

Decision maker: Planning Committee

Subject: Planning appeal decision at 11 Malvern Road, Southsea, Portsmouth, PO5 2LZ

Report by: Claire Upton-Brown
Assistant Director of Culture & City Development

Ward affected: St. Jude

Key decision (over £250k): No

1. Purpose of report

To advise the Planning Committee of the outcome of the appeal that was allowed by the Planning Inspector.

2. Recommendations

That the report is noted.

3. Background

A planning application was considered by the Planning Committee at its meeting on 20th July 2016 (16/00839/FUL). The application, for the change of use of the property to a 9-bed House in Multiple Occupation (Sui Generis) and the construction of new garage to the rear, was recommended by Officers for conditional permission. This recommendation was overturned and the planning application was refused for the following reasons:

1. In the opinion of the Local Planning Authority, the continued use of the building as a House in Multiple Occupation would, by reason of the level of activity and anti-social behaviour associated with it, be likely to have an adverse impact on the viability of the operation of neighbouring hotels to the detriment of the economic growth and needs of the city. The proposal is therefore contrary to the aims and objectives of paragraphs 17 and 19 of the National Planning Policy Framework; and

2. Without appropriate mitigation the development would be likely to have a significant effect on the Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas and so is contrary to Policy PCS13 of the

Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended).

In considering the appeal the Inspector opined that: "Houses in the locality are large and could accommodate large families. Some are subdivided into flats and there are some hotels and commercial uses. Whilst the proposed use would be likely to generate more activity than a typical family, it would be roughly the same as that for a large family. Moreover, on the basis of the mix of uses in the locality and the juxtaposition of some hotels, flat conversions and HMOs next to single family dwellings, I am not convinced that the comings and goings and general activity that would be generated by the appeal site in use as an HMO would be harmfully out of place in this locality. Furthermore, for the same reasons, I am not persuaded that the appeal development would result in a harmful increase in noise and disturbance, such that the living conditions of neighbouring residents would be adversely affected".

In considering evidence presented by local residents regarding noise, disturbance and anti-social behaviour associated with the unlawful use of the property as a HMO, the Inspector continued: "I have noted the evidence before me of incidents of anti-social behaviour and noise and disturbance at the appeal site and the concern of neighbours and local hotels that the appeal site has been a source of noise, disturbance and anti-social behaviour in the past and has resulted in a fear of crime in the locality. However, such matters are a consequence of the behaviour of the occupants, which is a matter that is not controlled under the planning regime. The behaviour of future occupants is controlled by other legislation and I am making a decision on the basis of the planning merits of the appeal alone. If those matters were controlled through the appropriate legislation, the appeal development could contribute towards promoting safe and accessible environments where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion as set out in paragraph 69 of the National Planning Policy Framework (the Framework)".

In respect of living conditions and impact on neighbouring residents the Inspector concluded: "the appeal proposal would not adversely affect the living conditions of neighbouring occupiers, with regard to noise, disturbance and anti-social behaviour. For this reason, it would generally accord with Policy PCS20 of The Portsmouth Plan (2012) and paragraphs 17 and 19 of the Framework. These, together, seek to encourage HMOs which do not result in negative social, environmental and economic impacts of high concentrations of HMOs on communities and to secure a high quality of design and a good standard of amenity for all existing and future occupants of land and buildings".

In terms of the economic impact of the development, the Inspector concluded that: "I acknowledge the contribution that hotels make to the local economy, in particular small boutique hotels such as those close to the appeal site. I also note the evidence of further growth in demand for hotel accommodation before me. The appeal site is located close to a number of small hotels and I accept the evidence of the impact that anti-social behaviour and noise and disturbance

at the appeal site has had on those businesses in the recent past. However, that impact has been due to the behaviour of the occupants, rather than the use of the appeal site as an HMO in itself. The behaviour of future occupants is controlled under other legislation and is not a matter for me. On the basis of my previous findings, I am unconvinced that the use of the appeal site as an HMO would adversely affect local hotel businesses and thereby the economic growth of the City. The appeal would, therefore, generally accord with paragraph 19 of the Framework, which supports sustainable economic growth.

The Inspector also concluded that the proposed accommodation would provide an acceptable standard of living environment for future occupiers, and the use and proposed garage to the rear would preserve the character and appearance of the 'East Southsea' Conservation Area. The matter of SPA mitigation was resolved through a Section 111 Agreement and contribution of £176 before the appeal was heard by the Inspector.

An application for an award of costs, made by the appellant, was submitted out of time and was not considered by the Inspector.

4. Reason for recommendations

For information to the Planning Committee.

5. Equality impact assessment (EIA)

None.

6. Head of legal services' comments

The report is for information only.

7. Head of finance's comments

The report is for information only.

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Signed by:

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Planning application 16/00839/FUL	Planning Services
Planning appeal decision APP/Z1775/W/16/3158162	Planning Services