



# NOTICE OF MEETING

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## PLANNING COMMITTEE

**WEDNESDAY, 28 SEPTEMBER 2022 AT 10.30 AM**

**COUNCIL CHAMBER - THE GUILDHALL, PORTSMOUTH**

Telephone enquiries to Democratic Services - Tel 023 9283 4870

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.

### **Public health guidance for staff and the public due to Winter coughs, colds and viruses, including Covid-19**

- Following the government announcement 'Living with Covid-19' made on 21 February and the end of universal free testing from 1 April, attendees are no longer required to undertake any 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.
- We strongly recommend that attendees should be double vaccinated and have received any boosters they are eligible for.
- If unwell 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 still 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 protects us from coughs, colds and winter viruses, including Covid-19.
- 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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**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

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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**

### **Meeting information: Risk assessment for Council Chamber**

### **Apologies**

### **Declaration of Members' Interests**

### **Minutes of previous meeting held on 31 August 2022 (Pages 7 - 20)**

RECOMMENDED that the minutes of the meeting held on 31 August 2022 be approved as a correct record.

### **Planning applications**

#### **19/01849/FUL - 32 Norman Road (Pages 21 - 26)**

Change of use from house in multiple occupation (Class C4) to 7 person, seven bedroom, house in multiple occupation (sui generis) (resubmission of 18/01429/FUL)

#### **20/00921/FUL - 237 Fawcett Road (Pages 27 - 32)**

Change of use from house in multiple occupation (Class C4) to house in multiple occupation (sui generis)

**20/01118/FUL - 44 Hudson Road (Pages 33 - 40)**

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)

**20/00997/FUL - 57 Orchard Road (Pages 41 - 48)**

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)

**20/01199/FUL - 41 Margate Road (Pages 49 - 54)**

Change of use from purposes falling within Class C4 (HMO) use to (HMO) use for more than six persons (sui generis).

**21/00071/FUL - 305 Fawcett Road (Pages 55 - 60)**

Change of use from house of multiple occupation (Class C4) to seven bedroom/seven person house of multiple occupation (sui generis) (resubmission of 19/01815/FUL)

**21/00490/FUL - 33 Hudson Road (Pages 61 - 66)**

Change of use from dwelling house (Class C3) or house in multiple occupation (Class C4) to house in multiple occupation for seven occupants over seven bedrooms (sui generis)

**21/01803/FUL - 18 Pains Road (Pages 67 - 72)**

Change of use from purposes falling within Class C4 (house in multiple occupation) to an 8 bedroom house in multiple occupation (sui generis) (resubmission of 20/00996/FUL)

**22/00510/FUL - 327 Queens Road (Pages 73 - 80)**

Change of use from Class C3 (dwelling house)/Class C4 (house in multiple occupation) to 7 person house in multiple occupation (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 is made to webcast this meeting, should technical or other difficulties occur, the meeting will continue without being webcast via the Council's website.

# 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

# Agenda Item 3

MINUTES OF THE MEETING of the Planning Committee held on Wednesday, 31 August 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) Chris Attwell Hugh Mason Robert New Darren Sanders Russell Simpson John Smith Linda Symes Gerald Vernon-Jackson
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## Welcome

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

## Guildhall, Fire Procedure

The Chair explained to all present the procedures for the meeting and the fire evacuation procedures including where to assemble and how to evacuate the building.

## 124. Apologies (AI 1)

Apologies were received from Councillor George Fielding.

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

There were no declarations of interest.

In the interests of openness and transparency, Councillor Sanders made a voluntary declaration to those present that in relation to Agenda Item 1 (111 Havant Road Portsmouth PO6 2AH) he has a mother living in a care home on Havant Road and in relation to Agenda Item 7 (2 Chalkridge Road, Portsmouth, PO6 2BE) as he lives in a house of multiple occupation (HMO).

Councillor Judith Smyth clarified that although she had been listed as wishing to make a deputation on Agenda Item 6 (24 Beach Road, Southsea PO5 2JH) she no objection to this application. The call-in request, dated 4 years ago and still on file, related to HMOs on this street and did not relate to flats.

## 126. Minutes of previous meeting held on 10 August 2022 (AI 3)

**RESOLVED** that the minutes of the Planning Committee held on 10 August 2022 be agreed as a correct record.

## PLANNING APPLICATIONS

The Committee agreed to change the order of business to hear Agenda Item 8, 22/00214/FUL - 2 Capstan House, Tower Street, Portsmouth PO1 2JR first.

The Supplementary Matters report can be viewed on the Council's website at [\(Public Pack\)Supplementary matters report Agenda Supplement for Planning Committee, 31/08/2022 10:30 \(portsmouth.gov.uk\)](#)

Deputations are not minuted but can be viewed on the Council's website at: [Agenda for Planning Committee on Wednesday, 31<sup>st</sup> August, 2022, 10.30 am Portsmouth City Council](#)

### **127. 21/01726/FUL - 111 Havant Road Portsmouth PO6 2AH**

Construction of five-storey building to provide 55 retirement apartments (use class C3), with associated vehicle access from Havant Road, car parking and landscaping, after demolition of existing car showroom and dwelling (resubmission of 21/00684/FUL).

The Development Management Lead presented the report and informed the Committee that this was a re-submission of planning application 21/00684/FUL. The application was refused in November 2021 under delegated powers and allowed at appeal in July 2022. Although planning permission has been achieved, the applicant wishes to pursue this second application to address feedback received at the time of the first application. If this second application was granted by the Committee, the applicant would have the choice of which application to implement.

The Development Management Lead drew attention to the additional information contained in the Supplementary Matters report.

Deputations were heard from Damien Lynch (agent).

#### Members' questions

In response to questions, the Development Management Lead clarified that:

- Drainage and flooding mitigation measures to address concerns about rainwater in sewers and the possibility of sewage flowing into Langstone Harbour is addressed by Condition 8. The Coastal Partnership and Environment Agency had been consulted and had no objection.
- The overall height of the building of the previous application was deemed acceptable to the Planning Inspector. Although this scheme has 5 storeys under a flat roof (rather than 4 storeys, a pitched roof and void), its overall height is similar to the previous application.
- The Council's independent advisors have assessed the development will yield a profit of 19.2%, slightly less than the 20% standard.
- The applicant has not indicated which of the two applications it prefers although the application before the Committee has a better layout and one extra unit.



- Appropriate nitrate mitigation is dealt with by condition on both applications for this site.
- The matter of affordable housing and financial viability was addressed in the first application. The Local Planning Authority (LPA) had viability independently assessed and accepted that the scheme could not provide affordable housing and an acceptable degree of profit. The applicant has provided a Viability Appraisal with a nil affordable housing contribution. Overall, the outcome is consistent with the previously assessed scheme and therefore the nil approach to affordable housing provisions is also accepted in this instance.

In relation to members questions about rainwater run-off, the Agent informed the Committee that the Drainage Strategy ensured attenuation on site. He also confirmed that the footprint of the application before the Committee was smaller than the previous application, the L-section of the building has been removed and it has been set back within the site.

#### Members' comments

- Concerns about the large number of retirement complexes in this area of Drayton were raised and with the suggestion that PCS19 (mixed community) was being pushed to its limit.
- This design is better than the previous application in terms of its overall design, landscaping and provision for residents including balconies. Rooms sizes are acceptable, and this scheme has a smaller overall footprint and better environmental measures than the previous application.

It was proposed that an informative be added to ask the applicant to explore affordable retirement housing within this property as local residents were in danger of being priced out of the market. The Legal Advisor advised that the matter of affordable housing had been previously addressed and a Viability Appraisal had been undertaken. As a result, she advised that an informative should not be added.

Members noted that in the past, members of the Planning Committee had sight of viability appraisals and suggested that this would be useful in future. The Chair commented that the applicant had provided a Viability Appraisal for the previous application and that the Planning Inspector had commented on this aspect of the Local Plan. The Development Management Lead noted that full viability information would not normally come to Committee and that it had been reviewed by independent consultants and addressed in summary in the Officer Report.

#### **RESOLVED to:**

- 1. Grant delegated authority to the Assistant Director of Planning & Economic Growth to grant Conditional Permission subject to completion of a Legal Agreement to secure the following:**
  - (i) Mitigation of the development with respect to the recreational disturbance to the Special Protection Areas.**

- (ii) Nitrate neutrality mitigation for the Special protection Areas;
2. Add one further condition relating to appropriate SPA Mitigation Nitrates as set out in Appendix 1 of the Supplementary Matters List;
  3. Grant delegated authority to the Assistant Director of Planning & Economic Growth to add/amend conditions where necessary;
  4. Grant delegated authority to the Assistant Director of Planning & Economic Growth to refuse planning permission if a Legal Agreement to secure the development the mitigation of the development with respect to the Special Protection Areas pursuant to Recommendation 1 has not been completed within three months of the date of this resolution.

**It was also agreed to add the Reasons attached to each condition, as per Appendix 1 of the Supplementary Matters report.**

**128. 21/01102/FUL - Former Car Park, Staunton Street, Portsmouth**

Construction of part one, part two, part three, part four storey building to form student halls of residence (class C1) comprising 40no. Studio bedrooms, common room, gym, and associated refuse and cycle storage.

The Development Management Lead drew attention to the additional information contained in the Supplementary Matters report.

Deputations were heard from:

Kevin Gissing (objecting) read out by Councillor Russell Simpson as he was not in attendance

Matthew Pickup (agent)

Councillor Cal Corkery had been expected to make a deputation, but he was not in attendance.

Members' questions

In response to questions, the Development Management Lead clarified that:

- There are no windows on the northern and southern elevations and therefore no issue of over-looking.
- He was not aware of applications by other developers to convert student halls of residents into flats because of an oversupply of student accommodation in the city. The pandemic has caused some flux in the demand for accommodation as students consider where they live and study.
- During the planning application process, developers are asked informally about future conversion plans. This is not a requirement but can be useful as there are different space standards for student halls and individual dwellings. This developer has informally shared plans for flat sub-division and flats with balconies or small gardens on ground floor, indicating the building could be used for a different occupation that students, were the need to arise.
- If a disabled student required parking for a car on a temporary or permanent basis, the developer would provide the flexibility to provide this. Disability access is ensured through building regulations.

- The separation between the northern wall of the western section of the development and the nearest house is 8.22m.
- The installation of solar panels and other sustainability measures are controlled by building regulation and which are improving and becoming more robust all the time. The development could accommodate solar panels and the applicant will decide how best to meet sustainability matters.
- The separation of run off rainwater and sewage will be covered by the Drainage Strategy (Condition 11).
- In relation to light, a shadow analysis indicated that neighbouring gardens would receive direct sunlight most of the time, except in winter, and that it was therefore the view of officers that this was within reasonable bounds.

The Agent, in response to members' questions, informed the Committee that it is a condition of the lease that student would not bring cars to the city. Following a suggestion that this be controlled by condition to ensure this practice would continue following a change in ownership, the Legal Advisor and the Development Management Lead advised that it has been established by case law that it would not be lawful to add a such a condition and that all those who manage student halls use a Student Management Agreement and these run from operator to operator (by virtue of condition 15).

#### Members' comments

- There had been credible media reports of developers looking to amend applications to change the use of buildings following a drop in demand. It was noted that the Council had purchased three empty student halls.
- Some members commented that there were no windows on the north elevation, although the amount of light to the neighbours' gardens would decrease slightly.
- It was noted that the applicant has undertaken to ensure no cars.

It was proposed that the application be refused on the grounds of residential amenity of near neighbours, particularly the objector, including balanced mixed community PCS23. It was suggested that the oversupply of student accommodation be added as an additional reason for refusal.

The Legal Advisor advised that the relevant policy was PCS23 (design and conservation). PCS20 relates to HMOs and requires there to be a mixed and balanced community. Policy PCS23 does not contain any policy requirement for a mixed and balanced community-.

The Development Management Lead commented that amenity had been addressed in his presentation to the Committee and that notwithstanding the proximity of Wingfield House, the application was unlikely to cause an imbalance in the community. Supply and demand is a matter for the market and this application had been made in the summer of 2021 when the market was more uncertain than it is now. The applicant has reduced the scale of the application and if necessary in the future, the developer could apply for a change of use. Contrary to his earlier understanding, he was now aware that

two applications have indeed been received where developers have sought a 12-month relaxation to allow use of the sites outside of student use.

Some members proposed and seconded the officer's recommendation with the suggestion that an advisory be added stating that the Committee expected the applicant to be cognisant of the need to reduce demand on the public electricity supply. The Legal Advisor advised that although building regulations control sustainability, the Committee could add an advisory to this effect.

Members then went on to consider the proposal to refuse planning permission. This proposal failed at the vote.

Following the vote, the issue of supply which potentially threatens the viability of the scheme was raised with the suggestion that an informative be added asking the developer to conduct an annual viability check every 12 months in consultation with the University. The Legal Advisor advised that it would not be appropriate to consider viability once the development had been built.

It was noted that further discussion with officers about the amount of student accommodation in the city would be useful.

Members then went on to consider the recommendation to grant planning permission and **RESOLVED to:**

- 1. Grant delegated authority to the Assistant Director of Planning & Economic Growth to grant Conditional Permission subject to completion of a Legal Agreement to secure the following:**
  - i) Mitigation of the development with respect to the recreational disturbance to the Special Protection Areas.**
  - ii) Nitrate neutrality mitigation for the Special protection Areas**
  - iii) The future control of the land use as student halls as required by the Student Halls of Residence Supplementary Planning Guidance;**
- 2. Attach the extra condition set out in Appendix 2 of the Supplementary Matters report to address the architectural detailing of the proposed building to ensure the quality of the design outcome.**
- 3. That delegated authority be granted to the Assistant Director of Planning & Economic Growth to add/amend conditions where necessary;**
- 4. That delegated authority be granted to the Assistant Director of Planning & Economic Growth to refuse planning permission if a Legal Agreement to secure the development the mitigation of the development with respect to the Special Protection Areas pursuant to Recommendation I has not been completed within three months of the date of this resolution.**

**It was also agreed to add an informative to request the applicant to consider sustainable construction and the energy efficiency of the development.**

### **129. 21/00935/FUL - 24 Beach Road Southsea PO5 2JH**

Conversion from guest house (class C1) to form 3 no. One bedroom self contained flats (class C3); alterations to include second floor rear extension and enlarged rear dormer; replacement of existing window with French door to ground floor rear elevation.

The Development Management Lead drew attention to the additional information contained in the Supplementary Matters report.

There were no deputations. Katie Mayers had been due to make a deputation, but she was not present.

#### Members' questions

In response to questions, the Development Management Lead clarified that:

- Regarding the height of the restricted ceiling height within the bedroom and kitchen of Unit 3 on the second floor flat, the case officer would have checked that the space under the eaves (below 1.5m) was not included in the space calculation.
- The property had been a 5 bedroom guest house, the application was for three 1 bedroom flats and as such was not an HMO application.
- As a guest house the property would be entitled to 5 car parking permits; each flat would be able to apply for two permits and there was one off road car parking space.
- The minimum space standard for a 1 bedroom flat was 37SQM and Unit 3 was 37SQM.
- The height of the eaves (measured by eye using photographs in the officer's presentation) seemed to be 1.5m, therefore met the standard and was acceptable.

Some members expressed concerns about the layout of the kitchen in Unit 3, specifically the cooker under the sloping ceiling.

Members agreed to defer the item to the end of the agenda so that the height of the ceiling and associated floor area could be checked.

Consideration of the Item resumed at 2.37pm without Councillors Robert New and Linda Symes as they had left the meeting earlier.

The Development Management Lead confirmed that Unit 3 conformed to the minimum space standards (37SQM). The dotted lines on the plan indicated some additional space in the bedroom and kitchen where the eaves dropped below 1.5m but this had not been included in the space calculation. The bed and some kitchen units are in this additional space. The applicant could amend the proposed layout of the kitchen if necessary or wanted.

#### Members' comments

- Some members continued to express reservations about the kitchen layout, including the location of the cooker and fridge/freezer.

Members proposed adding a condition to limit the occupation of Units 2 and 3 to one person each as the plans indicated that these units were for one person. The Development Management Lead commented that this may not be enforceable but could accept the extra condition.

**RESOLVED to:**

- 1. Grant delegated authority to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to:  
(a) receipt of the positive response of Natural England to the Local Planning Authority's 'Appropriate Assessment', and;  
(b) the satisfactory completion of a Legal Agreement to secure the necessary mitigation for the effects of recreational disturbance on the Special Protection Areas;  
(c) include wording set out in the Supplementary Matters report within Condition 5 (Car Parking) to best regulate water run-off from the property forecourt as the application site is located in Flood Zone 3 and to ensure that the development accords with the aims of policies PCS12 and PCS17 of the Portsmouth Plan 2012;**
- 2. Grant delegated authority to the Assistant Director of Planning & Economic Growth to add/amend conditions where necessary;**
- 3. Grant delegated authority to the Assistant Director of Planning & Economic Growth to refuse planning permission if a Legal Agreement has not been satisfactorily completed within three months of the date of this resolution.**

**It was also agreed to add an extra condition limiting the occupation of units 2 and 3 to 1 person in each unit.**

The meeting adjourned at 12.40pm and resumed at 12.55pm. Councillors Robert New and Linda Symes left the meeting.

**130. 21/00624/FUL - 2 Chalkridge Road, Portsmouth, PO6 2BE**

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

The Development Management Lead presented the report and informed the Committee that should this application be approved the percentage of HMOs within the area would be 4.16%, well within the 10% threshold above which an area is considered to have a community imbalance.

The Development Management Lead drew attention to the additional information contained in the Supplementary Matters report.

A deputation was heard from Alan Kleyn (applicant). Michael Robinson (objecting) had been due to make a deputation, but he was not present.

Members' questions

In response to questions, the Development Management Lead clarified that:

- The property would require to be licenced under Part 2 of the Housing Act 2002 and that the layout and sizes proposed would be inspected by licensing.
- There is sufficient off road parking in the area and most houses also have off road parking.
- The shared driveway with No.4 Chalkridge Road would be retained, and no parking would be permitted on the driveway by way of property covenant or informal agreement between neighbours so as to retain access to the remaining garage next door.

#### Members' comments

- The application meets minimum space standards and was under the HMO limit.

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

#### **131. 21/01717/FUL - 58 Gladys Avenue Portsmouth PO2 9BQ**

Change of use from dwelling house (class C3) to purposes falling within class C3 (dwelling house) or class C4 (house of multiple occupation).

The Development Management Lead presented the report and informed the Committee that should this application be approved the percentage of HMOs within the area would be 5.08% (increased from 3.39%), within the 10% threshold above which an area is considered to have a community imbalance. The bedrooms meet the required space standards including the ensuites. This application is subject to a non-determination appeal.

The Development Management Lead drew attention to the additional information contained in the Supplementary Matters report.

A deputation was heard from Simon Hill (on behalf of the applicant). Councillor Daniel Wemyss had been due to make a deputation, but was not present.

#### Members' questions

In response to questions, the Development Management Lead clarified that:

- All ensuites comply with space standards for ensuites and this was clarified within the Supplementary Matters report.
- The conservatory will be replaced with a solid brick built structure on same footprint as the existing structure.
- Regarding the repurposing of rooms and impact on neighbours, there will be some structural work to the rear of the property and there would be some remodelling required, particularly when creating the ensuites.

#### Members' comments

- Some members expressed concern about the potential 'domino effect' of additional cars impacting on parking in neighbouring roads as Gladys Avenue has restricted parking due to passing places and bus stops.
- Portsmouth has one of the most stringent regimes in monitoring HMOs and it would require a change in the law to make further changes.

**RESOLVED that the position of the Local Planning Authority is that if the appeal for non-determination had not been submitted, it would have granted planning permission, with the Conditions set out in the published report.**

**132. 22/00808/FUL - 22 Burlington Road Portsmouth PO2 0DP**

Change of use from dwelling house (class C3) to purposes falling within class C4 (house in multiple occupation) or class C3 (dwelling house).

The Development Management Lead presented the report and informed the Committee that should this application be approved the percentage of HMOs within the area would be 5.01% which is within the 10% threshold above which an area is considered to have a community imbalance. The bedrooms are on or over the required space standards and the general layout is acceptable.

The Development Management Lead drew attention to the additional information contained in the Supplementary Matters report.

A deputation was heard from Simon Hill (on behalf of the applicant).

Members' questions

None.

Members' comments

- Some members asked to see parking stress surveys in the future if possible.
- The potential for planning officers to ask those adding house extensions under permitted development rights if they plan to subsequently apply for change of use from a dwelling house to an HMO was mooted.

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

**133. 22/00085/FUL - Voyager Park North Portfield Road Portsmouth PO3 5FX**

Construction of 2 buildings covering total of 3850sqm floorspace (gross external area) in 3 units, for use as general industrial purposes (class B2), storage & distribution (class B8) and/or other industrial purposes (class E(g)(iii)); with ancillary offices, associated car parking, service yard and alteration to vehicular access.

The Development Management Lead presented the report outlining the proposed application, the planning history of the site and a summary of the main issues relating to the application.

Members' questions

In response to questions, the Development Management Lead clarified that:

- Car parking proposed is net minus one space short of the guidelines and that given all the other advantages of the application this was deemed acceptable.



- The applicant is required to enter into a Section 106 Agreement to secure a Travel Plan to encourage sustainable travel.
- A CCTV survey check of the sewers had been undertaken and it was noted that water will be channelled away to Great Salterns Lake and eventually to the harbour. The Environment Agency's concerns would be controlled by conditions 3, 4 , 5 and 7 for construction and the building and would protect controlled waters including contamination risk to Great Salterns Lake. On-going by verification reports and site visits will provide monitoring.

#### Members' comments

- Sustainable travel should be encouraged, and it was suggested that an informative be added to ask the developer to consider the Bus Service Improvement Plan as part of the Travel Plan requirement.

#### **RESOLVED to:**

- 1. Grant delegated authority to grant Conditional Permission subject to the applicant first entering into a Section 106 Agreement to secure:  
(1) an Employment and Skills Plan and  
(2) Travel Plan including contribution to monitoring of £5,000;**
- 2. Grant delegated authority to the Assistant Director of Planning & Economic Growth to add/amend conditions where necessary;**
- 3. Grant delegated authority to the Assistant Director of Planning & Economic Growth to refuse planning permission if the legal agreement has not been completed within three months of the date of the resolution.**

**In addition, it was agreed to add an informative to ask the developer to consider the Bus- Service Improvement Plan as part of the Travel Plan requirement.**

#### **134. 22/00214/FUL - 2 Capstan House, Tower Street, Portsmouth PO1 2JR**

Reconstruct third floor in revised form to include roof terrace; projecting window at second floor level; second/third floor rear height extension and installation of doors to 'Wyllie' arch at rear.

The Development Management Lead drew attention to the additional information contained in the Supplementary Matters report.

A deputation was heard from Mr David Cornelius (on behalf of the applicant).

#### Members' questions

In response to questions, the Development Management Lead clarified that:

- Changes to the rear eastern stairwell facing Broad Street would result in a slight increase in height. However, this was limited and the impact on light to the neighbouring property therefore minimal.
- The new roof would be metal zinc which would result in a smart grey appearance.

### Members' comments

- This is a sensitive application.

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

**135. 22/00958/CS3 - Unicorn Road, Cascades Approach, Marketway and Charlotte Street, Portsmouth, PO1 4RL**

Construction of a new section of carriageway to create a two-way bus lane along Unicorn Road into Cascades Approach, with new cycle lane provision, lighting and drainage, and realignment of Cascades Car Park Entrance. Associated highway improvement works, along Unicorn Road, Marketway and Charlotte Street, including the reconfiguration of the existing highway and amendments to Unicorn Road junction from the Portsmouth Naval Base, removal and provision of new crossing points and cycle lane provision. Tree removal, landscaping and associated engineering and temporary construction works including a temporary site office.

The Chair informed the Planning Committee that this is unusual in that it is an application for roadworks which comprises one of four projects forming part of the South East Hampshire Rapid Transit (SEHRT) programme and forms part of a wider development of the city centre.

The Development Management Lead presented the report and informed the Committee that benefits included increased bus services, bus service punctuality and shorter bus journeys which will help address sustainable travel as well as economic development. The Development Management Lead drew attention to the additional information contained in the Supplementary Matters report.

A deputation was heard from Martin Lavers, Assistant Director Regeneration, Portsmouth City Council (applicant). Kim Cohen (agent) was present but did not speak.

### Members' questions

In response to questions, the Assistant Director Regeneration clarified that:

- Heavy use of Cascades car park potentially interfering with buses due to tailbacks has been considered. Overall, the benefits of bus lanes outweigh the disbenefit of possible occasional tailbacks. The bus companies had been consulted and although they would prefer no cars there, that is not an option.
- The proposals will bring benefits to the area before the widening of Charlotte Street. Future plans include an ambition to widen Charlotte Street to have buses going in both directions, but the current benefit is for buses travelling west to east.
- When the benefits of the whole SEHRT scheme are taken together, bus punctuality improvements are significant and this scheme is a step in right direction for sustainable travel including for pedestrians and cyclists.
- Car user access to Marketway is not changed with this.

The Development Management Lead confirmed that although there was a negative effect due to the loss of trees in the area, the applicant would only remove trees when it was unavoidable and would add trees elsewhere. This negative aspect would be outweighed by travel punctuality and sustainable travel benefits.

Members' comments

- Members noted the additional information contained in the Supplementary Matters report, agreed that there was a need to improve walking, cycling and buses in the city and expressed a hope that trees lost would be replaced elsewhere.

**RESOLVED to grant unconditional planning permission with the conditions suggested in the officer's committee report and the Supplementary Matters report.**

The meeting concluded at 2.46 pm.

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Signed by the Chair of the meeting  
Councillor Judith Smyth

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# Agenda Item 4

19/01849/FUL

WARD: CENTRAL SOUTHSEA

32 NORMAN ROAD SOUTHSEA PO4 0LP

**CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO 7 PERSON, SEVEN BEDROOM, HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS) (RESUBMISSION OF 18/01429/FUL)**

**Application Submitted By:**

Thorns Young Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Robert Leatherland

**RDD:** 6th December 2019

**LDD:** 3rd February 2020

## 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 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 but no external operational development forms part of this application
- 1.7 Planning History
- 1.8 The change of use from Class C4 (HMO) to mixed use Class C3 (Residential Dwelling)/ Class C4 (HMO) was permitted in 2014 under planning ref: 14/00118/FUL.
- 1.9 The change of use from purposes falling within Class C4 (house in multiple occupation) to a 7 bedroom house in multiple occupation (Sui Generis) was refused in 2018 under planning ref: 18/01429/FUL. The reasons for refusal were as follows:
1. *The proposed change of use from dwellinghouse (Class C3)/HMO (Class C4) to Sui-Generis HMO would fail to support a mixed and balanced community in an area already imbalanced by the level of similar such uses. The proposal is therefore contrary to Policy PCS20 of the Portsmouth Plan and the Houses in Multiple Occupation Supplementary Planning Document (July 2018).*
  2. *The proposed use of the building as a seven bedroom sui generis House in Multiple Occupation would, as a result of its undersize communal living space fail to provide the necessary space for an adequate standard of living accommodation*

*for future occupiers and would represent an overintensive use of the site. The proposal is therefore contrary to Core Planning Principles of the National Planning Policy Framework and Policies PCS20 and PCS23 of the Portsmouth Plan, including the supporting Houses in Multiple Occupation Supplementary Planning Document (July 2018).*

3. *Without appropriate mitigation the development would be likely to have a significant effect on the Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas and so is contrary to Policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended).*

1.10 The appeal against the refusal of planning permission was dismissed (26.06.2019) with the only reason for refusal upheld by the Planning Inspector being the impact upon SPA mitigation. Their concluding comments were:

1.11 *"Whilst the proposal would not lead to an imbalance in the HMOs in the surrounding community and would not harmfully affect the living conditions of future residents with regard to communal internal space provision, the proposal would be likely to harmfully affect the integrity of the SPAs considered in combination with other projects and plans."*

1.12 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 One representation has been received from a neighbouring resident raising an objection on the following grounds:

- (a) Previous appeal should have considered the increase of three residents due to external alterations.
- (b) Set a precedent for other properties in the area.
- (c) Combined impact of similar increases by 1-3 residents within other HMOs resulting in a significant increase in population density in area.
- (d) Increase in waste and recycling.

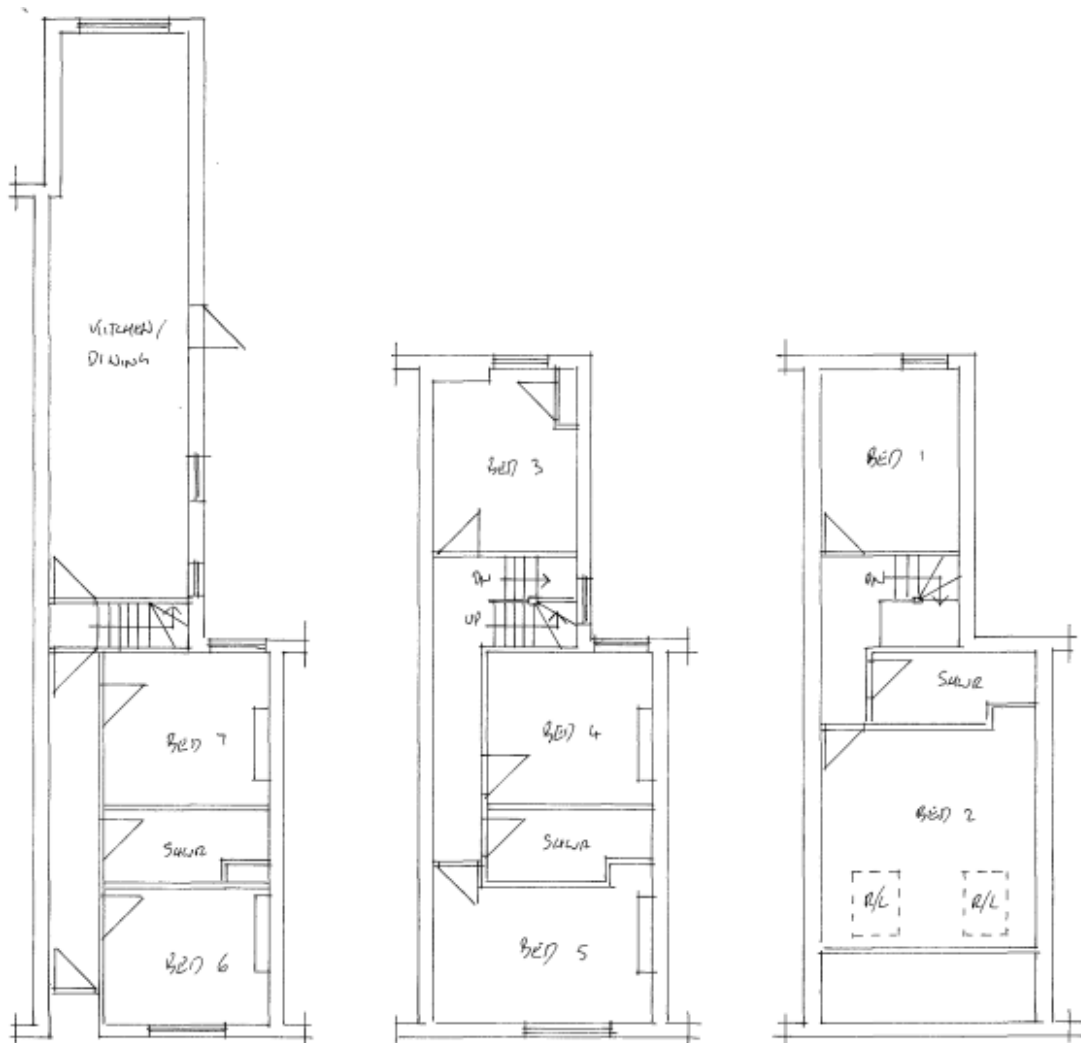
## **5.0 COMMENT**

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 31 HMOs out of 69 properties, a percentage of 44.9%. 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 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	12.68m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	8.42m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	10.34m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	8.39m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	8.75m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	10.22m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	10.22m <sup>2</sup>	6.51m <sup>2</sup>
WC	1.19m <sup>2</sup>	1.17m <sup>2</sup>
Combined Living Space	25.78m <sup>2</sup>	34m <sup>2</sup>
Bathroom 1	3.33m <sup>2</sup>	2.74m <sup>2</sup>
Bathroom 2	3.33m <sup>2</sup>	2.74m <sup>2</sup>



5.7 As is shown in the table above, the proposal results in an internal layout, which due to the size of the communal living space, does not meet the guidance provided to describe a satisfactory standard of living environment as such the proposal is not considered to comply with Local Plan policy PCS23.

5.8 With regards to the above, consideration should be had to the previous Inspectors decision on the site for the same proposal, while it was dismissed this was only on the failure to pay for SPA mitigation, which the Inspector stating *"Taking into account the proposed increase of one occupant and the living environment of the house as a whole therefore, I conclude that the proposal would not harm the living conditions of future residents with regard to the communal living space provision. As such, I find no conflict with PP Policy PCS23 which, amongst other things, requires that new development provides a good standard of living environment for neighbouring and future occupiers. PP Policy PCS20 does not refer to living standards in HMOs and is not therefore relevant to this issue."* It is however noted that this appeal decision was considered under the previous HMO SPD which required 27m<sup>2</sup> for a combined living space and as such the under provision in space was not as significant, in Policy terms.

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.
- 5.10 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 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.

## **6.0 CONCLUSION**

- 6.1 As detailed above the application is not considered to fully comply with the relevant policies of the Local Plan, however bearing in mind the previous appeal decision on the property the proposal would be considered to be on-balance acceptable. 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, associated guidance and previous appeal decision on the property, 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**

# Agenda Item 5

20/00921/FUL

WARD: CENTRAL SOUTHSEA

237 FAWCETT ROAD, SOUTHSEA PO4 0DJ

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QF0E12MOJYG00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qf0e12mojyg00)

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Appleton  
Applecore LTD

**RDD:** 13th August 2020

**LDD:** 4th February 2021

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee at 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 dwellinghouse located on the northern side of Fawcett 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 application involves an increase in occupancy levels and will involve the repurposing of internal rooms but no external operational development is to be considered in this application.

### 1.7 Planning History

1.8 Change of use from house of multiple occupancy (Class C4) to purposes falling within Class C3 (dwelling house) or C4 (house of multiple occupancy) 19/01210/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 1 representation has been received from a nearby resident objecting to the proposed scheme on the following grounds:

- a) To many HMOs within the street at present;
- b) Increased noise and disturbance concerns;
- c) Increase traffic and parking demand;
- d) Waste and rubbish concerns;
- e) 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**

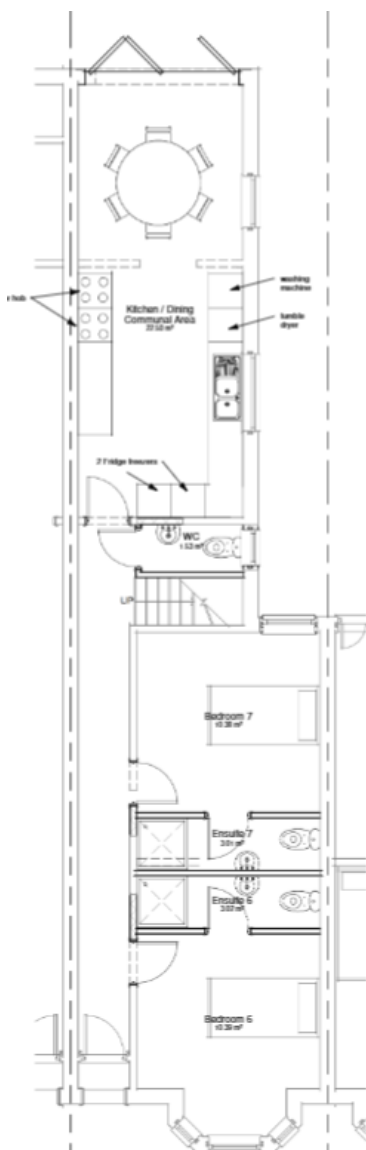
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of 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. For reference, 31% of properties within a 50m radius of the application site are known to be existing HMOs due to 27 of the 87 residential properties being in HMO use. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. 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.

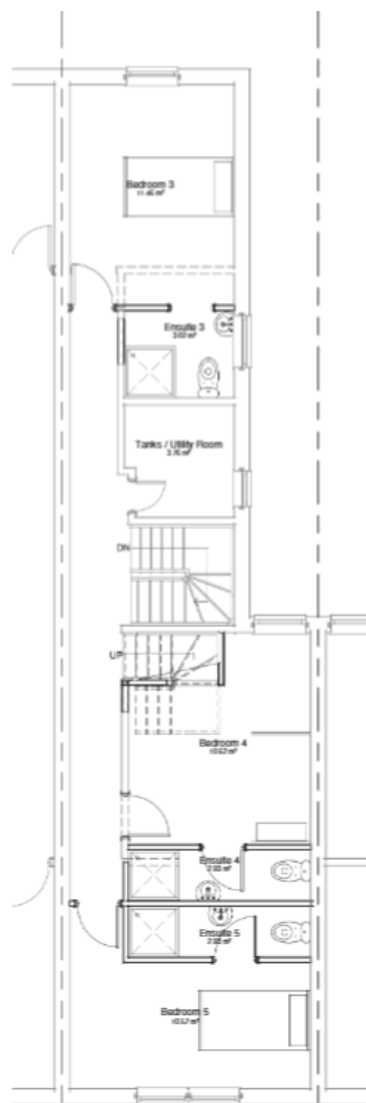
- 5.5 The sizes of bedrooms and communal areas is a material consideration. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether 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.

- 5.6 The property is Licensed for up to 5 persons by the Council's Private Sector Housing Team.
- 5.7 The property benefits from the lower requirement for combined living space due to all of the bedrooms exceeding 10msq. Each bedroom is provided with an ensuite bathroom which exceeds the standard for a shower room and a shared WC is provided on the ground floor.

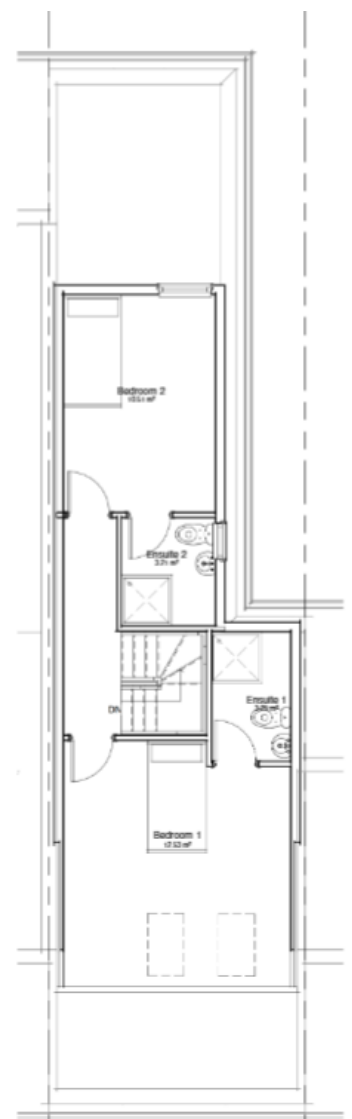
Room	Area Provided:	Required Standard:
<b>Bedroom 1</b>	<b>12.53m<sup>2</sup></b>	<b>6.51m<sup>2</sup></b>
<i>Ensuite 1</i>	<i>3.25m<sup>2</sup></i>	<i>2.74</i>
<b>Bedroom 2</b>	<b>10.51m<sup>2</sup></b>	<b>6.51m<sup>2</sup></b>
<i>Ensuite 2</i>	<i>3.21</i>	<i>2.74</i>
<b>Bedroom 3</b>	<b>11.46m<sup>2</sup></b>	<b>6.51m<sup>2</sup></b>
<i>Ensuite 3</i>	<i>3.02</i>	<i>2.74</i>
<b>Bedroom 4</b>	<b>10.62m<sup>2</sup></b>	<b>6.51m<sup>2</sup></b>
<i>Ensuite 4</i>	<i>2.93</i>	<i>2.74</i>
<b>Bedroom 5</b>	<b>10.57m<sup>2</sup></b>	<b>6.51m<sup>2</sup></b>
<i>Ensuite 5</i>	<i>2.98</i>	<i>2.74</i>
<b>Bedroom 6</b>	<b>10.39m<sup>2</sup></b>	<b>6.51m<sup>2</sup></b>
<i>Ensuite 6</i>	<i>3.02</i>	<i>2.74</i>
<b>Bedroom 7</b>	<b>8m<sup>2</sup></b>	<b>6.51m<sup>2</sup></b>
<i>Ensuite 7</i>	<i>3.01</i>	<i>2.74</i>
<b>Kitchen/Diner</b>	<b>22.50m<sup>2</sup></b>	<b>22.5m<sup>2</sup></b>
WC	1.49m <sup>2</sup>	1.17m <sup>2</sup>



1 0 - Proposed Ground Floor - Clean  
1:50



2 1 - Proposed First Floor - Clean  
1:50



3 2 - Proposed Second Floor - Clean  
1:50

- 5.7 As is shown in the table above, the internal layout of the site complies with the internal size requirements described in the HMO SPD and the provision of en-suites for every room that results in a good standard of living and amenity for occupiers and is therefore compliant with PCS20 and PCS23.
- 5.8 Amenity and Parking
- 5.9 The proposal would increase the occupancy of the existing HMO by 1-2 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 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.

#### 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 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 as the size of the resulting accommodation meets 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 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 comply with the associated guidance regarding the relevant local plan policies in respect of room sizes to support a good standard of living.

**RECOMMENDATION**

Grant unconditional planning permission.

**Conditions: None**



# Agenda Item 6

20/01118/FUL

WARD: ST THOMAS

44 HUDSON ROAD, SOUTHSEA, PORTSMOUTH, PO5 1HD.

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)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DETAILS&KEYVAL=QHKUERM0L7V00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=details&keyval=qhkuerm0l7v00)

## Application Submitted By:

Applecore PDM Ltd

## On behalf of:

Mr Simon Birmingham

RDD: 4<sup>th</sup> January 2021

LDD: 1<sup>st</sup> March 2021

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee at the request of Councillor Vernon-Jackson and due to the number of objections received.

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

### Site and surroundings

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

### The Proposal

1.4 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 room but no external operational development forms part of this application

### Planning History

1.5 The relevant planning history is listed below:

- 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)  
Ref. No: 20/01118/FUL | Received: Fri 02 Oct 2020 | Validated: Mon 04 Jan 2021 | Status: Pending Consideration
- Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse)

- Construction of single storey rear extension  
Ref. No: 19/00088/GPDC | Received: Wed 28 Aug 2019 | Validated: Wed 28 Aug 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.
- 3.2 The Highways Authority have been consulted but no comments have been received.

## **4.0 REPRESENTATIONS**

- 4.1 Three letters of objection has been received, raising the following matters:
- Constant increase in HMO intensity that is tantamount to an additional dwelling in the area and contrary to Policy PCS23;
  - Impact on residents' amenity with regard to litter, noise, car parking, fly tipping and other issues including water and drainage;
  - This is unsuitable of such a property becoming a home for 7/8 people.

## **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.

### Principle

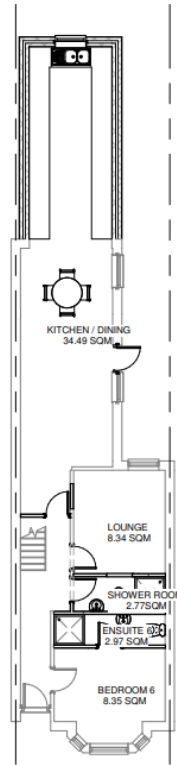
- 5.2 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of 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.
- 5.3 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 58 HMOs out of 86 properties, a percentage of 67.4%. This proposal of course has no effect on that percentage. The HMO SPD also describes 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 material to the determination of this application.

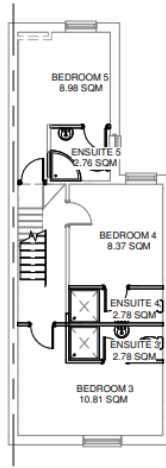
- 5.4 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 21<sup>st</sup> October 2020 and expires on 20<sup>th</sup> October 2025.
- 5.5 The repurposing of internal rooms to accommodate 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	9.89. m2	6.51 m2
Ensuite 1	2.74 m2	2.74 m2
Bedroom 2	12.43 m2	6.51 m2
Ensuite 2	2.75 m2	2.74 m2
Bedroom 3	10.81 m2	6.51 m2
Ensuite 3	2.78 m2	2.74 m2
Bedroom 4	8.37 m2	6.51 m2
Ensuite 4	2.78 m2	2.74 m2
Bedroom 5	8.98 m2	6.51 m2
Ensuite 5	2.76 m2	2.74 m2
Bedroom 6	8.35 m2	6.51 m2
Ensuite 6	2.97 m2	2.74 m2
Bedroom 7	8.34 m2	6.51 m2
Ensuite 7	2.77 m2	2.74 m2
Kitchen/Dinner (Combined Space)	34.49 m2	34 m2

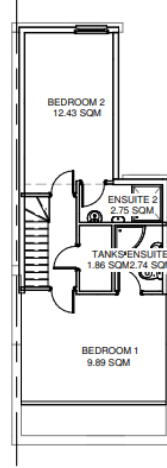
Existing Layout:



1 Existing GF SUI GEN  
1 : 100

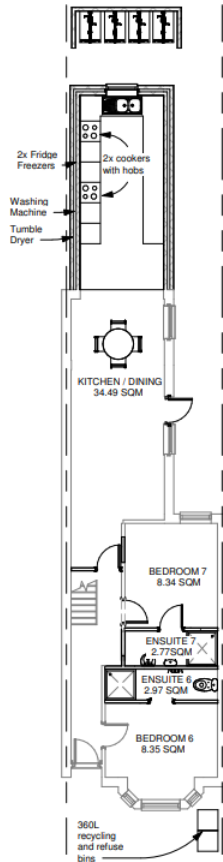


2 Existing FF SUI GEN  
1 : 100

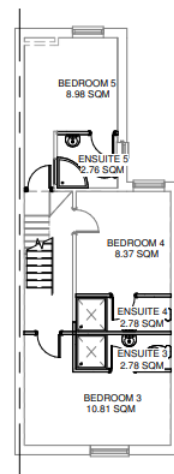


3 Existing SF SUI GEN  
1 : 100

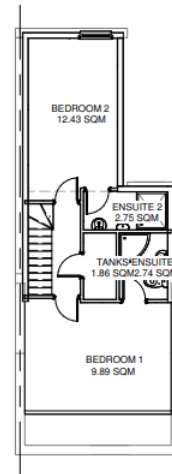
Proposed Layout:



Proposed GF SUI GEN  
1 : 100



5 Proposed FF SUI GEN  
1 : 100



6 Proposed SF SUI GEN  
1 : 100

- 5.6 As is shown in the table above, the proposal results in an internal layout that meets or exceeds the minimum internal space standards set out in the HMO SPD. Based on 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

- 5.7 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.
- 5.8 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.

#### Other Material Considerations

- 5.9 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.
- 5.10 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 lawfully carry out the change in occupation without the benefit of Planning Permission.

- 5.11 The letters of objection refer to the increase in the intensity of the HMO and the negative impacts on the amenities of residents amenity and that when considered against the other HMO's in the area that the application is tantamount to a new dwelling and 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

- 5.12 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 fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would 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)

- 5.13 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")

- 5.14 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.
- 5.15 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 meets 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. 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**

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# Agenda Item 7

20/00997/FUL

WARD:CENTRAL SOUTHSEA

57 ORCHARD ROAD SOUTHSEA PO4 0AA

**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)**

**LINK TO DOCUMENTS:**

[20/00997/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 \(SUI GENERIS\) | 57 ORCHARD ROAD SOUTHSEA PO4 0AA \(PORTSMOUTH.GOV.UK\)](https://www.portsmouth.gov.uk/planning-and-building-control/planning-application/20/00997/FUL)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

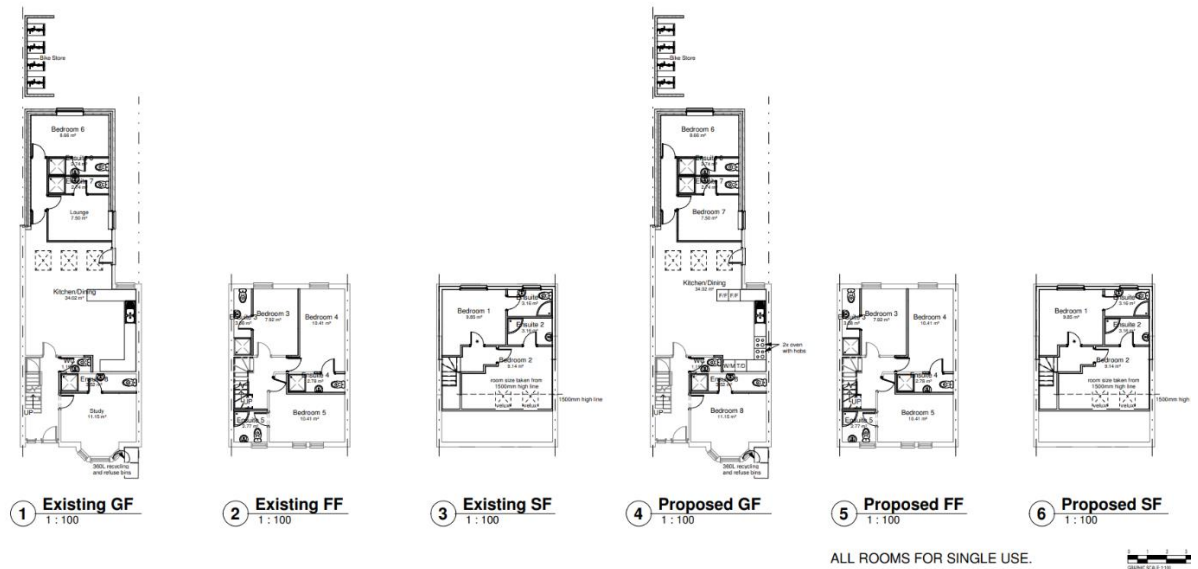
Mr Simon Birmingham

**RDD:** 3rd September 2020

**LDD:** 16th February 2021

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee because it relates to a Sui Generis (going from a 6 bed to a 8 bed) HMO.
- 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 This application relates to a two-storey, mid-terrace property located on the northern side of Orchard Road. The dwelling is separated from the road by a forecourt and to the rear of the dwelling is an enclosed garden.
- 1.5 The Proposal
- 1.6 The Applicant has sought planning permission for the change of use of the property from the current lawful use as a Class C4 House in Multiple Occupation (HMO) with up to six individuals living together, to allow up to 8 individuals to live together as an Sui Generis HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application. The existing lounge and study would be converted into bedrooms.



**Figure 1: Existing and proposed floor plans**

### 1.7 Planning History

19/00090/GPDC - Single Storey Rear Extension -Prior Approval was granted 01.10.2019

19/01385/FUL - Change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwelling house) or Class C4 (house in multiple application) - Permitted 09.09.2019

## 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: No comment received
- 3.2 Highways Engineer: No comment received

## 4.0 REPRESENTATIONS

- 4.1 None.

## 5.0 COMMENT

5.1 The main determining issues for this application relate to the following:

- The principle of Development;
- The standard of accommodation;
- Impact upon amenity neighbouring residents;
- Parking;
- Impact upon the Solent Protection Areas; and
- Any other raised matters

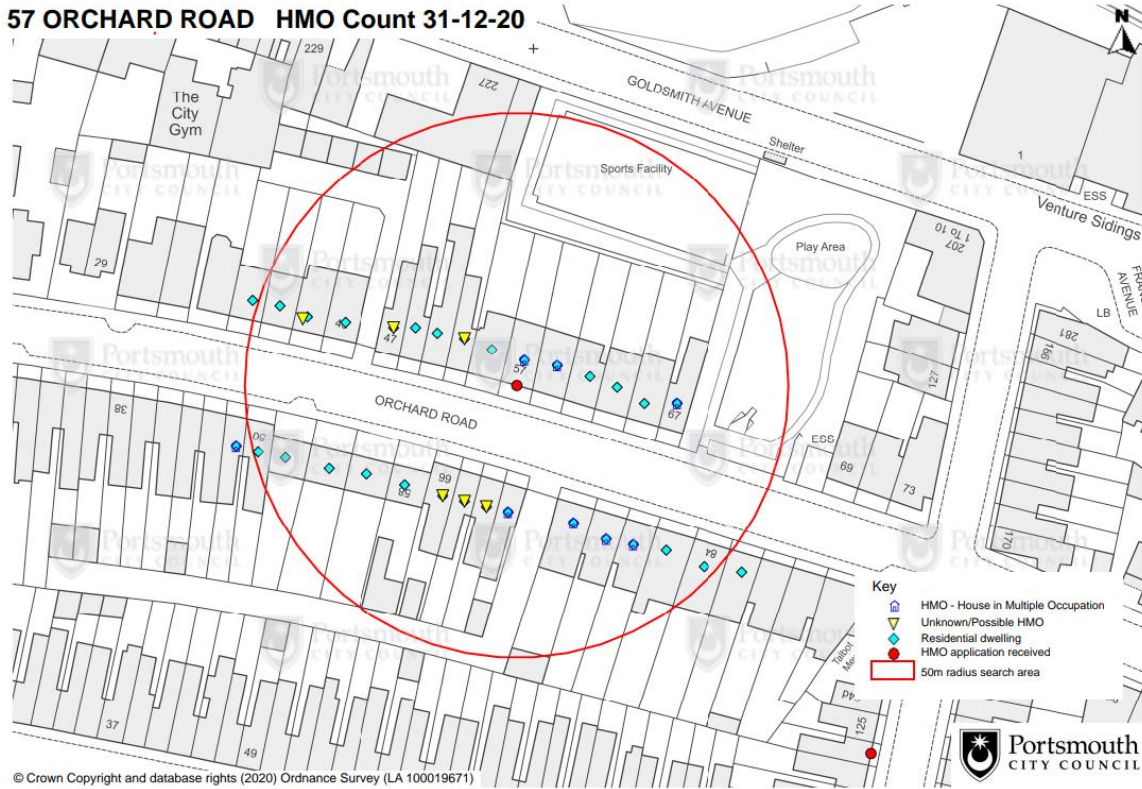
5.2 Principle

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 having been granted permission for flexible C3/C4 Use under planning permission ref 19/01385/FUL which was implemented. This 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 14 HMOs out of 31 properties, a percentage of 45.16%. 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 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:

**57 ORCHARD ROAD HMO Count 31-12-20**



**Figure 2: HMO data count (5m radius)**

**5.6 Standard of accommodation**

5.7 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	9.85m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	3.16m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	9.14m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	3.16m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	7.92m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	3.08m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	10.41m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.78m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	10.41m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B5	2.77m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	8.66m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B6	2.74m <sup>2</sup>	2.74m <sup>2</sup>

Bedroom 7	7.5m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 8	11.15m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	3.52m <sup>2</sup>	2.74m <sup>2</sup>
Combined kitchen/dining space to be retained	34.02m <sup>2</sup>	34sqm (based on 6.5m <sup>2</sup> sized bedrooms )

- 5.8 As is shown in the table above, the new bedrooms accord with the standards as set out within the HMO SPD (October 2019) and 'The Standards for Houses in Multiple Occupation' document dated September 2018. Three out of the eight bedrooms would exceed 10sqm and the remaining five would measure between 7.5sqm and 9.85sqm. Given the bedrooms measure between 7.5sqm and 11.15sqm, the size expected of the communal living area is 34sqm and 34.02sqm combined living space would be provided.
- 5.9 The combination of ensuites would provide a suitable overall arrangement of sanitary facilities. Furthermore, the bedrooms would have good access to natural light and would be of an appropriate configuration/layout.
- 5.10 As such, it is considered the proposal would provide an adequate standard of living accommodation to facilitate up to 8 persons sharing and the proposals would accord with the SPD.
- 5.11 Impact on neighbour amenity
- 5.12 The proposal would increase the occupancy of the existing 6-bedroom HMO) by 2 extra bedrooms. 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 considered that the level of activity associated with the current use of a 6-bed HMO), would be unlikely to be significantly different than the occupation of the property by between 8 unrelated persons as a Sui Generis HMO. It is therefore not considered the proposal would result in a demonstrably higher level of harm to existing general levels of residential amenity in the area, whether from noise, additional vehicle use or any other form of nuisance/disturbance.
- 5.13 The proposal would not result in an overconcentration of HMOs within the surrounding area, and therefore it is considered that the impact of 2-extra occupants of the existing 6-bed HMO would not be significantly harmful at this particular point in time.
- 5.14 The HMO SPD is supported by an assessment of the need for, and supply of, shared housing in Portsmouth and the impacts of high concentrations of HMOs on local communities. Paragraphs 9.1-9.10 discuss the negative impacts of HMO concentrations on local communities and points to the cumulative environmental effects of HMO concentrations. However, given that this application would not impact on or result in over-concentration of HMOs within the surrounding area, it is considered that the impact of the proposed C3/C4 HMO would not be significantly harmful.
- 5.15 Having regard to this material consideration, it is considered there would not be a significant impact on residential amenity from the proposal.
- 5.16 Amenity and Parking
- 5.17 The proposal would increase the occupancy of the existing property by 2no bedrooms. The minor increase of occupants is not considered to have a demonstrable impact on

the parking need over and beyond the existing. As existing, there is no on-site parking being provided but is met on-street and due to site constraints no off-street parking.

5.18 The Portsmouth Parking SPD also gives the expected level of cycle parking that should be provided for residential developments. A 4+ bedrooms has an expected demand for 4 cycle parking spaces.

5.19 According to the submitted drawing no. PG.4102- 19-4, the property has 4no. weatherproof bicycle storage facilities which accords with the Parking SPD.

#### 5.20 Waste

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

#### 5.22 Other Material Considerations

5.23 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 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 certificates 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.

5.24 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 lawfully carry out the change in occupation without the benefit of Planning Permission.

5.25 Community Infrastructure Levy (CIL)

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

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

5.28 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.

5.29 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 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 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), cycle parking storage provision 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.

**7.0 RECOMMENDATION**

Approve unconditionally



# Agenda Item 8

20/01199/FUL

WARD:ST THOMAS

41 MARGATE ROAD SOUTHSEA PO5 1EY

CHANGE OF USE FROM PURPOSES FALLING WITHING CLASS 4 (HMO) USE TO (HMO) USE FOR MORE THAN SIX PERSONS (SUI GENERIS).

## LINK TO DOCUMENTS:

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QIJUGKMOLPB00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=QIJUGKMOLPB00)

## Application Submitted By:

Applecore PDM Ltd  
FAO Mrs Carianne Wells

## On behalf of:

Mr Simon Birmingham

RDD: 21st October 2020

LDD: 8th March 2021

## 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
- 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 but no external operational development forms part of this application
- 1.7 Planning History
- 1.8 A non-determination appeal was dismissed for the change of use from Class C4 (house in multiple occupation) to Sui Generis house in multiple occupation (for 7 persons) under Planning ref: 19/01396/FUL and Appeal ref: APP/Z1775/W/20/3253960. The Inspectors concluding comments were: *"Therefore, in conclusion on the main issue I find that the proposal would be harmful to the living conditions of future occupiers having particular regard to the internal space provision. As such, the proposal would be contrary to Policy PCS23 of the CS, Section 12 of the Framework and guidance in the SPD."*
- 1.9 Following this appeal decision, the floor plans have been amended to increase the size of bedrooms 2, 4 and 7. These rooms were previously under 10m<sup>2</sup> in size. This now means that only bedroom 5 is under the 10m<sup>2</sup> size standard.

## **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 Four representations have been received from a neighbouring residents raising an objection on the following grounds:
  - a) Increase in waste and litter;
  - b) Increase in parking concerns;
  - c) Increase in fly tipping;
  - d) Impact on water and drainage;
  - e) Communal impact of HMOs should be considered;
  - f) Contravenes policy;
  - g) Increase noise and disturbance;
  - h) Impact on social imbalance; and
  - i) Crime and anti-social behaviour.

## **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 52 HMOs out of 89 properties, a percentage of 58.42%. 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 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	10.2m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	10m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	11.2m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	11.65m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	9.02m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	10.69m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	10.71m <sup>2</sup>	6.51m <sup>2</sup>
Combined Living Space	27.03m <sup>2</sup>	34m <sup>2</sup>
Shower room 1	2.71m <sup>2</sup>	3.74m <sup>2</sup>
Shower room 2	3.75m <sup>2</sup>	3.74m <sup>2</sup>
Shower room 3	3.74m <sup>2</sup>	3.74m <sup>2</sup>
WC	1.5m <sup>2</sup>	1.17m <sup>2</sup>



5.7 As is shown in the table above, the proposal results in an internal layout, by virtue of bedroom 5 falling below 10 sq.m the living space is required to be 34 sq.m. The living space, at 27.03 sq.m, falls below the 34 sq.m set out in the SPD and as such does not meet the guidance provided to describe a satisfactory standard of living environment as such the proposal is not considered to comply with Local Plan Policy PCS23.

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.

### 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 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 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**

## **Unconditional Permission**

**Conditions: None**

# Agenda Item 9

21/00071/FUL

WARD: CENTRAL SOUTHSEA

305 FAWCETT ROAD SOUTHSEA PO4 0LE

**CHANGE OF USE FROM HOUSE OF MULTIPLE OCCUPATION (CLASS C4) TO SEVEN BEDROOM/SEVEN PERSON HOUSE OF MULTIPLE OCCUPATION (SUI GENERIS) (RESUBMISSION OF 19/01815/FUL)**

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Simon Birmingham

**RDD:** 15th January 2021

**LDD:** 14th May 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 terraced dwelling with rooms in the roof in a predominately residential 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 Class C3 (dwelling house) or Class C4 (house in multiple occupation) to a seven person, seven bedroom HMO (Sui Generis) was sought in 2018 under planning ref: 18/00016/FUL. Non-determination appeal. Dismissed.
- 1.8 The change of use from house of multiple occupancy (Class C4) to purposes falling within Class C3 (dwelling house) or C4 (house of multiple occupancy) was permitted in 2019 under planning ref: 19/01326/FUL
- 1.9 The change of use from a dwellinghouse (Class C3) or house in multiple occupation (Class C4) to purposes falling within Sui Generis (house in multiple occupation) was sought in 2020 under planning ref: 19/01815/FUL. Non-determination was appealed on the application and the appeal dismissed; the Council two identified reason for refusal were:

*1. The change of use of the property, by reason of the under provision of communal living space would fail to provide a good standard of living accommodation for the occupiers and*

*represent an over intensive use of the site. The proposal is therefore contrary to Core Planning Principles of the NPPF and Policy PCS23 of the Portsmouth Plan and the Houses in Multiple Occupation Supplementary Planning Document (October 2019).*

*2. It has been identified that any residential development in the city will result in a significant effect on the Solent Special Protection Areas, through additional nutrient output; with mitigation against these impacts being required. No mitigation measures have been secured and, until such time as this has been provided, the proposal would have a significant detrimental impact on the Special Protection Areas; contrary to Policy PCS13 of The Portsmouth Plan 2012, the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981, and Section 15 of the NPPF 2019.*

- 1.10 The inspector's concluding comments were: *"I therefore conclude that the change of use has resulted in inadequate living conditions for the occupiers of the property. Accordingly, in this respect it conflicts with Policy PCS23 of The Portsmouth Plan Portsmouth's Core Strategy (2012) which, amongst other things, requires that new development provides a good standard of living environment for future occupiers. The development also conflicts with paragraph 127 f) of the National Planning Policy Framework which requires developments to create places with a high standard of amenity for existing and future users... Therefore, had I reached a different conclusion on the main issue, it would have been necessary for me to undertake an AA and give further consideration to the likely effectiveness of mitigation measures. In doing so I would have had regard to the updated financial contribution towards the mitigation measures set out in the Solent Recreation Mitigation Strategy (2017) with regard to the recreational pressure arising from the development. I would also have had regard to the S.106 agreement provided to me securing a financial contribution for the purchase of nutrient mitigation credits in line with the Council's Interim Nutrient Neutral Mitigation Strategy (2019). However, as I am dismissing this appeal for another reason, this has not been necessary... For the reasons given above, and having had regard to the other matter raised, the appeal is dismissed."*
- 1.11 Since this appeal, the applicant has amended the internal floorplans for the property, increasing the size of bedroom 2 (rear, loft bedroom) to achieve all bedrooms being above 10m<sup>2</sup>.
- 1.12 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 One representation has been received from a neighbouring resident, objecting to the proposal on the following grounds:



- a) Noise and disturbance
- b) Increased anti-social behaviour;

## 5.0 COMMENT

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

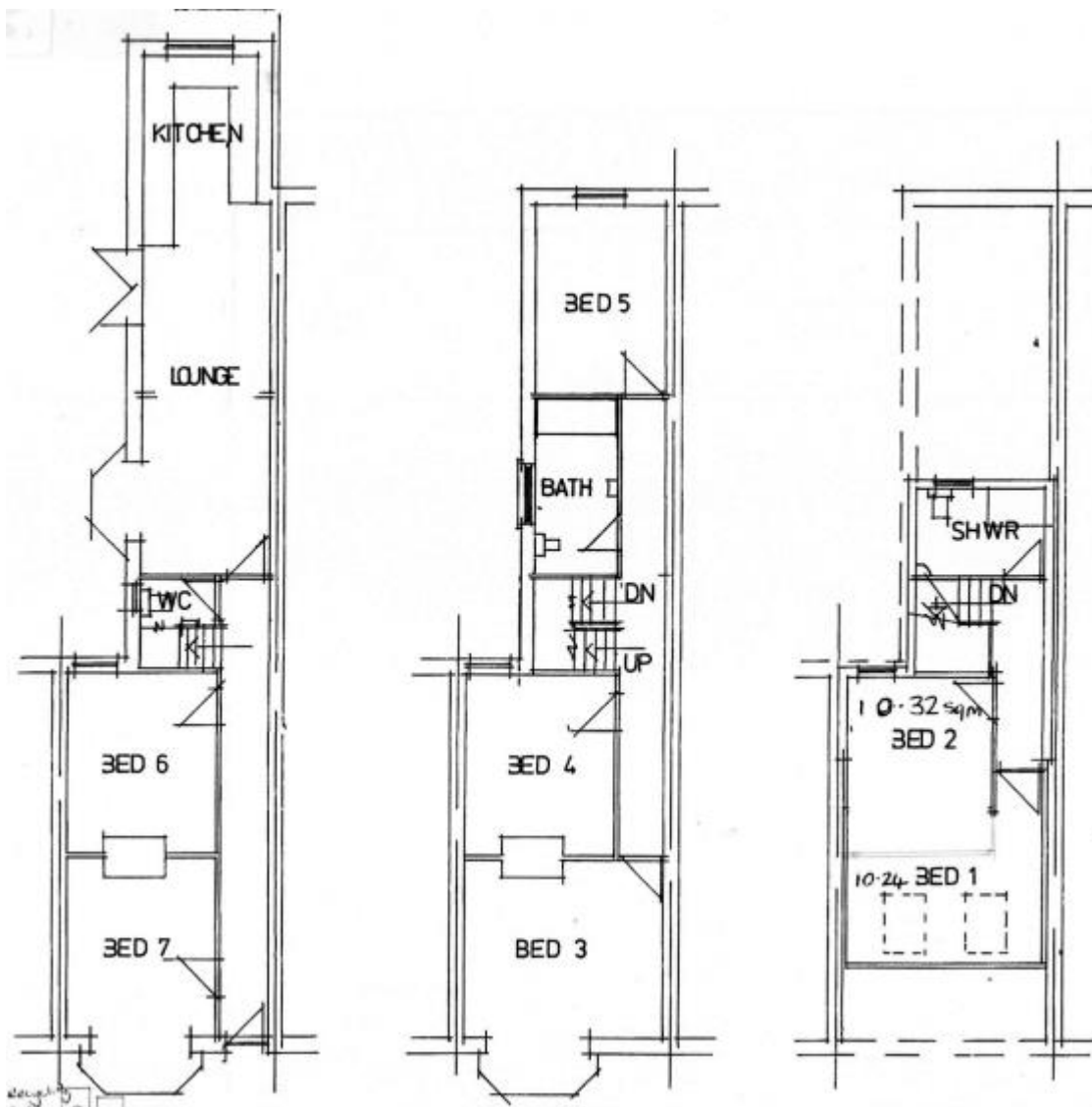
### 5.2 Principle

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 19 HMOs out of 62 properties, a percentage of 30.6%. 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 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	10.24m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	10.32m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	16.86m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	10.8m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	10.26m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	10.8m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	12.9m <sup>2</sup>	6.51m <sup>2</sup>
Combined Living Space	27.15m <sup>2</sup>	22.5m <sup>2</sup>
Bathroom 1	6.12m <sup>2</sup>	3.74m <sup>2</sup>
Bathroom 2	4.68m <sup>2</sup>	3.74m <sup>2</sup>
WC	1.35m <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 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 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.

## 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, 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**

**Unconditional Permission**

**Conditions: None**

# Agenda Item 10

21/00490/FUL

WARD:ST THOMAS

33 HUDSON ROAD SOUTHSEA PO5 1HB

**CHANGE OF USE FROM DWELLING HOUSE (CLASS C3) OR HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO HOUSE IN MULTIPLE OCCUPATION FOR SEVEN OCCUPANTS OVER SEVEN BEDROOMS (SUI GENERIS)**

**Application Submitted By:**

New Era Agency  
FAO Chris Broyd

**On behalf of:**

Mr Sanjay Patel  
Fuse Properties

**RDD:** 31st March 2021

**LDD:** 27th May 2021

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee at 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 dwellinghouse located on the northern side of Hudson 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 application involves an increase in occupancy levels and will involve the repurposing of internal rooms but no external operational development is to be considered in this application.

### 1.7 Planning History

1.8 Change of use from house of multiple occupancy (Class C4) to purposes falling within Class C3 (dwelling house) or C4 (house of multiple occupancy) 17/01708/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

### 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 No representations received.

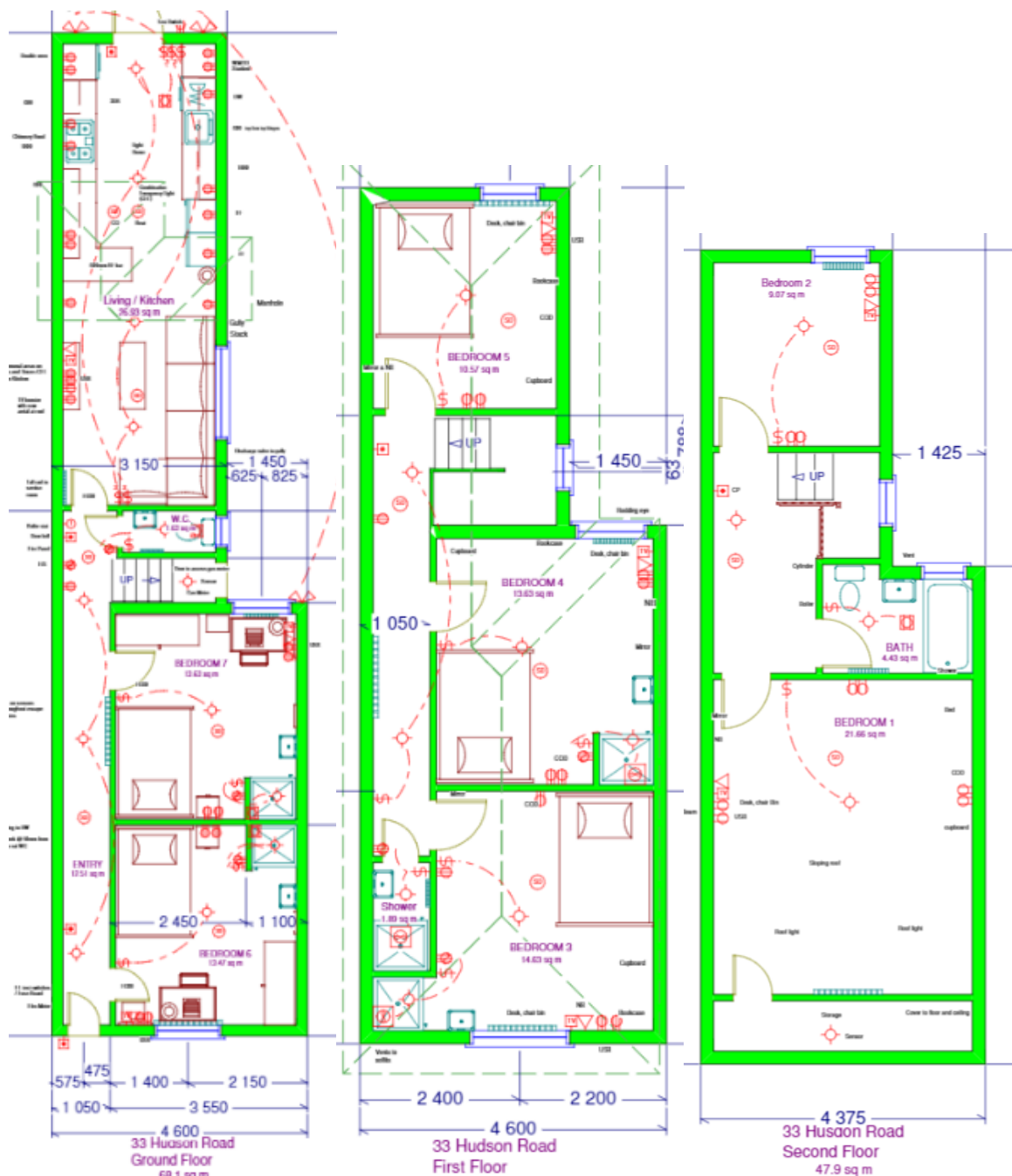
### 5.0 COMMENT

- 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. However, for reference, the current makeup of HMOs in the area comprises of 57 HMOs out of 86 dwellings, which produces a percentage of 66.3%. 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 sizes of bedrooms and communal areas is a material consideration. 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.
- 5.6 The property is currently Licensed for up to 5 persons by the Council's Private Sector Housing team.

Room	Area Provided:	Required Standard:
Bedroom 1	21.66m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	9.07m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	14.63m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	13.63m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	10.57m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	13.47m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	13.63m <sup>2</sup>	6.51m <sup>2</sup>
Living/Kitchen	26.93m <sup>2</sup>	34m <sup>2</sup>
SF Bathroom	4.43m <sup>2</sup>	3.74m <sup>2</sup>
FF Shower Room	1.89m <sup>2</sup>	2.74m <sup>2</sup>
GF WC with HWB	1.63m <sup>2</sup>	1.17m <sup>2</sup>



5.7 As is shown in the table above, the communal living kitchen area falls significantly below the required standard of 34m<sup>2</sup> and is therefore contrary to PCS20.

#### 5.8 Amenity and Parking

5.9 The proposal would increase the occupancy of the existing HMO by 1-2 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 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.

#### 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 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 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 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**

Grant unconditional planning permission.

**Conditions: None**

# Agenda Item 11

21/01803/FUL

WARD:ST THOMAS

18 PAINS ROAD SOUTHSEA PO5 1HE

CHANGE OF USE FROM PURPOSES FALLING WITHIN CLASS C4 (HOUSE IN MULTIPLE OCCUPATION) TO AN 8 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS) (RESUBMISSION OF 20/00996/FUL)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R45NWNMOGM400](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R45NWNMOGM400)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Birmingham  
Bunked Ltd

**RDD:** 15th December 2021

**LDD:** 10th February 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 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

### 1.7 Planning History

1.8 The 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) was the subject of a non-determination appeal (APP/Z1775/W/21/3272718). This appeal was dismissed, however only due to a failure to resolve the impact on the integrity of the Solent water environment resulting from the proposal.

## 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 Two representations have been received from neighbouring residents objecting to the scheme on the following grounds:

- a) Work has already commenced;
- b) Fire safety;
- c) Bedrooms have double beds and therefore could be double occupied;
- d) Additional bins and waste;
- e) Noise from single large communal area;
- f) Increase anti-social behaviour; and
- g) Limited outside amenity 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 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 45 HMOs out of 87 properties, a percentage of 51.7%. 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 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	8.67m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	2.82m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	8.41m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	7.04m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	12.84m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B	2.92m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	8.07m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B	2.86m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	14.68m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B	2.86m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	11.35m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B7	3.47m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 8	8.08m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B8	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	34.02m <sup>2</sup>	34m <sup>2</sup>
WC	1.27m <sup>2</sup>	1.17m <sup>2</sup>



**Figure 1 Floor plans - it should also be noted that the property benefits from a basement room**

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 in 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 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 lawfully carry out the change in occupation without the benefit of Planning Permission.
- 5.14 It has been raised by local residents that the property has already been occupied as an 8 person HMO, it is noted that this is in accordance with the current license for the property. It is not considered that this is a sufficient reason to withhold permission.
- 5.15 Fire safety would be unchanged from its existing use as a six bedroom HMO.
- 5.16 The description of development is clear over the maximum occupancy as applied for and as such it is not considered that any of the rooms would be double occupied.
- 5.17 Bin storage would be unchanged from the existing use and it is not considered that the additional occupants would give rise to such a quantum of waste as to have any significant impact from the existing use.
- 5.18 The property has the same existing large communal area and it is not considered that the proposed change would give result in a significant increase in noise from the property.
- 5.19 it is not considered that the proposal would give rise to any increase in anti-social behaviour.
- 5.20 The outside space would not be changed with the application, and there is no set required amount of outside space for an HMO.

5.21 Impact on Special Protection Areas

- 5.22 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 that 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**



# Agenda Item 12

22/00510/FUL

WARD:COPNOR

327 QUEENS ROAD FRATTON PORTSMOUTH PO2 7LY

CHANGE OF USE FROM CLASS C3 (DWELLING HOUSE)/CLASS C4 (HOUSE IN MULTIPLE OCCUPATION) TO 7 PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)

**LINK TO DOCUMENTS:**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RAA849MOJ6D00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RAA849MOJ6D00)

**Application Submitted By:**

Kercher  
Collective Studio

**On behalf of:**

Wheelhouse

**RDD:** 14th April 2022

**LDD:** 14th June 2022

## 1 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to four letters of objection, and a call-in request of Councillor Swann.
- 1.2 The main issues for consideration in the determination of the application are as follows:
  - The principle of Development;
  - The standard of accommodation;
  - Parking;
  - Amenity impacts upon neighbouring residents;
  - Impact upon the Solent Protection Areas; and
  - Any other raised matters
- 1.3 Site and surroundings
- 1.4 This application relates to a two-storey (with dormer roofs added) mid-terrace dwelling, which features a single storey bay window and is located on the northern side of Queens Road. The property is set back from the roadway by a front forecourt and benefits from a rear garden.
- 1.5 As existing the property has no off-street parking provision but relies on on-street parking.
- 1.6 The Proposal
- 1.7 Planning permission is sought for the change of use of the property from the current lawful use of as a Class C4 House in Multiple Occupation (HMO) with up to six individuals living together, to allow up to 7 individuals to live together as a Sui Generis HMO. This change in occupancy will involve the repurposing of the living room but no external operational development forms part of this application.

1.8 Planning History

1.9 22/00015/FUL- Change of use from House in Class C3 (Dwellinghouse) to purposes falling within Class C3 (dwelling house) or Class C4 (House in Multiple Occupation) Conditional Permission 23.02.2012.

**2 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').

**2.3 CONSULTATIONS**

2.4 Private Sector Housing:

2.5 No comments received

2.6 Highways Engineer:

2.7 No comments received

**2.8 REPRESENTATIONS**

2.9 Four letters of representation received objecting on the following summarised grounds:

- Noise;
- Parking concerns;
- Anti-social behaviour;
- Loss of family homes;
- Over concentration of HMOs in the area
- Proposed plans do not provide any measurements re: proposed single storey extension exceeds the permitted development;
- Proposal not in keeping with character of the area;
- Loss of light;
- Loss of privacy from rear dormer;
- Increased pressure on local infrastructure and services from intensification of use;
- Would set a precedent

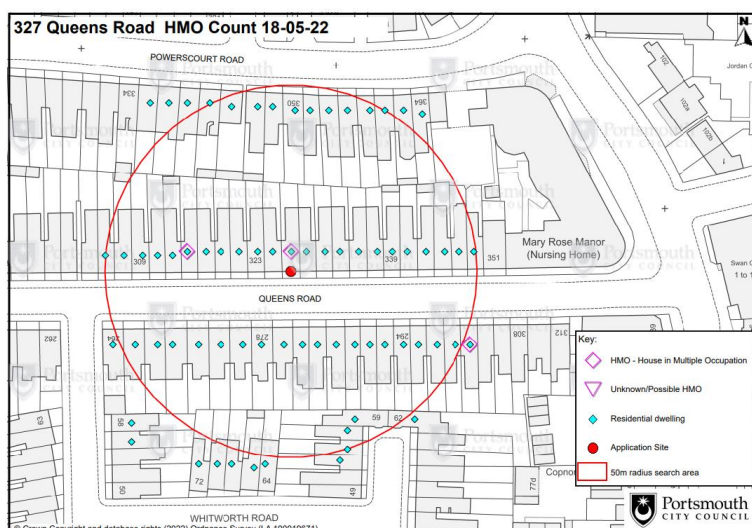
**3 COMMENT**

3.1 The main determining issues for this application relate to the following:

- The principle of Development;
- The standard of accommodation;
- Impact upon amenity neighbouring residents;
- Parking;
- Impact upon the Solent Protection Areas; and
- Any other raised matters.

**4 Principle**

- 4.1 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.
- 4.2 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 70 properties, a percentage of 4.28%. 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.



4.3 **Figure 1: HMO Count map (50m radius)**

4.4 **Standard of accommodation**

- 4.5 The application seeks, in addition to a flexible C3/C4 use, the opportunity to use the property as a 7 person (sui generis) HMO.
- 4.6 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	10.88m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	3.2m <sup>2</sup>	2.74m <sup>2</sup>

Bedroom 2	10.79m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	2.83m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	10.45m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	3.52m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	10.02m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.83m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	10.51m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B5	3.05m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	11.21m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B6	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	11.37m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B7	2.96m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	24.73m <sup>2</sup>	22.5sqm (based on 10m <sup>2</sup> sized bedrooms )

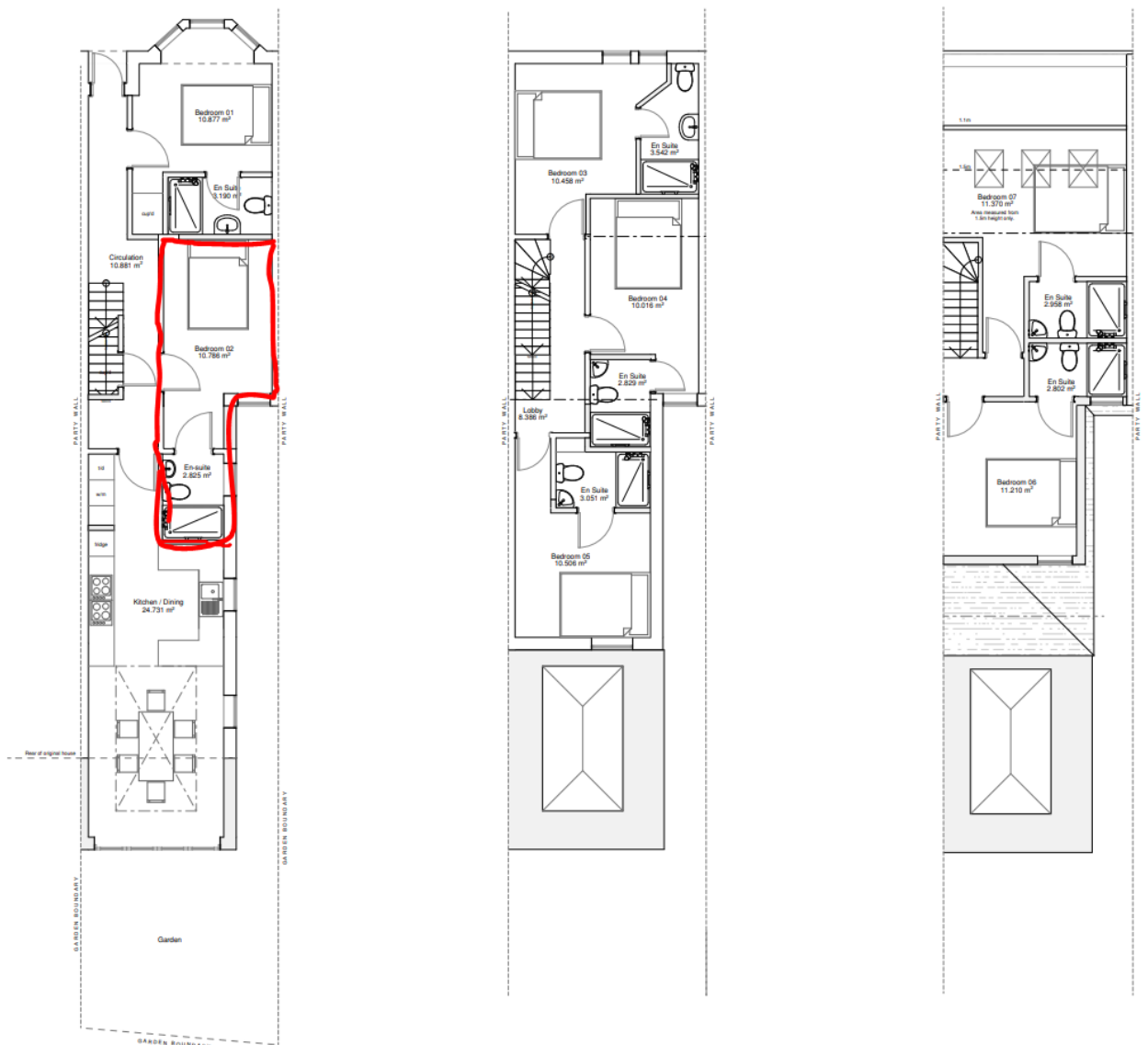


Figure 2: The only change proposed within the property is the use of the room outlined in red above, from a living room, to the proposed seventh bedroom.

- 4.7 As is shown in the table above, all of the bedrooms accord with the standards as set out within the HMO SPD (October 2019) and 'The Standards for Houses in Multiple Occupation' document dated September 2018. Given the bedrooms all meet or exceed 10sqm, the size expected of the communal living area is 22.5sqm, and 24.73m<sup>2</sup> combined living space would be provided.

- 4.8 The combination of ensembles would provide a suitable overall arrangement of sanitary facilities. Furthermore, all habitable rooms would have good access to natural light and would be of an appropriate configuration/layout.
- 4.9 As such, it is considered the proposal would provide an adequate standard of living accommodation to facilitate up to 7 persons sharing and the proposals would accord with the SPD.
- 4.10 **Impact on neighbour amenity**
- 4.11 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.
- 4.12 The HMO SPD is supported by an assessment of the need for, and supply of, shared housing in Portsmouth and the impacts of high concentrations of HMOs on local communities. Paragraphs 9.1-9.10 discuss the negative impacts of HMO concentrations on local communities and points to the cumulative environmental effects of HMO concentrations. However, given that there is not an over-concentration of HMOs within the surrounding area, it is considered that the impact of one further HMO would not be significantly harmful.
- 4.13 Having regard to this material consideration, it is considered there would not be a significant impact on residential amenity from the proposal.
- 4.14 **Amenity and Parking**
- 4.15 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 bedrooms. Where no on-site parking is provided, it is assumed that existing parking demand is met on-street and as such would not be required to provide any car parking spaces despite an increase in the number of bedrooms. It is therefore considered that an objection on car parking requirement can be sustained on refusal. It should also be noted that the property could be occupied by a large family with grown children, each owning a separate vehicle.
- 4.16 The Portsmouth parking SPD also gives the expected level of cycle parking that should be provided for residential developments. An existing property with 4 bedrooms has an expected demand for 4 cycle parking spaces; upon changing to a HMO (Sui generis), the cycle parking provision required would remain the same as the current use and therefore additional cycle parking spaces are not required. It should however be ensured that the existing property already provides for 4 cycle parking spaces as per SPD standards.
- 4.17 According to the submitted Design and Access Statement as part of these proposals, the property will provide 4no. weatherproof bicycle storage facilities. No details of the bicycle storage facilities have been submitted with this application, but this can however be secured via condition.
- 4.18 **Waste**
- 4.19 The storage of refuse and recyclable materials would remain unchanged and an objection on waste grounds would not form a sustainable reason for refusal.
- 4.20 **Other Material Considerations**

- 4.21 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 decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.
- 4.22 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.
- 4.23 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above.
- 4.24 **Impact on Special Protection Areas**
- 4.25 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 applicant's 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.
- 4.26 **Community Infrastructure Levy (CIL)**
- 4.27 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.
- 4.28 **Human Rights and the Public Sector Equality Duty ("PSED")**
- 4.29 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.

4.30 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.

#### 4.31 **CONCLUSION**

4.32 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.

4.33 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), cycle parking storage provision 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.

4.34 **RECOMMENDATION** Approve unconditionally

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