

Agenda item:

Decision maker: Planning Committee
Subject: Planning appeal decisions concluded up to April 2018
Report by: Claire Upton-Brown
 Assistant Director Culture & City Development
Wards affected: Eastney & Craneswater, Nelson and Charles Dickens
Key decision (over £250k): No

1. Purpose of report

To advise the Planning Committee on the outcome of recent appeal decisions concluded up to April 2018.

2. Recommendations

That individual Inspectors decisions are noted.

3. Summary

| Appeal Site | Proposal | PCC Decision | Inspectors Decision | Costs |
|---|---|--------------|-------------------------------------|---------|
| 22 Jessie Road Southsea PO4 0EN (Central Southsea) | Change of use from purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a 7 bedroom 7 person sui generis house in multiple occupation. | Refusal | Allowed- Permission Granted | Allowed |
| 12 Inglis Road Southsea PO5 1PB (St. Jude) | Construction of single storey rear extension (after demolition of existing) | Refusal | Dismissed- Permission refused | N/A |
| 63 Cornwall Road Portsmouth PO1 5AR (Fratton) | Construction of dormers to side roofslope | Refusal | Dismissed- Permission refused | N/A |

| Appeal Site | Proposal | PCC Decision | Inspectors Decision | Costs |
|--|---|---------------------|---|--------------|
| 1 Edmund Road Southsea PO4 0LL (Central Southsea) | Change of use from purposes falling within Class C4 (house in multiple occupation) to a 7 bedroom house in multiple occupation (Sui Generis) | Non-determination | Allowed- Permission Granted | Allowed |
| 59 Liss Road Southsea PO4 8AS (Central Southsea) | Change of use from purposes falling within Class C4 (house in multiple occupation) to a 7 bedroom house in multiple occupation (Sui Generis) | Non-determination | Allowed- Permission Granted | Allowed |
| Annesley House Queens Crescent Southsea PO5 3HE (St. Jude) | Retrospective application for construction of two outbuildings | Refuse | Split Decision, Part allowed, part refused | N/A |
| 56 Stubbington Avenue Portsmouth PO2 0JA (Copnor) | Formation of dropped kerb/access to serve hardstanding | Refuse | Dismissed- Permission refused | N/A |
| 9 Livingstone Road Southsea PO5 1RS (Central Southsea) | Demolition of existing entrance piers and wall; and construction of new piers and wall to facilitate vehicular access and the formation of a driveway | Refuse | Dismissed- Permission refused | N/A |

4. Decisions in Focus

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

22 Jessie Road, Southsea PO4 0EN-

The main issue considered in allowing this appeal was whether the proposal would provide satisfactory living conditions for future occupiers of the property.

The inspector made note that the Council refer this type of planning application to the Private Sector Housing Team (PSHT) but concerns were raised due to a lack of clarity around the councils SPD "Standards for Houses in Multiple Occupation" (2014) which the Inspector noted was under review and therefore little weight was given to this document. In addition to this, the PSHT consultation comments for this planning application referred to this document to underpin their rationale, however given the unknown status of this document, the Inspector was left unclear about what weight should be applied to this consultation. The inspector also noted that two of the seven proposed rooms were slightly under the 7.5m² limitation as identified in the draft HMO SPD.

In assessing the proposed communal facilities, the Inspector acknowledged that the loss of the communal lounge and the provision of an additional bedroom will have an effect upon the demands for remaining shared space elsewhere within the building. However in considering the suitability of these facilities, the Inspector noted: *"The level of facilities provided in the kitchen appeared to me to be to a good standard. Space around the food preparation area was substantial and there is a reasonably sized sink. The lounge part of this had a large sofa suitable for 4 or 5 people in my view. There is some other space available to bring in further, informal seating if required. I also found the room to be light and airy with good access to outside space. Although there would be greater use of this room, it did not strike me as an area that would feel cramped or claustrophobic even if 7 people were to all use it at the same time."*

A further interpretation of the HMO SPD draft standards as considered at the time provided an insight into the combined living space requirement. The inspector noted that the presence of seven people cooking together would be *"chaotic"* however was of the opinion that this would not be significantly different to six people cooking together at the same time. The inspector opined: *"Furthermore, the SPD requires a combined living space of 27m² although I am unconvinced from the submitted evidence that not meeting this guidance would make a critical difference to the comfort of living here with 1 additional resident. The Council's PSH team acknowledges that the room may be satisfactory but that they would need to visit to determine that. It is unfortunate that they did not visit."*

In relation to matters relating to proposed sanitary facilities, the Inspector advised: *"The PSH team refer to concerns over the size of the second floor bathroom and again, this has not been clarified via a site visit. I found the sanitary accommodation to be to a good standard and size. Given that usually 1 person would use a bathroom at a time, it is not clear why these rooms are suitable for 6 people but not 7. Although the requirement of the SPD for 2 separate toilets is not met, the proposal would result in only 1 additional occupant and I do not consider that this should be of decisive weight in relation to this matter."*

In conclusion the Inspector noted: *"Overall, I found that the accommodation within the property would enable a comfortable living environment for occupiers of the building. In relation to the main issue, the proposal would provide for satisfactory living conditions for the prospective occupiers."*

The Inspector found it was appropriate to apply standard conditions relating to time limits and carrying out the development in accordance with approved plans, however applied a condition

restricting the usage of the property to 7 people to avoid any additional strain on the proposed facilities.

Costs Decision-

The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

The Inspector acknowledged that the Council's decision to refuse planning permission was based on the perceived quality of living environment afforded to future occupiers of the Sui-Generis HMO and that this decision relied heavily on the advice of the Private Sector Housing Team. The Inspector opined: *"At the time of the decision, no set of adopted standards as guidance to inform the decision has been referred to by them other than the Technical housing standards – nationally described space standards. These do not relate directly to Houses in Multiple Occupation and can only be given limited as I have in my appeal decision."*

Discussing the process regarding how this application was assessed, the Inspector noted: *"Whilst the Council's planning officer has also visited the site, given the degree of influence that the PSH officer has had in this case, it is very unfortunate that a site visit was not made by that officer. The quality of a living environment is not solely about floor space as I have made clear within my appeal decision. It is not clear why a visit was not undertaken particularly given that the PSH officer had offered to do so on 11 May 2017 in an e-mail, over a month prior to the Council's Planning Committee."*

Further to this, the Inspector added: *"I found the Council's case unconvincing particularly when I saw the inside of the property for myself and therefore consider that the refusal was vague and generalised, contrary to PPG advice. In this respect, the Council has acted unreasonably."*

In concluding the Costs application the Inspector advised: *"The unreasonable behaviour by the Council has resulted in an appeal that may not have been necessary otherwise. The appellant has employed a planning consultant to prepare his case and I was met at the site by his letting agent. Fees have been incurred. The PPG makes it clear that a costs awards cannot extend to compensation for indirect losses such as those resulting from the delay and the costs would not extend to the loss of income due to the delay in having an additional letting room."*

59 Liss Road, Southsea PO4 8AS-

The main issues considered in allowing this appeal were the effects of the proposal on the mix and balance of the community and secondly, whether the proposed use would provide an adequate standard of accommodation for occupiers.

The Inspector acknowledged the HMO Count Data that identified that 21 properties (inclusive of the application site) were in use as HMO's within a 50m radius equating to a density of 28.76% which is above the 10% threshold, however noted that as the property is already in mixed C3/C4 use that the proposal would not result in a change to the balance of uses in the surrounding area.

Offering an interpretation of the role of SPD's the Inspector noted: *"Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan."* Further to this she added: *"Whilst I give*

significant weight to the SPD, conflict with the guidance is not in itself a planning harm nor does it necessarily equate to a breach of development plan policy."

Offering an opinion on the council's interpretation of the impact of HMO's the inspector opined: *"The Council states that consultations with city residents suggest that problems occur at a much greater rate in areas with high concentrations of HMOs. It goes on to refer to areas of the city where HMOs can exceed 30, 40 and in some cases 70%. However, the proposal would not result in an increased percentage of HMOs in the area, and the streets referred to are at some distance north and north-west of Edmund Road."*

The inspector acknowledged that high levels of HMO's within an area may lead to problems for other residential neighbours but went on to state that no evidence had been presented to substantiate this claim and on this basis was in agreement with previous inspectors' decisions: *"In the absence of any such evidence I agree with the Inspector in the 37 Margate Road appeal, that any increase in occupancy at the property derived from such a small increase in bedroom accommodation would not be materially discernible when considered in the context of the existing activity in the surrounding urban area."*

Having regard to the amended HMO SPD (January 2017) which outlines that application sites already in C4 use would be subject to the 10% rule for changes of use to Sui-Generis HMO's, the inspector offered the following interpretation: *"However, the appeal property is now in HMO use and no change to the balance of uses in the area would therefore occur. Further I have seen no robust evidence that the proposal would result in significant harm, or risk of harm, on its own or cumulatively to the nature of the local community or the popularity of the area. I find no conflict therefore with CS Policy PCS20 and no other consideration of sufficient weight to lead me to refuse the proposal on this basis."*

Picking up on the size standards introduced by the amended HMO SPD the inspector noted that the common shared living space was fractionally undersize and opined: *"At some 26.18sqm this would fall short of the 27sqm standard for 7 or more persons given on the SPD. However, the under provision is small and that of one of the first floor showers is marginal (approximately 0.32sqm), and in my judgement these are off-set by the additional space all of the bedrooms offer in excess of the relevant SPD standards."*

In concluding on the quality of living accommodation she concluded: *"Taking into account the living environment of the house as a whole therefore I conclude that the proposal would provide an adequate standard of accommodation for occupiers. Consequently it would not result in an over-intensive use of the house or a significantly increased risk of disturbance to neighbouring residents. I find no conflict therefore with CS Policy PCS23 which requires amongst other things that new development provides a good standard of living environment for neighbouring and future occupiers."*

Costs Decision-

Planning Policy Guidance states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications.

In this case, the inspector noted that the Planning Committee's decision to defer the decision on this application was to allow time for the revised HMO SPD to be adopted. On this point the Inspector noted: *"No other reason for the deferral was given and no explanation is offered as to the reasons for the inconsistency in the approach to decision making in respect of the three Edmund Road applications."* Two other applications at Edmund Road (No.43 and No.5) were approved at the same Planning Committee and the Inspector failed to see how the decision to refuse No.1 Edmund Road was fairly considered.

In concluding on these matters, the Inspector advised: *"I conclude therefore that the Council acted unreasonably in delaying determination of the application causing the appellant unnecessary expense in making an appeal. Consequently a full award of costs is justified."*

59 Liss Road, Southsea, PO4 8AS-

Similar to the appeal decision above, the main determining issues in allowing this appeal were the effect of the proposal on the mix and balance of the community and secondly, whether the proposed use would provide an adequate standard of accommodation for occupiers.

Again the Inspector noted the HMO Count data (13.95%) exceeded the 10% rule, but similar to the case above stated: *"Policy PCS20 considers Class C4, mixed C3/C4 use and HMOs in sui generis use all to be HMOs, and that the proposed change of use to a larger HMO would not therefore result in a change to the balance of uses in the context of the surrounding area."*

In considering representations made on the case relating to the impact HMO's have on the quality of life/services/housing provision in the surrounding area, the Inspector opined: *"Since the quantity of family housing in the area would thus be unaffected there is no reason why there should be any resulting increased competition for private rented houses, rising house prices and corresponding lack of affordability, decreased demand for some local services, change in leisure, entertainment and retail, or the closure of local services, schools and other community infrastructure."*

Discussing the impact of high number of HMO's within a given area the Inspector advised: *"I have no reason to doubt that problems arising from high levels of HMO occupation in an area could occur. But no evidence has been presented to indicate what the occupation rates in HMOs in the Liss Road area are, whether any of the problems that can occur have occurred in the vicinity of the appeal site, and if so in what way they would be exacerbated by the small increase in occupation proposed."*

Offering some conclusions on the HMO Count Data and the impact of this development on local communities the inspector acknowledged that the proposal would result in more than 10% HMO's with a 50m radius but stated: *"However, the appeal property is now in HMO use and no change to the balance of uses in the area would therefore occur. Further I have seen no robust evidence that the proposal would result in significant harm, or risk of harm, on its own or cumulatively to the nature of the local community or the popularity of the area."*

Commenting on the quality of living accommodation and the SPD's requirements to ensure a minimum size standard, like the decision above, the inspector opined: *"the application is for use of the house for 7 people and I saw at my site visit that the majority of the rooms have on-suite bathroom facilities. In these circumstances the marginal under provision of the shower and bathroom floorspace is unlikely to cause a problem and in my judgement the limited shortfall in common living area would be off-set by the additional space all of the bedrooms offer in excess of the relevant SPD standards."*

Concluding on the matter the Inspector stated: *"I conclude that the proposal would provide an adequate standard of accommodation for occupiers. Consequently it would not result in an over-intensive use of the house or a significantly increased risk of disturbance to neighbouring residents."*

Costs Decision-

Similar to the appeal decisions above, the Inspector noted that: *"No other reason for the deferral was given and no explanation is offered as to the reasons for the inconsistency in the approach to decision making in respect of the applications."*

Concluding on this costs application the Inspector advised: *"I conclude therefore that the Council acted unreasonably in delaying determination of the application causing the appellant unnecessary expense in making an appeal. Consequently a full award of costs is justified."*

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: 17/00555/FUL (22 Jessie Road, Southsea, PO4 0EN) | Planning Services |
| Appeal decision: APP/Z1775/W/17/3179404 (22 Jessie Road, Southsea, PO4 0EN) | Planning Services |
| Planning application: 17/01102/HOU (12 Inglis Road, Southsea, PO5 1PB) | Planning Services |
| Appeal decision: APP/Z1775/D/17/3184345 (12 Inglis Road, Southsea, PO5 1PB) | Planning Services |
| Planning application: 17/00682/HOU (63 Cornwall Road, Portsmouth, PO1 5AR) | Planning Services |
| Appeal decision: APP/Z1775/D/17/3181548 (63 Cornwall Road, Portsmouth, PO1 5AR) | Planning Services |
| Planning application: 17/01215/FUL (1 Edmund Road, Southsea, PO4 0LL) | Planning Services |
| Appeal decision: APP/Z1775/W/17/3185758 (1 Edmund Road, Southsea, PO4 0LL) | Planning Services |
| Planning application: 17/00920/FUL (59 Liss Road, Southsea, PO4 8AS) | Planning Services |
| Appeal decision: APP/Z1775/W/17/3185768 (59 Liss Road, Southsea, PO4 8AS) | Planning Services |
| Planning application: 17/00274/PLAREG (Annesley House, Queens Crescent, Southsea, PO5 3HE) | Planning Services |
| Appeal decision: APP/Z1775/W/17/3183699 (Annesley House, Queens Crescent, Southsea, PO5 3HE) | Planning Services |
| Planning application: 17/01214/HOU (56 Stubbington Avenue, Portsmouth, PO2 0JA) | Planning Services |
| Appeal decision: APP/Z1775/D/17/3187543 (56 Stubbington Avenue, Portsmouth, PO2 0JA) | Planning Services |

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| Planning application: 17/01397/HOU (9 Livingstone Road, Southsea, PO5 1RS) | Planning Services |
| Appeal decision: APP/Z1775/D/17/3188027 (9 Livingstone Road, Southsea, PO5 1RS) | Planning Services |