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# NOTICE OF MEETING

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## PLANNING COMMITTEE

WEDNESDAY, 13 SEPTEMBER 2023 AT 10.30 AM

## COUNCIL CHAMBER - THE GUILDHALL

Telephone enquiries to Democratic Services 023 9283 4060

Email: [Democratic@portsmouthcc.gov.uk](mailto:Democratic@portsmouthcc.gov.uk)

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

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### 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, Matthew Atkins, George Fielding, Lewis Gosling, Ian Holder, Mark Jeffery, Steve Pitt, Darren Sanders, Russell Simpson and Daniel Wemyss

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

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

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

## AGENDA

- 1 Declaration of Members' Interests
- 2 Apologies
- 3 Minutes of the Previous Meeting held on 23 August 2023 (Pages 5 - 16)

- 4      **22 Montgomerie Road, Southsea PO5 1ED - 22/01658/FUL**      (Pages 17 - 22)  
**Change of use from 6 bedroom house in multiple occupation (Class C4) to 7 bedroom house in multiple occupation (Sui Generis). (Resubmission of 21/01733/FUL)**
- 5      **253 Powerscourt Road, Portsmouth PO2 7JJ - 23/00196/FUL**      (Pages 23 - 28)  
**Change of use from A purpose falling within dwellinghouse (Class C3) to a 7 person/7 BEDROOM house in multiple occupation (Sui Generis) [NOTE Change of Description]**
- 6      **32 Margate Road, Southsea PO5 1EZ 21/00489/FUL**      (Pages 29 - 34)  
**Change of use from house in multiple occupation (Class C4) to 7 person/7 bedroom house in multiple occupancy (Sui Generis).**
- 7      **33 Darlington Road, southsea PO4 0ND - 23/00207/FUL** (Pages 35 - 40)  
**Change of use from house in multiple occupation (Class C4) to 7 person/7 bedroom house in multiple occupation (Sui Generis)**
- 8      **49 Cleveland Road, southsea PO5 1SF - 20/00748/FUL**      (Pages 41 - 46)  
**Change of use from house in multiple occupation (Class C4) to 7 person/7 bedroom house in multiple occupancy (Sui Generis). (Amended Description)**
- 9      **49 St Pirans' Avenue, Portsmouth PO3 6JE - 23/00736/FUL**      (Pages 47 - 54)  
**Change of use from a Class C3 dwellinghouse to a 7-bed/7-person House in Multiple Occupation**
- 10     **55 Bedhampton Road, Portsmouth PO2 7JX** (Pages 55 - 60)  
**Change of use from purposes falling within dwellinghouse (Class C3) to 7 bedroom house in multiple occupation (Sui Generis) [Note change of description]**
- 11     **78 Stubbington Avenue, Portsmouth PO2 0JG - 23/00363/FUL**      (Pages 61 - 66)  
**Change of use from house in multiple occupation (Class C4) to seven**

**person house in multiple occupation (Sui Generis)**

- 12**     **27 Down End Road, Portsmouth PO6 1HU - 23/00788/HOU** (Pages 67 - 68)

Construction of extension to existing front porch.

- 13**     **114 Queens Road, Portsmouth**

Report to follow

Change of use from purposes falling within dwellinghouse (Class C3) to 7 bedroom house in multiple occupation (Sui Generis) [note change of description]

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# Agenda Item 3

## PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held on Wednesday 23 August 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  
Lee Hunt  
Peter Candlish  
Raymond Dent  
Asghar Shah  
John Smith  
Mary Vallely  
Gerald Vernon-Jackson CBE

### Also present:

Councillor Benedict Swann  
Councillor Russell Simpson

### Welcome

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

### Guildhall, Fire Procedure

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

### 108. Apologies (AI 1)

Apologies had been received from Councillors Hannah Brent and Judith Smyth. Councillors Gerald Vernon Jackson and Asghar Shah apologised that they would have to leave for other meetings at 12.30pm.

The meeting was adjourned for a short break at 12.32pm and recommenced at 12.38pm.

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

There were none.

### 110. Minutes of the previous meeting held on 2 August 2023 (AI 3)

**RESOLVED** that the minutes of the Planning Committee meeting held on 2 August 2023 be agreed as a correct record.

### Planning Applications

The Supplementary Matters report (SMAT) and the deputations (which are not minuted) can be viewed on the council's website at [Agenda for Planning Committee on Wednesday, 23rd August, 2023, 10.30 am Portsmouth City Council](#)

The Chair altered the order of the agenda to hear the items as follows:

Item 5 - 23/00676/FUL 61 St Chads Avenue, Portsmouth PO2 0SD

Item 6 - 23/00322/FUL 27 Queens Road, Fratton, Portsmouth PO2 7LT

Item 7 - 23/00097/FUL 76 Oriel Road, Portsmouth PO2 9EQ

Item 9 - 23/00640/FUL 57 Northern Parade, Portsmouth PO2 9PD

Item 4 - 23/00547/FUL 52 Beaulieu Road, Portsmouth PO2 0DN

Item 8 - 23/00551 47 Belgravia Road, Portsmouth PO2 0DX

Item 10 - 23/00571/FUL 7 Magdala Road, Portsmouth PO6 2QG

Item 11 - 23/00690/FUL Unit 14 Fitzherbert Spur, Portsmouth PO6 1TT

The minutes remain in the order of the published agenda.

#### **111. 23/00547/FUL 52 Beaulieu Road, Portsmouth PO2 0DN (AI 4)**

Change of use from a Class C3 dwellinghouse to a 7-bed/7-person House in Multiple Occupation.

The Interim Head of Development Management introduced the officer's report and drew Members' attention to the Supplementary Matters Report which included an objection from Councillor Daniel Wemyss, set out in Appendix 1 of the SMAT. There was no change to the officer's recommendation.

### Deputations

Deputations were made by Mike Russell (objecting) and Carianne Wells (Agent) who spoke in support of the application.

### Members' questions

In response to Members' questions, officers clarified:

- Guidance on HMOs for the Committee is set out in the HMO Supplementary Planning Document (SPD) and this includes details of what comprises a shared or communal space.
- The guidance does not include details such as the space taken by units and appliances in a kitchen and is based on room size only.
- The Committee may take a view on the configuration and use of the communal space, which in this case exceeds the council's space standard.
- The Planning Department errs on the side of caution when counting HMOs within 50 metres of an application site, by using three data sources and investigating any alleged further HMOs identified by neighbours or councillors.
- In the current HMO SPD, a combined living space (communal area) is defined as, "a single, typically open plan space, usually containing a kitchen, dining area and living area, laundry and utility space".

Members' comments

- Councillor Hunt moved refusal as he was concerned about the combined living space, suggesting that kitchens are not communal; that once the space taken by kitchen units and appliances is taken into account the communal space did not meet the council's space standards and the Planning Inspector has agreed layout is a factor in the past.

Councillor Gerald Vernon-Jackson commented that he had sympathy with this point but believed the council's policy includes kitchens as communal spaces. He noted that the SPD could be more specific in relation to communal spaces. It was agreed that officers be asked to review the definition of communal space during the development of the Local Plan.

Councillor Gerald Vernon-Jackson, as Cabinet Member for Transport, commented that some Members of the Planning Committee have remarked on comments expressed by the highways officer in planning reports. He suggested that an informal meeting be set up with transport officers to discuss these, and this was agreed.

**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 and conditions (set out in the officer's report)**
- 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.**

**112. 23/00676/FUL 61 St Chads Avenue, Portsmouth PO2 0SD (AI 5)**

Change of use from dwellinghouse (Class C3) to 7-bed/7-person House in Multiple Occupation.

The Interim Head of Development Management introduced the officer's report and drew Members' attention to the Supplementary Matters Report which included late comments including an objection from the Battenburg Child Development Centre and Councillor Benedict Swann. Comments had also been received from Councillor Daniel Wemyss and were included as Appendix 1 to the Supplementary Matters Report. There was no change to the officer's recommendation as the changes to the application were minor and did not require further consultation.

### Deputations

Deputations were made by John Mallory and Karen Mckeown (objecting). John Stait had been due to make a deputation but did not speak as the time allowed for objections had been exceeded. Councillors Benedict Swann and Russell Simpson, who had called in the application, made deputations objecting. Carianne Wells (Agent) made a deputation in support of the application. Councillor Benedict Swann circulated a photograph submitted by John Stait to members of the Committee (but not to the Planning Officer or Legal Officer) and read a statement from Councillor Daniel Wemyss relating to flood risk in the vicinity of the property.

### Members' questions

In response to Members' questions, officers clarified:

- The extension and other building work to the property is being undertaken as permitted development and would therefore be allowed whether for a family home or HMO.
- Permitted development may take place even if it has an impact on neighbours and concerns relating to bulk, sense of enclosure, overlooking or loss of light are not therefore for consideration by the Committee.
- Some windows do need to be frosted or of a certain size if on the side of a property, but this is not the case for this application as the windows are on the back of the house and in any event are not of concern as there is already overlooking from other windows.
- Some other councils have a policy relating to distance separation for windows, Portsmouth does not.
- The application only relates to change of use to an HMO by 7 persons, not the 14 persons alleged in the Deputations.

The Interim Head of Development Management confirmed that:

- The Committee should not consider the impact of permitted development in its decision making.
- The Planning Inspector does not give weight to the *number* of objections but will take material objections into account before making a judgment.
- The officers' view is that parking is not a reason to refuse as a family home could have a similar level of car ownership and use and the highways officer sees no difference between parking demand for family use and HMO usage.
- The Planning Committee may take account of concerns relating to flood risk associated with sewerage, although water usage by a 7 person household may not be greater than a family with small children.
- In any event, the water supplier must provide adequate services and this falls outside the planning regime.
- There have been two instances of a house collapse in the last year, from recollection one due to poor building work and one because of a gas leak.
- Building work at the property will be monitored by the building control department.
- The information on the number of HMOs within 50 metres comes from three data sources plus information from ward Councillors and residents. It is



therefore as reliable as possible, and it is unlikely that there are any unknown HMOs in the area.

- This is a small scale development and unlike large developments where drainage and flood risk may be relevant, it is unlikely to be material in this case although every application must be determined on its own merits.

#### Members' comments

- Members noted that permitted development rules give little opportunity for the Committee to refuse an application and that Portsmouth City Council has some of the strongest HMO standards on the south coast.
- The proposal to change this property to a 7-bedroom property will add to the pressure on water and sewerage services and increase flood risk.
- Some Members considered deferral to get more information from Southern Water about the potential for increased localised flood risk.

The Interim Head of Development Management commented that planning applications may bring in issues dealt with by other regimes, for example structural issues are dealt with by building control. It is *ultra vires* for planning to be involved with drainage as this is the responsibility of Southern Water. He noted that, at appeal, most applicants do not seek costs. However, imposing conditions or refusing this application because of flood risk would, in his professional opinion, lead to the appeal being dismissed and a cost claim awarded against the council.

The Interim Head of Development Management offered his professional opinion that deferring would not produce information that would have any bearing on the decision.

A proposal to refuse the application for planning permission was put forward and seconded. The vote was taken, and the motion passed.

A proposal to defer the application was put forward and seconded but it was not necessary to vote on the motion.

#### **RESOLVED to refuse permission.**

- 1) **It is not considered that there is adequate capacity available for drainage resulting from the proposed occupation of the site, nor details to provide confidence to the Council that additional capacity will be provided prior to occupation, resulting in an unacceptable reduction to the level of foul water disposal service and local surface water flood risk contrary to Policy PCS12 (flood risk) of the Portsmouth Plan 2012.**
- 2) **The proposed development would result in a significant effect on the Solent Special Protection Areas, through additional recreational pressures and nitrates, with mitigation against these impacts 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).**

**113. 23/00322/FUL 27 Queens Road, Fratton, Portsmouth PO2 7LT (AI 6)**

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

The Interim Head of Development Management introduced the officer's report noting that the application meets room standards, and its layout is considered satisfactory.

Deputations

A deputation was made by Tri Tran objecting. Councillor Benedict Swann made a deputation on behalf of a resident, Matthew Whealan, who was unable to attend the meeting. Simon Hill (Agent) spoke in support of the application.

Councillor Gerald Vernon-Jackson left the meeting at 12.20pm and took no part in this item.

Members' questions

In response to Members' questions, officers clarified that the application meets the council's space standards.

Members' comments

Members noted that Portsmouth has some of the strictest space standards for HMOs, that HMOs are strictly licenced and there were no grounds for refusal.

Councillor Asghar Shah left the meeting at 12.29pm, before the vote.

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

**114. 23/00097/FUL 76 Oriel Road, Portsmouth PO2 9EQ (AI 7)**

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

The Interim Head of Development Management introduced the officer's report and confirmed the application met the council's space and layout standards and was therefore deemed acceptable. He drew Members' attention to the Supplementary Matters Report which included comments by Councillor Daniel Wemyss, included in Appendix 1 of the SMAT. There was no change to the officer's recommendation.

Deputations

A deputation was made by Carianne Wells (Agent) in support. Councillor Russell Simpson made a deputation on the application.

Members' questions

In response to Members' questions, officers clarified:

- Crime and anti-social behaviour may be considered in the round when considering an application, but Members should not draw the conclusion that every HMO will bring anti-social behaviour.
- It is not believed to be a contravention of building regulations to locate a WC and shower directly off a kitchen.
- The Study does not have direct access to an ensuite shower room.
- There is no information available to indicate whether the Applicant would seek to turn the Study into a bedroom in the future.

Councillor Gerald Vernon-Jackson returned to the meeting at 12.50pm and took no part in the voting on this item as he had not been present for the officer's presentation.

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

**115. 23/00551 47 Belgravia Road, Portsmouth PO2 0DX (AI 8)**

Change of use from a Class C3 dwellinghouse to a 7- bed/7 person House in Multiple Occupation.

The Interim Head of Development Management introduced the officer's report and drew Members' attention to the Supplementary Matters Report which included comments by Councillor Daniel Wemyss which were set out in Appendix 1. There was no change to the officer's recommendation.

Deputations

A deputation was made by Carianne Wells (Agent) in support of the application.

Members' questions

In response to Members' questions, officers clarified that:

- The submitted plans provided an indicative layout for the kitchen which included a double sink and 4-ring hob and that the tank room is on the first floor.
- Bikes would need to be wheeled through the house, including the kitchen, and that the Planning Inspector has tended to note that this takes just a few moments before people settle back down to their activities.

Members' comments

Some members expressed concern about the size of the kitchen and felt that it was more appropriate for a small family rather than a household of 7 adults.

The Legal Advisor noted, and the Interim Head of Development Management agreed, that the Licensing regime has strict standards relating to numbers of cookers and other appliances for HMOs. The Applicant also indicated that these regulations were very strict. The Interim Head of Development Management confirmed that the application complied with the council's space standards, including in relation to the communal space.

**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.

**116. 23/00640/FUL 57 Northern Parade, Portsmouth PO2 9PD (AI 9)**

Change of use from a Class C3 dwellinghouse to a 7-bed/7-person House in Multiple Occupation.

The Interim Head of Development Management introduced the officer's report and drew Members' attention to the Supplementary Matters Report which included a correction to paragraph 8.8 of the officer's report. Comments by Councillor Daniel Wemyss were included in Appendix 1 of the SMAT. There was no change to the officer's recommendation.

Deputations

A deputation was made by Carianne Wells (Agent) in support of the application. Councillor Russell Simpson made a deputation.

Members' questions

In response to Members' questions, officers clarified that changing the use of the sitting room previously approved to a bedroom would result in a loss of communal space but that the application nonetheless complied with the council's space standards.

Members' comments

Some Members felt that this application reflected unmitigated greed by the developer. However, it was agreed that the rooms, including the communal area, are larger than required, that the application is of high quality and the Applicant had said it would be well executed. Members also considered that unlike other HMO applications, this one had usable bike storage.

Councillor Lee Hunt commented that he did not accept that the kitchen should be included as communal space.

The Interim Head of Development Management advised Members that this application must be considered on own merits and should not be considered with other, or previous, applications in mind. He also verbally corrected the percentage of HMOs resulting in the 50m radius.

A proposal to approve the application as set out in the officer's report was put forward and seconded. The vote was taken, and the motion passed.

A proposal to refuse the application was put forward and seconded but it was not necessary to vote on the motion.

**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;**
  - 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. and conditions (set out in the officer's report)**
- 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.**

**117. 23/00571/FUL 7 Magdala Road, Portsmouth PO6 2QG (AI 10)**

Change of use from a Class C3 dwellinghouse to a 7-bed/7-person House in Multiple Occupation.

The Interim Head of Development Management introduced the officer's report, noting that the presentation showed the correct configuration of the dormer extension.

Deputations

A deputation was made by Carianne Wells (Agent) in support of the application.

Members' questions

There were none.

**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 and conditions (set out in the officer's report).
- 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.

- 118. 23/00690/FUL Unit 14 Fitzherbert Spur, Portsmouth PO6 1TT (AI 11)**  
Installation of 2.4m high mesh wire fence with gates and soft landscaping fronting Hardy Road (amended description).

The Interim Head of Development Management introduced the officer's report.

Members' questions

In response to Members' questions, officers clarified that access to the site would be through two gates.

Members' comments

Some Members commented that officers had done well to seek a change to the materials for the fence as the wire mesh fence would be harder to climb and residents would be able to see new landscaping planted inside the perimeter. Councillor Gerald Vernon-Jackson felt that rubbish would build up inside the fence, would be visible and become an eyesore.

A proposal to grant permission for the application as applied for was put forward and seconded. The vote was taken, and the motion passed.

A proposal to refuse the application was put forward but was not considered as it was not seconded and the motion to grant permission had been passed.

**RESOLVED: to approve the application subject to conditions set out in the officer's committee report.**

**119. Update on the St James's Hospital Inquiry**

At the beginning of the meeting, the Chair invited the Interim Head of Development Management to provide members of the Planning Committee with an update on the St James's Hospital Inquiry. The Interim Head of Development Management informed Members that the decision on the appeals for non-determination by the Council had now been received and the appeals for the two applications had been allowed. Therefore, planning consent and listed building consent has been granted. The government Inspector had noted the Committee's concerns relating to the loss of trees and green space but felt that this was outweighed by the benefits of 209 additional dwellings helping to meet housing need in the city as well as productive re-use helping to protect listed buildings.

In response to a question from a Member, the Interim Head of Development Management informed the Committee that the developer had not sought costs against the Council and the Inspector had not imposed costs unilaterally.

Councillor Gerald Vernon-Jackson commented that this was a sad decision by the government Inspector and was not in line with residents' wishes. It would result in the loss of 50 protected trees and, notwithstanding the addition of 209 new homes, the development would provide no affordable housing for local people. He commented further that the Inspector had overruled the Planning Committee again and that local people would have to cope with adverse effects of the decision.

Councillor Lee Hunt commented that Members should continue to make decisions it considers to be right, and not be scared by concerns of costs being imposed at appeal.

The meeting concluded at 2.12pm.

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Signed by the Chair of the meeting  
Councillor Chris Attwell

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# Agenda Item 4

22/01658/FUL

WARD: ST THOMAS

22 MONTGOMERIE ROAD SOUTHSEA PO5 1ED

CHANGE OF USE FROM 6 BEDROOM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO 7 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS). (RESUBMISSION OF 21/01733/FUL)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RM4524MOFOP00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RM4524MOFOP00)

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Mr Birmingham  
Bunked

**RDD:** 30th November 2022

**LDD:** 25th January 2023

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson.
- 1.2 The main issues for consideration in the determination of the application are as follows:
  - Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.3 Site and surroundings
- 1.4 The application site is a two-storey mid-terrace 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 an HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms (a ground floor lounge will be converted into a bedroom) but no external operational development forms part of this application.
- 1.7 An appeal against the non-determination of this application has been submitted by the applicant, but has not yet started. The authority to determine the application therefore remains with the Council.

### Planning History

- 1.8 21/01733/FUL: Change of use from house in multiple occupation (Class C4) to House in multiple occupation for more than 6 persons (Sui Generis). Committee Refusal (01.06.2022). Reasons for refusal:
- 1.9 *1. The proposal is considered to be development requiring planning permission due to the intensity of the use of the accommodation, the impact on parking, waste, amenity impact upon neighbouring residents and the impact on the solent special protection area.*

Furthermore:

*On balance the proposed development would give rise to a poor quality living environment for existing and future occupiers of the property due to the insufficient provision of communal living space, having regard to the shortfall of bedroom 6 and bedroom 7. This would be contrary to Policy PCS23 (Design and Conservation) of the Portsmouth Local Plan (2012).*

*2. It has been identified that any residential development in the city will result in a significant effect on the Solent Special Protection Areas, through additional nutrient output; with mitigation against these impacts being required. No mitigation measures have been secured and, until such time as this has been provided, the proposal would have a significant detrimental impact on the Special Protection Areas; contrary to Policy PCS13 of The Portsmouth Plan 2012, the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981, and Section 15 of the NPPF 2021.*

- 1.10 This decision was appealed, and the appeal dismissed (APP/Z1775/W/22/3297557). It is noted that the inspector did not comment on the whether the change of occupation resulted in development requiring Planning Permission, specifically stating "*However, whether or not a material change of use has occurred is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990 (as amended)*". The appeal was dismissed but only due to a failure to mitigate against increase impact on the SPA, with his concluding comments being "*Whilst I have found that **the development provides satisfactory living conditions for existing and future occupiers**, this does not outweigh the conflict which I have identified with the development plan and the Habitats Regulations. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.*"
- 1.11 21/01246/FUL: Change of use from Class C4 (House in Multiple Occupation) to purposes falling within Class C3 (Dwellinghouse) or Class C4 (House in Multiple Occupation). Conditional Permission (22.11.2021).

## **2.0 POLICY CONTEXT**

- 2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in Multiple Occupation and PCS23 (Design and Conservation).
- 2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document (2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The 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 None received.

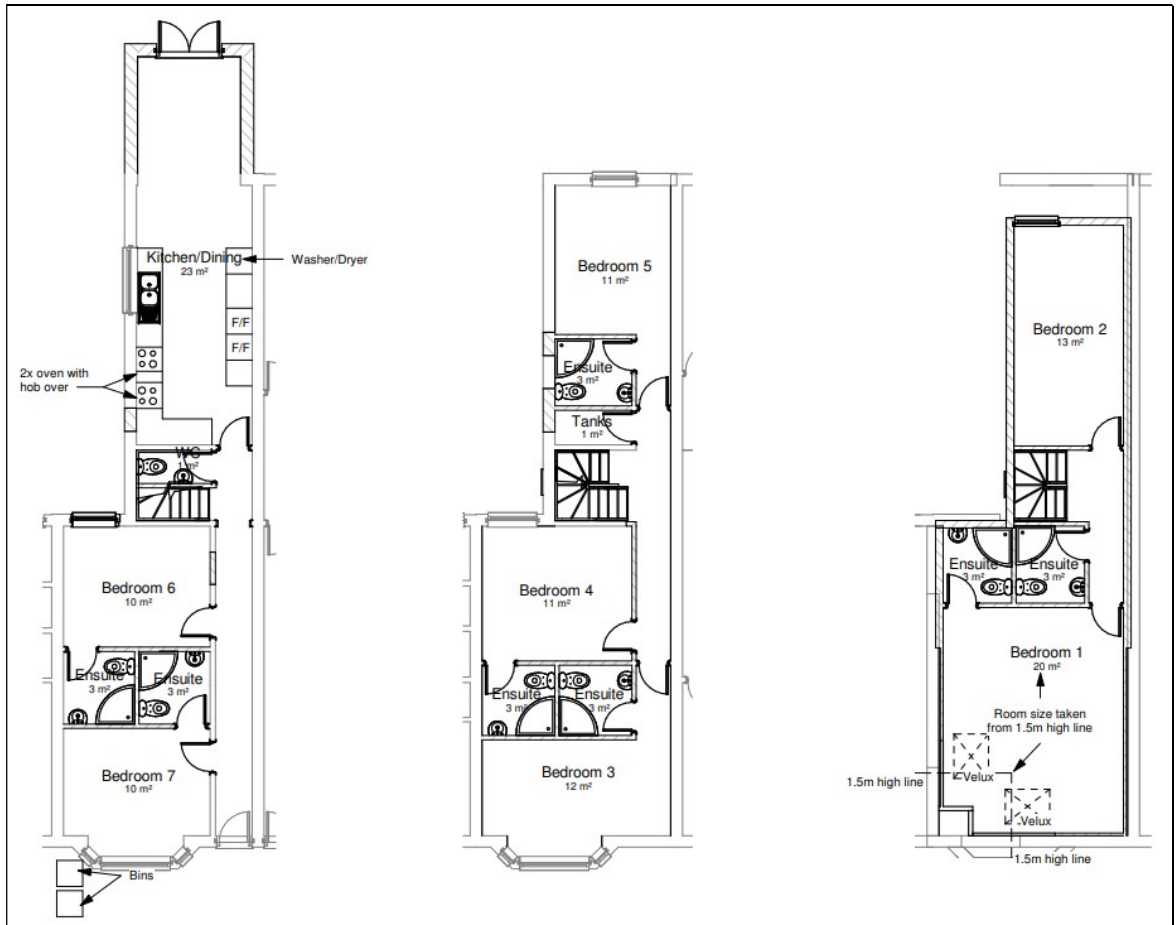
## **5.0 COMMENT**

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

## 5.2 Principle

- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 32 HMOs out of 80 properties, a percentage of 40%. This proposal of course has no effect on that percentage and the single additional occupant is not considered to have a material adverse impact on amenity at this dwelling. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	15.8m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B1	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	13.2m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B2	2.9m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	12m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B3	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	11m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B4	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	11m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B5	2.75m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	9.5m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B6	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	9.6m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B7	2.75m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	23m <sup>2</sup>	22.5m <sup>2</sup>
GF WC	1.3m <sup>2</sup>	1.17m <sup>2</sup>



5.6 As mentioned above the proposal has already been to appeal and while the internal living conditions did make one of the Council's previous reason for refusal, the Inspector disagreed with this judgement and stating that they were "*satisfied that the development provides satisfactory living conditions for the occupiers of the premises*". On the basis of the information supplied within the application and the previous appeal decision, the resulting layout is considered to result in a satisfactory standard of living environment.

5.7 Amenity and Parking

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

5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more 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 s77 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. This is of course the case on this site when the committee previously determined that permission was required for this proposal. Members can note that the 'Lane' appeal decisions of 9 March 2023 were against three similar 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. Consideration to the previous, June 2022, decision of the planning committee at this site has been given, but the weight given to it by professional officers particularly noting the commentary from an inspector in the 'Lane' appeal decisions in March 2023 is very limited. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.
- 5.14 Should it be considered necessary to assess the merits of the application, notwithstanding the advice of Officers' above, the Committee's attention is drawn to the current 5 year housing land supply position within Portsmouth. In any planning application, the decision-maker will need to 'balance' any harms identified due the development against any benefits also arising. Principally, for this HMO application, the benefits are to the provision of housing through the provision of additional bedspace of occupation within the HMO. While this is a small contribution to the overall housing stock, the Council currently is unable to identify a 'five year supply' of housing, with only a 2.9 year supply currently identifiable. In this circumstance, the Council is directed to consider that the policies which are most important to determinations associated with housing provision within the Local Plan are out of date. The consequence of this is that decision takers are directed to apply a tilted balance to determinations so that permission is only withheld when the adverse impacts '*...significantly and demonstrably outweigh the benefits...*'. Any harm associated with the increase in occupancy in this area are considered to be insignificant and therefore fall short of being able to significantly and demonstrably outweigh even the small benefit to the city's housing stock of the provision of bedspaces, should such assessment be considered necessary.

5.15 It is not considered that the addition of one additional occupant would result in a significant impact on the drainage/sewage system

5.16 Impact on Special Protection Areas

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

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

# Agenda Item 5

23/00196/FUL

WARD: COPNOR

253 POWERSCOURT ROAD PORTSMOUTH PO2 7JJ

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RQ0IH WMOH2100](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RQ0IH WMOH2100)

**Application Submitted By:**

Mr Carl Leroy-Smith  
Carl Architect Ltd

**On behalf of:**

Mr Andrew Tindall  
Destination South

**RDD:** 14th February 2023

**LDD:** 11th April 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 two-storey end-of-terrace 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 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 three adverse representations.

### 1.7 Planning History

1.8 22/01606/FUL: Change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwellinghouse) and Class C4 (house in multiple occupation). Conditional Permission (07.02.2023).

1.9 22/00086/GPDC: Construction of single storey rear extension extending 6m beyond the rear wall, with a height of 3m to the eaves and a maximum height of 3.55m. Prior-Approval not required (17.11.2022)

## **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 3 representations have been received in response to the application (including one from Cllr Swann) raising objection on the following grounds:

- a) Additional strain on drainage;
- b) Impact on parking;
- c) Waste and rubbish;
- d) Loss of family home;
- e) Number of similar developments along the street;
- f) Proliferation of HMO in the area; and
- g) Increased noise and disturbance.

## **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.

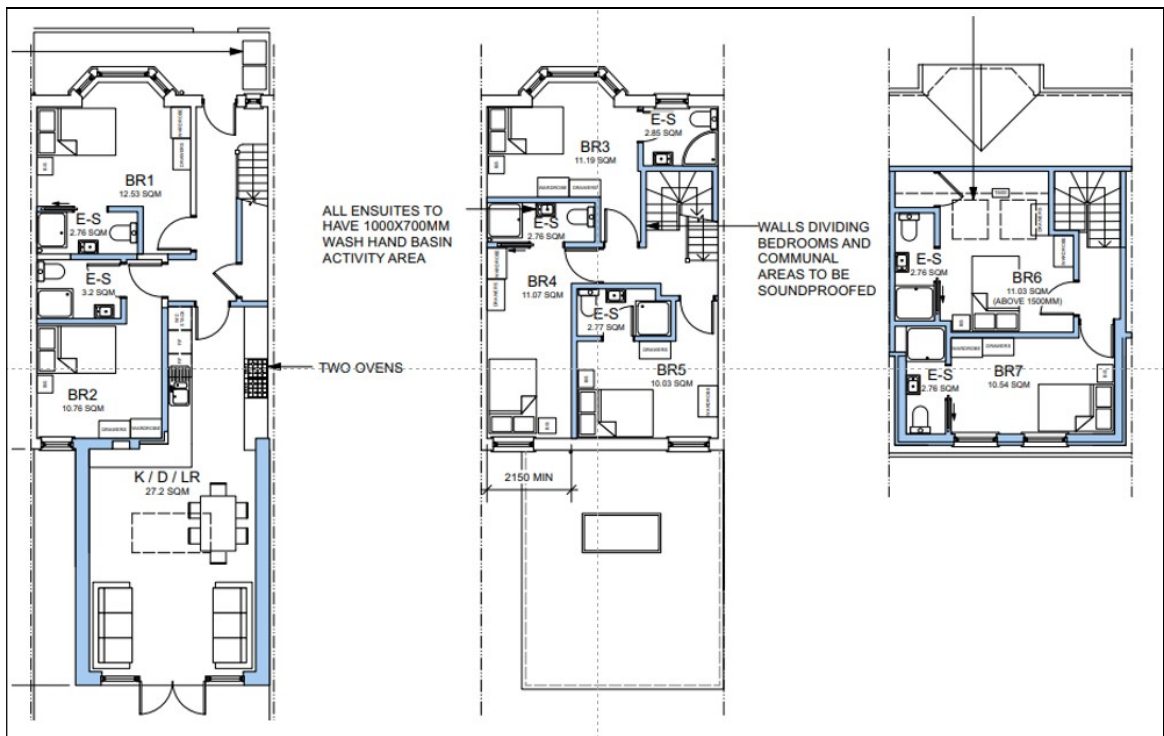
5.4 In this case the application site has already been granted planning permission for use as an HMO and the application has been made to seek an alternative internal layout allowing 7 occupants rather than 6, an increase in occupation by 1 occupant compared to that granted under the 2022 dual use planning 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 6 HMOs out of 69 properties, a percentage of 8.69%. This proposal of course has no effect on that percentage and in any case a single additional occupant is not considered to have a material impact on amenity at this site. 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 When compared to the fall-back C4 permission 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	12.53m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B1	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	10.76m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B2	3.2m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	11.19m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B3	2.77m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	11.07m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B4	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	10.03m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B5	2.85m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	11.03m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B6	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	10.54m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B7	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	27.2m <sup>2</sup>	22.5m <sup>2</sup>



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

5.8 Amenity and Parking

5.9 The proposal would increase the occupancy of the existing 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 described as resulting in demonstrable adverse effect.

5.10 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 further incremental addition

of only 1 occupant would not be considered to amount to a material change in the use of the dwelling. 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. 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 lawful carry out the use proposed in this application, albeit though 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 a likely 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 I** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to:

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

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

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

**Conditions:**

**1) Time Limit**

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.

**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.

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

**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.

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

**4) 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.

Reason: To ensure that the development complies with PCS15 of the Portsmouth Plan and does not exceed the scope of Nitrate Mitigation Credits purchased.

# Agenda Item 6

21/00489/FUL

WARD:ST THOMAS

32 MARGATE ROAD SOUTHSEA PO5 1EZ

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QQUA86MOHX400](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qqua86mohx400)

**Application Submitted By:**

New Era Agency  
FAO Mr Chris Broyd

**On behalf of:**

Mr Chris Broyd

**RDD:** 31st March 2021

**LDD:** 27th May 2021

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee at the request of Councillor Vernon-Jackson.
- 1.2 The main issues for consideration in the determination of the application are as follows:
  - Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.3 Site and surroundings
- 1.4 The application site is a two-storey mid-terrace 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, with the front lounge becoming a bedroom. No external operational development forms part of this application.
- 1.7 Planning History
- 1.8 There is no relevant/recent planning history, but officers consider the lawful use of the property to be as a C4 HMO based on evidence such as licensing records.

## 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 have been received in response to the application raising objection on the following grounds:

- a) Impact on parking;
- b) Waste and rubbish;
- c) Loss of family home;
- d) Number of similar developments along the street;
- e) Proliferation of HMO in the area; and
- f) Increased noise and disturbance.
- g) ASB from students
- h) All residents in road not notified

### 5.0 COMMENT

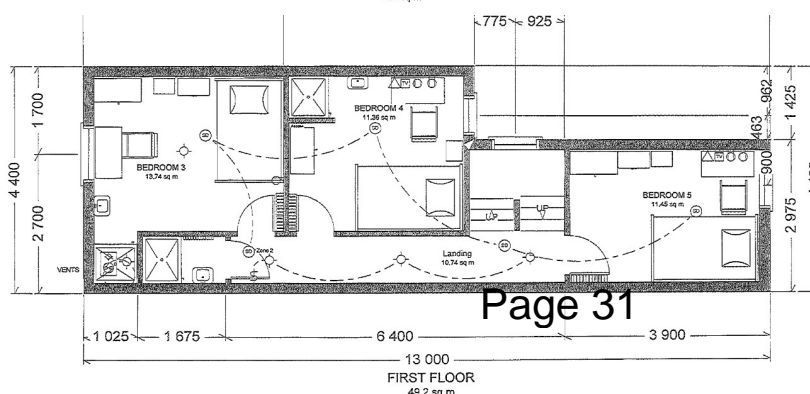
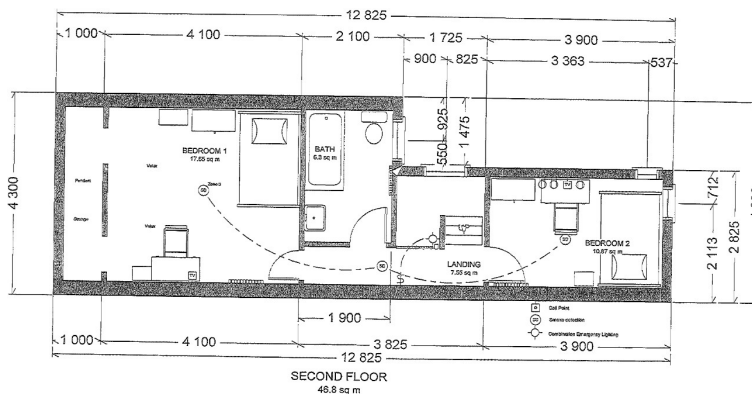
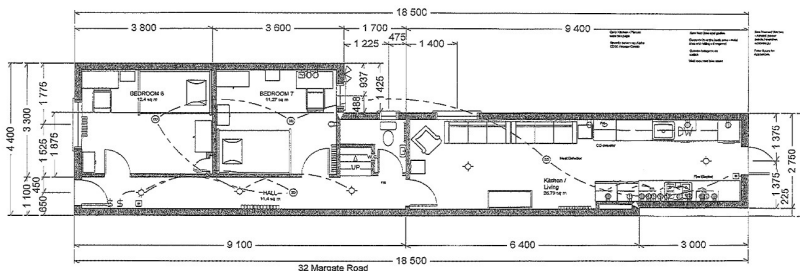
- 5.1 The main issues to consider in the determination of this application is whether the proposal requires planning permission and whether it is acceptable in principle.

#### 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 42 HMOs out of 79 properties, a percentage of 53%. This proposal of course has no effect on that percentage and the single additional occupant is not considered to have a demonstrable impact on amenity. 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 for 7 persons (between 2020 and 2024). It has previously been licensed for 5 persons since 2014.

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	17.65m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 2	10.87m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 3	13.74m <sup>2</sup>	(see below)
<i>Bedroom 3 'room' area</i>	11.92m <sup>2</sup>	10.00m <sup>2</sup>
<i>Bedroom 3 'shower' area</i>	1.82m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	11.36m <sup>2</sup>	(see below)
<i>Bedroom 4 'room' area</i>	10.01m <sup>2</sup>	10.00m <sup>2</sup>
<i>Bedroom 4 'shower' area</i>	1.35m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	11.45m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 6	11.03m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 7	11.27m <sup>2</sup>	10.00m <sup>2</sup>
GF WC	2.76m <sup>2</sup>	1.17m <sup>2</sup>
FF Shower Room	1.84m <sup>2</sup>	2.74m <sup>2</sup>
SF Bathroom	6.3m <sup>2</sup>	3.74m <sup>2</sup>
Combined Living Space	26.79m <sup>2</sup>	22.5m <sup>2</sup>



- 5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards except for the Combined Living Space. However the HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m<sup>2</sup>) for combined living accommodation in circumstances where all bedrooms are at least 10m<sup>2</sup> and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.
- 5.8 The shower areas within rooms 3 and 4 have been assessed as a separate area to the rest of the bedrooms and fall below the required standard for an en suite. However, because they are contained within a room, space will not be needed to get dressed etc. and as such, they are considered to provide a good standard of accommodation for the occupants of those rooms. The first floor shower room falls below the standard also, but is not required and as such it is not considered reasonable to refuse the application on this ground.

#### 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 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.

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

## **6.0 CONCLUSION**

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact

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

- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, as the merits of the proposed use comply fully with the relevant policies of the Local Plan and associated guidance, the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 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 7

23/00207/FUL

WARD: CENTRAL SOUTHSEA

33 DARLINGTON ROAD SOUTHSEA PO4 0ND

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RQ2TY0MOH3B00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RQ2TY0MOH3B00)

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Robinson

**RDD:** 15th February 2023

**LDD:** 12th April 2023

## 1.0 SUMMARY OF MAIN ISSUES

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

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

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

1.3 Site and surroundings

1.4 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 (a ground floor lounge is being changed to a bedroom) but no external operational development forms part of this application.

1.8 Planning History

1.9 21/01403/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). Conditional Permission (03.12.2021). Site inspection has confirmed that the site is currently in C4 use.

## 2.0 POLICY CONTEXT

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

2.2 Guidance for the assessment of applications that is relevant to the application includes The Parking Standards and Transport Assessments Supplementary Planning Document

(2014), The Technical Housing Standards - nationally described space standards (2015), The Solent Recreation Mitigation Strategy (2017), The 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 3 adverse representations have been received in response to the application (including one from Cllr Gerada) raising the below concerns:

- a) Increased noise;
- b) Parking impacts; and
- c) Area already over-saturated with HMOs.

1 letter has been received in support on the basis that:

- a) It has been a 6 bed HMO for many years
- b) It is better to utilise an existing HMO by having one more person than losing another house

### 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

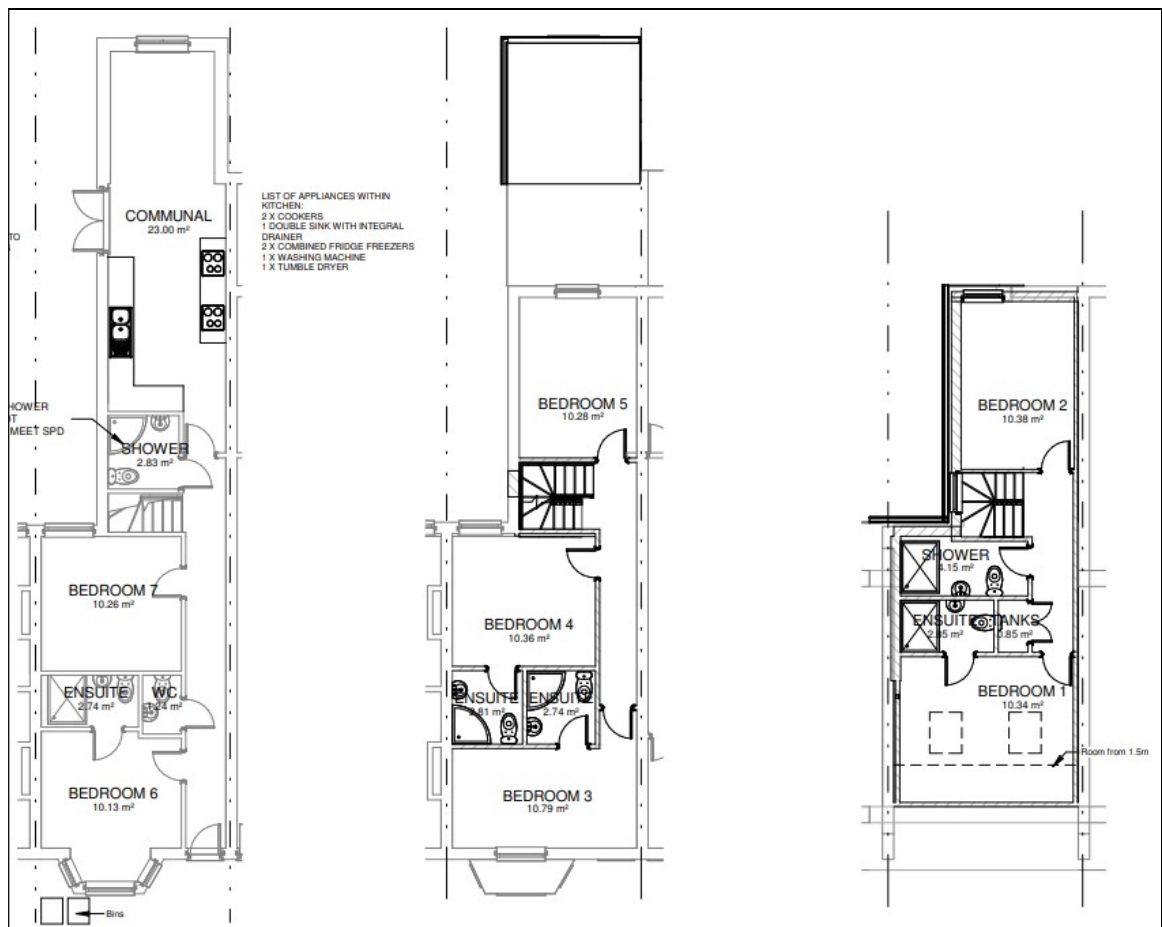
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of 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 22 HMOs out of 89 properties, a percentage of 24.7%. This proposal of course has no effect on that percentage and the additional single occupier would not demonstrably effect local amenity. 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 has a pending Licence for a HMO for 7 occupants by Portsmouth City Council.

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	10.34m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B1	2.85m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	10.38m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 3	10.79m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B3	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	10.36m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B4	2.81m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	10.28m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 6	10.13m <sup>2</sup>	10.00m <sup>2</sup>
Ensuite B6	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	10.26m <sup>2</sup>	10.00m <sup>2</sup>
Combined Living Space	23m <sup>2</sup>	22.5m <sup>2</sup>
Shower room 1 (SF)	4.15m <sup>2</sup>	2.74m <sup>2</sup>
Shower room 2 (GF)	2.83m <sup>2</sup>	2.74m <sup>2</sup>
WC (GF)	1.24m <sup>2</sup>	1.17m <sup>2</sup>



5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards. The HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline

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

#### 5.8 Amenity and Parking

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

5.10 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more 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 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 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 8

20/00748/FUL

WARD:CENTRAL SOUTHSEA

49 CLEVELAND ROAD SOUTHSEA PO5 1SF

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO 7 PERSON/7 BEDROOM HOUSE IN MULTIPLE OCCUPANCY (SUI GENERIS). (AMENDED DESCRIPTIPON)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QD5D38MOIYQ00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qd5d38moiYQ00)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Simon Birmingham

**RDD:** 8th July 2020

**LDD:** 20th January 2021

## 1.0 SUMMARY OF MAIN ISSUES

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

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

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

1.3 Site and surroundings

1.4 The application site is a two-storey mid-terrace 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 (a ground floor lounge becomes an additional bedroom and a ground floor shower room is converted to a utility/laundry) but no external operational development forms part of this application.

1.7 The applicant's description has been amended to provide the necessary clarity that the proposed use is as a 7 bed/7 person HMO.

Planning History

1.8 No relevant/recent planning history.

## 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 have been received in response to the application raising objection on the following grounds:

- a) Impact on parking;
- b) Waste and rubbish;
- c) Loss of family home;
- d) Number of similar developments along the street;
- e) Proliferation of HMO in the area; and
- f) Increased noise and disturbance.
- g) ASB from students
- h) All residents in road not notified

### 5.0 COMMENT

5.1 The main issues to consider in the determination of this application is whether the proposal requires planning permission and whether it 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 35 HMOs out of 80 properties, a percentage of 43.75%. This proposal of course has no effect on that percentage and the single additional occupant is not considered to have a demonstrable impact on amenity. 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 currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO for 7 persons between 2020 and 2025).
- 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	11.71m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	7.97m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	9.6m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	9.51m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	8.28m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	7.83m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	11.27m <sup>2</sup>	6.51m <sup>2</sup>
GF Utility Room	4.79m <sup>2</sup>	No standard
FF Shower Room	3.93m <sup>2</sup>	2.74m <sup>2</sup>
SF WC	1.59m <sup>2</sup>	1.17m <sup>2</sup>
SF Shower Room	3.78m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	29.21m <sup>2</sup>	34m <sup>2</sup>



- 5.7 As is shown in the table above, the proposal results in an internal layout, which due to the size of the combined living area does not meet the guidance provided. However, it is

considered that the provision of a separate utility room (which although separate, when added to the area of communal floorspace would equal 34m<sup>2</sup> as required by the SPD) frees up space which would be otherwise occupied by washing machines and dryers and provides an area which is far closer to the requirement. This, coupled with the conventional shape and layout of the room which would mean moving around and using the area is very practicable. As such, it is considered that while the communal area does not meet the required standard, the proposal would still provide a good standard of living and is therefore compliant with Policy PCS23.

#### 5.8 Amenity and Parking

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

5.10 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more 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 It is not considered that the addition of one additional occupant would result in a significant impact on the drainage/sewage system
- 5.16 Impact on Special Protection Areas
- 5.17 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have Likely Significant Effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

## **6.0 CONCLUSION**

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that 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 9

23/00736/FUL

WARD:BAFFINS

49 ST PIRANS AVENUE PORTSMOUTH PO3 6JE

CHANGE OF USE FROM A CLASS C3 DWELLINGHOUSE TO A 7-BED/7-PERSON HOUSE  
IN MULTIPLE OCCUPATION

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?KEYVAL=RW6NK7MOJAH00&ACTIVETAB=SUMMARY](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?keyval=rw6nk7mojah00&activetab=summary)

**Application Submitted By:**

Mrs Carianne Wells  
Applecore PDM Ltd

**On behalf of:**

Mr Alonso

**RDD:** 14th June 2023

**LDD:** 16th August 2023

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee at the request of Councillor Vernon-Jackson as well as having 8 objection comments against it.

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

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

### 1.3 Site and surroundings

1.4 The application site is a two-storey mid terrace 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 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 eight adverse representations.

### 1.7 Planning History

1.4 22/01102/FUL- Change of use from dwelling house (Class C3) to purposes falling within Classes C3 (dwelling house) or C4 (house in multiple occupancy) (APPROVED 03/23). This permission has not yet been implemented through occupation.

## **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 5 representations have been received in response to the application (including one from Cllr Swann) raising objection on the following grounds:
- a) Additional strain on drainage;
  - b) Impact on parking;
  - c) Waste and rubbish;
  - d) Loss of family home;
  - e) Number of similar developments along the street;
  - f) Proliferation of HMO in the area; and
  - g) Increased noise and disturbance.

## **5.0 COMMENT**

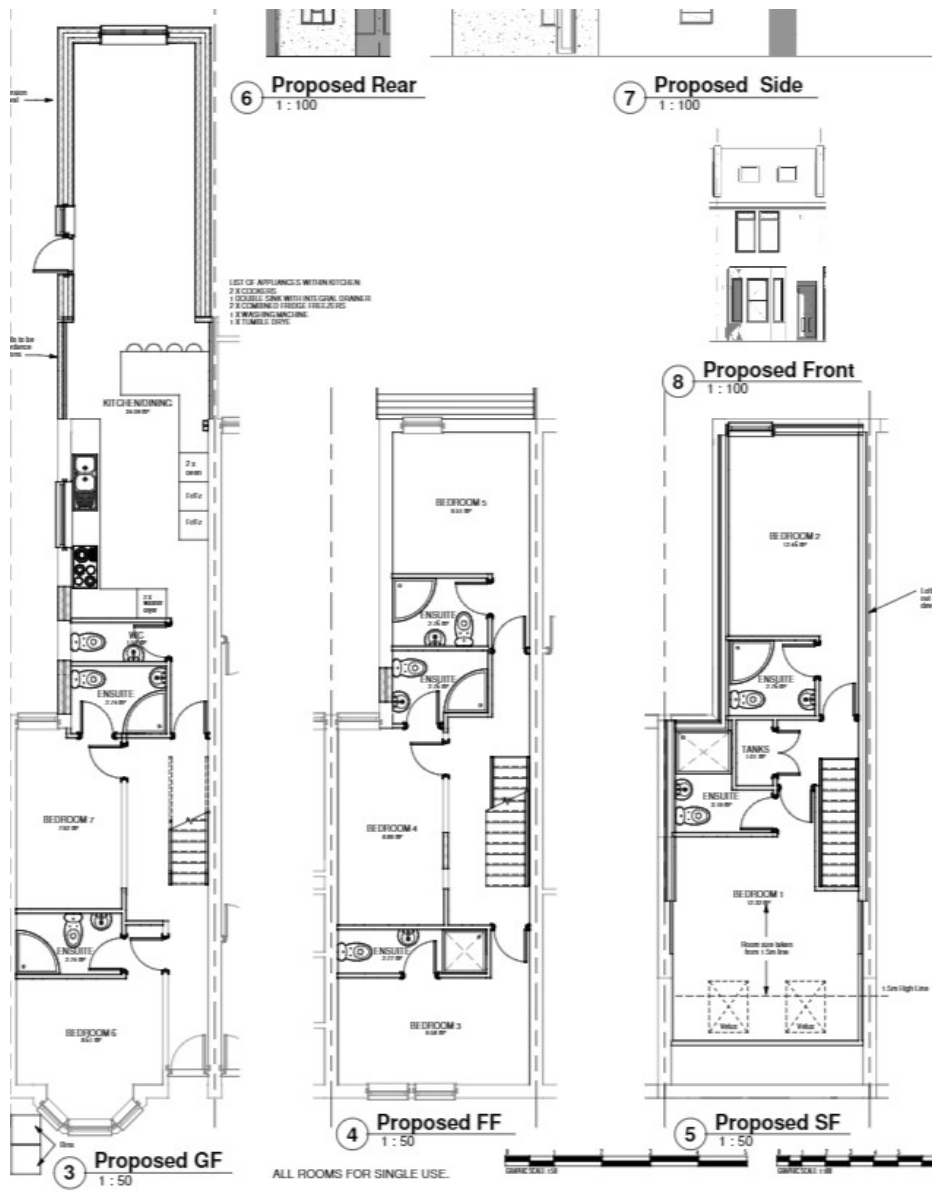
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the 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 already has planning permission for a lawful use as an HMO and the application has been made to alternatively pursue an intention to increase its occupation by 1 occupant compared to that permission to become a 7 bed HMO. As such the application is not considered, on its individual facts to create any greater material impact on the balance of the community in the area that already permitted. 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. In this case, with the current use remaining in use class C3 the relevant 50m radius area is currently made up of 2 HMOs out of 71 properties, a percentage of 2.82%. This is well within the 10% threshold. Alternatively this proposal of course has no effect on that percentage



should the applicant utilise their fall back position on implementing their C4 planning permission and in that case the small increase of HMO dwelling occupants in this area is not considered to create any demonstrable imbalance or adverse implications. 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 When compared to the fall-back C4 permission 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	12.32m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	12.46m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	9.58m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	8.89m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	9.51m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	8.61m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	7.92m <sup>2</sup>	6.51m <sup>2</sup>
En Suite 1	3.91m <sup>2</sup>	2.74m <sup>2</sup>
En Suite 2	2.76m <sup>2</sup>	2.74m <sup>2</sup>
En Suite 3	2.77m <sup>2</sup>	2.74m <sup>2</sup>
En Suite 4	2.76m <sup>2</sup>	2.74m <sup>2</sup>
En Suite 5	2.76m <sup>2</sup>	2.74m <sup>2</sup>
En Suite 6	2.74m <sup>2</sup>	2.74m <sup>2</sup>
En Suite 7	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	34.09m <sup>2</sup>	34m <sup>2</sup>
GF WC	1.58m <sup>2</sup>	1.17m <sup>2</sup>



5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards. 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). On the basis of the information supplied 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 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 described as resulting in demonstrable adverse effect.

5.10 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 further incremental addition of only 1 occupant would not be considered to amount to a material change in the use of the dwelling. 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. 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 lawful carry out the use proposed in this application, albeit though 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 a likely 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 I** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to:

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

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

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

### Conditions:

#### 1) Time Limit

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.

#### 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.6216 · 21 · 1

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

#### 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.

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

#### 4) 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.

Reason: 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 10

23/00122/FUL

WARD:COPNOR

55 BEDHAMPTON ROAD PORTSMOUTH PO2 7JX

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RPB15ZMOGRV00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RPB15ZMOGRV00)

**Application Submitted By:**

Mr Willment  
incollective.works

**On behalf of:**

LK Estates

**RDD:** 31st January 2023

**LDD:** 7th April 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 two-storey mid terrace 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 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 five adverse representations.

### 1.7 Planning History

1.4 22/01451/FUL - Change of use from dwelling house (Class C3) to purposes falling within Classes C3 (dwelling house) or C4 (house in multiple occupancy) (APPROVED 01/23).

## **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 5 representations have been received in response to the application (including one from Cllr Swann) raising objection on the following grounds:
- a) Additional strain on drainage;
  - b) Impact on parking;
  - c) Waste and rubbish;
  - d) Loss of family home;
  - e) Number of similar developments along the street;
  - f) Proliferation of HMO in the area; and
  - g) Increased noise and disturbance.

## **5.0 COMMENT**

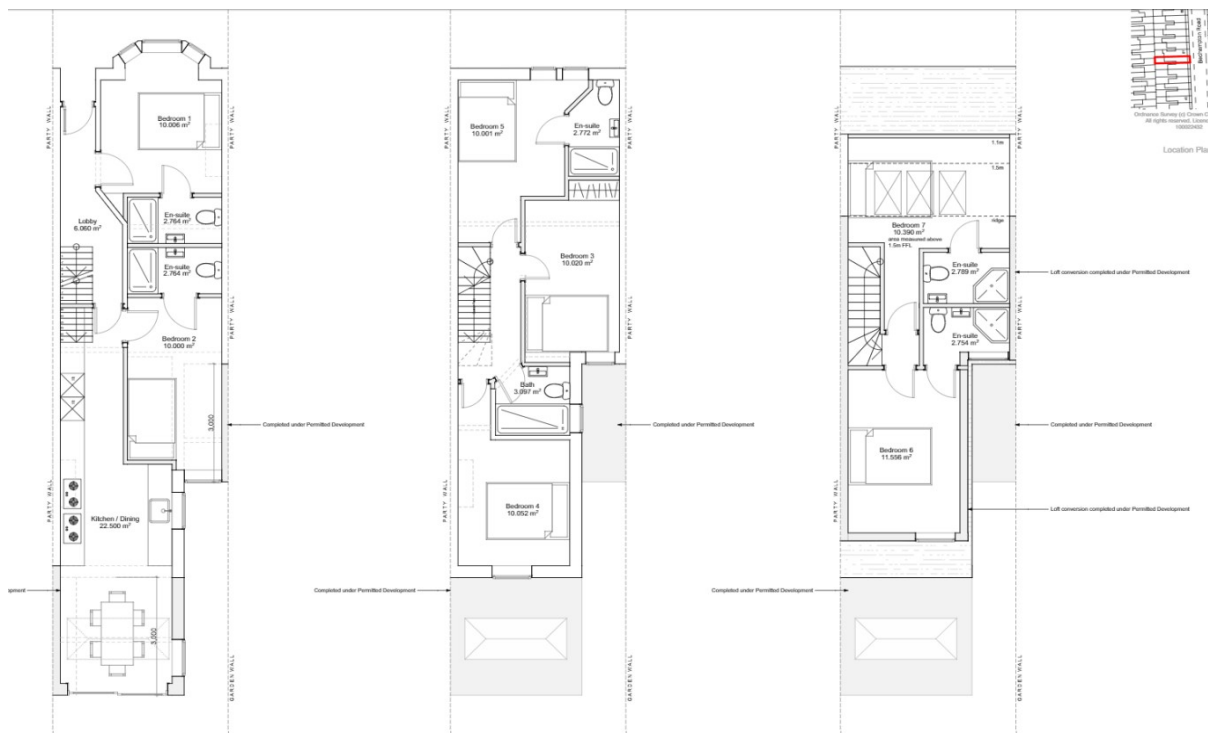
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the 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 already has planning permission for the lawful use as an HMO, but this has not yet been implemented. The application has been made to recognise the alternative intention to increase the proposed HMO occupation by 1 occupant. As such compared to the consented C4 use the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 2 HMOs out of 89 properties, a percentage of 2.24%. This proposal would therefore be well within the 10% threshold and of course if the extant C4 use was implemented would have no effect on that percentage and the



small increase of HMO dwelling occupants in this area would not be considered to create any demonstrable imbalance or adverse implications. 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. This proposal does not bring 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, whether used as a C3 or through implementation of the approved C4 permission. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	10m <sup>2</sup>	10m <sup>2</sup>
Bedroom 2	10m <sup>2</sup>	10m <sup>2</sup>
Bedroom 3	10.02m <sup>2</sup>	10m <sup>2</sup>
Bedroom 4	10.05m <sup>2</sup>	10m <sup>2</sup>
Bedroom 5	10m <sup>2</sup>	10m <sup>2</sup>
Bedroom 6	11.56m <sup>2</sup>	10m <sup>2</sup>
Bedroom 7	10.39m <sup>2</sup>	10m <sup>2</sup>
En Suite 1	2.764m <sup>2</sup>	2.74m <sup>2</sup>
En Suite 2	2.764m <sup>2</sup>	2.74m <sup>2</sup>
En Suite 5	2.772m <sup>2</sup>	2.74m <sup>2</sup>
En Suite 6	2.754m <sup>2</sup>	2.74m <sup>2</sup>
En Suite 7	2.789m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	22.5m <sup>2</sup>	22.5m <sup>2</sup>
Bathroom 1	3.079m <sup>2</sup>	3.74m <sup>2</sup> (or 2.74 if shower room)



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

### 5.8 Amenity and Parking

5.9 The proposal would increase the occupancy of the existing approved HMO by 1 occupant if that permission was implemented. 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.

5.10 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 further incremental addition

of only 1 occupant would not be considered to amount to a material change in the use of the dwelling. 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. 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 lawful carry out the use proposed in this application, albeit though 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 a likely 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 I** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to:

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

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

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

**Conditions:**

**1) Time Limit**

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.

**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: 101 - PL 10\_REVB SUIS GENERIS PLANS

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

**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.

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

**4) 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.

Reason: To ensure that the development complies with PCS15 of the Portsmouth Plan and does not exceed the scope of Nitrate Mitigation Credits purchased.

# Agenda Item 11

23/00363/FUL

WARD: COPNOR

78 STUBBINGTON AVENUE PORTSMOUTH PO2 0JG

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

[23/00363/FUL | CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION \(CLASS C4\) TO SEVEN PERSON HOUSE IN MULTIPLE OCCUPATION \(SUI GENERIS\) | 78 STUBBINGTON AVENUE PORTSMOUTH PO2 0JG](#)

**Application Submitted By:**

Alice Ibbotson  
The Shared Homes Company

**On behalf of:**

Parnham  
Ditton Properties Ltd

**RDD:** 21st March 2023

**LDD:** 17th May 2023

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee at the request of Councillor Vernon-Jackson
- 1.2 The main issues for consideration in the determination of the application are as follows:
  - Principle of Development including compliance with policy
  - Impacts on Amenity including parking
  - Other material considerations
- 1.3 Site and surroundings
- 1.3 The application site is a two storey terraced dwelling with rooms in the roof in a predominately residential area.
- 1.4 The Proposal
- 1.5 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms (a ground floor study room to become a bedroom) but no external operational development forms part of this application
- 1.6 Planning History
- 1.7 21/01703/FUL: Change of use from dwelling house (Class C3) to purposes falling within classes C3 (dwelling house) or C4 (House in Multiple Occupation). Conditional permission (02.02.2022). Site inspection has confirmed that the dwelling is in current use as a six bed HMO.

## 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 Two representations have been received (one from Councillor Swann) objecting to the proposal on the following grounds:

- a) Extensions form part of the application;
- b) Number of HMOs within the area;
- c) Additional waste;
- d) Parking concerns;
- e) Drainage concerns;
- f) Area is for family homes; and
- g) Noise concerns.

### 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

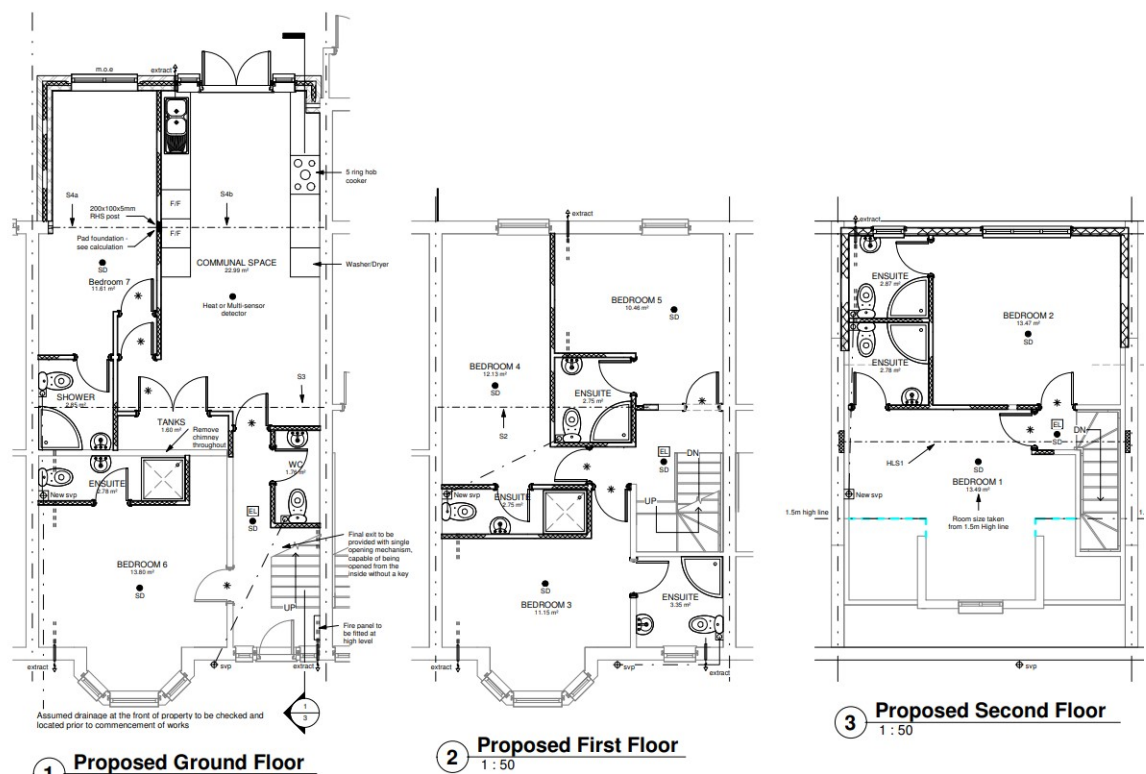
5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of 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 58 properties, a percentage of 5.17%. This proposal of course has no effect on that percentage and the small increase of HMO dwelling occupants in this area is not considered to create any demonstrable imbalance or adverse implications. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be

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

Room	Area Provided:	Required Standard:
Bedroom 1	13.49m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 2	13.47m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 3	11.15m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 4	12.13m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 5	10.46m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 6	13.8m <sup>2</sup>	10.00m <sup>2</sup>
Bedroom 7	11.61m <sup>2</sup>	10.00m <sup>2</sup>
Combined Living Space	22.99m <sup>2</sup>	22.5m <sup>2</sup>
WC (GF)	1.76m <sup>2</sup>	3.74m <sup>2</sup>
Ensuite B1	2.78m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite B2	2.87m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite B3	3.35m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite B4	2.75m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite B5	2.75m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite B6	2.78m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite B6	2.85m <sup>2</sup>	2.74m <sup>2</sup>



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

5.8 Amenity and Parking

5.9 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the

property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.

- 5.10 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more bedrooms. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.
- 5.11 Other Material Considerations
- 5.12 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a number of joint appeal decisions, the 'Campbell Properties' appeal dated 29 April 2021, and the 'Lane' appeal decision dated 9 March 2023 wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee which have contrary to Officer recommendation determined similar changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission. The 'Lane' appeal decisions of 9 March 2023 where against three such Planning Committee decisions and the Planning Inspector in those case disagreed both with the judgement of the Committee and was critical of the justification, noted above, as a basis for that judgement.
- 5.13 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.
- 5.14 Should it be considered necessary to assess the merits of the application, notwithstanding the advice of Officers' above, the Committee's attention is drawn to the current 5 year housing land supply position within Portsmouth. In any planning application, the decision-maker will need to 'balance' any harms identified due the development against any benefits also arising. Principally, for this HMO application, the



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

5.15 Impact on Special Protection Areas

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

**6.0 CONCLUSION**

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

6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, as the merits of the proposed use comply fully with the relevant policies of the Local Plan and associated guidance, the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 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**

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# Agenda Item 12

23/00788/HOU

WARD:DRAYTON & FARLINGTON

27 DOWN END ROAD PORTSMOUTH PO6 1HU

CONSTRUCTION OF EXTENSION TO EXISTING FRONT PORCH

[23/00788/HOU | Construction of extension to existing front porch | 27 Down End Road Portsmouth PO6 1HU](#)

**Application Submitted By:**

Mr & Mrs Paul & Nicola Munnion

**On behalf of:**

Mr & Mrs Paul & Nicola Munnion

**RDD:** 23rd June 2023

**LDD:** 18th August 2023

## 1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before the Planning Committee as the applicant is an employee of Portsmouth City Council.
- 1.2 The main issues for consideration are; the effects on the adjoining occupiers by way of amenities, loss of outlook, loss of privacy and overlooking.
- 1.3 Site and surroundings
- 1.4 The application site is a two-storey semidetached dwelling in a residential area of mixed character with detached chalet bungalows, two storey dwellings, some with roof in the roof and a variety of architectural styles and materials.

### The Proposal

- 1.5 The application seeks planning permission to enlarge an existing porch across the width of the dwelling.

### Planning History

- 1.6 None relevant

## 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: PCS23 (Design and Conservation).

## 3.0 CONSULTATIONS

- 3.1 None.

## 4.0 REPRESENTATIONS

- 4.1 None.

## 5.0 COMMENT

- 5.1 The proposal will include removal of the existing porch and will infill the same area with a larger porch to the northeastern elevation. It is designed as an enclosed porch with an open porch attached with a part ridged part hipped roof design with the total height of approximately 3.5m. The proposed total depth will be 2.8m
- 5.2 The land levels change sloping down from the road therefore only part of the porch would be seen from the highway. The adjoining (attached) occupier at no. 29 will not be affected by the proposal as it does not project beyond the existing front elevation. The porch is a modest addition, reflective of the existing porch in design and is not therefore considered to imbalance the semi-detached pair or otherwise harm the character or appearance of the surrounding area.
- 5.3 It is noted that the property at no. 25 does not have windows in the side elevation and as the porch does not extend beyond the existing building line will not have any adverse implications on light or amenity to that neighbour.

## **6.0 CONCLUSION**

- 6.1 The application is a modest addition that is not considered to have any adverse effect on amenity or character and, subject to conditions, would be in accordance with policy PCS23 of the Portsmouth Plan and associated national guidance.

## **RECOMMENDATION**

### **Grant planning permission subject to the following conditions:**

#### **1) Time Limit**

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.

#### **2) Approved Plans**

The permission hereby granted shall be carried out in accordance with the following approved drawings - P&NM - 3 - EE&P - S&L; P&NM - 2 - FPP; and P&NM - 4 - S&E.

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

#### **3. Materials to Match**

The materials to be used in the construction of the porch hereby approved shall match, as far as is practicably possible the existing dwelling to which it is attached.

Reason: To ensure a satisfactory appearance in accordance with PSC23 of the Portsmouth Plan.

Informative - It is noted that the house numbering shown on the location plan included within the approved plan is incorrect. The correct numbering has been referred to in the report above