



Appeal Decision

Site visit made on 26 August 2025

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 OCTOBER 2025

Appeal Ref: APP/Z1775/C/23/3325500

Land at 13 Wyndcliffe Road, Southsea PO4 0LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Antony Lane against an enforcement notice issued by Portsmouth City Council.
 - The notice was issued on 26 June 2023.
 - The breach of planning control as alleged in the notice is the material change of use of a dwellinghouse from use class C4 House in Multiple Occupation for occupation by 6 persons to use as Sui Generis House in Multiple Occupation - occupied by 7 persons, which has occurred without planning permission. It is considered that s172(1) (a) TCPA 1990 has been satisfied and a breach of planning control has occurred.
 - The requirements of the notice are to:
Permanently cease the use of the dwellinghouse as a seven bedroom, seven resident house in multiple occupation by ensuring that at any given time no more than six residents occupy the dwellinghouse used as a house in multiple occupation (C4 use).
 - The period for compliance with the requirements is: four (4) months.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
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Formal Decision

1. The appeal is allowed, and the enforcement notice is quashed.

Preliminary Matters

2. Both parties have referred to a planning application and appeal decision. Namely, Council application reference, 18/01332/FUL, which was a refused planning application for the use of the property as a House of Multiple Occupation (HMO) for 7 persons. The refused application was subsequently dismissed at appeal in 2019¹, and for the purposes of this decision I will hereafter refer to this as the '2019 appeal.'
3. Following the 2019 appeal, the appellant submitted a new application; however, it remained undetermined by the Council for an extended period. Eventually, the appellant decided to withdraw the resubmission before he received a decision. The withdrawal was guided by several section 174 appeals that had been allowed in the surrounding area, and the Council's subsequent decision to advise applicants to withdraw similar applications.
4. The section 174 appeals in question involved changes of use that were like both the resubmitted application and the current appeal. In those cases, the Inspector concluded that the changes of use did not constitute 'development' as defined by section 55 of the Town and Country Planning Act 1990 (1990 Act)². These decisions

¹ Appeal Reference APP/1775/W/18/3214434

² Section 55 of the 1990 Act defines "development," as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

are referred to as the ‘Campbell Properties Decisions³.’ The appellant has also highlighted more recent section 78 appeal decisions in the locality, which despite being appeals against the refusal of a planning application, were allowed by the Inspector in line with the reasoning set out in the ‘Campbell Properties Decisions⁴.’ A section 195 appeal allowed against the refusal of a Lawful Development Certificate has also been highlighted, which also proposed a comparable change of use.

5. As a point of clarification, a Class C4 use as set out in The Town and Country Planning (Use Classes) Order 1987 (as amended) (‘UCO’) normally relates to 3-6 occupants, who are not regarded as forming a single household, sharing the property and certain communal facilities as an HMO. I will refer to this use as a ‘small HMO’ for the purposes of this decision. There is no permitted change of use from a ‘small HMO’ to an HMO with 7 occupants or more sharing a property. An HMO classed as a sui generis use is commonly referred to as a ‘large HMO’, and for the purposes of this decision I will refer to the HMO with 7 occupants as such.

The Appeal on Ground (c)

6. To succeed on ground (c), the appellant must demonstrate that the matters alleged in the enforcement notice do not constitute a breach of planning control. The relevant test is the balance of probability, not the more onerous test of beyond a reasonable doubt. The onus rests with the appellant to provide sufficiently precise and unambiguous information to demonstrate this to be the case.
7. The appellant contends that the change of use of the Land from a small HMO occupied by 6 persons to a large HMO, occupied by 7 persons, is not a breach of planning control, as the change of use cannot be regarded as development. ‘Development’ is defined in section 55(1) of the 1990 Act as including ‘..... the making of any material change in the use of any building or other land’. Consequently, the appellant has made the case that the change of use is not ‘material’. As such, it cannot be considered ‘development’, or, as a consequence, a breach of planning control.
8. The appellant outlines that despite the Council taking formal enforcement action, the Council Planning Officer’s Report advised the Planning Committee that the change of use from a small HMO occupied by 6 persons to a large HMO occupied by 7 persons was not a ‘material’ change of use, and therefore not development. The report to the committee sets out the investigation into the change of use and highlights the Campbell Properties Decisions as a material consideration. The report advises that they do not regard the change of use at the appeal property, involving the increase in 1 occupant, as development.
9. The issue on which this appeal turns, therefore, is whether the large HMO can be regarded as materially different to the previous use as a small HMO. It is appreciated that the two uses are defined differently within the UCO. However, for a ‘material’ change of use to have occurred, there must be some definable change in the character of the use from what has gone on previously, which is based on a matter of fact and degree. To carry out this assessment, it is necessary to compare the actual previous use with the current use, rather than notional uses within those use classes.

³ Appeal references APP/Z1775/C/20/3245106, APP/Z1775/C/20/3246078, APP/Z1775/C/20/3245110, APP/Z1775/C/20/3246079

⁴ Appeal Ref: APP/Z1775/W/22/3302601, APP/Z1775/W/22/3303724, APP/Z1775/W/22/3303194

10. In the 2019 appeal, the property was described as having a rear dormer and kitchen extensions, and comprised two bedrooms, a combined kitchen and living area, along with a WC on the ground floor. The first floor included three bedrooms and a WC, while the second floor featured a bathroom and two additional bedrooms. All bedrooms on the ground and first floors were equipped with en-suites, but the communal facilities were accessible to all. Prior to the change of use, six unrelated residents had private rooms and shared the communal bathroom, kitchen and W.C facilities in the property.
11. Observations during my site visit corroborated that no external modifications have been made to facilitate this change of use, and the interior layout remains unaltered. The additional occupant is located on the second floor, which already comprises two bedrooms and accommodates a shared bathroom. Consequently, the property maintains its original appearance both internally and externally.
12. The Officer Delegated Report investigating the breach and advising the Planning Committee on the appropriate course of action was submitted by the appellant as evidence⁵. The report indicates that although there has been an increase in occupancy by one resident, this change has not resulted in any definable change in the nature of the use or a proportional increase in associated impacts. The report does not detail any definable change in the number of vehicles, waste generation, noise, disturbance, or movement patterns attributable to the increase in occupants. Notably, it confirms that while there has been an intensification of occupancy, the nature of the dwelling and its use by seven persons remains consistent in character.
13. The property is a terraced house with neighbours flanking either side and at the rear. Despite the proximity to these neighbours, there is limited evidence before me to demonstrate that the noise and disturbance levels experienced by the closest neighbours have changed when compared to the previous situation. The addition of one resident has not significantly altered the frequency or type of movements in and around the property, nor has it led to an increase in the number of vehicles. This indicates that the change of use has not resulted in any definable change in noise and disturbance from an increase in movements, in parking stress or inconvenience for neighbouring residents.
14. I have reviewed the submitted representations regarding this case. However, they mainly discuss the general impacts associated with areas that have a high concentration of HMOs. While I accept that specific impacts from the use of the appeal property are highlighted, the impacts primarily focus on its current use by seven occupants, and do not adequately address the defined change in use and any resultant impacts that have occurred since this transition. This reinforces the fact that there is a lack of evidence to demonstrate a definable change in the scale, nature, or character of activities within the property since the increase in occupants from 6 to 7.
15. Having regard to the legal test of a balance of probability, in my judgement, there is sufficiently precise and unambiguous evidence to demonstrate that the change of use of the property to a large HMO, occupied by 7 persons, does not constitute a 'material' change of use from a small HMO occupied by 6 persons.
16. Accordingly, the appeal on ground (c) succeeds.

⁵ Appellant's submissions - Appendix 4

Other Matters

17. The Council has raised concerns about the potential impacts of the large HMO on housing mix and community cohesion, and its compliance with standards regarding room sizes. Additionally, issues related to the impact of the change of use on the Solent Special Protection Area (SPA) have also been raised.
18. I have had regard to these matters, but my decision is grounded in fact, relevant planning law, and judicial authority. The matters raised would have been pertinent if the change of use was considered to be 'development', and I was determining a section 78 appeal in accordance with the relevant development plan policies. However, they do not alter my determination of whether the change from a small HMO for six occupants to a large HMO for seven occupants signifies a material change of use. For completeness, the change of use also does not result in a change to the nature of the housing stock or the size of the rooms. In this respect, there is no planning consequence from the loss of the previous use as a small HMO.

Conclusion

19. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.

M. P. Howell

INSPECTOR