

# NOTICE OF MEETING

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## PLANNING COMMITTEE

WEDNESDAY, 27 JULY 2022 AT 10.30 AM

## COUNCIL CHAMBER - THE GUILDHALL, PORTSMOUTH

Telephone enquiries to Democratic Services 023 9283 4060

Email: [Democratic@portsmouthcc.gov.uk](mailto:Democratic@portsmouthcc.gov.uk)

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

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### Planning Committee Members:

Councillors Judith Smyth (Chair), Chris Attwell (Vice-Chair), George Fielding, Hugh Mason, Robert New, Darren Sanders, Russell Simpson, John Smith, Linda Symes and Gerald Vernon-Jackson CBE

### Standing Deputies:

Councillors Dave Ashmore, Cal Corkery, Lewis Gosling, Mark Jeffery, Abdul Kadir, George Madgwick, Scott Payter-Harris, Steve Pitt, Asghar Shah, Lynne Stagg and Daniel Wemyss

### Information with regard to public access due to Covid precautions

- Following the government announcement 'Living with COVID-19' made on 21 February and the end of universal free testing from 1<sup>st</sup> April, attendees are no longer required to undertake an asymptomatic/ lateral flow test within 48 hours of the meeting however we still encourage attendees to follow the PH precautions we have followed over the last two years to protect themselves and others including vaccination and taking a lateral flow test should they wish.
- We strongly recommend that attendees should be double vaccinated and have received a booster.
- If symptomatic we encourage you not to attend the meeting but to stay at home. Updated government guidance from 1 April advises people with a respiratory infection, a high temperature and who feel unwell, to stay at home and avoid contact with other people, until they feel well enough to resume normal activities and they no longer have a high temperature. From 1 April, anyone with a positive COVID-19 test result is being advised to follow this guidance for five days, which is the period when you are most infectious.
- We encourage all attendees to wear a face covering while moving around crowded areas of the Guildhall.

- Although not a legal requirement, attendees are strongly encouraged to keep a social distance and take opportunities to prevent the spread of infection by following the 'hands, face, space' and 'catch it, kill it, bin it' advice that also protects us from other winter viruses.
- Hand sanitiser is provided at the entrance and throughout the Guildhall. All attendees are encouraged to make use of hand sanitiser on entry to the Guildhall.
- Those not participating in the meeting and wish to view proceedings are encouraged to do so remotely via the livestream link.

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(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](http://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 the day before the meeting and must include the purpose of the representation (e.g. for or against the recommendations). Email requests to [planning.reps@portsmouthcc.gov.uk](mailto:planning.reps@portsmouthcc.gov.uk) or telephone a member of the Technical Validation Team on 023 9283 4826.

## AGENDA

**1 Apologies**

**2 Declaration of Members' Interests**

**3 Minutes of previous meeting held on 6 July 2022 (Pages 7 - 16)**

Recommended that the minutes of the meeting held on 6 July 2022 be approved as a correct record.

Planning Applications

**4 22/00449/FUL 54 SHEFFIELD ROAD PORTSMOUTH PO1 5DP (Pages 17 - 82)**

Change of use from house in multiple occupation (Class C4) to seven bedroom house in multiple occupation (Sui Generis).

**5 22/0046/FUL 19 Lawson Road, Southsea PO5 1SD**

Change of use from house in multiple occupancy (Class C4) to house in multiple occupancy for seven people (Sui Generis).

**6 22/00445/FUL 27 Cleveland Road, Southsea PO5 1SF**

Change of use from house in multiple occupation (Class C4) to house in multiple occupation for more than six persons (Sui Generis)

- 7 20/01328/FUL 243 Fawcett Road, Southsea PO4 0DJ**  
Change of use from house in multiple occupation (Class C4) to 8 person house in multiple occupancy (Sui Generis) (description amended).
- 8 20/01402/FUL 35 Baileys Road, Southsea PO5 1EA**  
Change of use from house in multiple occupation (HMO) (Class C4) to 7 person/7 bedroom HMO (Sui Generis).
- 9 20/01347/FUL 95 Castle Road, Southsea PO5 3AY**  
Change of use from house in multiple occupancy (Class C4) to house in multiple occupancy (Sui Generis) for more than six people.
- 10 20/01415/FUL 98 Manners Road, Portsmouth PO4 0BG**  
Change of use from house in multiple occupancy (Class C4) to seven bedroom/seven person house in multiple occupancy (Sui Generis).
- 11 21/01532/FUL 70 Manners Road, Southsea PO4 0BB**  
Change of use of small HMO (C4) to allow occupation as an HMO with 7 occupants (Sui Generis).
- 12 22/0026/FUL 1 Garnier Street, Portsmouth PO1 1PD**  
Change of use from house in multiple occupation (Class C4) to Sui Generis 7 bed house in multiple occupation.
- 13 22/00448/FUL 178 Walmer Road, Portsmouth PO1 5AU**  
Change of use from house in multiple occupancy (Class C4) to seven person house in multiple occupancy (Sui Generis)

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>



# Coronavirus Risk Assessment for the Council Chamber, Guildhall

**Date:** 1 April 2022 (based on Living safely with respiratory infections, including COVID-19, 1 April 2022)

**Review date:** Ongoing

**Author:** Lynda Martin, Corporate Health and Safety Manager, Portsmouth City Council

## Coronavirus Risk Assessment for the Council Chamber, Guildhall

<b>Manager's Name and Job Title completing Risk Assessment:</b>	Lynda Martin Corporate Health and Safety Manager	<b>Risk Assessment Dept:</b>	Corporate Services	<b>Date:</b>	1 April 2022	<b>Signature:</b>	
		<b>Location:</b>	Council Chamber, Guildhall				

Hazard	Who could be harmed and how	All controls required	How controls will be checked	Confirmed all in place or further action required
Risk of exposure to Covid-19 virus - Ventilation	Staff, contractors and attendees	<ul style="list-style-type: none"> <li>• There are no longer capacity limits for the Guildhall Chamber.</li> <li>• We encourage all attendees to wear a face covering when moving around crowded areas of the Guildhall and the council chamber.</li> <li>• The mechanical ventilation system works efficiently and the South Special Rooms Supply and Extract fans are fully operational during times when the Council Chamber is in use.</li> <li>• Pedestal fans - positioned in each of the wing areas and along the back wall behind the pillars, maximum speed and modulation setting.</li> </ul>	Staff will ensure ventilation system and fans are operational.	In place
Risk of transmission of virus - Risk mitigation	Staff, contractors and attendees	<p>The Guildhall has the following measures in place:</p> <ul style="list-style-type: none"> <li>• Face Coverings – as per government guidance, we encourage you to continue to wear a face covering whilst in the venue &amp; crowded places especially when walking around the building.</li> <li>• Enhanced Sanitisation &amp; Cleaning – we will carry out enhanced cleaning procedures between meetings and we encourage you to sanitise your hands on entry and regularly throughout your visit at the sanitisation points provided.</li> </ul>	The Guildhall Trust and PCC Facilities Team to implement and monitor.	In place
Risk of transmission of virus - Hygiene and Prevention		<ul style="list-style-type: none"> <li>• Updated government guidance from 1 April advises people with a respiratory infection, a high temperature and who feel unwell, to stay at home and avoid contact with other people, until they feel well enough to resume normal activities and they no longer have a high temperature. From 1 April, anyone with a positive COVID-19 test result is being advised to follow this guidance for five days, which is the period when you are most infectious.</li> <li>• Although not a legal requirement attendees are strongly encouraged to keep a social distance and take opportunities to prevent the spread of infection by following the 'hands, face, space' and 'catch it, kill it, bin it' advice that also protects us from other winter viruses.</li> <li>• Wash hands for 20 seconds using soap and water or hand sanitiser.</li> <li>• Maintain good hygiene particularly when entering or leaving.</li> <li>• Hand sanitiser and wipes will be located in the meeting room.</li> <li>• No refreshments will be provided. Attendees should bring their own water bottles/drinks.</li> <li>• All attendees should bring and use their own pens/stationery.</li> <li>• Attendees are no longer required to undertake an asymptomatic/ lateral flow test within 48 hours of the meeting however we still encourage attendees to follow the Public Health precautions we have followed over the last two years to protect themselves and others including vaccination and taking a lateral flow test should they wish. It is strongly recommended that attendees should be double vaccinated and have received a booster.</li> </ul>	The Guildhall Trust and PCC Facilities Team to implement and monitor.	In place
Financial Risk	Staff, contractors and attendees	<ul style="list-style-type: none"> <li>• The council meeting may need to be cancelled at short notice if the Covid-19 situation changes due to local outbreaks, local sustained community transmission, or a serious and imminent threat to public health.</li> <li>• Technology in place to move to virtual council meeting if required and permitted by legislation.</li> </ul>	Financial commitments minimised wherever possible.	In place

## PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held on Wednesday, 6 July 2022 at 10.30 am in the Council Chamber - The Guildhall, Portsmouth

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

### Present

Councillors Judith Smyth (Chair)  
George Fielding  
Hugh Mason  
Robert New  
Darren Sanders  
Russell Simpson  
John Smith  
Gerald Vernon-Jackson CBE  
Mark Jeffery (Standing deputy for Chris Attwell)

### 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.

### 87. Apologies (AI 1)

Apologies for absence were received from Councillors Linda Symes and Chris Attwell. Councillor Mark Jeffery was in attendance as standing deputy for Councillor Chris Attwell.

### 88. Declaration of Members' Interests (AI 2)

Councillor Sanders declared an interest in agenda item 8 (World War 2 Beach Defences). He is a member of the Langstone Harbour Board and he had contributed towards the Langstone Harbour Board comments on this application. Legal advised he was not able to participate in the determine on the issue.

Councillor Smyth declared a personal interest, as the applicant, for agenda item 6 (41 St Vincent Road) and proposed the item be moved to the end of the agenda when she would leave the meeting. The Vice Chair was not present at the meeting, so Members agreed for Councillor Mason to take over as Chair for this agenda item. The minutes will be kept in the original order for ease of reference.

**89. Minutes of previous meeting held on 15 June 2022 (AI 3)**

**RESOLVED that the minutes of the Planning Committee held on 15 June 2022 be agreed as a correct record.**

In response to a question from Councillor Vernon-Jackson the Chair confirmed that one of the planning committee objectives is to clear the backlog of planning applications as soon as possible.

The Chair adjourned the meeting until 11:03 due to an IT issue.

**90. 21/01664/FUL 155 Oyster Quay PO6 4TQ (AI 4)**

Change of use from class C3 (dwelling house) to purposes falling within class C3 (dwelling house) or class 4 (house in multiple occupation).

**The Development Management Lead, Planning & Economic Growth presented the report and** drew attention to the Supplementary Matters report which provided the following additional information:

*Since the publication of the Committee Report, two further letters have been received from nearby residents objecting on the following grounds:*

- (a) Error with Highways comments - incorrectly identified access;*
- (b) An objection did not appear online;*
- (c) Lack of a flood risk assessment; and*
- (d) Location of site notice.*

*Points (a) and (d) are addressed within the Committee Report. Point (b) has been rectified. Point (c): the south-western corner of the property is within Flood Zone 2. Given that the application is for a change of use from one residential use to another, with the same internal layout, there is no different effect on or from flooding.*

*Bike storage: the Officer Report notes in Paragraph 5.21 that bike storage could be provided on the rear balcony. The Applicant has stated that would not be permitted by the property rules present at the site, but his garage is in a corner location with splayed footprint and so has extra floorspace within which to store bikes. The existing Condition 3 for bike storage remains appropriate for securing the matter.*

*No change to recommendation.*

Deputations

Deputations were made objecting to the application by:

- David Jump
- Peter Harrison

Deputations were made in support of the application by:

- Craig McGuinness (applicant)
- Wendy McGuinness

Deputations are not minuted but can be viewed on the council's website at

[Planning Committee, 6 July 2022 on Livestream](#)



In response to questions from the chair following the first deputation, the legal officer confirmed:

- The role of the Council as freeholder of the property is completely separate to the role of the Council as a local planning authority and does not need to be taken into consideration in the planning decision.
- The issue of compensation was not relevant to this planning application. The legal officer clarified that the only financial considerations that can be considered are:
  - A grant or other financial assistance that has been or will or could be provided to the relevant authority by a Minister of the Crown.
  - A sum (payment under seal) under the Community Infrastructure Levy.
- Any issues in relation to matters pertaining to the lease come under private law and are not relevant to this planning application.

#### Members' questions

In response to member's questions, the following points were clarified:

- The applicant has stated there would be three persons in occupation but Class C4 use is for up to 6 occupants. Within this application the room size falls short in bedroom 3 were there to be two occupiers of that room. This matter would be controlled through HMO licensing, and it is likely that the licensing would only allow for a maximum of 5 occupants. In planning terms, there is no reason to restrict the occupation beyond the C4 class.
- Occupancy of a Class C4 premises compared to a Class C3 is not considered to exert any significant additional sewerage and waste disposal load on the drainage system.
- Ongoing issues in relation to cladding which have affected leaseholders within the city have no bearing on this application.
- The application does not involve re-purposing any rooms.
- There is no planning control over the number of occupants of a Class C3 property.
- One and a half parking spaces is the expected number of parking spaces for a two or three bedroomed Class C3 or C4. The parking bay and the garage belong to the applicant and will be available to the occupiers of the property.
- Parking standards are based on the number of bedrooms. This size Class C3/C4 require two long stay bicycle spaces. The garage can accommodate a car and more than two bicycles.
- The planning officer was unaware of Fareham's planning policy on HMOs.

#### Members' comments

- The application is not controversial, it exceeds Portsmouth City Council (PCC) space standards significantly, meets parking standards, does not exceed the 10% threshold for HMOs in the area and does not depart from PCC policies in any way.
- Members discussed the option of approving, with conditions limiting the number of occupants, and were advised by planning and legal officers that this was not necessary.

**RESOLVED to grant conditional planning permission as set out in the officer's report and the Supplementary Matters report.**

**91. 22/00347/FUL 5 Burlington Road PO2 ODP (AI 5)**

Change of use from dwelling house (class C3) to purposes falling within class C3 (Dwelling House) or class C4 (House in Multiple Occupation)

**The Development Management Lead, Planning & Economic Growth presented the report and** drew attention to the Supplementary Matters report which provided the following additional information:

*Private Sector Housing: no objection. Based on the layout and room sizes, the property would require to be licenced under Part 2, Housing Act 2004.*

*Extra note from the Planning Officer: a new planning application was received at the end of May at 22 Burlington Road (ref. 22/00808/PA). It is also proposing a change of use, from Class C3 Dwellinghouse, to Class C4 small HMO or Class C3. No. 22 is within the 50m radius of the application site on today's agenda. Were both no. 5 and no. 22 to be approved for the flexible C4/C4 use, the numbers of HMOs within the 50m radius of no. 5 would be 2 out of 75 = 2.67%, still well below the policy threshold of 10% for a balanced community.*

*No change to recommendation.*

Deputations

A deputation objecting to the application was made by Julie Banthorpe.

A deputation supporting the application was made by Simon Hill (for the applicant)

Deputations are not minuted but can be viewed on the council's website at

[Planning Committee, 6 July 2022 on Livestream](#)

Members' questions

In response to member's questions, the following points were clarified:

- There are 3 bedrooms shown on the existing first floor.
- There is a small discrepancy of 0.04 m<sup>2</sup> below space standards for the ensuite bathrooms. The applicant has not yet provided the amended plans showing that the ensuites now meet the space standards. The difference would be difficult to see on new plans.
- The roof extension is slightly set back at a higher level and would not overlook all parts of the garden. Those parts it would be already overlooked by other windows. There are no windows in the left-hand flank wall.
- The extensions are within permitted development.
- The prior approval submission, that was previously refused, extended 4.8 metres from the original back wall. This application is 3 metres.

- HMO regulations require some degree of noise insulation, but in planning terms there is little distinction between the occupation of a dwelling house and an HMO for up to 6 people. There may be other controls through building regulations and licensing.

Members' comments

- There were no comments.

**RESOLVED to grant conditional planning permission as set out in the officer's committee report and the Supplementary Matters report.**

**92. 20/00458/HOU 41 St Vincent Road PO5 2QR (AI 6)**

Construction of a single storey rear/side extension.

Councillor Smyth left the meeting at 14:09 prior to the presentation of this item.  
Councillor Mason took over as Chair.

**The Development Management Lead, Planning & Economic Growth presented the report.**

Members' questions

In response to member's questions, the following points were clarified:

- The property is not where the applicant currently lives.
- If the applicant were not a member of the Committee or Council the application would have gone through via delegated approval.

Members' comments

- There were no member comments.

**RESOLVED to grant conditional planning permission as set out in the officer's committee report and the Supplementary Matters report.**

**93. 22/00597/TPO 1 St George Court, 4 Hambrook Street PO5 3SA (AI 7)**

Within tree preservation order 175 - (T2) Atlas Cedar (Cedrus Atlantica) - fell tree.

**The Development Management Lead, Planning & Economic Growth presented the report.**

Members' questions

In response to member's questions, the following points were clarified:

- It was not known if the tree would fall away from the building. Paragraph 5.5 of the officer's report details the possible dangers.
- The tree was considered to be the wrong tree in the wrong place and a more suitable tree will be planted in its place.

- Replacing the current tree like for like would engender the same problems further down the line.
- The new tree would achieve TPO (Tree Preservation Order) status.

Members' comments

- This is a well-loved tree in a good space, it provides high amenity to residents and prevailing winds would not bring it down.
- The tree should not be removed because it may, at some point in the future, during high winds, lose branches and result in a claim for compensation. The tree needs to be preserved.
- This cedar tree is a substantial tree and in the wrong place. The loss of the canopy is unfortunate, but a suitable tree is being proposed for replacement and this is the best way forward to avoid any incidents that may occur through loss of tree limbs.
- The tree is of visual amenity value.

The planning officer and the legal officer advised members of the potential issue of compensation were the Council to refuse the application.

**RESOLVED to refuse conditional consent contrary to the recommendation as set out in the officer's committee report because of the visual amenity value of the tree.**

Councillors Sanders and Vernon-Jackson left at 13:00

**94. 19/01704/LBC World War 2 Beach Defense, Eastney Beach Adj to Melville Road (AI 8)**

Removal and reinstatement of anti-tank defences to facilitate new coastal defence and coastal path works.

**The Development Management Lead, Planning & Economic Growth presented the report and** drew attention to the Supplementary Matters report which provided the following additional information:

*The Officer Report presently contains the standard three year period for application implementation. Given the various complexities involved with this site, it is considered prudent to propose a longer five year implementation period, which ought to negate the risk of another Listed Building application being needed due to expiry of a first consent. Secondly, the last section of the condition is unnecessary and is proposed for deletion.*

*Amend Condition 1 as follows:*

*The development to which this consent relates shall be begun before the expiration of 3 5 years from the date of this consent.*

*Reason: To comply with Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and to prevent an accumulation of unimplemented consents*

### Members' questions

In response to member's questions, the following points were clarified:

- There are 280 anti-tank defences across the wider beach. The application is to move and reinstate about 33 of these.
- The Fraser Range development has no bearing on the decision to be taken with this application.
- If the blocks need to be moved again at a later stage another planning application would be required.

### Members' comments

- The Fraser Range will be developed sooner or later entailing sea defence improvement which will require the resetting of the blocks at some point.

**RESOLVED to grant consent as set out in the officer's committee report and the Supplementary Matters report.**

The meeting adjourned for a break returning at 13:20.  
Councillor Vernon-Jackson re-joined the meeting.

**95. 22/00453/HOU Tideways, Tower Street PO1 2JR (AI 9)**

Construction of additional storey on flat roof and associated roof terrace; rear extension including lift enclosure and modifications to front and rear elevations, including removal of mansard roof features and oriel window (front) (resubmission of 21/00453/HOU).

**The Development Management Lead, Planning & Economic Growth presented the report.**

### Deputations

A deputation was made in support of the application by Doctor Yve Kelly (applicant)

Deputations are not minuted but can be viewed on the council's website at

[Planning Committee, 6 July 2022 on Livestream](#)

### Members' questions

In response to member's questions, the following points were clarified:

- In the previous application, which was refused, the exterior of the property was to be rendered. This new application will be using brickwork to match the existing building, which is similar to the brickwork on the property to the right of the site.
- The extension windows are facing parallel and out and would have no impact on Spice Island House.
- The extension does not block any windows in Spice Island House.
- The changes requested by the Conservation Officer are within this application.
- Number 1 Tideways wrote stating they had no objections.

- The fenestration is aluminium. Details of materials are in the planning conditions. The existing windows are not believed to be double glazed.
- The front second floor window wraps around the corner. It is not known if it is to be obscurely glazed - this could be put in the conditions.
- The Planning Officer is confident that the guidelines will be complied with.

#### Members' comments

- This is a good scheme, with improved fenestration and appropriate to this area of Old Portsmouth.

**RESOLVED to grant conditional permission as set out in the officer's committee report and the Supplementary Matters report.**

**96. 21/00817/FUL 192 Laburnum Grove PO2 0EU (AI 10)**

Change of use from dwellinghouse (Class C3) to six-bedroom house in multiple occupation (Class C4)

**The Development Management Lead, Planning & Economic Growth presented the report and** drew attention to the Supplementary Matters report which provided the following additional information:

*Local Highways Authority: no objection re impact on highway network. Same parking demand (two spaces) for the proposed HMO as for the existing dwelling, where no on-site parking is provided it is assumed that existing parking demand is met on-street. Should provide four cycle parking spaces as per SPD standards.*

*Private Sector Housing: no adverse comments, providing that the usable area of any loft rooms (with ceiling height of minimum 1.5m) exceeds 6.51sqm. Based on the layout and sizes proposed, property would require to be licenced under Part 2, Housing Act 2004.*

*Four cycle parking spaces already required by Condition 3.*

#### Members' questions

In response to member's questions, the following points were clarified:

- The property is lawfully a dwelling house and not an HMO. It may be in refurbishment in anticipation of receiving HMO consent. If the property is being used unlawfully as an HMO, the planning application needs to be considered and any action needed can be taken after determination.
- The front yard of the property can accommodate a bicycle store.
- According to PCC records there are no HMOs adjoining the property.
- Item 7.8 of the officer's report has a typo for bedroom 6. All bedrooms are the same size.
- The planning application is for Class C4 which caps the occupancy at 6. It is not necessary to put a condition on limiting the number of occupants to 6. Should the dining room be turned into a 7<sup>th</sup> bedroom further planning permission might need to be sought. Planning is unable to anticipate future use of the property.

Members' comments

- Member's expressed concern about the living room becoming a bedroom following C4 permission being granted and requested a condition limiting occupancy to 6 people.

**RESOLVED to grant conditional planning permission as set out in the officer's committee report and the Supplementary Matters report with the additional condition of no more than 6 people to occupy the property.**

The meeting concluded at 2.15 pm.

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Signed by the Chair of the meeting  
Councillor Judith Smyth

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# Agenda Item 4

## **PLANNING COMMITTEE 27 JULY 2022**

**10:30 AM COUNCIL CHAMBERS  
GUILDHALL**

### **REPORT BY THE ASSISTANT DIRECTOR - PLANNING AND ECONOMIC GROWTH 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 - Planning and Economic Growth 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 relevance 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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# 01

22/00449/FUL

WARD: FRATTON

54 SHEFFIELD ROAD PORTSMOUTH PO1 5DP

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO SEVEN BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R907LWMOIY800](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R907LWMOIY800)

**Application Submitted By:**

Applecore PDM Ltd

**On behalf of:**

Lees, Staltosi Property Ltd

**RDD:** 4th April 2022

**LDD:** 31st May 2022

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to the number of objections as well as the request of Councillor Vernon-Jackson. The application has also now been taken to appeal on grounds of non-determination and the Secretary of State is now the determining authority in this case.
- 1.2 The main issues for consideration in the determination of the application/appeal are considered to be as follows:
  - Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.3 Site and surroundings
- 1.4 The application site is a two-storey mid-terrace dwellinghouse located on the southern side of Sheffield Road. It is located within a predominantly residential area.
- 1.5 The Proposal
- 1.6 The Applicant has sought planning permission for the change of use of the dwelling from the current Class C4 HMO use (with up to six individuals living together) to allow up to 7 individuals to live together as an HMO (Sui generis). This change in occupancy will involve the repurposing of internal rooms, principally by way of changing a ground floor study to a 7<sup>th</sup> bedroom. There would be no external operational development forming part of this application with the exception of an indicative siting of a cycle store within the rear garden, details which could be secured by planning condition.
- 1.7 Planning History
- 1.8 There is no planning history for the property.

## **2.0 POLICY CONTEXT**

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation) and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

## **3.0 CONSULTATIONS**

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.

## **4.0 REPRESENTATIONS**

- 4.1 5 representations have been received from nearby residents objecting to the proposed scheme on the following grounds:
- a) Too many HMOs within the street at present, many without permission;
  - b) Change to sui generis would represent a fundamental change;
  - c) Increased noise and disturbance concerns;
  - d) Increase traffic and parking demand, noting Sheffield Road is a dead-end with limited turning;
  - e) Concerns around maintenance and upkeep;
  - f) Waste and rubbish concerns;
  - g) Impact on character of the area.
  - h) Loss of property value [Nb. This cannot be taken as a material planning objection]

## **5.0 COMMENT**

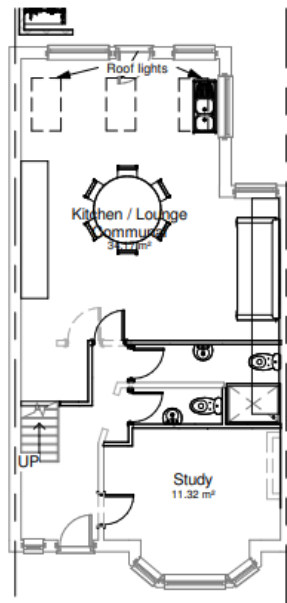
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in use as an HMO and this application has been made to recognise the intention to increase its occupation by 1 occupant, from a six-bedroom HMO (C4) to 7-bedroom HMO (sui generis). This is achieved through the creation of a further bedroom from an existing front study room. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of

dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 17 HMOs out of 78 properties, a percentage of 21%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

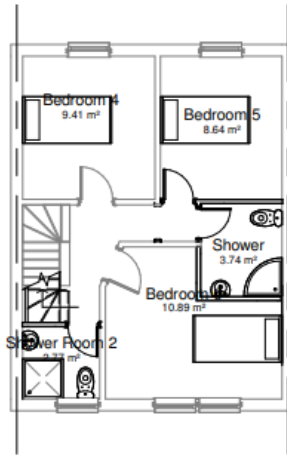
- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 3<sup>rd</sup> June 2020 and runs to 2<sup>nd</sup> June 2025.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	7.52m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	7.57m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	7.53m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	9.41m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	8.64m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	10.89m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	11.32m <sup>2</sup>	6.51m <sup>2</sup>
Communal Kitchen/Diner/Lounge	34.17m <sup>2</sup>	34m <sup>2</sup>
Shower room GF	3.86m <sup>2</sup>	2.74m <sup>2</sup>
Shower room FF	3.74m <sup>2</sup>	2.74m <sup>2</sup>
Shower room 2F	2.74m <sup>2</sup>	2.74m <sup>2</sup>
WC	1.4m <sup>2</sup>	1.17m <sup>2</sup>

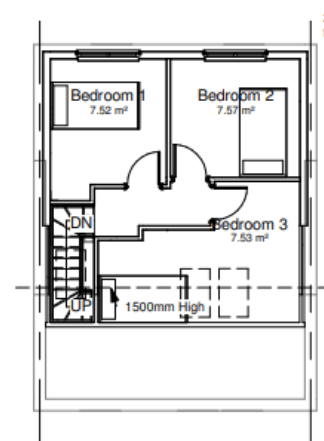
- 5.7 As is shown in the table above, the proposal results in an internal layout, which is compliant with room sizes in the adopted HMO Guidance. There would be a satisfactory standard of living environment and as such the proposal is not considered to comply with Local Plan policy PCS23.



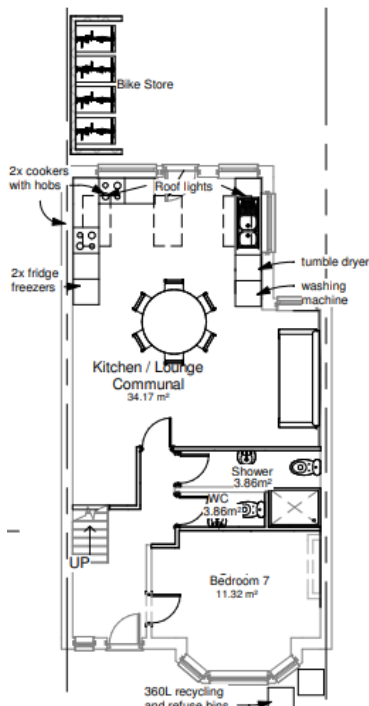
**1 Existing GF**  
1 : 100



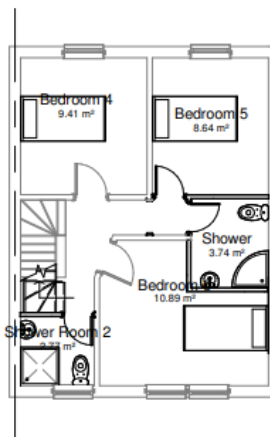
**2 Existing FF**  
1 : 100



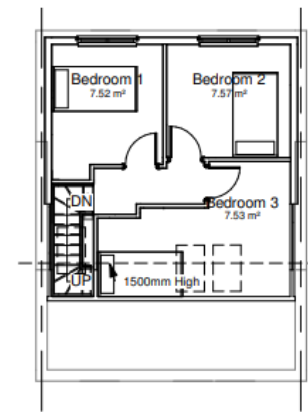
**3 Existing SF**  
1 : 100



**4 Proposed GF**  
1 : 100



**5 Proposed FF**  
1 : 100



**6 Proposed SF**  
1 : 100

5.8 Amenity and Parking

5.9 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have

any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.

5.10 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently, the proposal remains in accordance with the Council's adopted guidance on parking provision.

#### 5.11 Other Material Considerations

5.12 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.

5.13 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.

#### 5.14 Impact on Special Protection Areas

5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants

above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

#### Community Infrastructure Levy (CIL)

- 5.16 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.

#### Human Rights and the Public Sector Equality Duty ("PSED")

- 5.17 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.
- 5.18 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relation between those who share a relevant protected characteristic and those who don't. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered that the officer's recommendation would breach the Council's obligations under the Equality Act 2010

### **6.0 CONCLUSION**

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the local plan as the size of the resulting accommodation would meet the adopted standards for room sizes considered to provide a good standard of living accommodation in accordance with Local Plan Policy PCS23. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that the on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, the committee can note that the merits of the proposed use comply fully with the associated guidance regarding the relevant local plan policies in respect of room sizes to support a good standard of living, the Committee would therefore need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur



until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

## **RECOMMENDATION**

That the Secretary of State be advised that Portsmouth City Council Planning Committee resolve to grant unconditional planning permission.

**Conditions: None**

19 LAWSON ROAD SOUTHSEA PORTSMOUTH PO5 1SD

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPANCY (CLASS C4), TO HOUSE IN MULTIPLE OCCUPANCY FOR SEVEN PEOPLE (SUI GENERIS)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R9NWGTMOIXY00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R9NWGTMOIXY00)

**Application Submitted By:**

Applecore PDM Ltd

**On behalf of:**

Rowe, NJR Accommodation LTD

**RDD:** 4th April 2022

**LDD:** 31st May 2022

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee due to the number of objections as well as the request of Councillor Vernon-Jackson and Councillor Suzy Horton. The application has also now been taken to appeal on grounds of non-determination and the Secretary of State is now the determining authority in this case.

1.2 The main issues for consideration in the determination of the application are as follows:

- Principle of Development including compliance with policy
- Impacts on Amenity including parking
- Other material considerations

### 1.3 Site and surroundings

1.4 The application site is a two-storey mid-terrace dwellinghouse located on the southern side of Lawson Road. It is located within a predominantly residential area.

### 1.5 The Proposal

1.6 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application

### 1.7 Planning History

1.8 Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwelling house) was permitted in 2012 under planning ref: 12/01133/FUL.

## **2.0 POLICY CONTEXT**

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation) and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

## **3.0 CONSULTATIONS**

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.

## **4.0 REPRESENTATIONS**

- 4.1 4 representations have been received from nearby residents objecting to the proposed scheme on the following grounds:
- i) To many HMOs within the street at present;
  - j) Increased noise and disturbance concerns;
  - k) Increase traffic and parking demand;
  - l) Concerns around maintenance and upkeep;
  - m) Waste and rubbish concerns;
  - n) Impact on character of the area.

## **5.0 COMMENT**

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 32 HMOs out of 95 properties, a percentage of 33.6%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As

this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 08/01/2020.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	8.56m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	7.95m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	7.35m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	9.06m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	8.32m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	7.44m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	8m <sup>2</sup>	6.51m <sup>2</sup>
Cinema Room (Lounge)	13.17m <sup>2</sup>	14m <sup>2</sup>
Kitchen/Diner	21.2m <sup>2</sup>	34m <sup>2</sup>
Shower room 1	3.75m <sup>2</sup>	2.74m <sup>2</sup>
Shower room 2	3.84m <sup>2</sup>	2.74m <sup>2</sup>
WC	1.49m <sup>2</sup>	1.17m <sup>2</sup>



**4 Proposed GF**  
1 : 100

**5 Proposed FF**  
1 : 100

**6 Proposed SF**  
1 : 100

5.7 As is shown in the table above, the proposal results in an internal layout, which due to the size of the communal open plan kitchen/dining area fails to comply with the internal size requirements described in the HMO SPD. While the substandard open plan kitchen/dining area is supplemented by a 'cinema room' on the ground floor judgement must be applied to consider whether overall this provides a satisfactory standard of living environment. While if these two areas were combined into a single space they would just exceed the suggested 34sqm standard the layout of these two rooms limits their utility with the open plan kitchen dining area being narrow and linear in its form and also providing the only access to the rear external areas of the property. This limits its value as shared amenity space and on balance the proposal would therefore be considered to not comply with Local Plan policy PCS23 due to the quality of living environment created for this number of occupants.

5.8 Amenity and Parking

5.9 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.

5.10 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted

that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.

#### 5.11 Other Material Considerations

5.12 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.

5.13 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.

#### 5.14 Impact on Special Protection Areas

5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

### Community Infrastructure Levy (CIL)

- 5.16 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.

### Human Rights and the Public Sector Equality Duty ("PSED")

- 5.17 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.
- 5.18 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relation between those who share a relevant protected characteristic and those who don't. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered that the officer's recommendation would breach the Council's obligations under the Equality Act 2010

## **6.0 CONCLUSION**

- 6.1 As detailed above the application is considered to not fully comply with the relevant policies of the local plan as the size of the resulting accommodation fails to meet the adopted standards for room sizes considered to provide a good standard of living accommodation in accordance with Local Plan Policy PCS23. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that the on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with or without conditions. In such a circumstance, Members would note that the merits of the proposed use do not comply with the associated guidance regarding the relevant local plan policies in respect of room sizes to support a good standard of living.

## **RECOMMENDATION**

That the Secretary of State be advised that Portsmouth City Council Planning Committee resolve to grant unconditional planning permission.

**Conditions: None**

# 03

22/00445/FUL

WARD: CENTRAL SOUTHSEA

27 CLEVELAND ROAD SOUTHSEA CITY OF PORTSMOUTH PO5 1SF

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO HOUSE IN MULTIPLE OCCUPATION FOR MORE THAN SIX PERSONS (SUI GENERIS).

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R9NWGIMOIXW00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R9NWGIMOIXW00)

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Rowe  
NJR Accommodation Ltd

**RDD:** 4th April 2022

**LDD:** 31st May 2022

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson. The application is currently the subject of appeal on the grounds of non-determination and the Secretary of State is now the determining authority in this case.
- 1.2 The main issues for consideration in the determination of the application are as follows:
  - Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.3 Site and surroundings
- 1.4 The application site is a two storey terraced dwelling with rooms in the roof in a predominately residential area.
- 1.5 The Proposal
- 1.6 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms, with a ground floor study converted into a bedroom, but no external operational development forms part of this application
- 1.7 Planning History
- 1.8 None relevant.



## **2.0 POLICY CONTEXT**

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation) and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

## **3.0 CONSULTATIONS**

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.

## **4.0 REPRESENTATIONS**

- 4.1 Three representations have been received in response to the application (two objecting and one in support). The two objection comments have raised concerns relating to:

- a) Increased waste and rubbish;
- b) Parking concerns;
- c) Increased noise and disturbance;
- d) Poor property management;
- e) Overdevelopment of property;
- f) Concerns over publicity (only one site notice);
- g) Balance of HMOs in the area already above 10%;
- h) Drainage concerns

- 4.2 The support comments imply stated that the proposal seemed like a 'good use of space'

## **5.0 COMMENT**

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

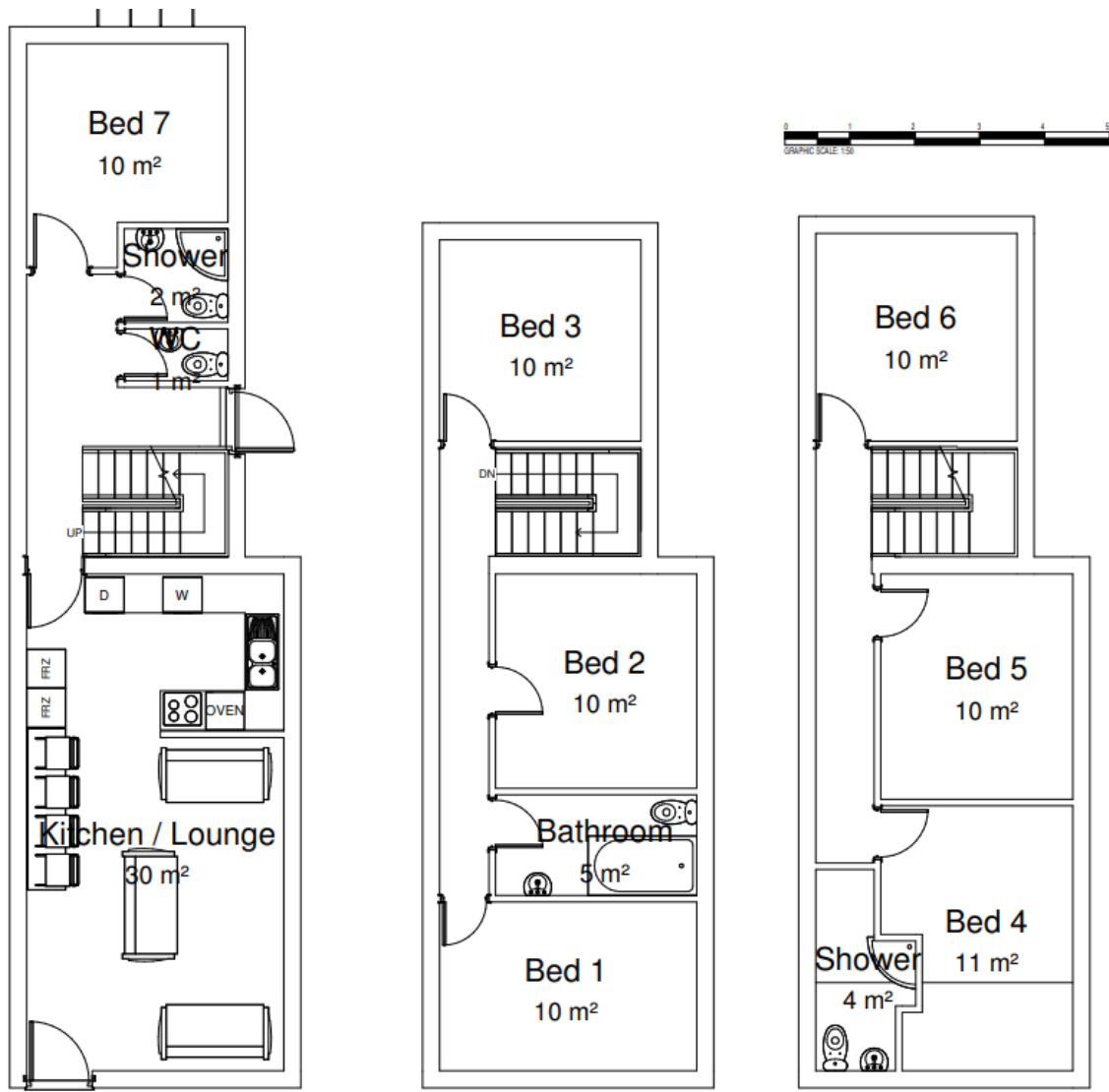
### 5.2 Principle

- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made

up of 42 HMOs out of 75 properties, a percentage of 56%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 14/07/2021.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	10m2	6.51m2
Bedroom 2	10m2	6.51m2
Bedroom 3	10m2	6.51m2
Bedroom 4	11m2	6.51m2
Bedroom 5	10m2	6.51m2
Bedroom 6	10m2	6.51m2
Bedroom 7	10m2	6.51m2
Combined Living Space	30m2	22.5m2
Bathroom	5m2	3.74m2
Shower room 1	2m2	2.74m2
Shower room 2	4m2	2.74m1
WC	1m2	1.17m2



5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards in accordance with the HMO SPD, at para 2.6, which advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m<sup>2</sup>) for combined living accommodation in circumstances where all bedrooms are at least 10m<sup>2</sup> and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment. The minor size discrepancy of the ground floor WC is not considered to undermine this judgment.

5.8 Amenity and Parking

5.9 The proposal would increase the occupancy of the existing HMO by 1 occupants. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.

5.10 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted

that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently, the proposal remains in accordance with the Council's adopted guidance on parking provision.

#### 5.11 Other Material Considerations

5.12 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.

5.13 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.

#### 5.14 Impact on Special Protection Areas

5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

### Community Infrastructure Levy (CIL)

- 5.16 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.

### Human Rights and the Public Sector Equality Duty ("PSED")

- 5.17 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.
- 5.18 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relation between those who share a relevant protected characteristic and those who don't. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered that the officer's recommendation would breach the Council's obligations under the Equality Act 2010

## **6.0 CONCLUSION**

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that the on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, as the merits of the proposed use comply fully with the relevant policies of the Local Plan and associated guidance, the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

## **RECOMMENDATION**

That the Secretary of State be advised that Portsmouth City Council Planning Committee resolve to grant unconditional planning permission

**Conditions: None**

# 04

20/01328/FUL

WARD: CENTRAL SOUTHSEA

243 FAWCETT ROAD, SOUTHSEA, PORTSMOUTH PO4 0DJ

CHANGE OF USE OF FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO 8 PERSON HOUSE IN MULTIPLE OCCUPANCY (SUI GENERIS) (DESCRIPTION AMENDED)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=\\*\\*\\*\\*\\*](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=*****)

## Application Submitted By:

Applecore PDM LTD

## On behalf of:

Mr Antony Lane

RDD: 22 February 2021

LDD: 11 January 2021

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson.

1.2 The main issues for consideration in the determination of the application are as follows:

- Principle of Development including compliance with policy
- Impacts on Amenity including parking and internal space
- Other material considerations

### 1.3 Site and surroundings

1.3 The application site is a two storey mid-terrace property which is located on the junction of Fawcett Road and Sutherland Road. The surrounding area is densely populated and dominated by similar two storey terrace properties. To the south east is the Golden Eagle public house to the south east and a hair salon.

### 1.4 The Proposal

1.5 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 8 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application.

### 1.6 Planning History

1.7 The key matters from the site history of the site

A\*27225/B - Alterations to convert shop with living accommodation to a dwellinghouse. Granted conditional permission in March 1971.

18/00542/CPE - Application for a certificate of lawful development for the existing use of a dwellinghouse as a class C4 (HMO) - Granted June 2018

18/01703/FUL - Application for a change of use from C4 (HMO) to 8 person/8beroom HMO - Refused February 2019 and dismissed on appeal.

## **2.0 POLICY CONTEXT**

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

## **3.0 CONSULTATIONS**

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.

## **4.0 REPRESENTATIONS**

- 4.1 One letter of objection has been received citing ASB and that the area has no parking.

## **5.0 COMMENT**

- 5.1 The main issues to consider in the determination of this application are

- i. Principle of development;
- ii. Impacts on residential amenity; and
- iii. Other issues.

### **5.2 Principle**

- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 2 occupants. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 24 HMOs out of 80 properties, a percentage of 30%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs

are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

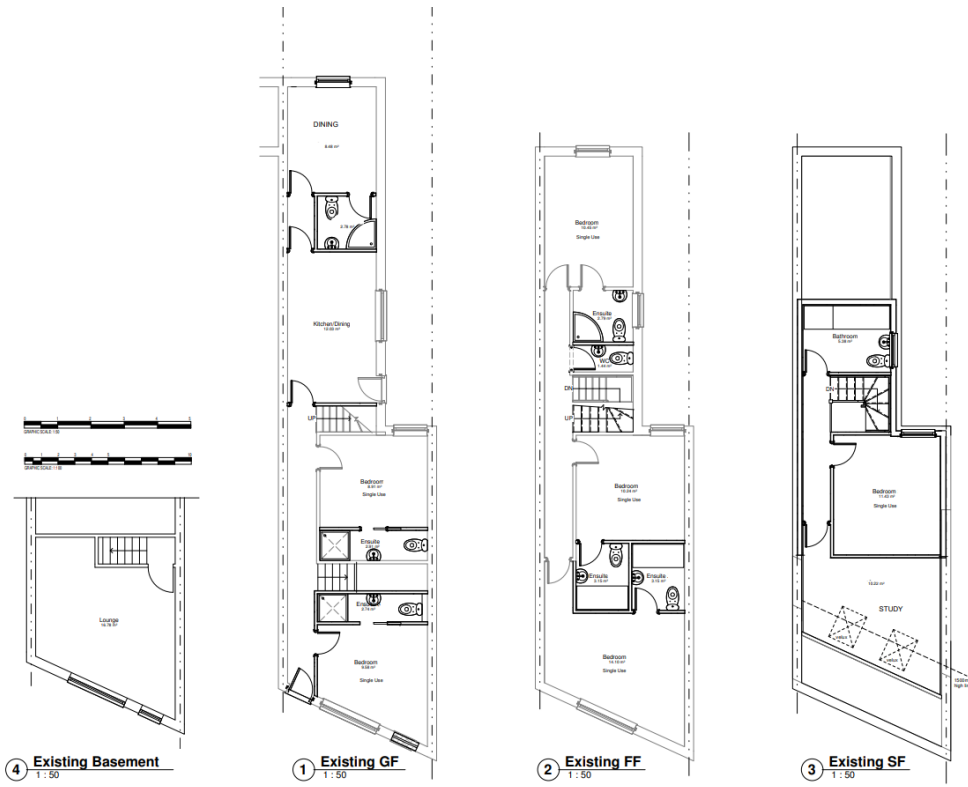
5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 8 occupants. This licence was granted on 8 April 2020 and expires on 07 April 2025

5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Further below are the existing and proposed floor plans. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

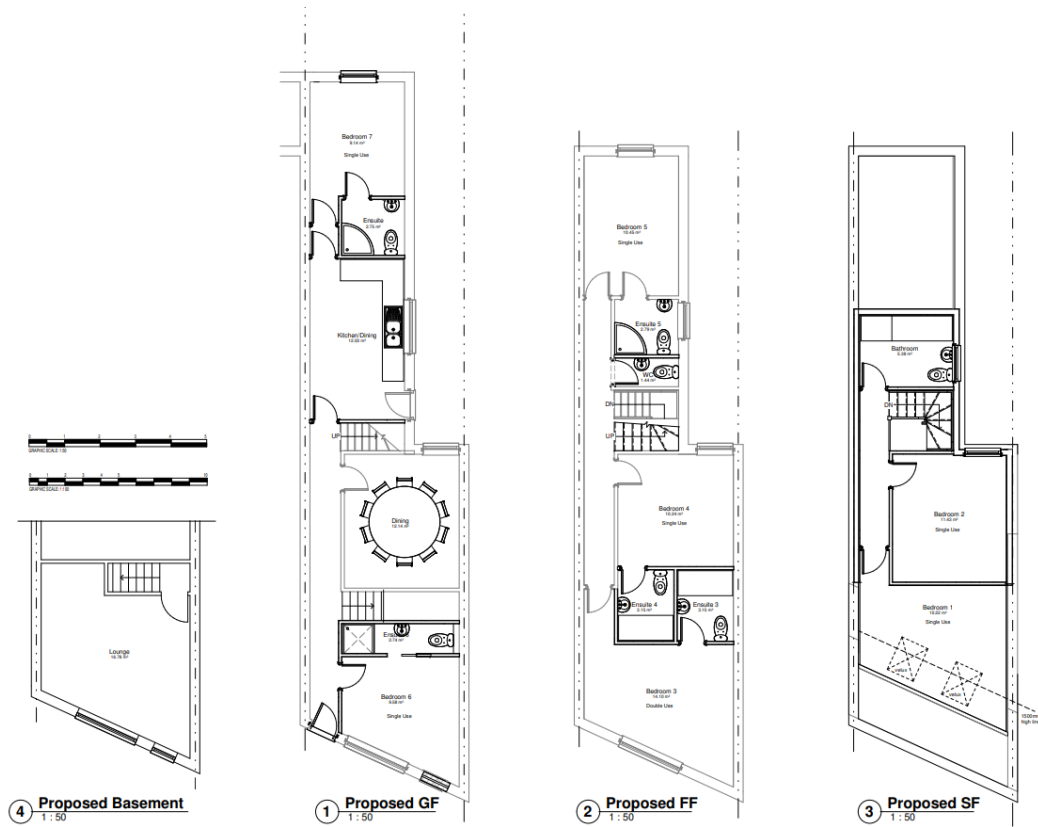
Room	Area Provided:	Required Standard:
Bedroom 1	10.22 m2	6.51m2
Bedroom 2	11.43 m2	6.51m2
Bedroom 3	14.10 m2	11 m2 (double bed space)
Ensuite 3	3.15 m2	2.74 m2
Bedroom 4	10.24 m2	6.51m2
Ensuite 4	3.15 m2	2.74 m2
Bedroom 5	10.45 m2	6.51m2
Ensuite 5	2.70 m2	2.74 m2
FF Separate WC	1.44 m2	1.17 m2
Bedroom 6	9.58 m2	6.51m2
Ensuite 6	2.74 m2	2.74 m2
Bedroom 7	9.14 m2	6.51m2
Ensuite 7	2.75 m2	2.74 m2
Lounge (Basement)	16.78 m2	14m2
Kitchen/Dining (GF)	12.03 m2	11m2
Dining Room (GF)	12.142	14m2
SF Bathroom	5.38 m2	3.74m2



Existing Layout:



Proposed Layout:



5.7 As is shown in the table above, the proposal results in a internal layout that performs positively against the internal space standards set out in the Council's HMO SPD. It is necessary to state that if the proposal was considered to require planning permission the shared communal space, consisting of a separate Kitchen and Dining rooms on the ground floor and a lounge space in the basement would need to be carefully considered to judge whether it result in an adequate living environment for future occupiers. A previous scheme for 8 occupiers was dismissed on appeal (18/01703/FUL), due to an inadequate standard of living, with particular reference to the basement living room which in that application was the only communal living/dining area. It is noted that at that time the 8 occupancy was achieved through the use of the ground floor space as a bedroom rather than a dining room and in the current application proposal this space would be a communal dining room, albeit one below the 14m<sup>2</sup> standard, and the 8 occupancy achieved through the use of bedroom 3 as a double occupancy rather than single occupancy room. Furthermore, future occupants would have access to a private outdoor amenity space that measures approximately 36 sq.m further contributing to the quality of the space to be provided. As such the scheme is considered on balance to adhere to the objectives of Local Plan Policy PCS23.

#### 5.8 Amenity and Parking

5.8 The proposal would increase the occupancy of the existing HMO by 2 occupants. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.

5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently, the proposal remains in accordance with the Council's adopted guidance on parking provision.

#### 5.10 Other Material Considerations

5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to

be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.

- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as an HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.
- 5.13 The letter of objection refers to the extent of students, HMO's, anti-social behaviour, noise, drinking, parties and other issues. Whilst such matters are not usually a planning matter the development would only result in an additional 2 additional people. Such an increase would not result in a material increase in the potential for such behaviour and would not thereof represent a reason to withhold planning permission.

#### Impact on Special Protection Areas

- 5.14 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

#### Community Infrastructure Levy (CIL)

- 5.15 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.

#### Human Rights and the Public Sector Equality Duty ("PSED")

- 5.16 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.
- 5.17 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relation between those who share a relevant protected characteristic and those who don't. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had

due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered that the officer's recommendation would breach the Council's obligations under the Equality Act 2010

## **6.0 CONCLUSION**

- 6.1 As detailed above the application is considered to result in an adequate quality of the residential accommodation and as such unconditional planning permission should be granted.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions.
- 6.3 In such circumstances the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.]

## **RECOMMENDATION**

## **Unconditional Permission**

**Conditions: None**

20/01402/FUL

WARD: ST THOMAS

35 BAILEYS ROAD, SOUTHSEA, PORTSMOUTH PO5 1EA.

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (HMO) (CLASS C4) TO 7 PERSON/7 BEDROOM HMO (SUI GENERIS)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=\\*\\*\\*\\*\\*](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=*****)

## Application Submitted By:

Applecore PDM Ltd

## On behalf of:

Mr Simon Birmingham

RDD: 3<sup>rd</sup> March 2021

LDD: 25<sup>th</sup> January 2021

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson.

1.2 The main issues for consideration in the determination of the application are as follows:

- Principle of Development including compliance with policy
- Impacts on Amenity including parking
- Other material considerations

### 1.3 Site and surroundings

1.4 The application site is a two storey mid-terrace property located within a predominantly residential area characterised by similar two storey terrace properties.

### 1.5 The Proposal

1.6 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as an HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of an internal rooms but no external operational development forms part of this application

### 1.7 Planning History

1.8 The relevant planning history is listed below:

- Change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwelling house) or Class C4 (house in multiple occupation)  
Ref. No: 20/00085/FUL | Received: Thu 23 Jan 2020 | Validated: Fri 24 Jan 2020 | Status: Approve

- Construction of single-storey rear extension that comes out a maximum of 5m beyond the rear wall of the original house with a maximum height of 3m and a maximum height of 2.8m to the eaves.  
Ref. No: 20/00007/GPDC | Received: Wed 22 Jan 2020 | Validated: Thu 23 Jan 2020 | Status: Prior Approval not required

## **2.0 POLICY CONTEXT**

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

## **3.0 CONSULTATIONS**

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would not require to be licenced under Part 2, Housing Act 2004.

## **4.0 REPRESENTATIONS**

- 4.1 One letter of objection has been received, raising the following matters:
- constant increase in HMO intensity;
  - impact on residents' amenity with regard to litter, noise, car parking, fly tipping and other issues including water and drainage;
  - this is not an isolated incident, the application needs to be considered in the context of the surrounding area, and the cumulative approval would result in an area that cannot take such an over intensification and the use of 'permitted development' rights to double develop a property.

## **5.0 COMMENT**

- 5.1 The main issues to consider in the determination of this application:

- i. The principle of development;
- ii. The impacts on residential amenity; and
- iii. Other Issues.

### **5.2 Principle**

- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.

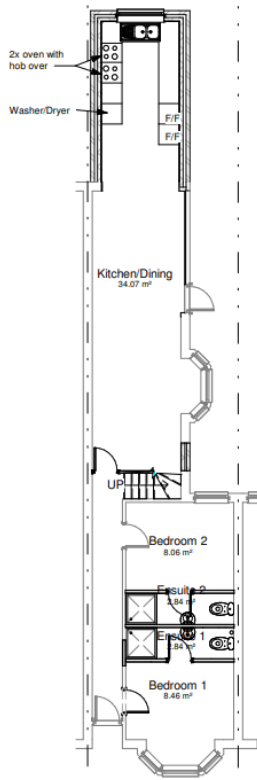
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of

dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 26 HMOs out of 58 properties, a percentage of 44.8%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

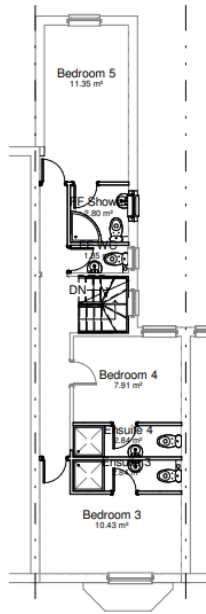
- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 18<sup>th</sup> December 2021 and expires on 17<sup>th</sup> December 2025.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, with the images below showing the existing and proposed layouts, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	8.46 m2	6.51m2
Ensuite 1	2.84m2	2.74m2
Bedroom 2	8.06 m2	6.51m2
Ensuite 2	2.84m2	2.74m2
Bedroom 3	10.43 m2	6.51m2
Ensuite 3	2.84m2	2.74m2
Bedroom 4	7.91 m2	6.51m2
Ensuite 4	2.84m2	2.74m2
Bedroom 5	11.35 m2	6.51m2
Ensuite 5	2.80m2	2.74m2
FF Separate WC	1.35 m2	1.17m2
Bedroom 6	8.83 m2	6.51m2
Ensuite 6	2,75 m2	
Bedroom 7	8.22 m2	6.51m2
SF Shower Room	3.58 m2	2.74m2
Kitchen/Dinner (Combined Space)	34.07 m2	34m2

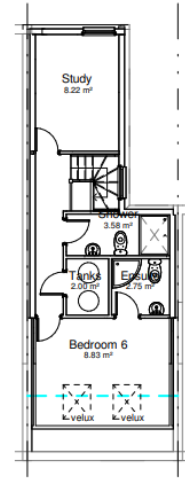
Existing Layout shown over the page:



**1 Existing GF**  
1 : 100

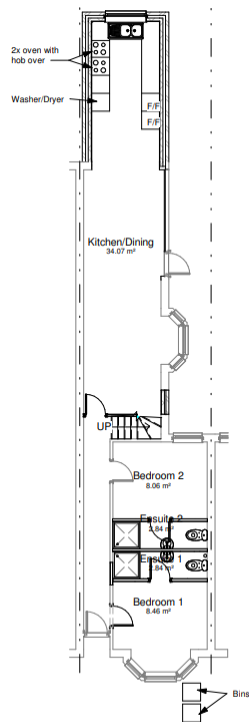


**2 Existing FF**  
1 : 100

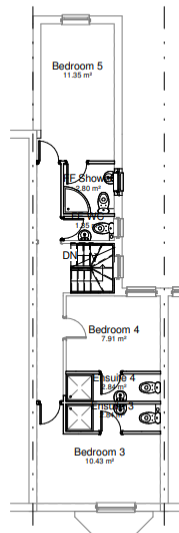


**3 Existing SF**  
1 : 100

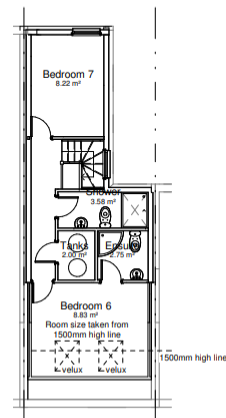
**Proposed Layout:**



**4 Proposed GF**  
1 : 100



**5 Proposed FF**  
1 : 100



**6 Proposed SF**  
1 : 100

5.7 As is shown in the table above, the proposal results in an internal layout that, with the exception of the proposed shower room falling approximately 0.16 of a sq.m short of the



requirement for a bathroom, exceeds the minimum internal space standards set out in the HMO SPD. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment thereby according with Policy PCS23 of the Local Plan.

#### Amenity and Parking

5.8 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this very small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.

5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently, the proposal remains in accordance with the Council's adopted guidance on parking provision.

#### 5.10 Other Material Considerations

5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.

5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO

with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.

- 5.13 The letter of objection refers to the increase in the intensity of their HMO and the very negative impacts on the residents' amenity and that when considered against the other HMO's in the area that the application needs to be considered in this regard. The application, as noted above, does not represent a new HMO and would only represent an increase of 1 additional person. Such a small increase would not result in any adverse impacts over and above the existing situation.

#### Impact on Special Protection Areas

- 5.14 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants' above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

#### Community Infrastructure Levy (CIL)

- 5.15 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.

#### Human Rights and the Public Sector Equality Duty ("PSED")

- 5.16 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.
- 5.17 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relations between those who share a relevant protected characteristic and those who don't. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered that the officer's recommendation would breach the Council's obligations under the Equality Act 2010.

## **6.0 CONCLUSION**

- 6.1 As detailed above the application is considered to comply with the relevant policies of the local plan as the size of the resulting accommodation meets the adopted standards for room sizes and as such is considered to provide a good standard of living accommodation in accordance with Local Plan Policy PCS23.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider

whether permission should be granted with conditions. The Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

## **RECOMMENDATION**

## **Unconditional Permission**

**Conditions: None**

95 CASTLE ROAD SOUTHSEA PO5 3AY

**CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPANCY (CLASS C4), TO HOUSE IN MULTIPLE OCCUPANCY (SUI GENERIS) FOR MORE THAN SIX PEOPLE**

**LINK TO DOCUMENTS:**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QJXSNFMOM8100](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qjxsnfmom8100)

**Application Submitted By:**

Applecore PDM Ltd

**On behalf of:**

Mr Richard Stidolph

**RDD:** 17th November 2020

**LDD:** 27th April 2021

## **1.0 SUMMARY OF MAIN ISSUES**

- 1.1 This application is brought before Planning Committee due the request of Councillor Vernon-Jackson. The application has also now been taken to appeal on grounds of non-determination and the Secretary of State is now the determining authority in this case.
- 1.2 The main issues for consideration in the determination of the application are as follows:
  - Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.3 Site and surroundings
- 1.3 This application relates to the flat located at first and second floor level of 1 Kent Road. Access to this property is via an entrance to the rear of the ground floor A3 unit. At first floor level, this property comprises a kitchen, bathroom, study, dining room and lounge. There is an external terrace at this level located above the ground floor A3 unit. This property is located within both an area of indicative floodplain (Flood Zone 3) and the Castle Road Conservation Area.
- 1.4 The Proposal
- 1.5 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application

## 1.6 Planning History

- 1.7 The change of use from dwelling house (Class C3) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwelling house) was permitted in 2014 under planning ref: 13/01205/FUL.
- 1.8 There is no other relevant planning history associated with the application site.

## 2.0 **POLICY CONTEXT**

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

## 3.0 **CONSULTATIONS**

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.

## 4.0 **REPRESENTATIONS**

- 4.1 None received.

## 5.0 **COMMENT**

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

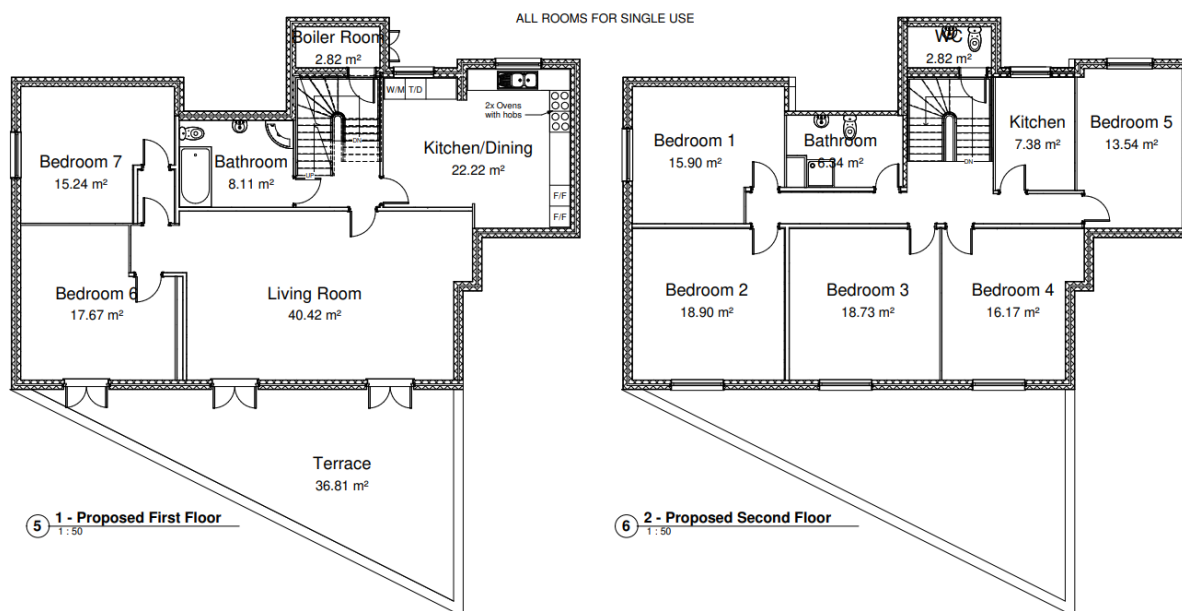
### 5.2 Principle

- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 2 occupants. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 9 HMOs out of 88 properties, a percentage of 10.11%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As

this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 6 occupants. This licence was granted on 29/11/2018.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	15.9m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	18.9m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	18.73m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	16.71m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	13.54m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	17.67m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	15.26m <sup>2</sup>	6.51m <sup>2</sup>
Living Room	40.42m <sup>2</sup>	14m <sup>2</sup>
Kitchen / Dining Room	22.22m <sup>2</sup>	11m <sup>2</sup>
Kitchen	7.38m <sup>2</sup>	11m <sup>2</sup>
Bathroom 1	8.11m <sup>2</sup>	3.74m <sup>2</sup>
Bathroom 2	6.34m <sup>2</sup>	3.74m <sup>2</sup>
WC	2.82m <sup>2</sup>	1.17m <sup>2</sup>



- 5.7 As is shown in the table above, the proposal results in an internal layout that meets the Council's adopted space standards and is therefore considered to result in a satisfactory standard of living environment.

## 5.8 Amenity and Parking

5.9 The proposal would increase the occupancy of the existing HMO by 2 occupants. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.

5.10 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.

## 5.11 Other Material Considerations

5.12 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.

5.13 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position

of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.

5.14 Impact on Special Protection Areas

5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

**6.0 CONCLUSION**

6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However, notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.

6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, as the merits of the proposed use comply fully with the relevant policies of the Local Plan and associated guidance, the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

**RECOMMENDATION**

That the Secretary of State be advised that Portsmouth City Council Planning Committee resolve to grant unconditional planning permission

**Conditions: None**



98 MANNERS ROAD, PORTSMOUTH PO4 0BG

**CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPANCY (CLASS C4) TO SEVEN BEDROOM/SEVEN PERSON HOUSE IN MULTIPLE OCCUPANCY (SUI GENERIS)**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=\\*\\*\\*\\*\\*](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=*****)

**Application Submitted By:**

Applecore PDM Ltd

**On behalf of:**

Mr Simon Birmingham

**RDD:** 14<sup>th</sup> March 2021

**LDD:** 13<sup>th</sup> August 2021

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson.

1.2 The main issues for consideration in the determination of the application are as follows:

- Principle of Development including compliance with policy
- Impacts on Amenity including parking
- Other material considerations

### 1.3 Site and surroundings

1.4 The application site is a two storey mid terrace property with rooms in the roof and set in a residential area characterised by similar two storey terrace properties.

### 1.5 The Proposal

1.6 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application

### 1.7 Planning History

1.8 The site's planning history is listed below:

- Construction of single-storey rear extension that comes out a maximum of 6m beyond the rear wall of the original house with a maximum height of 3m and a maximum height of 2.8m to the eaves.

Ref. No: 20/00047/GPDC | Received: Tue 07 Apr 2020 | Validated: Tue 07 Apr 2020 | Status: Prior Approval not required

- Change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwellinghouse) and Class C4 (house in multiple occupation)

Ref. No: 19/01743/FUL | Received: Thu 14 Nov 2019 | Validated: Thu 21 Nov 2019 | Status: Conditional Permission

- Construction of single storey rear extension.  
Ref. No: 19/00119/GPDC | Received: Mon 28 Oct 2019 | Validated: Mon 28 Oct 2019 | Status: Prior Approval not required

## 2.0 POLICY CONTEXT

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

## 3.0 CONSULTATIONS

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.

## 4.0 REPRESENTATIONS

- 4.1 Five neighbour notification letters were sent out, no responses have been received.

## 5.0 COMMENT

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle; would have an acceptable impact on and provide for adequate residential amenity.

### 5.2 Principle

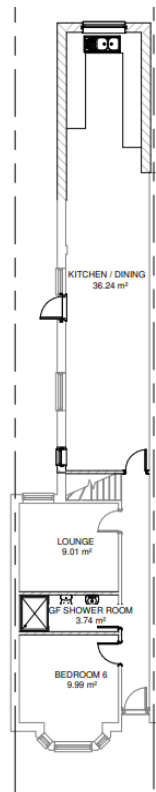
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 25 HMOs out of 70 properties, a percentage of 35.7%. This proposal of course has no effect on that

percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

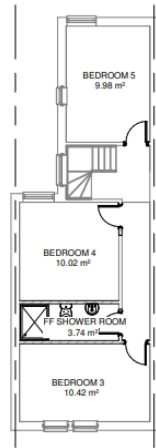
- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO for 7 persons. The license was granted on 4<sup>th</sup> January 2021 and expires on 3<sup>rd</sup> January 2026. This adds weight to the current use and the 'fall back' position should the application be refused.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. The images below show the existing and proposed layouts. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance. In addition to the internal space the proposal would also provide for a covered cycle storey for 4 bicycles.

Room	Area Provided:	Required Standard:
Bedroom 1	12.42 m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	9.34 m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	10.42 m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	10.02 m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	9.98 m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	9.99 m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	9.01 m <sup>2</sup>	6.51m <sup>2</sup>
Kitchen/Diner - Combined Living Space	36.24 m <sup>2</sup>	34m <sup>2</sup>
GF Shower room	3.74 m <sup>2</sup>	2.74m <sup>2</sup>
FF Shower room	3.74 m <sup>2</sup>	2.74m <sup>2</sup>
SF Shower room	3.84 m <sup>2</sup>	2.74m <sup>2</sup>
SF Separate WC	1.92 m <sup>2</sup>	1.17 m <sup>2</sup>

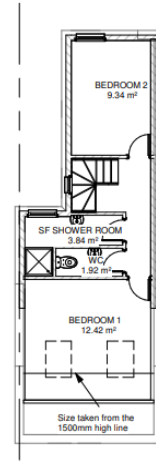
Existing Ground Floor:



1 Existing GF Plan  
1 : 100

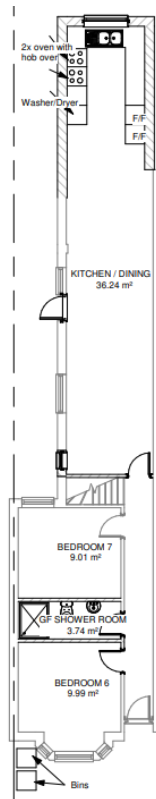


2 Existing FF Plan  
1 : 100

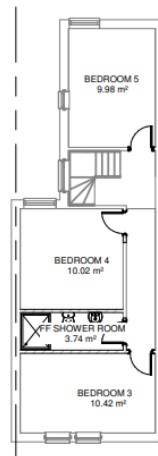


3 Existing SF Plan  
1 : 100

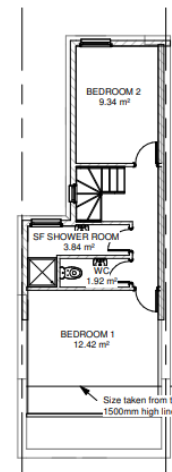
Proposed Floor Plans



4 Proposed GF Plan  
1 : 100



5 Proposed FF Plan  
1 : 100



6 Proposed SF Plan  
1 : 100

- 5.7 As is shown in the table above, the proposal results in an internal layout that meets or in some cases exceeds the Council's adopted space standards set out in the HMO SPD and is therefore considered to result in a satisfactory standard of living environment thereby complying with Policy PCS23 of the Local Plan.

#### Amenity and Parking

- 5.8 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.

- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently, the proposal remains in accordance with the Council's adopted guidance on parking provision.

#### 5.10 Other Material Considerations

- 5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.

- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material

and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.

#### Impact on Special Protection Areas

- 5.13 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

#### Community Infrastructure Levy (CIL)

- 5.14 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.

#### Human Rights and the Public Sector Equality Duty ("PSED")

- 5.15 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.
- 5.17 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relations between those who share a relevant protected characteristic and those who don't. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered that the officer's recommendation would breach the Council's obligations under the Equality Act 2010

## **6.0 CONCLUSION**

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

**RECOMMENDATION**  
Conditions: None

**Unconditional Permission**

70 MANNERS ROAD, SOUTHSEA PORTSMOUTH PO4 0BB

CHANGE OF USE OF SMALL HMO (C4) TO ALLOW OCCUPATION AS AN HMO WITH 7 OCCUPANTS (SUI GENERIS)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=\\*\\*\\*\\*\\*](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=*****)

**Application Submitted By:**

Applecore PDM Ltd

**On behalf of:**

Simon Birmingham

**RDD:** 23<sup>rd</sup> November 2021

**LDD:** 14<sup>th</sup> December 2021

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson. The application has also now been taken to appeal on grounds of non-determination and the Secretary of State is now the determining authority in this case.

1.2 The main issues for consideration in the determination of the application are as follows:

- Principle of Development including compliance with policy
- Impacts on Amenity including parking
- Other material considerations

### 1.3 Site and surroundings

1.3 The application site is a two storey mid-terrace property within a residential area characterised by similar such properties.

### 1.4 The Proposal

1.5 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application

### 1.6 Planning History

1.7 The only history of the site is set out below:

- Change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwelling house) or Class C4 (house in multiple occupation).  
Ref. No: 21/00602/FUL | Received: Wed 21 Apr 2021 | Validated: Thu 22 Apr 2021 | Status: Conditional Permission.

## **2.0 POLICY CONTEXT**

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation) and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

## **3.0 CONSULTATIONS**

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.

## **4.0 REPRESENTATIONS**

- 4.1 Six neighbour notification letters were sent out. No responses have been received.

## **5.0 COMMENT**

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

### **5.2 Principle**

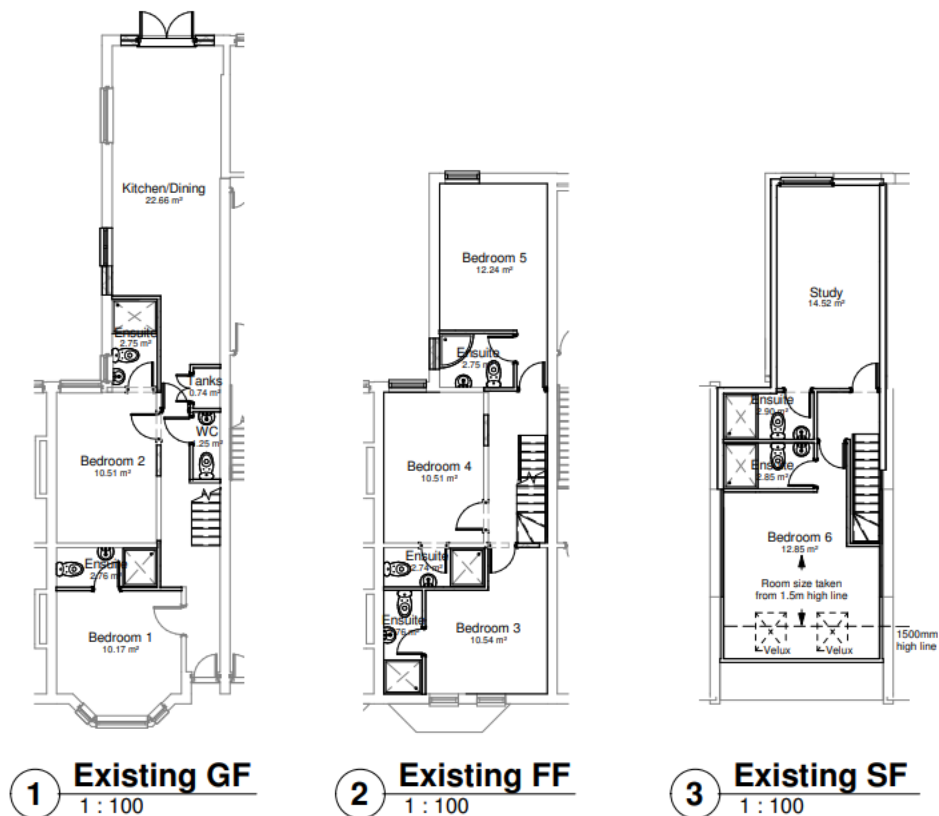
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 35 HMOs out of 81 properties, a percentage of 43%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 4<sup>th</sup> March 2022 and expires on 3<sup>rd</sup> March 2027.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private



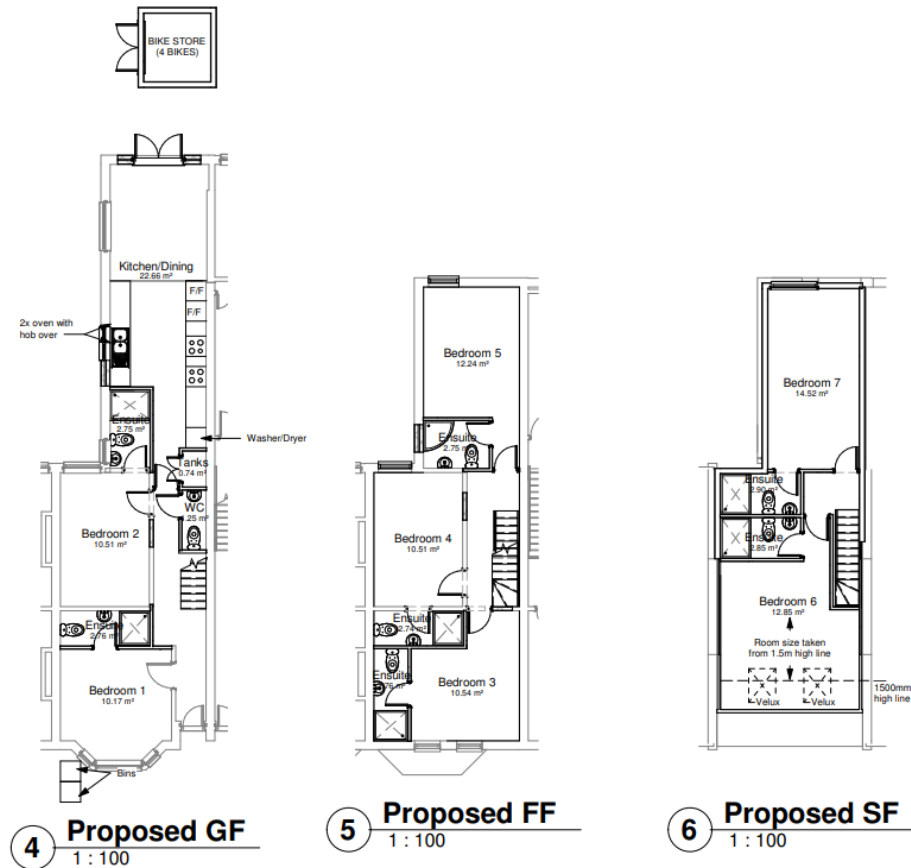
bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided together with a bicycle storage shed to the rear, as compared to the minimum size prescribed in the Council's adopted guidance with the existing and proposed internal layouts below the table:

Room	Area Provided:	Required Standard:
Bedroom 1	10.17 m <sup>2</sup> (not inc. en-suite)	6.51m <sup>2</sup>
Ensuite 1	2.76 m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 2	10.51m <sup>2</sup> (not inc. en-suite)	6.51m <sup>2</sup>
Ensuite 2	2.75 m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 3	10.54 m <sup>2</sup> (not inc. en-suite)	6.51m <sup>2</sup>
Ensuite 3	2.76 m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 4	10.51 m <sup>2</sup> (not inc. en-suite)	6.51m <sup>2</sup>
Ensuite 4	2.74 m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 5	12.24 m <sup>2</sup> (not inc. en-suite)	6.51m <sup>2</sup>
Ensuite 5	2.74 m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 6	12.85 m <sup>2</sup> (not inc. en-suite)	6.51m <sup>2</sup>
Ensuite 6	2.85 m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 7	14.52 m <sup>2</sup> (not inc. en-suite)	6.51m <sup>2</sup>
Ensuite 7	2.90 m <sup>2</sup>	2.74 m <sup>2</sup>
Kitchen/Diner Living Space	22.66 m <sup>2</sup> Combined	22.5m <sup>2</sup>
Separate WC	1.25 m <sup>2</sup>	1.17 m <sup>2</sup>

Existing Layout:



Proposed Layout:



5.7 As is shown in the table above, the proposal results in an internal layout that meets the Council's adopted space standards, and is therefore considered to result in a satisfactory standard of living environment]

5.8 Amenity and Parking

5.8 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.

5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently, the proposal remains in accordance with the Council's adopted guidance on parking provision.

5.10 Other Material Considerations

5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning

permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the Solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.

5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.

5.14 Impact on Special Protection Areas

5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

Community Infrastructure Levy (CIL)

5.16 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.

Human Rights and the Public Sector Equality Duty ("PSED")

5.17 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.

- 5.18 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relation between those who share a relevant protected characteristic and those who don't. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered that the officer's recommendation would breach the Council's obligations under the Equality Act 2010

## **6.0 CONCLUSION**

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, as the merits of the proposed use comply fully with the relevant policies of the Local Plan and associated guidance, the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

## **RECOMMENDATION**

That the Secretary of State be advised that Portsmouth City Council Planning Committee resolve to grant unconditional planning permission

**Conditions: None**

1 GARNIER STREET PORTSMOUTH PO1 1PD

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO SUI  
GENERIS 7 BED HOUSE IN MULTIPLE OCCUPATION

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-  
APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R7RF6  
3MOI7X00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R7RF63MOI7X00)

**Application Submitted By:**

Applecore PDM Ltd

**On behalf of:**

Mr S Appleton, Applecore Living

**RDD:** 24th February 2022

**LDD:** 22nd April 2022

**1.0 SUMMARY OF MAIN ISSUES**

- 1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson. The application is currently the subject of appeal on the grounds of non-determination and the Secretary of State is now the determining authority in this case.
- 1.2 The main issues for consideration in the determination of the application are as follows:
- Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.3 Site and surroundings
- 1.5 The application site is a two storey end-of-terrace dwelling with rooms in the roof. The surrounding area is residential in character with a large supermarket and associated car park just to the south and west.
- 1.6 The Proposal
- 1.7 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application
- 1.8 Planning History
- 1.9 The change of use from House in C3 Dwellinghouse to purposes falling within Class C3 (dwelling house) or Class C4 (House in Multiple Occupation) was permitted in 2021 under planning ref: 21/01143/FUL.
- 1.10 An application for certificate of lawful development for the installation of dormer to the western roofslope (to facilitate loft conversion) was refused in 2021 under planning ref: 21/01199/CPL.

- 1.11 The refused was due to the dormer being located on the primary frontage of the property. This decision was appealed and the appeal dismissed.

## **2.0 POLICY CONTEXT**

- 2.0 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

## **3.0 CONSULTATIONS**

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.

## **4.0 REPRESENTATIONS**

- 4.1 None received.

## **5.0 COMMENT**

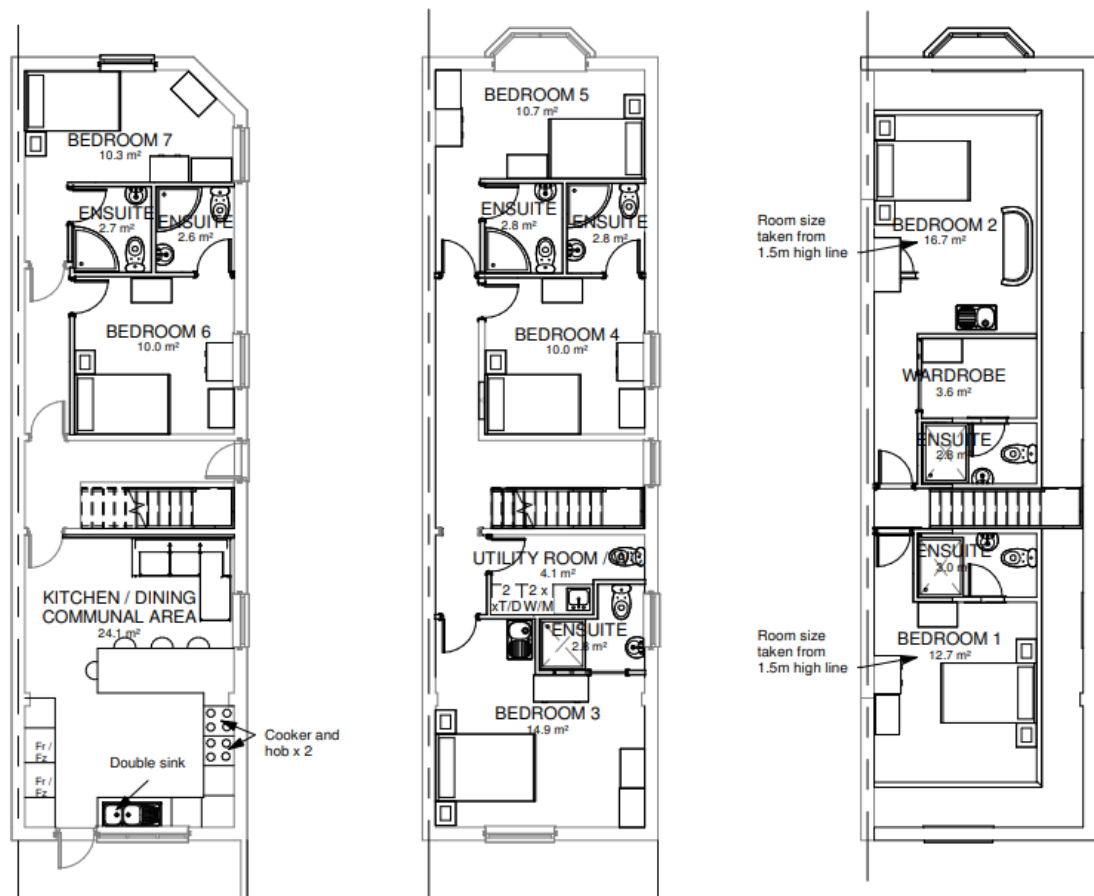
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

### **5.2 Principle**

- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 3 HMOs out of 58 properties, a percentage of 5.17%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

- 5.5 This site doesn't currently benefit from a Licence, though an application for a license for 7 occupants was received on 22/06/2022, though has yet to be issued.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	12.7m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	3m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	16.7m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	3.6m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	14.9m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	10m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	10.7m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B5	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	10m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B6	2.6m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	10.3m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B7	2.7m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	24m <sup>2</sup>	22.5m <sup>2</sup>



- 5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards within the HMO SPD, at para 2.6, which advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m<sup>2</sup>) for combined living accommodation in circumstances where all bedrooms are at least 10m<sup>2</sup> and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment
- 5.8 It is also noted that the ensuites for bedroom 6 and 7 are marginally undersized, however given the otherwise acceptable nature of the layout, this is not considered to be sufficient justification for a refusal. It should also be noted
- 5.9 Amenity and Parking
- 5.8 The proposal would increase the occupancy of the existing HMO by 1 occupants. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.
- 5.10 Other Material Considerations
- 5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to



either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.

5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as an HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.

#### 5.13 Impact on Special Protection Areas

5.14 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

#### 5.15 Community Infrastructure Levy (CIL)

5.16 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.

#### Human Rights and the Public Sector Equality Duty ("PSED")

5.17 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.

5.18 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relation between those who share a relevant protected characteristic and those who don't. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered that the officer's recommendation would breach the Council's obligations under the Equality Act 2010

## **6.0 CONCLUSION**

6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However, notwithstanding the compliance or otherwise of the proposal with the polices of the Local Plan it is noted that the on the details of this case the

changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.

- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, the committee can note that the merits of the proposed use comply fully with the associated guidance regarding the relevant local plan policies in respect of room sizes to support a good standard of living, the Committee would therefore need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

## **RECOMMENDATION**

That the Secretary of State be advised that Portsmouth City Council Planning Committee resolve to grant unconditional planning permission

**Conditions: None**

22/00448/FUL

WARD: FRATTON

178 WALMER ROAD, PORTSMOUTH, PO1 5AU

**CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPANCY (CLASS C4) TO SEVEN PERSON HOUSE IN MULTIPLE OCCUPANCY (SUI GENERIS).**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R907LMOIY600](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R907LMOIY600)

**Application Submitted By:**

Applecore PDM Ltd

**On behalf of:**

Staltosi Property Limited

**RDD:** 4th April 2022

**LDD:** 31st May 2022

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson.
- 1.2 The application is currently the subject of appeal on the grounds of non-determination and the Secretary of State is now the determining authority in this case.
- 1.3 The main issues for consideration in the determination of the application are as follows:
  - Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.4 Site and surroundings
- 1.5 The application site was originally a two-storey terraced dwelling, but has had the loft enlarged under a Permitted Development roof extension, and a single-storey rear extension provided under the consent 19/00099/GPDC (see below). The property is situated in a predominately residential area.
- 1.6 The Proposal
- 1.7 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use as a HMO with up to six individuals living together, to allow up to seven individuals to live together as an HMO. There would be various internal changes to the property, and the overall, proposed room sizes and floor arrangements are set out later in this report.
- 1.8 Planning History
- 1.9 19/00099/GPDC, Construction of single storey rear extension. No neighbour representations received, proposal therefore did not require prior approval, 5/11/19.

- 1.10 19/01739/FUL, [Change of use from house in multiple occupation \(Class C4\) to purposes falling within Class C3 \(dwellinghouse\) and Class C4 \(house in multiple occupation\)](#), approved 22/1/20.
- 1.11 20/01002/FUL, [Change of use from purposes falling within a Class C4 \(house in multiple occupancy\) to house in multiple occupancy for more than 6 persons \(Sui Generis\)](#), application withdrawn 1/4/22.

## **2.0 POLICY CONTEXT**

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Nutrient Neutral Mitigation Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

## **3.0 CONSULTATIONS**

- 3.1 Private Sector Housing: The proposal would require to be licenced under Part 2, Housing Act 2004. The ensuite to Bedroom 3 is too small (2.73sqm, the standard is 2.74sqm).

## **4.0 REPRESENTATIONS**

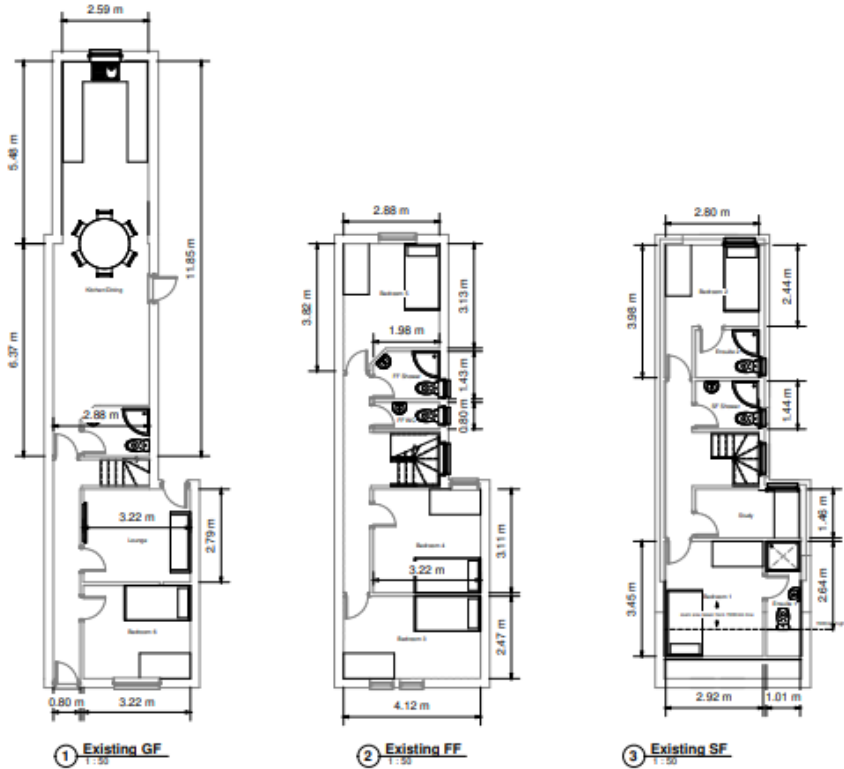
- 4.1 None received.

## **5.0 COMMENT**

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by one person. As such the application is not considered on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 10 HMOs out of 62 properties, a percentage of 16%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this

proposal does not involve the creation of a new HMO these considerations are not brought into effect.

- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This is a five year licence valid from 14/10/2020.



Existing plans



Proposed plans

5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
<b>GROUND FLOOR</b>		
Bedroom 7	8.94 m <sup>2</sup> (including walk-in wardrobe of 1.27 m <sup>2</sup> )	6.51 m <sup>2</sup>
Bedroom 6	7.67 m <sup>2</sup>	6.51 m <sup>2</sup>
WC, shared	1.27 m <sup>2</sup>	1.17 m <sup>2</sup>
Combined Living Space	34.01 m <sup>2</sup>	34 m <sup>2</sup>
<b>FIRST FLOOR</b>		
Bedroom 5	8.19 m <sup>2</sup>	6.51 m <sup>2</sup>
Bed 5 ensuite shower room	2.74 m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 4	9.01 m <sup>2</sup>	6.51 m <sup>2</sup>
Bedroom 3	9.54 m <sup>2</sup>	6.51 m <sup>2</sup>

Bed 3 ensuite shower room	2.73 m2	2.74 m2
Shower room A, shared	2.74 m2	2.74 m2
SECOND FLOOR		
Bedroom 2	8.05 m2	6.51 m2
Bed 2 ensuite shower room	2.74 m2	2.74 m2
Bedroom 1	9.59 m2	6.51 m2
Bed 1 ensuite shower room	2.76 m2	2.74 m2
Shower room B, shared	2.74 m2	2.74 m2
Shower room C, shared	2.74 m2	2.74 m2

5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards. The 0.01sqm shortfall for the ensuite shower room for Bedroom 3 is negligible. In any event, the requirement is for two bathrooms and two WCs (one WC can be separate), and the proposal has *three* shared bathrooms, *and* four ensuites (and a shared WC). On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment

#### 5.8 Amenity and Parking

5.8 The proposal would increase the occupancy of the existing HMO by 1 occupants. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.

5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently, the proposal remains in accordance with the Council's adopted guidance on parking provision.

#### 5.10 Other Material Considerations

5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these

examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the Solent Special Protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.

5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as an HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.

#### 5.13 Impact on Special Protection Areas

5.14 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

#### Community Infrastructure Levy (CIL)

5.15 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.

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5.16 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.

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## **6.0 CONCLUSION**

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However, notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that the on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, while the merits of the proposed use do not comply fully with the associated guidance regarding the relevant local plan policies in respect of a minor infraction of room sizes to support a good standard of living, officers are satisfied that the amount and configuration of the dwelling does not create an unacceptable living environment, the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

## **RECOMMENDATION**

That the Secretary of State be advised that Portsmouth City Council Planning Committee resolve to grant unconditional planning permission

**Conditions: None**

**END OF REPORT**

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