



Appeal Decision

Site visit made on 19 August 2025

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

an Inspector appointed by the Secretary of State

Decision date: 05 September 2025

Appeal Ref: APP/Z1775/W/25/3366741

36 Chichester Road, Portsmouth PO2 0AD

- 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 S Chibber against the decision of Portsmouth City Council.
 - The application Ref is 25/00117/FUL.
 - The development proposed is change of use to seven-bedroom house in multiple occupancy.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use to seven-bedroom house in multiple occupancy at 36 Chichester Road, Portsmouth PO2 0AD, in accordance with the terms of the application Ref 25/00117/FUL and the plans submitted with it, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by S Chibber against Portsmouth City Council. This application is the subject of a separate Decision.

Preliminary Matter

3. As part of the appeal submissions, 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 Areas (the SPAs). This is a matter to which I later return.

Main Issues

4. The main issues are:
 - The effect of the appeal scheme on the mix and balance of households in the local community; and
 - Whether the appeal scheme would provide adequate mitigation for the SPAs.

Reasons

Background

5. The appeal property is a 2-storey, 3-bedroom, mid-terrace dwellinghouse located on the south side of Chichester Road within an established residential area in the North End part of the city.

6. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) provides for the use of a dwelling house as an HMO by not more than 6 residents; that is, up to 6 unrelated individuals who share basic amenities.
7. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) grants planning permission, under Part 3 Class L, for a change of use from Use Class C3 (use as a dwelling house for up to 6 people living as a single household) to Use Class C4. However, the Council has, from 1 November 2011, put in force a city-wide Direction under Article 4 of the Town and Country Planning Act 1990 (as amended) (TCPA), that removes this permitted development right (the Article 4 Direction). This enables the Council to control the location of new HMOs through the planning system.
8. The Council has also adopted a Supplementary Planning Document titled '*Houses in Multiple Occupation (HMOs) – Ensuring Mixed and Balanced Communities*' (the HMO SPD) (updated in October 2019) which seeks to prevent an oversaturation of HMOs in the city's communities by setting guidance for applications for change of use to C4 and/or Sui Generis HMO use, as well as ensuring those living in HMOs benefit from good standards of living by setting space standards for bedroom areas and communal living areas.
9. The HMO SPD was adopted following public consultation, and it supports Policy PCS20 of *The Portsmouth Plan* (2012) (the PP), which seeks to ensure that a range of household needs continue to be accommodated throughout the city. I therefore afford significant weight to the HMO SPD in reaching my decision.

Mix and balance of households

10. The HMO SPD recognises that HMOs are an important type of accommodation for Portsmouth residents, including people on low incomes, young professionals, students, and single-person households. However, the conversion of high-density Victorian terraces, which are prevalent within the city, into HMOs has the potential to harm community cohesion and sustainability, as well as reducing the availability of family-sized dwellings with 3 or more bedrooms. The HMO SPD also notes that there is strong correlation between amenity complaints and the number of HMOs in a community.
11. The HMO SPD therefore seeks to prevent excessive concentrations of HMOs and ensure the future provision of mixed and balanced communities. To do this, it provides a definitive threshold, stating that planning permission will not be granted for new HMOs where the proportion of HMOs would exceed 10% of the residential properties within a 50-metre radius of the site.
12. Policy PCS20 explicitly states that for the purposes of the policy, dwellings in use as Class C4, mixed C3/C4 use and HMOs in Sui Generis use will be considered to be HMOs. Paragraph 2.21 of the HMO SPD provides further supporting information in respect of how the Council identify HMO properties for the purposes of determining planning applications on the basis of Policy PCS20. Moreover, Appendix 1 of the HMO SPD provides a definition of Class C4 HMO use.
13. It is the appellant's view that, having regard to the information held within the Council's database of confirmed HMOs, the appeal scheme would result in 9.3% of the existing 43 properties within the 50-metre radius of the appeal site being within HMO use. As such, the Policy PCS20 threshold of 10% would not be exceeded.

14. This view is based on the information contained within the officer reports to the 2 April 2025 and 30 April 2025 Planning Committees, which confirm that the Council's database of HMOs recognises only 3 existing HMOs within the Policy PCS20 50-metre radius of the appeal site (7,9 and 35 Chichester Road).
15. The Planning Committee reached a different decision than that recommended in the planning officer committee report, based upon its view of the existing use of a nearby property at 52 Chichester Road. As this property lies within the 50-metre radius of the appeal site, if it comprises an HMO use for the purposes of PP Policy PCS20 and the HMO SPD, the 10% HMO threshold in respect of the appeal scheme would be exceeded.
16. For the avoidance of doubt, my appeal decision is based on the evidence submitted as part of this appeal. Moreover, it is not for me, under this S78 appeal, to determine the lawful use of No.52, and any subsequent determination under sections 191/192 of the Act in respect of that property would not be affected by my determination of this appeal under S78.
17. The Council has confirmed that No.52 is currently occupied in connection with a charity which provides residential support in respect of matters such as alcohol and drug abuse and homelessness.
18. The information before me is that, following deferral of the planning application at the 2 April Planning Committee meeting, prior to the determination of the application by the Planning Committee on 30 April 2025, the planning officer undertook a detailed investigation of the use of No.52. This included contacting the current owners to ascertain how the premises were operating, together with investigating its planning and licensing history, Council Tax records and details of its previous sale history and sales particulars.
19. Based on the above, the officer committee report confirmed that at that time, no evidence was found that No.52 was currently, or had previously been, operating as an HMO. Moreover, the Council's appeal statement confirms that, after having sought information from the owner of No.52 in respect of the detailed operation of the premises, officers judged that it was likely that the use would fall within Class C3(b).
20. The Council's appeal statement confirms that during the Planning Committee meeting, Members concluded that the use of No.52 was "*akin to an HMO*" so that, having regard to Policy PCS20, the percentage of houses in multiple occupation within a 50-metre radius would exceed 10%. The Council's appeal statement does not retract or update any of the detailed evidence included within the officer committee report in respect of the planning history and existing use of No.52. Nor has any additional substantive evidence been provided to support the Council's view that the use of No.52 is as an HMO.
21. As such, based upon the information before me, including the current use of the property, and the absence of compelling evidence to the contrary, I have no sound reasons to disagree with the initial officer assessment that No.52 comprises a Class C3(b) use, based on the UCO definition of such as comprising "*not more than six residents living together as a single household where care is provided for residents*".

22. The Council's statement of case provides no further details in respect of why Members disagreed with the officers' assessment of the existing use class of No.52. Whilst reference is made in the Planning Committee Minutes to six unrelated adults living at that property, no further detailed information has been submitted to explain why the Council considers that No.52 should be classed as an HMO, having regard to the aforesaid text of Policy PCS20 and paragraph 2.21 and Appendix 1 of the HMO SPD.
23. Also, the evidence before me in respect of the planning history of No.52 and the length of time the current use of that property has been in operation, which is not in dispute between the main parties, means that even if the premises were considered to be currently operating as an HMO, insufficient time would have elapsed to enable it to have accrued a lawful use through the passage of time.
24. For the above reasons I find that there is insufficient justification before me for the inclusion of No.52 within the HMO density calculation for the purposes of Policy PCS20 and the supporting HMO SPD. On this basis I find that the 10% HMO threshold has not been breached in respect of the appeal proposal.
25. Furthermore, Policy PCS20, together with the aforesaid Article 4 Direction, aim to prevent an over-concentration of HMO uses, having regard to identified potential negative social, environmental and economic impacts on communities specifically associated with such. Noting that the Council has stated that it considers the use of No.52 to be '*akin to an HMO*', it has not provided cogent evidence as to how it considers the existing use of No.52 would make a similar contribution to that of an HMO use in terms of impacting upon the mixed and balance community objectives of Policy PCS20.
26. I have noted third party concerns about the accuracy of the Council's Planning Committee Minutes and third-party representations in respect of the operation of No.52. The accuracy of the Council's Committee documentation is not a matter for determination by me as part of this appeal decision. Moreover, I am not persuaded that the third-party submissions in respect of the planning application and the appeal provide robust evidence of an existing HMO use of No.52, having regard to the Policy PCS20 and HMO SPD definitions of such.
27. My attention has been drawn to a dismissed appeal¹ in respect of a scheme for a Class C4 HMO where the Inspector concluded that there was an over-concentration of HMOs. However, based on that appeal decision, I am not persuaded that the circumstances of that decision are directly comparable to those of the current appeal scheme, since, in the cited case the Council was satisfied that the 10% HMO threshold had been breached and there was no disagreement over the specific use of any other particular property.
28. Objectors have suggested that the HMO threshold should be reduced or abandoned completely to take into account the number of HMOs that have come into use and family houses that have been lost since the adoption of the PP. However, any changes to the policy would need to be introduced through the Emerging Local Plan process rather than through the development management decision-making process.
29. For the above reasons, on the basis of the evidence before me, and having regard

¹ Ref APP/Z1775/W/25/3360728

to the methodology in the HMO SPD, I therefore conclude that the appeal scheme would not harm the mix and balance of households in the local community. Accordingly, it accords with PP Policy PCS20 and the HMO SPD when taken together, in so much as they seek to ensure that a range of household needs continue to be accommodated within the city, and only allow changes of use to a HMO where the community is not already imbalanced by a concentration of such uses, or where the development would not create an imbalance.

30. This is generally consistent with advice in Chapter 5 of the Framework, which encourages the provision of a mix of housing types to satisfy the needs of various community groups.

SPAs

31. 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. The SPAs were designated by the Government to protect these over-wintering birds.
32. 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 wastewater created by an increase in residents at the site.
33. As such, although the change of use from a family dwellinghouse to a 7-bedroom 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.
34. 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, having regard to the evidence submitted by the main parties, which includes the Council's adopted mitigation strategies. These are supported by Natural England and set out the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal.
35. 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 regarding the in-combination effects of increased recreational pressure on the SPAs arising from new residential development are met through mitigation measures.
36. The SRMS provides for the payment of a mitigation contribution 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.

37. The Council's updated *Interim Nutrient-Neutral Mitigation Strategy for new dwellings* (June 2022) (the INNMS), recognises that changes of use from Class C3 dwellinghouses 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.
38. 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.
39. The SRMS and INNMS are considered by Natural England to set out suitable measures for the mitigation of the likely significant effects of the development on the SPAs. Accordingly, I find 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.
40. The appellant has paid £1029 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 £4,200 to purchase mitigation credits in accordance with the INNMS.
41. 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.
42. In line with the guidance in the Planning Practice Guidance (PPG)³, 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 (SRMC) and the Nutrient Neutrality Mitigation Contribution (NNMC) could only be used by the Council for the purposes of mitigating the development's effect on the SPAs.
43. 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 SRMC and the NNMC, 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

² As explained in a 'Section 111 Agreement' completed by the appellant on 1 April 2025

³ Paragraph: 004 Reference ID: 65-004-20190722 22 July 2019

Paragraph 193 of the Framework. That is because mitigation would be available to conserve the natural environment, most particularly the integrity of the SPAs.

Other Matters

44. I have had regard to third party objections based on noise disturbance impacts. I concur with the Council's assessment that the proposed occupation of the property as a 7-bedroom 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.
45. Moreover, I am not persuaded that the use of bedrooms within an HMO property would have a materially greater impact upon neighbouring privacy and noise levels than that of bedroom use within a dwellinghouse.
46. Noise impacts associated with the proposed building works to enlarge the property would be short term and not uncommon with any building project. Notwithstanding this, these works can be carried out under Permitted Development without the conversion of the property into an HMO.
47. 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.
48. I have taken account of neighbour concerns in respect of car parking. The appeal property has no off-street parking, so residents of the existing dwelling rely on on-street parking, which is available along both sides of Chichester Road.
49. 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 Authority did not object to the proposal. I am therefore satisfied that this matter does not constitute a reason for dismissing the appeal.
50. Concerns have been raised about the design of the physical alterations and extensions in terms of how they would impact upon the outlook, privacy and light to neighbouring properties, rainwater drainage, the character and appearance of the area and neighbouring trees. However, it is not disputed that these works could be carried out under Permitted Development regardless of my decision on this appeal.
51. Damage to neighbouring property because of building works would be a civil matter.
52. Having regard to concerns about impacts upon the local sewer network, the construction, operation and maintenance of an adopted sewerage system is the responsibility of the statutory sewerage undertaker who has a responsibility to provide an effective system of sewers in its area.

- 53. In respect of third-party objections regarding waste management, I saw during my visit that bins are currently placed within the front garden, and a planning condition can ensure that appropriate facilities in this location are made available for the appeal scheme.
- 54. There are concerns in respect of fire safety. This matter would be dealt with under the Building Regulations, separately from the consideration of this appeal.
- 55. 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.
- 56. Interested party concerns about increased crime and anti-social behaviour within the area and a safeguarding issue due to the proximity of the site to a children's nursery 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

- 57. The Council has suggested 6 conditions in the event that the appeal is allowed. I have considered these in the light of the tests set out in Paragraph 57 of the Framework and the 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.
- 58. 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 Policies PCS17 and PCS23. In the interests of the living conditions of the occupiers of the site and neighbouring occupiers, and the character and appearance of the area, in accordance with PP Policy PCS23, a condition is justified to ensure the provision of adequate refuse storage facilities (4).
- 59. As the additional floorspace created by the proposed loft conversion and rear single storey extension to be carried out under Permitted Development and in accordance with Prior Approval Ref 24/00078/GPDC respectively, are needed to ensure a good standard of living accommodation for future residents, a condition requiring the works to be completed prior to occupation is required (5). A condition to minimise water usage is necessary to ensure that the lower threshold under the Building Regulations is applicable so that Nitrate Mitigation Credits are not exceeded, in accordance with paragraph 4.8 of the INNMS and to accord with PP Policy PCS13 (6).

Conclusion

- 60. The development accords with the development plan taken as a whole and there are no material considerations, including the Framework, that indicate that the decision should be made other than in accordance with the development plan.
- 61. 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: ReQuestaPlan Refs TQRQM25034105307984 and TQRQM24348155917355 and Sui Gen Plan PG.9176.24.2 rev B.
- 3) 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.
- 4) The use hereby permitted shall not commence until refuse and recyclable waste storage facilities 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 waste storage facilities shall thereafter be retained for the continued use by the occupants.
- 5) The use hereby permitted shall not commence until all the physical alterations and extensions to the building shown on approved drawing Sui Gen Plan PG.9176.24.2 rev B have been completed.
- 6) The development hereby permitted shall be carried out in accordance with the water efficiency calculator Ref EWC-4728-13339 received on 28 March 2025 demonstrating that the development has achieved a maximum water use efficiency of 110 litres per occupant per day, as set out in Regulation 36(2)(b) of the Building Regulations 2010 (as amended).

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