

**Decision maker:** Planning Committee

**Subject:** Recent Inspector Decisions

**Report by:** Claire Upton-Brown  
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**Wards affected:** Fratton, St Thomas and St. Jude,

**Key decision (over £250k):** No

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**1. Purpose of report**

To advise the Planning Committee on the outcome of recent appeal decisions concluded up to August 2017.

**2. Recommendations**

That individual Inspectors decisions are noted.

**3. Summary**

Appeal Site	Proposal	PCC Decision	Inspectors Decision	Costs
25 Baileys Road Southsea, PO5 1EA (St Thomas)	Change of use from C3/c4 to 7 person Sui- Generis HMO	Refusal	Allowed- Permission Granted	Award of costs- Refused
239 Powerscourt Road Portsmouth PO2 7JJ (Fratton)	Change of use C3 to C4-HMO	Refusal	Allowed- Permission Granted	Award of costs- Allowed
24 Merton Road Southsea PO5 2AQ	Change of use from C3 to sui- generis HMO	Refusal	Allowed- Permission Granted	Award of costs- Allowed

#### **4. Decisions in Focus**

Three of the Inspectors decisions are detailed below to highlight points of interest.

##### **25 Baileys Road, Southsea PO5 1EA-**

The main issue considered in allowing this appeal was the impact on the living conditions of future residents of the HMO, having regard to communal internal space provision, and existing residents in the surrounding area, having regard to noise and disturbance.

The inspector made reference to the Council's statement that licenced room sizes are smaller than those for new build residential developments and that the proposal would see the removal of a shared community space and a study. However he noted *"there would still be a shared open plan kitchen and lounge remaining for residents and the adequateness of room sizes for habitation remains a matter for the City Council's Private Sector Housing Team in licensing the premises. For all these reasons, the room sizes and layout of the accommodation would not be so restricted as to cause residents to spend any greater time within their bedrooms than would otherwise be the case and therefore would not cause any significant increase in noise and disturbance."*

In reference to representations received regarding the proposals impact on the quality of life for local residents and community cohesion the inspector noted that anti-social behaviour, noise & disturbance, litter and other matters equally apply to other type of accommodation and not just C4 HMO's.

##### **Costs**

The applicant made an application for costs on the basis that the Planning Committee had pre-meditated their decision making.

In dismissing the costs application the inspector noted; *"I have concluded the proposal to be acceptable because there would only be the addition of one person. Nevertheless the Council is entitled to come to a different view with specific evidence as it has done so here. In considering the Council's case as a whole, its reason for refusal has been substantiated and nor has it offered vague, generalised or inaccurate assertions about a proposals impact unsupported by any objective analysis."*

##### **239 Powerscourt Road, Portsmouth PO2 7JJ-**

The applicant made an application for costs on the basis that the Planning Committee had pre-meditated their decision making.

The main issue considered in allowing this appeal was the effect the proposal would have on the living conditions of residents in the surrounding are, having regard to the parking provision, noise and disturbance.

The council had stated there would be a significant increased pressure on parking in the area on the basis of representations received from local residents claiming that they have to park their cars a significant distance from their homes which can be troublesome for the elderly and families with young children. The Inspector noted however the Parking Standards and Transport Assessments SPD 2014 requires two car parking spaces to be provided for the existing C3-Residential use as well as the proposed C4-HMO use. Further to this, the Inspector noted that the application site is in close proximity to a high frequency bus route as well as the North End District Centre and therefore reducing the need to use a car to access basic amenities; *"Such accessibility to shops, services and transport facilities would substantially reduce the necessity for a car by future occupiers. For all of*

*these reasons, it has not been demonstrated that there would be a significant worsening of the current car parking issues that have been identified."*

Turning to the issue of noise and disturbance raised by representations, the Inspector noted; *"the proposed Class C4 HMO would compromise between 3 and 6 persons. Although the persons within the HMO are unrelated, there is no evidence that they would generate greater activity than a typical family household or group of people living as a household. "*

## **Costs**

The applicant made an application for costs on the basis that the Council refused permission because of a perceived parking impact and an increased level of noise and disturbance.

The Inspector offered the view that *"it is not disputed that there are significant pressures on local residents at peak times for parking but the council has failed to substantiate its case that the proposal would result in further unacceptable pressure for parking to the detriment of local residents."*

Relating to issues around noise and disturbance, the inspector noted; *"The Council is entitled to consider the impact of the users of the HMO to be significantly greater than the use as dwellinghouse but such a view must be based on well-founded planning argument and evidence. My attention has been drawn to members and local resident's knowledge and comments but it has not been used to produce any objective analysis to judge the merits of this proposal."*

The Inspector concluded; *"For all these reasons, the Council has prevented/delayed a development which should clearly be permitted, having regard to the development plan, national policy and other considerations. Such behaviour is unreasonable and has resulted in unnecessary cost for the applicant in pursuing an appeal. In this respect, a full award of costs is justified.."*

## **24 Merton Road, Southsea, PO5 2AQ-**

The main issue considered in allowing this appeal were whether the proposal would preserve or enhance the character or appearance of the Owen's Southsea Conservation Area, the effect of the proposal on highway safety, and the effect of the proposal on the living conditions of the occupiers of nearby residential properties with particular regard to smell, outlook, noise and disturbance.

In relation to the perceived impact on the Conservation Area, the inspector noted that large lightwells were not a common feature of properties in the surrounding vicinity and *"thus I consider that the proposal would not appear as incongruous as alleged by the Council. As it is, the proposal would retain a significant part of the lightwell, and thus the infilling proposed would preserve the overall character and appearance of the area."*

Further to this, in response to representations made about an increased level of coming and goings, the inspector stated; *" Whilst there may be more comings and goings in an HMO compared to a family dwelling, the lawful use as a nursing home would no doubt also have generated more comings and goings and deliveries than would a family home. There is nothing which leads me to conclude that the change in activity would be sufficient to harm the character and appearance of the conservation area."*

Responding to the Council's argument regarding the living conditions of neighbouring occupiers, the inspector opined; *"The Council has produced no evidence to show that HMOs in the area result in material harm to residents' living conditions. Clearly the more intensive occupation of an HMO will result in more comings and goings than would a family home, but in an area where many of the properties have been converted into flats and where the previous use was as a nursing home, I*

*consider that it is unlikely that there would be a marked difference in the noise and disturbance generated by occupiers."*

## **Costs**

The applicant made an application for costs on the basis that the Council's evidence did not show how the proposal would create an "imbalance" so as to conflict with Policy PCS23 of the Portsmouth Plan.

On the matters raised in the appeal the Inspector noted; *"No facts were put forward to show how the proposed use would result in harm to the character or appearance of the conservation area. Again, this was a vague assertion unsupported by evidence or objective analysis."*

In regards to the Highways issues raised, the inspector concluded; *"the Council failed to have regard to the findings of the previous Inspector, who found that there would be unlikely to be a material change in the demand for car parking in the surrounding area, from use of the neighbouring property as an HMO, having regard to the intense pressure that already exists and the good accessibility to services and public transport. The Highway Authority had no objection and in these circumstances it was incumbent on the Council to adduce clear evidence that material harm would arise. The failure to do so amounts to unreasonable behaviour."*

## **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:

<b>Title of document</b>	<b>Location</b>
Planning application: 16/02009/FUL (239 Powerscourt Road, Portsmouth PO2 7JJ)	Planning Services
Appeal decision: APP/Z1775/W/17/3169402 (239 Powerscourt Road, Portsmouth PO2 7JJ)	Planning Services
Planning application: 16/01210/FUL (25 Baileys Road, Southsea PO5 1EA)	Planning Services
Appeal decision: APP/Z1775/W/16/3159990 (25 Baileys Road, Southsea PO5 1EA)	Planning Services
Planning application: 16/01532/FUL (24 Merton Road, Southsea, PO5 2AQ)	Planning Services
Appeal decision: APP/Z1775/W/16/3165136 (24 Merton Road, Southsea, PO5 2AQ)	Planning Services