



---

# NOTICE OF MEETING

---

## PLANNING COMMITTEE

WEDNESDAY, 12 APRIL 2023 AT 10.30 AM

## COUNCIL CHAMBER - THE GUILDHALL, PORTSMOUTH

Telephone enquiries to Democratic Services  
Email: [Democratic@portsmouthcc.gov.uk](mailto:Democratic@portsmouthcc.gov.uk)

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

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

---

### 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, 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](http://www.portsmouth.gov.uk)

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

## AGENDA

- 1 Apologies**
- 2 Declaration of Members' Interests**

**3 Minutes of the previous meetings held on 1 March 2023 & 22 March 2023**  
(Pages 5 - 24)

RECOMMENDED that the minutes of the meetings held on 1 March 2023 and 22 March 2023 be agreed as correct records.

**4 Report on HMO appeal decisions regarding Houses of Multiple Occupation** (Pages 25 - 32)

Purpose of report

1. To inform members of the recent appeal decisions addressing that there is a need for planning permission for the change of occupancy of Houses of Multiple Occupation (HMOs) from 6 beds/occupants to 7 beds/occupants.
2. To advise members that these appeal decisions are a material consideration for HMO applications, in particular, where there is a change of occupancy of an HMO from 6 beds/occupants to 7 beds/occupants.
3. To advise members that where there is an appeal decision for the application site to have regard to that appeal decision as a material consideration when determining the application.
4. To advise members of the need to produce sound, substantive and defensible reasons for the refusal of planning permission.

**5 21/00941/FUL 14 Hudson Road, Southsea PO5 1HD** (Pages 33 - 38)

Change of use from house in multiple occupation (Class C4) to seven bedroom/seven person house in multiple occupation (Sui Generis) (resubmission of 20/01001/FUL).

**6 22/00963/FUL 101 Oxford Road, Southsea PO5 1NP** (Pages 39 - 48)

Change of use from dwelling house (Class C3) or house in multiple occupation (Class C4) to house in multiple occupation for eight people (Sui Generis).

**7 22/01166/CPL 59 Manners Road, Southsea PO4 0BA** (Pages 49 - 52)

Application for certificate of lawful development for the proposed change of use from house in multiple occupation (Class C4) to an 8 bedroom house in multiple occupation (Sui Generis).

**8 22/01101/FUL 24 Norman Road, Southsea PO4 0LP** (Pages 53 - 58)

Change of use from Class C3 (dwelling house)/Class C4 (house in Multiple Occupation) to seven person house in multiple occupation (Sui Generis).

- 9**      **22/01142/FUL 160 Chichester Road, Portsmouth PO2 0AH** (Pages 59 - 64)  
Change of use from Class C3 (dwelling house)/Class C4 (house in multiple occupation) to 7 person house in multiple occupation (Sui Generis).
- 10**     **22/01484/FUL 57 Hudson Rd, Southsea PO5 1HB** (Pages 65 - 70)  
Change of use from house in multiple occupation (Class C4) to house in multiple occupation for seven persons (Sui Generis).
- 11**     **22/01494/FUL 98 Beresford Rd, Portsmouth PO2 0NQ** (Pages 71 - 76)  
Change of use from house in multiple occupation (Class C4) to house in multiple occupation for seven persons (Sui Generis).
- 12**     **22/01552/FUL 32 Kingsland Close, Portsmouth PO6 4AL** (Pages 77 - 82)  
Change of use from house in multiple occupation (Class C4) to 8 bedroom house in multiple occupation (Sui Generis).
- 13**     **23/00189/FUL 75 Grosvenor Street, Southsea PO5 4JG** (Pages 83 - 88)  
Change of use from house in multiple occupation (Class C4) to 7 person house in multiple occupation (Sui Generis).

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

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

- Although not a legal requirement, attendees are strongly encouraged to keep a social distance and take opportunities to prevent the spread of infection by following the 'hands, face, space' and 'catch it, kill it, bin it' advice that protects us from coughs, colds and winter viruses, including Covid-19.
- Hand sanitiser is provided at the entrance and throughout the Guildhall. All attendees are encouraged to make use of hand sanitiser on entry to the Guildhall.
- Those not participating in the meeting and wish to view proceedings are encouraged to do so remotely via the livestream link.

Members of the public are permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting nor records those stating explicitly that they do not wish to be recorded. Guidance on the use of devices at meetings open to the public is available on the Council's website and posters on the wall of the meeting's venue. Whilst every effort is made to webcast this meeting, should technical or other difficulties occur, the meeting will continue without being webcast via the Council's website.

# Agenda Item 3

## PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held on Wednesday, 1 March 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)  
Hugh Mason  
Darren Sanders  
Russell Simpson  
John Smith  
Judith Smyth (Vice-Chair)  
Linda Symes  
Gerald Vernon-Jackson CBE  
Asghar Shar (Standing Deputy)

### Also in attendance

Councillor Payter-Harris.

### Welcome

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

### Guildhall, Fire Procedure

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

### 25. Apologies (AI 1)

Apologies for absence were received from Councillors George Fielding and Robert New. Councillor Asghar Shar was present as a Standing Deputy for Councillor Fielding.

Councillor Gerald Vernon-Jackson apologised that he would need to leave the meeting before 1:00pm to get to another meeting and Councillor Hugh Mason apologised that he would need to leave the meeting at 1:30 to get to another commitment.

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

Item 4, 22/01292/FUL - Land at Tipner East, East of the M275, West of Twyford Avenue

Councillor Darren Sanders declared that he knew Mark Perry, the agent for the application, in his capacity as Cabinet Member for Housing and Preventing Homelessness, however he had not discussed the Tipner application with him. This was not a disclosable pecuniary interest.

Item 5 - 22/01102/FUL - 49 St Pirans Avenue, Portsmouth, PO3 6JE Councillor Darren Sanders advised that he had called in this application and would be making a deputation on this item as Ward Councillor so he would leave the meeting for the discussion of this item.

Item 8 -22/01528/FUL - Shed 9, The Camber, White Hart Road, Portsmouth, PO1 2JX

Councillors Darren Sanders and Chris Attwell made voluntary declarations. They advised that they knew and had spoken to Ms Riches, one of the deputees, but had not discussed the application with her and they had kept an open mind therefore this was not a disclosable pecuniary interest.

Councillor Attwell had received correspondence from residents, but had not expressed an opinion on the application.

Item 9 - 23/00004/PLANREG - 8 Highbury Way, Portsmouth, PO6 2RH Councillor Judith Smyth made a voluntary declaration. She advised that herself and Councillor Asghar Shar were both members of the Labour party, and had worked closely with Councillor Shah, but she did not have a close personal relationship with Councillor Shah. She has not discussed the application with him. After seeking legal advice Councillor Smyth did not consider that she has any personal or prejudicial interests.

Councillor Asghar Shar declared a disclosable pecuniary interest as he was the landowner and applicant for this application and would therefore leave the meeting for the discussion of this item.

## **27. Minutes of the previous meeting held on 8 February 2023 (AI 3)**

Members noted that for minute numbers 15,17 and 18 there was a typing error under deputations - Cerriane Wells should be amended to Carianne Wells.

**RESOLVED: That the minutes of the Planning Committee held on 8 February 2023 be agreed as a correct record subject to the above amendment.**

### **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, 1st March, 2023, 10.30 am Portsmouth City Council](#)

The Chair advised that he would be amending the order of the agenda slightly. The applications were considered in the following order but for ease of reference the minutes will be kept in the original order:

22/01292/FUL Land at Tipner East, East of the M275, West of Twyford Avenue, Portsmouth

22/01102/FUL 49 St Piran's Avenue, Portsmouth, PO3 6JE  
22/01528/FUL Shed 9, The Camber, White Hart Road, Portsmouth, PO1 2JX -  
22/01603/FUL 36 Hartley Rd, Portsmouth, PO2 9HU  
22.01707/FUL 51 Shadwell Road, Portsmouth, PO2 9EH  
22.01707/FUL 51 Shadwell Road, Portsmouth, PO2 9EH  
23/00004/PLAREG 8 Highbury Way, Cosham PO6 2RH

**28. 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 services and other associated works. This application constitutes EIA development.

The Assistant Director of Planning and Economic Growth presented the report and drew attention to the additional information in the Supplementary Matters report. He advised that there is an area of undeveloped land to the south of the application site which is in the ownership of Homes England and under the control of Bellway Homes, that have a complimentary application coming forward in due course.

Deputations

Mark Perry, Chief Executive VIVID Homes.

Members' questions

In response to members' questions, officers clarified that:

- Car parking management is proposed as part of the conditions. Conversations are ongoing regarding the use of the proposed transport hub which is why the letter from the Chief Executive, David Williams was included as part of the supplementary matters list. The scheme is very low in parking provision and there is no assumption that 396 parking spaces will be provided in a future the transport hub. The maximum benefit for connecting to sustainable and active transport is in the mind of all parties.
- The car parking management plan would be a binding condition with any developer and the authority would hope that they would want to continue those conversations to maximise that opportunity.
- This application was deferred in January 2023 to allow for further discussions with coastal partners and the Environment Agency. There are a number of elements to the flood defence; the flood wall which is in the control of the application site which connects through to the rest of the Tipner Lake flood wall. There is a gap where there will need a managed solution and on the west side the land peters out to the M275 embankment. Grampian conditions will be required for both the eastern and western gap to require that the flood defence is put in with the appropriate management in place, prior to the occupation of the development.

- There are lots of conditions regarding surface water and flood management on site discussed in depth with the Environment Agency. There were several challenges with surface water drainage which would drain the site directly into the Tipner Lake. These would be finalised through the planning conditions.
- There would be plenty of opportunities for kerb side planting which would include drainage opportunities and enhance biodiversity.
- The scheme would be capable of taking equipped play and this would be part of the ongoing discussions.
- With regard to a cycle way dedicated to children, officers said they would make a note of this for the ongoing discussions. It is a low car scheme so it would be well suited for cycling for children.
- Mr Maguire said that if you wish for a lower car future for the city, parking provision must be reduced. This was a challenge however unless parking provision is reduced, it will be more convenient for people to have a car. There is a risk that more people will own cars living on this site than there are spaces. In terms of where excess cars would park there is the existing park and ride and surrounding streets which would be inconvenient to existing residents. This disadvantage of the scheme needs to be weighed against the advantages of providing new homes; until development happens there will be no infrastructure.
- The policy compliant level is a floor so it would be not less than 30% affordable homes.
- One of the Heads of Terms required in the planning obligation is in respect of community space, culture and community arts which entails a detailed understanding of what and how the commercial community spaces will be offered up to market. A second element is community access to determine if some buildings will only be for community use and this will be secured through planning obligation. The rest of the commercial and community space is to be looked at as onsite employment space to include a convenience shop or some enterprise and co-working spaces. There is a collaboration agreement between VIVID Homes and Bellway to maximise those shared opportunities. If the transport hub comes forward this will have an amount of non-parking structures which forms the opportunity of an urban village centre.
- One of the planning obligations is around bus opportunities. The design from VIVID Homes to enable exit bus gate on the north side of the park and ride to allow buses to move east to west from the park and ride and discussions are ongoing with bus providers.
- The objection from the Highways Authority has largely been resolved. The original submission did not involve a junction redesign at Twyford Avenue. Since the deferral a design has been provided and has gone through a stage one road safety audit which demonstrated there are two or three options to deliver that junction safely. The Highways Authority wants more information which will be required by planning condition and then it will need to go through stage two of the road safety audit.
- A planning obligation would be more appropriate than a condition to ensure a route through to the park and ride/transport hub is achieved. A bus services contribution would need to be a contribution through the s 106 agreement, not a condition.
- The authority has signed a contract through Enterprise for a car club in the city. Car hire provision is part of the conversation around the transport hub.



The car parking access and management plan will cover this and paragraph 7.7 of the report gives a breakdown of the number of spaces at the proposed transport hub including EV charging spaces and disabled bays.

- The obligation of water companies is to accept foul water and they have a power under the Water Management Act to acquire contribution from developers who are increasing the impact on the sewer system. This is outside the planning function.

#### Member's comments

Member had serious concerns about the lack of parking in the scheme however welcomed the development and said it was long overdue.

#### **RESOLVED:**

- (1) Permission was granted subject to a s106 agreement and conditions, including the obligation to provide an Employment and Skills Plan as part of the finalised s106 agreement;**
- (2) Authority was delegated to the Assistant Director of Planning and Economic Growth to finalise the wording of the draft conditions and to finalise the s106 agreement in line with the Heads of Terms listed in the report.**

#### **29. 22/01102/FUL - 49 St Piran's Avenue. Portsmouth PO3 6JE (AI 5)**

(Councillor Sanders withdrew from the meeting and moved to the public gallery to make a deputation on this item)

Change of use from dwellinghouse (Class C3) to purposes falling within classes C3 (dwellinghouse) or C4 (House in Multiple Occupation)

The Assistant Director Planning and Economic Growth presented the report and drew attention to the additional information in the Supplementary Matters report.

#### Deputations

Mr Gary Tobitt, objecting

Mr Terry Leonard, objecting

Councillor Darren Sanders, Ward Councillor

Mrs Carianne Wells, Agent for the applicant

#### Members' questions

In response to members' questions, officers clarified that:

- With regard to the query raised by one of the deputees over the depth of the rear extension, officers explained that when the rear extension was approved under the prior notification process, the Planning Authority was satisfied that the conservatory rear wall was at the same place as the original rear wall. Therefore, it is 6m beyond that and the 2m conservatory which gives an 8m reconstruction.
- The authority is able to grant planning permission to build above the sewer network, however this would need to building regulation approval.
- The Planning Authority would not have any powers to ensure that the lounge on the ground floor would not become bedroom 7. The Council can impose

conditions on the grant of planning permission if there are planning reasons to do so. Whether or not the lounge is provided makes no difference to the Council's adopted standards because the full provision of communal space is provided in the combined living/dining space. The communal living space requirements are the same for 6 people as it would be for 7. There would be no planning reason to be concerned with a potential future conversion into a seventh bedroom as it meets the required standards.

- It would be a matter for planning judgement on whether this would need to come back to committee to become a Sui Generis HMO and would be dependent on whether there was an enforcement case, how that seventh occupant is provided and whether a planning application is submitted.

#### Member's comments

Members were disappointed with this application as when this previously came to committee members' raised concerns that the lounge has an ensuite and felt that the lounge would likely become a seventh bedroom. Concern was also raised that the building works would be over the sewer network and would disadvantage being able to access the sewer network. It was also suggested that a condition be added that only 6 people can live in the property. Officers advised that building over the sewer network would be a building regulations issue and would not be a material planning consideration. It would be in the committee's gift to impose a condition to limit the number of occupants to 6 however this would need a planning reason; space standards would not be a sufficient reason.

A proposal for refusal was put forward but this motion fell.

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

The committee had a 15 minute adjournment at 12:15.

#### **30. 22/01603/FUL - 36 Hartley Rd, Portsmouth, PO2 9HU (AI 6)**

Change of use from dwellinghouse (Class C3) to house in multiple occupation for seven people (Sui Generis).

The Assistant Director of Planning and Economic Growth presented the report.

#### Deputations

Mr Henry Thorpe, objecting (read out by Councillor Russell Simpson)

Mrs Carianne Wells, Agent for the applicant

Councillor Payter-Harris, Ward Councillor

#### Members' questions

In response to members' questions, officers clarified that:

An earlier application was considered by the Committee on 9 November 2022 when it was under appeal for non-determination, and it was resolved that planning permission would have been refused due to inadequate safe amenity space for the occupier of bedroom six contrary to building regulations. This has now been clarified and there are double doors out into the rear garden, so this issue is now resolved.

Member's comments

Members' felt that when the application came forward previously it was to move from C3 to C4 use. It was felt that adding another bedroom would cause the property to be overcrowded. It was noted however that the application does provide adequate communal living. It was also noted that the policy issues raised would be considered as part of the HMO SPD which is being considered as part of the Local Plan review.

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

**31. 22.01707.FUL - 51 Shadwell Road, Portsmouth PO2 9EH (AI 7)**

Change of use from dwellinghouse (Class C3) to purposes falling within classes C3 (dwellinghouse) or C4 (House in Multiple Occupation).

The Assistant Director of Planning and Economic Growth presented the report. He pointed out that the annotation of the drawings on room sizes was incorrect and do not match those figures put into the table in the report; the figures in the table were the accurate measurements.

Deputations

Mr Henry Thorpe, objecting (read out by Councillor Russell Simpson)

Mr Simon Hill, on behalf of the applicant.

Councillor Payter-Harris, Ward Councillor

There were no questions.

Member's comments

Members' felt that flats should be included when reviewing how many HMOs are within a 50m radius.

-

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

**32. 22/01528/FUL - Shed 9, The Camber, White Hart Road, Portsmouth PO1 2JX (AI 8)**

Refurbishment of existing fish market to include wheelchair accessible main entrance; electric sliding door, alterations to fenestration, fixed awnings; installation of external freezer room and secure pant area for new condenser units.

The Assistant Director of Planning and Economic Growth presented the report.

Deputations

Mr Chris Barker, Agent

Ms Paula Riches, Supporting the application.

Members' questions

In response to members' questions, officers clarified that:

- The opening hours of the fish market are 7am to 3pm and there is no intention to amend these hours.
- The installation of the external freezer room would be approximately 50cm above the existing wall.
- When there are no other storage containers or fishing equipment there is space for a vehicle to turn. It is not public land. The broader implications for the area are however nil as it is a piece of land that is some distance away from the public highway.
- There would be no change to the coastal path, the changes are to the south and to the northern frontage.

Member's comments

Members felt that this was a good scheme which would improve the appearance of the area.

-

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

(Councillor Vernon-Jackson left the meeting at the end of this application)

**33. 23/00004/PLAREG 8 Highbury Way Portsmouth PO6 2RH (AI 9)**

(Councillor Shah left the meeting due to his previously declared disclosable pecuniary interest)

Retrospective application for the construction of 2 no. rear outbuildings.

The Assistant Director for Planning and Economic Growth presented the report.

Members' questions

In response to members' questions, officers clarified that:

- The applicant had undertaken development without planning permission which is a breach of planning control, therefore a retrospective application was required to resolve this. The General Permitted Development Order (GDPO) is a confusing document and it was not uncommon for householders to undertake development without realising that planning permission is required. If this happens applicants are invited to make a retrospective planning application.

- Officers have delegated authority to determine householder applications with no objections. This application had come to committee due to the applicant being a member of the Council.

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

**34. 22/01565/HOU - 107 Portchester Road, Portsmouth PO2 7JA (AI 10)**

(Councillor Hugh Mason left the meeting prior to the commencement of this item)

Construction of single storey rear and side extension.

The Assistant Director for Planning and Economic Growth presented the report.

There were no questions or comments.

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

The meeting concluded at 1.39 pm.

---

Signed by the Chair of the meeting  
Councillor Chris Attwell

This page is intentionally left blank

MINUTES OF THE MEETING of the Planning Committee held on Wednesday 22 March 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) George Fielding Hugh Mason Darren Sanders Russell Simpson John Smith Linda Symes Gerald Vernon-Jackson CBE
-------------	--

### **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.

The Chair altered the order of business to hear items in the following order:

Item 11 22/01765/HOU - 92 Havant Road, Drayton and Farlington, Portsmouth PO6 2RA

Item 7 22/00226/FUL - Former British Legion, Sixth Avenue, Portsmouth PO6 3PD.  
The remaining items were considered in the order of business on the agenda.

Item 4 22/01720/VOC - Sea Defences, Southsea Seafront from Long Curtain Moat in the west to Eastney Marine Barracks in the east

Item 5 22/01721/LBC - Sea Defences, Southsea Seafront: Eastney Esplanade between the Pyramids and Speakers Corner

Item 6 - 22/01722/LBC - Sea Defences, Southsea Seafront: Eastney Esplanade between the Pyramids and Speakers Corner

Item 9 - 23/00021/FUL - 108 Milton Road, Portsmouth PO3 6AR

The remaining items were considered in the order of business on the agenda.

### **35. Apologies (AI 1)**

No apologies for absence had been received. Councillor Hugh Mason had sent apologies that he would be late (joined at 10.45am for Item 7). Councillors

Darren Sanders, Russell Simpson, Linda Symes and George Fielding apologised that they would need to leave at 1.00pm for other commitments and Councillor Gerald Vernon-Jackson apologised that he would need to leave at 1.30pm as he had another meeting relating to Council business.

**36. Declaration of Members' Interests (AI 2)**

Items 4 22/01720/VOC - Sea Defences, Southsea Seafront from Long Curtain Moat in the west to Eastney Marine Barracks in the east, Item 5 22/01721/LBC - Sea Defences, Southsea Seafront: Eastney Esplanade between the Pyramids and Speakers Corner, and Item 6 - 22/01722/LBC - Sea Defences, Southsea Seafront: Eastney Esplanade between the Pyramids and Speakers Corner  
Councillor Gerald Vernon-Jackson declared that he is Chair of the Cabinet which considers matters relating to the seafront but in his view it does not form part of his portfolio and these items do not therefore form a prejudicial interest.

Councillor Judith Smyth declared a non prejudicial interest in these items as she is a member of cross party working group relating to the seafront and she is a keen user of this section of the beach.

Item 9 - 23/00021/FUL - 108 Milton Road, Portsmouth PO3 6AR  
Councillor Darren Sanders advised that he had called in the item, would be making a deputation and would not take part as a Member of the Planning Committee this item.

Councillor Hugh Mason confirmed on his arrival at the meeting that he had no declarations of interest in any items on the agenda.

**37. Minutes of previous meeting held on 1 March 2023 (AI 3)**

The minutes of the Planning Committee held on 1 March 2023 will be considered at the next meeting on 12 April 2023.

**PLANNING APPLICATIONS**

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

[Agenda for Planning Committee on Wednesday, 22nd March, 2023, 10.30 am Portsmouth City Council](#)

**38. 22/01720/VOC - Sea Defences, Southsea Seafront from Long Curtain Moat in the west to Eastney Marine Barracks in the east (AI 4)**

Application to vary condition 1 of planning permission 21/00820/VOC to seek approval of amended plans relating to sub-frontage 5 (Pyramids centre to Speakers Corner).

The Acting Head of Development Management presented the report and drew attention to the additional information in the Supplementary Matters report which has not led to a change in the recommendation. The officer noted that



the scheme is necessary to protect thousands of homes and businesses from flooding and that the application seeks to vary the planning consent and previously approved plans to sub-frontage 5 west.

#### Members' questions

In response to members' questions, officers clarified that:

- The beach is expected to continue to change shape as the shingle is moved, for example, by winter storms. The application has been modelled and engineered to withstand these changes and the result is a higher and flatter beach.
- The steps apron will extend along this section of the seafront and will drop below the level of the new shingle to allow access even if the shingle moves.
- There are four access ramps to the beach at various points, providing reasonable disabled provision.
- Additional work to provide mats to provide disabled access to the sea do not comprise part of the application and is being undertaken by officers in the Culture and Leisure department.
- A condition requiring a Beach Management Strategy will ensure that shingle movement will be monitored and tailored to what the beach does over time, ensuring that it continues to fulfil its flood defence function.
- Details relating to the exact measurement in reduction of the flat space at Speakers Corner were not available.
- The listed building consents for shelters on the seafront have lapsed over time and they will be relocated.
- There is an intention relocate the unlisted shelter also in sub-frontage 5 west to somewhere on the seafront, but this is separate to this scheme.
- Details relating to landscaping and planting are subject to further work and will be subject to condition in relation to specifying the best and most robust species for the area.
- AEP (abbreviation found in paragraphs 15, 18 and 20) refers to Annual Exceedance Probability which describes the chances over a given period that a flood will reach or exceed a specific magnitude.

The Acting Head of Development Management advised that an additional condition requested by a Member of the Committee to require the Applicant to replace the shelter at Speakers Corner would not be appropriate as the Applicant and others would not have an opportunity to comment and the existing condition relating to landscaping represents a betterment.

#### Member's comments

Councillor Gerald Vernon-Jackson proposed adding a condition to replace the shelter at Speakers Corner. He agreed that this need not be prescriptive but added that he felt it was important to continue to provide a shelter in the area and suggested the following wording: "A shelter is provided as part of any redevelopment of Speakers Corner area".

Councillor Hugh Mason noted that the landscaping formed an important part of the scheme although he agreed that a new or some kind of shelter could be beneficial. He added that the application represented a great improvement on

the previous scheme and that the shingle would produce a more attractive seafront while helping with flooding.

The Acting Head of Development Management reiterated his advice against adding a condition relating to a shelter at Speakers Corner adding that as a matter of procedural correctness no-one would have had the opportunity to comment on the suggested condition as it was not part of the application and had not been advertised. The Legal Advisor confirmed that removal of the existing shelter would not prevent an application for a new structure in the future, adding that the application has also been subject to an Environmental Impact Assessment process.

Some members felt that adding a condition could be ambiguous and supported the officer's recommendation; others considered that the reinstatement of a shelter would be welcomed. It was agreed to add an informative make it clear to the Applicant that the Planning Committee expected a shelter to form part of the redevelopment of Speakers Corner

**RESOLVED to grant conditional planning permission as set out in the officer's committee report and the Supplementary Matters report. An informative stating that the Planning Committee expected the Applicant to provide a shelter at Speakers Corner as part of the redevelopment of the area was added.**

Councillor Russell Simpson left the meeting at 12.25pm

39. **22/01721/LBC - Sea Defences, Southsea Seafront: Eastney Esplanade between the Pyramids and Speakers Corner (AI 5)**  
Removal, repair and relocation of 7no. Grade II listed lamp columns along the seafront.

**RESOLVED to grant conditional Listed Building consent as set out in the officer's committee report.**

40. **22/01722/LBC - Sea Defences, Southsea Seafront: Eastney Esplanade between the Pyramids and Speakers Corner (AI 6)**  
Removal, refurbishment, and relocation of 3no. Grade II listed seafront shelters.

**RESOLVED: To grant conditional Listed Building consent as set out in the officer's committee report and the Supplementary Matters report.**

41. **22/00226/FUL - Former British Legion, Sixth Avenue, Portsmouth PO6 3PD (AI 7)**  
Construction of 4 storey building, comprising 23no. flats with on site car parking and bicycle storage (following demolition of existing building).

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

There was no change to the recommendation as a result of the additional information.

#### Deputations

Mr Darryl Howells (Agent)

#### Members' questions

In response to members' questions, officers clarified that:

- There are conditions relating to tree protection and a full drainage scheme and officers believe that the latter will achieve a betterment over the current situation.
- There is some space for planting shrubs or hedging and it is expected that these would be native species.
- There has not been a submission relating to the inclusion of solar panels though a condition requires the Applicant to consider this.
- Building regulations are improving all the time and the Applicant will need to provide good standard of sustainable development.
- Exact information relating to the height of the development and the Church was not available, but the officer felt that the scheme was in scale to the surrounding area.
- It was confirmed that the Applicant had submitted a financial assessment that the development cannot make the expected provision for affordable housing and make a profit and it was hoped that further discussion and negotiation on this point could take place following the Committee's determination of the application.
- The drainage officer has looked at the topography of the site and is satisfied that a betterment will result from the development.
- A comprehensive Flood Risk and Surface Water Drainage report is required by condition.
- The strong set back of the roof storey, and appropriate and mixed materials across the building, means that the misalignment of the fenestration of the top storey is not considered an aesthetic flaw.

#### Member's comments

It was proposed that the application be deferred, ideally to the next meeting on 12 April 2023, to allow for officers to hold further discussions and negotiations with the Applicant about affordable housing provision. It was felt that it would be helpful to hold these discussions before determination of the application rather than after the decision. In recognition of the tight turnaround between Committee meetings, it was further agreed that it would not be necessary to not be necessary to write an entire report again, but Officers could simply address the matter of Affordable Housing with new text above the retained original report.

**RESOLVED: To defer the application to a future meeting of the Planning Committee (12 April 2023 if possible) to allow for further discussion and negotiation with the Applicant to finalise the level of Affordable Housing, if any, and the corresponding legal agreements.**

**Reasons: That the Applicant has submitted a financial assessment that the proposals cannot make a provision for affordable housing and remain viable for development, that is, taking into account reasonable profit, and Members wish to oversee the outcome of negotiations between the Applicant and officers.**

Councillor Gerald Vernon-Jackson asked that consideration be given to holding an additional meeting between those scheduled for 12 April and 31 May 2023. He noted that there was no impediment to this, despite the local elections, and an additional meeting would help reduce the back log of applications. The Chair agreed to consider the idea.

**42. 22/01749/FUL - 163 Station Road, Portsmouth PO6 1PU (AI 8)**

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

The Acting Head of Development Management presented the report, drew attention to the additional information in the Supplementary Matters report and confirmed that there was no change to the officer's recommendation.

Members' questions

In response to members' questions, officers clarified that:

- Cycle storage has been secured by condition.
- The northwest facing conservatory has a glazed roof, though the material could not be confirmed.
- The first part of Paragraph 5.7 in the report ("If the property is operated as a Class C4 small HMO this would have an effect on the ratio of communal/ amenity space compared to private bedroom space available internally for future occupants.") should be disregarded.

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

Councillors Darren Sanders, George Fielding and Linda Symes left the meeting at 12.58pm.

**43. 23/00021/FUL - 108 Milton Road, Portsmouth PO3 6AR (AI 9)**

Change of use from dwellinghouse (Class C3) to house in multiple occupation for eight people (Sui Generis).

The Acting Head of Development Management presented the report.

Deputations

Carianne Wells (Agent)  
Councillor Darren Sanders

Councillor Darren Sanders left the meeting during consideration of this item.

Members' questions

In response to members' questions, officers clarified that the communal areas are in excess of the council's minimum space standards and that a condition to limit the number of occupants to 8 by condition would be possible.

#### Member's comments

Members were sympathetic to the points raised in the deputation by Councillor Darren Sanders, particularly in relation to parking. However, it was generally agreed that the bedrooms were of generous size, that it was a good conversion and a good use of the property. Members were minded to add a condition limiting the number of occupants to a maximum of eight.

#### **RESOLVED:**

- 1. That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to:
    - a) Satisfactory completion of a Legal Agreement necessary to secure the mitigation of the impact of the proposed development on Solent Special Protection Areas (recreational disturbance and nitrates) by securing the payment of a financial contribution.****
  - 2. That delegated authority be granted to the Assistant Director of Planning & Economic Growth to add/amend conditions where necessary.**
  - 3. That delegated authority be granted to the Assistant Director of Planning & Economic Growth to refuse planning permission if a Legal Agreement has not been satisfactorily completed within three months of the date of this resolution.**
  - 4. To add a condition to limit the maximum number of occupiers to eight persons.**
- 44. 20/01092/FUL - 37 Toronto Road, Portsmouth PO2 7QD (AI 10)**  
First floor side extension to form an additional two bedroom dwelling.

The Acting Head of Development Management presented the report.

#### Members' questions

Members asked about the forecourt parking arrangements. The Acting Head of Development Management clarified that although two cars could be parked, it was not something that the Local Planning Authority could rely upon, due to parking and access across/outside each others' properties. An informal arrangement may well be reached between neighbours, but the LPA would not attach a condition to try and control the matter.

#### Member's comments

Members hoped that residents would find a way to ensure that two car spaces could be made available, possibly by use of a covenant.

#### **RESOLVED:**

- 1. That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to:**

- a) Receipt of 'no objection' from Natural England concerning the SPA Mitigation, and;
  - b) Satisfactory completion of a Legal Agreement necessary to secure the mitigation of the impact of the proposed residential development on Solent Special Protection Areas (recreational disturbance and nitrates) by securing the payment of a financial contribution.
2. That delegated authority be granted to the Assistant Director of Planning & Economic Growth to add/amend conditions where necessary.
  3. That delegated authority be granted to the Assistant Director of Planning & Economic Growth to refuse planning permission if a Legal Agreement has not been satisfactorily completed within three months of the date of this resolution.
45. **22/01765/HOU - 92 Havant Road, Drayton and Farlington, Portsmouth PO6 2RA (AI 11)**  
Construction of 1.5 storey side extension, infill extension at rear, external alterations and construction of raised terrace platform at rear (including swimming pool) (resubmission of 22/0071/HOU).

The Acting Head of Development Management presented the report.

#### Deputations

Mrs Marshalsea (objecting)  
Daniel Byrne (Applicant)  
Sarah Roberts (Agent)

The Legal advisor advised that neither Councillor Hugh Mason nor Councillor Russell Simpson would be able to vote on this item as they had not been present for the presentation by the officer or the deputations in their entirety.

#### Members' questions

In response to members' questions, officers clarified that:

- This application is not particularly comparable to 154 Havant Road as the two streets do not have the same width and character and in any event, it was considered that no.154 is too prominent, of questionable design quality and not a good consent.
- The decision on this application will become material to the pending application for a side extension at 94 Havant Road.

The Acting Head of Development Management noted for the record that he absolutely refuted the accusations made against the case officer during the course of the deputations.

**RESOLVED: To refuse planning permission for the reasons set out in the officer's committee report.**

**46. 22/01761/CPL - 119 Bath Road, Southsea PO4 0HX (AI 12)**

Application for certificate of lawful development for the proposed construction of rear dormer and installation of rooflights to front roofslope.

The Acting Head of Development Management presented the report.

**RESOLVED: To grant a Certificate of Lawful Development.**

The meeting concluded at 13.09 pm.

---

Signed by the Chair of the meeting  
Councillor Chris Attwell

This page is intentionally left blank



# Agenda Item 4



## **THIS ITEM IS FOR INFORMATION ONLY**

**(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)**

<b>Title of meeting:</b>	Planning Committee
<b>Subject:</b>	Recent decisions regarding Houses of Multiple Occupation
<b>Date of meeting:</b>	12 April 2023
<b>Report by and Authored by:</b>	Ian Maguire Assistant Director for Planning and Economic Development
<b>Wards affected:</b>	All

---

### **1. Purpose**

- 1.1 To inform members of the recent appeal decisions addressing that there is need for planning permission for the change of occupancy of Houses of Multiple Occupancy (HMOs) from 6-beds/occupants to 7-beds/occupants.
- 1.2 To advise members that these appeal decisions are a material consideration for HMO applications, in particular, where there is a change of occupancy of an HMO from 6 -beds/occupants to 7-beds/occupants.
- 1.3 To advise member that where there is an appeal decision for the application site to have regard to that appeal decision as a material consideration when determining the application.
- 1.4 To advise members of the need to produce sound, substantive and defensible reasons for the refusal of planning permission.

### **2. Background**

- 2.1 In 2019 Mr Lane submitted applications for the change of use from a C4 HMO (6 occupants) to a sui generis HMO for 7 persons for 3 properties 123 Talbot Road' 48 Jessie Road' and 56 Jessie Road in Southsea These 3 applications were subject to appeals against non-determination by way of written representations. In each case the Council defended the appeals on the basis that the schemes were considered, individually, to result in firstly an 'under provision of communal living space' failing to provide a good standard of living accommodation and secondly that the increased occupancy would result in an unmitigated significant effect on the Solent Special Protection Area by virtue of an increase in nutrient output.

## **THIS ITEM IS FOR INFORMATION ONLY**

**(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)**

- 2.2 All three appeals were dismissed by the Planning Inspectorate in August 2020, however PINS only dismissed the appeals on the second reason for refusal, with their concluding comments being identical in each case:

*"Although I have found that the development would not result in inadequate living conditions for 7 persons, this is not sufficient to outweigh the likely significant effect on the integrity of designated habitats sites which would be adverse and for which there is no adequate mitigation before me, with consequent conflict with the development plan, the Framework and the Habitats Regulations. Therefore, and having had regard to the other matters raised, the appeal is dismissed, and planning permission is refused."*

- 2.2 The three applications were resubmitted in December 2020, with an intention to overcome the single reason for refusal in 2019 and subsequently refused planning permission by the Portsmouth City Council Planning Committee on 26<sup>th</sup> May 2022. All three were recommended for unconditional permission by officers, primarily due to the individual judgement that planning permission was not required in these cases, as the proposed increase from 6 occupants to 7 occupants did not amount to a material change in use and consequently was not development requiring planning permission. These recommendations reflected the overall approach and reasoning of the inspector in the Campbell Properties appeal decisions for 22 Pains Road, 78 Manner Road and 60 Cottage Grove<sup>1</sup>, were similarly a minimal change in occupation in three of those cases did not result in a significant difference in the character of activities from what had gone on previously as a matter of fact and degree and consequently did not constitute development.

- 2.3 Notwithstanding this recommendation, officers also noted histories of the sites in the report to committee in May 2022 including the previous appeal decisions and judgements applied by the previous Inspector as to the adequacy of living conditions in each case.

- 2.4 The reasons whereby the Planning Committee considered planning permission was required and, furthermore considered that in these cases planning permission should be withheld were identical for all three cases, namely that :

*"The proposal is considered to be development requiring planning permission 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.*

*And furthermore Members resolved to refuse planning permission for the following reasons:*

---

<sup>1</sup> PINS Refs: APP/Z1775/C/20/3245106, 3246078, 3245110, 3246079, 3245108, 3246077, 3233187, 3236610, 3234941, 3266831, 3238003, 3238287

## **THIS ITEM IS FOR INFORMATION ONLY**

**(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)**

*The change of use of the property, by reason of the under provision of communal living space would fail to provide a good standard of living accommodation for the occupiers and represent an over intensive use of the site. The proposal is therefore contrary to Core Planning Principles of the NPPF and Policy PCS23 of the Portsmouth Plan and the Houses in Multiple Occupation Supplementary Planning Document. And*

*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."*

- 2.5 All three refusals by the Planning Committee were appealed and were considered in a single decision letter as the appeals shared the same appellant and were refused for similar reasons. That decision letter, of 9 March 2023, referred to herein as the "Lane Appeal Decisions" allowed all three appeals. An associated application for costs against the Council, on the basis that the Council has acted unreasonably putting the appellant to the expense of appeal was also granted at the same time. Costs were awarded against the Council in the 3 Lane Appeal Decisions.

### **3 Information**

- 3.1 These decisions are being reported to Planning Committee as Members are advised that they are relevant material considerations in respect of similar applications, a number of which are on the agenda at the meeting of 12 April 2023. Decision Makers are required to give weight to material considerations in the planning process to establish, amongst other things,
- (1) whether the matter is development or not; and
  - (2) whether they dictate if a decision should be made other than in accordance with the Development Plan.

#### Material Consideration

- 3.2 Failure to have due regard to a relevant material consideration is a ground to find a decision unsound through Judicial Review and also likely' as was the case in the determination of this appeal' to be a basis both for being unable to robustly defend a decision at appeal and having costs awarded against a council for unreasonable behaviour. The inspector of the Lane Appeal Decisions has made it clear that decision makers must take into account any relevant appeal decision as material considerations.

**THIS ITEM IS FOR INFORMATION ONLY**

**(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)**

At paragraph 5 of the appeal decision the inspector refers to the previous appeal decisions for the appeal properties, which related to essentially the same scheme. He states:

*"Although the appeals were dismissed, it is highly pertinent that the Inspector found no conflict with Policy PCS23 of the Portsmouth Plan (Portsmouth's Core Strategy) 2012 or paragraph 127 f) of the National Planning Policy Framework (the Framework) in respect of living conditions."*

At paragraph 8 of the appeal decision the inspector has taken into account the Campbell Property Appeal Decisions as material considerations

*"In all three cases the increased occupancy has not involved any external alterations to the properties nor indeed a material change of use that would require planning permission. In coming to that view, I adopt the reasoning of my colleague in the Campbell Properties appeal decision."*

The Lane Appeal Decisions are now also relevant material considerations for HMO applications for a change of use from C4 HMO (6 persons) to sui generis HMOs for 7 persons.

- 3.3 The "Lane Appeal Decisions" specifically address whether or not planning permission was required for the specific, minimal increase in occupation of an established HMO. The "Lane Appeal Decisions" represent 3 further assessments by an appointed inspector of the Planning Inspectorate concluding, as a matter of fact and degree, that an increase from 6-beds/occupants to 7 -bed/occupants did not constitute a material change in the use and therefore did not need planning permission. In total the Council has now received decisions from the Planning Inspectorate, from two separate Inspectors at six different sites in the past two years.
- 3.4 There have been no contrary appeal decisions, whereat an Inspector has expressly found that, as a matter of fact and degree, a change for 6-bed to 7-bed occupation of an HMO *did* constitute development requiring planning permission in Portsmouth. Therefore there are no contrary appeal decisions to take into account as material considerations.
- 3.5 There have been 26 other appeals determined for similar changes of use, since the Campbell Properties decision in 2021, but in none of those appeals has an Inspector sought to engage the primary question of whether planning permission was needed. There appears to be no consistent approach in the method used by Inspectors who have avoided the primary question but many Inspectors simply failed to demonstrate any consideration of the matter within their decision letters at all and where they did, frequently Inspectors expressly avoided a conclusion with

## **THIS ITEM IS FOR INFORMATION ONLY**

**(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)**

*statements such as "However, whether or not a material change of use has occurred is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990 (as amended)."*

- 3.6 The starting point for the determination of any planning application is to consider if the works or change of use are development under s55 of the Town and Country Planning Act 1990 (the "TCPA") and therefore need planning permission. The decision maker, when applying s55 TCPA, is required to make a planning judgement on the facts in each case and must take into account any relevant material considerations, including any relevant appeal decision (for the same site and sites that are materially similar). The Campbell appeal decisions for 22 Pains Rd, 78 Manners Rad, and 60 Cottage Grove are relevant material considerations.
- 3.7 The inspectors in the other 26 appeals have failed to consider the relevant legislation set out at s55 TCPA, so they have not made the necessary planning judgement and have failed to take into account the Campbell appeal decision as relevant material considerations. Officers would advise the Planning Committee that this approach is fundamentally wrong in law.
- 3.8 For completeness Members can be made aware that 2 of these 26 appeals were also subject to claims for appeal costs against the Council. Neither claim, distinguishable from the claims awarded in the recent "Lane Appeal Decision" the subject of this report, sought to raise the issue of a lack of need for planning permission within their argument, so they provide little assistance in addressing that question. One application for costs was unsuccessful, with the Council being found to not have been acting unreasonably, but the other, at 3 Pains Road was awarded in similar circumstances as seen in the 3 "Lane Appeal Decision" cases, in that in that case there had also been a previous appeal that found, contrary to the opinion of the Planning Committee, that the living conditions created were satisfactory and the reasons given by the Planning Committee to revert to their contrary view were consequently in adequate.

### Reasoning of the Decision

- 3.9 Where planning permission is refused there is a statutory duty on an LPA under the Development Management Procedure Order to give notice of a decision on an application for planning permission, stating clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the development which are relevant to the decision. Each planning application must be determined on its own merits. The decision maker must consider the facts on each application when coming to decision. The decision must be reasonable, rational and evidence based. What matters is that the decision-maker can be shown, objectively, to have taken the relevant material into account and reached its own conclusion based on that evidence.

**THIS ITEM IS FOR INFORMATION ONLY**

**(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)**

- 3.10 Careful consideration must - be given when the Planning Committee wishes to exert its own opinion on individual facts contrary to
- 1) the officer recommendation and/or
  - 2) an appeal decision determined by the Planning Inspectorate on the application sites themselves or in materially similar circumstances.

- 3.11 As has been referenced in the award of costs against the Council in the "Lane Appeal Decisions":

*"While it is a fundamental principle of local decision making that a planning committee is not bound to follow the advice of its officers, there is a reasonable expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects. That very clearly did not happen in this instance."*

- 3.12 At paragraph 12 of the cost decision the inspector states

*"Unfortunately for reasons that are not entirely obvious, Members chose to depart from that very clear and cogent advice (in the officer's report).*

- 3.13 The Planning Committee of course also has the right to depart from officers' advice in respect of the need and merit of planning permission, however again this right is accompanied by the obligation when doing so to produce sound, substance and defensible planning reasons for doing so. It has been determined that the Council has fallen short of this obligation in the "Lane Appeal Decision" case.

- 3.14 At paragraph 9 of the appeal decision the inspector states:

*"The matter of living conditions and specifically the amount of residual communal space has therefore already been considered and found to be acceptable (by the previous inspector). There has been no significant change in circumstances in the intervening period and no substantial evidence has been adduced by the Council to rebut the Inspector's findings at paragraphs 21-26."*

- 3.15 At paragraph 12 of the cost decision the inspector says:

*"The fact that the previous Inspector had found the amount of living space to be acceptable, was **seemingly brushed aside** on the basis that there was no change to the previous application and therefore no reason for a different decision."*

- 3.16 The inspector goes on to say at paragraph 15 of the cost decision:

**THIS ITEM IS FOR INFORMATION ONLY**

**(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)**

*"There is no explanation in the Minutes, nor the Council's Statement of Case, why Members **disregarded** the Campbell Properties appeal decision. They were of course entitled to do so, provided that very careful justification was provided."*

- 3.17 The Planning Committee does of course have the right to disregard the Campbell Properties Decisions and the Lane Decisions, but in doing so they also have the obligation to provide very careful justification for doing so. That justification can be neither vague nor generalised and furthermore must explain how, in each case on its own merits, an additional occupant at that specific property would result in an intensification of the use of the site that results in a material change of use.
- 3.18 The inspector concluded that the Planning Committee, failed to have proper regard to officer's advice, the previous appeal decisions for the application sites and the Campbell Appeal Decisions and stated that the Planning Committee gave no sound, substantive and defensible reasons for doing so (see paragraphs 9-11 of the cost decision).
- 3.19 These comments by the Inspector provide unambiguous guidance as to the standard and nature of the task before a Planning Committee when they wish to distinguish their judgement from a materially similar previous case, especially when doing so it contrary to officer recommendation.
- 3.20 It is unavoidable to note that the inspector in the case of the "Lane Appeal Decisions" was of the opinion that the way the Planning Committee tackled their conclusion of those cases in the May 2022 Committee meeting demonstrated
- " a disturbing lack of awareness of basic planning procedure and law."*
- 3.21 Furthermore the Inspector, overall expressed his decision that the Council was guilty in their reasoning
- " of using vague, generalised or inaccurate assertions about the proposals 'impact"*
- 3.22 These concerns are of particular importance as a materially similar approach by the Planning Committee to constructing decisions on similar cases has been consistently used in every case since May 2022 and officers' firm advice to Members is that this approach should be reconsidered.
- 3.23 It is within the gift to the planning committee to depart from officers' recommendations and to give different or no weight to relevant appeal decisions, but there must be a reasonable and rational and evidential reasons for doing so.

**THIS ITEM IS FOR INFORMATION ONLY**

**(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)**

3.24 In the interest of fairness a decision maker reasons should:

1. be intelligible and adequate
2. enable the reader to understand why the matter was decided as it was
3. state what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved.

and reasons can be briefly stated, need refer only to the main issues in the dispute<sup>2</sup>.

Signed by pp(Director)

**Appendices:**

The "Lane Appeal" Decisions dated 20 February 2023

Appeal Ref: APP/Z1775/W/22/3302601 at 123 Talbot Road, Southsea, PO4 0HD, Appeal

Ref: APP/Z1775/W/22/3303724 at 48 Jessie Road, Southsea, PO4 0EN and Appeal Ref:

APP/Z1775/W/22/3303194 56 Jessie Road, Southsea, PO4 0EN

And decision on Costs application dated 20 February 2023 associated with those appeals

The "Campbell Properties Appeal" Decision dated 29 April 2021

Appeal Refs: APP/Z1775/C/20/3245106, 3246078, 3245110, 3246079, 3245108,

3246077, 3233187, 3236610, 3234941, 3266831, 3238003, 3238287

**Background list of documents:** None

---

<sup>2</sup> South Buckinghamshire DC v Porter, House of Lords - [2004] UKHL 33



# Agenda Item 5

21/00941/FUL

WARD: ST THOMAS

14 HUDSON ROAD SOUTHSEA PO5 1HD

**CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4), TO SEVEN BEDROOM/SEVEN PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS) (RESUBMISSION OF 20/01001/FUL)**

**LINK TO DOCUMENTS:**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QV3SB  
CMOK1000](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qv3sbcmok1000)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr James Oliver

**RDD:** 22nd June 2021

**LDD:** 18th August 2021

**REPORT BACK TO COMMITTEE FOLLOWING MEMBERS SITE VISIT 17<sup>TH</sup> MARCH 2023**

This application is being represented to Members following a deferral at the 25<sup>th</sup> May 2022 in order to conduct a site visit. The application was previously considered by Committee Members who resolved that:

*1. The proposal is considered to be development requiring planning permission 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.*

Following this resolution Members then went on to consider the merits of the proposal against the Councils Policy. Members resolved to carry out a site visit in order to better understand the standard of accommodation being provided.

Following this deferral, there was a prolonged period of discussion between the Council and the applicant around organising a Members site visit. This was finally agreed and took place on 17<sup>th</sup> March 2023. The Members in attendance were:

- Councillor Gerald Vernon-Jackson;
- Councillor John Smith; and
- Councillor Russell Simpson.

The Councillors viewed the internal and external space within the site. No questions were raised to the Case Officer to resolve in the Committee Report. For consistency the previous report has been provided below without alteration. Members will however want to note that since the previous consideration of this report three further appeal decisions, the "Lane Appeal Decisions" have been received by the Council which provide guidance to decision makers on the critical question of when planning permission is needed and how Planning Committees should approach their decision making in such cases. These decisions are a Material Consideration to this application. Members will also want to note the current 5 year housing land supply which stands at 2.9 years, meaning that developments providing additional housing supply are subject to a presumption in favour of sustainable development.

## **COPY OF THE PREVIOUS REPORT**

### **1.0 SUMMARY OF MAIN ISSUES**

1.1 This application is brought before Planning Committee due to the requests 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 This application relates to a two-storey, mid-terrace property located on the southern side of Hudson Road. The dwelling is separated from the road by a forecourt and to the rear of the dwelling is an enclosed garden

### **1.5 The Proposal**

1.6 The Applicant has sought planning permission for the change of use of the property from the current lawful use of as a Class C4 House in Multiple Occupation (HMO) with up to six individuals living together, to allow up to 7 individuals to live together as an Sui Generis HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application.

### **1.7 Planning History**

1.8 Application for Certificate of Lawful Development for the existing use as a House of Multiple Occupation (Class C4) was granted in 2098 under planning ref: 19/01211/CPE.

1.9 The construction of single-storey rear extension that comes out a maximum of 6m beyond the rear wall of the original house with a maximum height of 3m and a maximum height of 2.8m to the eaves was refused under Prior-Approval in 2019 under planning ref: 19/00126/GPDC.

1.10 The change of use from purposes falling within a Class C4 (house in multiple occupancy) to house in multiple occupancy for more than 6 persons (Sui Generis) was the subject of a non-determination appeal in April 2019. This appeal was dismissed solely on the failure of the applicant to provide mitigation for the impacts of the development upon the Solent Special Protection Areas. With the Inspectors concluding comments being:

1.11 *"Although I have found that the development provides adequate living conditions for 7 persons, this is not sufficient to outweigh the conflict with the development plan and the Habitats Regulations I have identified above. Therefore, and having regard to the other matters raised, the appeal is dismissed and planning permission is refused."*

### **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 None.

### 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

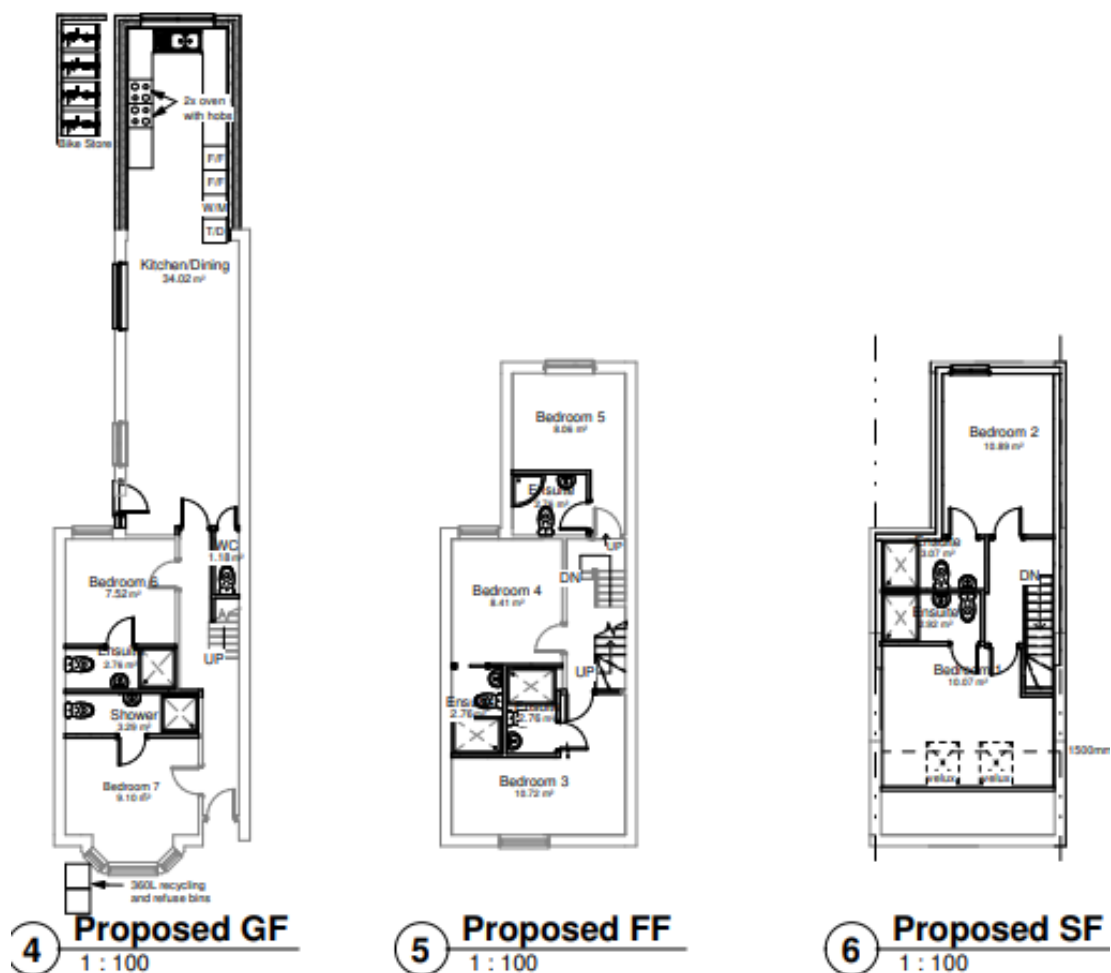
5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of 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 51 HMOs out of 83 properties, a percentage of 61.4%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

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

Room	Area Provided:	Required Standard:
Bedroom 1	10.07m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	2.92m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	10.89m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	3.07m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	10.72m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	2.76m <sup>2</sup>	2.74m <sup>2</sup>

Bedroom 4	8.41m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	8.06m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B5	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	7.52m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B6	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	9.1m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B7	3.29m <sup>2</sup>	2.74m <sup>2</sup>
WC	1.18m <sup>2</sup>	1.17m <sup>2</sup>
Combined Living Space	34.02m <sup>2</sup>	34m <sup>2</sup>



- 5.6 As is shown in the table above, the proposal would meet the Council's adopted space standards.
- 5.7 Amenity and Parking
- 5.8 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of

HMO with 4 or more 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. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.

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. With respect to work already commenced, it is not known what the works alleged may be and whether they require planning permission. Action is unlikely pending the decision on the current application.

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 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.

**5.16 CONCLUSION**

5.17 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 use 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.

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

# Agenda Item 6

22/00963/FUL

WARD:ST JUDE

101 OXFORD ROAD SOUTHSEA PO5 1NP

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=REACYSMO0BJ00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=REACYSMO0BJ00)

**Application Submitted By:**

Mr Tim Green

**RDD:** 30th June 2022

**LDD:** 28th October 2022

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee under the delegated authority of the Assistant Director for Planning and Economic Growth due to the similarity to cases requested to be determined by the Planning Committee by Cllr 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;
- Standard of living accommodation;
- Impact on the amenities of neighbouring residents and parking;
- Housing Land Supply;
- Impact on the Solent Special Protection Area; and
- 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. The property fronts directly onto the roadway and includes a private rear garden.

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 five bed HMO to allow up to 8 individuals to live together as an HMO. It is noted that the property was last occupied as a 5-bedroom HMO and that in order to enable the additional occupation Permitted Development works have been part carried out. The ground floor extension has been completed and other internal works carried out. The rear dormer has yet to be constructed and would be completed prior to the change in occupation.

1.7 Planning History

1.8 12/00443/FUL: Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwelling house). Conditional Permission (09/07/2012).

1.9 The Applicant has constructed a single storey rear extension. A rear dormer extension within the main roof and the installation of three rooflights within the front roofslope under permitted development is proposed, as shown in the drawing below, to facilitate the

enlargement of the property. The extensions and alterations can be completed under permitted development.

- 1.10 Given that the alterations are considered to be Permitted Development, it is not possible to consider their design or amenity impact as part of this application.



Figure 1 External works

## 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 5 representations have been received from nearby residents, objecting on the following grounds:
- a) Increase parking concerns and access along busy road;
  - b) Noise and disturbance;
  - c) Loss of light and space from extensions;
  - d) Work going ahead already; and
  - e) Bins and waste storage.

## 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 The 'fall back' position
- 5.3 Whether or not the change in occupancy of an HMO amounts to a 'material change of use' resulting in development requiring planning permission is a matter of planning judgement based on the specific circumstance of each case. That judgement will need to assess whether there is some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. As seen in other applications within this and previous agendas, Officers' view, as demonstrated by the 'Campbell properties' and the 'Lane' appeal decisions is that some changes of use do not necessarily represent development requiring Planning Permission. Therefore, in other cases, the Applicant would benefit from a 'fall-back' position of not requiring Planning Permission. A large number of application for change in the occupation of a dwelling from a 6 person HMO to a 7 or 8 person HMO have been assessed and, on their own facts Officers have concluded that they do not constitute a material change of use. It can be noted that the Planning Committee has come to a different conclusion.
- 5.4 In this instance a different circumstance falls be considered when compared to these other cases. The last use of the application property was as a 5 person HMO. The application seeks occupation of the property as an 8 person HMO. This would result in a more significant change in usage which in the Officers view would represent a material change in the use of the property and therefore would require Planning Permission. This is seen through the likely difference in impact that the additional occupants would represent and which is considered to make a significant difference in the character, and scale of the activities resulting from the proposed use. Other, nominally similar, applications changing the occupation from 6 occupants to 7 seven occupants have been found in the opinion of officers to result in insufficiently change to be considered a material change of use. The same conclusion, in material similar circumstances as noted above, has been drawn at six other sites by Inspectors in the 'Campbell Properties' and 'Lane' appeals. Those appeals are material considerations and to draw a different conclusion to that which they might superficially suggest, as is the recommendation of Officers, requires a specific and justified reason.
- 5.5 The majority of the cases within the 'Campbell Properties' and 'Lane' appeals, and those since reviewed by Officers as demonstrated elsewhere on this agenda, involve a change of use from 6 occupants to 7 occupants. Members have previously raised concerns that an increase in occupation has an impact on areas of planning relevance, namely amenity, waste water/nitrates, parking and waste/recycling. Within the 'Lane appeal decisions' the Inspector criticised the Council for failing to provide a sound, substantive and defensible basis for their decision making and felt the assertions made in those decisions were vague and generalised. Consequently Officers have carefully assessed the current application proposal to ensure that the judgement to be applied is specific to the facts and site in question and precise in their formulation.

- 5.6 The change in occupancy in an HMO from 6 people to 7 people is to increase the occupants by 17%. Ostensibly the resultant impact from this additional occupation would proportionately increase by the same percentage. However in reality each case would likely express this change in different ways. The assessment of that change can sensibly be done with reference to headings highlighted by the Planning Committee in similar applications. For example it is Officers conclusion that an increase of 1 additional occupant (+17%) cannot be evidenced to have any demonstrable impact on amenity when viewed externally. The total number of movements to and from the property, the likelihood of noise and anti-social behaviour and the day to day activity within the dwelling, while increasing by 17% would be arguably objectively imperceptible to neighbours and passers-by. Similarly the increase in waste water from an additional occupant would have an insignificant impact on the water management and disposal. While, in combination with all other increases in waste water within the catchment of the relevant Waste Water Treatment Works (Budds Farm), this can be considered to have a cumulative impact on eutrophication within the Solent Waters that precautionary and cumulative assessment is relevant only in respect of the specific Habitats Regulation assessment which is only engaged if a need for planning permission is established. Consequently the impact on waste water and nitrates from adding a single additional occupant to an HMO is not considered to demonstrate a material change in the use of that dwelling. When looking at parking implications it becomes even more challenging as the parking demand/stress resulting from occupants varies not just on the number of individuals but on accessibility to alternative modes of transport, personal mobility issues, personal economic circumstances and individual choice. When considering all those factors, especially noting that occupants of HMOs are likely to be in the lowest economic bracket for private rented accommodation, it is again considered unlikely that the minimal, 17%, increase in occupancy would result in a demonstrable implication for parking availability within any given area. In respect of waste and recycling it is however more straightforward. Councils have a good understanding of the demands of different household types and sizes in respect of waste capacity as this is used to provide bins for both recycling and residual waste and to consequently manage the amount of waste collected. In Portsmouth a 6 bed HMO is provided with 720 litres of bin capacity, usually in the form of a single 360l bin for recycling and a single 360l bin for residual waste. More, but smaller bins equivalent to the same capacity can of course be provided as an alternative if the nature of the property requires it. A 7 bed HMO is provided with exactly the same 720 litre amount. Consequently while an individual bin may be more full on collection day there is considered to be no likely difference between a 6 and 7 bed HMO in respect of waste that would be externally apparent.
- 5.7 It is therefore necessary to compare these factors, which have lead Officers to conclude many changes in occupancy from 6 to 7 do not constitute a material change of use, to the facts of the current application, which seeks a change in occupancy from 5 occupants to 8 occupants.
- 5.8 When considering the impact on amenity it is noted that the change in occupation will increase 60%, from 5 to 8, compared to the insignificantly assessed 17%. However there is no evidence that a more intensely used HMO is likely to generate more complaints, regarding noise and anti-social behaviour, than a smaller HMO. This point was examined in the 'Campbell Properties' appeal inquiry. It is of course also to be noted that such amenity impacts will be far more greatly influenced by the nature of individual tenants than the nature/scale of the property albeit the two factors cannot be entirely disentangled. Overall however and notwithstanding that the occupation is proposed to increase by 60% Officers are of the opinion that there is no specific evidence or likelihood that this increase will lead to a significant difference in the character or impact of the use in respect of amenity.
- 5.9 As noted above while the increase in waste water, and nitrates, will have a directly proportionate increase based in the additional occupants the relevance of this only occurs if planning permission is found to be needed and consequently it provides little direct evidence as to that question itself.

- 5.10 Parking demand/stress is however considered to be more likely in the application scenario, increasing occupancy from 5 to 8. While adding a single occupant, likely on lower income is considered very unlikely to have a significant impact on the parking demands in an area, the addition of 3 occupants, the equivalent occupation of an average family dwelling, is considered to be far more likely to result in an increased likelihood of parking stress. It is noted that the application site is sustainably located, within easy walking distance of facilities and bus routes on Albert Road, however the 60% increase in occupation is, notwithstanding this, considered to lead to a likely associated increase in car ownership and associated identifiable impact on parking amenity and availability.
- 5.11 In respect of waste and recycling, as noted above, an increase in a single occupant is unlikely to result in any demonstrable, externally identifiable impacts, as it would not normally require any addition bin capacity to be provided. However in the application scenario, increasing from 5 occupants to 8 the Council's Waste Service Team have been consulted on the application and they have confirmed that the required capacity would have to be significantly increased. A 5 bed HMO has a capacity need of 480 litres (normally 1 x 240l bin for recycling, and 1 x 240l bin for residual waste). An 8 bed HMO has a capacity need of 860 litres (normally 1 x 360l bin for recycling, and 1 x 360l bin plus 1 x 140l bin for residual waste). This is a 79% increase in capacity. The slight disproportionality of this increase is due to the availability of different wheelie-bin sizes. In the specific case of the application property it can be noted that it fronts directly onto the road without the benefit of a front forecourt and waste storage will have to be at the rear of the property within bins moved through the house on collection days. For this property 360 litre bins will therefore not be suitable. Instead, the residents will either have to use refuse bags, which will be allocated on a one per bedroom basis and still result in increased waste generation and need for storage or make use of smaller 180 litre bins. In which instance the property would require four 180 litre and one 140 litre bins. In that circumstance the number of bins associated with this property would likely increase from 2, 2x240l bins associated with the 5 bed HMO need; to 5, 4x180l bins and 1x140l associated with the proposed 8 bed HMO need.
- 5.12 This increase in waste would likely be stored at the rear of the property, which as mentioned has recently been extended under Permitted Development. Given that the use would also require a secure weatherproof cycle store at the rear of the property, the amount of external amenity space would be compromised, given the space taken up by the waste storage. This would fundamentally change the function of the rear garden from being an area of external amenity, to simply an area for the storage of bins and bicycles. There would also be a readily apparent change when viewed within the street scene with now up to 5 bins placed in the highway on collection days.
- 5.13 It is therefore considered that the given the above, the change of use in this instance is fundamentally different to the existing 5 bed HMO use and is distinguishable to the above appeals and distinct from previous applications presented to the Planning Committee. The proposal is considered to be a material change of use constituting development requiring planning permission and does not benefit from a fall-back position to the contrary. It falls therefore to be assessed against the policy of the Local Plan.
- 5.14 Principle
- 5.15 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.

5.16 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 3 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 increase in occupancy does not change this mix of dwellings the proposal has no impact on this primary guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 13 HMOs out of 105 properties, a percentage of 12.38%. This proposal of course has no effect on that headline percentage. The application does of course increase the number of HMO residents in an area that would already be considered to have a concentration of HMOs. A judgement needs to be made whether the addition of 3 HMO residents into this existing imbalanced community would result in a potential harm to the amenity of that community, as guided by paragraph 2.3 of the Council's SPD for HMOs. The assessment of that harm is considered below. 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.

5.17 Standard of living accommodation

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

Room	Area Provided:	Required Standard:
Bedroom 1	11.1m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	10.83m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	9.98m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	12.9m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	12.9m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	9.98m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	15.96m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 8	15.96m <sup>2</sup>	6.51m <sup>2</sup>
Combined Living Space	23.963m <sup>2</sup>	34m <sup>2</sup> or 22.5m <sup>2</sup> if all bedrooms are over 10m <sup>2</sup>
Bathroom	5.75m <sup>2</sup>	3.74m <sup>2</sup>
Shower room	2.83m <sup>2</sup>	2.74m <sup>2</sup>
WC	1.73m <sup>2</sup>	1.17m <sup>2</sup>

5.19 As is shown in the table above, the proposal results in an internal layout, which due to the size of the communal living space does not meet the guidance provided to describe a satisfactory standard of living environment. However, in this instance, bedrooms 3 and 4 are under the higher standards set out within the HMO SPD by only 0.02m<sup>2</sup>. On the basis of the information supplied with the application the detailed guidance within para 2.6 is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

## 5.20 Amenity and Parking

5.21 The proposal would increase the occupancy of the existing HMO by 3 occupants. While as noted above this would have a proportionate increase in activity within and coming and going from the property this 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.

5.22 While the increase of occupants is considered to have some 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. On balance Officers are satisfied that the minor increase in likelihood of parking demand while identifiable is unlikely to be so significantly harmful to parking amenity and availability to warrant refusal of planning permission.

## 5.23 Housing Land Supply

5.24 The Committee's attention is drawn to the current 5 year housing land supply position within Portsmouth. In any planning application, the decision-maker will need to 'balance' any harms identified due the development against any benefits also arising. Principally, for this HMO application, the benefits are to the provision of housing through the provision of additional bedspace of occupation within the HMO. While this is a small contribution to the overall housing stock, the Council currently is unable to identify a 'five year supply' of housing, with only a 2.9 year supply currently identifiable. In this circumstance, the Council is directed to consider that the policies which are most important to determinations associated with housing provision within the Local Plan are out of date. The consequence of this is that decision takers are directed to apply a tilted balance to determinations so that permission is only withheld when the adverse impacts '*...significantly and demonstrably outweigh the benefits...*'. Any harm associated with the increase in occupancy in this area are considered to be insignificant and therefore fall short of being able to significantly and demonstrably outweigh even the small benefit to the city's housing stock of the provision of bedspaces, should such assessment be considered necessary.

## 5.25 Impact on Special Protection Areas

5.26 As the increase in occupancy from a 5 person HMO to 8 persons HMO is considered to warrant planning permission the provisions of the Habitat Regulations are engaged and mitigation for increased Nitrate and Phosphate Output into the Solent and Recreational Disturbance to the SPA is required. This can be secured through a s111 agreement, which the applicant has agreed to, and is in accordance with the advice from Natural England.

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

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

5.29 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relation between those who share a relevant protected characteristic

and those who do not. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered that the officer's recommendation would breach the Council's obligations under the Equality Act 2010.

## 6.0 CONCLUSION

6.1 Having assessed the likely significant difference in the nature and implications of the change in occupation it is considered that the change in use is material and requires planning permission. Having regard to all material planning considerations, including the current 5 year land supply within the City and the representations received, it is concluded that the proposed change of use is acceptable and would be in accordance with the relevant policies of the Portsmouth Plan (2012) and the objectives of the National Planning Policy Framework (NPPF) (2021).

**RECOMMENDATION I** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to:

- (a) satisfactory completion of a Legal Agreement necessary to secure the mitigation of the impact of the proposed development on Solent Special Protection Areas (recreational disturbance and nitrates) by securing the payment of a financial contribution.

**RECOMMENDATION II** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to add/amend conditions where necessary.

**RECOMMENDATION III** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to refuse planning permission if a Legal Agreement has not been satisfactorily completed within three months of the date of this resolution.

### Conditions

#### Time Limit:

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990

#### Approved Plans:

- 2) Unless otherwise agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Location Plan - 101 Oxford Road; Proposed Ground Floor; Proposed Elevations and Section; and Proposed First and Second Floors.

Reason: To ensure the development is implemented in accordance with the permission granted.

#### Cycle Storage:

- 3) Prior to first occupation of the property as a House in Multiple Occupation, secure and weatherproof bicycle storage facilities for 4 bicycles shall be provided at the site and shall thereafter be retained for the parking of bicycles at all times.

Reason: To ensure that adequate provision is made for cyclists using the premises in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.



This page is intentionally left blank



# Agenda Item 7

22/01166/CPL

WARD: CENTRAL SOUTHSEA

59 MANNERS ROAD SOUTHSEA PO4 0BA

## APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT FOR THE PROPOSED CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO AN 8 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)

[22/01166/CPL | Application for Certificate of Lawful Development for the proposed change of use from House in Multiple Occupation \(Class C4\) to an 8 bedroom House in Multiple Occupation \(Sui Generis\) | 59 Manners Road Southsea PO4 0BA \(portsmouth.gov.uk\)](#)

### Application Submitted By:

Mr Robert Tutton

Robert Tutton Town Planning Consultants Ltd

On behalf of: Mr I. Hebbard

RDD: 12th August 2022

LDD: 7th October 2022

### 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before the Planning Committee under the delegated authority of the Assistant Director for Planning and Economic Growth due to the similarity to cases requested to be determined by the Planning Committee by Cllr Vernon-Jackson.
- 1.2 The sole issue for consideration in the determining of this application is whether the change of use of 59 Manners Road from a 5 bedroom House in Multiple Occupation (HMO) to an 8 bedroom HMO would result in a material change of use as defined under s55 of the Town and Country Planning Act 1990 and therefore whether planning permission is required.

#### Site

- 1.3 This application relates to a two-storey, mid-terrace HMO property located on the northern side of Manners Road. The application site is located within the Central Southsea Ward.

#### The Proposal

- 1.4 The property has been used as a 5 bedroom HMO since 4<sup>th</sup> January 2010. A letter from the Council Tax team, dated 11<sup>th</sup> October 2021, and a 'Statement of Truth' from the applicant, dated 31<sup>st</sup> January 2023 have been submitted to evidence this.
- 1.5 An HMO Licence (Ref. DISREUO22/00754/HMO) was recently granted by the Council's Licensing Team on 27<sup>th</sup> October 2022 for the use of the property as an HMO for no more than 8 persons for a period of 5 years (until 26<sup>th</sup> October 2027).

- 1.6 This application seeks to demonstrate that the change of use of the property from a 5 bedroom HMO to an 8 bedroom, 8 person HMO would not result in a material change of use and therefore would not require planning permission.

### Relevant Planning History

- 1.7 Prior Approval was granted on 13<sup>th</sup> December 2021 (reference: 21/00136/GPDC) for the construction of a single-storey rear extension that came out a maximum of 4.6m beyond the rear wall of the original house with a maximum height of 3.3m and a maximum height of 3m to the eaves.

## **2.0 POLICY CONTEXT**

- 2.1 Not applicable.

## **3.0 CONSULTATIONS**

- 3.1 None.

## **4.0 REPRESENTATIONS**

- 4.1 None.

## **5.0 COMMENT**

- 5.1 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 TCPA '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.
- 5.2 Members will note a number of joint appeal decisions, the 'Campbell Properties' appeal dated 29<sup>th</sup> April 2021, and the 'Lane' appeal decision dated 9<sup>th</sup> March 2023 wherein the Inspector considered a number of nominally 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.
- 5.3 Members may also note the previous decisions of Portsmouth's Planning Committee which have contrary to Officer recommendation determined similar 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. The 'Lane' appeal decisions of 9<sup>th</sup> March 2023 were against three such Planning Committee decisions and the Planning Inspector in those case disagreed both with the judgement of the Committee and was critical of the justification, noted above, as a basis for that judgement.

- 5.4 In the case of this application for a certificate of lawfulness the applicant has suggested that a change in the use of the site from the established use as a 5 bed HMO to the current use as an 8 bed HMO should similar be considered a non-material change in the use that does not require planning permission. No evidence as to why the LPA should make that decision has been provided by the applicant other than reference to decisions within the 'Campbell Properties' appeal, which concluded that a change of use in that case from a 6 bed HMO to an 8 bed HMO did not amount to development requiring planning permission. The LPA must therefore make a judgement on the specific facts of this case whether there is some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. If there has not then a certificate of lawfulness should be granted.
- 5.5 The change in occupation from 5 occupants to 8 would of course result in differences in the character of activities associated with the residential occupation whether those differences are significant can be individually assessed. Based on previous decisions of the Council it is considered that the likely differences would be to the impact on residential amenity, the impact on waste water output, the impact on parking stress and the impact on recycling and residual waste capacity.
- 5.6 When considering the impact on amenity it is noted that the change in occupation will increase 60%, from 5 to 8. However there is no evidence that a more intensely used HMO is likely to generate more complaints, regarding noise and anti-social behaviour, than a smaller HMO. This point was examined in the 'Campbell Properties' appeal inquiry. It is of course also to be noted that such amenity impacts will be far more greatly influenced by the nature of individual tenants than the nature/scale of the property albeit the two factors cannot be entirely disentangled. Overall however and notwithstanding that the occupation is proposed to increase by 60% Officers are of the opinion that there is no specific evidence or likelihood that this increase will lead to a significant difference in the character or impact of the use in respect of amenity.
- 5.7 The increase in waste water, and nitrates, will have a directly proportionate increase based in the additional occupants the relevance of this only occurs if planning permission is found to be needed and consequently it provides little direct evidence as to that question itself.
- 5.8 Parking demand/stress is however considered to be more likely in the scenario of an increased occupancy from 5 to 8. While adding a single occupant, likely on lower income is considered very unlikely to have a significant impact on the parking demands in an area, the addition of 3 occupants, the equivalent occupation of an average family dwelling, is considered to be far more likely to result in an increased likelihood of parking stress. It is noted that the application site is sustainably located, within easy walking distance of facilities at the Pompey Centre, bus routes on Goldsmiths Avenue and Fratton station, however the 60% increase in occupation is, notwithstanding this, considered to lead to a likely associated increase in car ownership and associated identifiable impact on parking amenity and availability.
- 5.9 In respect of waste and recycling, while an increase in a single occupant is unlikely to result in any demonstrable, externally identifiable impacts, as it would not normally require any addition bin capacity to be provided. However in the application scenario, increasing from 5 occupants to 8 it has been confirmed that the required capacity would have to be significantly increased. A 5 bed HMO has a capacity need of 480 litres (normally 1 x 240l bin for recycling, and 1 x 240l bin for residual waste). An 8 bed HMO has a capacity need of 860 litres (normally 1 x 360l bin for recycling, and 1 x 360l bin plus 1 x 140l bin for residual waste). This is a 79% increase in capacity. The slight disproportionality of this increase is due to the availability of different wheelie-bin sizes. In the specific case of the application property it can be noted that it benefits

from a front forecourt, where it would be expected bins would be stored and as such this significant increase in refuse bins would be readily evident.

## **6.0 CONCLUSION**

- 6.1 It is therefore considered that the given the above, the change of use in this instance is fundamentally different to the existing 5 bed HMO use and is distinguishable to the above appeals and distinct from previous applications presented to the Planning Committee. The change in occupation described in this application for a certificate of lawfulness is therefore considered to be a material change of use constituting development requiring planning permission and the certificate is therefore recommended to be refused.

## **RECOMMENDATION**

## **Refuse Certificate of Lawfulness**

# Agenda Item 8

22/01101/FUL

WARD: CENTRAL SOUTHSEA

24 NORMAN ROAD SOUTHSEA PO4 0LP

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RFQF83MOL7J00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RFQF83MOL7J00)

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Gardiner  
Mckeand Property

**RDD:** 29th July 2022

**LDD:** 26th September 2022

## 1.0 SUMMARY OF MAIN ISSUES

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

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

- Principle of Development including compliance with policy;
- Impacts on Amenity including parking; and
- 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 19/01778/FUL: Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) and Class C3 (dwellinghouse). Conditional Permission (14.02.2020).

## 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) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation and PCS23 (Design and Conservation).

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

### 3.0 CONSULTATIONS

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

### 4.0 REPRESENTATIONS

4.1 Two representations have been received from local residents, raising objection on the following grounds;

- a) Additional strain of local services;
- b) Number of HMOS on the existing road;
- c) Disruption from building works;
- d) Waste and littering;
- e) Parking strain; and
- f) Noise and anti-social behaviour.

### 5.0 COMMENT

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

#### 5.2 Principle

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

5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 33 HMOs out of 72 properties, a percentage of 45.83%. 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 07/11/2022.

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

Room	Area Provided:	Required Standard:
Bedroom 1	10.19m <sup>2</sup>	10m <sup>2</sup>
Bedroom 2	10.04m <sup>2</sup>	10m <sup>2</sup>
Bedroom 3	11.33m <sup>2</sup>	10m <sup>2</sup>
Bedroom 4	11.36m <sup>2</sup>	10m <sup>2</sup>
Bedroom 5	10.46m <sup>2</sup>	10m <sup>2</sup>
Bedroom 6	10.03m <sup>2</sup>	10m <sup>2</sup>
Bedroom 7	10.03m <sup>2</sup>	10m <sup>2</sup>
Combined Living Space	22.5m <sup>2</sup>	22.5m <sup>2</sup>
Shower room (GF)	3.74m <sup>2</sup>	2.74m <sup>2</sup>
Shower room (SF)	4.09m <sup>2</sup>	2.74m <sup>2</sup>
WC	1.39m <sup>2</sup>	1.17m <sup>2</sup>

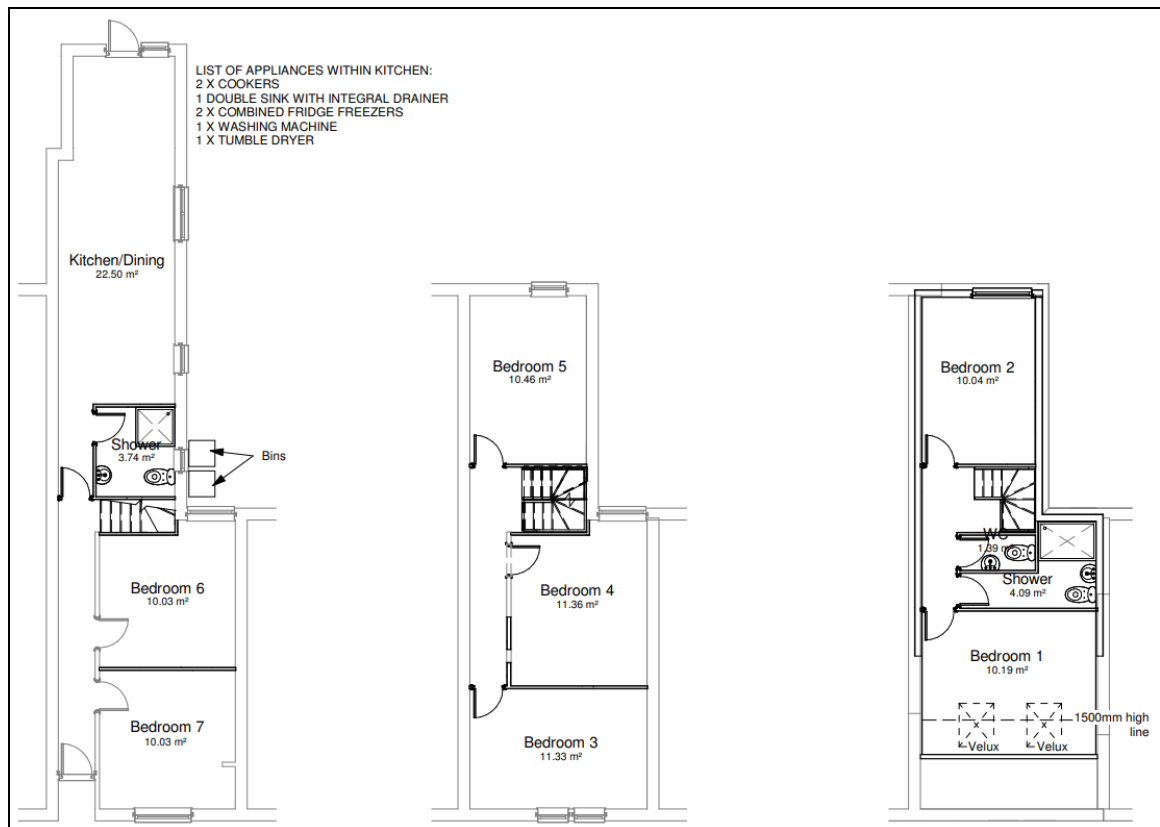


Figure 1 Proposed floorplans (change relates to Bedroom 7, changing from a Lounge)

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 22.5m<sup>2</sup>) for combined living accommodation in circumstances where all bedrooms are at least 10m<sup>2</sup> and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable

and the resulting layout is considered to result in a satisfactory standard of living environment.

#### 5.8 Amenity and Parking

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

5.10 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more 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 number of joint appeal decisions, the 'Campbell Properties' appeal dated 29 April 2021, and the 'Lane' appeal decision dated 9 March 2023 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 which have contrary to Officer recommendation determined similar 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. The 'Lane' appeal decisions of 9 March 2023 where against three such Planning Committee decisions and the Planning Inspector in those case disagreed both with the judgement of the Committee and was critical of the justification, noted above, as a basis for that judgement.

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 Should it be considered necessary to assess the merits of the application, notwithstanding the advice of Officers' above, the Committee's attention is drawn to the current 5 year housing land supply position within Portsmouth. In any planning application, the decision-maker will need to 'balance' any harms identified due to the development against any benefits also arising. Principally, for this HMO application, the benefits are to the provision of housing through the provision of additional bedspace of occupation within the HMO. While this is a small contribution to the overall housing stock, the Council currently is unable to identify a 'five year supply' of housing, with only a 2.9 year supply currently identifiable. In this circumstance, the Council is directed to consider that the policies which are most important to determinations associated with housing provision within the Local Plan are out of date. The consequence of this is that decision takers are directed to apply a tilted balance to determinations so that permission is only withheld when the adverse impacts '*...significantly and demonstrably outweigh the benefits...*'. Any harm associated with the increase in occupancy in this area are considered to be insignificant and therefore fall short of being able to significantly and demonstrably outweigh even the small benefit to the city's housing stock of the provision of bedspaces, should such assessment be considered necessary.
- 5.15 The concerns of two local residents as described in representations can be noted, though Officers are satisfied that the increase in occupancy by a single resident would not have a material impact on the areas of concern raised.
- 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 a Likely Significant Effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

## **6.0 CONCLUSION**

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

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

# Agenda Item 9

22/01142/FUL

WARD: COPNOR

160 CHICHESTER ROAD PORTSMOUTH PO2 0AH

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RG4XZXMOLDH00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RG4XZXMOLDH00)

**Application Submitted By:**

Mr Willment  
Collective Studio

**On behalf of:**

Mr Forrest

**RDD:** 8th August 2022

**LDD:** 11th October 2022

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson
- 1.2 The main issues for consideration in the determination of the application are as follows:
  - Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.3 Site and surroundings
- 1.3 The application site is a two-storey terraced dwelling with rooms in the roof in a predominately residential area.
- 1.4 The Proposal
- 1.5 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application
- 1.6 Planning History
- 1.7 15/01336/FUL: Change of use from dwelling house (Class C3) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwelling house). Conditional Permission (07.08.2015)
- 1.8 21/00149/GPDC: Construction of single-storey rear extension that comes out a maximum of 6m beyond the rear wall of the original house with a maximum height of 3m and a maximum height of 2.8m to the eaves. Prior-Approval is Required and Refused (19.01.2023)

## **2.0 POLICY CONTEXT**

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

## **3.0 CONSULTATIONS**

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

## **4.0 REPRESENTATIONS**

- 4.1 Four representations have been received (including one from Councillor Swann) raising objection to the application on the following grounds:
- a) Lack of Parking;
  - b) Loss of property value;
  - c) Concerns about how the property can accommodate 7 residents;
  - d) Works already undertaking;
  - e) Area overly congested with residents;
  - f) Loss of family housing;
  - g) Increase in waste;
  - h) Increase in noise; and
  - i) Pressure of local services.

## **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 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 does not currently benefit from a Licence. It was previously licensed by Portsmouth City Council to operate as an HMO with up to 5 occupants. This licence ran until 18/02/2022.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	11.51m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	10.16m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	13.51m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	11.88m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	14.95m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	11.54m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	15.58m <sup>2</sup>	6.51m <sup>2</sup>
Combined Living Space	39.53m <sup>2</sup>	34m <sup>2</sup> / 22.5m <sup>2</sup>
Ensuite for B1	2.81m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite for B2	2.84m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite for B3	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite for B4	2.86m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite for B5	2.84m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite for B6	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite for B7	2.8m <sup>2</sup>	2.74m <sup>2</sup>
WC	1.95m <sup>2</sup>	1.17m <sup>2</sup>



Figure 1 Proposed Floorplans

- 5.7 As is shown in the table above, the proposal results in an internal an internal layout that meets the Council's adopted space standards, and is therefore considered to result in a satisfactory standard of living.
- 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 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 number of joint appeal decisions, the 'Campbell Properties' appeal dated 29 April 2021, and the 'Lane' appeal decision dated 9 March

2023 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 which have contrary to Officer recommendation determined similar 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. The 'Lane' appeal decisions of 9 March 2023 where against three such Planning Committee decisions and the Planning Inspector in those case disagreed both with the judgement of the Committee and was critical of the justification, noted above, as a basis for that judgement.

- 5.13 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.
- 5.14 Should it be considered necessary to assess the merits of the application, notwithstanding the advice of Officers' above, the Committee's attention is drawn to the current 5 year housing land supply position within Portsmouth. In any planning application, the decision-maker will need to 'balance' any harms identified due the development against any benefits also arising. Principally, for this HMO application, the benefits are to the provision of housing through the provision of additional bedspace of occupation within the HMO. While this is a small contribution to the overall housing stock, the Council currently is unable to identify a 'five year supply' of housing, with only a 2.9 year supply currently identifiable. In this circumstance, the Council is directed to consider that the policies which are most important to determinations associated with housing provision within the Local Plan are out of date. The consequence of this is that decision takers are directed to apply a tilted balance to determinations so that permission is only withheld when the adverse impacts '*...significantly and demonstrably outweigh the benefits...*'. Any harm associated with the increase in occupancy in this area are considered to be insignificant and therefore fall short of being able to significantly and demonstrably outweigh even the small benefit to the city's housing stock of the provision of bedspaces, should such assessment be considered necessary.
- 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 the on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, as the merits of the proposed use comply fully with the relevant policies of the Local Plan and associated guidance, the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

## **RECOMMENDATION**

## **Unconditional Permission**

**Conditions: None**



# Agenda Item 10

22/01484/FUL

WARD:ST THOMAS

57 HUDSON ROAD SOUTHSEA PORTSMOUTH PO5 1HB

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

<https://publicaccess.portsmouth.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RK0EF5MOMNA00>

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Mr Simon Pollock

**RDD:** 20th October 2022

**LDD:** 16th 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 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application.
- 1.6 Planning History
- 1.7 20/01148/FUL - Change of use C4 to C3/C4 (Confirming C4 use and enabling flexibility). Granted 11.03.2021.
- 1.8 21/00020/GPDC - Prior approval for 6m extension. Refused 08.03.2021.

## **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 No representations received.

## **5.0 COMMENT**

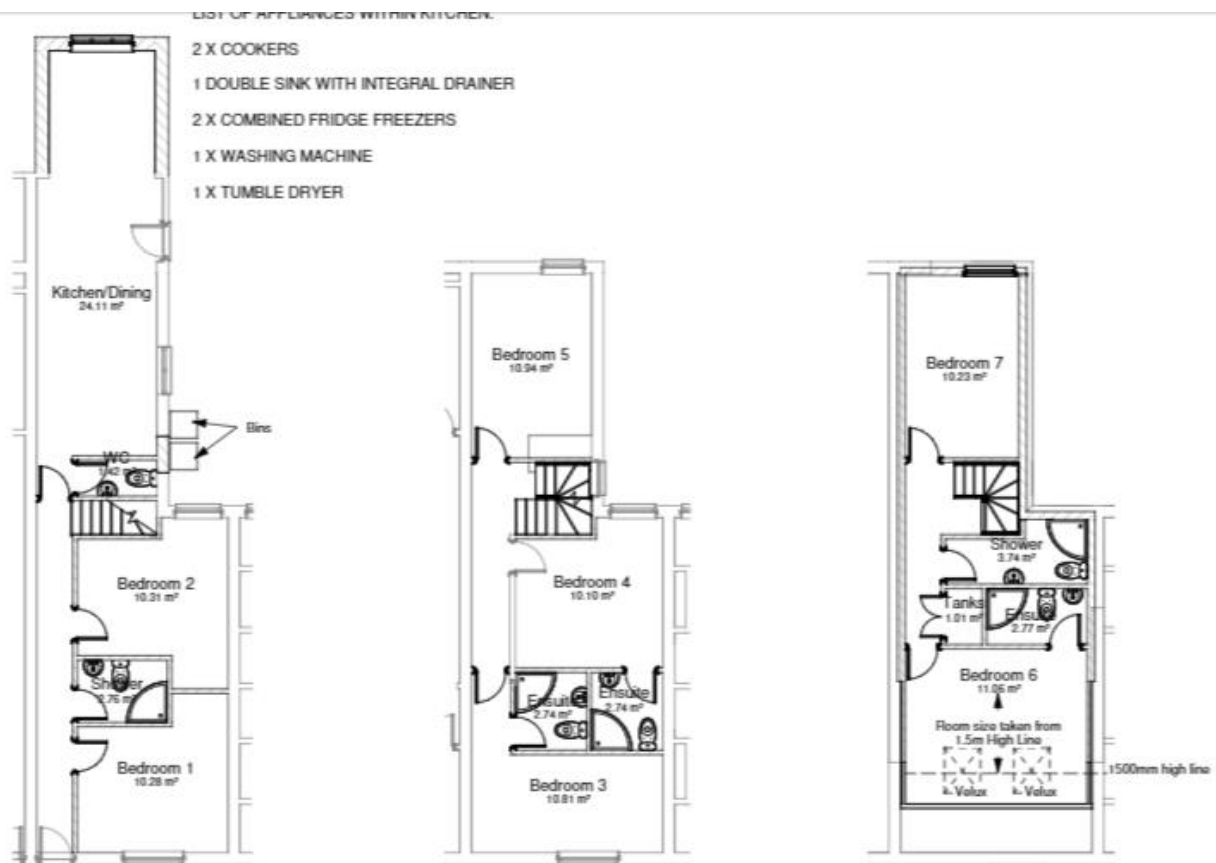
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

### 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 49 HMOs out of 93 properties, a percentage of 52.7%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 23.12.21
- 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	10.28m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	10.31m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	10.81m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	10.10m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	10.94m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	11.05m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	10.23m <sup>2</sup>	6.51m <sup>2</sup>
Shower Room (GF)	2.75m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite serving B3	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite serving B4	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Shower Room (2f)	3.74m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite serving B6	2.77m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	24.11m <sup>2</sup>	22.5m <sup>2</sup> (lower standard can be applied as all bedrooms over 10msq).



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

accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

## 5.8 Amenity and Parking

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

5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more 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. Members will note a number of joint appeal decisions, the 'Campbell Properties' appeal dated 29 April 2021, and the 'Lane' appeal decision dated 9 March 2023 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 which have contrary to Officer recommendation determined similar 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. The 'Lane' appeal decisions of 9 March 2023 where against three such Planning Committee decisions and the Planning Inspector in those case disagreed both with the judgement of the Committee and was critical of the justification, noted above, as a basis for that judgement.

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 Should it be considered necessary to assess the merits of the application, notwithstanding the advice of Officers' above, the Committee's attention is drawn to the current 5 year housing land supply position within Portsmouth. In any planning application, the decision-maker will need to 'balance' any harms identified due to the development against any benefits also arising. Principally, for this HMO application, the benefits are to the provision of housing through the provision of additional bedspace of occupation within the HMO. While this is a small contribution to the overall housing stock, the Council currently is unable to identify a 'five year supply' of housing, with only a 2.9 year supply currently identifiable. In this circumstance, the Council is directed to consider that the policies which are most important to determinations associated with housing provision within the Local Plan are out of date. The consequence of this is that decision takers are directed to apply a tilted balance to determinations so that permission is only withheld when the adverse impacts '*...significantly and demonstrably outweigh the benefits...*'. Any harm associated with the increase in occupancy in this area are considered to be insignificant and therefore fall short of being able to significantly and demonstrably outweigh even the small benefit to the city's housing stock of the provision of bedspaces, should such assessment be considered necessary.

5.14 As there are no representations, there is nothing to address from this perspective.

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

## 6.0 CONCLUSION

6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan.

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

6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions.

In such a circumstance, as the merits of the proposed use comply fully with the relevant policies of the Local Plan and associated guidance, the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy

should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

# Agenda Item 11

22/01494/FUL

WARD:HILSEA

98 BERESFORD ROAD PORTSMOUTH PO2 0NQ

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

<https://publicaccess.portsmouth.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RK3YAIMOMP200>

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Mr Christian Reynolds

**RDD:** 24th October 2022

**LDD:** 19th December 2022

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due at the request of Councillor Vernon-Jackson. The application has also received 5 objections from residents. The application has been appealed against non determination and as such the committee is advising the Planning Inspector of the decision it would have made had it come before the committee before an appeal was valid.
- 1.2 The main issues for consideration in the determination of the application are as follows:
  - Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.3 Site and surroundings
- 1.3 The application site is a two storey terraced dwelling with rooms in the roof in a predominately residential area.
- 1.4 The Proposal
- 1.5 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application.
- 1.6 Planning History
- 1.7 20/00087/GPDC - Rear extension to a maximum length of 4.5m - Prior approval not required 02/09/2020.
- 1.8 20/00813/FUL - Change of use from dwelling house (Class C3) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwelling house) approved 13.01.22.

## **2.0 POLICY CONTEXT**

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation) and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The 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 5 representations received which can be summarised as:

- Number of HMOs in the area
- Impact on parking which is already strained
- Not space in the forecourt for motorbikes
- Unclear as to who will be occupying the house
- Works have already been undertaken
- Anti social behaviour
- Waste
- The site is close to a nursery and old peoples home
- Fire escape route

## **5.0 COMMENT**

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



up of 3 HMOs out of 63 properties, a percentage of 4.8%. One objection comment mentioned several properties he suspects to be HMOs on Montague Road and Stubbington Avenue, however, these properties are not caught within the 50m radius. This proposal of course has no effect on the percentage of HMOs in the area. 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 5.12.22.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	10.25m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	9.28m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	15.18m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	9.54m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	9.26m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	10.74m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	9.58m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite 1	2.84m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 2	2.84m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 3	2.78m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 4	2.97m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 5	2.82m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 6	3.01m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 7	3.02m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	34.34m <sup>2</sup>	34m <sup>2</sup>
GF WC w/HWB	1.35m <sup>2</sup>	1.17



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

5.8 Amenity and Parking

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

5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more 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. Members will note a number of joint appeal decisions, the 'Campbell Properties' appeal dated 29 April 2021, and the 'Lane' appeal decision dated 9 March 2023 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 which have contrary to Officer recommendation determined similar 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. The 'Lane' appeal decisions of 9 March 2023 where against three such Planning Committee decisions and the Planning Inspector in those case disagreed both with the judgement of the Committee and was critical of the justification, noted above, as a basis for that judgement.

- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.
- 5.13 Should it be considered necessary to assess the merits of the application, notwithstanding the advice of Officers' above, the Committee's attention is drawn to the current 5 year housing land supply position within Portsmouth. In any planning application, the decision-maker will need to 'balance' any harms identified due the development against any benefits also arising. Principally, for this HMO application, the benefits are to the provision of housing through the provision of additional bedspace of occupation within the HMO. While this is a small contribution to the overall housing stock, the Council currently is unable to identify a 'five year supply' of housing, with only a 2.9 year supply currently identifiable. In this circumstance, the Council is directed to consider that the policies which are most important to determinations associated with housing provision within the Local Plan are out of date. The consequence of this is that decision takers are directed to apply a tilted balance to determinations so that permission is only withheld when the adverse impacts '*...significantly and demonstrably outweigh the benefits...*'. Any harm associated with the increase in occupancy in this area are considered to be insignificant and therefore fall short of being able to significantly and demonstrably outweigh even the small benefit to the city's housing stock of the provision of bedspaces, should such assessment be considered necessary.
- 5.14 Many of the resident concerns would be dealt with as and when issues may arise through the police, licensing and waste teams. Building Control and Licensing will inspect the property if they have not already to ensure it is up to standard, including fire safety. While there may be an increase in occupants, the SPD requirement for parking does not change and therefore a refusal on these grounds is not sustainable. There is no evidence or reason to suggest that occupants of the property would pose any threat to the nursery school or old peoples home and this comment is considered to be unfounded and should be disregarded.
- 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 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 order to advise the planning inspector.
- 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 advise the inspector that they would have resolved to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition) and requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition). A condition 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 is not necessary as a s111 agreement has already been completed and submitted to PINS.

## **RECOMMENDATION**

## **Unconditional Permission**

**Conditions: None**

# Agenda Item 12

22/01552/FUL

WARD:PAULSGROVE

32 KINGSLAND CLOSE PORTSMOUTH PO6 4AL

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

<https://publicaccess.portsmouth.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RKZ111MO0JP00>

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Mr Shuwel Ahmed

**RDD:** 4th November 2022

**LDD:** 2nd January 2023

## 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 but no external operational development forms part of this application

### 1.6 Planning History

1.7 17/01548/FUL - C3 to C3/C4 granted 15.11.17

## 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 No representations received.

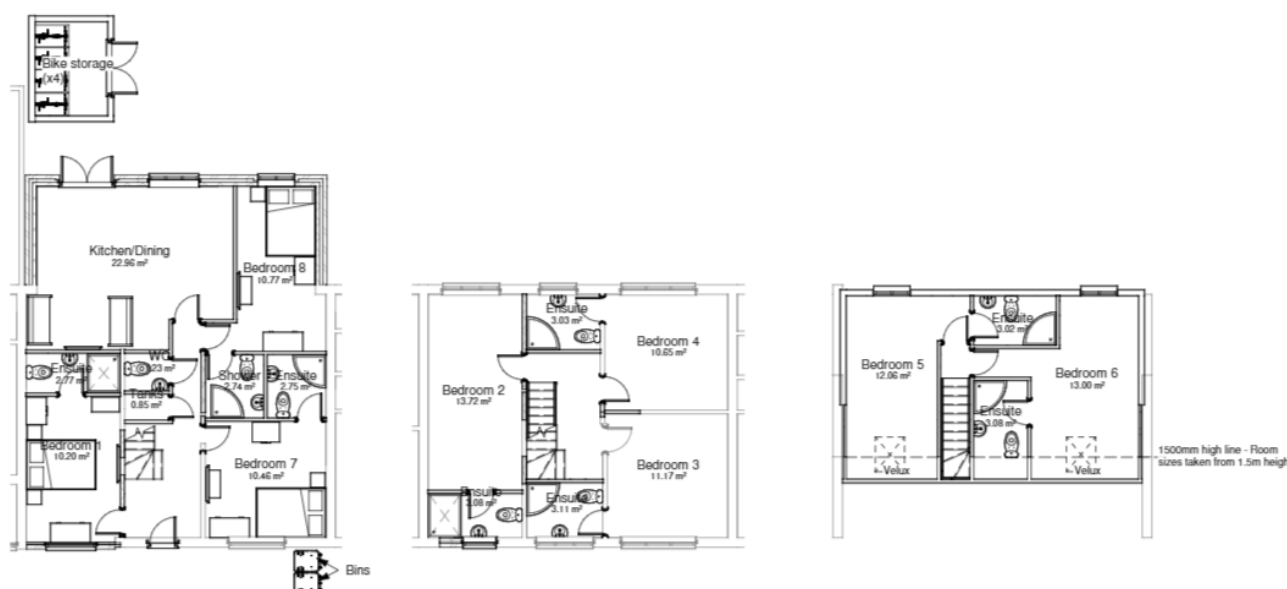
### **5.0 COMMENT**

- 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 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 3 HMOs out of 32 properties, a percentage of 9.4%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The HMO use of this site previously benefited from a Licence granted by Portsmouth City Council to operate as an HMO with up to 5 occupants. This licence was granted in 2019 but was revoked due to the sale of property.
- 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	10.2m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	13.72m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	11.17m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	10.65m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	12.06m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	13m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	10.46m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 8	10.77m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite 1	2.77m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 2	3.08m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 3	3.11m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 4	3.03m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 5	3.08m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 6	3.08m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 7	2.75m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite 8	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	22.96m <sup>2</sup>	22.5m <sup>2</sup> (lower space can be applied due to all bedrooms being over 10msq.)
Bathroom 1	1.23m <sup>2</sup>	1.17m <sup>2</sup>



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

5.8 Amenity and Parking

5.8 The proposal would increase the occupancy of the existing HMO by 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 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 number of joint appeal decisions, the 'Campbell Properties' appeal dated 29 April 2021, and the 'Lane' appeal decision dated 9 March 2023 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 which have contrary to Officer recommendation determined similar 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. The 'Lane' appeal decisions of 9 March 2023 where against three such Planning Committee decisions and the Planning Inspector in those case disagreed both with the judgement of the Committee and was critical of the justification, noted above, as a basis for that judgement.
- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.
- 5.13 Should it be considered necessary to assess the merits of the application, notwithstanding the advice of Officers' above, the Committee's attention is drawn to the current 5 year housing land supply position within Portsmouth. In any planning application, the decision-maker will need to 'balance' any harms identified due the development against any benefits also arising. Principally, for this HMO application, the benefits are to the provision of housing through the provision of additional bedspace of



occupation within the HMO. While this is a small contribution to the overall housing stock, the Council currently is unable to identify a 'five year supply' of housing, with only a 2.9 year supply currently identifiable. In this circumstance, the Council is directed to consider that the policies which are most important to determinations associated with housing provision within the Local Plan are out of date. The consequence of this is that decision takers are directed to apply a tilted balance to determinations so that permission is only withheld when the adverse impacts '*...significantly and demonstrably outweigh the benefits...*'. Any harm associated with the increase in occupancy in this area are considered to be insignificant and therefore fall short of being able to significantly and demonstrably outweigh even the small benefit to the city's housing stock of the provision of bedspaces, should such assessment be considered necessary.

5.14 As there are no representations there are no other matters to address.

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

This page is intentionally left blank

# Agenda Item 13

23/00189/FUL

WARD:ST THOMAS

75 GROSVENOR STREET SOUTHSEA PO5 4JG

**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=RPV6QGMOH1200>

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Mr Simon Birmingham

**RDD:** 13th February 2023

**LDD:** 10th April 2023

## 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 end of terrace dwelling with rooms in the roof in a predominately residential area.
- 1.4 The Proposal
- 1.5 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application.
- 1.6 Planning History
- 1.7 20/00011/GPDC - Construction of single-storey rear extension that comes out a maximum of 6m beyond the rear wall of the original house with a maximum height of 3m and a maximum height of 2.8m to the eaves. PRIOR APPROVAL NOT REQUIRED
- 1.8 20/00087/FUL - Change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwelling house) or Class C4 (house in multiple occupation)  
APPROVED

## **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**

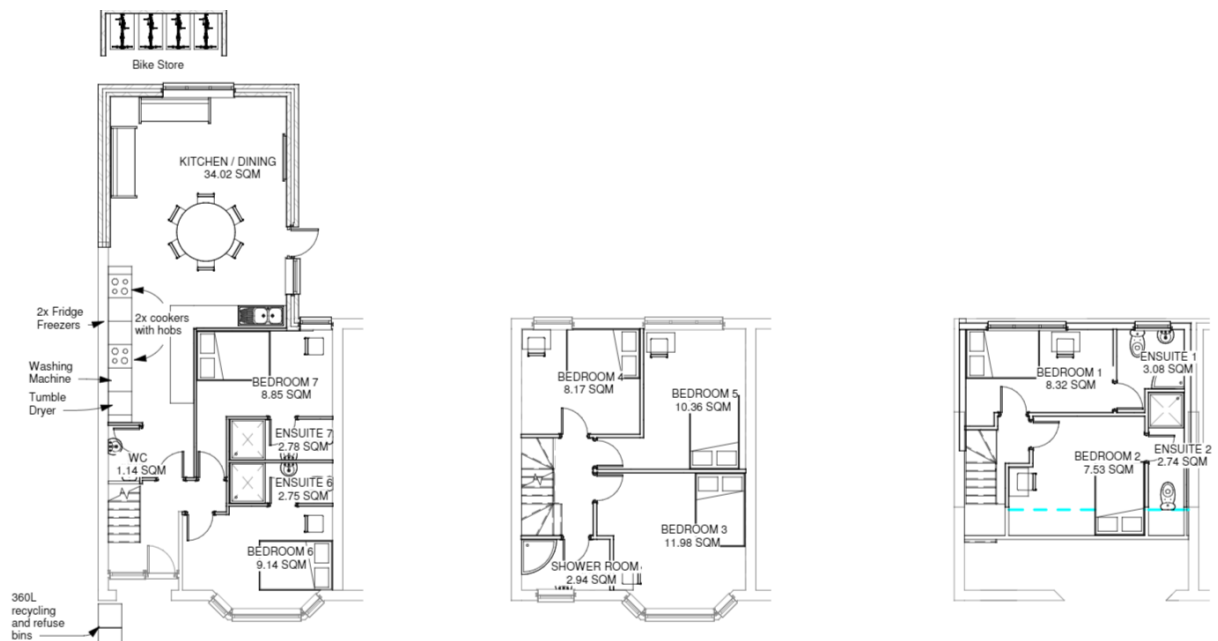
- 4.1 None received.

## **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 10 HMOs out of 43 properties, a percentage of 23.2%. It should be noted that an estimated 5 units of Grosvenor House are caught in the radius, none of which are on the HMO register. 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 21/10/2020.
- 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	8.32m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	7.53m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	11.98m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	10.36m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	8.17m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	9.14m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	8.85m <sup>2</sup>	6.51m <sup>2</sup>
En suite serving b1	3.08m <sup>2</sup>	2.74m <sup>2</sup>
En suite serving b2	2.74m <sup>2</sup>	2.74m <sup>2</sup>
En suite serving b6	2.75m <sup>2</sup>	2.74m <sup>2</sup>
En suite serving b7	2.78m <sup>2</sup>	2.74m <sup>2</sup>
Shower Room ff	2.94m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	34.02m <sup>2</sup>	34m <sup>2</sup>



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

5.8 Amenity and Parking

5.8 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. Members will note a number of joint appeal decisions, the 'Campbell Properties' appeal dated 29 April 2021, and the 'Lane' appeal decision dated 9 March 2023 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 which have contrary to Officer recommendation determined similar 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. The 'Lane' appeal decisions of 9 March 2023 where against three such Planning Committee decisions and the Planning Inspector in those case disagreed both with the judgement of the Committee and was critical of the justification, noted above, as a basis for that judgement.
- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.
- 5.13 Should it be considered necessary to assess the merits of the application, notwithstanding the advice of Officers' above, the Committee's attention is drawn to the current 5 year housing land supply position within Portsmouth. In any planning application, the decision-maker will need to 'balance' any harms identified due the development against any benefits also arising. Principally, for this HMO application, the benefits are to the provision of housing through the provision of additional bedspace of occupation within the HMO. While this is a small contribution to the overall housing stock, the Council currently is unable to identify a 'five year supply' of housing, with only a 2.9 year supply currently identifiable. In this circumstance, the Council is directed to consider that the policies which are most important to determinations associated with housing provision within the Local Plan are out of date. The consequence of this is that decision takers are directed to apply a tilted balance to determinations so that permission is only withheld when the adverse impacts '*...significantly and demonstrably outweigh*

*the benefits...!*. Any harm associated with the increase in occupancy in this area are considered to be insignificant and therefore fall short of being able to significantly and demonstrably outweigh even the small benefit to the city's housing stock of the provision of bedspaces, should such assessment be considered necessary.

5.14 As there are no comments there is nothing further to address.

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.

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**

This page is intentionally left blank