



NOTICE OF MEETING

PLANNING COMMITTEE

WEDNESDAY, 12 JULY 2023 AT 10.30 AM

COUNCIL CHAMBER - THE GUILDHALL

Telephone enquiries to Democratic Services

Email: Democratic@portsmouthcc.gov.uk

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

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

Planning Committee Members:

Councillors Chris Attwell (Chair), Lee Hunt (Vice-Chair), Hannah Brent, Peter Candlish, Raymond Dent, Asghar Shah, John Smith, Judith Smyth, Mary Vallely and Gerald Vernon-Jackson CBE

Standing Deputies

Councillors Dave Ashmore, George Fielding, Lewis Gosling, Ian Holder, Mark Jeffery, Steve Pitt, Darren Sanders, Russell Simpson and Daniel Wemyss

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

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

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

AGENDA

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

- 3 Minutes of the previous meeting held on 21 June 2023** (Pages 7 - 16)
- RECOMMENDED that the minutes of the meeting held on 21 June 2023 be agreed as a correct record.
- 4 21/01357/FUL - Tipner East Land off Twyford Avenue and Tipner Lane, Portsmouth** (Pages 17 - 46)
- Construction of 221 dwellings, new accesses onto Tipner Lane and Twyford Avenue, internal access roads & cycleways, open space, parking and associated infrastructure, including potential linkages to the proposed residential development to the north, existing residential development to the south and to the existing and proposed enhanced park & ride facilities to the west. The proposal constitutes EIA Development (revised scheme).
- 5 19/00595/FUL - 137 London Road, Hilsea, Portsmouth PO2 9AA** (Pages 47 - 52)
- Change of use of part of ground floor and upper floors from a five bedroom/five person house of multiple occupation to a five bedroom/seven person house of multiple occupation (Sui Generis); to include construction of part single/part two storey rear/side extension; dormer to rear roofslope and associated cycle and refuse stores (Note amended description)
- 6 21/01417/CPL - 127 Powerscourt Road, Portsmouth PO2 7JQ** (Pages 53 - 56)
- Application for a certificate of lawful development for existing use as house in multiple occupation with 7 beds.
- 7 22/01076/FUL - 39 Wykeham Road, Portsmouth PO2 0EG** (Pages 57 - 62)
- Change of use from six bed house in multiple occupation (Class C4) to house in multiple occupation for seven persons (Sui Generis).
- 8 22/01152/FUL - 12 Thurbern Road, Portsmouth PO2 0PJ** (Pages 63 - 68)
- Change of use from Class C3 (Dwellinghouse) to 7 person house in multiple occupation (Sui Generis).
- 9 22/01559/FUL - 15 Shadwell Road, Portsmouth PO2 9EH** (Pages 69 - 78)
- Change of use from dwellinghouse (Class C3) to 8 person house in multiple occupation (Sui Generis).
- 10 22/01643/FUL - 13 Shadwell Road, Portsmouth PO2 9EH** (Pages 79 - 84)
- Change of use from house in multiple occupation (Class C4) to an 8 bedroom house in multiple occupation (Sui Generis) (resubmission of 21/01622/FUL)

- 11 23/00080/FUL - 232 Queens Road, Fratton, Portsmouth PO2 7NG** (Pages 85 - 92)
- Change of use from purpose falling within dwellinghouse (Class C3) to a 7 bedroom house in multiple occupation (Sui Generis) [note change of description]
- 12 22/01610/FUL - 28 Hudson Road, Southsea PO5 1HD** (Pages 93 - 100)
- Change of use from a six bedroom house in multiple occupation (Class C4) to a 7 bedroom house in multiple occupation (Sui Generis) [note amended description]
- 13 22/01657/FUL - 3 Pains Road, Southsea PO5 1HE** (Pages 101 - 106)
- Change of use from house in multiple occupation (Class C4) to 7 bedroom house in multiple occupation (Sui Generis)
- 14 23/00089/FUL - 36 Montgomerie Road, Southsea PO5 1ED** (Pages 107 - 112)
- Change of use from a six bedroom house in multiple occupation (Class C4) to 8 bedroom house in multiple occupation (Sui Generis)
- 15 23/00112/FUL - 4 Chalkridge Road, Portsmouth PO6 2BE** (Pages 113 - 120)
- Change of use from a purpose falling within dwellinghouse (Class C3) to a 7 person house in multiple occupation (Sui Generis) [note change of description]
- 16 23/00524/FUL - 30 Telephone Road, Southsea PO4 0AY** (Pages 121 - 126)
- Change of use from 6-bed/6-person house in multiple occupation to a 7-bed/7-person house in multiple occupation.

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 1st 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.

PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held on Wednesday, 21 June 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)
Lee Hunt (Vice-Chair)
Hannah Brent
Raymond Dent
John Smith
Judith Smyth
Mary Vallely

Also in attendance

Councillors Russell Simpson and Daniel Wemyss.

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.

71. Apologies (AI 1)

Apologies were received from Councillors Peter Candlish, Asghar Shah and Gerald Vernon-Jackson.

Councillor Hunt apologised that he needed to leave the meeting at 11:30am.

72. Declaration of Members' Interests (AI 2)

There were no declarations of interest.

73. Minutes of the previous meeting held on 31 May 2023 (AI 3)

RESOLVED that the minutes of the Planning Committee meeting held on 31 May 2023 be agreed as a correct record.

Planning Applications

The Supplementary Matters report and the deputations (which are not minuted) can be viewed on the council's website at [Planning Committee, 21 June 2023 on Livestream](#)

The Chair advised that he would be amending the order of the agenda; the applications were considered in the following order:

Item 7: 2 Mayfield Road, Portsmouth, PO2 0RW

Item 8: 152-154 London Road, Hilsea, Portsmouth, PO2 9DJ

Item 6: 46 Shadwell Road, Portsmouth, PO2 9EJ
Item 4: Land to the South of Limberline Rad and North of Norway Road, Hilsea
Item 5: Trematon, The Thicket, Southsea, PO5 2AA
Item 9: 172 Chichester Road, Portsmouth, PO2 0AH
Item 10: 11 St Davids Road, Southsea, PO5 1QH
Item 11: 68 Bedhampton Road Portsmouth, PO2 7JY

However, for ease of reference the minutes will be kept in the original order.

74. 23/00063/FUL - Land to the South of Limberline Road and North of Norway Road, Hilsea (AI 4)

The Interim Head of Development Management presented the report and drew members' attention to the information in the Supplementary Matters report.

Deputations

Victoria Yeandle, on behalf of applicant
Cllr Daniel Wemyss, ward councillor
Cllr Russel Simpson, ward councillor

Members' Questions

In response to members' questions, officers clarified that:

- The local highway Authority are responsible for maintenance of the highway.
- The applicant intends to operate to the BREAM excellent standard so there are a range of possible features across a development like this and solar panels were one of those identified.
- There is no objection from the highways department. This is an excellent location in the city with a good transport network nearby and the applicant will encourage staff to use public transport or to cycle where possible.
- In terms of infiltration and SuDS, the applicant has gone through the range of possible options and discounted infiltration based on the soil and ground conditions. The council's drainage officer would like to investigate this further to ensure that is the case, he has however accepted the scheme as a good scheme as it stands. Surface water will be attenuated by large tanks and oversized pipes underneath the north/south spine road to regulate the amount of surface water coming off the site when it rains heavily. The discharge from this site as proposed would be half of the existing.
- There is more work to come but the drainage officer will ask for it to be as best they can to discharge the condition. Officers were satisfied that the condition was strong enough.

Members' Comments

Concerns were raised that the double yellow lines will not stop lorries stopping parking there causing more traffic congestion in this area.

RESOLVED

(1) - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission as per the officer's report with the amendment to condition 2 and the additional condition to secure the TRO, subject to:

(a) satisfactory completion of a Legal Agreement to secure a Travel Plan Monitoring sum, and an Employment and Skills Plan.

(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 six months of the date of this resolution.

75. 23/00348/FUL - Trematon, The Thicket, Southsea PO5 2AA (AI 5)

The Interim Head of Development Management presented the report and drew members' attention to the information on the Supplementary Matters report.

Deputations

Gary Elliott, applicant

James Kirby, neighbour against the application.

Members' Questions

In response to members' questions, officers clarified that:

- The eaves height of the proposals are the same as the ridge height of the property to the west. There is not much of a difference in terms of height. These were pointed out by the officer on the presentation.
- In terms of the neighbouring property being overshadowed, this would depend on the time of day and time of year. In the winter the proposed new building may not make much of a difference as the sun is already blocked by the existing three storey building; having another building slightly closer would not change this. It is an 'in the round' judgement and because the windows affected are non-habitable rooms and secondary windows to the main living accommodation, this effect would not be so undue to withhold planning consent.
- A former motor company previously existed to the north of the site from the 1930s to the 1990s and there were chemicals and oils stored on site. The site was redeveloped in the 1990s and investigations into contamination took place at that time. The contamination was fairly deep and it is common where there is such deep contamination to leave the contamination at depth. The ground was capped with the tarmac to the parking area to Hendy Close.
- It is possible that some of the contamination from the land could have migrated south into the application site. The environmental team and officers have looked at this issue very carefully and appropriate conditions had been proposed in the report and the thorough process was explained to members. The matter will be properly controlled by conditions if the application is approved,
- The applicant has worked with the planning authority to achieve a form of development including footprint, height, and appearance, that officers are satisfied with. There will be an impact on neighbours, but it was the degree of the impact that is the matter of judgement. Officers felt that this is an appropriate development for the site and a good development.

Members' Comments

Members' felt that this area of Southsea was very densely occupied and noted that the site falls within the Owens Southsea conservation area. It was felt that the proposal would not enhance the area due to its height, mass and being on a larger footprint.

RESOLVED that the application be refused for the following reasons:

- (1) The proposed development is over-sized for the plot available, in height, footprint and mass, and would have consequent adverse effects on the amenity of the adjoining residential occupier to the east (Thicket Cottage), in terms of light, over-shadowing, and dominance. Architectural quality is also insufficient. The scale and position and design of the building would harm the character and appearance of the Conservation Area. As such, the proposal would conflict with Policy PS523 of the Local Plan and the provisions of the NPPF.**
- (2) It has been identified that any residential development in the city will result in a significant effect on the Solent Special Protection Areas, through additional recreational pressures; with mitigation against this impact being required. No justification or 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) (as amended), the Wildlife and Countryside Act (1981), and Section 15 of the National Planning Policy Framework (2021).**

76. 23/00465/FUL - 46 Shadwell Road, Portsmouth, PO2 9EJ (AI 6)

The Interim Head of Development Management presented the report.

Deputations

Carianne Wells, agent

Cllr Daniel Wemyss, ward councillor

Cllr Russell Simpson, ward councillor (also on behalf of Cllr Emily Strudwick, ward councillor)

Members' Questions

In response to members' questions, officers clarified that:

- No. 15 Shadwell Road at appeal is outside of the 50m radius but any undetermined applications or appeals are included in the figures.
- There are two HMOs in a 50m radius out of 65 dwellings.
- The application is for C4 use for up to six people so any more people would, according to this committee's position, require planning permission.
- The licensing department are rigorous with their checks to ensure that the development matches the plans agreed.

Members' Comments

There were no comments.

RESOLVED that conditional planning permission be granted.

77. 23/00499/FUL - 2 Mayfield Road, Portsmouth, PO2 0RW (AI 7)

The Interim Head of Development Management presented the report and drew members' attention to the information on the Supplementary Matters report.

Deputations

Andrew Slee, Mayfield Residents Association
Carianne Wells, agent
Cllr Daniel Wemyss, ward councillor
Cllr Benedict Swann (read out by Cllr Wemyss)
Cllr Russell Simpson, ward councillor

Members' Questions

In response to members' questions, officers clarified that:

- The application is for a 7 bed/7 person HMO, to add an extra occupant would, according to this committee's position, require a further planning application.
- There was a post war extension to the property. The planning system commenced in 1948 which is the date that considered to be original in the legislation. There was an original outbuilding at the location pre-war. This was replaced on the same footprint so they could still extend the 3m beyond that. The extension as shown would therefore be permitted development.
- The Council already has an Article 4 Direction in place relating to HMOs which covers the whole city.
- It was the request of the former Leader of the Council that applications from Class C4 (small HMO) to a large HMO, typically for 7 or 8 persons, be considered by the Planning Committee for decision if it is recommended for approval by officers. This is the same for closing enforcement cases for the same change of use and also for applications for lawful development certificates which seek to confirm an increase in occupation from 6 to 7 or 8 occupants. Applications for HMOs also come to committee if they have received a call-in request from a councillor or have received a large number of objections.
- A HMO does not necessarily use more water than a family dwelling with multiple occupants. Water and sewerage concerns are outside of the planning system for small scale applications. The water authority has a duty to provide the relevant capacity so residents can engage with the water authority if they wish.
- If the planning authority receive concerns that a property is operating illegally as a HMO, planning officers will investigate this. Officers believe that their data on the number of HMOs in the area is up to date and they were not aware that the property is operating as a HMO.

Members' Comments

It was noted that concerns about capacity of the sewer system were not a material planning consideration. Members were concerned about parking and a proposal was put forward to refuse the application on lack of parking, overcrowding and the application being out of context with the street scene, however this motion did not receive a seconder.

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.**

Councillor Hunt left the meeting at the end of this item.

78. 22/01667/FUL - 152-154 London Road, Hilsea, Portsmouth, PO2 9DJ (AI 8)

The Interim Head of Development Management presented the report and drew members' attention to the information on the Supplementary Matters report.

Deputations

Matt Baker, agent

Cllr Daniel Wemyss, ward councillor

Cllr Russell Simpson, ward councillor

Members' Questions

In response to members' questions, officers clarified that:

- Further provision for cycling would be useful and it was felt there was space available for further cycle storage. The condition does not mention how bicycle bays are to be provided so this did not need amending, it would just be for the applicant to bear in mind.
- The North End District Centre Policy generally resists the loss of upper floor office space but also supports residential use, so it was not felt the proposal presented a difficulty.
- All the concerns raised with the previous application had been resolved. The dormers are now more modest in size and there was now more floorspace available. The refuse and recycling concerns had been resolved and this has been moved from the alleyway to the front of the property and the capacity has been worked out with the waste disposal services at Portsmouth City Council.
- In terms of room sizes, the policy does not anticipate beyond 6 or more people sharing so this may need to be addressed. Officers were happy that what is provided in terms of living space is reasonable accommodation.

Condition 6 states that the property shall not be permitted by more than 13 persons.

- Concerns over the sewer system being overloaded were outside of the planning process.
- There is no spare capacity for off street parking.
- The layout of and use of rooms seen on the plans is covered by condition 2.

Members' Comments

Members' raised concern over the impact on the sewer system with the additional showers and baths in this property. Members were concerned about there not being enough cycle storage for all occupants and officers advised it would be reasonable to ask the applicant to add some further cycle storage to the maximum number that the site could accommodate. Members requested that condition 5 be amended to read 'at least 10 cycle storage facilities shall be provided'. It was also requested that condition 6 have the following wording added 'having the benefit of three separate communal areas'

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 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.**
- (4) That the following amendments to the conditions be applied:**

condition 5 have the following wording included 'at least 10 cycle storage facilities shall be provided'

Condition 6 - to add the following wording 'having the benefit of three separate communal kitchens'

79. 22/00208/FUL - 172 Chichester Road, Portsmouth, PO2 0AH (AI 9)

The Interim Head of Development Management presented the report and drew members' attention to the information on the Supplementary Matters report.

Deputations

Carianne Wells, agent.

Members' Questions

There were no questions.

Members' Comments

There were no comments.

RESOLVED that conditional planning permission be granted.

80. 22/01735/HOU - 11 St Davids Road, Southsea, PO5 1QH (AI 10)

The Interim Head of Development presented the report.

Deputations

Mr Amir Hussain, Applicant.

Members' Questions

In response to members' questions, officers clarified that a condition regarding the capping detail was already included as part of condition 3.

Members' Comments

Members felt it was important that a permeable material be used for the parking area and wished to add this as a condition.

RESOLVED that conditional planning permission be granted with an additional condition that a permeable material be used for the parking area.

81. 23/00110/FUL - 68 Bedhampton Road, Portsmouth, PO2 7JY (AI 11)

The Interim Head of Development Management presented the report and drew members' attention to the information on the Supplementary Matters report.

Deputations

Carianne Wells, Agent.

Members' Questions

In response to members' questions, officers clarified that the hallway was 3.6m long and 0.95m wide which was common and a bicycle could fit up and down it. In two recent inspector decisions where this issue arose, the inspector noted that people moving through the hallway with bicycles is a momentary activity.

Members' Comments

It was felt it was important that the window in the utility room was able to open to provide ventilation and prevent damp.

RESOLVED to grant conditional planning permission with an additional condition stating that the maximum occupancy of the property is 6 people.

The meeting concluded at 2.06 pm.

Signed by the Chair of the meeting
Councillor Chris Attwell

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Agenda Item 4

21/01357/FUL

WARD: NELSON

TIPNER EAST LAND OFF TWYFORD AVENUE AND TIPNER LANE PORTSMOUTH

CONSTRUCTION OF 221 DWELLINGS, NEW ACCESSES ONTO TIPNER LANE AND TWYFORD AVENUE, INTERNAL ACCESS ROADS & CYCLEWAYS, OPEN SPACE, PARKING AND ASSOCIATED INFRASTRUCTURE, INCLUDING POTENTIAL LINKAGES TO THE PROPOSED RESIDENTIAL DEVELOPMENT TO THE NORTH, EXISTING RESIDENTIAL DEVELOPMENT TO THE SOUTH AND TO THE EXISTING AND PROPOSED ENHANCED PARK & RIDE FACILITIES TO THE WEST. THE PROPOSAL CONSTITUTES EIA DEVELOPMENT. (REVISED SCHEME).

WEBLINK: THE PLANS AND DOCUMENTS ASSOCIATED WITH THE APPLICATION CAN BE VIEWED [HERE](#).

Application Submitted By:

Savills
FAO Mr Cliff Lane

On behalf of:

Bellway Homes Ltd (Wessex) And Homes England

RDD: 13th September 2021

LDD: 4th January 2022

Following discussion of the application at the Planning Committee Meeting held on 31 May 2023, the Planning Committee RESOLVED that the application be deferred to the meeting on 12 July with the additional information requested by members.

Members felt that they could not determine this application without the following information:

- **The flood risk mitigation particularly if the sea wall is not built.**
- **Predicted traffic volumes.**
- **Clearer, colour maps showing the locations of high buildings, two-bedroom properties, flats, green areas and hard landscapes.**
- **An option clarifying the developer's original proposals regarding traffic.**

This update report provides the necessary information, set out below:

Flood risk

The applicant's flood risk advisers have provided a 'Note on Flood Risk'. The note is available on the council's website via the link above.

As set out in the FRA submitted with the application the site, in its current condition, is predominantly within Flood Zone 1 - Low Probability¹ with a small area being within Flood Zone 2 - Medium Probability². None of the site lies within Flood Zone 3 - High Probability / Functional Floodplain.

¹ Zone 1 Low Probability Land having a less than 0.1% annual probability of river or sea flooding. (Shown as 'clear' on the Flood Map for Planning – all land outside Zones 2, 3a and 3b)

² Zone 2 Medium Probability Land having between a 1% and 0.1% annual probability of river flooding; or land having between a 0.5% and 0.1% annual probability of sea flooding. (Land shown in light blue on the Flood Map)

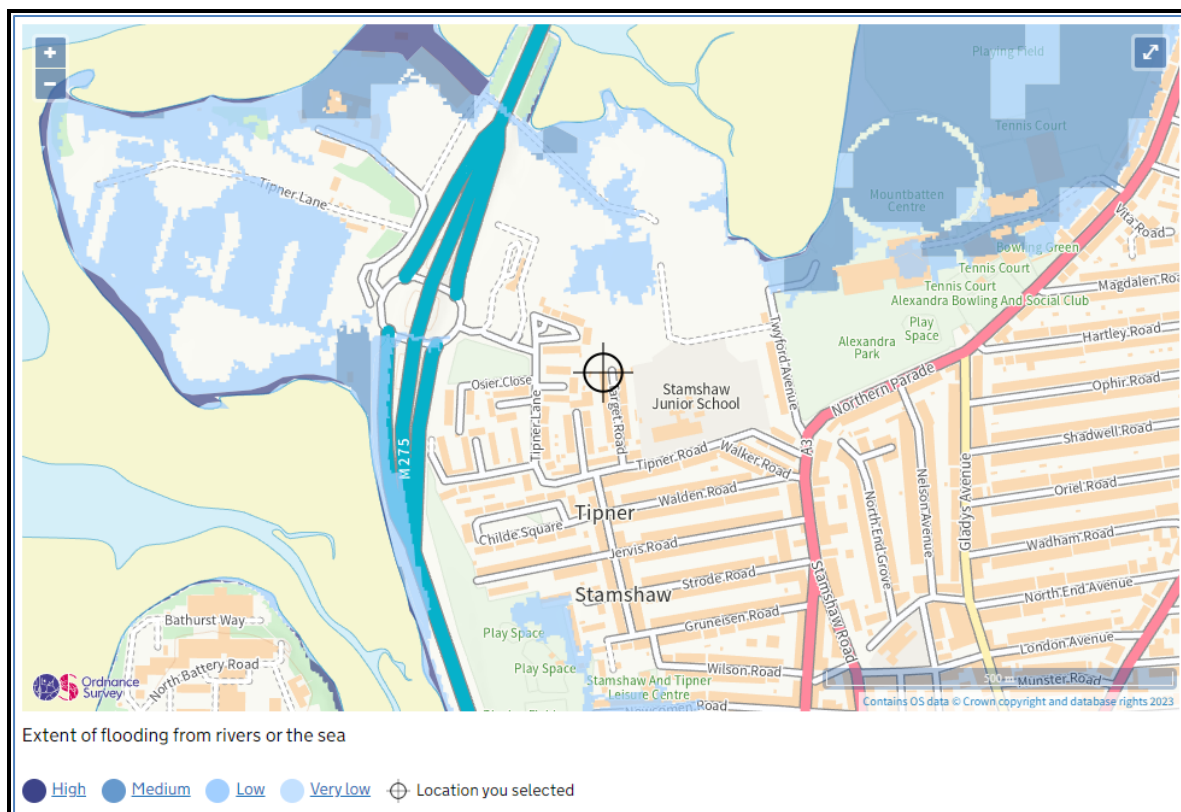


Figure 1 - Extent of Flooding

In order to assess the flood risk in more detail the applicant obtained predicted future sea level data from the PCC website for 2025 and for 2115, in summary the maximum predicted 1 in 200 year tidal level predicted forward to 2115 is 4.3m AOD, this includes an allowance for sea level rise as a potential result of climate change.

The applicant is therefore proposing that the proposed development should be protected against this tidal flood level by setting finished floor levels no lower than 4.6 mAOD, i.e 30 cm (c. 12 inches) above the predicted flood level of 4.3 mAOD. Officers are advised that the 4.6 mAOD will also provide protection against the 1 in 1000 year (extreme) tidal flood event projected to 2115.

During the planning consultation period the Environment Agency were re-consulted on five occasions and at no time raised any objections. The latest consultation response, received on 4 May 2023 reiterated their recommended planning condition that the development is carried out in accordance with FRA, and specifically that no Finished Floor Levels (FFL's) are set lower than 4.6 mAOD.

It should be noted that, by virtue of raising finished floor levels the external areas, i.e. roads and footpaths, will also be elevated above the peak flood levels therefore negating any flood hazard associated with the site and the requirement for additional coastal flood defences.

It should also be noted that as the scheme is not immediately adjacent to Tipner Lake, there would not be a risk of any flooding due to wave over topping of sea defences; flood protection of this scheme is not reliant on the proposed new development immediately to north (which also has FFL's no lower than 4.6m AOD), the development will be protected in its own right by virtue of raised ground levels and FFL's and will not be reliant on any additional sea defences that may, or may not be delivered by other schemes.

Highways

At the 31 May Committee Meeting, officers sought to explain that movement through the site from Tipner Lane to Twyford Avenue 'rat running' would not be intended, due to a current legal restriction that prevents that from happening. Officers noted however that there were no physical restraints to that movement.

In response to this Bellway's Transport Consultants, Paul Basham Associates have prepared a note, the 'Tipner Lane Access Transport Note', which along with the 'Flood Note' above is available on the public access website. This discusses the use of Tipner Lane as an access option in relation to application 21/01357/FUL and provides data on traffic volumes.

The note confirms that connectivity between Tipner Lane and Twyford Avenue is prohibited due to a legal restriction. Whilst that restriction remains it is proposed that temporary planters or bollards be used to enforce it. A plan, Appendix A to the 'Tipner Lane Access Transport Note' on file shows the location of the proposed bollards.

As a result of this restriction, the site is split into east and west segments, with each part having to be serviced separately by emergency and service (refuse collection) vehicles. A 'swept path analysis' (Appendix B), shows that these vehicles can use the roads either side of the restriction.

As a result of the partition, on site parking would be split with 46 spaces located west of the bollards and 241 spaces east of the bollards. The spaces to the west of the bollards would be forced to use Tipner Lane. Based on trip data within the Addendum Transport Assessment, this could result in 191 trips in a 12-hour period, or approximately 16 trips per hour.

Whilst it is acknowledged that opening up the restriction would make it feasible for all units to access the site via Tipner Lane, both the applicant's consultants and the Council's Highways team think that this would be unlikely due to the more convoluted route to the primary network (the A3), whereas there would be a more direct route using Twyford Avenue. It is for this reason that the council's highway engineers have recommended that if permission is granted, improvements to the network are secured by condition, as set out in Paragraph 8.1 below.

The report as presented to Planning Committee on 31 May is set out below:

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is being presented to Planning Committee as it is Major development involving the development of ten or more dwellings.

1.2 The main considerations are:

- whether the proposals comprising the construction of new housing on this site would contribute to the achievement of sustainable development in accordance with national and local planning policy
- the acceptability of the design (layout, scale and access);
- traffic/transportation implications;
- ecology
- loss of trees;
- flood risk/drainage;
- sustainable design and construction;
- site contamination; and
- residential amenities

2.0 SITE DESCRIPTION

2.1 The application site comprises an irregularly shaped parcel of land approximately 3.17 Ha (7.83 acres) in size, and includes previously developed, recently raised and part-remediated land. The site was previously developed and now consists of a few small buildings, hardstanding, a demolished greyhound track, scrubby grassland and some smaller trees.



Figure 2- Site Location Plan



Figure 3 - Site Layout in colour

2.2 The application site, shown in Figure 1 above, is within the Tipner policy area of Portsmouth, approximately 3km to the north of Portsmouth City Centre and around 1.8km north of HM Naval Base Portsmouth. The Tipner policy area is split in two, Tipner East and West, with the M275 dividing the two areas. The Site is located within the southern parcel of Tipner East. It is close to several strategic highways including the M275 approximately 130m west of the site, 1.6km south of the M27 and 130m north-west of the A3.

2.3 The site extends from Twyford Avenue to the east, and Tipner Lane to the west, and is directly accessible from an existing access off Twyford Avenue. Twyford Avenue, connects to the A3 to the south and would serve as the primary vehicular access to the Site. Tipner Lane to the west, would provide pedestrian and cycle access, as well as providing the eastern part of the Site with vehicular access for 41 units.

2.4 The Pilgrims Trail (a long-distance footpath) is a Public Right of Way (PRoW) which runs east to west across the south of the site (linking Twyford Avenue to the east with Target Road to the south west of the Site. Pedestrian and cycle connectivity will remain from the site to Target Road, but no vehicular access is proposed in this location. National Cycle Network 22 (NCN22) also runs through the site to Target Road.

3.0 PLANNING CONSTRAINTS

3.1 The site is subject to the following constraints:

- Contaminated land
- Flood Zone 2/3 (part of the site only)
- Adjacent to Portsmouth Harbour RAMSAR, Portsmouth Harbour SSSI and Portsmouth Harbour SPA

4.0 POLICY CONTEXT

4.1 The planning policy framework for Portsmouth is currently provided by The Portsmouth Plan (The Portsmouth Core Strategy) adopted in January 2012 and two Area Action Plans for Somerstown and North Southsea (2012) and Southsea Town Centre (2007).

4.2 This framework is supplemented by a number of saved policies from the Portsmouth City Local Plan (2006).

4.3 Having regard to the location of this site within the Tipner area of the city, the relevant policies within the Portsmouth Plan are:

PCS1 - Tipner
PCS10 - Housing Delivery
PCS12 - Flood Risk
PCS13 - A Greener Portsmouth
PCS14 - A Healthy City
PCS15 - Sustainable Design and Construction
PCS16 - Infrastructure and Community Benefit
PCS17 - Transport
PCS19 - Housing Mix, Size and the Provision of Affordable Homes
PCS21 - Housing Density
PCS23 - Design and Conservation

4.4 This framework is supplemented the following saved policy from the Portsmouth City Local Plan (2006).

Policy DC21 - Contaminated Land

4.5 Regard should also be had, albeit affording it very limited weight at this time, to the Draft Portsmouth Local Plan (September 2021).

4.6 Regard also has to be had to the following SPDs:

- Air quality and pollution
- Developing Contaminated Land
- Housing Standards
- Nitrate mitigation strategy
- Planning Obligations
- Parking Standards and Transport Assessments
- Reducing Crime Through Design
- Solent Special Protection Area
- Sustainable Design and Construction

5.0 STATUTORY DUTIES

5.1 The Local Planning Authority has statutory duties relating to the determination of the application which are set out in the following legislation:

- Section 70 of The Town and Country Planning Act 1990
- Section 38(6) of The Planning and Compulsory Purchase Act 2004
- The Equality Act 2010

6.0 RELEVANT PLANNING HISTORY

6.1 The complex planning history of this site is best illustrated on a site plan:

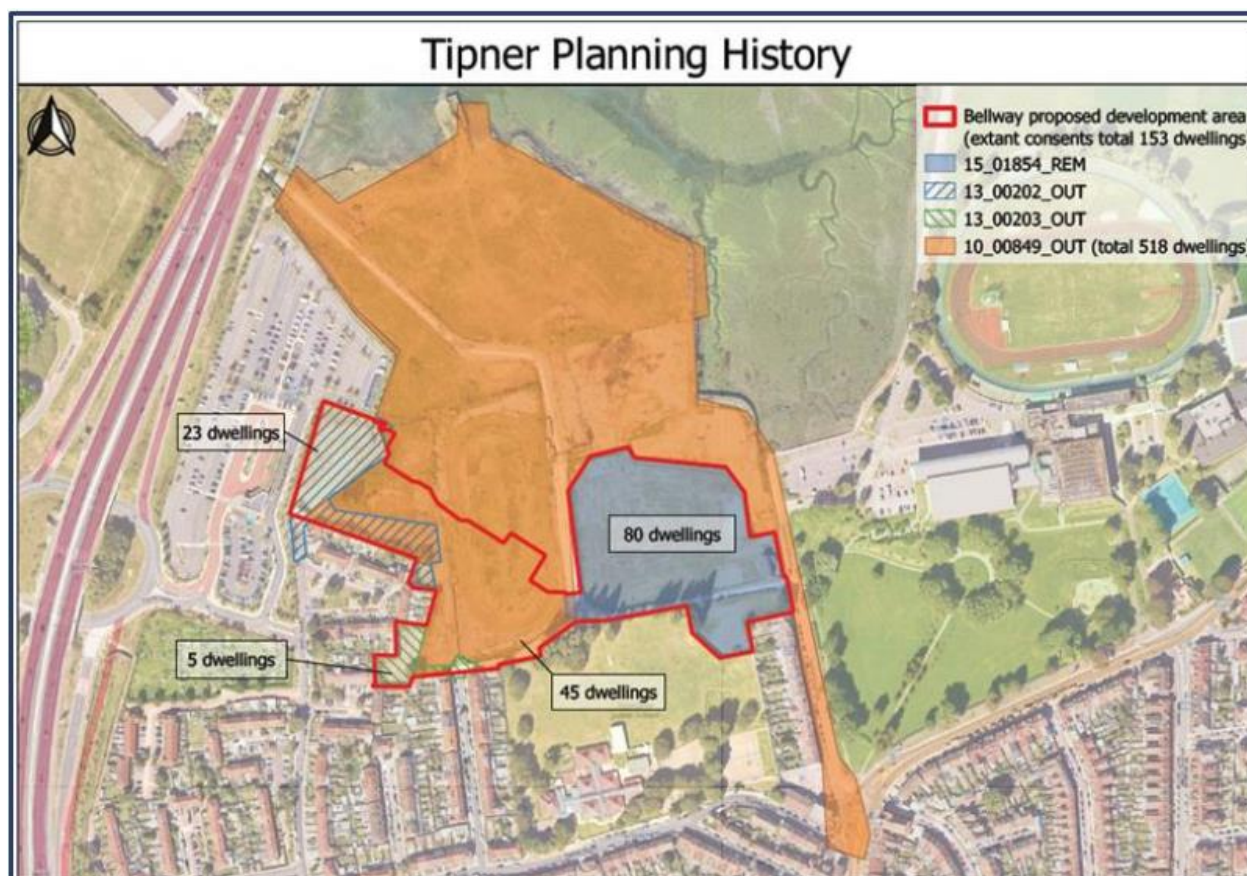


Figure 4 - Tipner Planning History - image © Savills

6.2 In detail:

- i. 10/00849/OUT - An application for outline planning permission which provided a detailed plan to remediate the land and sought permission for 518 dwellings, CHP plant, sea wall and coastal path. This was conditionally granted on the 30th March 2012.

- ii. 11/00362/OUT - An application for outline planning permission for up to 80 dwellings and up to 615 sqm (gross external) of commercial floor space for uses within classes A1/A2/A3/A5; construction of a new access from Twyford Avenue. A conditional outline approval was granted on the 30th March 2012.
- iii. 13/00202/OUT - An application for outline planning permission for 23 dwellings which also sought consideration of the access and layout. This was granted on the 29th March 2018.
- iv. 13/00203/OUT. An application for outline planning permission for 5 dwellings, conditionally granted on the 29th March 2018. It also considered the access and layout of the scheme.
- v. 15/01854/REM - A Reserved Matters application in respect of layout, scale, appearance and landscaping, for the construction of 80 dwellings and 235 sqm of commercial floor space for uses within classes A1/A2/A3/A5 pursuant to outline planning permission ref 11/00362/OUT. This was approved on the 9th February 2016

6.3 In addition, development proposals on the adjacent Park and Ride (P&R) site and the ex TRC land to the north of the application site (now owned by VIVID Homes) are material to this application.

6.4 With regard to the P&R site, an outline planning application, with all matters reserved, for the construction of a multi-storey Transport Hub (up to 28.5m above existing ground level) incorporating a park and ride facility and ancillary uses (up to 840sqm), with access from Junction 1 on the M275 was granted on 6 July 2022 (Ref. 22/00024/OUT); the submission of reserved matters is awaited.

6.5 In respect of VIVID Homes, a planning application was submitted in September 2022 (Ref. 22/01292/FUL). This application was determined at Planning Committee meeting held on 1 March 2023 wherein it was resolved that:

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.

7.0 PROPOSAL

7.1 The planning applications that is now for determination has been through a number of revisions since it was originally submitted in September 2021 as set out below:

Date	Notes
Sept 2021	Original submission
June 2022	Revised drawings and additional information, when numbers increased 203 > 221
Sept 2022	Updated and supplementary information and drawings following consultation
Nov 2022	Further updated and supplementary information and drawings
April 2023	Latest updated drawings and supplementary information

7.2 The key changes have been:

- An increase in the number of units from 203 to 221
- A requirement to integrate the scheme with the VIVID proposals north of the site
- Providing family housing in line with Council policy
- Including pocket parks and LAPs
- Respecting local context and residential amenity for the adjacent establish community to the south of the site

- Providing a highway layout that could accommodate a bus route in the future and provide safe passage for cyclists and pedestrians as well as cars

7.3 As such the latest iteration of the scheme comprises:

- 221 dwellings (a 42% increase in dwellings since the preapplication process started in November 2018),
- Increased use of apartments and strategically located flats over garages to raise density,
- A greater proportion of 4 storey buildings and stronger building enclosure to the streets, routes and spaces,
- Reduced parking levels to a maximum of 1 space per apartment and less for smaller 1 bed units,
- Open space and green infrastructure provided in the form of; LAPs and street trees, innovative vertical green walling to the ends of 'public' roadside parking pergolas, private and communal gardens and pocket spaces, with juliette balconies to blocks with communal space at a premium, but large open spaces now deleted at the SEDRP / Council's request in favour of densification and mitigated by contributions towards off-site provision,
- Amendments to the NE corner / northern edge apartments to a flat roof design echoing the likely 'language' of the Vivid proposals,
- An east-west spine to the fore with street trees and cycle ways within it linking new and existing facilities including a potential pedestrian / cycle link to the proposed park and ride facility and the Alexandra Park / Mountbatten Centre,
- A contemporary design language with 70% of the dwellings within bespoke designed buildings,
- Aspirations to embed public art in key locations across the wider Tipner West regeneration area to reinforce local distinctiveness and culture (two southern 'gateway' locations proposed for the Bellway/HE land and 3 no. strategic (eastern gateway, central space and waterfront) locations for the Vivid/TRC land.
- A contemporary design language that will stand the test of time and link both new and existing communities with a materials palette and colour scheme suited to a marine environment, and
- A commitment to meeting the interim 2023 Future Homes standard in advance of it becoming a formal national requirement (fabric first, efficient water use and services, MVHR, air source heat pumps and solar pv used to secure measurable carbon reduction) plus exploration of innovation in construction for Bellway through the experimental use of SIPPs construction.

7.4 The proposed development would comprise 221 new homes comprising a mix of apartments and family homes, 30% of which would be affordable.

7.5 Access to the site would be via Twyford Avenue. Tipner Lane may become available subject to future enhanced bus route provision. Pedestrian and cycle access would use the same access points including Tipner Lane and Target Road

7.6 It is anticipated that the development would be constructed in one continuous phase lasting approximately 3 years.

8.0 CONSULTATIONS

8.1 Responses were received from the following consultees:

Consultee	Response
Archaeology Advisor	No objection
Coastal And Drainage	The overall principle of surface water run-off for the development site (discharge to Tipner Lake) is sound and acceptable to LLFA, however this is assuming Southern Water permissions are attained

	in writing and submitted to LPA. Without this information the LLFA is unable to approve the Drainage Strategy at this time
Contaminated Land Team	No objection subject to conditions requiring: <ul style="list-style-type: none"> • Remediation method statement • Verification • Removal of PD rights
Crime Prevention Design Advisor (Hampshire Constabulary)	The proposed design and layout is considered to be conducive to crime and disorder for the reasons outlined in their response. In our opinion the design does not conform to the adopted Local Plan (Core Strategy), Policy PCS23; Hampshire Constabulary cannot support this application.
Ecology	Comments received on 19 January 2023: No objection, subject to a Reptile Mitigation Strategy being secured via a Planning Condition). Also recommend that the measures detailed within the ES Addendum Chapter A09 'Biodiversity' are secured via a Planning Condition. In addition, in order to address the impacts on loss of Priority Habitat on site, you may wish to request the creation of high distinctiveness habitats offsite, if the reduction of proposed residential units and onsite habitat creation is not possible. This will ensure compliance with the NPPF, The Environment Act 2021 (Commencement No. 5 and Transitional Provisions) Regulations 2022
Environment Agency	No objection, subject to conditions.
Environmental Health	No objection, subject to conditions requiring: <ol style="list-style-type: none"> 1. details of mitigation methods to lessen vibration activities shall be submitted for approval, prior to any works commencing, where pile driven activities are to be carried out within 20 meters of sensitive dwellings (existing or newly occupied). 2. Details of the glazing and ventilation specification shall be agreed with the Local Authority prior to installation.
Fareham Borough Council	No comments
Hampshire & Isle of Wight Fire & Rescue Service	No objection. The development will need to be constructed in accordance with Approved Document B5 of the Building Regulations, Section 12 of the Hampshire Act 1983 and the Fire and Rescue Services Act 2004.
Havant Borough Council	No comments
Health & Safety Executive	No objection, subject to a 'Grampian Condition' requiring the Hazardous Substances site licence that affects the land being revoked prior to first occupation of the development: <i>'No residential units shall be occupied within the inner and middle zones until the hazardous substances consent for Hattons Gas (H1777) has been revoked in its entirety under the provisions of the Planning (Hazardous Substances) Act 1990, and written confirmation of the necessary revocation has been issued by the Hazardous Substances Authority'.</i>
Highways Engineer	No objection subject to conditions and a S106 agreement to secure the following: <ul style="list-style-type: none"> • Full details of the means of access to Twyford Avenue to be submitted to and agreed by the LPA/LHA prior to commencement of development with the access to be provided as agreed via a S278 agreement prior to first occupation of the development.

	<ul style="list-style-type: none"> • NCN route to be retained at the existing width, with details of layout, surfacing, waymarking etc to be submitted to and agreed by the LPA/LHA and subsequently provided prior to first occupation of the development. • A s106 contribution (value to be agreed) toward the implementation of active travel improvements at the A3 Northern Parade and LCWIP route 307 section C is to be paid prior to the first occupation of the development • Mitigation works at Twyford Avenue/Walker Road junction (as identified in the Transport Assessment) to be implemented prior to occupation of the development • Details of parking provision (including total spaces, size and layout, and EV provision) to be submitted to and agreed by the LPA/LHA prior to commencement of development and parking spaces provided as agreed prior to occupation of the development and thereafter retained for use by residents/visitors of the development • Travel Plan to be submitted to and agreed by the LPA/LHA prior to first occupation of the development to cover a period of 5years • A travel plan audit fee of £5500 is to be paid prior to first occupation of the development • A Construction Traffic Management Plan is to be submitted to and agreed by the LPA/LHA prior to commencement of development. These conditions are required to ensure the safety of all highway users and for the promotion of sustainable travel in support of NPPF paras 112 & 113; and Portsmouth Plan policy PCS17.
Housing Enabling Officer	The new development scheme will provide desperately needed new affordable housing for the city as well as new private housing and is fully supported by Housing
Landscape Group	<p>We have reviewed the submitted information and have the following comments regarding the landscaping:</p> <ul style="list-style-type: none"> • Comments submitted in November 2021 specifically regarding tree size and species mix of the mixed perimeter hedge still apply, as well as comments regarding the dominance of cars. • Fencing - LAP area 1 shows a rectangular fenced area set within a wider area of wildflower. It would be preferable to extend the railings around the whole area to avoid creating a little 'holding pen' and make the entire area more useable. • There appears to be a very small strip of planting between property 171 and the back garden of property 172 which is shown as a planted area surrounded by a 1.8m brick wall and 1.8m close board fence, this should be reviewed. At the moment it looks like this space might become a problem as it appears to be just a leftover bit of land with no apparent use. Narrow strips surrounded by high fences/walls with no apparent use filled with planting should be avoided in general. • Hard surfacing - a sample of the coloured tarmac, as well as blocks and slabs proposed, should be submitted for approval prior to installation.
National Highways	<p>No objection, subject to the following condition:</p> <p>1. No development shall take place until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority (in consultation with Highways England). It should include but not be limited to construction traffic routes, parking and turning provision to be made on site, measures to prevent mud from being deposited on the highway and a</p>

	<p>programme for construction. Agreed details should be fully implemented prior to start of construction works.</p> <p>Reason: To mitigate any adverse impact from the development on the M27 Motorway and to ensure that the M27 continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety.</p>
Natural England	No Objection – Subject to Appropriate Mitigation being secured.
Portsmouth Cycle Forum	<p>Object.</p> <p>Portsmouth Cycle Forum recognise improvements have been made we are still in objection to the proposed provision for cycling at this site. The three main reasons for this are:</p> <ol style="list-style-type: none"> 1. The proposed segregated cycle route on Twyford Avenue is not LTN1/20 compliant. 2. The north south crossing of the new site access road is not on the 'desire line' 3. The internal shared use path on the north side of the access road is proposed at 2.5m wide with car parking on one side, and house frontages on the other, reducing its effective width to 1.5m. This is clearly in contravention with LTN1/20 and would be awful to cycle on with or without pedestrians being present
Portsmouth Water	No objection, subject to consideration being given to higher standards of water efficiency in new developments.
RSPB	Concerns raised regarding the adequacy of assessment under the habitats regulations
Scottish & Southern Electric	No objection provided the existing underground cables are not interfered with.
Southern Gas Network	No objection
Southern Water	<p>No objection subject to:</p> <ol style="list-style-type: none"> 1. the applicant making formal application to connect to the public sewer network 2. the applicant applying to adopt the on-site SuDS
SUSTRANS	No objection, subject to the developer providing an LTN1/20 compliant cycle track.
Tree Officer	<p>No objection subject to the following conditions:</p> <p>Landscaping</p> <p>Tree protection</p> <p>Pre-commencement meeting</p> <p>Arboricultural site supervision (pre-commencement and post completion)</p> <p>Tree planting</p> <p>Tree pruning</p> <p>Tree retention</p>
Waste Management Service	Expressed concerns regarding bin collection points, accessibility to bin stores by future residents, and the need for level access accessibility by RCVs and their crews.

9.0 REPRESENTATIONS

9.1 Following the re-consultation and re-notification exercise following receipt of amended plans in April 2023 a further 9 objections have been received. These raise the following issues:

- Increased traffic on Tipner Lane
- Parking
- Local infrastructure - schools, GP surgeries

- Noise disturbance during construction
- Access should only be via Twyford Avenue
- Reduction in air quality

9.2 Prior to this, a total of 45 representations had been received from 29 addresses, including 4 deputation requests and a petition of 378 signatures, raising the following issues:

- Access to my garage at 35 Target Road
- Access via Tipner Lane
- Blocks of flats out of keeping with the area
- Congestion
- Contaminated Land
- Energy efficiency measures within the development
- Flats out of keeping with the character of the area
- Highway safety
- Impact on ecology
- Impact on local, infrastructure (schools, GP surgeries etc)
- Inadequate car parking
- Inadequate environmental mitigation
- Inadequate parking
- Increase in traffic
- Increase in traffic on Tipner Lane
- Loss of day / sun light
- Loss of privacy due to overlooking
- Loss of trees
- Noise and disturbance
- Object to vehicle access off Tipner Lane due to impact on amenity of residents and air pollution etc.
- Opening up of Tipner Lane to traffic and amenity issues
- Overdevelopment of the site
- Overlooking and loss of privacy
- Proximity of proposed flats to rear of property (Range Green)
- Risk of contamination
- Specific objections to Plots 85 and 86 - overlooking & loss of privacy
- Traffic congestion
- Unsuitability of Tipner Lane / Twyford Avenue

10.0 POSITIVE AND PROACTIVE ENGAGEMENT

10.1 The National Planning Policy Framework requires local planning authorities to work with the applicant in a positive and proactive manner to resolve problems before the application is submitted and to foster the delivery of sustainable development. This requirement is met in Portsmouth through the availability of pre-application advice.

10.2 As set out in the Statement of Community Involvement submitted with the application, the applicant carried out extensive pre-application consultation and engagement both with the council and with local residents and businesses. In addition, the scheme was reviewed by a Design Review Panel set up by Design South East. The application is also subject to a Planning Performance Agreement.

10.3 The Design Panel Report has been submitted with the application. The key recommendations were as follows:

- 'Provide a composite plan that shows all three development sites (Bellway, Vivid and Tipner West sites) in their broader context in order to understand how they will come together to form a new neighbourhood adjoining the existing suburban neighbourhood of Tipner.

- Clarify the 'vision' for this new neighbourhood, moving beyond consideration of planning constraints to envision who will live here, how they will live and what kind of place this will be, taking a place making- or landscape-led approach to the masterplan, rather than a capacity-led approach.
- Introduce a range of alternative housing typologies to increase densities across the site, which will also be achieved through additional height, less slack space between buildings and addressing different edge conditions to inform the location of higher density in the masterplan
- Foreground the east-west spine that unites the scheme and connects this development with the surrounding amenities, to create a high quality, green pedestrian and cycle route that links with wider networks.
- Reduce the parking ratios to take up less space, support car-free living and active travel and allow for increased building footprint, given the proximity of the adjacent Park and Ride site.
- Consider the introduction of some additional uses to support the new community and address future ways of living.
- Rethink the location and function of the green open spaces within the masterplan to ensure their use and value to the community.
- Enhance the sustainability credentials of the scheme, given Homes England's commitment to biodiversity net gain and Portsmouth City Council's sustainability aspirations.'

11.0 PLANNING CONSIDERATIONS / COMMENT

Principle of the development

11.1 As set out in the NPPF (paragraph 2), 'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

11.2 Decisions must be taken in accordance with section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004. Section 70(2) of the Town and Country Planning Act 1990 requires the Committee to have regard to the provisions of the Development Plan, so far as material to the application; any local finance considerations, so far as material to the application; and any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the Committee to make its determination in accordance with the Development Plan unless material planning considerations support a different decision being taken. Whilst third party representations are regarded as material planning considerations (assuming that they raise town planning matters) the primary consideration, irrespective of the number of third-party representations received, remains the extent to which planning proposals comply with the Development Plan.

11.3 The key issue in the determination of this application is whether this proposal would contribute to the achievement of sustainable development, in accordance with national and local planning policy.

11.4 As such the main planning considerations are:

- The principle of the development
- Design considerations;
- Impact on adjacent residential amenities
- Traffic/transportation implications;
- Ecology
- Flood risk/drainage;
- Sustainable design and construction;

- Site contamination;

Principle of the development

11.5 With regard to the principle of this development, the National Planning Policy Framework makes it clear that in order to support the Government's objective of significantly boosting the supply of homes, a sufficient amount and variety of land can come forward where needed (NPPF July 2021, paragraph 60).

11.6 Objective 5 and Policy PCS1 of the Portsmouth Plan seeks to tackle the issue of accommodating development and housing mix and to revitalise the Tipner area transforming it from a underused derelict site to a thriving community creating a new gateway for the city.

11.7 The policy states that any development at Tipner would need to:

- Include measures to avoid and mitigate any adverse effect on the integrity of European sites, in particular the Brent goose feeding sites at Tipner Range and Alexandra Park;
- Include measures to avoid and mitigate the impact on the Portsmouth Harbour SSSI;
- Have appropriate separation of foul and surface water;
- Contribute towards increasing the capacity of nearby schools as necessary;
- Mitigate noise from the motorway through the location / height of buildings;
- Be designed to take advantage of waterside location and this key gateway to the city;
- Take into account, and where appropriate protect, view points and the wider visual impact across Portsmouth Harbour;
- Create attractive and safe streets and spaces avoiding featureless and monotonous elevations;
- Retain, repair and find suitable new uses for the listed buildings at Tipner Point;
- Enhance the settings of the listed buildings; and
- Provide public open space with access to the waterfront, if this can be achieved without an adverse effect on the ecological integrity of Portsmouth Harbour

11.8 Policy S2 in the emerging draft Local Plan sets out three options for Tipner East. All three options put forward in the draft plan state that the area could potentially accommodate up to 700 dwellings albeit subject to safe vehicular access and highways mitigation where necessary.

11.9 As can be seen from the planning history section there have been previous planning applications on the land within the Bellway / Homes England redline:

- 10/00849/OUT - Detailed application for land remediation and raising including thermal desorption. Outline application for up to 518 dwellings, CHP plant, sea wall, coastal path. Main access from Twyford Ave. (Access, layout & scale to be considered)
- 11/00362/OUT Outline application - upto 80 dwellings and upto 615sqm (gross external) of commercial floorspace for uses within classes A1/A2/A3/A5; construction of a new access from Twyford Avenue (only matter for approval)
- 13/00202/OUT - Outline application for 23 dwellings (access & layout to be considered)
- 13/00203/OUT - Outline application for 5 dwellings (access and layout to be considered)
- 15/01854/REM - Application for approval of reserved matters in respect of layout, scale, appearance and landscaping, for construction of 80 dwellings and 235sqm of commercial floorspace for uses within classes A1/A2/A3/A5 pursuant to outline permission ref 11/00362/OUT

11.10 On the basis that these were granted planning permission, albeit those permissions have now been allowed to lapse, this nevertheless demonstrates that acceptability of the site for redevelopment.

11.11 A further key consideration in favour of permitting this scheme is in terms of housing delivery. Based on figures in the recently published [Annual Monitoring Report](#) the council can only demonstrate 2.9 years supply (Table 4.5, page 28). Whilst the Government has announced plans to scrap the 5-year housing supply test that is only for councils with up to date plans. As

the development plan in Portsmouth is more than 5 years old, paragraph 74 of the National Planning Policy Framework (NPPF) states that housing delivery should be measured against local housing need as defined by the standard method set out in national planning guidance.

11.12 Consequently, there is a presumption in favour for the development of this site as long as the proposal does not have a significant effect on a habitat site (either alone or in combination with other projects), unless an appropriate assessment has concluded that the project will not adversely affect the integrity of that site (NPPF, paragraph 182).

Environmental Impact Assessment: Summary of Assessment Conclusions and Mitigation

11.13 The application is considered to be 'EIA Development' pursuant to Schedule 2 Part 10(b) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) and an Environmental Statement (ES) is accordingly submitted. A Scoping Opinion for the ES was sought by the applicants in January 2021 and issued in March 2021.

11.14 As required by the Regulations, a Non-Technical Summary of the EIA has also been submitted <https://publicaccess.portsmouth.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RHQS4RMOLV400>

11.15 The findings of the ES are briefly summarised here:

Topic	Identified Effects	Mitigation Measures	Residual Impacts
Transport, Access and Movement	Likely significant impact on Twyford Avenue Moderate impact at the junction of Walker Road and Twyford Avenue	Mitigation measures will be required by planning condition and through the S106 (discussed below)	No significant impacts
Air Quality	The impacts of emissions from two main sources associated with the Proposed Development have been assessed at nearby sensitive receptors. These are: • Emissions of dust and fine particles (PM10) from construction; and, • Traffic emissions from vehicles travelling to and from the Proposed Development during operation	Construction dust and pollution will be controlled through the CEMP Traffic emissions arising once the site is operating as a housing development will not be mitigated	
Noise & vibration	Noise impacts during site preparation and construction Impact of noise when site is in operation as a housing development has been assessed as Not Significant	To be mitigated through the imposition of planning conditions requiring a CEMP	

<p>Drainage and Flood Risk</p>	<p>There is limited existing drainage on the Site, therefore disposal of surface water runoff from the eastern part of the Proposed Development will be made either direct to Tipner Lake or to an existing public surface water sewer on Twyford Avenue that also drains into Tipner lake. Runoff from the western part of the development will be drained through the neighbouring Park and Ride site and discharged into an existing sewer in the north western corner of the Park and Ride, which also discharges into Tipner Lake.</p> <p>It has been established from previous studies that the Site could be at risk of future tidal flooding due to the existing levels, no other existing sources of flooding have been identified</p>	<p>To mitigate potential effects of future tidal flooding on the Site, floor levels will be raised above peak predicted sea levels, which will result in an insignificant flood risk and drainage effect.</p> <p>Potential effects of surface water runoff on Tipner Lake will be mitigated by measures detailed within the Drainage Strategy. These are to include permeable pavements and “downstream defender” devices for impermeable roads.</p> <p>Potential construction effects will be mitigated by strategies which are detailed in the CEMP which is submitted alongside this application.</p> <p>The assessment concludes that there will be no significant effects following the proposed mitigation strategies outlined in the chapter</p>	
<p>Biodiversity</p>	<p>Chapter 9 of the ES assessed the effects of the Proposed Development on biodiversity, including nearby European designated sites, Statutory and non-statutory sites and other habitats and species..</p>	<p>Measures will be required to mitigate the effects associated with construction on the nearby European Designated Sites, which will be secured by the CEMP. A Landscape and Ecological Management Plan (LEMP) will be required to mitigate habitat loss with Open Mosaic Habitat and bats. Reptiles must be translocated to an off-site receptor area to mitigate for the habitat loss caused by the Proposed Development.</p> <p>Mitigation for the loss of the SWBGS low use site P136 is to be in the form</p>	<p>some non-significant residual effects are predicted during construction for open mosaic habitat, reptiles and bats. The removal of open mosaic habitat is considered to be a moderate, permanent and irreversible impact due to only 7% of the area being mitigated for with habitat creation. Reptile translocation during construction is predicted to result in a negative minor impact due to it being unlikely that all animals will be caught or that all will survive at the receptor</p>

		<p>of enhancement works at the HIWWT Reserve at Southmoor, discussed below.</p> <p>Mitigation for the increased nitrogen load is to be via the implementation of land use changes at Knowle and the purchase of nitrogen credits from a suitable offsetting scheme such as Meon Springs or Warneford Park for the residual nutrient levels not covered by capacity at Knowle</p>	<p>site. There is predicted to be a negative negligible impact on bats due to a temporary loss of habitat until soft landscaping is installed</p>
Landscape & visual impact	Considering the site's current derelict condition a change in landscape condition is likely	Landscape strategy and mitigation planting to be secured by planning condition	
Ground Conditions	Historic ground contamination	<p>Mitigation will be necessary to ensure that piling works do not result in the contamination of the underlying aquifer. Measures must also be put in place to prevent the propagation of Japanese Knotweed. Once these mitigation measures have been put in place the potential significance of these effects are considered to be negligible.</p>	<p>Residual risks relate to the reuse of site won material and working beneath the capping layers, which can be managed through the provision of a CEMP and Materials Management Plan. In addition, vapour protection measures, will be required for new buildings within Parcel IV.</p>
Population and Economic effects	<p>Potential for residents to be affected by construction operations</p> <p>Increase in population as a result of the development could result in a significant effect on nearby schools due to lack of capacity to keep up with demand</p>	<p>The potential for residents to be adversely affected by construction operations would be controlled and managed through implementation of the CEMP. This will be secured by planning condition and agreed with PCC prior to commencement of works at the Site. This will result in a negligible residual effect which is not considered significant</p> <p>This effect would be mitigated by a developer contribution to cover an</p>	

	<p>Local healthcare appears to have capacity to accommodate the proposed development</p> <p>On site open space provision is less than that required by PCS13`</p>	<p>increase in capacity to the local schools that may be required to meet the additional demand for school places resulting from the development. The specific details will be agreed and secured via the Community Infrastructure Levy (CIL). The proposed mitigation results in a negligible residual effect which is not significant.</p> <p>However, should further analysis by the Portsmouth Clinical Commissioning Group identify a requirement to increase the consulting room capacity in the Primary Care Network, a developer contribution would be made and secured via section 106</p> <p>The open space needs of the new residents is considered to be met by existing local open space and play provision at Alexandra Park and Stamshaw Park, both located within 0.5 km of the Site</p>	
<p>Consideration of other potential receptors / impacts:</p> <ul style="list-style-type: none"> • Heritage; • Greenhouse Gases and Climate Change; • Waste and Materials; • Human Health; and, • Accidents and Disasters 	No significant effects	n/a	n/a
Cumulative effects	Whilst there may be some potential cumulative effects should construction take place at the same	Managed through the package of measures identified in the individual chapters including the provision of a CEMP	n/a

	time, the length of the construction period means that these are not significant.		
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Design Considerations

11.16 This application has been subject to a number of design and layout changes since originally submitted. These can be summarised as follows:

1. Iterative Design Changes - August 2021 – September 2022
 - a. Unit Numbers increased from 203 to 221 dwellings.
 - b. Noted as a 42% increase in dwellings since the preapplication process started in November 2018.
 - c. Density and number increase achieved by adding more flats over previous single flats over garages, adding linked flats over garages between terrace rows and swapping dwellings for flats at Flat Block J.
 - d. Amendments result in a greater proportion of 4 storey buildings and stronger building enclosure to the streets, routes and public realm.
 - e. Reduced parking levels to a maximum of 1 space per apartment and less for smaller 1 bed units.
 - f. Open space and green infrastructure provided in the form of; LAPs and street trees, innovative vertical green walling to the ends of 'public' roadside parking pergolas, private and communal gardens and pocket spaces.
 - g. Juliette balconies to blocks with communal space at a premium.
 - h. Noted that large open space deleted at the SEDRP / Council's request in favour of densification and mitigated by contributions towards on-site provision.
 - i. NE corner / northern edge apartment Blocks F G & H amended to a flat roof design to reflect the change in architectural language towards the Vivid proposals.
 - j. An east-west spine to the fore with street trees and cycle ways within it linking new and existing facilities including a potential pedestrian / cycle link to the proposed park and ride facility and the Alexandra Park / Mountbatten Centre.
 - k. A contemporary design language with 70% of the dwellings being bespoke design.
 - l. Proposals to embed public art in 2 key locations which will then act as a contemporary design language that will stand the test of time and link both new and existing communities with a materials palette and colour scheme suited to a marine environment.
 - m. A commitment to meeting the Future Homes standard in advance of it becoming a formal national requirement (fabric first, efficient water use and services, Mechanical Ventilation with Heat Recovery, air source heat pumps and solar pv used to secure measurable carbon reduction) plus exploration of innovation in construction for Bellway through the potential experimental use of SIPPs construction.
2. Further Design Changes - September 2022
 - a. The following further design refinements have been made to respond to consultee comments (notably housing, highways, ecology and designing out crime), to define complex ownership boundaries along its northern edges and to respond to submitted development proposals in Vivid's detailed planning application for 835 new homes 22/01292/FUL for validated 29th September 2022 on the land at Tipner East to the north of the HE / Bellway site:
 - b. Layout Revisions J-K Submitted September 2022:
 - c. Affordable Housing Balance: plots 5-8 changed to Affordable and Plots 82-83 changed to Private and wheelchair accessible parking spaces indicated.
 - d. Enlarged bin collection points.

- e. Flat Block J internal bin stores amended to decrease residents travel distances.
 - f. Fencing and / or gates added to provide security to meet crime prevention objectives.
 - g. Rear garden / 'garage' accesses provided for off-site dwellings at 30 and 35 Target Road.
 - h. Highway amendments opposite Plots 90-93 and Twyford Road junction to accommodate potential future bus route.
 - i. Flat Blocks A, B, E and F - Disabled Units added.
 - j. Flat block plan references updated.
 - k. House type swapped to FLE at Plots 4-8
 - l. Site Sections prepared to show relationships between existing residential and proposed VIVID proposals.
 - m. Additional information Submitted 28th September 2022: Ecology Technical Advice Note, Illustrative Materials and Identities Plan- 01 (ref. BELL180906 IP-01 REV P1) & Illustrative Identities Plan - CGI Views (ref. BELL180906 IP-02 Rev P1)
3. Further Design Changes - October – November 2022
- a. Further amended submissions made as follows:
 - b. Changes to road surfaces to indicate cycle and pedestrian priority (changes to continuous level tarmac cycleway) at crossings beside plots 8, 111 & 180.
 - c. Low retaining walls instead of graded banks on the northern edges around Flat Blocks F, G, H & J to align to the agreed boundary and allow the development to be independent from other potential / future planning approvals.
 - d. Potential Future Bus link connection into VIVID Site re-located to LAP Adjacent to plot 93.
 - e. Note LAP and junction re-configured to accommodate the potential link.
 - f. Affordable housing / private house locations amended in agreement with HEO requirements: Plots 20-21, 84-85 & 111-117 revert to Affordable Housing whilst Plots 5-8 & 9-14 revert to private.
 - g. Wheelchair accessible locations re-allocated and bespoke internal layouts as agreed directly with HEO & Occupational Therapists.
 - h. Wheelchair accessible units now located in flat Block B - 2 No x 1 Bed, Block E – 1 No x 1 Bed & Flat Block F – 1 No x 2 Bed.
 - i. External windows to Wheelchair units amended to omit cross bar at wheelchair eye level.
 - j. Flat Block H – Southern flat internal layout amended to respond to the submitted design of VIVIDs adjacent Flat Block: Lounge / Kitchen / Dining relocated to southern end of block with additional windows / bays added to the South & West aspects.

11.17 The resultant proposed layout is as shown below:



Figure 5 - Design Rationale

11.18 The overall effect of these changes is to create a new extended neighbourhood that is an evolution of the existing character to the south of the site and which provides a linkage to the VIVID site to the north. The proposed site is laid out to provide a strong continuous street frontage with minimal setbacks from the roads. Dwelling typologies to the main street frontages are predominantly long terrace rows often linking directly with flat blocks. Where the site meets Target Road the scale increases gradually from 2 storeys to 4 storeys within the street. Where the development meets the surrounding streets the roof forms are retained as traditional pitched roofs changing to flat roofed (flat blocks) where the proposals merge with VIVID site in the north-eastern area. To mirror the feel of the surrounding streets contemporary materials and design features such as bay projections are used to provide a vertical emphasis within the street. Overall, by matching the scale, dwelling typologies, creating a strong street frontage and reflecting the character of the surrounding context the new development will provide a contemporary extension to the existing neighbourhood.

11.19 Whilst Officers are satisfied that the amended scheme would result in an acceptable layout in design terms with no materially adverse impact on the residential amenities of the existing development to the south or for future occupiers of the proposed development, the Council's Designing Out Crime advisers (Hampshire Police) have concerns from a public safety and crime viewpoint. They consider that the proposed mitigation measures would not be effective. However, officers consider that the proposed layout does allow for reasonably effective surveillance of the car parking areas and results in a well-connected and logical layout.

Housing Provision

11.20 The proposed housing mix comprises a total of 221 units comprising 41, 1-bed units (21 market and 20 Affordable), 133, 2-bed units (94 market and 39 affordable) and 47, 3-bed units (39 market and 8 affordable). This mix is considered to meet local housing market needs and is acceptable.

11.21 The provision of 67 affordable units (30.3%) is policy compliant. In addition, following detailed discussion between the applicant and the council's housing enabling officer these units are to be provided in the following mix:

12 x 1-bed flats, 36 x 2-bed flats (in blocks B, E and F and including 4 disabled ground floor flats which have been specifically designed for PCC), 1 x 2-bed FOG, 2 x 2-bed FOGs, 4 x 2-bed houses, 4 x 3-bed 5 person houses and 4 x 3-bed 6 person houses. These all meet or exceed the minimum space standards as set out in the NDSS.

11.22 With regard to tenure type, the tenures will potentially be made up of a combination of Affordable rent (possibly Social Rent) and Low-Cost Home Ownership (LCHO - Shared Ownership). The tenure can be agreed later once there is a Registered Provider partner on board. All Affordable/Social rent units will be nominated to through the Portsmouth City Councils Housing Waiting Register and the LCHO through the 'Help to Buy - (South)' agent

11.23 As such the new development scheme will provide policy compliant affordable housing for the city as well as new private housing and is fully supported by Housing

11.24 As housing delivery within the city has fallen below 75% of the housing requirement over the previous three years the Council must apply the presumption in favour of sustainable development when making decisions on planning applications. This means that, in accordance with para. 11 d) of the NPPF, decisions on applications involving the provision of housing should be granted permission, unless NPPF protected areas or assets of particular importance provides a clear reason for refusing the development proposed, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF taken as a whole.

11.25 However, as Portsmouth has also been unable to demonstrate a five-year housing land supply in recent years, this presumption currently applies already.

11.26 The Government's Standard Method has identified a need for the city of 16,161 homes for the plan period to 2038. However, the assessed need for the draft Portsmouth Local Plan (PLP) going forward will need to take into account, amongst other factors, the actual deliverable level of housing in Portsmouth given the city's number of constraints, including the availability of land, impacts on the protected coastal habitat, local capacity of local infrastructure, and the financial deliverability of development. Nevertheless, the draft PLP has identified the necessity to have an uplift to housing delivery numbers compared to the adopted PP strategy, recognising the increased need for more housing in the city. The proposal is for 221 dwellings within a site area of approximately 3.2 ha (equivalent to 69 dph). As such whilst the proposal, on its own, falls short of the policy requirements under Portsmouth Plan Policy PCS21 for a minimum of 100 dph for Tipner as this application site is adjacent to and shares common infrastructure with the development approved on the adjacent site to be developed by VIVID homes which proposes 835 units on a site of approximately 5.95 ha this results in an density across the two sites of 130 dph. For information, the draft PLP stipulates that development at Tipner should be at least 120 dph.

11.27 With regard to mix, current Policy PCS19 requires that 'developments should achieve a target of 40% family housing where appropriate'. The proposed total number of 3-bed units (private and affordable flats and houses) account for 103 units (17.6%). This is below the aspiration of policy PCS19. Officers have consideration whether the applicant has done all that is possible to provide for family housing in line with the policy aspirations for the site given the known geographical constraints, and the need to balance overall supply of both market and affordable housing. It is considered that the failure to meet the aspiration of policy PCS19 in this case is a product of the applicant's intention, with the encouragement of Portsmouth City Council, to increase the density of development on the site and overall it is a reasonable response to the development constraints and opportunities of the site.

11.28 It is noted that the proposed affordable housing provision would meet the adopted policy requirement of 30%, which is supported.

Site Layout and Living conditions for Future Residents

11.29 The surrounding streets to the south of the application site are predominantly 2 – 2.5 storey dwellings grouped into terraced rows with occasional semi-detached dwellings. The dwellings have a minimal set back from the street thus providing a strong continuous street frontage. The dwellings are traditional in style with front to back pitched roofs. The application proposals seek to reflect the character of the surrounding context to the south and link into the emerging contemporary proposals to the north (VIVID Site).

11.30 In keeping with the surrounding context, the proposed site is laid out to provide a continuous street frontage with minimal setbacks from the roads. Dwelling typologies to the main street frontages are predominantly long terrace rows often linking directly with flat blocks. Where the site meets Target Road the scale increases gradually from 2 storeys to 4 storeys within the street. Where the development meets the surrounding streets the roof forms are retained as traditional pitched roofs changing to flat roofed (flat blocks) where the proposals merge with VIVID site in the north-eastern area. To mirror the feel of the surrounding streets contemporary materials and design features such as bay projections are used to provide a vertical emphasis within the street. Overall, by matching the scale, dwelling typologies, creating a strong street frontage and reflecting the character of the surrounding context the new development will provide a contemporary extension to the existing neighbourhood.

Impact on Amenities of Neighbouring Residents

11.31 With regard to the impact of the proposed development on the amenities of existing neighbouring residents living on Twyford Avenue, Target Road and Tipner lane, the site shares a 55 metre boundary with the curtilages of properties on Twyford Avenue and a 330 metre shared boundary with those on Target Road / Tipner Lane. The site has been designed so as to minimise adverse impacts on existing neighbours and is considered to represent a well-designed layout.

Highways and parking issues

11.32 The proposal is for the construction of 221 dwellings, new access onto Tipner Lane, internal access roads, open space, parking and associated infrastructure.

11.33 The proposed development occupies part of a site that was previously in receipt of an outline consent to construct up to 518 dwellings (10/00849/OUT). There are several other relatively recent consents relevant to this site or the wider Tipner East strategic allocation site. However, one of these consents has since expired and a further two are for much smaller developments (5 & 23 dwellings respectively) than proposed by the planning application.

11.34 The site proposes two accesses from the public highway, the main access is from Twyford Avenue, a 20 mph road that has housing and on street parking along its west side. The road is ultimately a "dead-end" however does also provide access for the Mountbatten Leisure Centre located east of the development site. This part of Twyford Avenue, from Tipner Lake to its junction with Northern Parade (A3) is not part of the classified road network.

11.35 The second access to the site is via Tipner Lane and will effectively extend the road northwards into the site. Tipner Lane is a 20mph road and is part of a predominantly residential area and is, like Twyford Avenue, ultimately a "dead-end". There is a link to M275 junction 1, though this is closed with bollards and is solely for use by active modes and emergency vehicles. There is not currently a route proposed through the site to join the two accesses, this is the result of an existing restriction placed upon one of the land parcels forming the wider site that prevents any access for vehicles or utilities to pass to the neighbouring land parcel. Therefore, only a small part of the development can be accessed via Tipner Lane (by vehicle) under the proposals.

The site also incorporates a part of the National Cycle Network (NCN) route 22 which passes through the site to the southern boundary and joins Target Road.

11.36 Extensive discussions that have taken place between the highway authority and the applicant's consultants during the life of this application.

11.37 Following the submission of a further technical note by the applicant's consultants and review by the Highway Authority, it would appear that the outstanding issues are now:

- Twyford Road access has been improved, though could still go further to place pedestrians/cyclists on the desire line. The final design (and subsequent delivery) of this could acceptably be secured by condition to be submitted to and agreed by the LHA prior to occupation as part of a package of s278 works.
- Future bus route through the site remains unresolved. The inclusion of turning space to the east of the site at Tipner Lane is welcomed and is reasonably the most that could be delivered within the existing proposed spine road alignment. However, a reciprocal allocation of a bus route through the neighbouring Vivid site will be required to ensure this is not redundant.
- Principle of securing a contribution towards active travel improvements at the A3 Northern Parade, particularly focused around the roundabout junction with Twyford Avenue is agreed, with the value/method of proportioning scale of contribution to be agreed.
- All internal side roads should be engineered in such a way to afford priority to pedestrians and cyclists (where appropriate) to reflect the updated road user hierarchy within the Highway Code 2022.
- It is recommended that permitted development rights are extinguished in relation to the conversion of front gardens to car storage for units where this may be feasible (i.e. forecourts are of a sufficient size to accommodate a vehicle).
- The LHA retains a desire to adopt the main spine road(s) of the development, this is currently precluded by the inclusion of allocated parking spaces along the spine road. These should be relocated so as to not preclude to possibility of the development roads being adopted in future.
- Off road NCN 22 section is re-provided to a lesser width than the existing facility. It is acknowledged that the new path will almost certainly be of a higher quality, with improved boundaries, increased natural surveillance, and a better surface. However, the route is to be provided at the absolute minimum prescribed within latest guidance (3.0m).

11.38 Notwithstanding these issues, the Highway Authority is of the view that the application can be recommended for approval subject to conditions and a S106 agreement to secure the following:

- Full details of the means of access to Twyford Avenue to be submitted to and agreed by the LPA/LHA prior to commencement of development with the access to be provided as agreed via s278 agreement prior to first occupation of the development.
- NCN route to be retained at the existing width, with details of layout, surfacing, waymarking etc to be submitted to and agreed by the LPA/LHA and subsequently provided prior to first occupation of the development.
- A S106 contribution (value to be agreed) toward the implementation of active travel improvements at the A3 Northern Parade and LCWIP route 307 section C is to be paid prior to the first occupation of the development.
- Mitigation works at Twyford Avenue/Walker Road junction (as identified in the Transport Assessment) to be implemented prior to occupation of the development.
- Details of parking provision (including total spaces, size and layout, and EV provision) to be submitted to and agreed by the LPA/LHA prior to commencement of development and parking spaces provided as agreed prior to occupation of the development and thereafter retained for use by residents/visitors of the development.
- Travel Plan to be submitted to and agreed by the LPA/LHA prior to first occupation of the development to cover a period of 5 years.
- A travel plan audit fee of £5500 is to be paid prior to first occupation of the development.
- A Construction Traffic Management Plan is to be submitted to and agreed by the LPA/LHA prior to commencement of development.

- These conditions are required to ensure the safety of all highway users and for the promotion of sustainable travel in support of NPPF paras 112 & 113; and Portsmouth Plan policy PCS17.

Impact on Biodiversity / Ecology

11.39 Protecting biodiversity and nature conservation areas is a key objective of the Portsmouth Plan and development at Tipner would be expected to deliver biodiversity enhancements. Policy PCS13, A Greener Portsmouth, seeks to ensure that development retains and protects the biodiversity value of the development site and produces a net gain wherever possible with any unavoidable negative impacts being appropriately mitigated.

11.40 In this case reptiles, bats and a priority habitat have been identified on the site along with the requirement to carry out a Habitat Regulations Assessment (HRA).

11.41 With regard to reptiles, it has been confirmed that a receptor site has been found, which is currently not suitable for reptiles as the majority of the site is managed as short grassland. Therefore, prior to commencement of the development, a Reptile Mitigation Strategy should be submitted to the LPA with the receptor made suitable prior to any translocation being carried out (to be secured via a Planning Condition).

11.42 With regard to bats, further updated bat surveys have been carried out. The survey results are similar to those previously recorded but it is noteworthy that barbastelle passes have been recorded on site. As the proposals will result in new lighting which is likely to deter these species from using the site, with no meaningful green buffers created along the boundaries, the proposals will result in a minor adverse impact on foraging/commuting bats.

11.43 With regard to the issue regarding the loss of an area of 'open mosaic priority habitat (OMH)', the proposed development will result in the loss of all areas and due to the nature of the scheme there is no possibility of providing meaningful and connective replacement habitats on the site. This has been acknowledged by the applicant's ecologist and is therefore a matter that has to be weighed up in the balance.

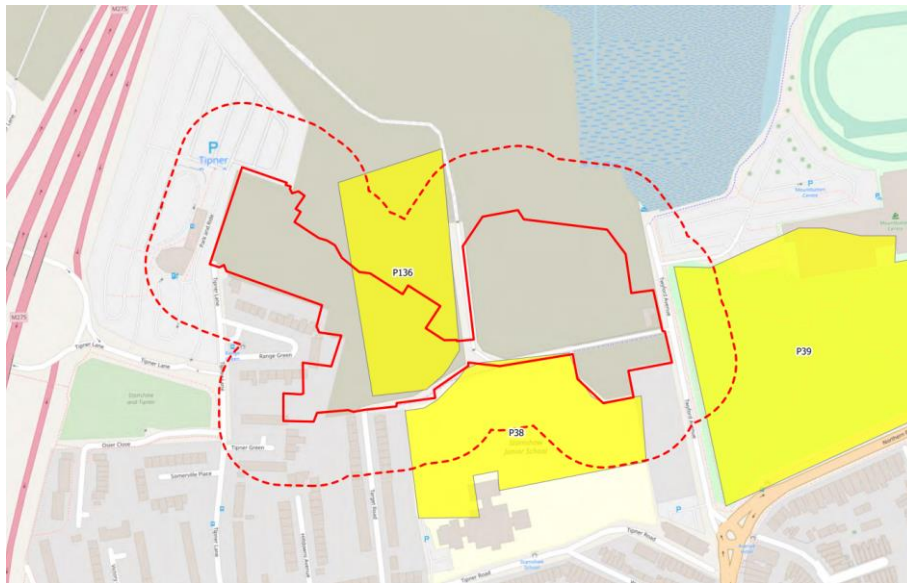
11.44 As such, whilst OMH is a priority habitat³ given that the proposal would deliver much needed housing on a brownfield site, regard has to be had to the NPPF which states that 'Local authorities should 'encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value'. There is no statutory definition of high environmental value. As such it has to be assessed in this case as to whether the OMH on this site is of sufficiently high value to warrant refusing the application on the basis of no suitable mitigation being proposed.

11.45 Officers consider that taking all matters into account that the need for housing delivery on this site including 30% affordable housing given the limited housing land supply available when assessed against the Government's 5-year standard are factors that weigh heavily in allowing this proposal.

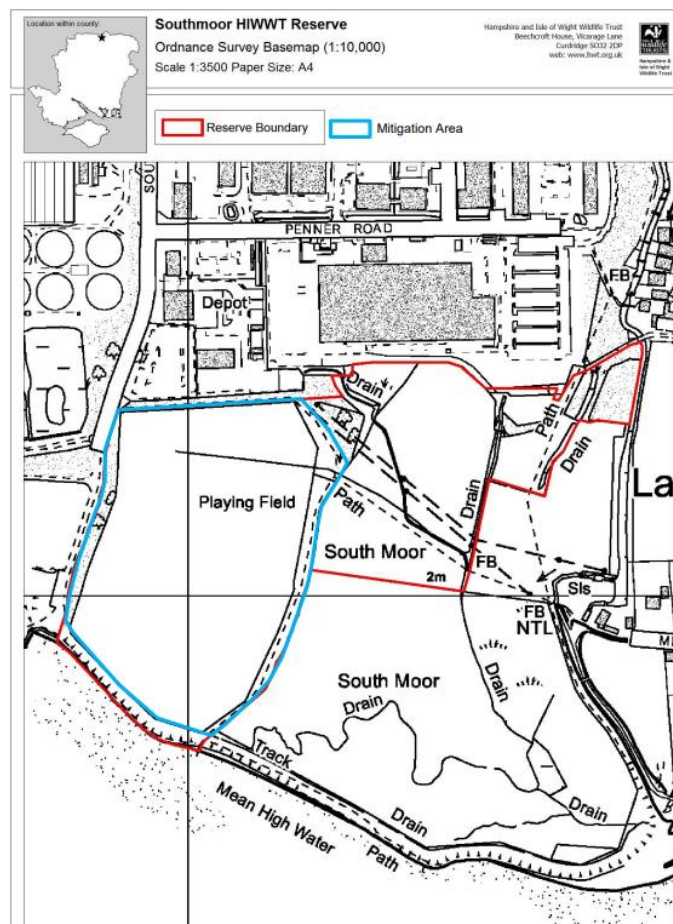
11.46 By way of partial mitigation for this loss, the applicant has submitted updated landscape plans which identify proposed locations within the site where habitat creation is proposed (using site won soils and seed where possible) in accordance with Chapter 9 (Ecology) of the Environmental Statement (ES). These plans are in broad accordance with Figure 9.11 of the ES and also accommodate a number of further amendments to the site layout. These do not result in any significant change to the impact assessment set out in Chapter 9, including the assessment of residual effects (which are significant adverse for OMH).

11.47 With regard to the loss of SPA supporting habitat for Solent Waders and Brent Geese, the proposed development results in the partial loss of a low use site (P136), as shown below:

³ [Open mosaic habitats on previously developed land \(UK BAP Priority Habitat description\) \(jncc.gov.uk\)](https://jncc.gov.uk/open-mosaic-habitats-on-previously-developed-land)



11.48 A reason as to why this application has taken so long to be presented to Planning Committee is due to the difficulties experienced by the applicant to find a suitable site to compensate for this loss. This has now been found in the form of land within the Hampshire and Isle of Wight Wildlife Trust's reserve off Southmoor Lane in Havant. Following consultation with Natural England, their opinion is that this mitigation appears ecologically robust and in line with the Solent Wader and Brent Goose Strategy Mitigation Guidance, and provided that this mitigation and management can be secured and provided for the lifetime of the development, Natural England can agree that there would be no adverse integrity on the Qualifying Features of the SPA.



11.49 A further issue that needs to be addressed is that of the impact of the development on nationally and internationally important wildlife sites in the Solent Catchment arising from

excessive nutrients from wastewater discharge. In this case the applicant has secured suitable mitigation as it proposes to utilise HCA land at Knowle in the borough of Winchester

Flood Risk and SUDS

11.50 Part of the site falls within Flood Zone 2 and 3 meaning that the site is at high risk of flooding. Based on the Flood Risk Assessment submitted with the application and following consultations with the Environment Agency and the City Council as Lead Local Flood Authority (LLFA), no objection is raised to the proposed development subject to conditions dealing with flood risk, previously unidentified contamination, SuDS infiltration of surface water, and Piling.

CIL and S106

11.51 Part 11 of the Planning Act 2008 provides for the introduction of the Community Infrastructure Levy (CIL). The detail of how CIL works is set out in the Community Infrastructure Regulations CIL is intended to be used for general infrastructure contributions whilst S106 obligations are for site specific mitigation. The regulations have three important repercussions for S106 obligations:

- Making the test for the use of S106 obligations statutory (S122)
- Ensuring that there is no overlap in the use of CIL and S106 (S123)
- Limiting the use of 'pooled' S106 obligations post April 2014 (S123)

11.52 Portsmouth City Council introduced its Community Infrastructure Levy (CIL) charging schedule in April 2012 with a basic CIL rate of £105/sqm. The CIL regulations require indexation to be applied to this rate annually using the RICS CIL Index and the 2023 basic rate is £167.15 / sqm. Most new development which creates over 99sqm of gross internal area or creates a new dwelling is potentially liable for the levy. However, exclusions, exemptions and reliefs from the levy may be available.

11.53 Based on figures provided by the applicant the gross CIL Liability for this site would be circa £2,819,523.

S106 - Heads of Terms

11.54 The applicant has indicated its willingness to enter into a legal agreement under S106. Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

11.55 These tests are set out as statutory tests in regulation 122 (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework. These tests apply whether or not there is a levy charging schedule for the area.

11.56 The Heads of Terms are to be agreed with the applicant but are likely to comprise, inter alia, the following:

1. ENVIRONMENTAL
 - 1.1. SANG/SAMM Solent Protection Area contribution (TBC)
 - 1.2. Ecological Management and Enhancement
 - 1.3. Open Space Management Plan
 - 1.4. Replacement Open Mosaic Habitat
 - 1.5. Bird Aware Financial Contribution
 - 1.6. Nutrient Mitigation Delivery

2. HIGHWAYS AND TRANSPORT
 - 2.1. Public Highway Works (Highway Improvements):
 - 2.2. Highways (junction improvement works - Twyford Avenue)
 - 2.3. Travel Plan Audit Fee
 - 2.4. Bus Routing
 - 2.5. Car Club
3. INFRASTRUCTURE
 - 3.1. Affordable housing
 - 3.2. Linkage to VIVID
 - 3.3. SUDS

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

11.57 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.

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

12.0 CONCLUSION AND PLANNING BALANCE

12.1 As set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004, the decision on a planning application should be made in accordance with the development plan unless material consideration(s) indicate otherwise. In considering Section 38(6) the proposal does not materially conflict with the development plan and the material considerations do not indicate otherwise.

12.2 This is a complex application that if implemented would take a significant period of time to complete. However, there are significant planning benefits in redeveloping this vacant site. These are:

- the delivery of much needed housing at a high density that makes efficient and effective use of land (a limited resource in Portsmouth) and at a time when PCC cannot deliver a five year land supply
- the provision of at least 30% affordable housing
- environmental improvements and enhancements compared with the existing site situation
- job creation

12.3 The officer recommendation is therefore to grant planning permission.

13.0 RECOMMENDATIONS

- 1. Grant planning permission subject to conditions and a S106 Agreement.**
- 2. Delegate authority to the Assistant Director for Planning and Economic Growth to finalise the wording of the Draft Conditions (based on the headings listed below) and finalise the S106 agreement in accordance with the draft Heads of Terms listed above.**
- 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 six months of the date of this resolution.**

Draft Conditions (Headings)

1. TIME LIMIT
2. APPROVED PLANS AND DOCUMENTS
3. MATERIALS
4. CONSTRUCTION ENVIRONMENT MANAGEMENT PLAN
5. CONSTRUCTION TRANSPORT MANAGEMENT PLAN
6. CONTAMINATED LAND - RISK MITIGATION
7. *CONTAMINATED LAND - VERIFICATION*
8. CONTAMINATED LAND - WATCHING BRIEF
9. PREVIOUSLY UNIDENTIFIED CONTAMINATION
10. FLOODING - IMPLEMENTATION OF FLOOD RISK ASSESSMENT
11. FLOODING - GROUND LEVELS
12. SURFACE WATER DRAINAGE SCHEME
13. PILING METHOD STATEMENT
14. LOCAL HIGHWAY IMPROVEMENTS
15. LANDSCAPING - DETAILS
16. LANDSCAPE IMPLEMENTATION
17. LIGHTING SCHEME
18. RETENTION OF GARAGES
19. PERMITTED DEVELOPMENT RIGHTS
20. COMMERCIAL UNITS
21. ECOLOGICAL MITIGATION
30. GLAZING - SOUNDPROOFING (M275 NOISE)
31. CAR PARKING
32. CYCLE PARKING
33. CAR PARKING ACCESS AND MANAGEMENT PLAN
34. PROVISION OF REFUSE AND RECYCLING FACILITIES

Agenda Item 5

19/00595/FUL

WARD:NELSON

137 LONDON ROAD HILSEA PORTSMOUTH PO2 9AA

CHANGE OF USE OF PART OF GROUND FLOOR AND UPPER FLOORS FROM A FIVE BEDROOM/FIVE PERSON HOUSE OF MULTIPLE OCCUPATION TO A FIVE BEDROOM/SEVEN PERSON HOUSE OF MULTIPLE OCCUPATION (SUI GENERIS); TO INCLUDE CONSTRUCTION OF PART SINGLE/PART TWO STOREY REAR/SIDE EXTENSION; DORMER TO REAR ROOFSLOPE AND ASSOCIATED CYCLE AND REFUSE STORES

(NOTE AMENDED DESCRIPTION)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=PPQIAIMOFMD00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=PPQIAIMOFMD00)

Application Submitted By:

Pro Pods
FAO Mr Daryn Brewer

On behalf of:

Mr Robert Johnson

RDD: 10th April 2019

LDD: 6th June 2019

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due at the request of Councillor Vernon-Jackson. While it is not reflected in the original description of development, based on planning history (see below 2017 permission), Licensing and Council Tax, it has been established that the current lawful use of the property in question is C4 HMO. Thus the change of use would be from C4 HMO to 7 Person HMO. The majority of the operational development stated in the description has been carried out in accordance with the previous permission.
- 1.2 The main issues for consideration in the determination of the application are as follows:
- Principle of Development including compliance with policy
 - Design and Impact of Operational Development
 - Impacts on Amenity including parking
 - Other material considerations
- 1.3 Site and surroundings
- 1.3 The application site is a two storey terraced building with a commercial unit at ground floor fronting London Road. The area can be described as at the edge of the Local Centre and as such is a mix of residential and commercial. The rear of the property has been extended with various levels of height, with ground and first floor rear extensions and a rear dormer.
- 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 use of 2 bedrooms for double occupancy with limited external alterations including the cladding of a side wall and the installation of a rooflight (under permitted development).

1.6 Planning History

17/01610/FUL - *Raise height of 2-storey rear projection; construction of part 2-storey/part single-storey rear/side extension, and dormer extension to rear roofslope; and use of part of ground floor and upper floors as a HMO within Class C4 with associated cycle and refuse storage.*

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 Updated Nutrient Neutral Mitigation Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 **CONSULTATIONS**

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

4.0 **REPRESENTATIONS**

- 4.1 No public comments 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.

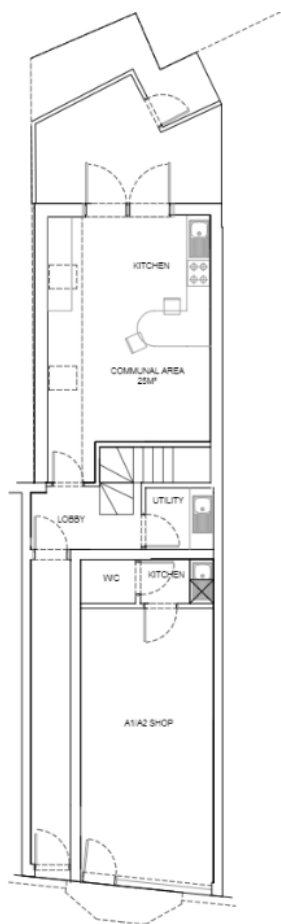
5.2 Principle

- 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 2 HMOs out of 83 properties, a percentage of 2.4%. 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 currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 5 occupants. This licence was granted on 24/9/19.
- 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:

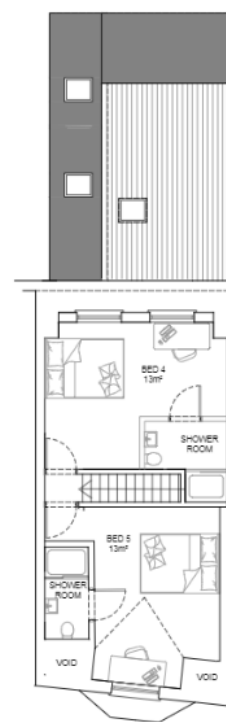
Room	Area Provided:	Required Standard:
Bedroom 1	12m ²	10m ²
Bedroom 2	14m ²	14m ²
Bedroom 3	13m ²	10m ²
Bedroom 4	13m ²	10m ²
Bedroom 5	13.5m ²	14m ²
Combined Living Space	25m ²	34/22.5m ² (see below)
Ensuite 1	3.2m ²	2.74m ²
Ensuite 2	3.9m ²	2.74m ²
Ensuite 3	3.9m ²	2.74m ²
Ensuite 5	3.25m ²	2.74m ²
Ensuite 6	3.15m ²	2.74m ²



PROPOSED GROUND FLOOR PLAN
SCALE 1:100



PROPOSED FIRST FLOOR PLAN
SCALE 1:100



PROPOSED SECOND FLOOR PLAN
SCALE 1:100

- 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 shared communal living space, and one of the double bedrooms which is 0.5m² below the required room size of 14m². The HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m²) for combined living accommodation in circumstances where all bedrooms are at least 10m² for single bedrooms and 14m² for double bedrooms. The accommodation is otherwise acceptable as communal space comfortably exceeds the requirement, the 22.5m² standard is applied and the bedroom falls only marginally below what is required (where the rest of the bedrooms also comfortably exceed the requirements). On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.
- 5.8 Amenity and Parking
- 5.8 The proposal would increase the occupancy of the existing HMO by 2 occupants. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more bedrooms. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.
- 5.10 Other Material Considerations
- 5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. 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 The operational development can be summarised as the cladding of the side of the first floor extension and the installation of a small roof light. All other operational development detailed in the description of development were approved in the previous application and have been implemented. These very minor alterations are considered acceptable, and within the scope of permitted development and have no adverse impact on neighbouring amenity. They fit with the building and character of the area and as such are considered acceptable.
- 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 mostly comply with the relevant policies of the local plan as the size of the resulting accommodation is considered to provide a good standard of living accommodation in accordance with Local Plan Policy PCS23 and the minor shortfall of one bedroom by 0.5m² is not considered to be sufficient to warrant a refusal. However, notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that the on the details of this

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

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

RECOMMENDATION

Unconditional Permission

Conditions: None

Agenda Item 6

21/01417/CPL

WARD: COPNOR

127 POWERSCOURT ROAD, PORTSMOUTH, PO2 7JQ.

APPLICATION FOR A CERTIFICATE OF LAWFUL DEVELOPMENT FOR EXISTING USE AS HOUSE IN MULTIPLE OCCUPATION WITH 7 BEDS

LINK TO DOCUMENTS:

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R00ZWHMOMBC00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R00ZWHMOMBC00)

Application Submitted By:

Mr Jonathan McDermott
Town Planning Experts

On behalf of:

Mr J Verncombe

RDD: 27th September 2021

LDD: 22nd November 2021

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before the Planning Committee at the request of the Councillor Vernon Jackson.
- 1.2 The sole issue for consideration in the determining of this application is whether the increase from six occupants to seven occupants in an existing Class C4 House in Multiple Occupation 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.
- 1.3 Site and surroundings
- 1.4 This application relates to a three-storey, mid-terrace property located on the northern side of 127 Powerscourt Road. The application site is located within the Copnor Ward.

2.0 PROPOSAL

- 2.1 This application seeks to demonstrate that increasing the number of occupiers in an existing lawful HMO by one to make it a seven person House in Multiple Occupation (HMO) would not result in a material change of use and therefore would not require planning permission.

2.2 Plans - Floor plans and Elevation Plans as existing.



2.3 Relevant Planning History

2.4 The Local Planning Authority (LPA) refused application reference 19/01055/FUL for Change of use from Class C4 (House in Multiple Occupation) to a 7 bed HMO (Sui-Generis) and the construction of a single storey side extension (following the demolition of an existing side extension) (Resubmission of 18/00230/FUL), in November 2020. It was considered that;

- The proposal, by reason of the under provision of communal living space would fail to provide a good standard of living accommodation for occupiers and represent an over intensive use of the property.
- 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 recreational pressures and nutrient output; with mitigation against these impacts being required.

This refusal was appealed and dismissed in September 20201 on the inadequacy of communal spaces, though the Inspector made no consideration in respect of the impacts on the SPA. The Inspector also made no statement to indicate whether he had given any consideration as to the need for planning permission, ie whether the increase in occupancy from 6 to 7 resulted in a material change of use, nor did the appellant in that case question that fact. This is a fact that Officers discuss in the recommendation below as being highly determinative.

2.5 The Local Planning Authority (LPA) also refused an earlier application, reference 18/00230/FUL for Change of use from Class C4 (House in Multiple Occupation) to a 7 bed HMO (Sui-Generis). It was considered that;

- The proposed use of the building as a seven-bedroom sui generis House in Multiple Occupation would, as a result of the cramped and restricted size of the communal amenity space (living room and kitchen areas), fail to provide the necessary space for an adequate standard of living accommodation for future occupiers and would represent an over intensive use of the site.
- Without appropriate mitigation the development would be likely to have a significant effect on the Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas.

2.6 Planning permission was granted in 2014 (reference: 14/00146/FUL) for the flexible use of the existing C3 residential for purposes falling within Classes C3 (dwellinghouse) or Class C4 (House in Multiple Occupation). Therefore, the property currently has permission to be used as Class C4 HMO by up to six unrelated individuals.

3.0 **POLICY CONTEXT**

3.1 Not applicable.

4.0 **CONSULTATIONS**

4.1 None.

5.0 **REPRESENTATIONS**

5.1 Neighbour notification letters were sent out to all adjacent properties, and a site notice displayed in October 2021. Four letters of objection have been received from three households and can be summarised as follows;

- a) A lawful development certificate application has been submitted to avoid the requirement of planning permission, this is not what certificate of lawful developments are for, they are trying to find loopholes to expand the use;
- b) Concerns regarding anti-social behaviour, parking, noise disturbance, waste;
- c) Request attention is given to comments which have been submitted objecting to planning application reference: 21/00883/FUL;
- d) Overdevelopment of the site, over-populated, sometimes people move-in before a decision is made;
- e) Please make sure all residents are aware of these applications.

6.0 **COMMENT**

6.1 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 TCPA, 'development' is defined as the making of a material change in the use of any buildings or land. For a change to be material there must

some significant difference in the character of the activities from what was going on previously as a matter of fact and degree.

- 6.2 It is considered that in this instance, the increase in occupancy from a six-person, six-bedroom House in Multiple Occupation to a seven-bedroom, seven person House in Multiple Occupation would not result in a significant difference in the character of the activities that would occur within the property or the character of the area. Therefore, there would not be a material change of use, and so planning permission is not required.
- 6.3 This view is supported by the Campbell Properties enforcement appeals dated 29th April 2021. The Planning Inspector considered a number of similar changes of use at six different properties and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to six occupants to seven, and a change in occupancy from up to six occupants to eight would not result in a material change of use. While the Inspector recognised the increase of one or two occupants would result in a more intensive use of the property, he was of the opinion that there would not be material effects arising from a seventh or eighth resident. The Inspector was of the opinion the change of use from a six person to seven or eight person HMO was a continuation of the existing use.
- 6.4 In a further three recent decisions, received on 9th March 2023, for applications 20/00964/FUL (123 Talbot Road), 20/00963/FUL (48 Jessie Road) and 20/00965/FUL (56 Jessie Road). The planning inspector noted the similarities with the Campbell Properties cases and agreed with the reasoning in that ruling. The inspector disagreed that the provision of an additional bedroom would result in unacceptable living conditions for current and future occupiers.
- 6.5 Having regard to the above and the appeal decisions being a material planning consideration, the LPA is of the opinion that increasing the number of occupants at no.127 Powerscourt Road from six to seven persons, on the specific merits and facts of the case, would not result in a material change of use, meaning planning permission would not be required and the proposed change of use is lawful.

7.0 CONCLUSION

- 7.1 The LPA is of the opinion that increasing the number of occupants at no.127 Powerscourt Road from six to seven persons would not result in a material change of use as defined under s55 of the Town and Country Planning Act 1990, meaning planning permission would not be required and the proposed change of use is therefore lawful.

8.0 RECOMMENDATION

- 8.1 Grant Certificate of Lawfulness.

Agenda Item 7

22/01076/FUL

WARD: COPNOR

39 WYKEHAM ROAD PORTSMOUTH PO2 0EG

CHANGE OF USE FROM SIX BED 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=RFF8STMOL3X00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RFF8STMOL3X00)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Edevane
One Seven East Holdings Ltd

RDD: 25th July 2022

LDD: 20th September 2022

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due the number of objections received (6) and at the request of Councillors Vernon-Jackson, Swann and Wemyss.
- 1.2 The main issues for consideration in the determination of the application are as follows:
 - Principle of Development including compliance with policy
 - Impacts on Amenity including parking
 - Other material considerations
- 1.3 Site and surroundings
- 1.4 The application site is a two-storey terraced dwelling with rooms in the roof in a predominately residential area.
- 1.5 The Proposal
- 1.6 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application.
- 1.7 Planning History
- 1.8 22/00368/FUL: Change of use from dwelling house (Class C3) to dwelling house (Class C3) or House in Multiple Occupation (Class C4). Conditional Permission (18.07.2022). Tenancy agreements have been submitted demonstrating that the C4 use of the property has been implemented.

2.0 POLICY CONTEXT

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

- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Updated Nutrient Neutral Mitigation Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 CONSULTATIONS

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

4.0 REPRESENTATIONS

- 4.1 6 objections have been received, including one from Councillor Swann, raising the following concerns:
- 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

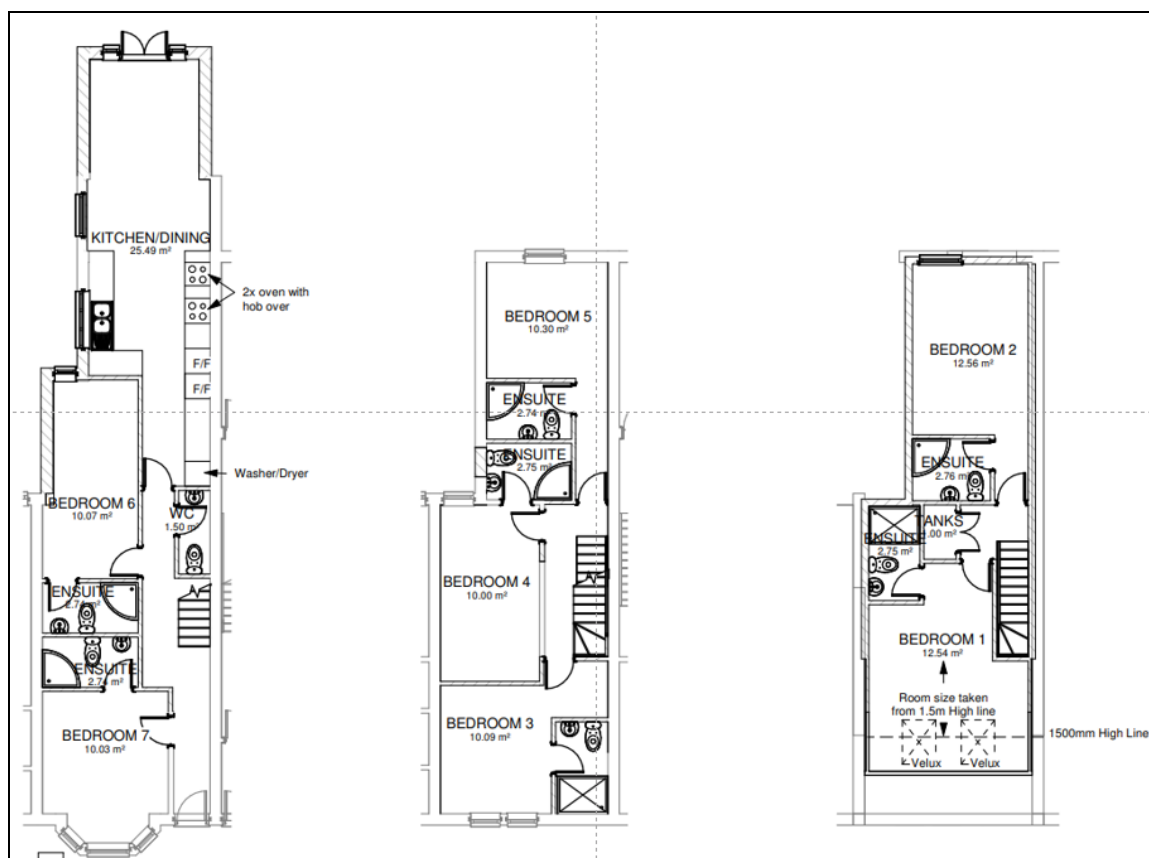
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

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 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 1 HMO out of 76 properties, a percentage of 1.3%. 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 granted by Portsmouth City Council to operate as an HMO.

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

Room	Area Provided:	Required Standard:
Bedroom 1	12.54m ²	6.51m ²
Ensuite B	2.75m ²	2.74m ²
Bedroom 2	12.56m ²	6.51m ²
Ensuite B	2.76m ²	2.74m ²
Bedroom 3	10.11m ²	6.51m ²
Ensuite B	2.74m ²	2.74m ²
Bedroom 4	10m ²	6.51m ²
Ensuite B	2.75m ²	2.74m ²
Bedroom 5	10.3m ²	6.51m ²
Ensuite B	2.74m ²	2.74m ²
Bedroom 6	10.07m ²	6.51m ²
Ensuite B	2.74m ²	2.74m ²
Bedroom 7	10.03m ²	6.51m ²
Ensuite B	2.74m ²	2.74m ²
Combined Living Space	25.49m ²	34m ² / 22.5m ²
WC	1.5m ²	1.17m ²



- 5.7 As is shown in the table above, the proposal results in an internal layout that meets the straightforward appraisal against the Council's adopted space standards. The HMO SPD, at para 2.6, advises that more detailed guidance, beyond the headline requirements should be referred to within the Council's standards for Houses in Multiple

Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m²) for combined living accommodation in circumstances where all bedrooms are at least 10m² and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

5.8 Amenity and Parking

5.9 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 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 be 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 3 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.

Conditions: None

Agenda Item 8

22/01152/FUL

WARD: HILSEA

12 THURBERN ROAD PORTSMOUTH PO2 0PJ

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RGAFCDMOLEK00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RGAFCDMOLEK00)

Application Submitted By:

Collective Studio

FAO Mr Edward Kercher

On behalf of:

Mr Lawrence Hubbard

RDD: 9th August 2022

LDD: 11th October 2022

1.0 SUMMARY OF MAIN ISSUES

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

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

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

1.3 Site and surroundings

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

1.5 The Proposal

1.4 The Applicant has sought planning permission for the change of use of the dwelling from its current last lawful use falling within dwellinghouse (Class C3) to allow up to 7 individuals to live together as an HMO. It can be noted that a previous planning permission ref no. 22/00304/FUL was granted for change of use from dwelling house (Class C3) to a dual use of either dwelling house (Class C3) or House in Multiple Occupation (Class C4) on 16/06/2022, though the potential use under Class C4 has not yet been carried out at the site.

1.7 Planning History

1.8 22/00304/FUL: Change of use from dwelling house (Class C3) to dwelling house (Class C3) or House in Multiple Occupation (Class C4). Conditional Permission (16.06.2022).

2.0 POLICY CONTEXT

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

- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The Updated Nutrient Neutral Mitigation Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 CONSULTATIONS

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

4.0 REPRESENTATIONS

- 4.1 One objection comments has been received raising the following concerns:

- a) Increase refuse and recycling;
- b) Anti-social behaviour;
- c) Parking

5.0 COMMENT

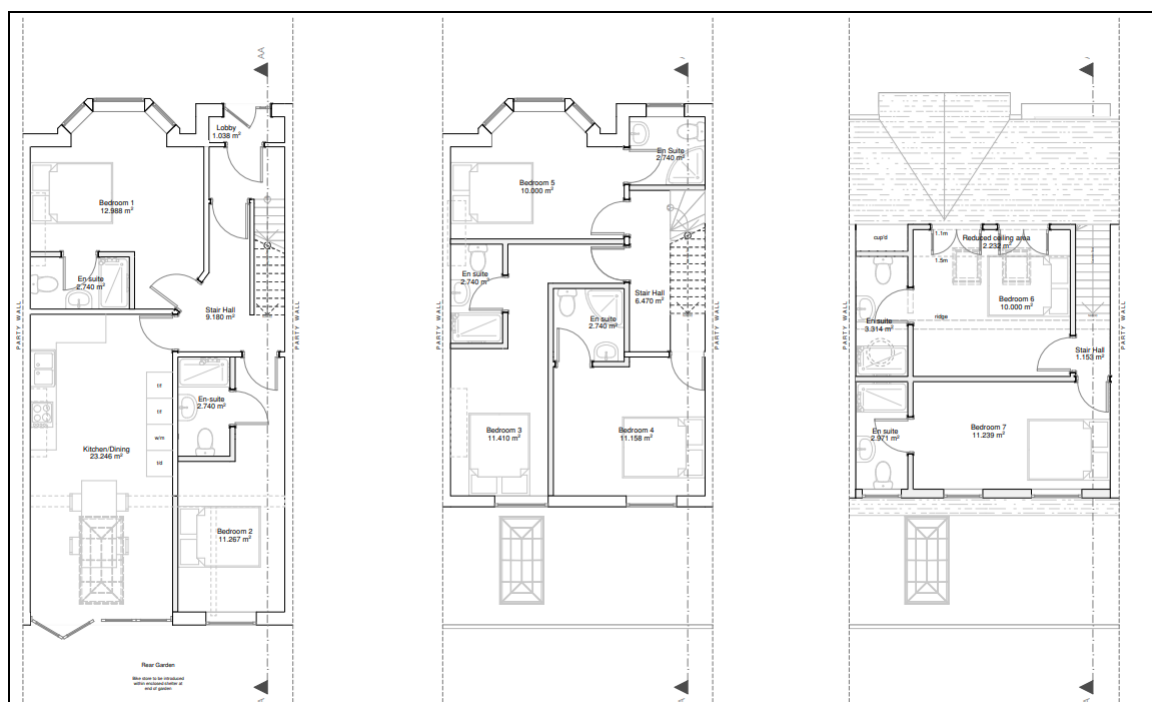
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

5.2 Principle

- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site and the refurbishment of the property has substantially progressed in readiness for occupation as an HMO under planning permission 22/00304/FUL. The application has been made to recognise the works to pursue an alternative internal layout, repurposing a ground floor living room, allowing for 7 bedrooms within the site. The existing benefit of a permission to use the dwelling as a C4 HMO is a material consideration in the determination. In any case the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 1 HMOs out of 67 properties, a percentage of 1.49%. 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 granted by Portsmouth City Council to operate as an HMO.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be

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

Room	Area Provided:	Required Standard:
Bedroom 1	12.98m ²	6.51m ²
Ensuite B1	2.74m ²	2.74m ²
Bedroom 2	11.267m ²	6.51m ²
Ensuite B2	2.74m ²	2.74m ²
Bedroom 3	11.41m ²	6.51m ²
Ensuite B3	2.74m ²	2.74m ²
Bedroom 4	11.58m ²	6.51m ²
Ensuite B4	2.74m ²	2.74m ²
Bedroom 5	10m ²	6.51m ²
Ensuite B5	2.74m ²	2.74m ²
Bedroom 6	10m ²	6.51m ²
Ensuite B6	3.314m ²	2.74m ²
Bedroom 7	11.239m ²	6.51m ²
Ensuite B7	2.97m ²	2.74m ²
Combined Living Space	23.24m ²	22.5m ²



- 5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards. The HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Councils standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m²) for combined living accommodation in circumstances where all bedrooms are at least 10m² and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

5.8 Amenity and Parking

- 5.9 The proposal would increase the occupancy compared to the approved HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area. Nor is the increase in parking demand considered to be materially different from that generated by a C3 dwelling house.
- 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 further 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. However as this site has not yet been used as a six bed HMO the determination of the application must be made in the first instance for a change of use between a C3 dwelling house and a 7 bed HMO, against the policies of the development plan. As the application complies with these policies this notional fall back, while material, does not need to be considered further.
- 5.13 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.

Impact on Special Protection Areas

- 5.14 Changing the use of the premises from a C3 dwelling to a 7 bed HMO will result in an increase in occupancy which will have an adverse impact on the Solent Special Protection Area and cause an increase in nitrate output and therefore a condition should be applied requiring mitigation to be secured.

6.0 CONCLUSION

- 6.1 As detailed above, the application is considered to be fully comply with the relevant policies of the Local Plan meeting the adopted standards for room sizes and providing a good standard of living accommodation in accordance with Policy PCS23 of the Local Plan. As the application itself, notwithstanding any weight that should be given to potential alternative routes to allowing a similar occupation, requires planning permission it is recommended that permission be granted subject to the imposition of conditions requiring implementation of the additional occupancy within 3 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 Grant conditional permission

Conditions:

1) Time Limit

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

2) Approved Plans

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: Sui Gen Plans PG.6180.21.6 Rev A, TQRQM22306133813088.

3) Cycle Storage

Prior to the occupation of the dwelling as a HMO for 7 persons, secure and weatherproof cycle storage for four or more bicycles shall be provided as shown on the approved plans and retained thereafter for the storage of bicycles. The storage shall accord with Permitted Development rights.

4) Mitigation - Special Protection Areas

(a) The development hereby permitted shall not be occupied/brought into use until a scheme each for the (i) mitigation of increased recreational disturbance resulting from an increased population within 5.6km of the Solent Special Protection Areas; and (ii) for an increase in nitrogen levels within the Solent water environment have been submitted to and approved in writing by the Local Planning Authority; and

(b) The development shall then be carried out in full accordance with both schemes of mitigation approved pursuant to part a) of this condition with any mitigation measures for (ii) thereafter permanently retained as approved.

5) Water Efficiency

The proposal hereby permitted shall not (unless otherwise agreed in writing with the LPA) be occupied until written documentary evidence has been submitted to and approved in writing by the Local Planning Authority demonstrating that the development has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)b of the Building Regulations (2010) (as amended). Such evidence shall be in the form of a post construction water efficiency calculator.

6) External works

Prior to first occupation of the property as a House in Multiple Occupation within Use Class C4, the building operations indicated within approved drawing Elevations - PL04, namely the construction of the rear dormer, shall be completed.

The reasons for the conditions are:-

1) To comply with Section 91 of the Town and Country Planning Act 1990.

2) To ensure the development is implemented in accordance with the permission granted.

3) To provide adequate cycle storage in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.

- 4) In the interest of mitigating harm arising from recreational disturbance of wading birds as a result of new residential accommodation in the Solent SPA, and the increase of output of nutrients into the Solent in accordance with the Habitats Regulations and Policy PCS15 of the Portsmouth Plan.
- 5) To ensure that the development complies with PCS15 of the Portsmouth Plan and does not exceed the scope of Nitrate Mitigation Credits purchased.
- 6) To ensure that adequate and communal living space is provided in accordance with Policy PCS23 of the Portsmouth Plan (2012) and the Houses in Multiple Occupation Supplementary Planning Document (2019).

Agenda Item 9

22/01559/FUL

WARD:HILSEA

15 SHADWELL ROAD PORTSMOUTH PO2 9EH

CHANGE OF USE FROM DWELLINGHOUSE (CLASS C3) TO 8 PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Mr Reynolds
CER Property Ltd

RDD: 9th November 2022

LDD: 10th January 2023

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to a total of 11 objections from local residents and an objection and call-in request from Cllr Wemyss and (previous) Cllr Payter-Harris. The application is now the subject of an appeal on grounds of non-determination and as such this report seeks a resolution by the Committee as to its likely determination should it had retained jurisdiction over the application. It differs from other applications on the agenda in this respect, but has been added due to this urgency.
- 1.2 The main issues for consideration in the determination of the application are considered to be as follows:
- The principle of development;
 - Standard of accommodation;
 - Relevant planning history providing fallback position
 - Parking;
 - Waste;
 - Amenity impacts upon neighbouring residents;
 - Impact upon the Solent Protection Areas; and
 - Any other raised matters.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site comprises a two-storey, mid-terrace dwelling located on the southern side of Shadwell Road as shown in **Figure 1** below. The dwelling is set back from the highway with a shallow-walled forecourt. To the rear of the dwelling is an enclosed garden backing on to properties fronting Oriel Road. It should be noted that planning permission was granted for a dual use as a dwelling house in either use class C3 or C4 in July 2021 but this permission is not considered to have yet been implemented. The extant permission is within the 3 year time limit for implementation and thus provides a fallback position but the site currently remains in last use as a C3 dwelling. The dwellinghouse is served by bay windows to the front and has a reasonably large front forecourt and rear garden (which has a rear access alleyway which serves as good access to the existing rear bike store). The existing layout comprises a lounge, living room, shower room, utility room, kitchen/dining room at ground floor level, and 3 bedrooms and a shower room on the first floor.

- 2.2 The application site falls within a residential area characterised by rows of two-storey terraced properties.



Figure 1 Location plan

3.0 THE PROPOSAL

- 3.1 Planning permission is sought for the Change of use from dwellinghouse (Class C3) to House in Multiple Occupation for eight people. Amended floor plans have been submitted showing an increased communal area and to remove a previously proposed GF rear bedroom. All bedrooms will be for single occupancy except for bedroom 3 which will be for double occupancy.
- 3.2 The proposed internal accommodation, as shown in **Figure 2** below, comprises the following:

- Ground Floor - Two bedrooms (all with ensuite shower, toilet and handbasin), communal Kitchen/Dining room, and a shared WC (with handbasin).
- First Floor - Three bedrooms (all with a shower, toilet and handbasin ensuite)
- Second Floor - Two bedrooms (all with a shower, toilet and handbasin ensuite).

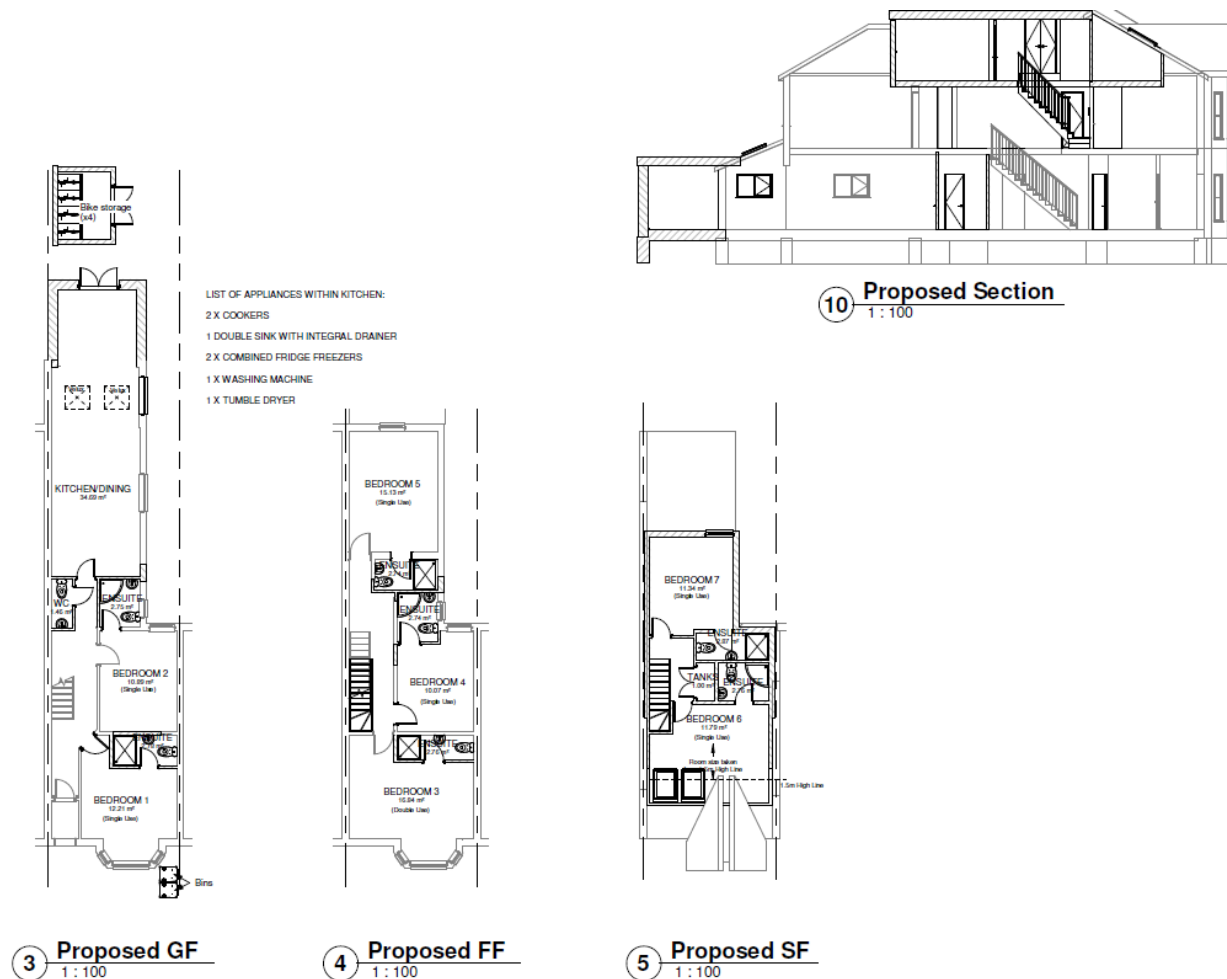


Figure 2 Proposed floor plan.

3.3 The Applicant has stated that works to extend the property are to be undertaken under permitted development (without the need to apply for planning permission). The extensions and alterations can be completed under permitted development regardless of whether the property is in Class C3 or C4 use. These works include a single storey rear extension and rear dormer and are not included in the application. They should not be considered as part of the application but would be necessary to meet the space standards required for the proposed use. Should the applicant wish, these works could, and likely would, go ahead with or without consent for the change of use being considered under this application. It is suggested that it would be prudent to impose a pre-occupation condition should the committee be minded to grant permission requiring that the permitted development works take place prior to the property's occupation as a HMO for 8 persons.

4.0 PLANNING HISTORY

4.1 **20/01540/FUL**- Change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwellinghouse) and Class C4 (house in multiple occupation) - Approved 23/07/2020. The applicant has stated that this planning permission has not been implemented and there is no evidence to suggest it has (being that no license has been

applied for as yet), this application should be considered as a change of use from C3 rather than from C4. It should be noted that the extant permission is still implementable and as such presents a fallback position of use as a C4 HMO with a broadly similar layout and 3 fewer bedrooms.

21/01162/VOC - Application to remove condition 4 of 20/01540/FUL to allow occupancy for more than 4 residents and users - Refused 09/12/2021.

5.0 POLICY CONTEXT

5.1 Portsmouth Plan (2012)

5.2 In addition to the aims and objectives of the National Planning Policy Framework (2021), due weight has been given to the relevant policies within the Portsmouth Plan (2012), which include:

- PCS17 (Transport)
- PCS20 (Houses in Multiple Occupation)
- PCS23 (Design and Conservation).

5.3 Other Guidance

5.4 Guidance for the assessment of applications that is relevant to the application includes:

- National Planning Practice Guidance (revised 2021)
- The Parking Standards and Transport Assessments Supplementary Planning Document (2014)
- The Solent Recreation Mitigation Strategy (2017)
- The Updated Interim Nutrient Neutral Mitigation Strategy (2022)
- The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD').

6.0 CONSULTATIONS

6.1 Private Sector Housing - Based on the layout and sizes provided with this application this property would require to be licenced under Part 2, Housing Act 2004. The property will need to be inspected by private sector housing to ensure it meets licensing requirements.

6.2 Highways Engineer - no objection. Highlights that there would be no increase in parking requirement (2 spaces) from the fallback position of being able to implement the C4 permission. However, the LHA also acknowledge that in theory an increase in the number of bedrooms could result in an increase in the level of cars at the property. This may, in turn, result in increased instances of drivers searching for parking spaces, but this would be a matter of residential amenity to consider. Recommend a condition to secure cycle storage prior to occupation.

7.0 REPRESENTATIONS

7.1 13 objections receive, including one from Councillor Payter-Harris, summarised as:

- a) Too many HMOs within the area
- b) Lack of car parking provision leading to an increase in traffic and exacerbation of existing on-street parking problems
- c) Loss of family home from the existing housing stock

- d) Poor standard of living for future residents
- e) Proposed extensions beyond permitted development limits.
- f) Undue strain on local services and infrastructure, including the sewage, drainage and Doctors/Dentists
- g) Concerns about impact on community

8.0 COMMENT

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

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

8.2 Principle of development

Five year Housing Land supply.

8.3 The National Planning Policy Framework (NPPF) states that planning decisions should be based on a presumption in favour of sustainable development (paragraph 11). That presumption does not apply where the project is likely to have a significant effect on a 'habitats site' (including Special Protection Areas) unless an appropriate assessment has concluded otherwise (paragraph 182). Where a local planning authority cannot demonstrate a five year housing land supply of deliverable sites, the NPPF deems the adopted policies to be out of date and states that permission should be granted for development unless:

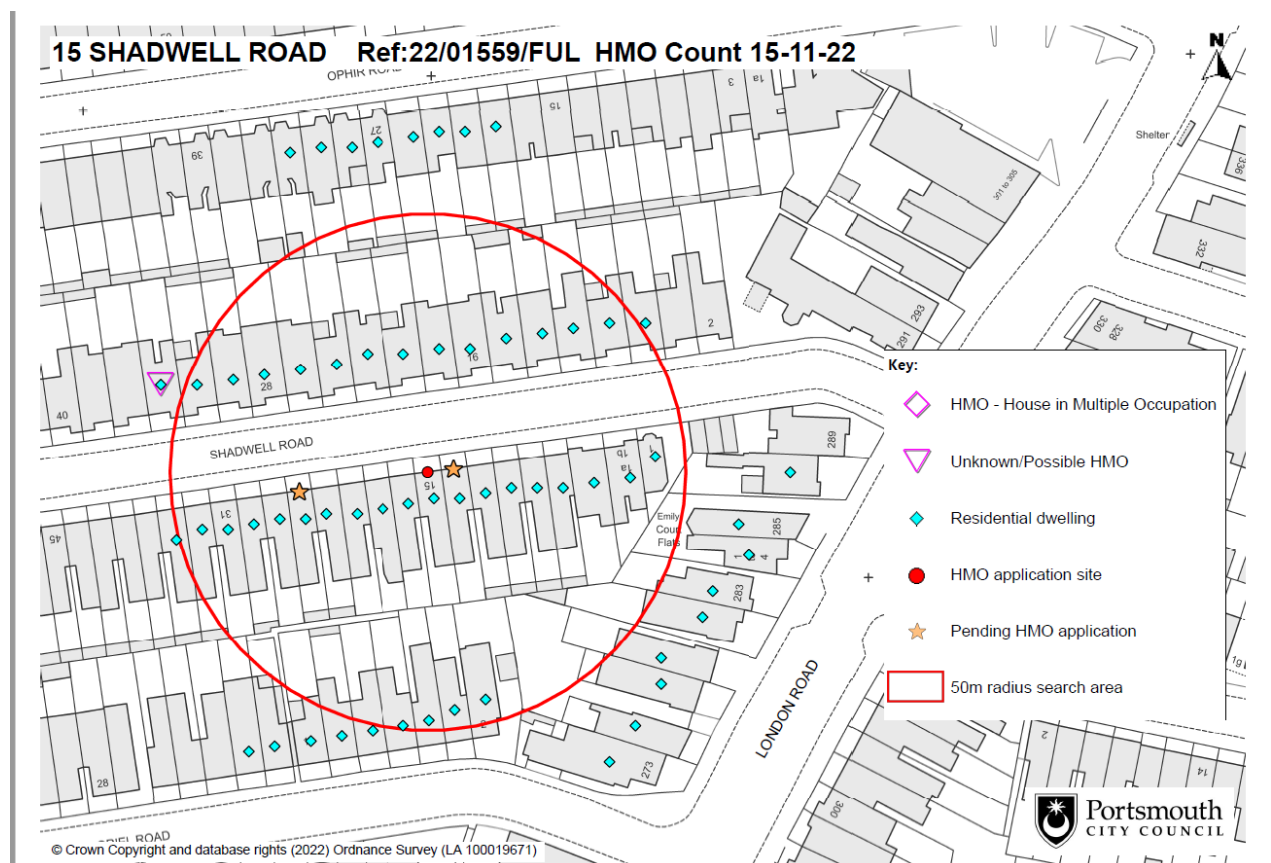
- I. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or
- II. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

8.4 Currently, the Council can demonstrate 2.9 years supply of housing land. The starting point for determination of this application is therefore the fact that the authority cannot demonstrate a five year supply of housing. This development would provide greater occupation of the building, so make a small, additional contribution towards the City's housing needs, at a sustainable location in the city, with good public transport, retail and services, employment, leisure, health facilities, etc. These factors weigh in favour of the proposed development. The further, specific impacts of the proposal must still be considered as to whether the development is appropriate in detail, as set out below.

HMO Policy

8.5 Permission is sought for the use of the property as a Sui Generis HMO for 8 persons. The property is currently considered to have a lawful use as a self-contained dwelling (Class C3), however, an extant permission for dual C3/C4 use has already established the acceptability of a HMO in the area and presents a fallback position which should be given significant weight in the consideration.

- 8.6 Policy PCS20 of the Portsmouth Plan states that applications for change of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses, or where the development would not create an imbalance. The adopted Houses in Multiple Occupation SPD (as amended October 2019), sets out how Policy PCS20 will be implemented and details how the City Council will apply this policy to all planning applications for HMO uses. The SPD states that a community will be considered to be imbalanced where more than 10% of residential properties within the area surrounding the application site (within a 50m radius) are already in HMO use.
- 8.7 It should be noted that HMO use has already been granted at this property and therefore there would be no further increase in the numbers of HMOs should this application be granted. Therefore, it would not be sustainable at appeal, or reasonable in a costs defence, to refuse this application under Policy PCS20 (Mixed and Balanced Communities).
- 8.8 Based on information held by the City Council, of the 74 properties within a 50 metre radius of the application site, one property has been identified as an HMO in lawful use (at no.34 Shadwell Road). Therefore, the existing number of HMOs equates to 1.35% of the properties within the search area. The addition of the application property would result in 2.70% of properties being an HMO within the 50m radius, which, regardless of the fallback falls below the 10% threshold limit above which an area is considered to be imbalanced.



- 8.9 A further policy strand introduced in July 2018, amended in October 2019, seeks to ensure that the amenity and standard of living environment of neighbours and local occupiers is protected. This is explained within Appendix 6 of the HMO SPD, which

references the specific proximity of HMOs to adjacent dwellings and how these circumstances may give rise to a particular risk of harm to amenity and disturbance. These are where: the granting of the application would result in three or more HMOs adjacent to each other, or where the granting of the application would result in any residential property being 'sandwiched' between two HMOs. There is no conflict caused by this proposal with this guidance.

- 8.10 Having regard to the above, the proposal would comply with the aims and objectives of Policies PCS19 and PCS20 of the Portsmouth Plan (2012).

8.11 Standard of accommodation

- 8.12 The application seeks Sui Generis HMO use for 8 persons and proposes the following room sizes, as shown in **Table 1** below.

Room	Area Provided	Required Standard
Bedroom 1 (Single use)	12.21m ²	6.51m ²
Bedroom 2 (Single use)	10.89m ²	6.51m ²
Bedroom 3 (Double use)	16.84m ²	11.00m ²
Bedroom 4 (Single use)	10.07m ²	6.51m ²
Bedroom 5 (Single use)	15.13m ²	6.51m ²
Bedroom 6 (Single use)	11.79m ²	6.51m ²
Bedroom 7 (Single use)	11.34m ²	6.51m ²
Shared WC	1.46m ²	1.17m ²
Communal Kitchen/Dining area (ground floor)	34.69m ²	34m ² / 22.5m ² (22.5m ² if all bedrooms exceed 10m ²)
Ensuite bathroom 1	2.78m ²	2.74m ²
Ensuite bathroom 2	2.75m ²	2.74m ²
Ensuite bathroom 3	2.76m ²	2.74m ²
Ensuite bathroom 4	2.74m ²	2.74m ²
Ensuite bathroom 5	2.74m ²	2.74m ²
Ensuite bathroom 6	2.76m ²	2.74m ²
Ensuite bathroom 7	2.87m ²	2.74m ²

Table 1 - HMO SPD (Oct 2019) compliance

- 8.13 All rooms comfortably exceed the required space standards and the proposal is considered to provide a good standard of living for future occupiers.

8.14 Impact on neighbouring living conditions

- 8.15 In terms of the impact on the living conditions of the adjoining occupiers, it is considered that the level of activity that could be associated with the use of any individual property as a dwellinghouse in Class C3, would be unlikely to be significantly different from the occupation of the as a house in multiple occupation, and would not be discernible from the fallback position of 6 unrelated individuals.

- 8.16 The HMO SPD is supported by an assessment of the need for, and supply of, shared housing in Portsmouth and of the impacts of high concentrations of HMOs on local communities. Paragraphs 9.1-9.10 discuss the negative impacts of HMO concentrations on local communities and points to the cumulative environmental effects of HMO concentrations. However, given that there is not an over-concentration of HMOs within

the surrounding area, it is considered that the impact of one HMO would not be significantly harmful, nor would the increase in 1 occupant when considered against the fallback position. The principle of an HMO use at this dwellinghouse has already been established as acceptable.

- 8.20 Having regard to this material consideration, it is considered there would not be a significant impact on residential amenity from the proposal.

8.21 Highways/Parking

- 8.22 The City Council's Parking Standards SPD sets the level of off-road parking facilities for new developments within the city and places a requirement of 2 off-road spaces for Sui Generis HMOs with four or more bedrooms. However, it should be noted that the expected level of parking demand for a Class C3 dwellinghouse with three bedrooms would be 1.5 off-road spaces, a difference of just 0.5 spaces. The proposal has no off-street parking, which is no change from the current use, or the fallback position.

- 8.23 As explained above, neither the Highways Officer nor Planning Officer highlights a serious issue with the scheme on the grounds of a lack of off-street parking. As the SPD requirement for parking is not materially different for the proposal than a similarly sized Class C3 dwellinghouse or C4 HMO (2 spaces), it is considered that refusal on a lack of parking is not reasonable or defensible. There is no objection on either highway safety grounds and therefore refusal could not be sustained on appeal. It should be noted that the property could be occupied by a large family and/or with adult children, each potentially owning a separate vehicle, or even more than 1 vehicle each.

- 8.24 The Council's Adopted Parking Standards set out a requirement for C4 HMO's to provide space for the storage of at least 4 bicycles. The property has a rear garden where a proposed secure cycle storage is shown to be located - it is acknowledged that access to the cycle storage can only be achieved through the house given that there is no rear access to the garden. The requirement for cycle storage is recommended to be secured by condition.

8.25 Waste

- 8.26 The storage of refuse and recyclable materials would remain unchanged, to be accommodated in the suitable front forecourt area. An objection on waste grounds would not form a sustainable reason for refusal and it is not considered necessary to require details of formalised waste storage.

8.27 Impact on Special Protection Areas

- 8.28 As there is a measurable increase in occupancy from 2.4 persons (for a C3 dwelling) to 8 persons, 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.

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

- 8.32 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.

- 8.33 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.

8.34 Other Matters raised in the representations.

- 8.35 Concerns have been raised by residents of the road regarding the pressure the additional occupants would put on local services and drainage/sewerage. However, having regard to the existing lawful C3 use of the property which allows the occupation of a family of unrestricted size, it is considered the use of the property would not have a significantly greater impact on local services and drainage/sewerage than if the property was occupied by a single family of eight. Noting also that securing any required additional drainage capacity is a matter managed outside the planning process.
- 8.36 Many objections centre around parking issues. This matter is discussed above in greater length. In summary, a lack of parking could not be defended at appeal due to policy having the same parking requirement for the fallback position of C4 use which can be implemented, and the current C3 use (with some minor internal/PD works).
- 8.37 Comments raised over the impact of the PD works. These works are not included in this application and are beyond the control of the Local Planning Authority. These works could be implemented without the need to apply for permission under the current C3 use or the allowed C4 use.
- 8.38 Some comments object due to the apparent poor quality of living for future occupiers and the high number of HMOs already in the area. Both of these objections are considered to be unfounded because the proposal is found to comply with both policies PCS20 and PCS23 of the Portsmouth Plan.
- 8.39 The application is for 8 persons and this would be monitored and controlled through the licensing regime. However, members may consider imposing an occupancy condition (although this is not considered necessary).

9.0 CONCLUSION

- 9.1 Having regard to all material planning considerations, giving significant weight to the fallback position available to applicant of implementing the previous permission for a 4 person HMO, and 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:

That the Secretary of State be advised, in respect of the ongoing appeal, that the Local Planning Authority would have concluded that the application be granted subject to the 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 and conditions (below)

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 drawing:

- Sui Gen Plan - Dwg No. PG.7094 · 22 · 4 REV D

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.

Completion of Permitted Development Works

- 4) Prior to the occupation of the property as a HMO for 8 persons, the single storey rear extension and rear dormer proposed to be constructed under permitted development allowances shall be completed.

Reason: In order to ensure that the property meets the required space standards and therefore provides a good standard of living in accordance with Policy PCS23 of the Portsmouth Plan.

Agenda Item 10

22/01643/FUL

WARD:HILSEA

13 SHADWELL ROAD PORTSMOUTH PO2 9EH

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO AN 8 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS) (RESUBMISSION OF 21/01622/FUL)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RLWK OEMOFML00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RLWK OEMOFML00)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Mr Reynolds

RDD: 28th November 2022

LDD: 24th January 2023

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to the number of objections (7) including an objection and call-in request from (previous) Cllr Payter-Harris . The application is now the subject of an appeal on grounds of non-determination and as such this report seeks a resolution by the Committee as to its likely determination should it had retained jurisdiction over the application.
- 1.1 The main issues for consideration in the determination of the application are as follows:
 - Principle of Development including compliance with policy
 - Impacts on Amenity including parking.
 - Other material considerations
- 1.2 Site and surroundings
- 1.3 This application relates to a two-storey (with loft conversion providing 2nd floor accommodation), mid-terrace property with a bay window that is separated from the road by a small front forecourt. To the rear of the dwelling is an enclosed garden. This property comprises at ground floor level, a kitchen/dining room, lounge, study, WC (with handbasin), and a bedroom with ensuite. At first floor there are three bedrooms all with ensuite facilities and at second floor level a further two bedrooms with ensuite facilities. The site is located on the southern side of Shadwell Road, west from its junction with London Road
- 1.3 The Proposal
- 1.4 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as an HMO with up to six individuals living together to allow up to eight individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application. Plans indicate that all bedrooms will be single occupancy.

1.5 Planning History

- 1.6 20/00485/FUL- Change of use from three self-contained flats (Class C3) to one dwellinghouse to be used for purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse) (description amended) - Approved 12.07.2021.
- 1.7 21/01622/FUL - Change of use from dual use Dwelling house (Class C3)/House in multiple occupation (Class C4) to House in multiple occupation for more than six people (Sui Generis) - Non-Determination, Appeal dismissed 22.11.2022 in respect of failure to mitigate impact on the SPA alone, albeit his decision noted that notwithstanding the assessment and submitted drawings for that site the dwelling has in fact be used for 8 occupants.
- 1.8 That Inspectors conclusion was:
"Although I have found that the mix and balance of housing in the area, the standard of accommodation for future occupants, the living conditions of neighbouring occupants and parking is all acceptable within the policy framework adopted by the Council for assessing HMO uses, because of the lack of suitable mitigation I am unable to conclude that the development would have no adverse effect on the Solent special protection areas. The development would therefore conflict with the Habitat Regulations and the Framework. I consider these are material considerations that outweigh the other matters which accord with the development plan."
- 1.9 It can also be noted that the Inspector on the above appeal in respect of 21/01622/FUL declined to comment on whether the proposal needed planning permission, notwithstanding the fact that the Appellant questioned this matter.

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 Updated Nutrient Neutral Mitigation Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 **CONSULTATIONS**

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

4.0 **REPRESENTATIONS**

- 4.1 7 letters of representation received objecting on the following summarised grounds:
- Concerns about, social, drainage, suitability/building standard of 120-year construction, noise, neighbouring properties, plumbing, local infrastructure, parking
 - Too many HMOs in the area, impacting the 10% threshold.
 - Impact on drainage, noise, air quality
 - Loss of family dwellings
 - Poor quality living for future occupants of the application dwelling

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.

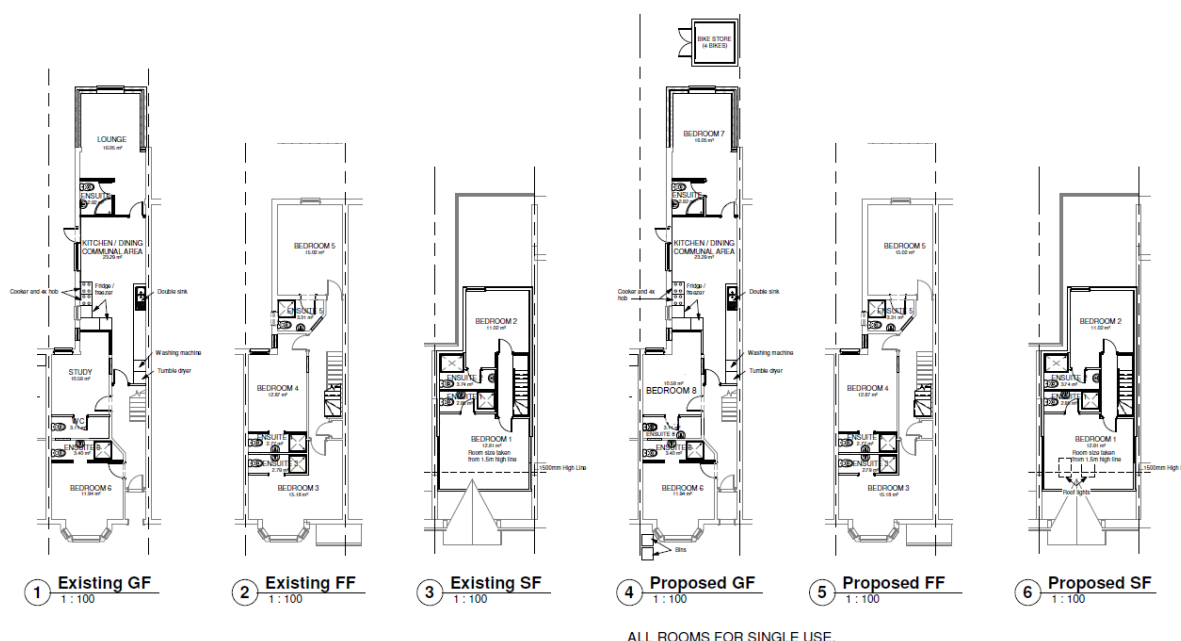
5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community 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 92 properties, a percentage of 3.26%. This includes any pending HMO applications. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

5.5 The property is currently licenced as an HMO for 8 persons. The property was granted a 1-year licence (ends Aug 2023) for 8 people. The City Council Private Sector Housing team inform that the property has been granted a licence for only 1 year to enable the landlord to deal with outstanding issues with Planning and Building Control.

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 with ensuite	12.81m ² + 2.85m ² ensuite	6.51m ²
Bedroom 2 with ensuite	11.02m ² + 3.74m ² ensuite	6.51m ²
Bedroom 3 with ensuite	15.18m ² + 2.79m ² ensuite	6.51m ²
Bedroom 4 with ensuite	12.87m ² + 2.77m ² ensuite	6.51m ²
Bedroom 5 with ensuite	15.02m ² + 3.31m ² ensuite	6.51m ²
Bedroom 6 with ensuite	11.94m ² + 3.40m ² ensuite	6.51m ²

Bedroom 7 with ensuite	16.05m2 + 2.82m2 ensuite	6.51m2
Bedroom 8 with ensuite	10.58m2 +2.82m2 ensuite	6.51m2
Combined Living Space	23.29m2	34m2 / 22.5m2



1 Existing and Proposed Floor Plans

5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards. The HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m²) for combined living accommodation in circumstances where all bedrooms are at least 10m² and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment

5.8 Amenity and Parking

5.9 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.

5.9 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 Noting that in addition to the previous conclusion of the Inspectorate on appeal that the development, subject to SPA mitigation is acceptable, a further 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 2 occupants 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.

5.15 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 - That the Secretary of State be advised, in respect of the ongoing appeal, that the Local Planning Authority would have granted Unconditional Permission

Conditions: None

Agenda Item 11

23/00080/FUL

WARD:FRATTON

232 QUEENS ROAD FRATTON PORTSMOUTH PO2 7NG

**CHANGE OF USE FROM PURPOSE FALLING WITHIN DWELLINGHOUSE (CLASS C3) TO A 7 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)
[NOTE CHANGE TO DESCRIPTION]**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=ROQC U0MOGKU00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=ROQC U0MOGKU00)

Application Submitted By:

Mr Willment
incollective.works

On behalf of:

Eswaran

RDD: 20th January 2023

LDD: 20th March 2023

1.0 SUMMARY OF MAIN ISSUES

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

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

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

1.3 Site and surroundings

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

1.5 There are no off-street car parking spaces available for the application site as existing, but relies on on-street parking which is available on Queens Road and surrounding streets.

1.6 The Proposal

1.7 The Applicant has sought planning permission for the change of use of the dwelling from its current last lawful use falling within dwellinghouse (Class C3) to allow up to 7 individuals to live together as an HMO. It can be noted that a previous planning permission ref no. 22/00491/FUL was granted for change of use from dwelling house (Class C3) to a dual use of either dwelling house (Class C3) or House in Multiple Occupation (Class C4) on 09/12/2022, though the potential use under Class C4 has not yet been carried out at the site.

1.8 The layout of the dwelling includes an rear extension constructed under permitted development, enlarging Bedroom 2 on the ground floor. This room was previously a smaller living room in the approved dual use 2022 permission. The staircase in this area has also been reconfigured with associated minor changes to the communal kitchen/dining area.

1.9 Plans:



Figure 1: Proposed plans

1.10 Planning History

1.11 22/00491/FUL

Change of use from dwelling house (Class C3) to dwelling house (Class C3) or House in Multiple Occupation (Class C4). Permission granted on 09/12/2022.

1.12 22/00033/GPDC -

Construction of single-storey rear extension that comes out a maximum of 4m beyond the rear wall of the original house with a maximum height of 2.7m and a maximum height of 2.7m to the eaves. Prior Approval not required, 10 May 2022

1.13 14/01439/PLAREG -

Retrospective application for construction of single storey outbuilding, decking and installation of up to 2.2m high fencing. Conditional Permission, 30 Dec 2014

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 Updated Nutrient Neutral Mitigation Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 CONSULTATIONS

3.1 Private Sector Housing:

Based on the layout and sizes provided there are no adverse comments to be made by Private Sector Housing. This property would require to be licenced under Part 2, Housing Act 2004.

3.2 Highways Engineer:

No objection subject to a condition for the provision of cycle storage prior to occupation.

3.3 Natural England:

No objection subject to securing appropriate mitigation.

4.0 REPRESENTATIONS

4.1 Three representations received objecting to the proposal on the following grounds:

- More than 10% of residential properties within a 50m radius of the area surrounding the application property are already in HMO use
- Parking
- Public services stretched
- Terraced property not suitable for HMO use
- Building materials left on the road

Non-Planning consideration

- Applicants owns other properties being developed as HMOs

5.0 COMMENT

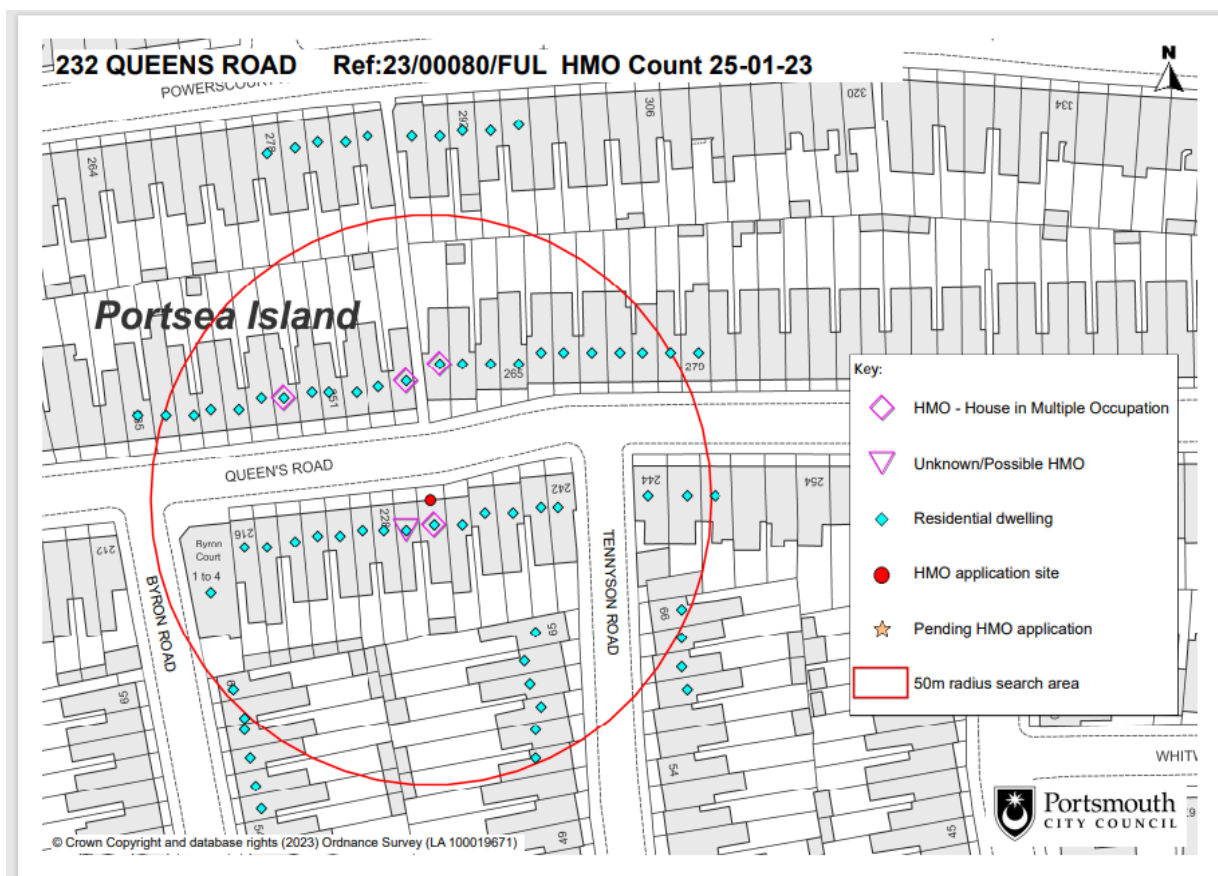
5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

5.2 Principle

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

5.4 In this case the application site and the refurbishment of the property has substantially progressed in readiness for occupation as an HMO under planning permission 22/00491/FUL. The application has been made to recognise the works to pursue an alternative internal layout, utilising an addition permitted development rear extension, allowing for 7 bedrooms within the site. The existing benefit of a permission to use the dwelling as a C4 HMO is a material consideration in the determination. In any case 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 compared to the alternative dual use permission, does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 5 HMOs out of 74 properties, a percentage of

6.76%. 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
Figure 2: HMO data count map (50m radius)

5.6 The site does not currently benefit from a HMO Licence and there are no HMO licensing records for this property.

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

5.8

Room	Area Provided:	Required Standard:
Bedroom 1	10.01m ²	7.51m ²
Ensuite B1	2.75m ²	2.74m ²
Bedroom 2	11.3m ²	7.51m ²
Ensuite B2	2.77m ²	2.74m ²
Bedroom 3	10.42m ²	7.51m ²
Ensuite B3	3.04m ²	2.74m ²
Bedroom 4	10.4m ²	7.51m ²
Ensuite B4	3.1m ²	2.74m ²
Bedroom 5	10.07m ²	7.51m ²
Ensuite B5	2.83m ²	2.74m ²

Bedroom 6	10.42m ²	7.51m ²
Ensuite B6	3.6m ²	2.74m ²
Bedroom 7	10.16m ²	7.51m ²
Ensuite B7	4.2m ²	6.51m ²
Combined Living Space	22.91m ²	22.5m ²

- 5.9 The HMO Standards advise that where bedrooms are more than 10m² then a shared living space/kitchen can be at least 22.5m² (for 6-10 persons). 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.
- 5.10 Amenity and Parking
- 5.11 The proposal would increase the occupancy compared to the approved HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area. Nor is the increase in parking demand considered to be materially different from that generated by a C3 dwelling house.
- 5.12 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.
- 5.13 The Parking Standards set out a requirement for 7 person HMOs to provide space for the storage of at least 4 bicycles. A covered cycle store is proposed to the rear of the property, to accommodate 4 bicycles. This will be secured by condition.
- 5.14 Other Material Considerations
- 5.15 A further 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. However as this site has not yet been used as a six bed HMO the determination of the application must be made in the first instance for a change of use between a C3 dwelling house and a 7 bed HMO, against the policies of the development plan. As the application complies with these policies this notional fall back, while material, does not need to be considered further.
- 5.13 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.

5.15 Impact on Special Protection Areas

- 5.16 Changing the use of the premises from a C3 dwelling to a 7 bed HMO will result in an increase in occupancy which will have an adverse impact on the Solent Special Protection Area and cause an increase in nitrate output and therefore a condition should be applied requiring mitigation to be secured.

6.0 CONCLUSION

- 6.1 As detailed above, the application is considered to be fully comply with the relevant policies of the Local Plan meeting the adopted standards for room sizes and providing a good standard of living accommodation in accordance with Policy PCS23 of the Local Plan. As the application itself, notwithstanding any weight that should be given to potential alternative routes to allowing a similar occupation, requires planning permission it is recommended that permission be granted subject to the imposition of conditions requiring implementation of the additional occupancy within 3 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

RECOMMENDATION

Grant conditional permission

Conditions:

1) Time Limit

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

2) Approved Plans

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: Sui Gen Plans PG.6180.21.6 Rev A, TQRQM22306133813088.

3) Cycle Storage

Prior to the occupation of the dwelling as a HMO for 7 persons, secure and weatherproof cycle storage for four or more bicycles shall be provided as shown on the approved plans and retained thereafter for the storage of bicycles. The storage shall accord with Permitted Development rights.

4) Mitigation - Special Protection Areas

(a) The development hereby permitted shall not be occupied/brought into use until a scheme each for the (i) mitigation of increased recreational disturbance resulting from an increased population within 5.6km of the Solent Special Protection Areas; and (ii) for an increase in nitrogen levels within the Solent water environment have been submitted to and approved in writing by the Local Planning Authority; and

(b) The development shall then be carried out in full accordance with both schemes of mitigation approved pursuant to part a) of this condition with any mitigation measures for (ii) thereafter permanently retained as approved.

5) Water Efficiency

The proposal hereby permitted shall not (unless otherwise agreed in writing with the LPA) be occupied until written documentary evidence has been submitted to and approved in writing by

the Local Planning Authority demonstrating that the development has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)b of the Building Regulations (2010) (as amended). Such evidence shall be in the form of a post construction water efficiency calculator.

The reasons for the conditions are:-

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To provide adequate cycle storage in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.
- 4) In the interest of mitigating harm arising from recreational disturbance of wading birds as a result of new residential accommodation in the Solent SPA, and the increase of output of nutrients into the Solent in accordance with the Habitats Regulations and Policy PCS15 of the Portsmouth Plan.
- 5) To ensure that the development complies with PCS15 of the Portsmouth Plan and does not exceed the scope of Nitrate Mitigation Credits purchased.

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Agenda Item 12

22/01610/FUL

WARD:ST THOMAS

28 HUDSON ROAD SOUTHSEA PO5 1HD

CHANGE OF USE FROM A SIX BEDROOM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO A 7 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)
[NOTE AMENDE DESCRIPTION]

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RLJYDXMOFHW00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RLJYDXMOFHW00)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Birmingham
Bunked Ltd

RDD: 21st November 2022

LDD: 17th 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

1.4 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 19/01398/FUL: Change of use from purposes falling within Class C4 (house in multiple occupation) to a 7 bedroom house in multiple occupation (sui generis).

1.9 A non-determination appeal (APP/Z1775/W/20/3253373) was submitted and dismissed on 3rd November 2021. The Inspectors concluding comments where: *"I conclude that the change of use has resulted in unsatisfactory living conditions for the occupiers and represents an over intensive use of the property. Accordingly, in this respect, the development conflicts with Policy PCS23 of The Portsmouth Plan Portsmouth's Core Strategy (2012) (the Core Strategy) which, amongst other things, requires that new development provides a good standard of living environment for future occupiers. This policy is consistent with paragraph 130 f) of the National Planning Policy Framework (the*

Framework) which requires developments to create places with a high standard of amenity for existing and future users, and with which the development therefore also conflicts."

- 1.10 Following this appeal decision, the applicant has proposed changes to the internal layout, primarily relating to the ground and first floor shower room. This change to the layout has resulted in all of the bedrooms now achieving over 10m² in area. As such the lower threshold has been met for the combined living space, as discussed below. Reviewing Para 11 of the Inspectors decision, this matter was examined, stating that *"Although the floor plans are not annotated with room sizes, the main parties accept that the size of the bedrooms in the property all exceed the minimum standard set out in the SPD and that 4 of the rooms exceed 10 m². I have no reason to consider otherwise. However, the SPD allows for a reduction in the communal area only where all the bedrooms are of 10 m² or more, which is not the case with the appeal property. The lack of adequate communal space impacts particularly on the occupiers of the 3 smallest bedrooms. Accordingly, the over provision of personal space does not compensate for the under provision of communal space"*. It is therefore considered that the amended layout and increased size of the bedrooms would result in an internal layout which now meets the HMO SPD space standards in regard to the combined living spaces and bedrooms.

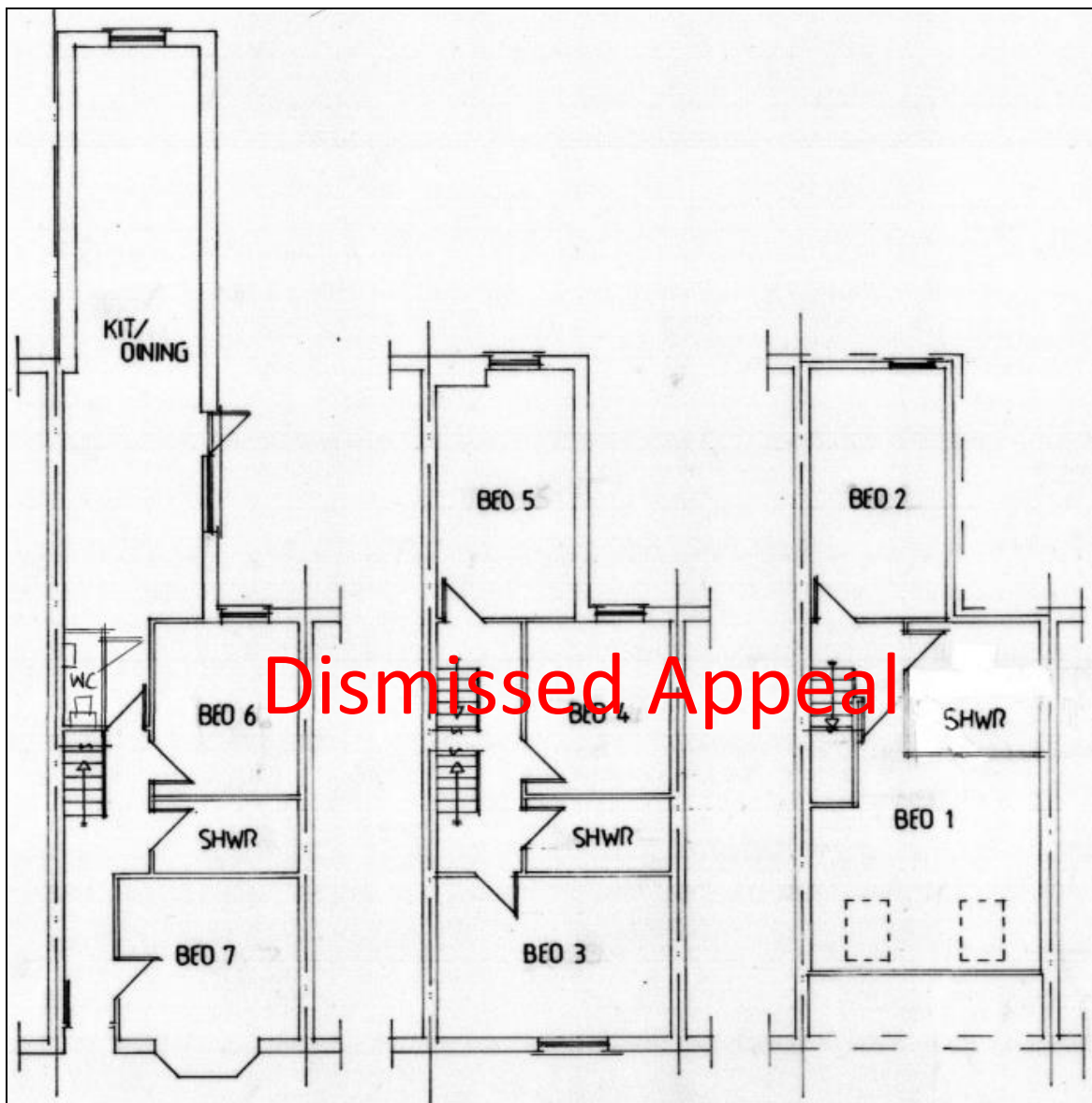


Figure 1 Floorplans of the dismissed appeal

- 1.11 As set out below the LPA has also received a number of Appeal Decisions on the question over if the increased occupancy in a HMO and results in material change of use. It is noted that within the above Appeal Decision the inspector did not address this matter.

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 Updated Nutrient Neutral Mitigation Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 CONSULTATIONS

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

4.0 REPRESENTATIONS

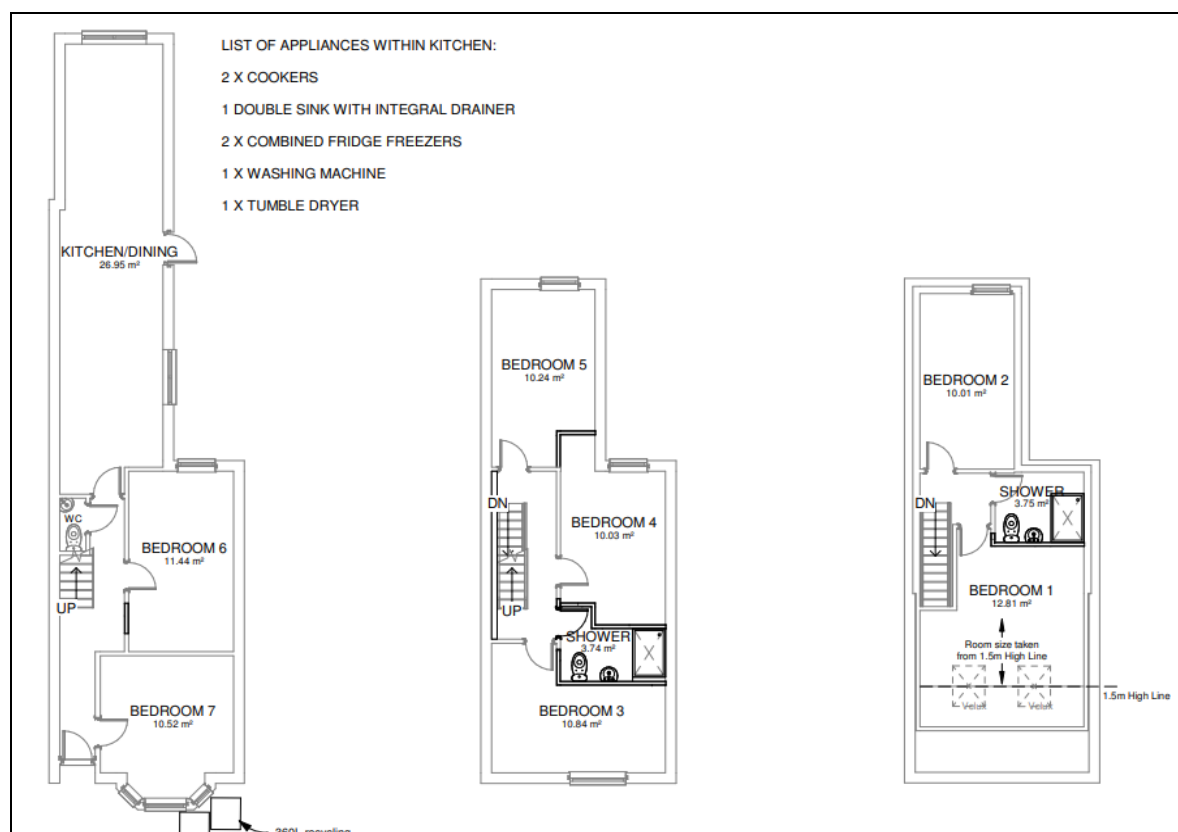
- 4.1 One representation has been received from a local resident raising the following concerns:
- a) No significant changes have occurred since the previous appeal; and
 - b) Question over need for the additional occupancy.

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 56 HMOs out of 82 properties, a percentage of 68.29%. This proposal of course has no effect on that percentage and on its own merit the increase of 1 occupant in an area of such concentration of HMO is not considered to have a material effect. 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 20th June 2019.
- 5.6 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	12.81m ²	6.51m ²
Bedroom 2	10.01m ²	6.51m ²
Bedroom 3	10.84m ²	6.51m ²
Bedroom 4	10.03m ²	6.51m ²
Bedroom 5	10.24m ²	6.51m ²
Bedroom 6	11.44m ²	6.51m ²
Bedroom 7	10.52m ²	6.51m ²
Combined Living Space	26.95m ²	22.5m ²
Shower room 1 (SF)	3.75m ²	2.74m ²
Shower room 2 (FF)	3.74m ²	2.74m ²
WC (GF)	0.78m ²	1.17m ²



- 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 ground floor WC. The HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m²) for combined living

accommodation in circumstances where all bedrooms are at least 10m² and the accommodation is otherwise acceptable as communal space. As noted that the WC at ground floor level is under the size standards, it is a restricted size however it is on-balance considered to be useable. It is noted that this layout has been licenced by the Private Sector Housing Team. 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 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 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 Impact on Special Protection Areas

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

6.0 CONCLUSION

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

RECOMMENDATION

Unconditional Permission

Conditions: None

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Agenda Item 13

22/01657/FUL

WARD:ST THOMAS

3 PAINS ROAD SOUTHSEA PO5 1HE

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RM429UMOFOM00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RM429UMOFOM00)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Mr Lees
Staltosi Property Ltd

RDD: 30th November 2022

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. The application also has 2 objections. An appeal has been lodged and while it has not yet started as such, if the appeal becomes valid prior to the issue of the decision, the LPA will be informing PINS of the decision the committee would have made had the appeal not been made. **The committee should note that PINS have twice found the scheme to be policy compliant and have only declined to grant permission due to the lack of a s111 agreement mitigating Nitrate and SPA impacts. The appellant has been awarded costs against PCC due to this and the committee is urged to give the inspectors previous comments on compliance with the size standards substantial weight.**
- 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 semi-detached 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 six bedroom 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 **18/00114/GPDC** - Construction of single storey rear extension (*GPDC Refuse*).

- 1.8 18/01996/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) (*Approve*).
- 1.9 19/00029/GPDC** - Construction of single storey rear extension (*Prior approval not required*).
- 1.10 19/00866/FUL** - Change of use from Class C4 (house in multiple occupation) to Sui Generis (House in multiple occupation for over 6 persons) (*Refused. Appeal Dismissed only on SPA Mitigation, but inspector noted that the scheme was policy compliant*).
- 1.11 21/01615/FUL** - Change of use from purposes falling within Class C4 (house in multiple occupation) to a 7 bedroom house in multiple occupation (sui generis) (Resubmission of 19/00866/FUL) (*Refused. Appeal dismissed, again only on SPA. Costs awarded against PCC.*)

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 Updated Nutrient Neutral Mitigation Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 CONSULTATIONS

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

4.0 REPRESENTATIONS

- 4.1 2 representations received which can be summarised as; students being difficult to live next to, the landlord is greedy, loss of family homes and there are student blocks available.

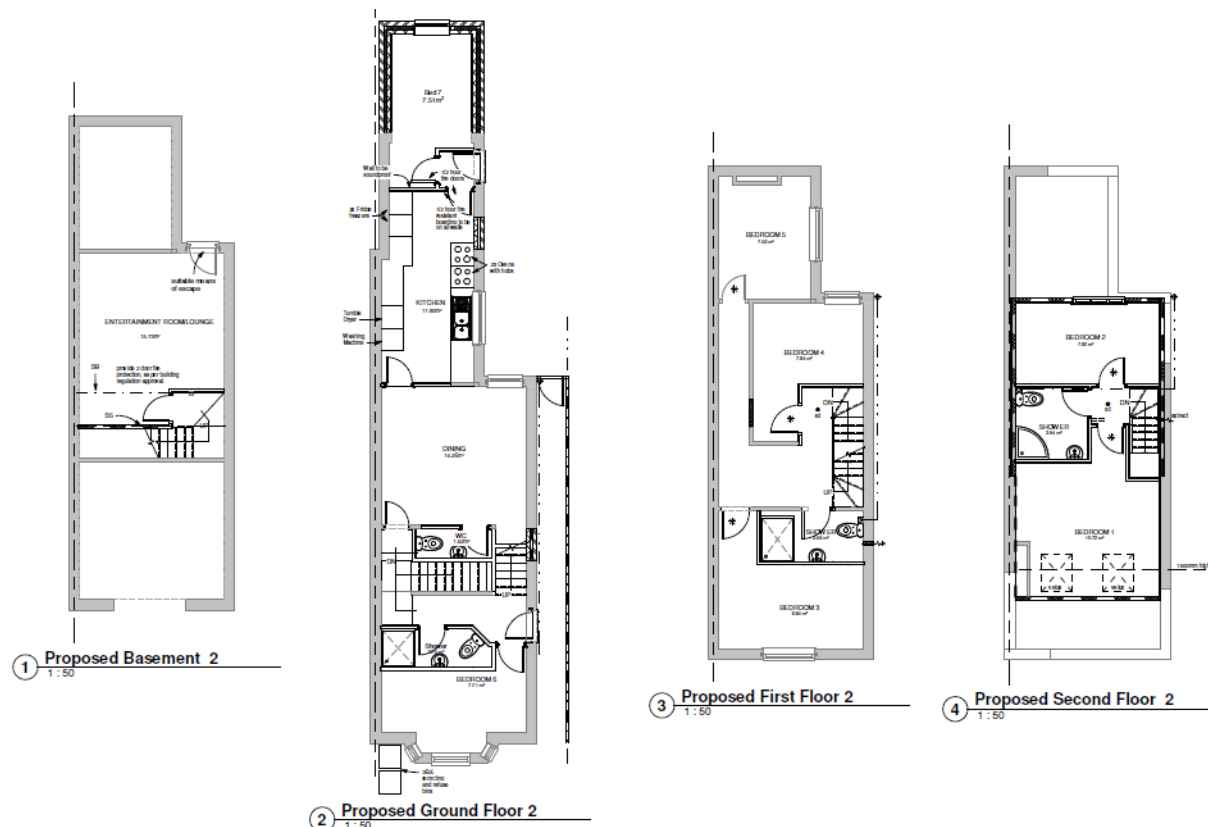
5.0 COMMENT

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material

impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 41 HMOs out of 81 properties, a percentage of 50.6%. This proposal of course has no effect on that percentage and on its own individual merits the increase in occupancy in this wider area is not considered to result in a material effect on the balance of accommodation. 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 granted on 06/09/2019. That licence allows for up to 8 persons, replacing a licence issued in 2015 for up to 4 persons.
- 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	10.72m ²	6.51m ²
Bedroom 2	7.92m ²	6.51m ²
Bedroom 3	9.84m ²	6.51m ²
Bedroom 4	7.94m ²	6.51m ²
Bedroom 5	7.53m ²	6.51m ²
Bedroom 6	7.71m ²	6.51m ²
Bedroom 7	7.51m ²	6.51m ²
Dining Room	14.26m ²	14m ²
Kitchen	11.80m ²	11m ²
Basement Lounge	15.73m ²	14m ²
Shower Room 1	2.75m ²	2.74m ²
Shower Room 2	3.58m ²	2.74m ²
Shower Room 3	3.54m ²	2.74m ²



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

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 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 were against three such Planning Committee decisions and the Planning Inspector in those cases 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.
- 5.15 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 3 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 14

23/00089/FUL

WARD:ST THOMAS

36 MONTGOMERIE ROAD SOUTHSEA PO5 1ED

CHANGE OF USE FROM A SIX BEDROOM 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=ROSLH5MOGM500](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=ROSLH5MOGM500)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Mr James Oliver

RDD: 23rd January 2023

LDD: 21st March 2023

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee at the request of Councillor Vernon-Jackson. This application has a valid appeal in place against non-determination and as such, the Committees assessment of the application will be relayed to PINS who will make the final decision on the application.

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 six bedroom 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 **22/00013/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 **22/00358/FUL** - Change of use from House in Multiple Occupation (Class C4) to dwelling house (Class C3) or House in Multiple Occupation (Class C4). *Approved and implemented*

2.0 POLICY CONTEXT

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

3.0 CONSULTATIONS

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

4.0 REPRESENTATIONS

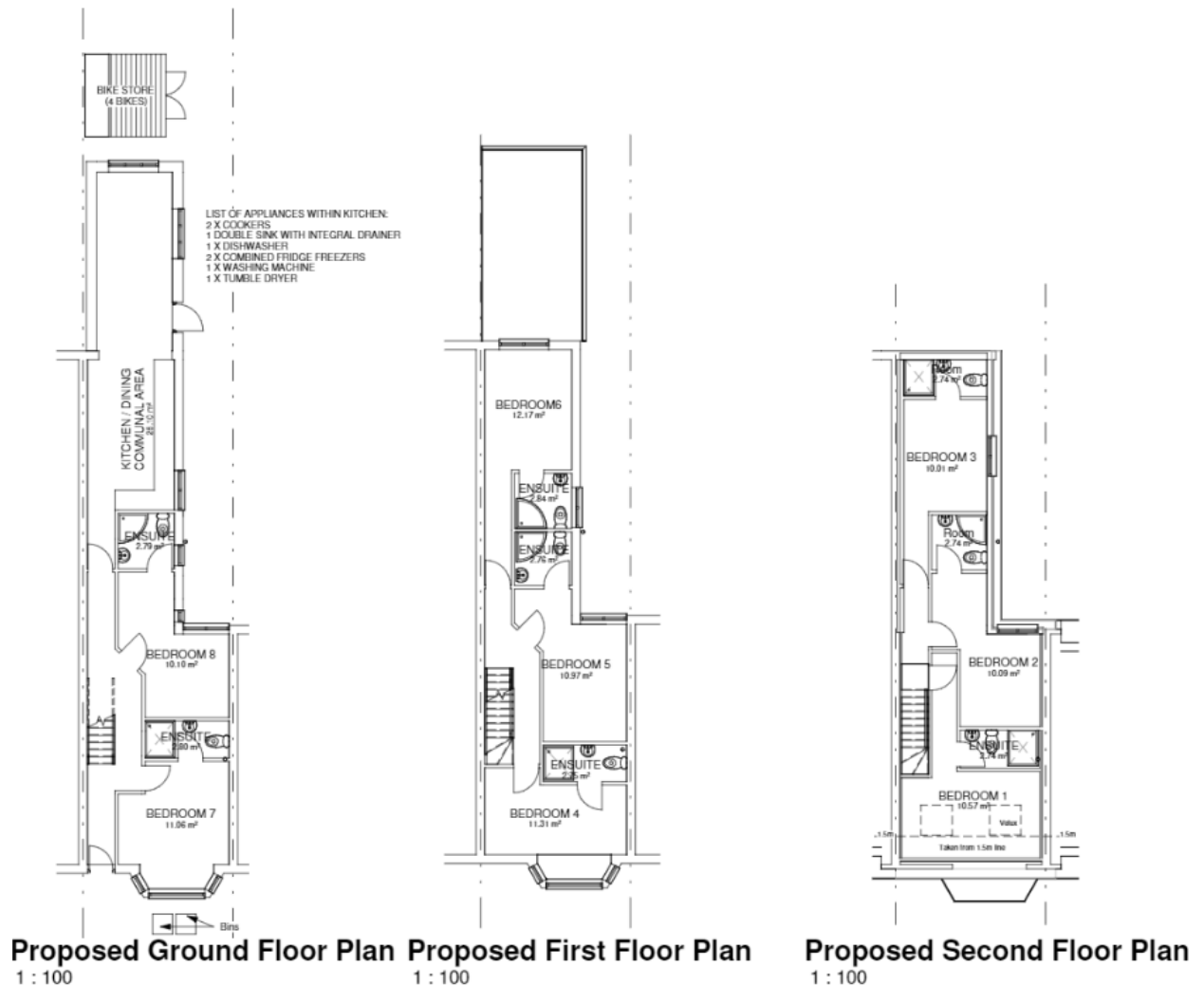
- 4.1 No public comments received.

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 a 6 bedroom 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 27 HMOs out of 79 properties, a percentage of 34.17%. This proposal of course has no effect on that percentage and the increase by two occupants in this specific area is not considered to materially affect the balance of the community. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 8 occupants. This licence was granted on 07/11/22.

- 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	10.57m ²	6.51m ²
Bedroom 2	10.09m ²	6.51m ²
Bedroom 3	10.01m ²	6.51m ²
Bedroom 4	11.31m ²	6.51m ²
Bedroom 5	10.97m ²	6.51m ²
Bedroom 6	12.17m ²	6.51m ²
Bedroom 7	11.06m ²	6.51m ²
Bedroom 8	10.10m ²	6.51m ²
Ensuite 1	2.74m ²	2.74m ²
Ensuite 2	2.74m ²	2.74m ²
Ensuite 3	2.74m ²	2.74m ²
Ensuite 4	2.75m ²	2.74m ²
Ensuite 5	2.76m ²	2.74m ²
Ensuite 6	2.84m ²	2.74m ²
Ensuite 7	2.80m ²	2.74m ²
Ensuite 8	2.79m ²	2.74m ²
Combined Living Space	26.10m ²	22.5m ²



5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards. The HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Councils standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m²) for combined living accommodation in circumstances where all bedrooms are at least 10m² and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

5.8 Amenity and Parking

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

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

5.10 Other Material Considerations

- 5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. 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.

5.15 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 3 years (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 15

23/00112/FUL

WARD:DRAYTON & FARLINGTON

4 CHALKRIDGE ROAD PORTSMOUTH PO6 2BE

**CHANGE OF USE FROM A PURPOSE FALLING WITHIN DWELLINGHOUSE (CLASS C3)
TO A 7 PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)
[NOTE CHANGE OF DESCRIPTION]**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RP431DMOGQ900](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RP431DMOGQ900)

Application Submitted By:

Mr Kercher
incollective.works

On behalf of:

Mr Joseph Williams

RDD: 27th January 2023

LDD: 5th May 2023

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee at the request of Councillor Vernon-Jackson. The application also has 1 objection.

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 semi-detached 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 to allow up to 7 individuals to live together as an HMO. Planning permission has been granted for the change of use of the existing dwelling, which was last occupied as a C3 dwelling, to be either a C3 or C4 (6 person) HMO (see below). Use as a 6-bed HMO under that permission has not yet been commenced, though building work has been carried out under permitted development and the property is ready for occupation, no licence for HMO occupation has yet been granted at the time of writing this report and no occupation as an HMO has been confirmed to have occurred. The site therefore remains in Use Class C3 at the time of determination by the Planning Committee and the change of use, to form a 7-bed HMO must be considered in that context. The application description has been changed accordingly, and for clarity the application has been brought to Committee notwithstanding the fact it has only a single adverse representation.

1.6 Planning History

- 1.7 22/01312/FUL - Change of use from Dwelling House (Class C3) to purposes falling within Class C3 (Dwelling House) or Class C4 (House in Multiple Occupation); to include alterations to fenestration and construction of single storey rear extension. (*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 Updated Nutrient Neutral Mitigation Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 CONSULTATIONS

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

4.0 REPRESENTATIONS

- 4.1 1 representation has been received and can be summarised as; potential for 14 people without a WC, does not meet space standards, parking, boundary issue original permission was for C3 use not for C4 use. These points are incorrect as detailed within this report.

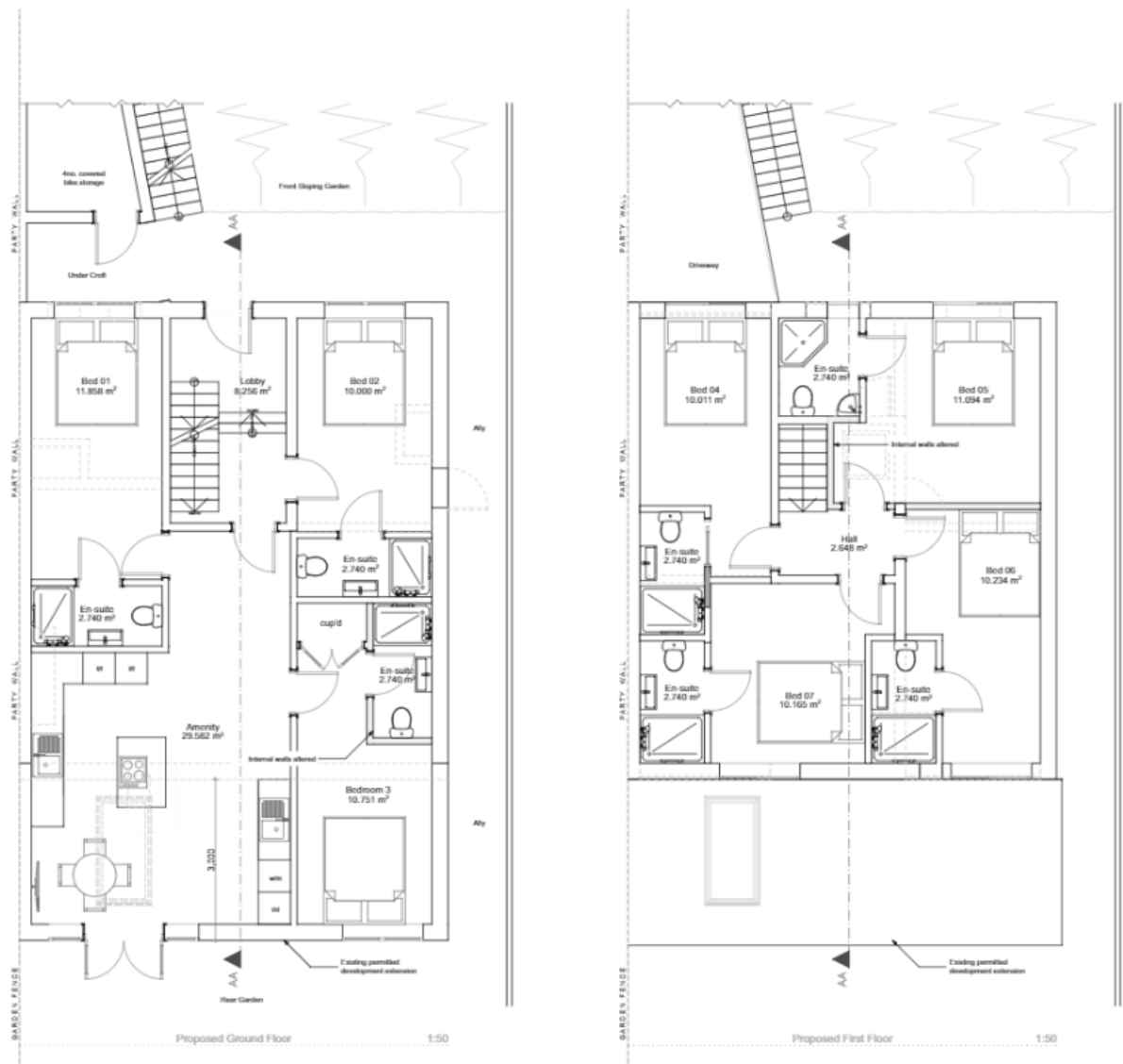
5.0 COMMENT

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site has already been granted planning permission for use as an HMO and the application has been made to seek an alternative internal layout allowing 7 occupants rather than 6, an increase in occupation by 1 occupant compared to that granted under the 2022 dual use planning permission. This minor change in occupancy 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 approved the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 2 HMOs out of 25 properties, a percentage of 8%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this

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

- 5.5 A HMO License for 7 persons is currently pending at this site at the time of writing this report.
- 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	11.858m ²	6.51m ²
Bedroom 2	10.000m ²	6.51m ²
Bedroom 3	10.751m ²	6.51m ²
Bedroom 4	10.011m ²	6.51m ²
Bedroom 5	11.094m ²	6.51m ²
Bedroom 6	10.234m ²	6.51m ²
Bedroom 7	10.165m ²	6.51m ²
Ensuite 1	2.74m ²	2.74m ²
Ensuite 2	2.74m ²	2.74m ²
Ensuite 3	2.74m ²	2.74m ²
Ensuite 4	2.74m ²	2.74m ²
Ensuite 5	2.74m ²	2.74m ²
Ensuite 6	2.74m ²	2.74m ²
Ensuite 7	2.74m ²	2.74m ²
Combined Living Space	29.582m ²	22.5m ² (as all bedrooms are over 10m ²)



- 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. The HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m²) for combined living accommodation in circumstances where all bedrooms are at least 10m² and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

Amenity and Parking

- 5.8 The proposal would increase the occupancy of the existing approved HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area. Compared to the existing, alternative C3 use more activity would again be expected, but not at a level that can objectively be described as resulting in demonstrable adverse effect.
- 5.9 Similarly the minor increase of approved occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has

the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more 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 a permission for a 6 bed HMO is in the process of being implemented. While the site remains in lawful C3 use at the time of concluding this recommendation it is recognised that the change of use to a six bed HMO, in use class C4 can occur at any point. When compared to that use, the addition of only 1 occupant would not be 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 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.

5.12 In the circumstances of the case the subject of this report it must first be noted that it is considered that the existing lawful use is within use class C3 and the proposed change of use to a 7 bedroom HMO is considered to be a material change of use that requires planning permission. For the avoidance of doubt, as discussed above that change of use is considered to fully comply with the Council's Development Plan. However weight can also be given to the fact that it is considered that the increase in occupancy to seven occupants, subsequent to a commencement of the current permission for a 6 bed HMO, is not considered to result in a significant difference in the character of the activities that would occur. As such it is considered that such a change of use would not be material and planning permission would not be 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 use proposed in this application, albeit through implementation of the intervening steps of the current permission, without the benefit of further Planning Permission.

5.13 In addition 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 bedspaces of occupation within the dwelling. 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 relatively 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.

5.15 Impact on Special Protection Areas

- 5.16 Changing the use of the premises from a C3 dwelling to a 7 bed HMO will result in an increase in occupancy which will have an adverse impact on the Solent Special Protection Area and cause an increase in nitrate output and therefore a condition should be applied requiring mitigation to be secured.

6.0 CONCLUSION

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. As the application itself, notwithstanding any weight that should be given to potential alternative routes to allowing a similar occupation, requires planning permission it is recommended that permission be granted subject to the imposition of conditions requiring implementation of the additional occupancy within 3 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 Grant conditional permission

Conditions:

1) Time Limit

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

2) Approved Plans

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: Sui Gen Plans PG.6180.21.6 Rev A, TQRQM22306133813088.

3) Cycle Storage

Prior to the occupation of the dwelling as a HMO for 7 persons, secure and weatherproof cycle storage for four or more bicycles shall be provided as shown on the approved plans and retained thereafter for the storage of bicycles. The storage shall accord with Permitted Development rights.

4) Mitigation - Special Protection Areas

(a) The development hereby permitted shall not be occupied/brought into use until a scheme each for the (i) mitigation of increased recreational disturbance resulting from an increased population within 5.6km of the Solent Special Protection Areas; and (ii) for an increase in nitrogen levels within the Solent water environment have been submitted to and approved in writing by the Local Planning Authority; and

(b) The development shall then be carried out in full accordance with both schemes of mitigation approved pursuant to part a) of this condition with any mitigation measures for (ii) thereafter permanently retained as approved.

5) Water Efficiency

The proposal hereby permitted shall not (unless otherwise agreed in writing with the LPA) be occupied until written documentary evidence has been submitted to and approved in writing by the Local Planning Authority demonstrating that the development has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)b of the Building Regulations (2010) (as amended). Such evidence shall be in the form of a post construction water efficiency calculator.

The reasons for the conditions are:-

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To provide adequate cycle storage in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.
- 4) In the interest of mitigating harm arising from recreational disturbance of wading birds as a result of new residential accommodation in the Solent SPA, and the increase of output of nutrients into the Solent in accordance with the Habitats Regulations and Policy PCS15 of the Portsmouth Plan.
- 5) To ensure that the development complies with PCS15 of the Portsmouth Plan and does not exceed the scope of Nitrate Mitigation Credits purchased.

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Agenda Item 16

23/00524/FUL

WARD:CENTRAL SOUTHSEA

30 TELEPHONE ROAD SOUTHSEA PO4 0AY

CHANGE OF USE FROM 6-BED/6-PERSON HOUSE IN MULTIPLE OCCUPATION TO A 7-BED/7-PERSON HOUSE IN MULTIPLE OCCUPATION

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RTMLSTMOIDL00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RTMLSTMOIDL00)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Mr Nick Rowe
NJR Accommodation Ltd

RDD: 25th April 2023

LDD: 4th July 2023

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee due to 1 objection as well as the request of Councillor Vernon-Jackson

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

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

1.3 Site and surroundings

1.3 The application site is a two storey (with loft conversion providing 2nd floor accommodation), mid-terrace detached dwellinghouse located on the southern side of Telephone Road. This property comprises a kitchen/dining room, shower room (with WC and hand basin), lounge and bedroom at ground floor level, two bedrooms and a shower room (with WC and hand basin) at first floor level, and two bedrooms, a shower room (with hand basin) and a WC (with hand basin) within a loft conversion at second floor level.

1.4 The Proposal

1.5 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 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. Plans indicate that all bedrooms will be single occupancy.

1.6 Planning History

1.7 14/00953/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) - Approved 18.09.2014.

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 Updated Nutrient Neutral Mitigation Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 CONSULTATIONS

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.
- 3.2 Highways: An additional bedroom would not result in any significant impact on the highway safety or function and therefore no objection would be raised

4.0 REPRESENTATIONS

- 4.1 1 letter of representation received objecting on the following summarised grounds:
- Increase in waste & inadequate bin storage facilities.
 - Too many larger HMOs within the area already
 - Undue strain on local services and infrastructure, including the sewage, drainage and Doctors/Dentists
 - Lack of car parking provision leading to an increase in traffic and exacerbation of existing on-street parking problems.

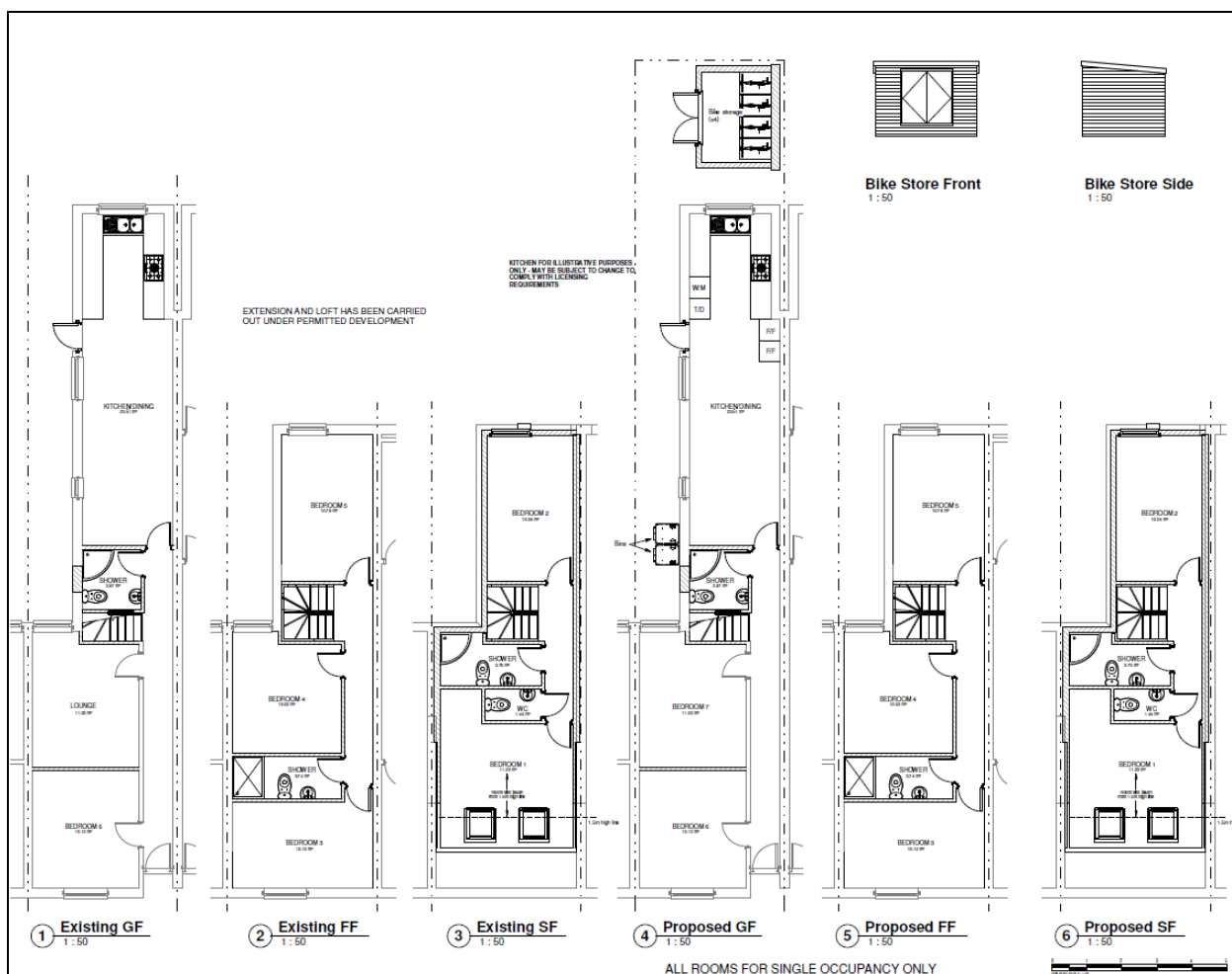
5.0 COMMENT

- 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 39 HMOs out of 84 properties, a percentage of 46.4%. This proposal of course has no effect on that percentage and the small increase in occupancy is not considered to materially affect the local community balance. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they

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

- 5.5 The property is not currently licenced as an HMO - an application has been made for a licence for 7 people, but this has not yet been granted as the property is still in the process of being verified. The application was submitted on the 28th of March 2023. The HMO Licensing history is as follows: -
- Licensed for 4 persons 5/1/2015 - 27/8/2018.
 - Licensed for 5 persons 3/12/2018 - 18/1/2023.
- 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	11.23m ²	6.51m ²
Bedroom 2	10.24m ²	6.51m ²
Bedroom 3	10.12m ²	6.51m ²
Bedroom 4	10.02m ²	6.51m ²
Bedroom 5	10.78m ²	6.51m ²
Bedroom 6	10.12m ²	6.51m ²
Bedroom 7	11.03m ²	6.51m ²
Combined Living Space	23.61m ²	34m ² / 22.5m ²
GF Shower Room (With WC and Hand Basin)	2.87m ²	2.74m ²
FF Shower Room (With WC and Hand Basin)	3.74m ²	2.74m ²
SF Shower Room (With WC and Hand Basin)	3.75m ²	2.74m ²
WC (with Hand Basin)	1.44m ²	1.17 m ²



1 Existing and Proposed Floor Plans

5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards. The HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m²) for combined living accommodation in circumstances where all bedrooms are at least 10m² and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment

5.8 Amenity and Parking

5.9 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.

5.9 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. It can be noted that the last licence for the property was for 5 occupants, suggestive of the fact that the last lawful use was as a five person HMO. If that is the case the proposed increase would be 2 rather than 1. However on the merits of the proposal this equally is not considered to be material. 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.

5.15 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