



NOTICE OF MEETING

PLANNING COMMITTEE

WEDNESDAY, 6 MARCH 2019 AT 1.00 PM

THE EXECUTIVE MEETING ROOM - THIRD FLOOR, THE GUILDHALL

Telephone enquiries to Democratic Services

Email: Democratic@portsmouthcc.gov.uk

If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

Planning Committee Members:

Councillors Hugh Mason (Chair), Judith Smyth (Vice-Chair), Jo Hooper, Suzy Horton, Donna Jones, Gemma New, Steve Pitt, Lynne Stagg, Luke Stubbs and Claire Udy

Standing Deputies

Councillors Frank Jonas BEM, Leo Madden, Robert New, Scott Payter-Harris, Jeanette Smith, David Tompkins, Gerald Vernon-Jackson CBE, Rob Wood and Tom Wood

(NB This Agenda should be retained for future reference with the minutes of this meeting.)

Please note that the agenda, minutes and non-exempt reports are available to view online on the Portsmouth City Council website: www.portsmouth.gov.uk

Representations by members of the public may be made on any item where a decision is going to be taken. The request needs to be made in writing to the relevant officer by 12 noon of the working day before the meeting, and must include the purpose of the representation (eg. for or against the recommendations). Email requests to planning.reps@portsmouthcc.gov.uk or telephone a member of the Technical Validation Team on 023 9283 4916.

A G E N D A

- 1 Apologies for absence
- 2 Declaration of Members' Interests
- 3 Minutes of the Previous meetings (Pages 3 - 10)

RECOMMENDED that the minutes of the Planning Committee held on 6 February 2019 be approved as a correct record to be signed by the Chair.

4 Updates on Previous Planning Applications by the Interim Assistant Director for City Development

To receive any updates on Previous Planning Applications by the Interim Assistant Director for City Development.

Planning Applications

5 18/01703/FUL 243 Fawcett Road, Southsea PO4 0DJ (Pages 11 - 34)

Change of use from purposes falling within Class C4 (house in multiple occupation) to eight person/eight bedroom house in multiple occupation (Sui Generis) (amended description and plans).

6 18/02042/VOC 154 - 156 Elm Grove Southsea PO5 1LR

Application to Vary Condition 6 of Planning Permission 17/00683/Plareg to Amend The Opening Hours to 10:00-23:00 Sunday-Wednesday, 10:00-00:00 on Thursdays and 10:00-02:00 on Friday and Saturdays.

7 19/00024/FUL 82 Wadham Road, Portsmouth PO2 9EE

Change of use from dwellinghouse (Class C3) to mixed use purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse).

Members of the public are permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting nor records those stating explicitly that they do not wish to be recorded. Guidance on the use of devices at meetings open to the public is available on the Council's website and posters on the wall of the meeting's venue.

Whilst every effort will be made to webcast this meeting, should technical or other difficulties occur, the meeting will continue without being webcast via the Council's website.

This meeting is webcast (videoed), viewable via the Council's livestream account at <https://livestream.com/accounts/14063785>

Agenda Item 3

PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held on 6 February 2019 at 1pm in the Executive Meeting Room, third floor, the Guildhall

These minutes should be read in conjunction with the agenda and associated papers for the meeting.

Present

Councillors Hugh Mason (Chair)
Judith Smyth (Vice-Chair)
Donna Jones
Gemma New
Steve Pitt
Lynne Stagg
Luke Stubbs

Welcome

The Chair welcomed members of the public and members to the meeting.

Guildhall, Fire Procedure

The Chair explained to all present at the meeting the fire procedures including where to assemble and how to evacuate the building in case of a fire.

144. Apologies (AI 1)

Apologies for absence had been received from Councillors Suzy Horton, Claire Udy and Jo Hooper (Councillor Robert New deputised for her).

145. Declaration of Members' Interests (AI 2)

18/01980/PLAREG - 112 Palmerston Road, Southsea PO5 3PT

Councillor Steve Pitt declared a non-prejudicial interest as he is a Cabinet Member and the owner of this premises has a relationship with the council.

Councillors Donna Jones and Luke Stubbs declared personal interests as they know the owner. They would withdraw themselves for this item.

146. Minutes of the Previous Meeting - 9 January 2019 (AI 3)

RESOLVED that the minutes of the Planning Committee held on 9 January 2019 be agreed as a correct record and signed by the chair subject to the following corrections:

Agenda item 140

The reference number 18/00967/FUL should be 18/01211/FUL

This item was included on the agenda in error and ***would be** dealt with under the Officer Scheme of Delegation.

The committee acknowledged that conditional permission ***would be** granted subject to the conditions set out in the report by the Assistant Director of City Development.

147. Appeal decisions relating to change of use applications from C4 HMO to sui generis HMO (AI 4)

Councillors Donna Jones, Luke Stubbs and Robert New were not present for this discussion.

The Chair introduced the report and during the subsequent discussion the following points were raised:

A number of planning applications for change of use from a C4 House in Multiple Occupancy (HMO) to a Sui Generis HMO had been refused by the committee in line with the amended Supplementary Planning Document (SPD) on the grounds that the change of use would result in an imbalance in the community. However, the Planning Inspector upheld the appeals. It was felt that the council's policy was therefore misleading as it is unenforceable.

The SPD does not clarify what potential harm could be brought to the community by having additional residents in the HMO. The term harm is loose and open to interpretation. The problem is that the committee does not have the power to stop the government crowding people into streets with no quality of life and no services.

A change from C4 to Sui Generis would not necessarily mean just one extra tenant. There could be a total of 54 further people within a 50m radius. There is no specific number which would tip the balance and demonstrate potential harm to the character of the area.

The committee's refusal of an application for a 25 bedroom HMO with only one kitchen was overturned by the Planning Inspector.

Although class C4 properties can have 3-6 tenants, the actual number of tenants they can be licensed for is not clear; more work is required.

The impact on parking and air pollution and the fact there will be unrelated tenants is considered irrelevant by the Planning Inspector.

RESOLVED:

- 1. The officers' recommendation was rejected.**
- 2. The Planning Committee Chair and Vice Chair to liaise with the Cabinet Member for Planning, Regeneration & Economic Development (PRED) and Opposition Spokespersons regarding improvements to the Supplementary Planning Document in consultation with officers.**

REASONS

Members rejected the recommendation as all applications which are contrary to the provisions of the SPD automatically trigger to the committee under the current scheme of delegation so the reinstatement of a blanket call-in would serve no purpose.

Members also considered it necessary to refer the matter to PRED for a review of the wording within the SPD relating to the change of use from C4 to HMO which has been the subject of a number of appeals which have recently been dismissed.

Members were of the opinion that the wording may need to be amended to require an assessment of harm to the character of the area to be undertaken with regard to the proposed change of use.

148. Updates on Previous Planning Applications by the Interim Assistant Director for City Development (AI 5)

There were no updates.

149. 18/01703/FUL - 243 Fawcett Road, Southsea PO4 0DJ (AI 6)

The Planning Officer introduced the report.

Anthony Lane, the applicant made a deputation to the committee.

Members' Questions.

In response to questions from members, officers clarified the following points:

- The measurements given by the applicant in his deputation differ from those in the report. The officers based their measurements on the applicant's plans.
- The loft bedroom with the sloping roof has 10.7m² floor area and over 1.5m high. The area that is less than 1.5m is not counted as floor area.
- The Planning Officer could not expand on the information given by the private sector housing.

Members' Comments.

Members felt that they could not determine this application due to the disagreement regarding room sizes.

RESOLVED that this application be deferred due to insufficient information for the committee to be able to make a decision.

REASONS

Members were concerned that the views expressed by a consultee with regard to room sizes were different from that contained within the officer's report and therefore, asked that the application be deferred to allow for the matter to be clarified.

150. 18/01675/FUL - 358 London Road, Portsmouth PO2 9JY (AI 7)

The Planning Officer introduced the report.

Members' Questions.

In response to questions from members, the Planning Officers clarified the following points:

- Bedrooms 5 and 6 have ensuite bathrooms. Bedroom 6 is on the second floor. The floor areas of the rooms were given:
 - The shower room on the ground floor 4.23m²
 - The bathroom on the second floor 5.94m²
 - The WC and wash basin on the second floor 1.53m²
- The shower room had not been built when the site visit had taken place so the officer could not say if it would contain a WC.
- There had been three revisions to this application and several amended descriptions. It could not be confirmed that the private sector housing had looked at the latest revision.

- The application met the requirements of the SPD for HMOs and is considered adequate for 8 tenants.
- The conservatory appeared to be double-glazed at the time of the site visit.
- The ensuite for bedroom 4 had been removed because the room space had not met private sector housing requirements.
- The applicant had assured the officer that there was no intention to have a self-contained flat on the top floor. Access would be given through the front door, the whole property and the same staircase.
- The kitchen is fully functioning.
- There is a fire door at the bottom of the stairs leading to the top floor.
- The application had been submitted in December and the applicant had agreed that it would be heard today.

Members' Comments.

During the discussion, members made the following observations:

- The double bedrooms were very large: 14.58m² and 17.6m²
- Bedroom 4 was not the largest but it was not the smallest either.
- Four of the ten tenants would use two bathrooms and the other six would use two.
- There are anomalies between the information given by planning and that given by private sector housing.
- The bedroom, kitchen and bathroom on the top floor could be used as a flat, particularly as there is a door at the bottom of the stairs that lead to that floor.
- The plans are not clear.
- Some tenants would be obliged to go through the ground floor kitchen to access the bathroom.
- It was however acknowledged that not all HMOs were perfect.

The Planning Solicitor reminded the committee that whether the top floor could be used as a flat is a planning judgement; however, he advised against excessive speculation as to the use of the rooms. If there were to be a breach in the conditions, enforcement action would be taken.

RESOLVED that authority be delegated to officers to approve the application having ascertained there is adequate WC facilities for the number of people and double rooms in the property.

REASONS

Members felt that to be sure that the application meets the required standards, clearer plans were required showing the location of the bathrooms and whether these contained WCs.

151. 18/01644/FUL - 10 Telephone Road, Southsea PO4 0AY (AI 8)

The Planning Officer introduced the report.

Members' Questions.

There were no questions from members.

Members' Comments.

Members expressed disappointment that the SPD's aim to prevent over intensification of HMOs in residential areas would not stand up to scrutiny.

RESOLVED that permission be granted subject to the conditions set out in the officers' report.

152. 18/01741/FUL - 1 Darlington Road, Southsea PO4 0ND (AI 9)

The Planning Officer introduced the application.

Ms Christine Candy made a deputation against the application.

The Chair informed Ms Candy that a number of appeals against the committee's refusal of applications for a change of use from C4 to Sui Generis HMO based on the impact on the community had been upheld by the Planning Inspector, despite the fact that there would be more than 10% of HMOs within a 50m radius.

Members' Questions.

In response to a question, members were told that imposing a condition that sound insulation be fitted as Environmental Health recommended, would be possible.

Members' Comments.

- Whilst members sympathised with the objector regarding the large number of HMOs close to her home, they noted that only a change in legislation could empower local planning authorities to refuse applications on the grounds that approval would result in there being more than HMOs comprising more than 10% of the properties within a 50m radius.
- The committee was not anti HMOs; it wanted to protect a mixed balance of properties in local communities.

RESOLVED that permission be granted subject to the conditions set out in the officers' report with an additional condition requiring sound insulation to be fitted.

153. 18/01869/PLAREG 84 Station Road, Drayton, Portsmouth PO6 1PJ (AI 10)

The Planning Officer introduced the application and referred members to the supplementary matters list.

The applicant had indicated that they want to the scheme to be judged on its original design which would leave the trellis at the top of the loft unchanged and gives the structure a maximum height of 3.1m. While the proposal was amended to reduce its scale and to bring it closer to the requirements of the Permitted Development, it is not considered that the trellis is significant enough to change the officer's recommendation (conditional permission).

Anthony Barrett, the applicant made a deputation in favour of the application and Julie Musselwhite made a deputation against.

Members' Questions.

In response to questions, the following points were put forward:

The applicant explained that the entrance to the loft did not face towards his house but towards the end of his garden. However, it was not visible because the neighbour put up a 2.9m high fence at the end of her garden.

The Planning Officer suggested that had the loft been facing a different way it might be felt to be less intrusive to the neighbour. If it were to be moved a short distance it would not require planning permission.

Members' Comments

During the discussion, members noted that:

- Keeping pigeons often brought communities together
- The trellis had an overburdening impact on the neighbouring property.
- Although it was aggravating that this is a retrospective application, it would be treated as a new application.
- This loft replaces three smaller ones in the same position.

RESOLVED that permission be granted subject to the conditions set out in the officers' report.

154. 18/01917/TPO - 29 Siskin Road, Southsea PO4 8UG (AI 11)

The council's Arboricultural Officer introduced this and the next two applications together.

Councillor Darren Sanders made a deputation regarding all three applications.

Members' Questions

In response to questions, members were informed that:

- The Planning Enforcement Officers would be informed once the chop day is set and would take action if the trees were not replaced.
- The trees would be replaced by nursery trees of between 3.5 and 4m high of the species recommended in the report. These will have a similar shape and growth habit but will have a longer longevity.
- If the new trees are planted within 12 months, they would receive Tree Protection Orders.
- It would be possible to notify Ward Councillors in future of any intentions to fell other trees.
- The chop date is not given to the officer for privately owned trees.

Members' Comments.

Members noted that:

- Notices informing the public of the council's intentions regarding felling have been displayed on trees in the past.
- The protection of trees is very important to residents.
- There has never been a war on trees in the city.
- It is sometimes necessary to fell trees.

RESOLVED that permission be granted subject to the conditions set out in the officers' report.

155. 18/01918/TPO - 21 Siskin Road, Southsea PO4 8UG (AI 12)

RESOLVED that permission be granted subject to the conditions set out in the officers' report.

156. 18/01921/TPO - 4 Reedling Drive, Southsea PO4 8UF (AI 13)

RESOLVED that permission be granted subject to the conditions set out in the officers' report.

157. 18/01980/PLAREG - 112 Palmerston Road, Southsea PO5 3PT (AI 14)

The following Councillors were not present for this item: Councillors Donna Jones, Robert New, Steve Pitt and Luke Stubbs.

The Planning Officer introduced the application and referred members to the supplementary matters list.

Following publication of the Committee report, an Objector has submitted a further email, to her local Councillor, raising the following points:

- (a) This is an on-going application process, having failed at local level and at appeal and now continuing to disregard the Planning Contravention Notice (PCN). I do not understand how a PCN can be issued on the one hand, yet there is also a positive recommendation for this new application. There seems to be a waste of time and money, against the spirit of planning and due process;*
- (b) The applicants are also the organisation behind the Victorious Festival and I wouldn't want to think this was the reason why this was bypassing, abusing or illegally obtaining retrospective planning, we have been through a very robust process and a decision had been made.*

The points can be addressed as follows:

- (a) The Applicant seeks to resolve the only outstanding issue from last year's appeal decision, by way of a new planning application. Should the application be refused, the Local Planning Authority would still have the enforcement process available.*
- (b) The application is being determined on planning matters alone.*

Deputations were heard against the application by Sue Lloyd and Peter Cairns.

Members' Questions.

- It was not known whether the owner had considered fitting inward-opening windows.
- The Inspector had considered that adherence to the operating procedure could be assured by adding a condition.
- It is not known whether the applicant had considered having opening windows solely on Auckland Road West. It may be felt that having open windows is an important part of the offer.
- The locking mechanism was fitted recently; perhaps in the Autumn. The planning department was not aware of any reports of accidents or near misses that had occurred since then.

- If permission were to be granted and an accident involving the windows occurred, no direct causation would be attributed to the council regarding possible negligence.
- Other statutory leads could be involved with having windows opening across pavements including Highways and Building Regulations.
- Community Enforcement Officers could be asked to keep an eye on this premises.
- The committee was within its powers as a determining authority could impose a condition requiring two windows to be remain closed.

Members' Comments.

- Although a solution was offered, it is the responsibility of the council to ensure that it could work and would protect public safety.
- The committee considered requiring a log of the staff involved in the opening and closing of the windows every day to be maintained.
- The fitting of latches to ensure that the windows could not be dislodged was welcomed.
- There is a risk to pedestrians coming from the Auckland Road West side.

RESOLVED that:

- 1. Delegated authority is given to officers to conclude an arrangement whereby 2 temporary notices are placed to warn pedestrians of the opening and closing of these windows as part of the opening procedure under condition 2 [and thereafter grant conditional permission].**

Condition 2 is worded as follows:

"At no time shall the windows to the premises be opened over the highway unless in full compliance with the submitted "Procedure for operation of windows opening into public highway" dated XX/XX/2019¹, and the securing bolts and angle-brackets shall thereafter be maintained in accordance with that document.

158. Additional Planning Meeting - 20 February 2019 (AI 15)

The meeting concluded at 5pm.

.....
Signed by the Chair of the meeting
Councillor Hugh Mason

¹ Date to be confirmed.

PLANNING COMMITTEE 6 MARCH 2019

**1 PM EXECUTIVE MEETING ROOM,
3RD FLOOR, GUILDHALL**

REPORT BY THE ASSISTANT DIRECTOR - CITY DEVELOPMENT ON PLANNING APPLICATIONS

ADVERTISING AND THE CONSIDERATION OF PLANNING APPLICATIONS

All applications have been included in the Weekly List of Applications, which is sent to City Councillors, Local Libraries, Citizen Advice Bureaux, Residents Associations, etc, and is available on request. All applications are subject to the City Councils neighbour notification and Deputation Schemes.

Applications, which need to be advertised under various statutory provisions, have also been advertised in the Public Notices Section of The News and site notices have been displayed. Each application has been considered against the provision of the Development Plan and due regard has been paid to their implications of crime and disorder. The individual report/schedule item highlights those matters that are considered relevant to the determination of the application

REPORTING OF CONSULTATIONS

The observations of Consultees (including Amenity Bodies) will be included in the report by the Assistant Director - City Development if they have been received when the report is prepared. However, unless there are special circumstances their comments will only be reported VERBALLY if objections are raised to the proposals under consideration

APPLICATION DATES

The two dates shown at the top of each report schedule item are the applications registration date- 'RD' and the last date for determination (8 week date - 'LDD')

HUMAN RIGHTS ACT

The Human Rights Act 1998 requires that the Local Planning Authority to act consistently within the European Convention on Human Rights. Of particular relevant to the planning decisions are *Article 1 of the First Protocol- The right of the Enjoyment of Property*, and *Article 8- The Right for Respect for Home, Privacy and Family Life*. Whilst these rights are not unlimited, any interference with them must be sanctioned by law and go no further than necessary. In taking planning decisions, private interests must be weighed against the wider public interest and against any competing private interests Planning Officers have taken these considerations into account when making their recommendations and Members must equally have regard to Human Rights issues in determining planning applications and deciding whether to take enforcement action.

Web: <http://www.portsmouth.gov.uk>

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243 FAWCETT ROAD SOUTHSEA PO4 0DJ**CHANGE OF USE FROM PURPOSES FALLING WITHIN CLASS C4 (HOUSE IN MULTIPLE OCCUPATION) TO EIGHT PERSON/EIGHT BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS) (AMENDED DESCRIPTION AND PLANS)****Application Submitted By:**Thorns Young Ltd
FAO Mrs Carianne Wells**On behalf of:**

Mr Anthony Lane

RDD: 11th October 2018**LDD:** 13th December 2018**SUMMARY OF MAIN ISSUES****Update**

This application was deferred from the Planning Committee on 6th February 2019. The reason for deferral was due to conflicting information in relation to room sizes. Following the deferral, the LPA have been in correspondence with the Private Sector Housing Team (PSHT) and can confirm Bedroom 7 has a floor area of 10.7m² (it is noted that any floor area under 1.5m² head height has not been included in this measurement). All other room sizes are outlined in the Officer's Report under the heading 'standard of accommodation'. It is therefore concluded that the reason for deferral has been resolved.

In addition, Members' attention is drawn to two recent appeal decisions at Nos.58 & 56 Britannia Road North, Southsea, PO5 1SL (APP/Z1775/W/18/3196268 & APP/Z1775/W/18/3196328, 15th February 2019) which have been dismissed (see 'standard of accommodation' section in bold). The appeals relate to a similar form of development regarding communal space located within a basement. The Officer's Report has subsequently been amended to reflect these updates. All other aspects of the report remain the same and the Officer's recommendation remains unaltered.

Original report (6th February 2019)

The application is being presented to the Planning Committee for determination because the creation of an 8 bedroom/8 person Sui Generis HMO would be contrary to Policy PCS20 of the Portsmouth Plan and the revised Houses in Multiple Occupation Supplementary Planning Document (HMO SPD, July 2018).

The determining issues for this application relate to the suitability of the proposed Sui Generis House in Multiple Occupation (HMO) use within the existing community and whether the proposal complies with policy requirements in respect of providing a suitable standard of accommodation. Other considerations include the proposals potential impact upon the living conditions of adjoining and neighbouring residents, SPA mitigation and parking.

The site

This application relates to a two-storey, mid-terrace dwellinghouse (Class C4) located to the north of Fawcett Road, where the road bends round to the west, close to its intersection with Sutherland Road. The property sits slightly back from the highway, due to the curvature of the road and benefits from a moderate size garden to the rear.

The proposal

Planning permission is sought for a change of use from Class C4 HMO to an 8 bedroom/8 person, Sui Generis HMO. A rear 'L shaped' dormer has been constructed under permitted development.

It is noted that amended plans have been received from the agent which saw the proposal increase from a seven bedroom layout to an eight bedroom layout, the description of development has thus been altered to reflect the revised plans.

Planning History

18/00542/CPE: Application for certificate of lawful development for the existing use of dwelling house as a Class C4 (HMO) House in Multiple Occupation. Grant (14.06.2018).

A*27225/C: Alterations to convert shop with living accommodation to a dwellinghouse. Conditional permission (11.03.1971)

A*27225/B: Alterations and additions to convert the whole premises to living accommodation. Conditional permission (11.09.1969).

A*27225/A: Alterations and an extension to convert the existing shop into two flats. Refused (24.07.1969).

A*27225: Change of use of shop to residence. Conditional permission (20.03.1969).

Licensing History

House in Multiple Occupation Licence was granted on 6th April 2016 for four people. Licence expired on 27th August 2018.

POLICY CONTEXT

In addition to the National Planning Policy Framework, the relevant policies within the Portsmouth Plan would include: PCS14 (A Healthy City), PCS17 (Transport), PCS20 (houses in multiple occupation) and PCS23 (Design and Conservation). The revised Houses in Multiple Occupation Supplementary Planning Document (HMO SPD, July 2018), Parking Standards SPD and Solent Special Protection Areas SPD would also be material considerations.

CONSULTATIONS

Private Sector Housing

Definitions

Dwelling and Flat: Housing Act 2004, Part 1, Chapter 1, Section 1 (5).

"Dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling.

"Flat" means a separate set of premises (whether or not on the same floor) —
(a) Which forms part of a building;
(b) Which is constructed or adapted for use for the purposes of a dwelling, and;
(c) Either the whole or a material part of which lies above or below some other part of the building.

Summary

- 4 storeys
- 8 bedrooms

Based on the layout and sizes provided with this application this property would require to be licenced under Part 2, Housing Act 2004.

Kitchen/Dining

I am concerned as there is no dining area proposed in the property. A combined kitchen/dining area measuring a floor space of 19.5m² is required, of which 11m² is to be designated for the exclusive use of cooking, food preparation and food storage.

The proposed kitchen area is 11.48m² so this area suffices the kitchen requirement, however as highlighted there is no dining area provision.

Living/Lounge

A designated living area is required of 16m², calculated at 8m² plus 1m² per person where bedrooms do not exceed 10m². The proposed size meets the overall floor space requirement, however there is no indication of windows or ventilation and therefore no natural light, nor ventilation will be entering the room so this proposed 'living' area is not suitable.

Bedroom 7

It is not clear that the usable space within this room exceeds 6.5m² as although the proposal states 12.41m², it is apparent there are Velux windows implying there is an area where the floor to ceiling height is less than 1.5m and therefore classed as 'unusable space' and is not to be included in the overall room size.

Bedroom 8

Significant concerns are raised regarding the location of this bedroom as access is via the kitchen, a high risk area of fire outbreaks. As a consequence a 'means of escape' exit window/door will be required in the bedroom and there needs to be the ability for the occupant to remove themselves entirely from the property to a minimum distance equivalent to the full height of the property, to ensure they are suitably clear from any falling debris in the event of a fire.

WC

No sizes have been proposed regarding the WC so no comment can be made at this stage.

Waste Management Service

There are no plans for waste storage on the drawings shown or any explanation in the application for. This property is flat fronted and oversized for the property. The only way forwards that I can see is for communal bins to be stored in the rear yard and for the residents to bring them out in to Sutherland Road for the scheduled collections.

Due to the size of this HMO application, if it is granted it will need to have communal refuse and recycling bins, purchased from Portsmouth City Council, otherwise they will need to make private collections for their waste.

Highways Engineer

For applications where a change of use is sought from a dwelling house (C3) or dwelling house in multiple occupation (C4) to a House of Multiple Occupation (Sui Generis) the following comments can be applied;

Considering the small scale of the proposal, it is the belief of the LHA that the proposal is unlikely to have a material impact upon the highway network and as such is satisfied that a traffic assessment would not be required.

Portsmouth's residential parking standards expect that dwelling houses (C3) and Houses in Multiple Occupation (HMO) (C4/Sui Generis) with more than 4 bedrooms should provide 2 car parking spaces per dwelling. Where no on-site parking is provided, it is assumed that existing parking demand is met on-street.

Where an application property already has 4 or more bedrooms, the expected parking demand of a HMO (Sui Generis) would be the same as the existing use as per SPD standards and as such would not be required to provide any further spaces despite an increase in the number of bedrooms.

The Portsmouth parking SPD also gives the expected level of cycle parking that should be provided for residential developments. An existing property with 4 bedrooms has an expected demand for 4 cycle parking spaces; upon changing to a HMO (Sui generis), the cycle parking provision required would remain the same as the current use and therefore additional cycle parking spaces are not required. It should however be ensured that the existing property already provides for 4 cycle parking spaces as per SPD standards.

Given the established policy position, the Highways Authority would see no grounds for objection for such an application and as such this guidance may be used in lieu of a formal consultation on any such application.

REPRESENTATIONS

None received.

COMMENT

The determining issues for this application relate to the suitability of the proposed Sui Generis HMO use within the existing community and whether the proposal complies with policy requirements in respect of providing a suitable standard of accommodation. Other considerations include the potential impact upon the living conditions of adjoining and neighbouring residents, SPA mitigation and parking/waste.

Principle of the use

Planning permission is sought for the use of the property as an eight bedroom/eight person Sui Generis house in multiple occupation.

Policy PCS20 of the Portsmouth Plan states that applications for the change of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses or where the development would not create an imbalance. The adopted Houses in Multiple Occupation SPD (HMO SPD July 2018) sets out how Policy PCS20 will be implemented and details how the City Council will apply this policy to all planning applications for HMO uses.

The property has a lawful use as a Class C4 (HMO) which was previously approved in June 2018, under planning application reference: 18/00542/CPE. As the property had a historic C4 use, the granting of the above permission (ref.18/00542/CPE) did not result in the creation of a new HMO.

Paragraph 1.15 of the HMO SPD states: 'Where planning permission is sought to change the use of a Class C4 or mixed C3/C4 use to a HMO in Sui Generis use, the City Council will seek to refuse applications 'in areas where concentrations of HMOs already exceed the 10% threshold'.

Having regard to the current lawful use of the property as a Class C4 HMO, the proposed change of the use to a larger HMO (Sui Generis) would therefore not result in an overall change to the balance of uses in the context of the surrounding area and would therefore, be in accordance with Policy PCS20 of the Portsmouth Plan and the supporting HMO SPD.

In considering several recent appeals which related to similar developments, whilst the Inspector recognised Policy PCS20 it was opined that as the development was not creating a new HMO, there was no material change to the balance of uses in the area. In a recent appeal (APP/Z1775/W/18/3193995, July 2018) at 18 Bramble Road (0.2 miles away), the Inspector stated: 'I saw that the works as shown on the proposed ground floor plan to change the layout to one containing 7 bedrooms had been implemented and occupied as such. Importantly, in this case, this has not increased the number of HMOs in the area as the property already benefits from a lawful use as a Class C3 dwelling house or Class C4 HMO. The HMO SPD does also state that the Council will seek to refuse planning applications for changes of use of the nature relating to the appeal in those same circumstances concerning the 10% threshold. Nevertheless, in this case the addition of just one single sized bedroom to an existing lawful HMO would be unlikely to materially increase the community imbalance and I have received insufficient substantive evidence to the contrary...In this respect, although determining the appeal on its own merits, I have also had regard to other similar recent cases allowed on appeal as referred to by the appellant. Similar conclusions were reached in those decisions in respect of this issue, all of which related to sites not far from that of this appeal, albeit not in the same immediate vicinity. I have therefore afforded significant weight to those other decisions...For the above reasons, the development does not cause unacceptable harm to the mix and balance of the local community. As such, it accords with policy PCS20 of the Core Strategy and is not at odds with the general principles set out in the HMO SPD'.

In considering an appeal at 11 Baileys Road (APP/Z1775/W/16/3159989, February 2017) which related to a similar development, the Inspector opined that: 'Policy PCS20 of The Portsmouth Plan seeks to avoid concentrations of HMOs within the city. However, the policy is clear in that it states 'for the purposes of this policy, dwellings in use as Class C4, mixed C3/C4 use and HMOs in Sui Generis use will be considered to be HMOs'. Consequently, as the appeal property already has consent for a C4 use, the proposal could not result in an increase in concentration of HMOs in the City'.

Similar decisions were reached by the Inspector at 14 Wisborough Road, December 2018, APP/Z1775/W/18/3208412; 50 Hudson Road, December 2018, APP/Z1775/W/17/3191358; 30 Hudson Road, August 2018, APP/Z1775/W/17/3189609; 8 Pitcroft Road, August 2018, APP/Z1775/W/17/3188485; 239 Powerscourt Road, July 2017, APP/Z1775/W/17/3169402; 103 Manners Road, April 2018, APP/Z1775/W/17/3187443; 63 Jessie Road, March 2018, APP/Z1775/W/17/3185652; 59 Liss Road, February 2018, APP/Z1775/W/17/3185768; 1 Edmund Road, February 2018, APP/Z1775/W/17/3185758; 22 Jessie Road, December 2017, APP/Z1775/W/17/3179404; 80 Margate Road, February 2017, APP/Z1775/W/16/3159993; 37 Margate Road, February 2017, APP/Z1775/W/16/3159992; 12 Beatrice Road, October, APP/Z1775/A/12/2177272 (15 appeals in total).

Placing significant weight on these appeal decisions, the LPA must accept that the proposal would not result in a further imbalance of HMO uses, and would be unable to defend the position set out within the HMO SPD (July 2018) at appeal.

Standard of Accommodation

The Housing in multiple occupation SPD (July 2018), sets out minimum size standards for rooms in order to achieve a satisfactory standard of living accommodation for future occupants. In relation to communal space, for a property that can accommodate 7 or more persons, the requirements are for either a separate kitchen, living room and dining room to be provided, or a shared communal space of at least 27m².

In terms of internal living conditions, the property benefits from the following:

Area:	Provided:	Required Standard: (HMO SPD-JULY 2018)
Bedroom 1 (Ground Floor)	9.08m ²	7.5m ²
Bedroom 1 en-suite	2.97m ²	Not specified
Bedroom 2 (Ground Floor)	9.24m ²	7.5m ²
Bedroom 2 en-suite	2.97m ²	Not specified
Bedroom 3 (First Floor)	14.21m ²	7.5m ²
Bedroom 3 en-suite	3.20m ²	Not specified
Bedroom 4 (First Floor)	10.40m ²	7.5m ²
Bedroom 4 en-suite	3.20m ²	Not specified
Bedroom 5 (First Floor)	10.67m ²	7.5m ²
Bedroom 5 en-suite	2.78m ²	Not specified
Bedroom 6 (Second Floor)	7.88m ²	7.5m ²
Bedroom 6 en-suite	2.83m ²	Not specified
Bedroom 7 (Second Floor)	10.7m ²	7.5m ²
Bedroom 8 (Ground Floor)	8.24m ²	7.5m ²
Bedroom 8 en-suite	3.69m ²	Not specified
Kitchen (Ground Floor)	11.48m ²	11m ²
Lounge	15.45m ²	14m ²
Shower room (Second Floor)	5.43m ²	3.74m ²
W/C (First Floor)	1.52m ²	Not specified

The pre-existing layout as documented in planning application reference no.18/00542/CPE of the property comprised of four bedrooms, a bathroom, kitchen and lounge. However, the proposed layout comprises of 8 bedrooms (3 located on ground floor, 3 located on the 1st floor and 2 in the converted loft space), a kitchen, basement lounge, a separate W.C at first floor and a separate shower room within the converted loft space. It is noted all of the rooms except bedroom 7 would benefit from an en-suite. The proposed plans would see the loss of a separate study area and dining room, in order to provide two additional bedrooms. Furthermore, the existing basement has been converted to form a new separate lounge.

It was possible to gain access to all of the rooms while undertaking a site visit. It is evident from the bedrooms that were seen on site and from the enclosed plans that the bedroom sizes are too small to act as a main living area, bedroom and study area for an adult. It is also noted that Bedroom 7 located within the converted loft would have a restricted head room which limits the usability of the room.

Whilst the list above indicates that the kitchen and lounge meet the minimum sizes, there is no separate dining room provided within the property, and therefore the communal space would be considered inadequate. In addition, the proposed lounge located at basement floor level would only be served by a small lightwell and would therefore fail to provide a suitable degree of natural light, outlook and ventilation. With regard to the above, it is considered the basement lounge would not provide a good standard of living environment for the future residents and users of the development.

The proposed lounge within the basement was visited during the site visit, and it was duly noted that the basement lounge was dark, enclosed and overall represents an ill-conceived and oppressive form of development. The over-subdivided property would see a once four bedroom HMO with good facilities (ref.18/00542/CPE) modified into an eight bedroom HMO with poor facilities. Thus, the proposal is indicative of an over-intensive use of the property.

The kitchen and basement lounge would be the only communal living areas within the HMO. The kitchen measures 11.48m² and the basement lounge measures 15.45m². The submitted floor plans do not show the proposed 'fit-out' for the kitchen or basement lounge and therefore it is difficult for the LPA to accurately assess if the kitchen and basement lounge would provide enough room for the eight individuals. Notwithstanding the lack of detail on the submitted plans, it is considered that the basement lounge accounts for a substantial percentage of the total amount of communal space.

With regards to the above, the lack of adequate communal space would be further emphasised, as only 1 out of the 8 (Bedroom 3) bedrooms would meet the size standards for a double bedroom (11.5m²). This would result in occupants spending less time in their bedrooms due to the limited floor space and useable circulation space. It is therefore considered that the provision of adequate communal space would be essential in order to provide a good standard of living environment for the eight individuals.

The City Council Private Sector Housing Team (PSHT) advises that a licence would be required and raise adverse comments to the proposal.

In considering two recent appeals at 58 & 56 Britannia Road North, Southsea, PO5 1SL (APP/Z1775/W/18/3196268 & APP/Z1775/W/18/3196328, February 2019) which related to similar developments, the Inspector opined that: 'The kitchen and dining space however would be housed entirely within the basement. A bay style window would serve the space but one that has a view towards a high sided masonry wall. This poor level of outlook would apply mainly to the dining area only and be exacerbated by the proximity of said wall. This arrangement would provide some natural light but an amount severely constrained to the extent that reasonable functioning of the spaces would rely almost wholly on artificial light. Taking these factors together I would conclude that the standard of living for occupiers would be unacceptably poor...Whilst the size of the spaces combined would be acceptable and the separate lounge space would have an appropriate outlook and access to natural light, the kitchen and dining area accounts for a substantial percentage of the total amount of communal space and thus these matters would not be sufficient to overcome my concerns. Consequently, the appeal schemes would fail to provide an adequate standard of living for occupiers. Accordingly they would conflict with Policy PCS23 of the Local Plan and the guidance set out by the Council's relevant SPD. Together, and amongst other things, they set out to ensure that new development

protects amenity and provides a good standard of living environment for future occupiers and users of the development'.

The above appeals relate to a change of use from C4 HMOs to 7 bedroom/7 person Sui Generis HMOs. It is therefore considered that the above appeals are directly comparable with the current application at hand. It is noted that the above appeals also included a living room at ground floor level in addition to the basement accommodation and thus it is considered offered a better standard of accommodation in comparison to the proposal. In addition, given the above appeals related to 7 bedroom/7 person Sui Generis HMOs, it could be argued that the use of the building for an 8 bedroom/8 person Sui Generis HMO would result in a worsened situation.

As the proposal falls short of planning standards identified in the HMO SPD (July 2018) and having regard to the material consideration outlined above, it is advised that the proposed layout of the property is not suitable for the occupation of 8 persons sharing. It is noted that the LPA attempted to seek amended plans which would revert back to the superseded plans detailing a seven bedroom HMO (email dated: 21.01.2019). However, no response was received from the agent.

For the reasons outlined above, the proposed use of the building as an eight bedroom/eight person Sui Generis HMO would, due to the over-subdivision of the property and in the absence of satisfactory communal facilities that benefit from an adequate degree of natural light, outlook and ventilation, fail to provide the necessary quality of space for an acceptable standard of living accommodation to serve eight people and would represent an over-intensive use of the site. The resulting development provides a poor standard of residential accommodation which would fail to meet the likely needs of future occupiers. The proposal is therefore contrary to Core Planning Principles of the National Planning Policy Framework and Policies PCS20 and PCS23 of the Portsmouth Plan, including the supporting Houses in Multiple Occupation Supplementary Planning Document (July 2018).

Impact on Residential Amenity

The proposal is to increase the number of bedrooms within the property from 6 to 8, allowing for occupation by 8 people. The current proposal therefore represents an increase in two people over the level of occupancy that would be allowed within the current C4 use. In the event that planning consent were to be granted, a condition would be applied to limit the maximum occupation of the property to eight persons.

Whilst the accommodation of additional occupants would lead to a more intensive occupation of property that could result in the transmission of noise and disturbance to the adjoining occupiers, regard must be made to the lawful use of the property that allows occupation by six unrelated individuals or a family of an unrestricted size.

The impact of increasing the occupancy of an HMO on the amenities of neighbouring residents has been considered in a number of recent appeals.

In considering a recent appeal at 11 Baileys Road (APP/Z1775/W/16/3159989, February 2017), the Inspector opined: 'The current use of the property for C4 purposes would enable occupation by up to six residents. The appeal concerns the accommodation being increased by 2 additional bedrooms, making a total of 8 bedrooms; however, this would not change the nature of the use. To effect this change the ground floor lounge and study would be converted to bedrooms. No other rooms would be affected ... I am not persuaded that sufficient evidence has been submitted to substantiate that the proposed 2 additional bedrooms, would result in material harm to their [local residents] living conditions or unbalance the local community'.

Having regard to the appeal above, and on the basis that the proposal would result in two additional occupants, it is not considered that an objection could reasonably be sustained on the

basis of the impact on the amenities of neighbouring residents in terms of increased noise or disturbance.

Highways and waste

The application site does not benefit from any off-street parking and none is proposed as part of this application (the constraints of the site are such that none can be provided). However, given the current use of the property, the view of the planning Inspector detailed above and the sites proximity to local shops, services and transport facilities, it is considered that an objection on car parking standards could not be sustained.

The Councils Adopted Parking Standards set out a requirement for Sui Generis HMOs to provide space for the storage of at least 4 bicycles. The property has a rear garden where secure cycle storage could be located. This can be secured by condition.

In relation to refuse requirements, the owners of the site would need to apply for communal waste collection. It is considered that the waste facilities could be stored in the rear garden, and can be secured by condition.

Solent Special Protection Areas

The Conservation of Habitats and Species Regulations 2017 [as amended] and the Wildlife and Countryside Act 1981 place duties on the Council to ensure that the proposed development would not have a significant effect on the interest features for which Portsmouth Harbour is designated as a Special Protection Area, or otherwise affect protected habitats or species. The Portsmouth Plan's Greener Portsmouth policy (PCS13) sets out how the Council will ensure that the European designated nature conservation sites along the Solent coast will continue to be protected.

The Solent Recreation Mitigation Strategy (December 2017) was adopted by Portsmouth City Council on 1st April 2018 and replaces the Interim Solent Recreation Mitigation Strategy (December 2014) and the associated Solent Special Protection Areas Supplementary Planning Document (SPD) which was revoked by the City Council from 1st April 2018. The Strategy identifies that any development in the city which is residential in nature will result in a significant effect on the Special Protection Areas (SPAs) along the Solent coast. It sets out how development schemes can provide a mitigation package to remove this effect and enable the development to go forward in compliance with the Habitats Regulations.

The proposal would lead to a net increase in population, which would be likely to lead to a significant effect as described in section 61 of the Habitats Regulations on the Portsmouth Harbour and the Chichester and Langstone Special Protection Areas (SPAs). The development is not necessary for the management of the SPA.

Mitigation payments to the value of £487 would be required for this type of development. The applicant has provided this payment, in accordance with Policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended). This contribution is sufficient to mitigate the likely significant effect of the proposal on the Solent Special Protection Areas.

Conclusion

For the reasons outlined above, the proposed use of the building as an eight bedroom/eight person Sui Generis HMO would, due to the over-subdivision of the property and in the absence of satisfactory communal facilities that benefit from an adequate degree of natural light, outlook and ventilation, fail to provide the necessary quality of space for an acceptable standard of living accommodation to serve eight people and would represent an over-intensive use of the site. The resulting development provides a poor standard of residential accommodation which would fail

to meet the likely needs of future occupiers. The proposal is therefore contrary to Core Planning Principles of the National Planning Policy Framework and Policies PCS20 and PCS23 of the Portsmouth Plan, including the supporting Houses in Multiple Occupation Supplementary Planning Document (July 2018).

RECOMMENDATION Refuse

Conditions

The proposed use of the building as an eight bedroom/eight person Sui Generis HMO would, due to the over-subdivision of the property and in the absence of satisfactory communal facilities that benefit from an adequate degree of natural light, outlook and ventilation, fail to provide the necessary quality of space for an acceptable standard of living accommodation to serve eight people and would represent an over-intensive use of the site. The resulting development provides a poor standard of residential accommodation which would fail to meet the likely needs of future occupiers. The proposal is therefore contrary to Core Planning Principles of the National Planning Policy Framework and Policies PCS20 and PCS23 of the Portsmouth Plan, including the supporting Houses in Multiple Occupation Supplementary Planning Document (July 2018).

PRO-ACTIVITY STATEMENT

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework it was not considered that the harm arising from the proposal could be overcome and the application has been refused for the reasons outlined above.

154 - 156 ELM GROVE SOUTHSEA PO5 1LR

APPLICATION TO VARY CONDITION 6 OF PLANNING PERMISSION 17/00683/PLAREG TO AMEND THE OPENING HOURS TO 10:00-23:00 SUNDAY-WEDNESDAY, 10:00-00:00 ON THURSDAYS AND 10:00-02:00 ON FRIDAY AND SATURDAYS

Application Submitted By:

Mr Paul Cobb
Southern Bar Management Ltd.

On behalf of:

Mr Paul Cobb
Southern Bar Management Ltd.

RDD: 11th December 2018

LDD: 18th April 2019

SUMMARY OF MAIN ISSUES

The main issues for consideration in this application relate to the principle of extending the operating hours of the cafe/restaurant/drinking establishment (Class A3/A4) and the impact on the occupiers of adjoining properties.

The Site

This application relates to a large ground floor commercial unit located to the corner of Elm Grove and Victoria Road South. The property is currently occupied at ground floor level by a cafe/restaurant/drinking establishment (Class A3/A4) with residential accommodation above. The site is also located immediately adjacent to a busy traffic light controlled junction and within the secondary retail frontage of the Albert Road and Elm Grove District Centre.

The surrounding area comprises an eclectic mix of shops, restaurants and bars that extend principally from the western end of Albert Road. Notwithstanding the commercial character of uses at ground floor level a number of residential uses are located at upper floor levels and immediately to the rear on Stafford Road.

Proposal

This application seeks to vary Condition 6 of planning permission 17/00683/PLAREG to amend the opening hours from '11:00-23:00 Monday to Saturday and 11:00-21:00 on Sundays and any recognised public holidays' to '10:00-23:00 Sunday to Wednesday, 10:00-00:00 on Thursdays and 10:00-02:00 on Friday and Saturdays'.

The application originally referred to the application site as 152-156 Elm Grove with the application red line incorporating these addresses. It was however, noted that the original planning permission at the site only granted planning permission for the use of 154-156 Elm Grove as a cafe/restaurant/drinking establishment (Class A3/A4). Conversations with the applicant have confirmed that No.152 has now been incorporated into the use of 154-156 without the benefit of planning permission. Whilst being invited to withdraw this application and submit a new full application to regularise the use of the wider site (152-156) and consider the

revised opening hours, the applicant has declined and has requested that a decision be made on the current application. An amended application form and site plans referring to 154-156 only has been provided.

It is, therefore, important to stress that this proposal relates to the variation of a condition imposed on planning permission 17/00683/PLAREG at 154-156 Elm Grove in the knowledge that any approval would not regularise the unlawful use of No.152 Elm Grove. Furthermore, any approval of this application is likely to result in extended hours of operation within No.152.

Relevant Planning History

- 2016 - An application seeking retrospective planning permission for the change of use of part of the building from a shop (Class A1) to cafe/bar (Class A3/A4) was refused in November 2016 (ref.16/01540/PLAREG). The reason for refusal was as follows: 'In the opinion of the Local Planning Authority, the use of the premises within Use Class A3/A4 Monday to Sunday would result in an unacceptable impact on the amenity of the occupiers of the residential properties above the site in terms of increased noise and disturbance at unsociable hours. The proposal is therefore contrary to the aims and objectives of the National Planning Policy Framework and policy PCS23 of the Portsmouth Plan'.

- 2017 - Retrospective planning permission was granted in July 2017 (ref.17/00683/PLAREG) for the change of use of part of building from a shop (Class A1) to cafe/restaurant/drinking establishment (Class A3/A4). Condition 6 of this permission states: 'The use hereby permitted shall be closed to and vacated by members of the public outside of the following hours: 11:00 to 23:00 Monday to Saturday; and 11:00 and 21:00 on Sundays and any recognised public holidays'.

- 2017 - An application to vary Condition 6 of planning permission 17/00683/PLAREG to extend the opening hours to 10:00-23:00 on Monday to Wednesday; 10:00-00:00 Thursday; 10:00-01:30 Friday to Saturday; and 10:00-23:00 on Sundays and any recognised public holidays was refused in December 2017 (ref.17/01712/VOC). The reason for refusal was as follows:

'In the opinion of the Local Planning Authority, the extension of opening hours to 10:00-23:00 Monday-Wednesday, 10:00-00:00 Thursday, 10:00-01:30 Friday & Saturday and 10:00-23:00 on Sunday would result in an unacceptable impact on the amenity of the occupiers of the residential properties above the site in terms of increased noise and disturbance at unsociable hours. The proposal is therefore contrary to the aims and objectives of the National Planning Policy Framework and policy PCS23 of the Portsmouth Plan'.

- 2018 - An application to vary Condition 6 of planning permission 17/00683/PLAREG to extend the opening hours to 10:00-23:00 Monday to Wednesday; 10:00-00:00 Thursday; 10:00-02:00 Friday and Saturday; and 10:00-23:00 on Sundays and any recognised public holidays was refused in August 2018 (ref.18/00801/VOC). The reason for refusal was as follows:

'In the opinion of the Local Planning Authority, the extension of opening hours to 10:00-23:00 Monday-Wednesday, 10:00-00:00 Thursday, 10:00-02:00 Friday & Saturday and 10:00-23:00 on Sunday would result in an unacceptable impact on the amenity of the occupiers of the residential properties above the site in terms of increased noise and disturbance at unsociable hours. The proposal is therefore contrary to the aims and objectives of the National Planning Policy Framework and policy PCS23 of the Portsmouth Plan'.

POLICY CONTEXT

In addition to the aims and objectives of the National Planning Policy Framework, the relevant policies within the Portsmouth Plan would include: PCS 8 (District Centres) and PCS23 (Design and Conservation).

CONSULTATIONS

Environmental Health

This consultation is with regard to the potential impact on the neighbouring sensitive uses. The locality is of mixed commercial and residential use. The building is A3/A4 at ground floor and at first and second floor is residential use. The reasons given by the applicant for the removal of the condition are that the condition is draconian, that the condition differs from the licensing hours and that the condition is not consistent with competitors in the immediate vicinity.

Three complaints have been received since December 2016 about music noise from the premises. No noise complaints have been received since early 2018 although no inference should be drawn from this as the residential units have been vacant due to ongoing refurbishment.

Currently the permitted hours are from 11:00 to 23:00 Monday to Saturday and 11:00 to 21:00 on Sundays and recognised Bank Holidays. The closing hours correspond with those on the Premises Licence other than in the circumstances of Bank Holidays. Tolerance of noise until 23:00 hours tends to be higher as this coincides with the traditional closing hour for public houses as well as the time associated with sleep (23:00-07:00). The following is a passage from the "Good Practice Guide on the Control of Noise from Pubs and Clubs" produced by the Institute of Acoustics:

In order to minimise the risk of noise problems arising, extreme caution should be exercised in permitting developments that result in pubs, clubs and other similar premises being structurally attached to noise-sensitive properties. Such development should not be permitted without it being clearly demonstrated that acceptable noise levels can be achieved and maintained at, and in, the noise-sensitive properties.

The proposal is to extend the hours until midnight on Thursday nights and until 02:00 on Friday and Saturday nights. Measures to comply with condition 3 [Noise restriction/Insulation] of permission 17/00683/PLAREG have been implemented. A visit was made to the empty residential unit above to assess the adequacy of the works. Noise from the ground floor use was still audible but considered to be not at a level that would cause a significant impact to amenity.

The level of protection afforded to the residents in the 1st and 2nd floors as a result of condition 3 of permission 17/00683/PLAREG is appropriate to the currently permitted hours of use. As such, whilst significant harm to amenity is unlikely to be caused during the permitted hours of use, this is not the case should those hours be extended further into the night.

It is also considered that this is not something that can be addressed through additional sound insulation measures. This is highlighted by the fact that despite the sound insulation that has already been undertaken, noise is still able to impact on the residential units. In addition, some impacts, such as the noise and smoke from customers congregating outside of the restaurant are extremely difficult to control other than by controlling the hours of use.

In order to avoid an unacceptable impact on the amenity of the neighbouring residential use, the EHT object to the application for the extension of hours into the night. The EHT do not object, however, to an extension at the start of the day to 10:00 hours on each day of the week.

Highways Engineer

The LHA has reviewed the application form and drawings submitted in support of this application which seeks to vary condition 6 of planning permission 17/00683/PLAREG to amend the opening hours to 10:00-23:00 Sunday-Wednesday, 10:00-00:00 on Thursdays and 10:00-02:00 on Friday and Saturdays and would make the following observations:

This proposal would not have a material impact on the quantum of traffic generation associated with the use rather is likely to extend any such movements later into the evening when there is

less demand on the highway network. As a consequence the LHA would not wish to raise a highway objection to this application.

Crime Prevention Design Advisor

No comments received.

REPRESENTATIONS

One letter of objection has been received from the landlord of No.152-156 Elm Grove which incorporates the application site, the adjoining commercial unit and the residential properties immediately above. The objection can be summarised as follows: a) Increased noise and disturbance at unsociable hours associated with the use of the bar and the area immediately outside of the premises; and b) Increased risk of vandalism within the area.

One letter of support has also been received by St. Jude Ward Member Councillor David Tompkins. The application has been brought to the Planning Committee for determination at the request of Councillor Tompkins.

COMMENT

The main issues for consideration in this application relate to the principle of extending the operating hours of the cafe/restaurant/drinking establishment (Class A3/A4) and the impact on the occupiers of adjoining properties.

The application site is located within the secondary retail frontage of the Albert Road and Elm Grove District Centre adjacent to a busy traffic light controlled junction. The surrounding area is busy throughout the day and has a popular night time economy with large bars located immediately to the north (177-185 Elm Grove - The One Eyed Dog) and to the south on Albert Road (O'Neils, former Victoria and Albert and The Fat Fox - 11-13 Victoria Road South) with a range of other restaurants and smaller public houses and bars throughout Albert Road and Elm Grove. Notwithstanding the busy commercial character at street level, a number of residential uses extend between Albert Road and Elm Grove including residential uses immediately above the application site.

The upper floors of the application building (known as 2A Victoria Road South) are currently in the process of renovation as part of planning application 18/00998/FUL to improve the standard of historic residential accommodation at the site. This will result in the presence of 6 self-contained dwellings at first and second floor level compared to the previous 10. The location of these residential properties makes them susceptible to noise from the busy junction and adjoining commercial uses, but principally from the use of the premises at ground floor which is structurally attached allowing for the transmission of noise through structural elements.

As set out within the planning history above, a planning application to regularise the unlawful use of the ground floor as a cafe/bar (Class A3/A4) (formerly a large furniture shop - Class A1) was initially refused in November 2016 (ref.16/01540/PLAREG) due to the unacceptable impact of the use on the residential amenity of occupiers of properties above in terms of increased noise and disturbance at unsociable hours. Retrospective planning permission was subsequently granted in July 2017 (ref.17/00683/PLAREG), but only with the inclusion of stringent mitigation measures including reduced opening hours and the installation of noise control measures.

However, notwithstanding the installation of insulation and noise limiting equipment at the site to satisfy these planning conditions, the City Council's Environmental Health Team (EHT) highlight that noise from the ground floor use was audible within the residential units above when they carried out a site visit. Indeed three complaints have been received by the EHT since December 2016 about music noise from the premises. Whilst noise was audible within the dwellings, the EHT consider that the level of protection afforded to residents is acceptable for the current

permitted hours of operation where tolerance to noise tends to extend to 23:00 as this coincides with traditional public house closing hours as well as the time generally associated with sleep patterns (23:00-07:00).

It should be noted that two previous applications to increase opening hours at the site have been submitted to the Local Planning Authority, both of which have been refused due to the unacceptable impact on the amenity of neighbouring occupiers through increased noise and disturbance at unsociable hours. The most recent decision was in August 2018. Notwithstanding the refusal of the first application to extend opening hours, it is noted that both the second and current applications sought/seek to extend the opening hours beyond those previously considered and refused. In addition, it is noted that the cafe/restaurant/drinking establishment is now operating unlawfully from a larger premises than that initially permitted, increasing its capacity and opportunities for noise and disturbance to occur. It is also unclear whether the sound insulation measures installed to address previous planning conditions extend to include the enlarged part of the premises.

The "Good Practice Guide on the Control of Noise from Pubs and Clubs" (Institute of Acoustics) states: 'In order to minimise the risk of noise problems arising, extreme caution should be exercised in permitting developments that result in pubs, clubs and other similar premises being structurally attached to noise-sensitive properties. Such development should not be permitted without it being clearly demonstrated that acceptable noise levels can be achieved and maintained at, and in, the noise-sensitive properties'. Paragraph 127 of The National Planning Policy Framework states that planning policies and decisions should ensure that developments 'a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;...f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users...'. Policy PCS23 of the Portsmouth Plan states that new development should ensure the protection of amenity and the provision of a good standard of living environment for neighbouring and local occupiers. Policy PCS8 of the Portsmouth Plan also acknowledges the cumulative amenity impact of food and drink uses (Class A3-A5) within Albert Road and Elm Grove.

It is apparent that the existing use of the premises was only considered to be acceptable with the inclusion of significant safeguarding conditions requiring the installation of acoustic attenuation measures and restricting the hours of operation. Even with these measures in place, it has been confirmed that the existing use of the premises at its permitted hours results in an impact on the occupiers of adjoining occupiers as demonstrated by noise complaints and site visit by the EHT. Whilst the impact at the current operating hours is not considered to result in significant harm, an extension by up to 3 hours into the early morning would significantly increase opportunities for noise and disturbance to occur. Furthermore, following closure to customers at the end of the day, it is inevitable that there would still be a significant amount of activity within the building by staff cleaning up and leaving themselves.

The LPA in consultation with the EHT is of the view that this issue cannot be dealt with through planning condition requiring the installation of additional sound insulation measures on the basis that despite existing measure being installed, noise is still able to impact on the residential units. In addition, some impacts, such as the noise and smoke from customers congregating outside of the premises are extremely difficult to limit other than by controlling the hours of use. In conclusion it is considered that the proposal would result in an unacceptable impact on the amenity of the occupiers of the residential properties above the site in terms of increased noise and disturbance at unsociable hours.

This conclusion is entirely consistent with previous decisions of the LPA at the site (16/01540/PLAREG, 17/01712/VOC and 18/00801/VOC). There are no material changes in circumstance that would lead the LPA to reach any other conclusion, and no additional information such as Noise Impact Assessment has been submitted with the application to support the applicant's case. As such, it has not been clearly demonstrated that acceptable

noise levels can be achieved and maintained within the noise-sensitive properties immediately above the site.

In seeking to justify the proposed hours of operation, the applicant has indicated that the existing condition is draconian, that it differs from the licensing hours and that the condition is not consistent with competitors in the immediate vicinity. It is noted however, that the premises licence (relating to 154-156 only ref.18/03317/LAPREM) is currently consistent with Condition 6 of planning permission 17/00683/PLAREG.

For the reasons set out above, it is considered that the requirements of Condition 6 of planning permission 17/00683/PLAREG remain necessary and reasonable. Whilst there are other large drinking establishments with later opening hours within the vicinity of the application site, these are historic uses and have not recently been converted from shops below established residential uses.

RECOMMENDATION Refuse

The extension of opening hours to 10:00-23:00 Sunday-Wednesday, 10:00-00:00 on Thursdays and 10:00-02:00 Fridays & Saturdays would result in an unacceptable impact on the amenity of the occupiers of residential properties located immediately above the application site in terms of increased noise and disturbance at unsociable hours. No further evidence has been provided to clearly demonstrate that acceptable noise levels can be achieved and maintained within these properties. The proposal is therefore contrary to the aims and objectives of the National Planning Policy Framework and policy PCS23 of the Portsmouth Plan.

PRO-ACTIVITY STATEMENT

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework it was not considered that the harm arising from the proposal could be overcome and the application has been refused for the reasons outlined above.

82 WADHAM ROAD PORTSMOUTH PO2 9EE**CHANGE OF USE FROM DWELLINGHOUSE (CLASS C3) TO MIXED USE PURPOSES FALLING WITHIN CLASS C4 (HOUSE IN MULTIPLE OCCUPATION) OR CLASS C3 (DWELLINGHOUSE)****Application Submitted By:**

Mr Edward Makgill

On behalf of:

Mr Edward Makgill

OE Estates Ltd

RDD: 10th January 2019**LDD:** 13th March 2019**SUMMARY OF MAIN ISSUES**

This application has been brought to committee for determination following a number of deputation requests from local residents.

The main issues to be considered in the determination of this application are the appropriateness of such a use in the context of the balance of uses in the surrounding area and whether it would have a detrimental impact on the living conditions of the adjoining and nearby residents. Other considerations are whether the proposal complies with policy requirements in regards to an adequate standard of accommodation and in respect to car and cycle parking.

The site

A two storey mid-terrace property occupies the application site and is located on the northern side of Wadham Road, east from its junction with Gladys Avenue. The surrounding area is primarily residential and characterised by rows of similar terrace properties.

The Proposal

Planning permission is sought for the change of use of the property to a 5 bedroom, 5 person Class C4 (House in Multiple Occupation). The interchange between Class C3 and Class C4 would normally be permitted development within the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, on 1st November 2011 a city wide Article 4 Direction relating to HMOs came into force removing this permitted development right. As such, planning permission is now required in order to interchange between the uses of a Class C3 dwellinghouse and a Class C4 HMO where between three and six unrelated people share at least a kitchen and/or a bathroom. The lawful use of the property is as a dwellinghouse within Class C3.

The existing property is stripped back and undergoing refurbishment, so it is not entirely clear about the previous room uses. Internally, the applicant proposes a combined living room and kitchen; shower room, utility room and two bedrooms at ground floor level with three bedrooms and a bathroom at first floor level.

Planning History

There is no relevant planning history for this site.

POLICY CONTEXT

The relevant policies within the Portsmouth Plan would include:

PCS19 (Housing mix, size and affordable homes), PCS17 (Transport), PCS23 (Design and Conservation),

The aims and objectives of the revised NPPF (July 2018) would also be relevant in the determination of this application.

CONSULTATIONS

Private Sector Housing

Summary

2 storeys

5 bedrooms

Based on the layout and sizes provided there are no adverse comments to be made by Private Sector Housing. This property would require to be licenced under Part 2, Housing Act 2004.

Please note the following amenities are to be provided.

Open planned kitchen/dining and lounge

There must be a designated kitchen area of 7m² for the exclusive use of cooking, food preparation and storage. The following facilities must be supplied:

1 x conventional cooker (oven, grill and 4 hot plates)

1 x single sink and integral drainer

1 x under the counter fridge and a separate freezer or 1 x equivalent combined fridge/freezer

2 x 500mm base units and 2 x 1000mm wall units with doors or equivalent Worktops 2000mm (l) x 500mm (d)

2 x twin sockets located at least 150mm above the work surface

REPRESENTATIONS

20 representations have been received in objection to the proposed development on the following grounds:

(a) Concerns around parking; (b) noise and disturbance caused by additional residents (c) noise and disturbance caused through construction; (d) impact on the sewage system and (e) lack of infrastructure to support additional occupiers.

COMMENT

The main issues to be considered in the determination of this application are the appropriateness of such a use in the context of the balance of uses in the surrounding area and whether it would have a detrimental impact on the living conditions of adjoining and nearby residents. Other considerations are whether the proposal complies with policy requirements in regards to an adequate standard of accommodation and in respect of car and cycle parking.

Principle

Permission is sought for the use of the property for purposes falling within Class C4 (house in multiple occupation) (HMO). The property currently has a lawful use as a dwellinghouse (Class C3). For reference, a Class C4 HMO is defined as a property occupied by between three and six unrelated people who share basic amenities such as a kitchen or bathroom.

Policy PCS20 of the Portsmouth Plan states that applications for the change of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses, or where the development would not create an imbalance. The adopted Houses in Multiple Occupation SPD (as amended 21 November 2017), sets out how Policy PCS20 will be implemented and details how the City Council will apply this policy to all planning applications for HMO uses. The SPD states that a community will be considered to be imbalanced where more than 10% of residential properties within the area surrounding the application site (within a 50m radius) are already in HMO use.

Based on information held by the City Council, of the 72 properties within a 50 metre radius of the application site, two (2) properties were identified to be in lawful use as HMOs. Whilst this is the best available data to the Local Planning Authority (LPA) and is updated on a regular basis, there are occasions where properties have been included or omitted from the database in error or have lawfully changed their use away from Class C4 HMOs without requiring the express permission of the LPA. Subsequently, two additional properties (No 89 Oriel Road & 75 Wadham Road) were brought to the attention of the LPA, one through a nearby resident and another through officer's research. These properties have been confirmed to be HMOs. Including these two additional HMOs and the application site (5 in total) would bring the percentage up to 6.94% which is lower than the 10% threshold above which an area is considered to be imbalanced.

A second strand policy introduced in July 2018 seeks to ensure that the amenity and standard of living environment of neighbours and local occupiers is protected. Paragraph 1.22 (a) states: "An application for HMO development would be deemed to be failing to protect the amenity, and the provision of a good standard of living environment, for neighbouring and local occupiers where:

- granting the application would result in three or more HMOs being adjacent to each other; or
- granting the application would result in any residential property (C3 use) being 'sandwiched' between two HMOs."

The proposed development would not result in three or more Class C4 HMO's being adjacent to each other nor would it result in any residential property (Class C3 use) being 'sandwiched' between two HMOs."

It is therefore concluded that the proposed change of use would not result in an imbalance between HMO's and Class C3 dwellings in the prescribed area.

Standard of Accommodation

The Houses in Multiple Occupation SPD, as amended on 21 November 2017, sets out minimum size standards for rooms in order to ensure that an appropriate standard of living accommodation is achieved. A summary of the sizes of the rooms within this property in comparison to the minimum standards within the SPD is set out below:

Area provided: (HMO SPD-NOV 2017)	Required standard:	
Bedroom 1	20.3m ²	7.5m ²
Bedroom 2	12.4m ²	7.5m ²
Bedroom 3	10m ²	7.5m ²
Bedroom 4	12.4m ²	7.5m ²
Bedroom 5	20.3m ²	7.5m ²
Kitchen/Living Room + Utility	24.3m ²	24m ²
Bathroom 1	4m ²	3.74m ²
Shower room	3.8m ²	3.74m ²

Having checked the SPD guidelines, a utility room should be included within the combined living space. As such all rooms meet the minimum required space standard and there are no objections from the Private Sector housing department.

For the reasons stated above, in accordance with the requirements outlined on pages 8 and 9 of the HMO SPD (July 2018), the property is considered to provide an adequate standard of living accommodation to facilitate 3-6 persons sharing.

Impact on amenity

In terms of the impact on the living conditions of the adjoining occupiers, it is considered that the level of activity that could be associated with the use of any individual property either as a dwellinghouse (Class C3) which involves occupation by a single family, would be unlikely to be significantly different than the occupation of the property by between 3 and 6 unrelated persons as a house in multiple occupation. The HMO SPD is supported by an assessment of the need for, and supply of, shared housing in Portsmouth and of the impacts of high concentrations of HMOs on local communities. Paragraphs 9.1-9.10 discuss the negative impacts of HMO concentrations on local communities and points to the cumulative environmental effects of HMO concentrations. However, given that there is not an over-concentration of HMOs within the surrounding area, it is considered that the impact of one further HMO would not be significantly harmful at this particular point in time.

In dismissing a recent appeal (July 2017) at 239 Powerscourt Road ref. APP/Z1775/W/17/3169402, the Inspector stated that:

'Turning to noise and disturbance, the proposed Class C4 HMO would comprise 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. The proposed use would, therefore, be unlikely to have an unacceptable impact on the living conditions of the occupiers of neighbouring dwellings by reason of noise and disturbance.'

Having regard to this material consideration, it is considered there would not be a significant impact on residential amenity from the use of the property within Class C4.

Highways/Parking

The City Council's Parking Standards SPD sets the level of off-road parking facilities for new developments within the city and places a requirement of 2 off-road spaces for Class C4 HMOs with four or more bedrooms. However, it should be noted that the expected level of parking demand for a Class C3 dwellinghouse with four or more bedrooms would also be 2 off-road spaces. Whilst the concerns of local residents in respect of parking are noted, in light of the requirements set out within the Parking Standards SPD and the view that the level of occupation associated with a HMO is not considered to be significantly greater than the occupation of the property as a Class C3 dwellinghouse, it is considered that an objection on car parking standards could not be sustained. It should be noted that the property could be occupied by a large family with grown children, each owning a separate vehicle.

Having regard to the considerations above, it is not considered that an objection on highways grounds could be sustained. The site is also located in close proximity to shops, services and transport links on London Road.

The submitted drawings do not indicate the provision of bicycle storage facilities in line with the Parking Standards SPD. However the rear yard is considered appropriate for the provision and retention of suitable bicycle storage facilities which can be required through a suitably worded planning condition

Waste

The storage of refuse and recyclable materials would remain unchanged and an objection on waste grounds would not form a sustainable reason for refusal.

Conclusion

Having regards to all material considerations, raised representations and planning policy, it is concluded that the development is acceptable.

RECOMMENDATION Conditional Permission

Conditions

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Location Plan - 1:500; Proposed Floor Plans - 1:100 and Proposed Floor Plans - 82 Wadham Road.
- 3) Prior to first occupation of the property as a 5 bedroom house in multiple occupation, details of secure and weatherproof bicycle storage facilities for at least 2 bicycles shall submitted to and approved in writing by the Local Planning Authority. The bicycle storage facilities shall thereafter be retained for the parking of bicycles at all times

The reasons for the conditions are:

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To ensure that adequate provision is made for cyclists using the premises in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.

PRO-ACTIVITY STATEMENT

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

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