



NOTICE OF MEETING

PLANNING COMMITTEE

WEDNESDAY 8 FEBRUARY 2023 AT 10.30AM

COUNCIL CHAMBER - SECOND FLOOR, THE GUILDHALL, PORTSMOUTH

Telephone enquiries to Democratic Services 023 9283 4060

Email: Democratic@portsmouthcc.gov.uk

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

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

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 2022 and the end of universal free testing from 1st April 2022, attendees are no longer required to undertake any asymptomatic/ lateral flow test within 48 hours of the meeting; however, we still encourage attendees to follow the public health precautions we have followed over the last two years to protect themselves and others including vaccination and taking a lateral flow test should they wish.
- We strongly recommend that attendees should be double vaccinated and have received any boosters they are eligible for.
- If unwell we encourage you not to attend the meeting but to stay at home. Updated government guidance from 1 April 2022 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 2022, 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.
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- 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

Planning Committee Members:

Councillors Chris Attwell (Chair), George Fielding, Hugh Mason, Robert New, Darren Sanders, Russell Simpson, John Smith, Judith Smyth (Vice-Chair), 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

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

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

Representations by members of the public may be made on any item where a decision is going to be taken. The request needs to be made in writing to the relevant officer by 12 noon the day before the meeting and must include the purpose of the representation (eg for or against the recommendations). Email requests to planning.reps@portsmouthcc.gov.uk or telephone a member of the Technical Validation Team on 023 9283 4826.

A G E N D A

- 1 Apologies**
- 2 Declaration of Members' Interests**
- 3 Minutes of the previous meeting held on 18 January 2023. (Pages 5 - 12)**
RECOMMENDED that the minutes of the meeting held on 18 January 2023 be agreed as a correct record.
- 4 21/00645/FUL 56 Margate Road, Southsea PO5 1EZ (Pages 13 - 18)**
Change of use from house in multiple occupation (Class C4) to house in multiple occupation for seven people (sui generis).
- 5 22/01607/FUL 41 Margate Road, Southsea PO5 1EZ (Pages 19 - 26)**
Change of use from house in multiple occupation (class C4) to a 7 bedroom house in multiple occupation (sui generis).
- 6 21/01760/FUL 31 Powerscourt Road, Portsmouth PO2 7JE (Pages 27 - 32)**
Change of use from house in multiple occupation (class C4) to sui generis HMO use for more than 6 persons.

- 7 20/00753/FUL 32 Telephone Road, Portsmouth PO4 0AY** (Pages 33 - 38)
Change of use from C4 house of multiple occupation (3 to 6 persons) to sui generis house in multiple occupation for more than 6 persons.
- 8 22/00957/FUL 32 Victoria Rd South, Southsea PO5 2BT** (Pages 39 - 44)
Change of use from house in multiple occupation for seven persons (sui generis) to house in multiple occupation for eight persons (sui generis).
- 9 22/01644/FUL 58 Gladys Avenue, Portsmouth PO2 9BQ** (Pages 45 - 50)
Change of use from house in multiple occupation (class C4) to an 8 bedroom house in multiple occupation (sui generis).
- 10 22/01650/FUL 48 Wallington Road, Portsmouth PO2 0HB** (Pages 51 - 56)
Change of use from purposes falling within classes C3 (dwelling house) or C4 (HMO) to 7 person/ 7 bedroom house in multiple occupancy (sui generis).
- 11 22/01446/FUL 147 Manners Road, Southsea PO4 0BD** (Pages 57 - 62)
Change of use from house in multiple occupation (class C4) to 7 person house in multiple occupation (sui generis).
- 12 22/01458/FUL 293 Twyford Avenue, Portsmouth PO2 8PD** (Pages 63 - 68)
Change of use from class C3 (dwelling house)/ class C4 (house in multiple occupation) to 8 person house in multiple occupation (sui generis).
- 13 22/00233/HMO 13 Wyndcliffe Road, Portsmouth PO4 0LA** (Pages 69 - 74)
Planning Enforcement: Delegated report to resolve HMO investigation.

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Agenda Item 3

MINUTES OF THE MEETING of the Planning Committee held on Wednesday, 18 January 2023 at 10.30 am in the Council Chamber, the Guildhall, Portsmouth

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

Present

Councillors	Chris Attwell (Chair) Judith Smyth (Vice Chair) Hugh Mason Robert New Darren Sanders Russell Simpson John Smith Linda Symes
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Welcome

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

Guildhall, Fire Procedure

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

1. Apologies (AI 1)

Apologies for absence were received from Councillors George Fielding and Gerald Vernon-Jackson.

2. Declaration of Members' Interests (AI 2)

Councillor Sanders objected to the planning application at 49 St Piran's Avenue (item 10), so has predetermined the matter. The Legal Advisor confirmed that Councillor Sanders, who was making a deputation for agenda item 10 (49, St Piran's Avenue), could return to the meeting after he had made the deputation but he could not vote on the application.

3. Minutes of previous meeting held on 21 December 2022 (AI 3)

RESOLVED: That the minutes of the Planning Committee held on 21 December 2022 be agreed as a correct record.

PLANNING APPLICATIONS

The Supplementary Matters report and the deputations (which are not minuted) can be viewed on the Council's website at:

[Agenda for Planning Committee on Wednesday, 18th January, 2023, 10.30 am Portsmouth City Council](#)

4. 22/01292/FUL - Land at Tipner East, east of the M275, west of Twyford Avenue, Portsmouth (AI 4)

Detailed planning application for the redevelopment of site to provide 835 residential units of 1, 2, 3 and 4 bed units across a number of buildings of between 2 and 11 storeys, to include some ground floor commercial (use Class E) and community uses (use Class F1 and F2), within blocks, E, F, J and K. With vehicular access from Twyford Avenue, and pedestrian, cycle and emergency access to and from the Park and Ride. To include landscaping, sea wall, improvements to the ecological barge, new coastal path, cycle lane, car parking and servicing, and other associated works. This application constitutes EIA development.

The Acting Head of Development Management explained that officers recommended that the application be deferred due to objections from the Environment Agency and Coastal Partners. He apologised for the regrettable delay but the objections could not be resolved in a couple of days. The application would return to the Committee for determination as soon as possible. In response to questions from members, he explained that the objections had been submitted promptly but that the resubmitted application had not provided the required information.

RESOLVED to accept officers' recommendation to defer the application.

5. 21/01774/FUL - 77-79 High Street, Cosham, Portsmouth, PO6 3AZ (AI 5)

Construction of two separate 2-storey roof extensions above existing building with connecting walkways and communal roof terraces to form 8 dwellings; alterations at ground floor to create new entrance fronting Dorking Crescent and associated refuse storage facilities.

The Acting Head of Development Management presented the report and drew attention to the additional information in the Supplementary Matters report.

Deputations

Michael Saunders, agent, made a deputation.

Members' questions

In response to members' questions, officers clarified that:

- With regard to the likely Community Infrastructure Levy (CIL) amount of £96,000 being paid it can be complicated determining the exact figure as various criteria could affect it. After consent has been granted the applicant works closely with Planning to finalise the figure; £96,000 is the expected figure at this stage.
- There would be ten flats in total (eight in the current application and two for which Prior Approval has been achieved in June 2021).
- The concerns which led to planning permission being refused in March 2021 for a previous application for the two flats are unknown at this point in the meeting (i.e. the information is on the case file but it is not presently in front of the officer) and they have now been superseded by the approval granted in June 2021.
- Having a two-storey building being next to a one-storey one would form a gap in the street scene but it would not cause material harm to the townscape. Streets often have buildings with different heights. Party wall matters would need to be resolved.

- The development would not be the tallest building in the street. A two-storey building opposite Peacock's is taller as commercial storeys are usually higher than residential ones.
- As far as is known, there has been no research on parking for shoppers; there is no change to the commercial situation. The location is sustainable as it is next to the train station and buses. A parking survey showed there is on-street parking nearby, mainly in Dorking Crescent. Officers have observed the area and their observations agree with the survey's findings.

Member's comments

The application is good quality and will improve that particular section of the High Street.

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

6. 22/01368/FUL - 167-169 Highland Road, Southsea, PO4 9EZ (AI 6)

Construction of a three storey building with mansard roof to form 4no. Dwellings with associated parking and refuse/cycle storage, following demolition of the existing building

The Acting Head of Development Management presented the report and drew attention to the additional information in the Supplementary Matters report.

Members' questions

In response to members' questions, officers clarified that:

- Parking data comes from the Local Highways Authority. Three residents' parking zones cover the application site and neighbouring areas, two with 103% capacity (over-subscribed) and one with 96% (under-subscribed so there are still spaces).

Member's comments

- The design is interesting and it is good that the fenestration matches the buildings to the east. The design is sympathetic to the area and it is good to see the building line maintained.
- It is good that the design includes trees as it will echo the "living streets" installation further west on Albert Road. It could lead to regeneration and greening of the area.
- Councillors Sanders wanted it noted that he was the only member who wanted to refuse the application; his proposed refusal reason was on the grounds of parking.

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

7. 21/00934/FUL - 12 Beach Road, Southsea. PO5 2JH (AI 7)

Conversion to form 3 no. One bedroom self-contained flats including second floor rear extension and rear dormer.

The Acting Head of Development Management presented the report and drew attention to the additional information in the Supplementary Matters report.

Members' questions

In response to members' questions, officers clarified that:

- The property is not listed as a House in Multiple Occupation (HMO); its lawful use is listed as a dwellinghouse.
- With regard to concerns about the second floor flat's size and having enough room for a washing machine or fridge, although it is small it meets national space standards, including allowing for head height.
- With regard to improving the layout of the bathroom to allow a washing machine it could be amended during construction when plumbers and joiners are on site. The kitchen has enough space.
- If the second floor is extended it would be approximately 19 or 20 metres from the properties in Somerset Road, which is in line with most local authorities' standards. The two roads taper so the distance between properties backing on to each other decreases. No objection has been received from no.16 Somerset Road.
- Officers apologised for the discrepancies about parking in the report and Supplementary Matters which relate to two separate matters. Case officers were referring to residents' permits whereas the Supplementary Matters refers to the Local Highways Authority consultation reply, which is the advice to consider.
- There is space for one car to park on the forecourt.

Member's comments

- Parking problems in the area are exacerbated by nearby hotels issuing temporary parking permits so residents, even those with permits, cannot park. The issue needs examining.
- The building is currently in poor condition and the area has been known for substandard HMOs so the application is welcome.

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

8. 21/00933/FUL - 8 Beach Road, Southsea, PO5 2JH (AI 8)

Conversion to form 3 no. one bedroom self-contained flats including second floor rear extension and remodelling of existing rear dormer.

The Acting Head of Development Management presented the report and drew attention to the additional information in the Supplementary Matters report.

Members' questions

In response to members' questions, officers clarified that:

- The extensions are limited to the upper rear dormers.
- Officers have double-checked to see that the 37m² floor space in the second floor flat is usable. There is less space at the front than at no. 12 Beach Road (as the dormer is smaller than that for no.12 Beach Road); there is only 0.5m difference with the national space standards of 37.5m² for both developments.
- The forecourt can accommodate one car together with refuse containers and cycle storage.

Members' comments

There were no comments.

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

9. 22/01260/FUL - Former Mary Rose & Dragon Public House St George's Road, Portsmouth, PO1 2EW (AI 9)

Conversion of building to form retail unit at ground floor and 2no. dwellings at first floor; to include single storey rear extension, parking, cycle and refuse storage and associated alterations.

The Acting Head of Development Management presented the report and drew attention to the additional information in the Supplementary Matters report. He explained that the proposed change of use of the ground floor from a restaurant to retail is covered by the 2020 Use Classes Order and does not need planning permission; however, it is not unusual to seek planning permission in such cases to provide certainty.

Deputations

Mr Chris Frost, agent, made a deputation.

Members' questions

In response to members' questions, officers clarified that:

- Although plans for the first floor terrace show container compounds, refuse collectors are unlikely to collect rubbish from the terrace so residents would have to take it down the stairs, along Warblington Street and across the car park.
- Putting the main entrance to the shop on Warblington Street in order to retain the building's principal elegant frontage is a good suggestion but as it is on the main street it is more visible and also easier for people driving there. A condition could be imposed about the quality of the materials of the entrance, for example, recesses and junctions, to preserve the overall quality of the building.
- With regard to comments about the bleakness of the forecourt, officers agreed it may be big enough to accommodate trees. Officers take advice from landscape officers and would not accept a poor quality landscaping scheme; the applicant would have to discharge all conditions. Officers can make every effort to improve the landscaping, including perhaps having trees at both front and back.
- Officers could amend the wording of conditions so that they show how residents' parking spaces will be denoted and managed correctly, for example, by demarcation or bollards.

Member's comments

Members agreed that conditions relating to landscaping should be strengthened, including provision for trees, and that conditions relating to parking should show how differentiation between residential and retail spaces will be managed.

RESOLVED to grant conditional planning permission as set out in the officer's committee report with additional wording in conditions on landscaping (including trees) and differentiation between residential and retail parking, and the Supplementary Matters report.

10. 22/01102/FUL - 49 St Piran's Avenue, Portsmouth, PO3 6JE (AI 10)

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

Councillor Sanders removed himself from the Committee in order to give his deputation.

The Acting Head of Development Management presented the report and drew attention to the additional information in the Supplementary Matters report.

Deputations

- Gary Tobitt and Terry Leonard made deputations objecting to the application.
- Simon Hill, agent, made a deputation.
- Councillor Sanders made a deputation objecting to the application. The deputation included comments from a resident at no.51 St Piran's Avenue. He neither participated in the debate nor voted on the application.

Members' questions

In response to members' questions, officers clarified that:

- The plans have changed since the report was published as the kitchen layout is different. The new plan also shows that the door to the shower room on the ground floor is now off the lounge, rather than off the hall.
- With regard to concerns that the lounge could become a seventh bedroom, this is not known and members have to consider the application on its own merits as it is in front of them, which is for C4 use for six people. The application complies with policy with or without facilities as each room is en suite.
- The applicant, if following the Planning Committee's usual stance on these matters, would have to apply for a change of use from C4 to sui generis if they wanted to change the lounge into a bedroom. The property would comply with space standards if the lounge became a seventh bedroom.
- The extension would leave very limited garden space but this is allowed under Prior Approval.
- There is prior approval for the extension which was allowed which is why no elevations were requested with the current application. There were no objections at the time. Many houses in Portsmouth have prior approval for extensions, not just HMOs, including roof extensions.
- Material alterations such as lowering two ceilings come under building regulations and / or licensing so are not Planning matters.

Members' comments

- The property is unsuitable for an HMO, especially a large scale one, as the walls are very thin in the properties in St Piran's Avenue. It might be acceptable in theory but not in reality.
- Parking in the area has been difficult for a long time.
- The extension is very large for a small house.
- Members queried why there was a bathroom on the ground floor when each room was en suite.
- Members felt the application should be deferred so that they could make a site visit in order to be better informed before making a decision.

RESOLVED to defer the application so that Committee members can make a site visit.

The meeting concluded at 12.46 pm.

Signed by the Chair of the meeting
Councillor Chris Attwell

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Agenda Item 4

21/00645/FUL

WARD: ST THOMAS

56 MARGATE ROAD SOUTHSEA PO5 1EZ

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

[21/00645/FUL | Change of use from House in Multiple Occupation \(Class C4\) to House In Multiple Occupation for seven people \(Sui Generis\) | 56 Margate Road Southsea PO5 1EZ \(portsmouth.gov.uk\)](#)

Application Submitted By:

Ms Carianne Wells
Applecore PDM Ltd

On behalf of: Mr James Oliver

RDD: 28th April 2021

LDD: 23rd June 2021

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is being brought before Planning at the request of Councillor Vernon-Jackson, and due to the number of objections (eleven) received.
- 1.2 The main issues for consideration in the determination of the application are as follows:
 - Principle of Development including compliance with policy
 - Impacts on Amenity including parking
 - Other material considerations

Site and surroundings

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

The Proposal

- 1.4 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use as an HMO with up to six individuals living together to allow up to seven 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.

Planning History

- 1.5 The current HMO (Class C4) use was approved under planning ref: 18/00148/FUL on 28th March 2018.
- 1.6 A single storey rear extension was constructed under Prior Approval 20/00071/GPDC, dated 27th July 2020.

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) are policies PCS17 (Transport), PCS20 (Houses in Multiple Occupation) and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes: The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD').

3.0 CONSULTATIONS

- 3.1 Private Sector Housing: No response received.
- 3.2 Transport Planning: No response received.

4.0 REPRESENTATIONS

- 4.1 Eleven representations have been received from neighbouring residents raising objections on the following grounds:
- Over concentration of HMOs in the local area;
 - Increase in noise and disturbance;
 - Increase in waste and litter;
 - Increase in parking concerns; and
 - Crime and anti-social behaviour.

5.0 COMMENT

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMOs could have in Portsmouth, most notably in relation to residential amenity, both for occupiers of HMOs and neighbouring properties, and the 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 property is already in lawful use as an HMO and the application seeks to increase its occupation by 1 occupant. As such, the application proposal would not have any material impact on the balance of the housing mix 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 proposed does not change this mix of dwellings, the proposal would not conflict with this guidance. For reference, it is noted that the relevant 50m radius area is currently made up of 51

HMOs out of 89 properties, a percentage of 57.30%. This proposal of course has no effect on this percentage. The HMO SPD also describes a number of circumstances where new HMOs are not considered 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 pertinent to this application.

- 5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal, as shown in **Figure 1** below, 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.
- 5.6 Under the current proposal, the following room sizes, as set out in **Table 1** below, would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	20.15m ²	6.51m ²
Bedroom 1 (Ensuite)	2.76m ²	2.74m ²
Bedroom 2	10.03m ²	6.51m ²
Bedroom 2 (Ensuite)	2.76m ²	2.74m ²
Bedroom 3	12.38m ²	6.51m ²
Bedroom 3 (Ensuite)	2.74m ²	2.74m ²
Bedroom 4	10.12m ²	6.51m ²
Bedroom 4 (Ensuite)	2.74m ²	2.74m ²
Bedroom 5	10.92m ²	6.51m ²
Bedroom 5 (Ensuite)	2.77m ²	2.74m ²
Bedroom 6	10.04m ²	6.51m ²
Bedroom 6 (Ensuite)	2.77m ²	2.74m ²
Bedroom 7	10.08m ²	6.51m ²
Bedroom 7 (Ensuite)	2.77m ²	2.74m ²
Combined Living Space	35.64m ²	22.5m ²
WC (Ground Floor)	1.48m ²	1.17m ²

Table 1 - HMO SPD (Oct 2019) compliance

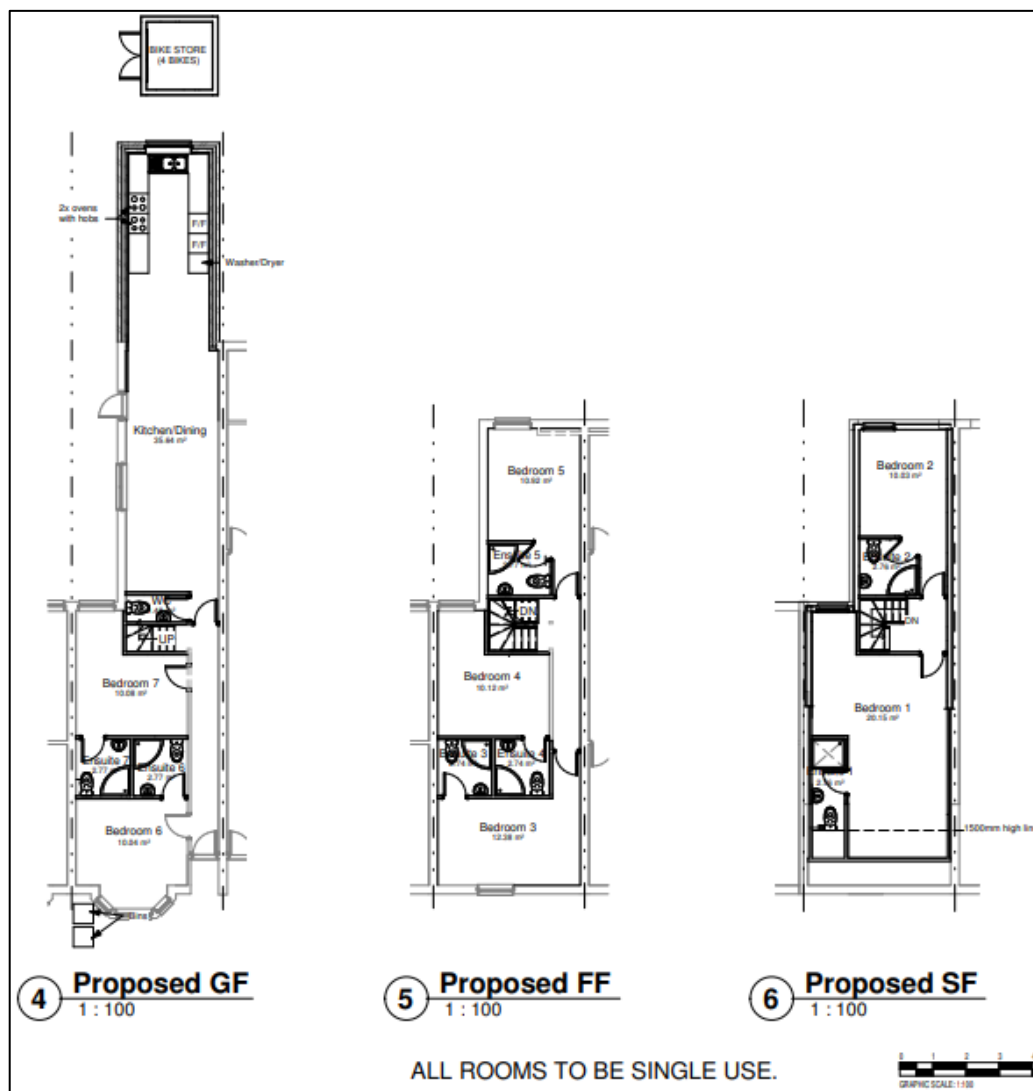


Figure 1: Proposed Floor plans

- 5.7 The bedrooms and communal living area would exceed the minimum size requirements for seven individuals, and the combination of ensuites and a shared WC would provide a suitable overall arrangement of sanitary facilities. Furthermore, all habitable rooms would have good access to natural light, and would have a suitable configuration/ layout, as well as size.
- 5.8 It is considered that all of the bedrooms and the communal living areas accord with the standards as set out within the HMO SPD (October 2019) and 'The Standards for Houses in Multiple Occupation' document dated September 2018.

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 Concerns have been raised in the representations regarding a potential increase in crime and anti-social behaviour as a result of the proposed increase in occupancy. However, the Council does not have any evidence to suggest that HMOs result in higher levels of crime or anti-social behaviour than a Class C3 dwellinghouse.

- 5.11 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 bedrooms. As such, the proposal remains in accordance with the Council's adopted guidance on parking provision.

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.
- 5.13 Under s57 of the 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 the 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.
- 5.14 Members will note a 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.
- 5.15 Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certificates of lawfulness and in respect of planning permission for change of use to alter the occupation of a number of HMOs with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to the Officer recommendations in these cases, the Committee determined that these changes in occupation amounted to a material change in use, primarily by concluding 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 amounted to development requiring planning permission.
- 5.16 In the case of this application proposal, the increase in occupancy proposed would not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as an HMO with up to six occupants. As such, it is considered that the change of use proposed 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

- 5.17 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicants fall-back position above 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 will 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 be fully comply with the relevant policies of the Local Plan meeting the adopted standards for room sizes and providing a good standard of living accommodation in accordance with Policy PCS23 of the Local Plan.
- 6.2 However, notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan, it is noted that in this particular 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, it is not considered that planning permission is required for the proposal, and it could be carried out anyway irrespective of the determination of this application. This is considered to be a material consideration of overriding weight, and unconditional planning permission should therefore be granted.
- 6.3 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, the proposal fully complies with the associated guidance regarding the relevant local plan policies [in respect of room sizes to support a good standard of living] and officers are satisfied that the amount and configuration of the dwelling does not create an unacceptable living environment], the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that the 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

22/01607/FUL

WARD: ST THOMAS

41 MARGATE ROAD SOUTHSEA PO5 1EY

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

[22/01607/FUL | Change of use from house in multiple occupation \(Class C4\) to a 7 bedroom house in multiple occupation \(Sui Generis\) | 41 Margate Road Southsea PO5 1EY \(portsmouth.gov.uk\)](#)

Application Submitted By:

Ms Carianne Wells
Applecore PDM Ltd

On behalf of: Birmingham Bunked

RDD: 22nd November 2022

LDD: 17th January 2023

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is being brought before Planning Committee at the request of Councillor Vernon-Jackson.
- 1.1 The main issues for consideration in the determination of the application are as follows:
- Principle of Development including compliance with policy
 - Impacts on Amenity including parking
 - Other material considerations

Site and surroundings

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

The Proposal

- 1.3 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use as an HMO with up to six individuals living together to allow up to seven individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms and a small extension to the existing rear wing roof enlargement, achieved under Permitted Development Rights.
- 1.4 The proposal is a re-submission of planning application ref. 20/01199/FUL with amendments being made to the floor plans to increase the size of the combined living space and Bedrooms 1, 5, 6 and 7 as detailed in **Table 1** below.

Planning History

- 1.5 19/00003/GPDC:
Ground floor extension constructed after Prior Approval 19/00003/GPDC.
A roof extension was built as Permitted Development.

- 1.6 19/00146/FUL:
The current HMO (Class C4) use was approved under planning ref: 19/00146/FUL on 2nd of April 2019.
- 1.7 19/01396/FUL:
A non-determination appeal was dismissed on 16th of September 2020 for the change of use of the property from the existing Class C4 (house in multiple occupation) to Sui Generis house in multiple occupation (for 7 persons) under planning ref: 19/01396/FUL and appeal ref: APP/Z1775/W/20/3253960. The Inspector's concluding comments were: *"Therefore, in conclusion on the main issue, I find that the proposal would be harmful to the living conditions of future occupiers having particular regard to the internal space provision. As such, the proposal would be contrary to Policy PCS23 of the CS, Section 12 of the Framework and guidance in the SPD"*.
- 1.8 20/01199/FUL:
Following the appeal decision for 19/01396/FUL, a subsequent application was submitted to the Council under planning ref: 20/01199/FUL which sought to make amendments to the floor plans to increase the size of Bedrooms 2 (10m²), 4 (11.65m²) and 7 (10.71m²). Bedroom 5 (9.02m²) was the only bedroom that remained under the 10m² size standard. This application was refused on 21st of October 2022 for the following reasons:
- 1) The proposal would be harmful to the living conditions of future occupiers having particular regard to the internal space provision. As such, the proposal would be contrary to Policy PCS23 of the CS, Section 12 of the Framework and guidance in the SPD and that the proposal would have unmitigated adverse effect to the Special Protection Area.
 - 2) It has been identified that any residential development in the city will result in a significant effect on the Solent Special Protection Areas, through additional nutrient output; with mitigation against these impacts being required. No mitigation measures have been secured and, until such time as this has been provided, the proposal would have a significant detrimental impact on the Special Protection Areas; contrary to Policy PCS13 of The Portsmouth Plan 2012, the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981, and Section 15 of the NPPF 2021.

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) are policies PCS17 (Transport), PCS20 (Houses in Multiple Occupation) and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes: The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD').

3.0 CONSULTATIONS

- 3.1 Private Sector Housing: No objection. The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.
- 3.2 Transport Planning: No objection. The proposal would not have a material impact upon the function of local highway network. A condition should be attached to any permission granted requiring secure cycle storage to be provided prior to occupation.

4.0 REPRESENTATIONS

- 4.1 Three representations have been received from neighbouring residents raising objections on the following grounds:
- Over concentration of HMOs in the local area;
 - Increase noise and disturbance;
 - Increase in waste and litter;
 - Increase in parking concerns; and
 - Crime and anti-social behaviour

5.0 COMMENT

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMOs could have in Portsmouth, most notably in relation to residential amenity, both for occupiers of HMOs and neighbouring properties, and the 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 property is already in lawful use as an HMO and the application seeks to increase its occupation by 1 occupant. As such, the application proposal would not have any material impact on the balance of the housing mix 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 proposed does not change this mix of dwellings, the proposal would not conflict with this guidance. For reference, it is noted that the relevant 50m radius area is currently made up of 51 HMOs out of 89 properties, a percentage of 57.30%. This proposal of course has no effect on this percentage. The HMO SPD also describes a number of circumstances where new HMOs are not considered 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 pertinent to this application.
- 5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal, as shown in **Figure 1** below, 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.

- 5.6 Under the current proposal, the following room sizes, as set out in **Table 1** below, would be provided, as compared to the previously refused planning application ref: 20/01199/FUL and the minimum size prescribed in the Council's adopted guidance:

Room	Refused Application 20/01199/FUL	Area now Provided:	Required Standard:
Bedroom 1	10.2m2	12.47m2	6.51m2
Bedroom 2	10m2	10m2	6.51m2
Bedroom 3	11.2m2	11.2m2	6.51m2
Bedroom 4	11.65m2	10.71m2	6.51m2
Bedroom 5	9.02m2	10.41m2	6.51m2
Bedroom 6	10.69m2	12.1m2	6.51m2
Bedroom 7	10.71m2	12.22m2	6.51m2
Combined Living Space	27.03m2	28.82m2	22.5m2
Shower room 1	2.17m2	Removed	3.74m2
Shower room 2	3.75m2	3.75m2	3.74m2
Shower room 3	3.74m2	3.78m2	3.74m2
WC	1.5m2	1.81m2	1.17m2

Table 1 - Proposed Room Sizes



Figure 1: Proposed Floor Plans

- 5.7 The HMO Standards advise that where bedrooms are more than 10m² then a shared living space/kitchen can be at least 22.5m² (for 6-10 persons). The application addresses the previous standard of living environment concerns raised in both applications ref: 19/01396/FUL (dismissed on appeal) and ref: 20/01199/FUL by increasing the size of all the bedrooms to over the 10m² standard and the combined living space to 28.82m² as shown in **Table 1** above. The proposal now results in an internal layout and space provision that would provide a satisfactory standard of living environment for future occupiers fully in accordance with Policy PCS23 of the Local Plan and the guidance in the HMO SPD.

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 bedrooms. As such, the proposal remains in accordance with the Council's adopted guidance on parking provision.

Other Material Considerations

- 5.10 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.
- 5.11 Under s57 of the 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 the 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.
- 5.12 Members will note the 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.
- 5.13 Members may also note the previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certificates of lawfulness and in respect of planning permission for change of use to alter the occupation of a number of HMOs with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to the Officer recommendations in these cases, the Committee determined that these changes in occupation amounted to a material change in use, primarily by concluding 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 amounted to development requiring planning permission.
- 5.14 In the case of this application proposal, the increase in occupancy proposed would not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as an HMO with up to six occupants. As such, it is considered that the change of use proposed 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

- 5.15 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 fall-back position above 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 will 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 be fully comply with the relevant policies of the Local Plan meeting the adopted standards for room sizes and providing a good standard of living accommodation in accordance with Policy PCS23 of the Local Plan.
- 6.2 However, notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan, it is noted that in this particular 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, it is not considered that planning permission is required for the proposal, and it could be carried out anyway irrespective of the determination of this application. This is considered to be a material consideration of overriding weight, and unconditional planning permission should therefore be granted.
- 6.3 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, the proposal fully complies with the associated guidance regarding the relevant local plan policies [in respect of room sizes to support a good standard of living] and officers are satisfied that the amount and configuration of the dwelling does not create an unacceptable living environment], the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that the 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

21/01760/FUL

WARD: NELSON

31 POWERSCOURT ROAD PORTSMOUTH PO2 7JE

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R3JCL9MOGDB00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R3JCL9MOGDB00)

Application Submitted By:

Applecore PDM Ltd
FAO Mrs Carianne Wells

On behalf of:

Geffryes

RDD: 3rd December 2021

LDD: 31st January 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

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

1.5 Proposal

1.6 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use 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

1.7 Planning History

1.8 The change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwellinghouse) or Class C4 (house in multiple occupation) was permitted in 2020 under planning ref: 20/00043/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 3 representations have been received from neighbouring residents objecting to the proposal on the following grounds:
- a) Loss of light from extension;
 - b) Questions if the rear ground floor extension is Permitted Development;
 - c) Loss of property value;
 - d) Impact on local services and infrastructure;
 - e) Over-development;
 - f) Increase in waste;
 - g) Too many HMOs in Portsmouth; and
 - h) Loss of housing.

5.0 COMMENT

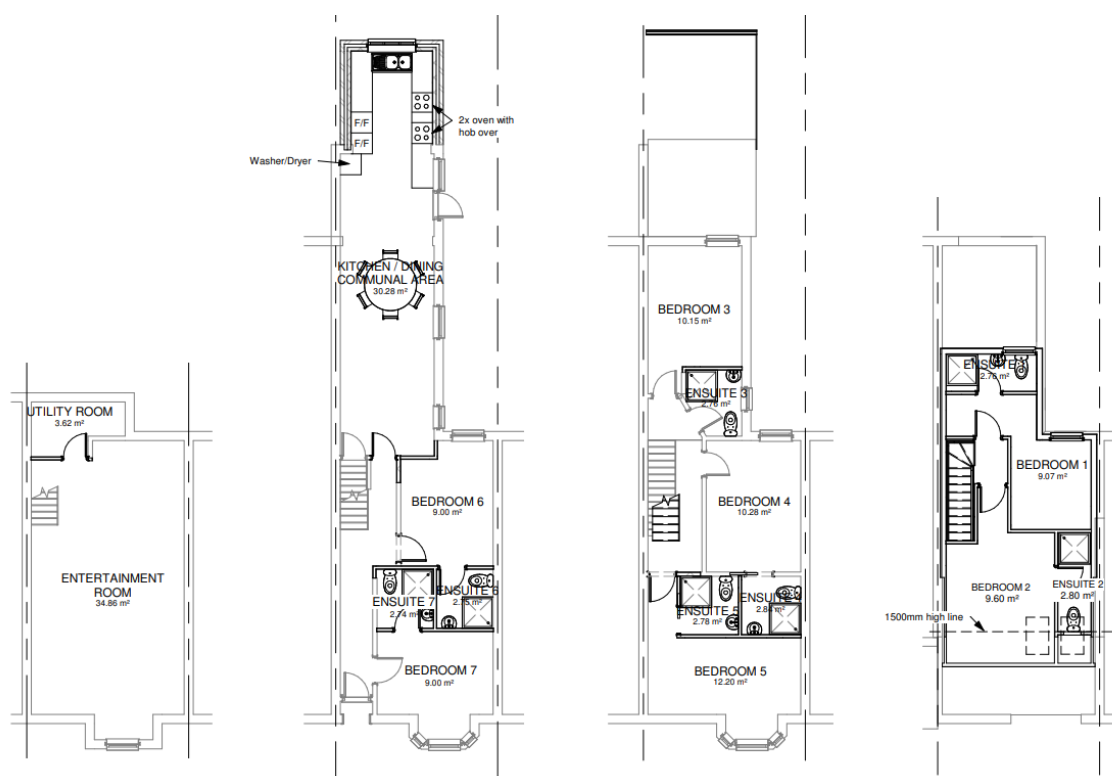
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

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 increase its occupation by 1 occupant. As such the application is not considered on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 3 HMOs out of 71 properties, a percentage of 4.22%. 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 22/06/2022.

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

Room	Area Provided:	Required Standard:
Bedroom 1	9.07m ²	6.51m ²
Bedroom 2	9.6m ²	6.51m ²
Bedroom 3	10.15m ²	6.51m ²
Bedroom 4	10.28m ²	6.51m ²
Bedroom 5	12.2m ²	6.51m ²
Bedroom 6	9m ²	6.51m ²
Bedroom 7	9m ²	6.51m ²
Ensuite B1	2.76m ²	2.74m ²
Ensuite B2	2.8m ²	2.74m ²
Ensuite B3	2.76m ²	2.74m ²
Ensuite B4	2.84m ²	2.74m ²
Ensuite B5	2.78m ²	2.74m ²
Ensuite B6	2.75m ²	2.74m ²
Ensuite B7	2.74m ²	2.74m ²
Combined Living Space	30.28m ²	34m ²
Entertainment Room	34.86m ²	---



- 5.7 As is shown in the table above, the proposal results in an internal layout, which due to the size of the ground floor communal area would not quite meet the guidance provided to describe a satisfactory standard of living environment. However, there is an additional entertainment room at basement level which measures 34.86m². These areas combined greatly exceed the 34m² communal space requirements. While it is noted that the

basement receives limited natural light and poor outlook, given the provision of total communal space provided this is considered to overcome the shortfall of the ground floor communal area. In addition, all of the bedrooms are well above the minimum space requirement and three are above the additional standard of 10m² as defined within the 'Standards for Houses in Multiple Occupation' guidance document (2019). Bedroom 1 does have a poor layout, however the room benefits from its own ensuite and the main area of the room alone would still be above the minimum standard for a bedroom. On the basis of the information supplied the resulting layout is considered to result in a satisfactory standard of living environment for seven occupiers. It was noted at the time of the officers site visit that the basement room was unfinished, if members decided to consider the change of use to require planning permission, but wish to grant approval otherwise, they may wish to consider a condition for the basement to be completed prior to the occupation as a seven person HMO.

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 bedrooms. 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 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 Matters raised in representations not already addressed
- 5.15 The extension is Permitted Development, while it does get close towards the 50% curtilage rule, given the area from the front of the property the extension is considered to accord. As the extension is permitted Development consideration cannot be given towards any loss of light.
- 5.16 Impact on property value is not a material planning consideration.
- 5.17 It is not considered that one additional resident will have a significant impact on local services or waste generation.
- 5.18 Impact on Special Protection Areas
- 5.19 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicant's above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a Likely Significant Effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

6.0 CONCLUSION

- 6.1 As detailed above the application is considered to comply with overall guidance, given the provision of a large basement communal area to supplement the ground floor area. It is considered the premises would provide a good standard of living accommodation in accordance with Local Plan Policy PCS23. However, notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, while the merits of the proposed use does comply with the associated guidance regarding the relevant local plan policies in respect of room sizes to support a good standard of living, officers are satisfied that the amount and configuration of the dwelling does not create an unacceptable living environment, the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit

condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

RECOMMENDATION

Unconditional Permission

Conditions: None

Agenda Item 7

20/00753/FUL

WARD: CENTRAL SOUTHSEA

32 TELEPHONE ROAD SOUTHSEA PO4 0AY

CHANGE OF USE FROM C4 HOUSE OF MULTIPLE OCCUPATION (3 TO 6 PERSONS) TO SUI GENERIS HOUSE IN MULTIPLE OCCUPATION FOR MORE THAN 6 PERSONS

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QD5R0IMOIZC00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qd5r0imoizc00)

Application Submitted By:

Applecore PDM Ltd
FAO Mrs Carianne Wells

On behalf of:

Mr Simon Birmingham

RDD: 8th July 2020

LDD: 20th January 2021

1.0 SUMMARY OF MAIN ISSUES

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

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

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

1.3 Site and surroundings

1.4 The application site is a two-storey 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 19/01317/FUL: Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse). Conditional Permission (30.10.2019).

1.9 19/00098/GPDC: Construction of a single-story rear extension. Prior Approval not required (21.10.2019).

2.0 POLICY CONTEXT

2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation and PCS23 (Design and Conservation).

- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 CONSULTATIONS

- 3.1 Private Sector Housing: 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 40 HMOs out of 85 properties, a percentage of 47.05%. 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 01/06/2020.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the

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

Room	Area Provided:	Required Standard:
Bedroom 1	8.36m ²	6.51m ²
Bedroom 2	7.62m ²	6.51m ²
Bedroom 3	9.1m ²	6.51m ²
Bedroom 4	9.52m ²	6.51m ²
Bedroom 5	9.31m ²	6.51m ²
Bedroom 6	7.13m ²	6.51m ²
Bedroom 7	9.03m ²	6.51m ²
Lounge	14.06m ²	14m ²
Kitchen	11.9m ²	11m ²
Dining room	14.32m ²	14m ²
Shower room 1	3.75m ²	3.74m ²
Shower room 2	3.74m ²	3.74m ²
WC	1.32m ²	1.17m ²

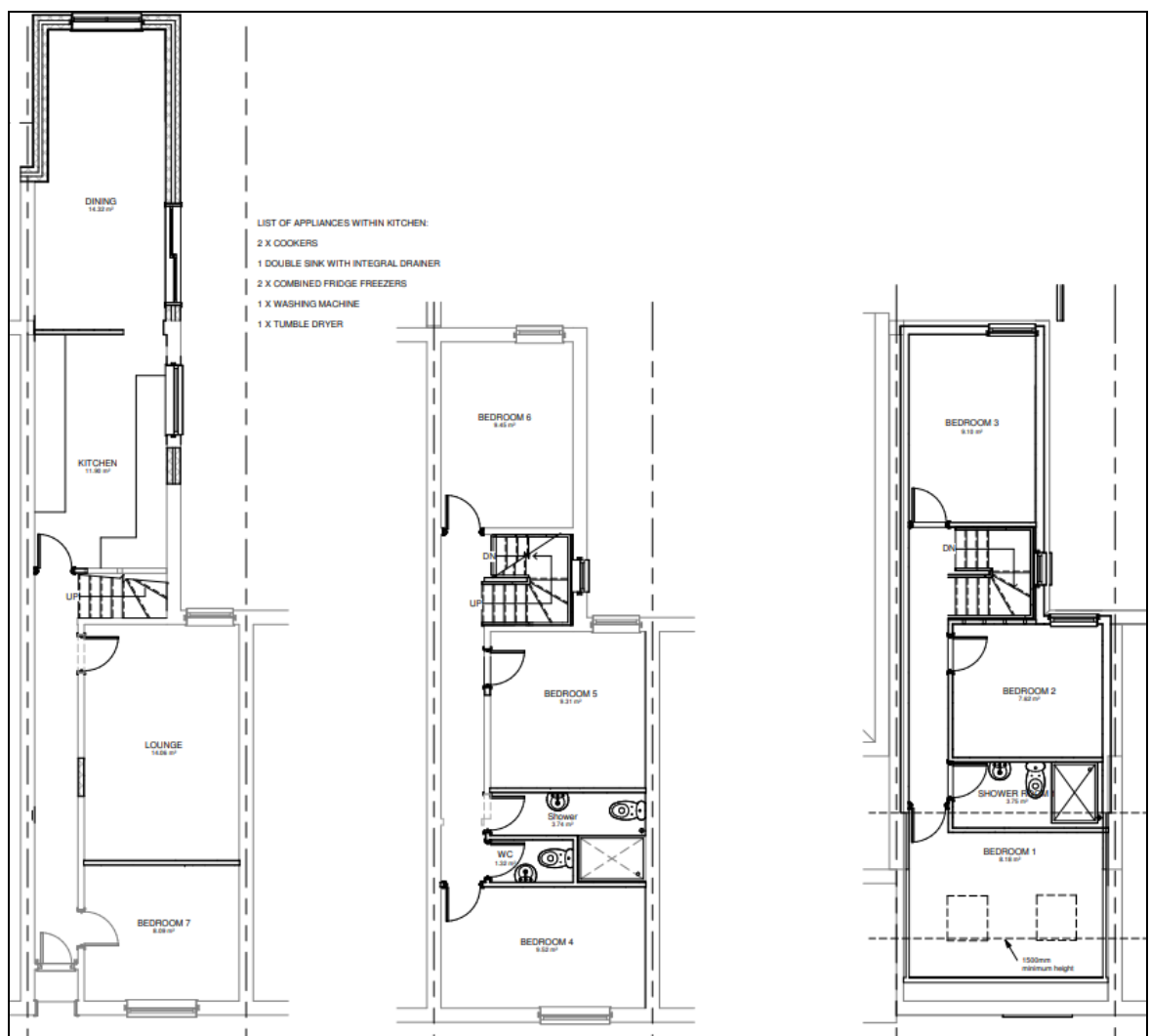


Figure 1 Proposed Floorplans

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

5.8 Amenity and Parking

- 5.9 The proposal would increase the occupancy of the existing HMO by 1 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 bedrooms. 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.
- 5.13 Members will note the 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.
- 5.14 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as an HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.

5.15 Impact on Special Protection Areas

- 5.16 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 8

22/00957/FUL

WARD: ST JUDE

32 VICTORIA ROAD SOUTH SOUTHSEA CITY OF PORTSMOUTH PO5 2BT

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION FOR SEVEN PERSONS (SUI GENERIS) TO HOUSE IN MULTIPLE OCCUPATION FOR EIGHT PERSONS (SUI GENERIS).

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RE8ISFMOKN700](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=re8isfmokn700)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Robinson
Brentor Property Ltd

RDD: 30th June 2022

LDD: 26th August 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

1.4 The application site is a three-storey terraced dwelling 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 an HMO with up to seven individuals living together, to allow up to eight 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 21/01561/FUL: Raise the roof on single storey rear extension and adding of roof lights to the front and rear elevation. Conditional Permission (25.01.2022)

1.9 21/00940/CPE: Application for certificate of lawful development for existing use as a 7 person House in Multiple Occupation (Sui Generis). Granted (18.11.2021).

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 7 HMOs out of 88 properties, a percentage of 7.95%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 8 occupants. This licence was granted on 23/09/2022.
- 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 (Double occupancy)	19.29m ²	14m ²
Ensuite B1	2.74m ²	2.74m ²
Bedroom 2	11.57m ²	10m ²
Ensuite B2	2.93m ²	2.74m ²
Bedroom 3	17.58m ²	10m ²
Ensuite B3	3.07m ²	2.74m ²
Bedroom 4	11.71m ²	10m ²
Ensuite B4	2.8m ²	2.74m ²
Bedroom 5	11.43m ²	10m ²
Shower room B5	3.09m ²	2.74m ²
Bedroom 6	14.07m ²	10m ²
Ensuite B6	2.98m ²	2.74m ²
Bedroom 7	11.63m ²	10m ²
Ensuite B7	2.83m ²	2.74m ²
Combined Living Space	24.23m ²	22.5m ²
WC	1.58m ²	1.17m ²

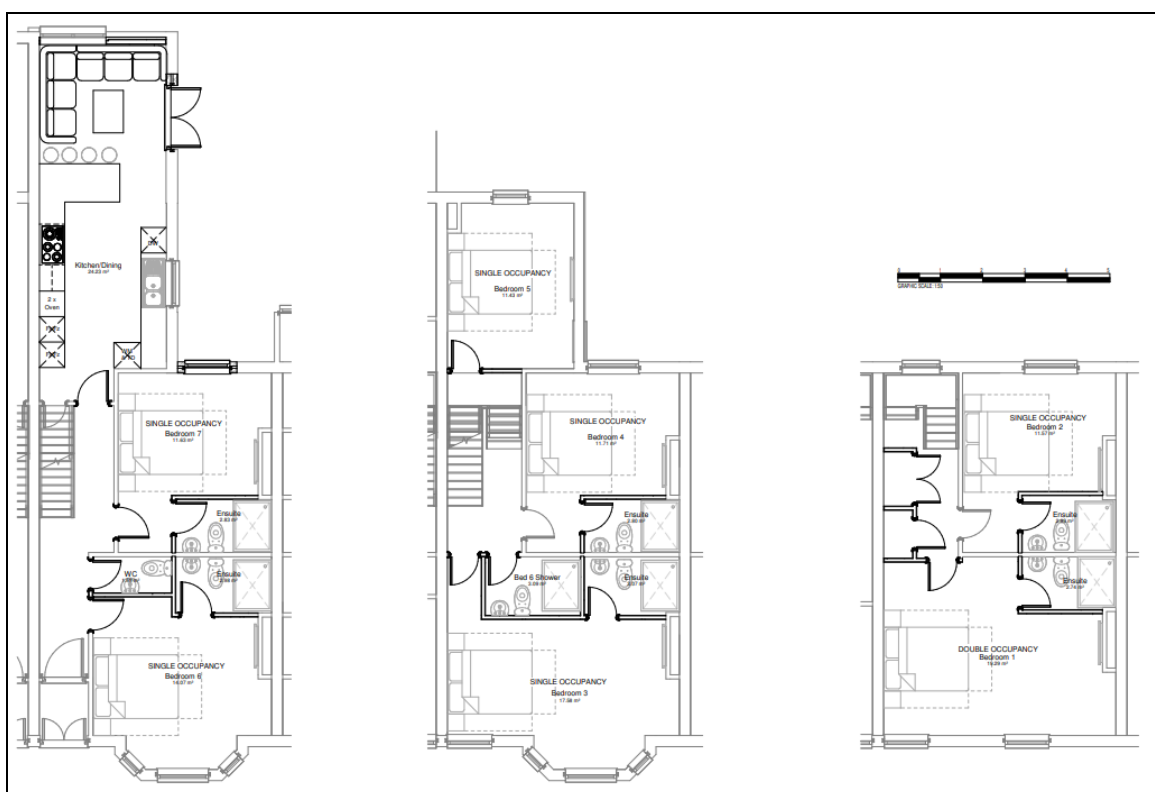


Figure 1 Proposed Floorplans

- 5.7 As is shown in the table above, the proposal results in an internal layout that meets the Council's adopted space standards and is therefore considered to result in a satisfactory standard of living environment.
- 5.8 Amenity and Parking
- 5.9 The proposal would increase the occupancy of the existing HMO by 1 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 bedrooms. 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.
- 5.13 Members will note the 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.
- 5.14 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as an HMO with up to seven 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.
- 5.15 Impact on Special Protection Areas
- 5.16 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 9

22/01644/FUL

WARD: NELSON

58 GLADYS AVENUE PORTSMOUTH PO2 9BQ

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO AN 8 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RLWKOLMOFMN00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RLWKOLMOFMN00)

Application Submitted By:

Applecore PDM Ltd
FAO Mrs Carianne Wells

On behalf of:

Mr Legg
Synergy Wealth Creation LTD

RDD: 28th November 2022

LDD: 23rd January 2023

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 relates to a two storey mid terrace property situated on the eastern side of Gladys Avenue in a predominately residential area. The application site comprises of; three bedrooms, a living area, dining room, kitchen, conservatory and separate WC at ground floor level and three bedrooms, bathroom and separate WC at first floor level.

1.4 The Proposal

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

1.6 The only change proposed within the property is that of the lounge and the study at the ground floor level becoming seventh and eighth bedrooms.

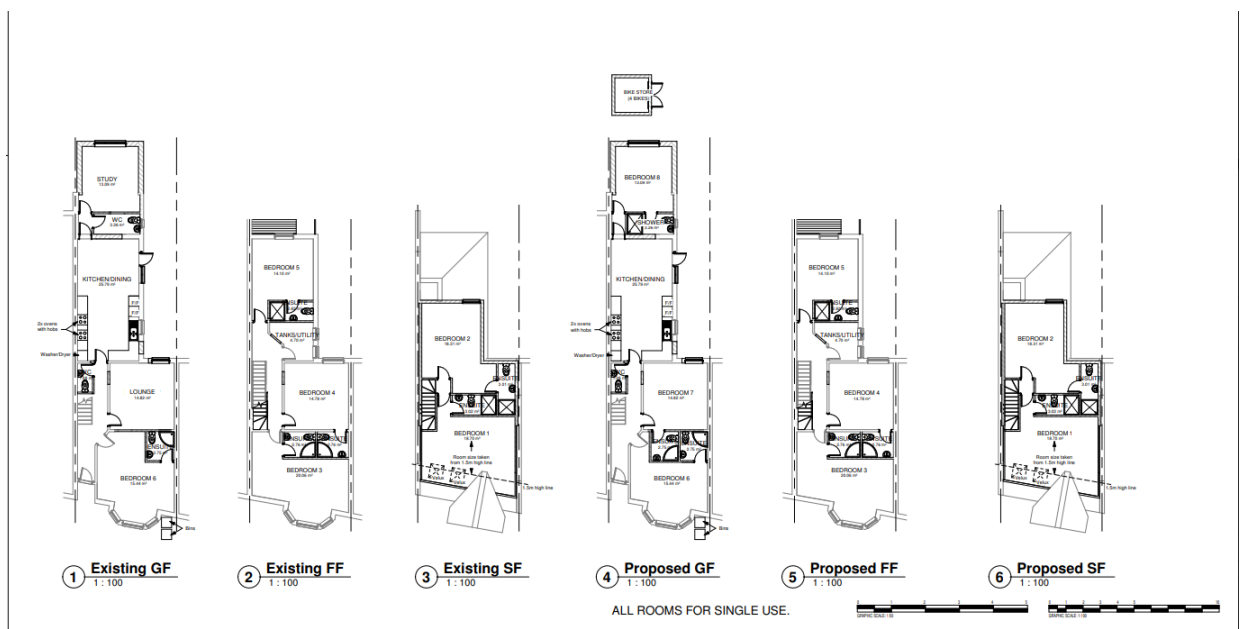


Figure 1: Existing and proposed floor plans

1.7 Planning History

1.8 21/01717/FUL - Change of use from dwelling house (class C3) to purposes falling within class C3 (dwelling house) or class C4 (House of Multiple Occupation). Allowed on Appeal (against non-determination), 18/11/2022

1.9 21/00147/GPDC - Construction of single-storey rear extension 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 notification required and refused 19/01/2022 (depth and bulk resulting in unneighbourly and overly dominant form of development).

2.0 **POLICY CONTEXT**

2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation and PCS23 (Design and Conservation).

2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 **CONSULTATIONS**

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

4.0 **REPRESENTATIONS**

4.1 Five letters of representation received objecting on the following summarised grounds:

- Insufficient parking in the area
- Sewer and drain infrastructure in the area can't cope (*Officer comment: This matter is covered by separate legislation*)
- Increased pressure on services
- Overdevelopment
- Rear extension has reduced the standard of communal space

- Subdivided properties for flat conversion should be counted as a HMO for the purpose of the 10% count
- Antisocial behaviour such as littering and overflowing bins
- Noise
- The 50m HMO radius is incorrect and 75 Wadham Road is also an HMO as previously noted in HMO applications on Wadham road and as noted on the councils own database. Thus, there are actually 4 HMOs within the 50m circle which is 5 with 58 included. *(Officer comment: 75 Wadham Road isn't a known HMO as on the public register. Whilst it has been granted an HMO licence there is no planning permission or pending planning applications.)*

5.0 COMMENT

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

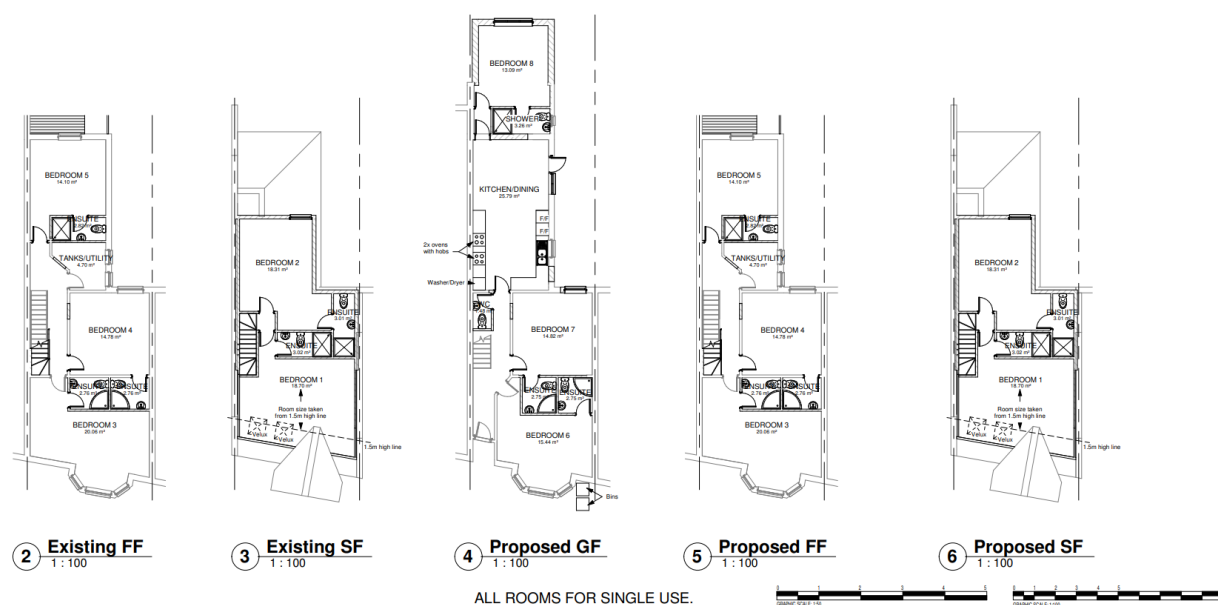
5.2 Principle

- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 2 occupants. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 4 HMOs out of 58 properties, a percentage of 6.9%. This proposal of course has no effect on that percentage, including whether or not 75 Wadham Road is an HMO, as noted in an objection comment). The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 6 occupants. This licence is from 16/01/2023 until 15/01/2028.
- 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	18.7m ²	6.51m ²
Ensuite B1	2.95m ²	2.74m ²

Bedroom 2	18.2m ²	6.51m ²
Ensuite B2	3.0m ²	2.74m ²
Bedroom 3	19.9m ²	6.51m ²
Ensuite B3	2.76m ²	2.74m ²
Bedroom 4	14.7m ²	6.51m ²
Ensuite B4	2.74m ²	2.74m ²
Bedroom 5	14.10m ²	6.51m ²
Ensuite B5	2.82m ²	2.74m ²
Bedroom 6	15.4m ²	6.51m ²
Ensuite B6	2.75m ²	2.74m ²
Bedroom 7	14.82m ²	6.51m ²
Ensuite B7	2.75m ²	2.74m ²
Bedroom 8	13.09m ²	6.51m ²
Ensuite B8	3.26m ²	2.74m ²
Combined kitchen -Living Space	25.79m ²	22.5m ² (where all bedrooms are at least 10m ²)
Separate Ground floor WC	1.48m ²	

Proposed floor plans:



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 in compliance with Local Plan policy PCS23.

5.8 Amenity and Parking

- 5.9 The proposal would increase the occupancy of the existing HMO by 2 occupants. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.10 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more bedrooms. 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 2 occupants to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling.
- 5.13 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.
- 5.14 Members will note the 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.
- 5.15 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.

5.16 Impact on Special Protection Areas

- 5.17 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.
- 6.3 In such a circumstance, as the merits of the proposed use comply fully with the relevant policies of the Local Plan and associated guidance, the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

RECOMMENDATION Unconditional Permission

Conditions: None

Agenda Item 10

22/01650/FUL

WARD:COPNOR

48 WALLINGTON ROAD PORTSMOUTH PO2 0HB

CHANGE OF USE FROM PURPOSES FALLING WITHIN CLASSES C3 (DWELLING HOUSE) OR C4 (HMO) TO 7 PERSON/7 BEDROOM HOUSE IN MULTIPLE OCCUPANCY (SUI GENERIS)

[22/01650/FUL | Change of use from purposes falling within Classes C3 \(dwelling house\) or C4 \(HMO\) to 7 person/7 bedroom House in Multiple Occupancy \(Sui Generis\) | 48 Wallington Road Portsmouth PO2 0HB](#)

Application Submitted By:

Mr Willment
incollective.works

On behalf of:

Mr Manning

RDD: 29th November 2022

LDD: 25th January 2023

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 relates to a two-storey mid terrace property situated on the northern side of Wallington Road in a predominantly residential area.

1.4 The Proposal

1.5 The Applicant has sought planning permission for the change of use from purposes falling within classes C3 (dwelling house) or C4 (HMO) to a 7 person/7 bedroom House in Multiple Occupancy (Sui Generis) Planning permission for flexible use of the dwelling as a C3 (dwelling house) or C4 (HMO) was granted under application ref no. 22/01155/FUL. The further proposed change in occupancy would involve the repurposing of internal rooms. The single storey rear extension, and the small, single-storey side extension, shown on the submitted drawings are permitted development to facilitate the HMO use, and so do not form part of this application. As such, the application relates to the use of the property only.

1.6 The only change proposed within the property is that of the lounge at the ground floor level to the proposed seventh bedroom.

1.7 Plans:

3.0 CONSULTATIONS

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.
- 3.2 Also, based on the plans provided suitable provisions for fire safety need to be made for the ground floor rear bedroom 2 that is accessed through the communal kitchen.
- 3.3 The Highways Authority has raised no objection but recommends a condition to secure final details of secure cycle storage provided to the LHA and thereby implemented prior to occupation.

4.0 REPRESENTATIONS

- 4.1 One letter of objection received from Councillor Swann, raising the following summarised concerns:
- Increase in HMO applications in the Copnor
 - Strain on infrastructure (*Officer comment: This matter is covered by a separate legislation*)
 - Lack of adherence to HMO policy

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 and the refurbishment of the property has substantially progressed in readiness for occupation 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 HMO out of 74 properties, a percentage of 1.35%. 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 does not currently benefit from a Licence to operate as an HMO and Portsmouth City Council has never received an application for this property.

- 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	10m ²	6.51m ²
Ensuite B1	2.74m ²	2.74m ²
Bedroom 2	10.01m ²	6.51m ²
Ensuite B2	2.79m ²	2.74m ²
Bedroom 3	10m ²	6.51m ²
Bedroom 4	10m ²	6.51m ²
Bedroom 5	10m ²	6.51m ²
Ensuite B5	2.74m ²	2.74m ²
Bedroom 6	10.99m ²	6.51m ²
Ensuite B6	2.74m ²	2.74m ²
Bedroom 7	10m ²	6.51m ²
Ensuite B7	3.294m ²	2.74m ²
Combined kitchen-Living Space	22.99m ²	22.5m ² (based on 10m ² sized bedrooms)
Ground Floor shared bathroom	3.788m ²	3.74m ²

- 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 in compliance 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 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 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above. While the issue relating to the undersized communal area is noted, 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.
- 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

Agenda Item 11

22/01446/FUL

WARD: CEN - CENTRAL SOUTHSEA

147 MANNERS ROAD SOUTHSEA PO4 0BD

CHANGE OF USE FROM 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=RJLLDKMO0JP00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RJLLDKMO0JP00)

Application Submitted By:

Mr Tim Willment

On behalf of:

Foggett

RDD: 11th October 2022

LDD: 14th December 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

1.4 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.

1.6 Planning History

1.7 22/00829/CPE - Certificate of Lawful Use granted 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

3.0 CONSULTATIONS

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

4.0 REPRESENTATIONS

- 4.1 No representations received.

5.0 COMMENT

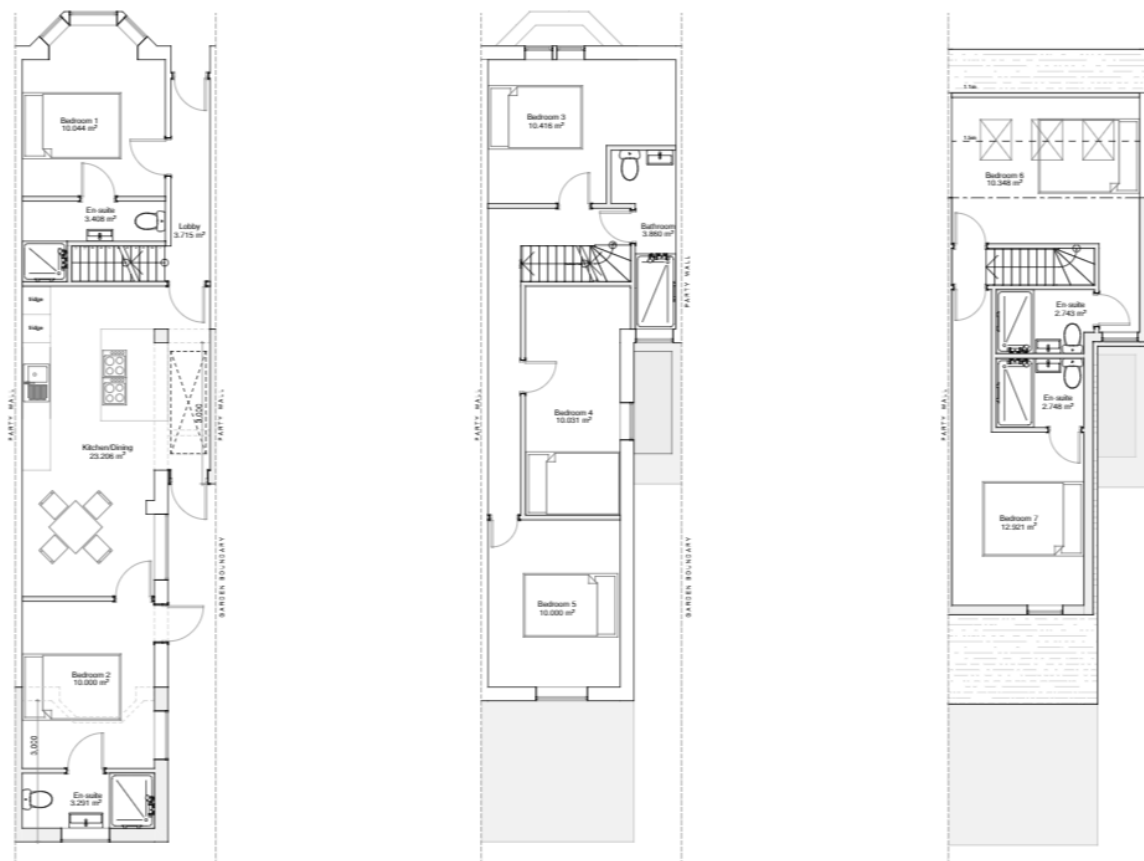
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

5.2 Principle

- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 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 25 HMOs out of 73 properties, a percentage of 34%. 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 property was licensed for 4 persons from 27/6/2014 until the local Additional HMO licensing scheme, which ended on 27/8/2018.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	10.044m²	6.51m²
<i>En suite 1</i>	<i>3.408m²</i>	<i>2.74m²</i>
Bedroom 2	10.00m²	6.51m²

<i>En suite 2</i>	3.291m ²	2.74m ²
Bedroom 3	10.416m²	6.51m²
Bedroom 4	10.031m²	6.51m²
Bedroom 5	10.00m²	6.51m²
Bedroom 6	10.348m²	6.51m²
<i>En suite 6</i>	2.734	2.74m ²
Bedroom 7	12.921m²	6.51m²
<i>En suite 7</i>	2.748	2.74m ²
Combined Living Space	23.206m²	22.5m²
Bathroom 1 (first floor)	3.860m²	3.74m²



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 kitchen/diner combined 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 22.5m²) for combined living accommodation in circumstances where all bedrooms are at least 10m² 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 bedrooms. 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.
- 5.12 Members will note the 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 12

22/01458/FUL

WARD: 22/01458/FUL

293 TWYFORD AVENUE PORTSMOUTH PO2 8PD

CHANGE OF USE FROM CLASS C3 (DWELLING HOUSE)/CLASS C4 (HOUSE IN MULTIPLE OCCUPATION) TO 8 PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS).

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RJPTH1MOMJM00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RJPTH1MOMJM00)

Application Submitted By:

Mr. Edward Kercher

On behalf of:

Mr. Krishan Patel

RDD: 17th October 2022

LDD: 13th December 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 a HMO with up to six individuals living together to allow up to 8 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms.
- 1.6 Planning History
- 1.7 Change of use from C3, to C3/C4, approved under 22/00809/FUL
- 1.8 6m rear extension prior approval not required under 22/00067/GPDC.

2.0 POLICY CONTEXT

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document

(2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Interim Nutrient Neutral Mitigation Strategy (2019), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 CONSULTATIONS

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

4.0 REPRESENTATIONS

- 4.1 1 representation: "This city cannot support any more HMOs the parking is becoming ridiculous".

5.0 COMMENT

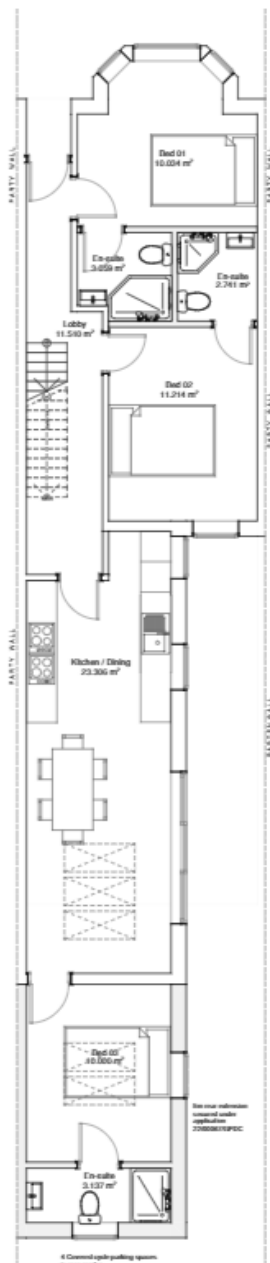
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

5.2 Principle

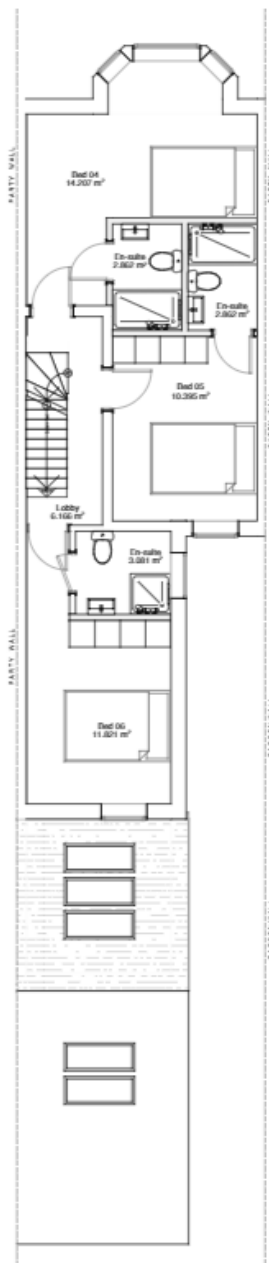
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 2 occupants. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 2 HMOs out of 98 properties, a percentage of 2%. 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 There is no HMO licence in place for this property and it has never been licensed as a HMO.
- 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:
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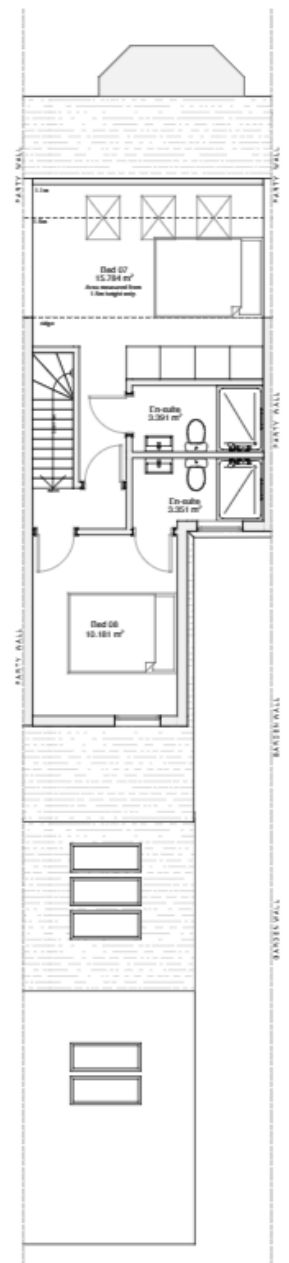
Bedroom 1	10.034m²	6.51m²
<i>En suite 1</i>	<i>3.059m²</i>	<i>2.74m²</i>
Bedroom 2	11.214m²	6.51m²
<i>En Suite 2</i>	<i>2.741m²</i>	<i>2.74m²</i>
Bedroom 3	10.00m²	6.51m²
<i>En Suite 3</i>	<i>3.137m²</i>	<i>2.74m²</i>
Bedroom 4	14.207m²	6.51m²
<i>En Suite 4</i>	<i>2.862m²</i>	<i>2.74m²</i>
Bedroom 5	10.395m²	6.51m²
<i>En Suite 5</i>	<i>2.862m²</i>	<i>2.74m²</i>
Bedroom 6	11.821m²	6.51m²
<i>En Suite 6</i>	<i>3.081m²</i>	<i>2.74m²</i>
Bedroom 7	15.784m²	6.51m²
<i>En Suite 7</i>	<i>3.391m²</i>	<i>2.74m²</i>
Bedroom 8	10.181m²	6.51m²
<i>En Suite 8</i>	<i>3.351m²</i>	<i>2.74m²</i>
Combined Living Space	23.306m²	22.5m²



Proposed Ground Floor 1:50



Proposed First Floor 1:50



Proposed Roof Plan 1:50

- 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 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 22.5m²) for combined living accommodation in circumstances where all bedrooms are at least 10m² 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 2 occupants. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more bedrooms. 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.
- 5.12 Members will note the 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 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.

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 13

DA Number: 22/00233/HMO

PLANNING ENFORCEMENT: DELEGATED REPORT TO RESOLVE HMO INVESTIGATION

DA Number: 22/00233/HMO	
Address: 13 Wyndcliffe Road, Portsmouth PO4 0LA	
Alleged Breach:	
Change of use from C4 to Sui Generis without planning permission.	
Site description / Investigation report:	
<p>13 Wyndcliffe Road is a two storey terraced property with accommodation over three floors, situated within the Central Southsea Ward of the city.</p> <p>Private Sector Housing brought this matter to Planning Enforcement's attention.</p> <p>13 Wyndcliffe Road has been licensed for the following periods:</p> <ol style="list-style-type: none">1. 5 persons from 23/10/2015 - 27/8/20182. 7 persons from 27/3/2019 - 26/3/2024. <p>18/01332/FUL:</p> <p>A planning application was submitted on 1st August 2018 for change of use from purposes falling within Class C4 (house in multiple occupation) to a 7 bedroom house in multiple occupation (sui generis). This application was refused on the 8th October 2018.</p> <p>The reason for refusal was as follows:</p> <p>1) <i>The proposed change of use from dwellinghouse (Class C3)/HMO (Class C4) to Sui Generis HMO would fail to support a mixed and balanced community in an area already imbalanced by the level of similar such uses. The proposal is therefore contrary to Policy PCS20 of the Portsmouth Plan and the Houses in Multiple Occupation Supplementary Planning Document (July 2018).</i></p> <p>2) <i>The proposed use of the building as a seven bedroom sui generis House in Multiple Occupation would, as a result of its undersize bedroom and limited sized bathrooms fail to provide the necessary space for an adequate standard of living accommodation for future occupiers and would represent an overintensive use of the site. The proposal is therefore contrary to Core Planning Principles of the National Planning Policy Framework and Policies PCS20 and PCS23 of the Portsmouth Plan, including the supporting Houses in Multiple Occupation Supplementary Planning Document (July 2018).</i></p> <p>3) <i>Without appropriate mitigation the development would be likely to have a significant effect on the Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas and so is contrary to Policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended).</i></p>	

This decision was appealed, and the Inspector dismissed the appeal on the 4th June 2019, due to local community balance, and effect on the Special Protection Areas. commenting:

"On the evidence put to me in this one, I find that it has been reasonably shown that the local area has a very high concentration of HMOs and there is already a significant imbalance in the housing mix. While changing the use of the property to a 7 bedroom HMO would not on its own add many additional bedrooms and people, it would contribute to the general increase in HMO accommodation and the cumulative effect of this would be to make the imbalance in the housing stock worse and harm the local community. I therefore find the at the proposal conflicts with PP Policy PCS20."

The Inspector found the standard of living accommodation to be acceptable, commenting:

"...the two additional bedrooms proposed in this application to result in a 7 bedroom HMO would be of an appropriate standard to ensure that the occupiers have reasonable living conditions and there is no conflict with PP Policies PCS20 as described above, or PCS23 regarding 'design and conservation'."

19/01433/FUL: A further planning application was submitted on 18/09/2019 - Change of use from purposes falling within Class C4 (house in multiple occupation) to a 7 bedroom house in multiple occupation (sui generis) (Revised Scheme 18/01332/FUL). The application was later withdrawn on 13/09/2022.

Planning Policy:

In addition to the National Planning Policy Framework (NPPF) the relevant policies within the Portsmouth Plan are PCS23 Design and Conservation and PCS20 Houses in Multiple Occupation.

Further guidance on the proper design and delivery of HMOs is also provided in the Houses in Multiple Occupancy SPD, and the associated guidance from the Private Sector Housing team 'Standards for HMOs' of September 2018.

Other Material Considerations

The enforcement notice appeal decisions for 22 Pains Road, 78 Manners Road and 60 Cottage Road, the 'Campbell Properties' decision.

The enforcement notice for each property in this case alleged that there had been a breach of planning control because there was a material change of use from a C4 HMO (6 persons) to Sui Generis HMO for 7 or 8 persons.

The appellant appealed these enforcement notices under 174(2) (c) TCPA that those matters (if they occurred) do not constitute a breach of planning control.

The appeal was dealt with by way of public inquiry

The appeal decision was issued in April 2021. The inspector concluded that the increase in occupancy from 6 persons to 7 or 8 persons within an HMO (the planning unit) did not amount to a material change of use and is therefore not development.

The planning inspector correctly identified that the movement out of the description of the Use Classes Order, in this case C4 to Sui Generis, is not in itself the determinative consideration for a change of use from a C4 HMO to a Sui Generis HMO for 7 or 8 persons.

As a matter of fact and degree the use of the property as a Sui Generis HMO for 7 or 8 persons did not result in some significant difference in the character of activities from

what had gone on previously when the property was used a C4 HMO (occupied by 6 persons. The addition of 1 or 2 persons did not amount to a material change of use.

These decisions were reviewed by the Council's chief planner, city solicitor and advice was sought from a barrister and found to be sound.

Planning History

Other than detailed above:

18/00063/GPDC: Construction of single storey rear extension. Application returned before registration on 15/06/2018.

Analysis

Under section 172 (1) Town and Country Planning Act 1990 (TCPA):

" The local planning authority may issue a notice (in this Act referred to as an "enforcement notice") where it appears to them—

(a) that there has been a breach of planning control; and

(b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations."

(a) Is there a breach of planning control?

In order for a breach of planning control to have taken place, development must have occurred. Development is defined under s55 of the Town and Country Planning Act (1990) as:

"the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

Since the refusal of planning application 18/01332/FUL: Change of use from purposes falling within Class C4 (house in multiple occupation) to a 7 bedroom house in multiple occupation (sui generis), the Council must take into consideration the appeal outcome resulting from the appeals made by Campbell Properties (see above) against the service of six planning enforcement notices against similar changes of use as has been identified in this case. That decision, like the 2019 appeal at this site, is a material consideration when reaching conclusions in similar cases, such as this one.

The guidance provided by the Campbell Properties decision is provided in a decision letter provided in April 2021 and the inspector in the 13 Wyndcliffe Road appeal was therefore unable to consider it. The Council must now consider whether it is expedient to pursue enforcement action against the use of 13 Wyndcliffe Road as a 7 person HMO.

In this instance, the Council must consider whether the addition of a further 1 occupant into an existing six bedroom HMO, is a material change of use, and is therefore development.

While the increase of occupancy does, by definition, move the property outside of use class C4, it has been held in law and at appeal that the Use Classes Order (1987) (as amended) is permissive and should be used as guidance only. Therefore, the materiality of each individual circumstance must still be fully considered by the LPA to determine whether a material change of use, and therefore a breach of planning control,

has occurred. This is a planning judgement as a matter of fact and degree in each case.

In this instance, while there has been some intensification of the occupancy of the property in question, this does not appear to have quantifiably or qualitatively altered how the property is used. For example, the addition of the extra occupant into the property has not changed the nature of how the occupants reside and use/share the facilities, in that they still have their own bedrooms and share communal facilities. There is nothing to suggest that this results in a materially different use to that which would fall within a higher occupancy C4 HMO. It should also be noted that internal alterations do not constitute development in themselves.

Again, while each instance must be assessed on its own merits in order to ascertain whether development has occurred, a primary material planning consideration is precedent set by past decisions, particularly appeal decisions, in materially similar circumstances.

In the cases of Campbell Properties, a joint inquiry against PCC planning enforcement notices determined in April 2021, the decision was made by Inspector P Hocking that an increase of 1 or 2 occupants within a HMO, even where it technically moves the property between use classes, was not a material change of use in the case of all 3 properties heard at appeal.. This decision appears to be materially very similar to the property in question and therefore should be given significant weight in considering whether a material change of use has occurred in this instance.

Officers are therefore satisfied that the change in the occupancy of this established HMO is not a material one, and as such cannot be considered development requiring planning permission. Section 172(1)(a) TCPA is not satisfied as no breach of planning control has occurred at this site and no planning enforcement action can be taken.

However, if contrary to this recommendation it is considered that s172(1) (a) TCPA has been satisfied and a breach of planning control has occurred, the Council would need to consider whether it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

The Planning Merits of the Use

Even in the instance that it is concluded that a material change of use had occurred, the LPA must then consider the planning merits of the development in order to decide whether it would have been expedient to pursue formal enforcement action.

The first relevant policy that the development should be considered against is PCS20's mixed and balanced communities objective. This is implemented through the HMO SPD through assessing whether the addition of a new HMO would imbalance a community. This is achieved by calculating whether a new HMO would cause more than 10% of HMOs within a 50m radius of the site to be HMOs.

While this policy is robust and has been upheld at appeal, it has been agreed by the Planning Inspector and the Planning Committee that this is not applicable to *existing* HMOs that are increasing in occupancy, as it does not increase the number of HMOs in an area. This is the case in this instance, and therefore, the property's use in question is not contrary to this aspect of PCS20.

The other relevant policy is space standards, as the SPD states the minimum sizes of each room within a HMO. These standards are in line with Private Sector Housing guidance. The Council's Private Sector Housing team have reviewed floor plans and inspected the property and come to the conclusion that it reaches those standards and

accordingly issued a licence for the property. Through investigation by the Planning Enforcement team nothing has been identified to suggest a different conclusion should be reached and Officers are satisfied that the room sizes, layout and provision result in a good standard of living environment for residents in accordance with the aims of Policy PCS23.

It is noted that this property was originally refused planning permission due to concerns surrounding the failure of a mixed and balanced community due to the level of similar such uses and these concerns were also echoed in the Inspector's decision to dismiss the appeal against this refusal. The Council's SPD advises that in order to assess the mix and balance of a community the residential properties within 50m of the relevant site should be examined and no more than 10% of those properties should be permitted to become HMOs. Interrogation of the Council's records identifies that 33 of the 93 properties within that 50m radius area are currently HMOs. This amounts to 35.5%. The change in occupancy discussed in this report of course makes no change to these figures.

While the above recommendation makes clear that it is not considered that a material change of use has occurred at this site, if a contrary position is taken the SPD advises that *"in areas where concentrations of HMOs exceed the 10% threshold the Council will consider the potential harm to amenity caused by an increase in the number of bedrooms in an already unbalanced community."* The addition of an additional occupant to an existing HMO is a very small alteration of the overall community. While the Council has no information in respect of the occupancy of C3 dwellings in the relevant area, nor can it reasonably obtain it, a standard occupancy presumption of 2.4 occupants for each property can be applied in line with general practice in other areas of planning assessment. If an occupancy of 6 persons is presumed for each of the HMOs in the relevant area, a reasonable approximation of the total population in this area arising from HMOs and from C3 dwellings can be made. Utilising these assumptions approximately 343 people live in this area, with 199 (58%) of them living in HMOs. The change in occupancy discussed in this report changes that to 200 people (58.3%). This minor change is not considered to have any discernible impact on the community in the area. Similarly due to control of management of the site imposed by the HMO licence, and the minor increase in occupancy of the dwelling itself it is considered that no demonstrable adverse impact on the amenity of adjacent neighbours has been caused by the increase in the number of bedrooms in this already unbalanced community.

Officers are therefore satisfied that if planning permission were sought and needed the proposal would not be considered contract to Policy PCS20 of the Portsmouth Plan. ,

Conclusion:

That the case be closed because, under s172(1)(a), there has been no material change of use identified, and therefore no breach of planning control against which formal enforcement action can be taken.

Should the committee be minded to reject this view and consider the use as unacceptable, then any Enforcement notice served would seek to rely on the reasons for refusal of 18/01332/FUL and the Inspector's comments made when dismissing the appeal made against this decision. However, it is anticipated that any appeal made against such an enforcement notice would be likely upheld on appeal with the potential to leave the Council liable to an award of costs.

Should the Committee be minded to consider that planning permission is required for the use, and that the use is acceptable, Officers would discuss with the Applicant how to regularise the matter, including any necessary mitigation for the effects of the development upon the Special Protection Areas.

AGREED BY

Signed **Date**

Background Papers:

Private Sector Housing plans

HMO License for 7 persons