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# NOTICE OF MEETING

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## PLANNING COMMITTEE

**WEDNESDAY, 30 NOVEMBER 2022 AT 10.30 AM**

**COUNCIL CHAMBER - THE GUILDHALL, PORTSMOUTH**

Telephone enquiries to Democratic Services 023 9268 8014

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.

Please note the public health requirements for attendees at the bottom of the agenda.

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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, Abdul Kadir, George Madgwick, Scott Payter-Harris, Steve Pitt, Asghar Shah, Lynne Stagg, Daniel Wemyss and Ian Holder

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

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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.

### **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<sup>st</sup> 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

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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.

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.

## **A G E N D A**

### **1 Apologies**

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

### **3 Minutes of previous meeting held on 9 November 2022**

To follow

### **4 21/01666/FUL - 259 Queens Road, Fratton, Portsmouth PO2 7LY (Pages 7 - 12)**

Change of use from house in multiple occupation (Class C4) to house in multiple occupation for more than 6 persons (Sui Generis).

### **5 22/00399/FUL - 8 Baileys Road, Southsea, PO5 1EA (Pages 13 - 18)**

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

bedroom house in multiple occupation (Sui Generis).

- 6        22/00568/FUL - 84 Shadwell Road, Portsmouth, PO2 9EJ** (Pages 19 - 24)

Change of use from dwelling house (Class C3) or house in multiple occupation (Class C4) to house of multiple occupation for seven people (Sui Generis).
- 7        22/00714/FUL - 302 London Road, Hilsea, Portsmouth** (Pages 25 - 30)

Change of use from house in multiple occupation (Class C4) to house in multiple occupation for more than six persons (Sui Generis).
- 8        22/00804/FUL - 128 Manners Road, Southsea PO4 0BG** (Pages 31 - 36)

Application for change of use from house in multiple occupation (Class C4) to Sui Generis house in multiple occupation for use of more than 6 persons.
- 9        22/01143/FUL - 297 Powerscourt Road, Portsmouth PO2 7JL** (Pages 37 - 44)

Change of use from dwelling house (Class C3)/house in multiple occupation (Class C4) to a 7 person house in multiple occupation (Sui Generis)
- 10       22/01156/FUL - 281 New Road, Portsmouth PO2 7RA** (Pages 45 - 50)

Change of use from dwellinghouse (Class C3)/house in multiple occupation (Class C4) to 7 person house in multiple occupation (Sui Generis)
- 11       22/01336/FUL - 118 Prince Albert Road, Southsea PO4 9HT** (Pages 51 - 58)

Retrospective application for change of use from purposes falling within house in multiple occupation (Class C4) to a 7 bedroom house in multiple occupation (Sui Generis).

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# Agenda Item 4

21/01666/FUL

WARD: COPNOR

259 QUEENS ROAD FRATTON PORTSMOUTH PO2 7LY

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO HOUSE IN MULTIPLE OCCUPATION FOR MORE THAN 6 PERSONS (SUI GENERIS).

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R2M3BKMOFWC00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R2M3BKMOFWC00)

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Geffryes  
AMSG Ltd

**RDD:** 15th November 2021

**LDD:** 11th January 2022

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson, Councillor Swann and due to 20 objections.
- 1.2 The main issues for consideration in the determination of the application are as follows:
  - Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.3 Site and surroundings
- 1.3 The application site is a two storey end of terrace dwelling with rooms in the roof. The area is predominately residential.
- 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 Change of use from dwellinghouse (Class C3) to mixed use purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse) was permitted in 2021 under planning ref: 21/00939/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 Twenty representations have been received from a residents, raising an objection on the following grounds:

- (a) Anti-social behaviour
- (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.
- (e) Disruptive building works
- (f) Increased parking issues
- (g) Occupied by people from challenging/difficult backgrounds as these people can only afford to stay in HMOs
- (h) Unfair distribution of council tax
- (i) Loss of privacy in gardens due to overlooking
- (j) Security risk due to nature of tenants
- (k) Strain on local infrastructure
- (l) Air pollution
- (m) Too many disabled parking bays in the area, which are too big, already causes parking issue
- (n) Housing targets should be met "somewhere else"
- (o) Other general objections

### 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 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 5 HMOs out of 66 properties, a percentage of 7.6%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 25/7/22.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided (msq):	Required Standard (msq):
<b>Bedroom 1</b>	<b>12.79</b>	<b>6.51</b>
<i>Ensuite 1</i>	<i>3.09</i>	<i>2.74</i>
<b>Bedroom 2</b>	<b>10.04</b>	<b>6.51</b>
<i>Ensuite 2</i>	<i>3.06</i>	<i>2.74</i>
<b>Bedroom 3</b>	<b>11.29</b>	<b>6.51</b>
<i>Ensuite 3</i>	<i>2.85</i>	<i>2.74</i>
<b>Bedroom 4</b>	<b>10.01</b>	<b>6.51</b>
<i>Ensuite 4</i>	<i>2.8</i>	<i>2.74</i>
<b>Bedroom 5</b>	<b>10.94</b>	<b>6.51</b>
<i>Ensuite 5</i>	<i>3.35</i>	<i>2.74</i>
<b>Bedroom 6</b>	<b>11.24</b>	<b>6.51</b>
<i>Ensuite 6</i>	<i>3.07</i>	<i>2.74</i>
<b>Bedroom 7</b>	<b>10.47</b>	<b>6.51</b>
<i>Ensuite 7</i>	<i>2.77</i>	<i>2.74</i>
<b>Combined Living Space</b>	<b>24.87</b>	<b>22.5</b>
GF WC	1.28	1.17



- 5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards. The HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m<sup>2</sup>) for combined living accommodation in circumstances where all bedrooms are at least 10m<sup>2</sup> and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

#### Amenity and Parking

- 5.8 The proposal would increase the occupancy of the existing HMO by 1 occupants. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.

- 5.10 Other Material Considerations



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

- 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 5

22/00399/FUL

WARD:ST THOMAS

8 BAILEYS ROAD SOUTHSEA PORTSMOUTH PO5 1EA

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R8Y9EWMOIP100](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R8Y9EWMOIP100)

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Birmingham  
Roscoe Property Holdings Ltd

**RDD:** 21st March 2022

**LDD:** 17th May 2022

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee at the request of Councillor Vernon-Jackson. The application is currently the subject of appeal on the grounds of non-determination but has not been finally validated. **The Committee will be updated to confirm whether the Secretary of State is now the determining authority in this case.**

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

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

### 1.3 Site and surroundings

1.4 The application site is a two-storey terraced dwelling with rooms in the roof in a predominately residential area.

### 1.5 The Proposal

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

### 1.7 Planning History

1.8 The change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse) was permitted in 2021 under planning ref: 21/00248/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 None received.

### **5.0 COMMENT**

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

#### **5.2 Principle**

- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 41 HMOs out of 84 properties, a percentage of 48.8%. This proposal of course has no effect on that percentage and the increase of one occupant is considered to have an inconsequential impact to the mix and balance of the community. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 12/05/2022.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the

following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	11.65m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	10.52m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	10.52m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	10.08m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	11.22m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	13.15m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	10.65m <sup>2</sup>	6.51m <sup>2</sup>
Combined Living Space	22.88m <sup>2</sup>	22.5m <sup>2</sup>
Shower room 1	3.96m <sup>2</sup>	2.74m <sup>2</sup>
Shower room 2	3.78m <sup>2</sup>	2.74m <sup>2</sup>
WC	1.48m <sup>2</sup>	1.17m <sup>2</sup>
Ensuite B6	2.99m <sup>2</sup>	2.74m <sup>2</sup>



5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards except for the communal living space. However, the HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m<sup>2</sup>) for combined living accommodation in circumstances where all bedrooms are at least 10m<sup>2</sup> and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

#### 5.8 Amenity and Parking

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

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

- 5.10 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.
- 5.11 Other Material Considerations
- 5.12 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the Solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.
- 5.13 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to 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 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 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**

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# Agenda Item 6

22/00568/FUL

WARD: HILSEA

84 SHADWELL ROAD PORTSMOUTH PO2 9EJ

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RAZT1XMOJE500](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RAZT1XMOJE500)

**Application Submitted By:**

Collective Studio  
FAO Kercher

**On behalf of:**

Wheelhouse

**RDD:** 28<sup>th</sup> April 2022

**LDD:** 24<sup>th</sup> June 2022

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to 7 objections as well as 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
- 1.3 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 21/01160/CPE - Certificate of existing lawful development for C4 HMO use.

## 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**

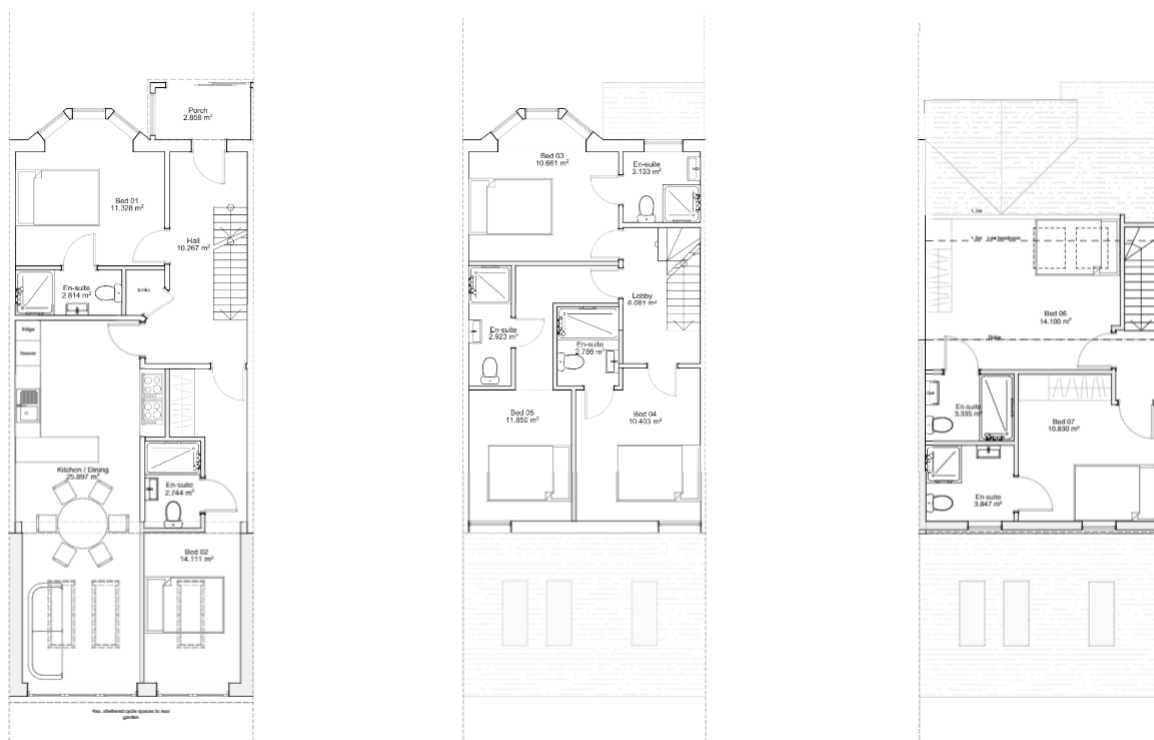
- 4.1 7 objections can be summarised as:
- a) Loss of value to neighbouring properties
  - b) Fire hazard
  - c) Noise
  - d) Disruption and damage due to building works
  - e) Extra stress on utilities/sewage
  - f) Parking issues
  - g) Vacant large buildings could be converted to accommodation
  - h) Electric car spaces already take up too much parking
  - i) Already too many HMOs in the area
  - j) Builders may look into neighbouring gardens
  - k) Loss of family homes and expensive to convert back from HMO
  - l) Maintenance of HMO properties is "always bad"
  - m) Waste issues
  - o) Increased crime/ASB

### **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 1 HMOs out of 70 properties, a percentage of 1.4%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The HMO use of this site was granted a License for up to 5 persons on 15/02/22

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

Room	Area Provided (msq):	Required Standard (msq):
<b>Bedroom 1</b>	<b>11.32</b>	<b>6.51</b>
<i>Ensuite 1</i>	<i>2.81</i>	<i>2.74</i>
<b>Bedroom 2</b>	<b>14.11</b>	<b>6.51</b>
<i>Ensuite 2</i>	<i>2.74</i>	<i>2.74</i>
<b>Bedroom 3</b>	<b>10.66</b>	<b>6.51</b>
<i>Ensuite 3</i>	<i>3.13</i>	<i>2.74</i>
<b>Bedroom 4</b>	<b>10.4</b>	<b>6.51</b>
<i>Ensuite 4</i>	<i>2.78</i>	<i>2.74</i>
<b>Bedroom 5</b>	<b>11.85</b>	<b>6.51</b>
<i>Ensuite 5</i>	<i>2.92</i>	<i>2.74</i>
<b>Bedroom 6</b>	<b>14.1</b>	<b>6.51</b>
<i>Ensuite 6</i>	<i>3.33</i>	<i>2.74</i>
<b>Bedroom 7</b>	<b>10.83</b>	<b>6.51</b>
<i>Ensuite 7</i>	<i>3.84</i>	<i>2.74</i>
<b>Combined Living Space</b>	<b>25.89</b>	<b>22.5</b>



- 5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards except for the combined shared living space. However, the HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m<sup>2</sup>) for combined living accommodation in circumstances where all bedrooms are at least 10m<sup>2</sup> and the accommodation is otherwise acceptable as communal space. On the basis of the

information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

#### 5.8 Amenity and Parking

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

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

#### 5.10 Other Material Considerations

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

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

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

5.14 Impact on Special Protection Areas

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

**6.0 CONCLUSION**

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

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

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# Agenda Item 7

22/00714/FUL

WARD:HILSEA

302 LONDON ROAD HILSEA PORTSMOUTH CITY OF PORTSMOUTH

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RHF72LMOLQ900](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=rhf72lmolq900)

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Vandenberghe

**RDD:** 11th May 2022

**LDD:** 7th July 2022

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to 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
- 1.3 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 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 internal rooms but no external operational development forms part of this application
- 1.6 Planning History
- 1.7 22/00006/GPDC - Prior approval for larger extension approved.
- 1.8 20/00713/FUL - Change of use from Class C3 flats to Class C3 Dwelling or C4 HMO.
- 1.9 **The Committee must note that this application is the subject of an appeal for non-determination, which has been validated and started by the Planning Inspectorate. Authority to determine the application has therefore transferred to PINS and the Committee is asked to comment on what their decision *would* have been.**

## 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 2 Objections received can be summarised as:

- Extension should have been refused
- Impact on parking
- Over intensive use of property
- Piecemeal development
- Only property with black window frames instead of white in the area
- Fire risk
- Overuse of sewer

- 4.2 1 support comment can be summarised as; while there are issues, housing is needed.

- 4.3 1 general comment from neighbouring landlord saying they have addressed shower issue.

### **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.

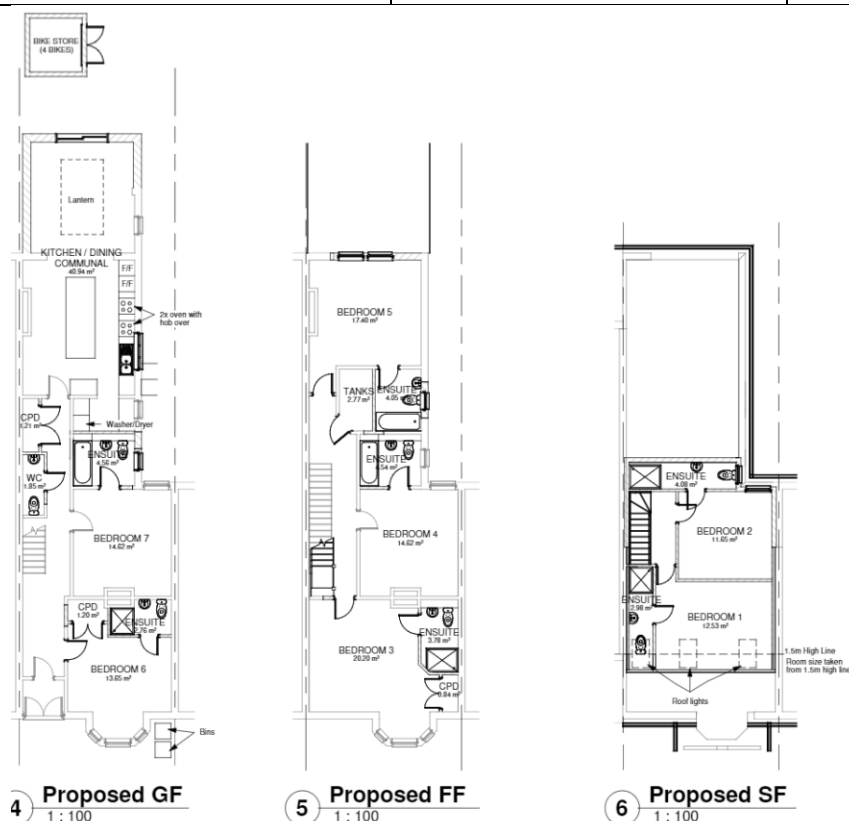
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupants. As such the application is not considered, on its individual facts to create any material impact on the balance of the community 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 2 HMOs out of 89 properties, a percentage of 2.24%. 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 (msq):	Required Standard (msq):
<b>Bedroom 1</b>	<b>12.53</b>	<b>6.51</b>
<i>Ensuite 1</i>	<i>2.98</i>	<i>2.74</i>
<b>Bedroom 2</b>	<b>11.65</b>	<b>6.51</b>
<i>Ensuite 2</i>	<i>4.08</i>	<i>2.74</i>
<b>Bedroom 3</b>	<b>20.2</b>	<b>6.51</b>
<i>Ensuite 3</i>	<i>3.78</i>	<i>2.74</i>
<b>Bedroom 4</b>	<b>14.62</b>	<b>6.51</b>
<i>Ensuite 4</i>	<i>4.5</i>	<i>2.74</i>
<b>Bedroom 5</b>	<b>17.4</b>	<b>6.51</b>
<i>Ensuite 5</i>	<i>4.05</i>	<i>2.74</i>
<b>Bedroom 6</b>	<b>13.65</b>	<b>6.51</b>
<i>Ensuite 6</i>	<i>2.76</i>	<i>2.74</i>
<b>Bedroom 7</b>	<b>14.62</b>	<b>6.51</b>
<i>Ensuite 7</i>	<i>4.6</i>	<i>2.74</i>
<b>Combined Living Space</b>	<b>40.94</b>	<b>22.5</b>
<b>WC with HWB</b>	<b>1.85</b>	<b>1.17</b>



- 5.6 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.
- 5.7 Amenity and Parking
- 5.8 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.
- 5.10 Other Material Considerations
- 5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.
- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position

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

- 5.13 This application has been appealed on the grounds of non-determination appeal valid and start letter received. Therefore, the committee is unable to make a decision on this application, but rather must make a recommendation as to whether they would grant permission for the scheme, which will be put to the Planning Inspector.

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 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.
- 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 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. The committee should make this recommendation which will be passed onto the Planning Inspector as part of the appeal statement.

## RECOMMENDATION

## Unconditional Permission

**Conditions: None**

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# Agenda Item 8

22/00804/FUL

WARD: CENTRAL SOUTHSEA

128 MANNERS ROAD SOUTHSEA PO4 0BG

APPLICATION FOR CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO SUI GENERIS HOUSE IN MULTIPLE OCCUPATION FOR USE OF MORE THAN 6 PERSONS

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RCJFKDMOK2R00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RCJFKDMOK2R00)

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Birmingham  
Bunked

**RDD:** 30th May 2022

**LDD:** 26th July 2022

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee at the request of Councillor Vernon-Jackson. The application is currently the subject of appeal on the grounds of non-determination but has not been finally validated. **The Committee will be updated to confirm whether the Secretary of State is now the determining authority in this case.**

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

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

### 1.3 Site and surroundings

1.3 The application site is a two-storey 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 C4 (House in Multiple Occupation) to purposes falling within Class C3 (Dwellinghouse) or Class C4 (House in Multiple Occupation) was granted Conditional Permission in 2021 under Planning Ref: 21/01339/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 None received.

### 5.0 COMMENT

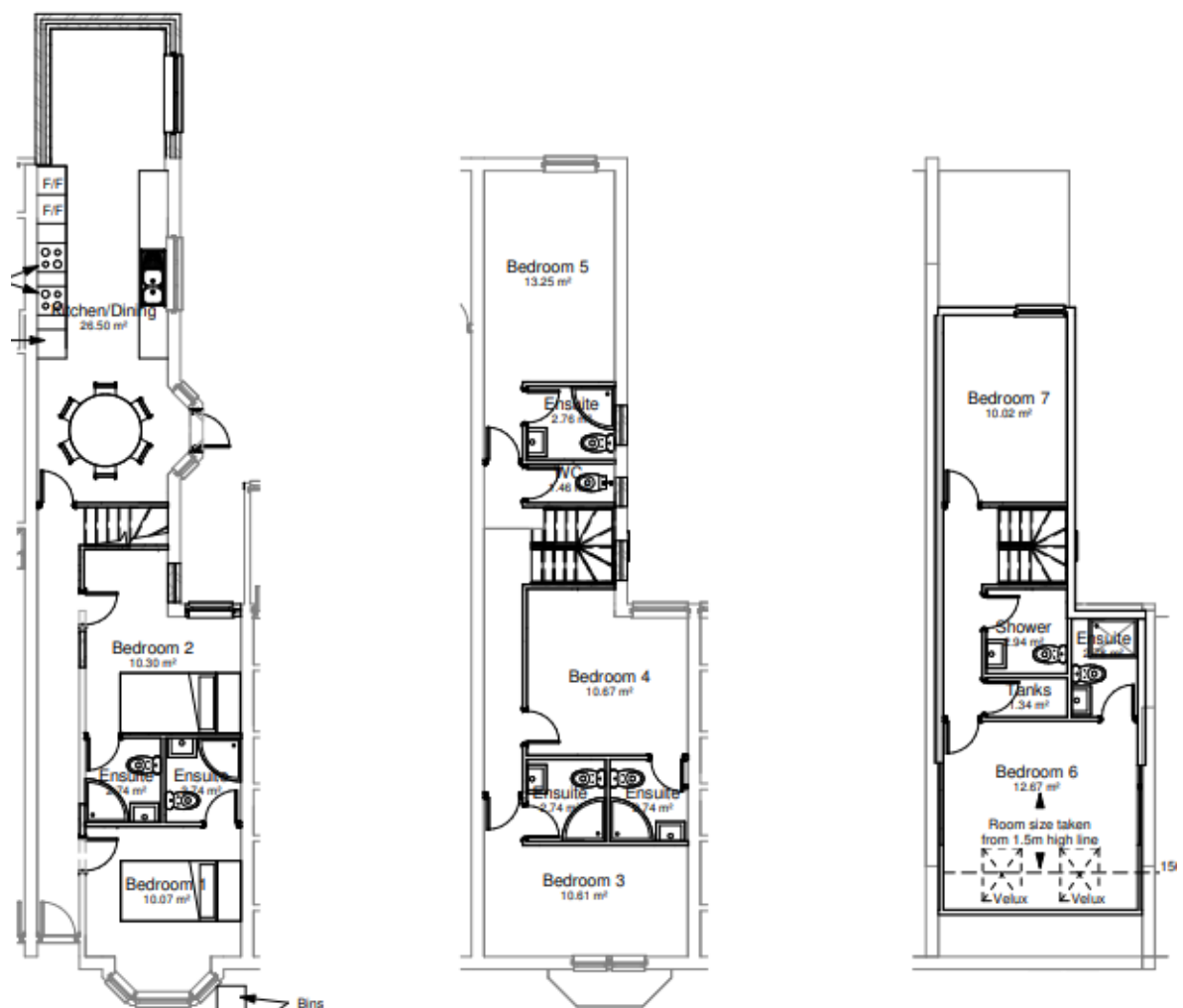
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

#### 5.2 Principle

- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 31 HMOs out of 81 properties, a percentage of 38.27%. This proposal of course has no effect on that percentage and the increase of one occupant is considered to have an inconsequential impact to the mix and balance of the community. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 20/06/2022.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing

team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	10.07m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	10.3m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	10.61m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	10.67m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	13.25m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B5	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	12.67m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B6	2.78m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	10.02m <sup>2</sup>	6.51m <sup>2</sup>
Shower room	2.94m <sup>2</sup>	2.74m <sup>2</sup>
WC	1.46m <sup>2</sup>	1.17m <sup>2</sup>
Combined Living Space	26.5m <sup>2</sup>	34m <sup>2</sup> / 22.5m <sup>2</sup>



**Figure 1 Floor plans**

- 5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards noting that the

HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Councils standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m<sup>2</sup>) for combined living accommodation in circumstances where all bedrooms are at least 10m<sup>2</sup> and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

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

5.14 Impact on Special Protection Areas

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

## 6.0 CONCLUSION

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

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

## RECOMMENDATION                      Unconditional Permission

**Conditions: None**

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# Agenda Item 9

22/01143/FUL

WARD: COPNOR

297 POWERSCOURT ROAD PORTSMOUTH PO2 7JL

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RG4Y06MOLDJ00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RG4Y06MOLDJ00)

**Application Submitted By:**

Collective Studio  
FAO Mr Willment

**On behalf of:**

Mr Burton

**RDD:** 8th August 2022

**LDD:** 11th October 2022

## **1.0 SUMMARY OF MAIN ISSUES**

- 1.1 This application is brought before Planning Committee due to the number of objections as well as the request of Councillors Vernon-Jackson and Benedict Swann.
- 1.2 The main issues for consideration in the determination of the application are as follows:
  - Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.3 Site and surroundings
- 1.3 The application site is a two storey mid-terraced dwelling with rooms in the roof in a predominately residential area. The building works to extend the property to the rear with a single storey extension and to convert the loft with a rear dormer is well underway and is being completed under permitted development rights.
- 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 (i.e living room) but no external operational development forms part of this application.
- 1.6 Plans



## 1.7 Planning History

- 1.8 21/01828/FUL -Change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwelling house) or Class C4 (House in Multiple Occupation). Approved 19/04/2022
- 1.9 21/00161/GPDC - Construction of single-storey rear extension that comes out a maximum of 5m beyond the rear wall of the original house with a maximum height of 3m and a maximum height of 2.8m to the eaves. Refused on 11/02/2022.  
The reason for refusal was because the proposed extension by reason of its excessive depth, bulk and siting on the western boundary would result in an unneighbourly and overly dominant form of development which would be detrimental to the amenities of the adjoining occupiers to the west, no.295 Powerscourt Road in terms of overbearing impact and the creation of a strong sense of enclosure.

## 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:**

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

### 3.3 **Highways Engineer:**

- 3.4 Considering the small scale of the proposal, it is the belief of the LHA that the proposal is unlikely to have a material impact upon the highway network and as such is satisfied that a traffic assessment would not be required.
- 3.5 Portsmouth's residential parking standards expect that dwelling houses (C3) and Houses in Multiple Occupation (HMO) (C4/ sui generis) with more than 4bedrooms should provide 2 car parking spaces per dwelling. Where no on-site parking is provided, it is assumed that existing parking demand is met on-street.
- 3.6 Where an application property already has 4 or more bedrooms, the expected parking demand of a HMO(sui generis) would be the same as the existing use as per SPD standards and as such would not be required to provide any further spaces despite an increase in the number of bedrooms.
- 3.7 The Portsmouth parking SPD also gives the expected level of cycle parking that should be provided for residential developments. An existing property with 4bedrooms 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.

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

#### **4.0 REPRESENTATIONS**

- 4.1 Twenty letters of objection received raising the following concerns:

- Application includes a rear extension, an extension that has already been refused planning permission under 21/00161/GPDC. (*Officer note: The previously refused application was for a larger rear extension of 5m in depth, whilst the one shown on the submitted plans measures 3m deep and it is to be carried out under permitted development rights therefore would not require planning permission and is not part of this application*)
- Loss of natural light to neighbouring properties causing rise in cost of lighting
- Noise nuisance,
- Draining issues
- Loss of green space
- Additional waste management,
- Parking and road safety impacted,
- Pressure on already overstretched local amenities such as doctors and dental practices
- This area is seriously overrun with HMOs and Queens Road is awash with them.
- Reduction of family home
- Anti-social behaviour.
- High occupancy
- Mental well-being, security and general lives of all neighbouring residents will be affected by more HMOS
- Over-bearing, out-of-scale and out of character to the neighbouring
- Creating a flood risk to neighbouring properties
- Over development to property.
- Only two houses in Powerscourt Road received letters about this application again, there is no notices on lampposts or window of the property to make neighbours aware of what is going to happen.

##### **Non - Planning Issues**

- Affect the value of properties.

#### **5.0 COMMENT**

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

##### **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 4 HMOs out of 76 properties, a percentage of 5.26%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

- 5.5 The HMO use of this site currently does not benefit from a Licence and Portsmouth City Council has not received any HMO licence applications.
- 5.6 The repurposing of internal rooms to accommodate the additional occupant 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	10.11m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	10.07m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	10.04m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	2.79m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	10.7m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	11.10m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B5	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	10.34m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B6	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	11.18m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B7	3.14m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	24.26m <sup>2</sup>	22.5m <sup>2</sup> (based on 10m <sup>2</sup> sized bedrooms )

- 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. As such the proposal is not considered to comply with Local Plan policy PCS23.
- 5.8 Amenity and Parking
- 5.8 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same

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

#### 5.10 Other Material Considerations

- 5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.
- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.

#### Impact on Special Protection Areas

- 5.14 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 Likely Significant Effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

## 6.0 CONCLUSION



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

## **RECOMMENDATION**

## **Unconditional Permission**

**Conditions: None**

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# Agenda Item 10

22/01156/FUL

WARD: FRATTON

281 NEW ROAD PORTSMOUTH PO2 7RA

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RGAW11MOLF500](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=rgaw11molf500)

**Application Submitted By:**

Mr Edward Kercher  
Collective Studio

**On behalf of:**

Mrs Serena Froom

**RDD:** 9th August 2022

**LDD:** 11th October 2022

## 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
- 1.3 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 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 internal rooms but no external operational development forms part of this application
- 1.6 Planning History
- 1.7 22/00831/FUL - Change of use from dwelling house (Class C3) to purposes falling within Class C4 (House in Multiple Occupation) or Class C3 (dwelling house) - Granted August 2022. It is unclear, at the time of the production of this officers' report whether this planning permission has yet been implemented.

## 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 2 representations received which can be summarised as; parking issues, overdevelopment of the property, waste issues, loss of property value to neighbours, noise disturbance and precedence set for other HMOs in 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 has already been granted planning permission to become a 6-bed HMO and at the time of production of the officers' report is unclear whether it is already in lawful use as an HMO. An update will be provided to the meeting of the Committee to resolve that position. Through the making of this application the applicant is asserting that the current use is as approved in August and consequently the application has been made to recognise the intention to increase its occupation by 1 occupant. Whether the lawful use of the dwelling is for single family occupancy (C3), available through a 'dual use' for either single family occupancy or HMO occupancy the application is not considered, in either scenario and 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. The application site is the only HMO, or potential HMO, which would result as it is 1 property out of 46 properties within the relevant 50m radius area, in a percentage of 2.17%. If the previous planning permission which first allowed the change in the use of this dwelling to be an HMO has not been implemented then this proposal of course has no effect on that percentage. And therefore in either case the development would not result in a concentration, proliferation or distribution of HMOs that would be considered to result in an imbalance in the community.
- 5.5 The HMO use of this site is not currently Licensed by the Council's PSH Licensing Team.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants when compared to that approved

in the previous scheme earlier this year. 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 (msq):	Required Standard (msq):
<b>Bedroom 1</b>	<b>11.49</b>	<b>6.51</b>
<i>Ensuite 1</i>	<i>2.74</i>	<i>2.74</i>
<b>Bedroom 2</b>	<b>12.68</b>	<b>6.51</b>
<i>Ensuite 2</i>	<i>3.51</i>	<i>2.74</i>
<b>Bedroom 3</b>	<b>10.79</b>	<b>6.51</b>
<i>Ensuite 3</i>	<i>2.74</i>	<i>2.74</i>
<b>Bedroom 4</b>	<b>11.01</b>	<b>6.51</b>
<i>Ensuite 4</i>	<i>3.37</i>	<i>2.74</i>
<b>Bedroom 5</b>	<b>10.32</b>	<b>6.51</b>
<i>Ensuite 5</i>	<i>2.74</i>	<i>2.74</i>
<b>Bedroom 6</b>	<b>10.95</b>	<b>6.51</b>
<i>Ensuite 6</i>	<i>2.74</i>	<i>2.74</i>
<b>Bedroom 7</b>	<b>10.82</b>	<b>6.51</b>
<i>Ensuite 7</i>	<i>2.74</i>	<i>2.74</i>
<b>Combined Living Space</b>	<b>25.77</b>	<b>22.5</b>



5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards in accordance with the HMO SPD, at para 2.6, which advises that more detailed guidance, beyond the preliminary headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m<sup>2</sup>) for combined living accommodation in circumstances where all bedrooms are at least 10m<sup>2</sup> and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment for seven occupants.

#### 5.8 Amenity and Parking

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

5.9 Similarly the minor increase of approved 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 that matter is slightly more complex due to the uncertainty in respect of whether the previous scheme (22/00831/FUL) has been implemented. Through the making of this application the applicant has asserted that it has and the recommendation is therefore concluded on that basis. In that circumstance 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, if the previous HMO planning permission has been implemented, 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 in that case 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 Alternatively if the previous planning permission (22/00831/FUL) has not been implemented then this application should be assessed as if it were a change of use between a single household dwelling (C3) and a 7-bed HMO. For the reasons described above, with the mix and balance of the community and the overall living environment found to be acceptable and in accordance with the Council's published guidance, this alternative scenario also recommends the grant of planning permission for what would, on its own merits be considered a material change of use requiring planning permission.
- 5.14 Which scenario, dependent on whether application 22/00831/FUL has been implemented, is the correct one will be updated at the meeting of the Planning Committee, as it is open to the landowner to of course implement that permission and change the status of the dwelling at any point between the production of this report and that meeting in accordance with the permission already granted.
- 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 either as a single household dwelling or a six bed HMO. As such, if planning permission as a six bed HMO has been implemented it is considered that the proposal would not amount to development and therefore not have Likely Significant Effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge. However if that planning permission has not been implemented then the proposal does, on its own facts, amount to development and appropriate mitigation for an increased level of nitrate discharge will be required. As noted above the status of the dwelling at the time of the decision will be updated for the Committee, and the applicant's willingness to provide an appropriate scheme of mitigation will also be confirmed.

## **6.0 CONCLUSION**

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan whether or not the previous scheme (22/00831/FUL) has been implemented.
- 6.2 If the updated to the Committee confirms that the previous scheme has been implemented Officers recommend that this proposal does not require planning permission. In that circumstance however 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. This alternative, conditional permission would be relevant in either of the circumstances that the previous permission has been implemented, but Members consider that the change in occupancy amounts to development, or in the scenario that the previous permission has not been implemented and the assessment of this proposal is the same as that for an application for a change of use between use class C3 and a 7-bed HMO.

## **RECOMMENDATION**

## **Unconditional Permission**

**Conditions: None**



# Agenda Item 11

22/01336/FUL

WARD: MILTON

118 PRINCE ALBERT ROAD SOUTHSEA PORTSMOUTH PO4 9HT

**RETROSPECTIVE APPLICATION FOR CHANGE OF USE FROM PURPOSES FALLING WITHIN HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO A 7 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RI8Y2GMOM1J00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RI8Y2GMOM1J00)

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Mr Tom Bunday  
Woodworx Resort Ltd

**RDD:** 16th September 2022

**LDD:** 15th November 2022

## **1.0 SUMMARY OF MAIN ISSUES**

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

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

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

### **1.3 Site and surroundings**

1.3 The application site is a two storey mid-terraced dwelling with rooms in the roof in a predominately residential area.

### **1.4 The Proposal**

1.5 The Applicant has sought retrospective 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 (i.e the lounge).

1.6 The works to carry out the proposed side extension to the lightwell shown in the plans do not form part of this application and are delivered through permitted development.

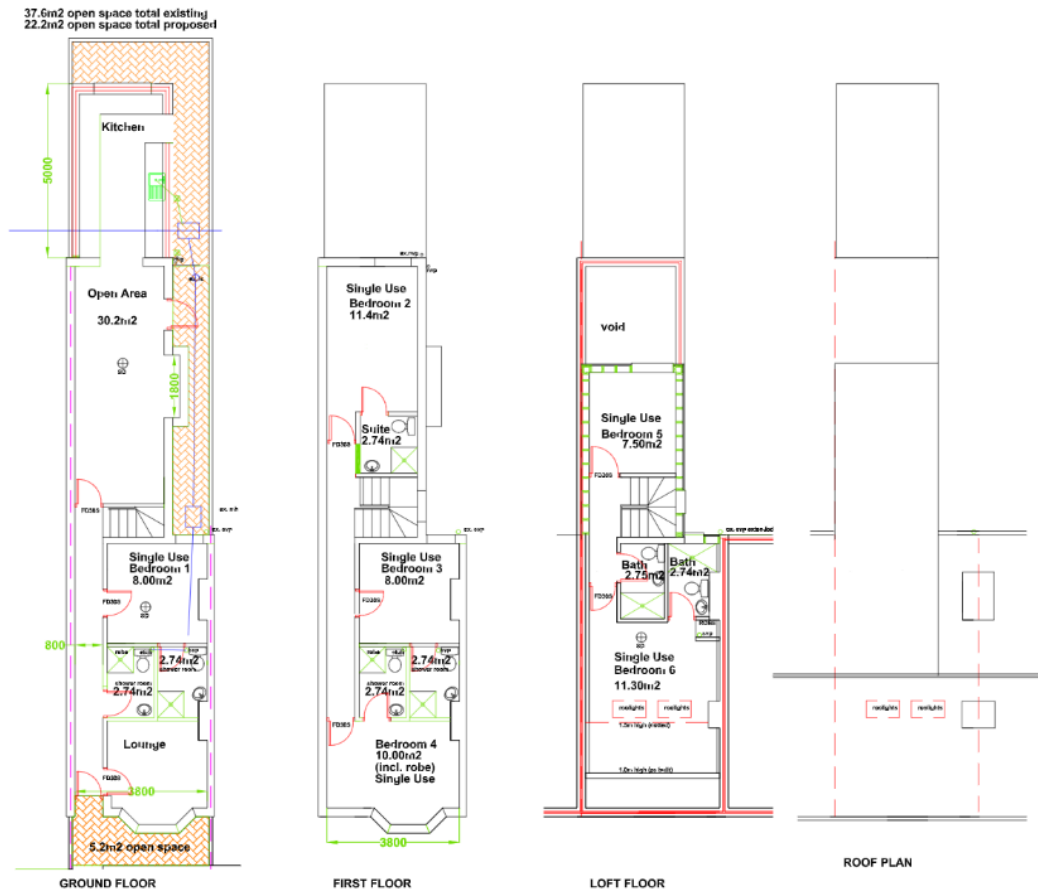


Figure 1: Existing plans

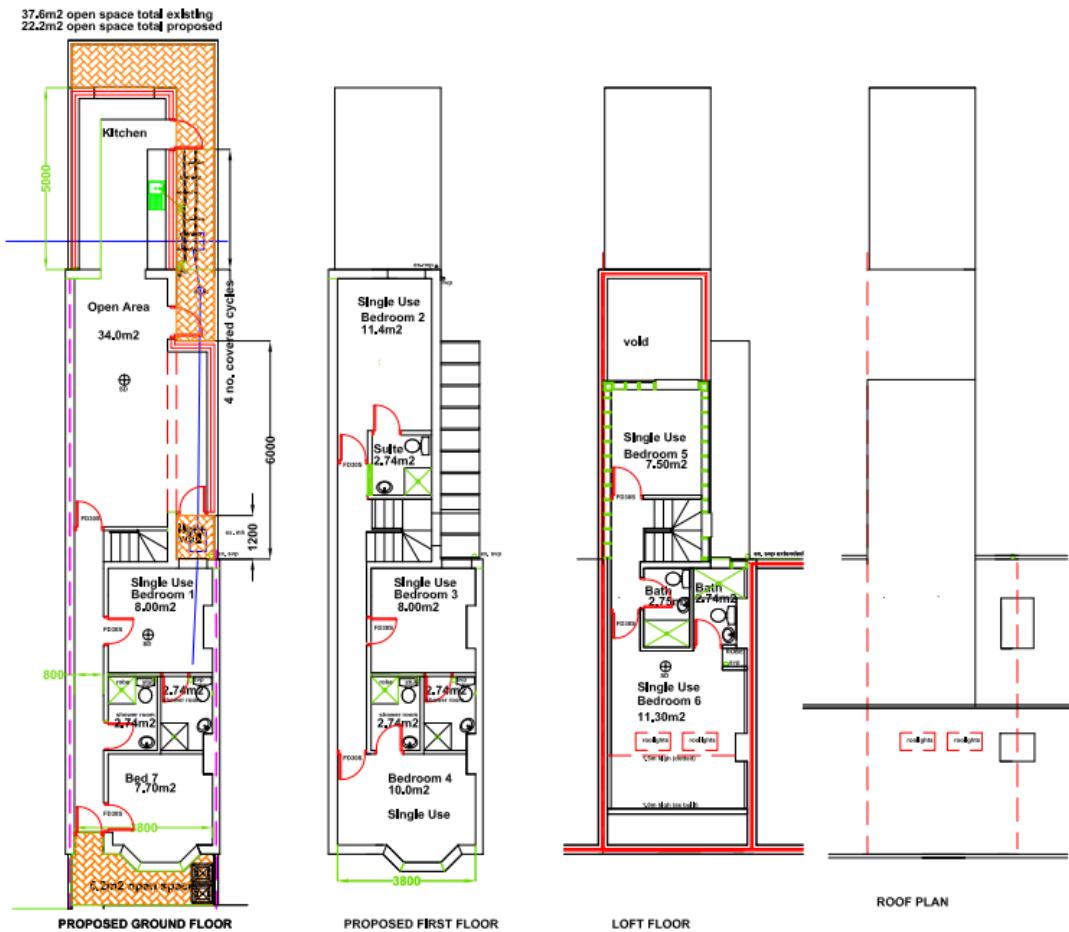


Figure 2: Proposed plans

## 1.7 Planning History

- 1.8 19/00112/GPDC - Construction of single storey rear extension. Prior Approval not required, 14 November 2019 (Implemented).
- 1.9 19/01621/FUL - Change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwellinghouse) and Class C4 (house in multiple occupation). Approved, 15 January 2020.
- 1.10 20/00276/FUL - Change of use from house in multiple occupancy (Class C4) from 6 to seven person/seven bedroom house in multiple occupancy (Sui Generis). Refused and appeal dismissed on 01 September 2021. The reason for refusal was as follows:

The proposal, by reason of the under provision of communal living space (approximately 4m<sup>2</sup> below the minimum requirement of 34 m<sup>2</sup>) would fail to provide a good standard of living accommodation for occupiers and represent an over intensive use of the property. 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).

- 1.11 22/00058/GPDC -Construction of single-storey rear extension that comes out a maximum of 6m beyond the rear wall of the original house with a maximum height of 3m and a maximum height of 2.8m to the eaves. Prior Approval not required, 30 August 2022

## 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:

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

### 3.3 Highways Engineer:

- 3.4 Considering the small scale of the proposal, it is the belief of the LHA that the proposal is unlikely to have a material impact upon the highway network and as such is satisfied that a traffic assessment would not be required.
- 3.5 Portsmouth's residential parking standards expect that dwelling houses (C3) and Houses in Multiple Occupation (HMO) (C4/ sui generis) with more than 4bedrooms should provide 2 car parking spaces per dwelling. Where no on-site parking is provided, it is assumed that existing parking demand is met on-street. Where an application property already has 4 or more bedrooms, the expected parking demand of a HMO(sui generis) would be the same as the existing use as per SPD standards and as such would not be required to provide any further spaces despite an increase in the number of bedrooms.

- 3.6 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.
- 3.7 Given the established policy position, the Highways Authority would see no grounds for objection for such an application.

#### **4.0 REPRESENTATIONS**

- 4.1 One letter of objection received raising the following concerns:

- Overcrowded dwelling and noise
- Fowl smelling sewage odour after the extension was built
- Loss of privacy from kitchen window facing onto neighbouring property (*Officer note: The extension was approved under 19/00112/GPDC*)
- Light pollution from exterior light (*Officer note: Minor domestic light fittings, are not subject to planning controls.*)

#### **5.0 COMMENT**

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

##### 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 8 HMOs out of 68 properties, a percentage of 11.77%. This proposal of course has no effect on that percentage and would have a negligible impact on the mix and balance of the community. 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.
- 5.4 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 1/4/2020 and it is due to expire on 31/3/2025.
- 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, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	8m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	11.4m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	8m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	10m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	7.5m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	11.3m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B6	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	7.7m <sup>2</sup>	6.51m <sup>2</sup>
Combined Living Space	34m <sup>2</sup> with extension shown or 30.2m <sup>2</sup> without the extension	34m <sup>2</sup> (based on 6.51m <sup>2</sup> sized bedrooms) 4 out of the 7 bedrooms measure between 7.5m <sup>2</sup> and 8m <sup>2</sup> .
GF Bathroom 1	2.74m <sup>2</sup>	3.74m <sup>2</sup>
Loft Bathroom 2	2.75m <sup>2</sup>	3.74m <sup>2</sup>

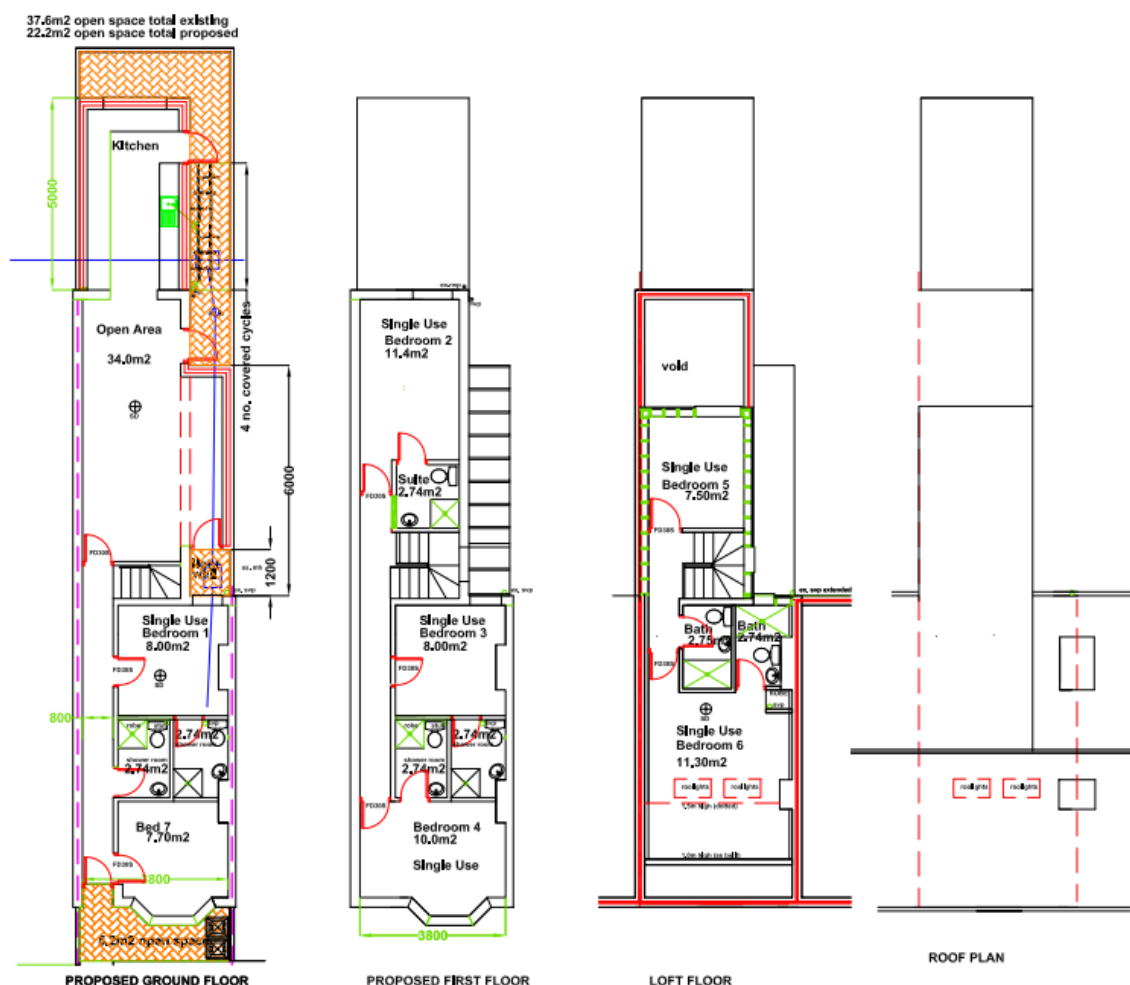


Figure 3: Proposed plans

- 5.6 The existing communal area measures 30.2m<sup>2</sup> which would be 4m<sup>2</sup> short of the required 34m<sup>2</sup> based on bedroom sizes of below 10sqm. This is the current circumstance as the dwelling is a long established HMO with the right, in planning terms, to be occupied by up to six individuals. However, if the proposed side/rear extension as shown on the plans were to be implemented this would result in a combined living space of 34m<sup>2</sup>. This extension is permitted development, as confirmed by application 22/00058/GPDC and can be completed at any time.
- 5.7 Officer's would note that the delivery of the proposed extension, alongside an intention to use the room annotated as 'bedroom 1' as a habitable bedroom would result in a less than satisfactory outlook for that bedroom. It will be for the Private Sector Housing team has part of the licensing regime to determine whether that room benefits from adequate light and outlook to allow it to be used as bedroom. From a planning perspective since the proposed change of use is not considered a material change of use as set out below in paragraph 5.11, irrespective of the compliance with policy regarding the quality of living environment, the landowner benefits from the fall back of being able to undertake that occupation without planning permission in any case. This matter is sufficiently weighty to overcome this identified harm.

#### Amenity and Parking

- 5.8 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.
- 5.10 Other Material Considerations
- 5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for

change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the Solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.

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

#### Impact on Special Protection Areas

- 5.13 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have 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 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, though the adverse implications to outlook of the side extension to bedroom 1 are noted. 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. A key consideration in that case would be whether the scheme would be acceptable with or without the side extension. That extension results in a notional increase in the shared communal space, but to the detriment of the future occupier of bedroom 1. It is therefore a matter of judgement, noting that this dwelling is already lawful, from a planning perspective, allowed to accommodate 6 residents, which has the same communal space requirements as 7 residents in accordance with the Council guidance, whether this extension is, overall beneficial to the living conditions of occupiers. In such a circumstance the Committee would need to consider whether to resolve to grant permission, and 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**



# 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