from the other windows of the communal living room onto the side passageway and boundary wall, would result in a somewhat oppressive outlook from the main internal communal area, thereby further reducing the overall quality of this space.
33. Having regard to all the above, and the evidence before me, including my site visit, I am not persuaded that the property would not feel unduly cramped and congested if occupied by 8 persons in the manner proposed, due to the layouts and sizes of the internal and external communal areas and the bedrooms, in particular bedroom 4. Due to the aforesaid identified deficiencies of each of the above, there is no opportunity for one element to satisfactorily compensate for shortcomings in another, having regard to the overall provision of living space for the residents.
34. For the above reasons, I therefore conclude that the appeal scheme does not provide satisfactory living conditions for future occupiers, having particular regard to internal and external living space. The development is therefore contrary to Policy PCS23 of *The Portsmouth Plan* (2012) in so far as it requires protection of amenity and the provision of a good standard of living environment for future residents and users of new development. The development would not be consistent with the advice set out in the HMO SPD, which amongst other matters, seeks a good standard of living accommodation.

35. This accords with Paragraph 135 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

SPA

36. 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, including more than 90,000 waders and wildfowl including 10 per cent of the global population of brent geese. The SPA was designated by the Government to protect these over-wintering birds
37. The appeal scheme results in an increase in bedroom provision within the 5.6km 'Zone of Influence' of the SPA. This net increase of residential occupation has a potential two-fold impact upon the SPA 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 wastewater created by additional residential occupation of the site.
38. As such, without mitigation, the appeal scheme presents a likely significant effect upon the integrity of these sites, particularly when the impacts are considered in combination with other residential developments located within the 5.6km Buffer Zone to the SPA.
39. The *Conservation of Habitats and Species Regulations 2017* (as amended) requires a decision maker to undertake an appropriate assessment (AA) before giving any permission where there are likely significant effects on the integrity of the designated habitats sites from the proposal. This is either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal.
40. Therefore, had I reached a different conclusion on the main issue, it would have been necessary for me to undertake an AA and give further consideration to the likely effectiveness of mitigation measures. In doing so, I would have regard to the S.111 Agreement provided by the appellant to secure financial contributions in accordance with the Council's *Solent Recreation Mitigation Strategy* (2017) and *Interim Nutrient Neutral Mitigation Strategy* (June 2022 update). However, since the first main issue provides clear reasons for dismissing the appeal, I have not had cause to pursue these matters further, since any findings on these issues would not change the appeal outcome.

Other Matters

41. I have noted that the property benefits from an eight-person HMO licence. However the standards that apply to Licensing and Planning are the subject of separate regulations, and my decision must be based solely upon the planning merits of the scheme that is before me.
42. I have had regard to third party concerns, including the loss of a family house, the number of HMOs in the area, noise disturbance and anti-social behaviour, parking impacts, impacts upon local amenities and services, and infrastructure impacts, including drainage and sewage.

43. The Council has not raised any objection in respect of these issues. Based on the written evidence before me and my site inspection, I find no reason to disagree. This includes having regard to the existing lawful use of the property as a HMO, the low number of additional occupiers and the Council's adopted parking standards and the availability of on-street parking.
44. The appellant has referred to the Council's procedures during the determination of the planning application, including consistency of approach to some matters compared with other planning applications and the process involved in dealing with the SPA issue. These processes are not matters for consideration as part of this appeal and I have determined the appeal on the merits of the appeal scheme before me and having regard to the 2024 appeal decision.

Conclusion

45. The development conflicts with the development plan taken as a whole and there are no material considerations, including the Framework, to suggest that the decision shall be made other than in accordance with the development plan.
46. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR