



Appeal Decisions

Site visits made on 20 February 2023

by D M Young JP BSc (Hons) MPlan MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 9 March 2023

Appeal Ref: APP/Z1775/W/22/3302601

123 Talbot Road, Southsea, PO4 0HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Anthony Lane against the decision of Portsmouth City Council.
 - The application Ref 20/00964/FUL, dated 26 August 2020, was refused by notice dated 26 May 2022.
 - The development proposed is a change of use from purposes falling within a class C4 (house in multiple occupancy) to house in multiple occupancy (Sui Generis).
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Appeal Ref: APP/Z1775/W/22/3303724

48 Jessie Road, Southsea, PO4 0EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Anthony Lane against the decision of Portsmouth City Council.
 - The application Ref 20/00963/FUL, dated 26 August 2020, was refused by notice dated 26 May 2022.
 - The development proposed is a change of use from purposes falling within a class C4 (house in multiple occupancy) to house in multiple occupancy (Sui Generis).
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Appeal Ref: APP/Z1775/W/22/3303194

56 Jessie Road, Southsea, PO4 0EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Anthony Lane against the decision of Portsmouth City Council.
 - The application Ref 20/00965/FUL, dated 26 August 2020, was refused by notice dated 26 May 2022.
 - The development proposed is a change of use from purposes falling within a class C4 (house in multiple occupancy) to house in multiple occupancy (Sui Generis).
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Decision

1. The appeals are allowed and planning permission is granted for a change of use from purposes falling within a class C4 (house in multiple occupancy) to house in multiple occupancy (Sui Generis) at 123 Talbot Road, Southsea PO4 0HD, 48 Jessie Road, Southsea PO4 0EN and 56 Jessie Road, Southsea PO4 0EN in accordance with the terms of the application Refs 20/00964/FUL, 20/00963/FUL, 20/00965/FUL, dated 26 August 2020.

Application for costs

2. Applications for costs were made by Mr Anthony Lane against Portsmouth City Council. These applications are the subject of a separate decision.

Preliminary Matters

3. As set out in the banner above there are three separate appeals relating to three properties which are within walking distance of each other. The appeals share the same appellant and were all refused for similar reasons relating to the under provision of communal living space and the need for mitigation to protect the Solent Special Protection Areas (SPAs). Therefore, while I have considered each appeal on its individual merits, as they raise the same issues, I have dealt with the cases in a single decision letter.
4. When I carried out my site inspections, I noted that the works to provide the additional bedroom at all three properties had already taken place. I have determined the appeals accordingly.
5. Previous appeals against non-determination which related to essentially the same scheme at all three properties were dismissed in August 2020¹. The putative reasons for refusal in respect of these scheme were effectively the same as the current appeals. Although the appeals were dismissed, it is highly pertinent that the Inspector found no conflict with Policy PCS23 of the Portsmouth Plan (Portsmouth's Core Strategy) 2012 or paragraph 127 f) of the National Planning Policy Framework (the Framework) in respect of living conditions. Accordingly, it was only the lack of a suitable mechanism to secure the SPA mitigation which resulted in the previous appeals being dismissed. I return to that issue later in my decision.

Main Issue

6. The main issue is whether an additional occupant at each property would result in unacceptable living conditions for current and future occupiers.

Reasons

Living conditions

7. As the Officer's Report sets out, these three proposals seek planning permission for a change of use of each property from the current lawful use of as a Class C4 House in Multiple Occupation (HMO) with up to six individuals living together, to allow up to seven individuals to live together as a Sui Generis HMO.
8. In all three cases the increased occupancy has not involved any external alterations to the properties nor indeed a material change of use that would require planning permission. In coming to that view, I adopt the reasoning of my colleague in the Campbell Properties appeal decision.² In light of the foregoing and as expressly acknowledged in the Officer's Report, the works that have been carried out do not constitute 'development' in the terms of

¹ PINS Refs: APP/Z1775/W/20/3246589, 3246262, 3246266

² PINS Refs: APP/Z1775/C/20/3245106, 3246078, 3245110, 3246079, 3245108, 3246077, 3233187, 3236610, 3234941, 3266831, 3238003, 3238287

section 55 of the Town and Country Planning Act 1990 and do not therefore require planning permission.

9. The concerns set out in the Council's Statement of Case regarding conflict with the HMO Supplementary Planning Document represent a re-running of the arguments that were put before and rejected by the previous Inspector. The matter of living conditions and specifically the amount of residual communal space has therefore already been considered and found to be acceptable. There has been no significant change in circumstances in the intervening period and no substantial evidence has been adduced by the Council to rebut the Inspector's findings at paragraphs 21-26.
10. Like my predecessor, I carried out an internal site inspection of the properties and found the communal areas to be of a good size and more than adequate to accommodate the needs of an additional occupant. The Council's argument regarding cycle access is unconvincing and overplayed. The wheeling of cycles through the communal area should it occur would be a transitory obstruction by its very nature. It is therefore simply not credible to put this forward as an argument to withhold planning permission notwithstanding comments made in the Shadwell Road appeal decision.³
11. I therefore find that the developments would not result in unacceptable living conditions for current and future occupiers. Accordingly, there would be no conflict with Policy PCS23 or the Framework.

Other Matters

12. Given my finding that no material change of use has taken place, it follows largely as a matter of logic that there would be no 'likely significant effects' on the SPAs including an increased level of nitrate discharge. In these circumstances, the Council's second reason for refusal falls away.
13. For all three appeals the Council has suggested five planning conditions covering time limits, the approved plans, the number of occupants and cycle/waste storage. However, since the works have already been carried out and given that I have found no material change of use has taken place, these conditions would not meet the statutory tests. Having inspected the properties, I do not consider there is scope to further increase the number of bedrooms. Accordingly, it is not necessary or proportionate to impose a limit on the number of occupants.

Conclusion

14. For the above reasons, and having regard to all other matters raised, I conclude that the appeals should succeed.

D. M. Young

Inspector

³ PINS Ref: APP/Z1775/W/21/3289027

