

# **PLANNING COMMITTEE**

## **6 FEBRUARY 2019**

**1 PM EXECUTIVE MEETING ROOM  
FLOOR 3, GUILDHALL**

### **REPORT BY THE ASSISTANT DIRECTOR - CITY DEVELOPMENT ON PLANNING APPLICATIONS**

#### **ADVERTISING AND THE CONSIDERATION OF PLANNING APPLICATIONS**

All applications have been included in the Weekly List of Applications, which is sent to City Councillors, Local Libraries, Citizen Advice Bureaux, Residents Associations, etc, and is available on request. All applications are subject to the City Council's neighbour notification and Deputation Schemes.

Applications, which need to be advertised under various statutory provisions, have also been advertised in the Public Notices Section of The News and site notices have been displayed. Each application has been considered against the provision of the Development Plan and due regard has been paid to their implications of crime and disorder. The individual report/schedule item highlights those matters that are considered relevant to the determination of the application

#### **REPORTING OF CONSULTATIONS**

The observations of Consultees (including Amenity Bodies) will be included in the report by the Assistant Director - City Development if they have been received when the report is prepared. However, unless there are special circumstances their comments will only be reported VERBALLY if objections are raised to the proposals under consideration

#### **APPLICATION DATES**

The two dates shown at the top of each report schedule item are the applications registration date- 'RD' and the last date for determination (8 week date - 'LDD')

#### **HUMAN RIGHTS ACT**

The Human Rights Act 1998 requires that the Local Planning Authority to act consistently within the European Convention on Human Rights. Of particular relevance to the planning decisions are *Article 1 of the First Protocol- The right of the Enjoyment of Property, and Article 8- The Right for Respect for Home, Privacy and Family Life*. Whilst these rights are not unlimited, any interference with them must be sanctioned by law and go no further than necessary. In taking planning decisions, private interests must be weighed against the wider public interest and against any competing private interests. Planning Officers have taken these considerations into account when making their recommendations and Members must equally have regard to Human Rights issues in determining planning applications and deciding whether to take enforcement action.

Web: <http://www.portsmouth.gov.uk>

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**243 FAWCETT ROAD SOUTHSEA PO4 0DJ****CHANGE OF USE FROM PURPOSES FALLING WITHIN CLASS C4 (HOUSE IN MULTIPLE OCCUPATION) TO EIGHT PERSON/EIGHT BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS) (AMENDED DESCRIPTION AND PLANS)****Application Submitted By:**

Thorns Young Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Anthony Lane

**RDD:** 11th October 2018

**LDL:** 13th December 2018

**SUMMARY OF MAIN ISSUES**

The application is being presented to the Planning Committee for determination because the creation of an 8 bedroom/8 person Sui Generis HMO would be contrary to Policy PCS20 of the Portsmouth Plan and the revised Houses in Multiple Occupation Supplementary Planning Document (HMO SPD, July 2018).

The determining issues for this application relate to the suitability of the proposed Sui Generis House in Multiple Occupation (HMO) use within the existing community and whether the proposal complies with policy requirements in respect of providing a suitable standard of accommodation. Other considerations include the proposals potential impact upon the living conditions of adjoining and neighbouring residents, SPA mitigation and parking.

**The site**

This application relates to a two-storey, mid-terrace dwellinghouse (Class C4) located to the north of Fawcett Road, where the road bends round to the west, close to its intersection with Sutherland Road. The property sits slightly back from the highway, due to the curvature of the road and benefits from a moderate size garden to the rear.

**The proposal**

Planning permission is sought for a change of use from Class C4 HMO to an 8 bedroom/8 person, Sui Generis HMO. A rear 'L shaped' dormer and single-storey rear extension have been constructed under permitted development.

It is noted that amended plans have been received from the agent which saw the proposal increase from a seven bedroom layout to an eight bedroom layout, the description of development has thus been altered to reflect the revised plans.

## Planning History

18/00542/CPE: Application for certificate of lawful development for the existing use of dwelling house as a Class C4 (HMO) House in Multiple Occupation. Granted (14.06.2018).

A\*27225/C: Alterations to convert shop with living accommodation to a dwellinghouse. Conditional permission (11.03.1971)

A\*27225/B: Alterations and additions to convert the whole premises to living accommodation. Conditional permission (11.09.1969).

A\*27225/A: Alterations and an extension to convert the existing shop into two flats. Refused (24.07.1969).

A\*27225: Change of use of shop to residence. Conditional permission (20.03.1969).

## Licensing History

House in Multiple Occupation Licence was granted on 6th April 2016 for four people. Licence expires on 27th August 2018.

## POLICY CONTEXT

The relevant policies within would include:

In addition to the National Planning Policy Framework, the relevant policies within the Portsmouth Plan would include: PCS14 (A Healthy City), PCS17 (Transport), PCS20 (houses in multiple occupation) and PCS23 (Design and Conservation). The revised Houses in Multiple Occupation Supplementary Planning Document (HMO SPD, July 2018), Parking Standards SPD and Solent Special Protection Areas SPD would also be material considerations.

## CONSULTATIONS

### Private Sector Housing

#### Definitions

Dwelling and Flat: Housing Act 2004, Part 1, Chapter 1, Section 1 (5).

"Dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling.

"Flat" means a separate set of premises (whether or not on the same floor) —

- (a) Which forms part of a building;
- (b) Which is constructed or adapted for use for the purposes of a dwelling, and;
- (c) Either the whole or a material part of which lies above or below some other part of the building.

#### Summary

- 4 storeys
- 8 bedrooms

Based on the layout and sizes provided with this application this property would require to be licenced under Part 2, Housing Act 2004.

### Kitchen/dining

I am concerned as there is no dining area proposed in the property. A combined kitchen/dining area measuring a floor space of 19.5m<sup>2</sup> of which 11m<sup>2</sup> is to be designated for the exclusive use of cooking, food preparation and food storage.

The proposed kitchen area is 11.48m<sup>2</sup> so this area suffices the kitchen requirement, however as highlighted there is no dining area provision.

### Living/lounge

A designated living area is required of 16m<sup>2</sup>, calculated at 8m<sup>2</sup> plus 1m<sup>2</sup> per person where bedrooms do not exceed 10m<sup>2</sup>. The proposed size meets the overall floor space requirement, however there is no indication of windows or ventilation and therefore no natural light, nor ventilation will be entering the room so this proposed 'living' area is not suitable.

### Bedroom 7

It is not clear that the usable space within this room exceeds 6.5m<sup>2</sup> as although the proposal states 12.41m<sup>2</sup>, it is apparent there are 'Velux' windows implying there is an area where the floor to ceiling height is less than 1.5m and therefore classed as 'unusable space' and is not to be included in the overall room size.

### Bedroom 8

Significant concerns are raised regarding the location of this bedroom as access is via the kitchen, a high risk area of fire outbreaks. As a consequence a 'means of escape' exit window/door will be required in the bedroom and there needs to be the ability for the occupant to remove themselves entirely from the property to a minimum distance equivalent to the full height of the property, to ensure they are suitably clear from any falling debris in the event of a fire.

### WC

No sizes have been proposed regarding the WC so no comment can be made at this stage.

### **Waste Management Service**

There are no plans for waste storage on the drawings shown or any explanation in the application for. This property is flat fronted and oversized for the property. The only way forwards that I can see is for communal bins to be stored in the rear yard and for the residents to bring them out in to Sutherland Road for the scheduled collections.

Due to the size of this HMO application, if it is granted it will need to have communal refuse and recycling bins, purchased from Portsmouth City Council, otherwise they will need to make private collections for their waste.

### **Highways Engineer**

For applications where a change of use is sought from a dwelling house (C3) or dwelling house in multiple occupation (C4) to a House of Multiple Occupation (Sui Generis) the following comments can be applied;

Considering the small scale of the proposal, it is the belief of the LHA that the proposal is unlikely to have a material impact upon the highway network and as such is satisfied that a traffic assessment would not be required.

Portsmouth's residential parking standards expect that dwelling houses (C3) and Houses in Multiple Occupation (HMO) (C4/Sui Generis) with more than 4bedrooms should provide 2 car parking spaces per dwelling. Where no on-site parking is provided, it is assumed that existing parking demand is met on-street.

Where an application property already has 4 or more bedrooms, the expected parking demand of a HMO(sui generis) would be the same as the existing use as per SPD standards and as such would not be required to provide any further spaces despite an increase in the number of bedrooms.

The Portsmouth parking SPD also gives the expected level of cycle parking that should be provided for residential developments. An existing property with 4bedrooms has an expected demand for 4 cycle parking spaces; upon changing to a HMO (Sui generis), the cycle parking provision required would remain the same as the current use and therefore additional cycle parking spaces are not required. It should however be ensured that the existing property already provides for 4 cycle parking spaces as per SPD standards.

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

## **REPRESENTATIONS**

None received.

## **COMMENT**

The determining issues for this application relate to the suitability of the proposed Sui Generis HMO use within the existing community and whether the proposal complies with policy requirements in respect of providing a suitable standard of accommodation. Other considerations include the potential impact upon the living conditions of adjoining and neighbouring residents, SPA mitigation and parking/waste.

### **Principle of the use**

Planning permission is sought for the use of the property as an eight bedroom/eight person Sui Generis house in multiple occupation.

Policy PCS20 of the Portsmouth Plan states that applications for the change of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses or where the development would not create an imbalance. The adopted Houses in Multiple Occupation SPD (HMO SPD July 2018) sets out how Policy PCS20 will be implemented and details how the City Council will apply this policy to all planning applications for HMO uses.

The property has a lawful use as a Class C4 (HMO) which was previously approved in June 2018, under planning application reference: 18/00542/CPE. As the property had a historic C4 use, the granting of the above permission (ref.18/00542/CPE) did not result in the creation of a new HMO.

Paragraph 1.15 of the HMO SPD states: 'Where planning permission is sought to change the use of a Class C4 or mixed C3/C4 use to a HMO in Sui Generis use, the City Council will seek to refuse applications 'in areas where concentrations of HMOs already exceed the 10% threshold'.

Having regard to the current lawful use of the property as a Class C4 HMO, the proposed change of the use to a larger HMO (Sui Generis) would therefore not result in an overall change

to the balance of uses in the context of the surrounding area and would therefore, be in accordance with Policy PCS20 of the Portsmouth Plan and the supporting HMO SPD.

In considering several recent appeals which related to similar developments, whilst the Inspector recognised Policy PCS20 it was opined that as the development was not creating a new HMO, there was no material change to the balance of uses in the area. In a recent appeal (APP/Z1775/W/18/3193995, July 2018) at 18 Bramble Road (0.2 miles away), the Inspector stated: 'I saw that the works as shown on the proposed ground floor plan to change the layout to one containing 7 bedrooms had been implemented and occupied as such. Importantly, in this case, this has not increased the number of HMOs in the area as the property already benefits from a lawful use as a Class C3 dwelling house or Class C4 HMO. The HMO SPD does also state that the Council will seek to refuse planning applications for changes of use of the nature relating to the appeal in those same circumstances concerning the 10% threshold.

Nevertheless, in this case the addition of just one single sized bedroom to an existing lawful HMO would be unlikely to materially increase the community imbalance and I have received insufficient substantive evidence to the contrary...In this respect, although determining the appeal on its own merits, I have also had regard to other similar recent cases allowed on appeal as referred to by the appellant. Similar conclusions were reached in those decisions in respect of this issue, all of which related to sites not far from that of this appeal, albeit not in the same immediate vicinity. I have therefore afforded significant weight to those other decisions...For the above reasons, the development does not cause unacceptable harm to the mix and balance of the local community. As such, it accords with policy PCS20 of the Core Strategy and is not at odds with the general principles set out in the HMO SPD'.

In considering an appeal at 11 Baileys Road (APP/Z1775/W/16/3159989, February 2017) which related to a similar development, the Inspector opined that: 'Policy PCS20 of The Portsmouth Plan seeks to avoid concentrations of HMOs within the city. However, the policy is clear in that it states 'for the purposes of this policy, dwellings in use as Class C4, mixed C3/C4 use and HMOs in Sui Generis use will be considered to be HMOs'. Consequently, as the appeal property already has consent for a C4 use, the proposal could not result in an increase in concentration of HMOs in the City'.

Similar decisions were reached by the Inspector at 14 Wisborough Road, December 2018, APP/Z1775/W/18/3208412; 50 Hudson Road, December 2018, APP/Z1775/W/17/3191358; 30 Hudson Road, August 2018, APP/Z1775/W/17/3189609; 8 Pitcroft Road, August 2018, APP/Z1775/W/17/3188485; 239 Powerscourt Road, July 2017, APP/Z1775/W/17/3169402; 103 Manners Road, April 2018, APP/Z1775/W/17/3187443; 63 Jessie Road, March 2018, APP/Z1775/W/17/3185652; 59 Liss Road, February 2018, APP/Z1775/W/17/3185768; 1 Edmund Road, February 2018, APP/Z1775/W/17/3185758; 22 Jessie Road, December 2017, APP/Z1775/W/17/3179404; 80 Margate Road, February 2017, APP/Z1775/W/16/3159993; 37 Margate Road, February 2017, APP/Z1775/W/16/3159992; 12 Beatrice Road, October, APP/Z1775/A/12/2177272 (15 appeals in total).

Placing significant weight on these appeal decisions, the LPA must accept that the proposal would not result in a further imbalance of HMO uses, and would be unable to defend the position set out within the HMO SPD (July 2018) at appeal.

#### Standard of Accommodation

The Housing in multiple occupation SPD (July 2018), sets out minimum size standards for rooms in order to achieve a satisfactory standard of living accommodation for future occupants. In relation to communal space, for a property that can accommodate 7 or more persons, the requirements are for either a separate kitchen, living room and dining room to be provided, or a shared communal space of at least 27m<sup>2</sup>.

In terms of internal living conditions, the property benefits from the following:

Area:	Provided:	Required Standard: (HMO SPD-JULY 2018)
Bedroom 1 (Ground Floor)	9.08m2	7.5m2
Bedroom 1 en-suite	2.97m2	Not specified
Bedroom 2 (Ground Floor)	9.24m2	7.5m2
Bedroom 2 en-suite	2.97m2	Not specified
Bedroom 3 (First Floor)	14.21m2	7.5m2
Bedroom 3 en-suite	3.20m2	Not specified
Bedroom 4 (First Floor)	10.40m2	7.5m2
Bedroom 4 en-suite	3.20m2	Not specified
Bedroom 5 (First Floor)	10.67m2	7.5m2
Bedroom 5 en-suite	2.78m2	Not specified
Bedroom 6 (Second Floor)	7.88m2	7.5m2
Bedroom 6 en-suite	2.83m2	Not specified
Bedroom 7 (Second Floor)	10.7m2	7.5m2
Bedroom 8 (Ground Floor)	8.24m2	7.5m2
Bedroom 8 en-suite	3.69m2	Not specified
Kitchen (Ground Floor)	11.48m2	11m2
Lounge	15.45m2	14m2
Shower room (Second Floor)	5.43m2	3.74m2
W/C (First Floor)	1.52m2	Not specified

The pre-existing layout as documented in planning application reference no.18/00542/CPE of the property comprised of four bedrooms, a bathroom, kitchen and lounge. However, the proposed layout comprises of 8 bedrooms (3 located on ground floor, 3 located on the 1st floor and 2 in the converted loft space), a kitchen, basement lounge, a separate W.C at first floor and a separate shower room within the converted loft space. It is noted all of the rooms except bedroom 7 would benefit from an en-suite. The proposed plans would see the loss of the separate lounge and the kitchen sub-divided to form additional bedrooms. Furthermore, the existing basement has been converted to form a new separate lounge.

It was possible to gain access to all of the rooms while undertaking a site visit. It is evident from the bedrooms that were seen on site and from the enclosed plans that the bedroom sizes are too small to act as a main living area, bedroom and study area for an adult. It is also noted that the two bedrooms located within the converted loft have restricted head room which limits the usability of the room.

Whilst the list above indicates that the kitchen and lounge meet the minimum sizes, there is no separate dining room provided within the property, and therefore the communal space would be considered inadequate. In addition, the proposed lounge located at basement floor level would only be served by a small lightwell and would therefore fail to provide a suitable degree of

natural light, outlook and ventilation. With regard to the above, it is considered the basement lounge would not provide a good standard of living environment for the future residents and users of the development.

The proposed lounge within the basement was visited during the site visit, and it was duly noted that the basement lounge was dark, enclosed and overall represents an ill-conceived and oppressive form of development. The over-subdivided property would see a once four bedroom HMO with good facilities (ref.18/00542/CPE) modified into an eight bedroom HMO with poor facilities. Thus, the proposal is indicative of an over-intensive use of the property.

The kitchen and basement lounge would be the only communal living areas within the HMO. The kitchen measures 11.48m<sup>2</sup> and the basement lounge measures 15.45m<sup>2</sup>. The submitted floor plans do not show the proposed 'fit-out' for the kitchen or basement lounge and therefore it is difficult for the LPA to accurately assess if the kitchen and basement lounge would provide enough room for the eight individuals.

With regards to the above the lack of adequate communal space would be further emphasised, as only 1 out of the 8 (Bedroom 3) bedrooms would be meet the size standards for a double bedroom (11.5m<sup>2</sup>). This would result in occupants spending less time in their bedrooms due to the limited floor space and useable circulation space. It is therefore considered that the provision of adequate communal space would be essential in order to provide a good standard of living environment for the eight individuals.

The City Council Private Sector Housing Team (PSHT) advises that a licence would be required and raise adverse comments to the proposal.

As the proposal falls short of planning standards identified in the HMO SPD (July 2018) it is advised that the proposed layout of the property is not suitable for the occupation of 8 persons sharing. The quality of life/standard of living accommodation argument was considered through a recent appeal decision at 8 Pitcroft Road (APP/Z1775/W/17/3188485, August 2018). The Inspector concluded that the proposal would have failed to provide a good standard of living accommodation for future occupiers placing significant weight on Policy PCS23 of the Portsmouth Plan, the HMO SPD and paragraph 127 of the NPPF.

It is noted that the LPA attempted to seek amended plans which would revert back to the superseded plans detailing a seven bedroom HMO (email dated: 21.01.2019). However, no response was received from the agent.

For the reasons outlined above, the proposed use of the building as an eight bedroom/eight person Sui Generis HMO would, due to the over-subdivision of the property and in the absence of satisfactory communal facilities that benefit from an adequate degree of natural light, outlook and ventilation, fail to provide the necessary quality of space for an acceptable standard of living accommodation to serve eight people and would represent an over-intensive use of the site. The resulting development provides a poor standard of residential accommodation which would fail to meet the likely needs of future occupiers. The proposal is therefore contrary to Core Planning Principles of the National Planning Policy Framework and Policies PCS20 and PCS23 of the Portsmouth Plan, including the supporting Houses in Multiple Occupation Supplementary Planning Document (July 2018).

#### Impact on Residential Amenity

The proposal is to increase the number of bedrooms within the property from 6 to 8, allowing for occupation by 8 people. The current proposal therefore represents an increase in two people over the level of occupancy that would be allowed within the current C4 use. In the event that planning consent were to be granted, a condition would be applied to limit the maximum occupation of the property to eight persons.

Whilst the accommodation of additional occupants would lead to a more intensive occupation of property that could result in the transmission of noise and disturbance to the adjoining occupiers, regard must be made to the lawful use of the property that allows occupation by six unrelated individuals or a family of an unrestricted size.

The impact of increasing the occupancy of an HMO on the amenities of neighbouring residents has been considered in a number of recent appeals.

In considering a recent appeal at 11 Baileys Road (APP/Z1775/W/16/3159989, February 2017), the Inspector opined: 'The current use of the property for C4 purposes would enable occupation by up to six residents. The appeal concerns the accommodation being increased by 2 additional bedrooms, making a total of 8 bedrooms; however, this would not change the nature of the use. To effect this change the ground floor lounge and study would be converted to bedrooms. No other rooms would be affected ... I am not persuaded that sufficient evidence has been submitted to substantiate that the proposed 2 additional bedrooms, would result in material harm to their [local residents] living conditions or unbalance the local community'.

Having regard to the appeal above, and on the basis that the proposal would result in two additional occupants, it is not considered that an objection could reasonably be sustained on the basis of the impact on the amenities of neighbouring residents in terms of increased noise or disturbance.

#### Highways and waste

The application site does not benefit from any off-street parking and none is proposed as part of this application (the constraints of the site are such that none can be provided). However, given the current use of the property, the view of the planning Inspector detailed above and the sites proximity to local shops, services and transport facilities, it is considered that an objection on car parking standards could not be sustained.

The Council's Adopted Parking Standards set out a requirement for Sui Generis HMOs to provide space for the storage of at least 4 bicycles. The property has a rear garden where secure cycle storage could be located. This can be secured by condition.

In relation to refuse requirements, the owners of the site would need to apply for communal waste collection. It is considered that the waste facilities could be stored in the rear garden, and can be secured by condition.

#### Solent Special Protection Areas

The Conservation of Habitats and Species Regulations 2017 [as amended] and the Wildlife and Countryside Act 1981 place duties on the Council to ensure that the proposed development would not have a significant effect on the interest features for which Portsmouth Harbour is designated as a Special Protection Area, or otherwise affect protected habitats or species. The Portsmouth Plan's Greener Portsmouth policy (PCS13) sets out how the Council will ensure that the European designated nature conservation sites along the Solent coast will continue to be protected.

The Solent Recreation Mitigation Strategy (December 2017) was adopted by Portsmouth City Council on 1st April 2018 and replaces the Interim Solent Recreation Mitigation Strategy (December 2014) and the associated Solent Special Protection Areas Supplementary Planning Document (SPD) which was revoked by the City Council from 1st April 2018. The Strategy identifies that any development in the city which is residential in nature will result in a significant effect on the Special Protection Areas (SPAs) along the Solent coast. It sets out how development schemes can provide a mitigation package to remove this effect and enable the development to go forward in compliance with the Habitats Regulations.

The proposal would lead to a net increase in population, which would be likely to lead to a significant effect as described in section 61 of the Habitats Regulations on the Portsmouth Harbour and the Chichester and Langstone Special Protection Areas (SPAs). The development is not necessary for the management of the SPA.

Mitigation payments to the value of £487 would be required for this type of development. The applicant has provided this payment, in accordance with Policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended). This contribution is sufficient to mitigate the likely significant effect of the proposal on the Solent Special Protection Areas.

## Conclusion

For the reasons outlined above, the proposed use of the building as an eight bedroom/eight person Sui Generis HMO would, due to the over-subdivision of the property and in the absence of satisfactory communal facilities that benefit from an adequate degree of natural light, outlook and ventilation, fail to provide the necessary quality of space for an acceptable standard of living accommodation to serve eight people and would represent an over-intensive use of the site. The resulting development provides a poor standard of residential accommodation which would fail to meet the likely needs of future occupiers. The proposal is therefore contrary to Core Planning Principles of the National Planning Policy Framework and Policies PCS20 and PCS23 of the Portsmouth Plan, including the supporting Houses in Multiple Occupation Supplementary Planning Document (July 2018).

## **RECOMMENDATION                      Refuse**

### **Conditions**

#### **The reasons for the conditions are:**

- 1) The proposed use of the building as an eight bedroom/eight person Sui Generis HMO would, due to the over-subdivision of the property and in the absence of satisfactory communal facilities that benefit from an adequate degree of natural light, outlook and ventilation, fail to provide the necessary quality of space for an acceptable standard of living accommodation to serve eight people and would represent an over-intensive use of the site. The resulting development provides a poor standard of residential accommodation which would fail to meet the likely needs of future occupiers. The proposal is therefore contrary to Core Planning Principles of the National Planning Policy Framework and Policies PCS20 and PCS23 of the Portsmouth Plan, including the supporting Houses in Multiple Occupation Supplementary Planning Document (July 2018).

### **PRO-ACTIVITY STATEMENT**

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework it was not considered that the harm arising from the proposal could be overcome and the application has been refused for the reasons outlined above.



**358 LONDON ROAD PORTSMOUTH PO2 9JY**

**CHANGE OF USE FROM PURPOSES FALLING WITHIN CLASS C3 (DWELLING HOUSE)  
OR CLASS C4 (HOUSE IN MULTIPLE OCCUPATION) TO A 10 PERSON 6 BED HOUSE IN  
MULTIPLE OCCUPATION (SUI GENERIS) (AMENDED DESCRIPTION)**

**Application Submitted By:**

Mr Clive Griffiths

**On behalf of:**

Mr Michael Nobes

**RDD:** 28th September 2018

**LDL:** 27th December 2018

**SUMMARY OF MAIN ISSUES**

The application is being presented to the Planning Committee for determination because the creation of a 6 bedroom/10 person Sui Generis HMO would be contrary to Policy PCS20 of the Portsmouth Plan and the revised Houses in Multiple Occupation Supplementary Planning Document (HMO SPD, July 2018).

The determining issues for this application relate to the suitability of the proposed Sui Generis HMO use within the existing community and whether the proposal complies with policy requirements in respect of providing a suitable standard of accommodation. Other considerations include the proposals potential impact upon the living conditions of adjoining and neighbouring residents, SPA mitigation and parking.

**The site**

This application relates to a two-storey (with loft accommodation) mid-terrace dwellinghouse (Class C4), located to the east of London Road, in between its intersection with Torrington Road and Battenburg Avenue. The application site comprises no.2 bedrooms, a kitchen/lounge and conservatory at ground floor with three bedrooms, a W.C and a bathroom, located on the first floor and one bedroom a kitchen and a bathroom located at second floor. The property benefits from a small enclosed forecourt, currently used for the storage of bins and a garden to the rear. The property also benefits from a rear garage which backs onto a service road to the east of the site. The surrounding area is characterised by densely populated residential terraces and is in close proximity to a range of shops and services located on London Road.

**The proposal**

Planning permission is sought for a change of use from Class C4 (house in multiple occupation) to a 6 bedroom/10 person, Sui Generis (house in multiple occupation). It is noted the description of development has been changed and the number of occupants reduced from 12 persons to 10 persons.

## Planning History

18/01601/FUL: Construction of first floor extension to existing garage to provide one bed studio flat. Refuse (20.12.2018). The reasons for refusal were as follows:

- 1) The proposed dwelling would, by virtue of its poor siting to the rear of the plot, represent a backland form of development that would fail to provide an appropriate standard of amenity for potential future occupiers in terms of a safe, accessible and desirable living environment contrary to the aims and objectives of the National Planning Policy Framework and to policy PCS23 of the Portsmouth Plan.
- 2) Having regard to its elevated position and proximity to common boundaries with neighbouring properties, the first floor extension would give rise to an unacceptable and unneighbourly degree of overlooking and resulting loss of privacy to the detriment of the occupiers of adjoining properties. The proposal is therefore contrary to policy PCS23 of the Portsmouth Plan and the aims and objectives of the NPPF.
- 3) In the absence of any evidence to the contrary, the proposed development would fail to provide off-street parking and secure cycle storage in accordance with the requirements of the Parking Standards and Transport Assessments Supplementary Planning Document resulting in a parking shortfall in an area where no space exists on street to accommodate a further parking exacerbating existing highway safety issues. The proposal is therefore contrary to the aims and objectives of the National Planning Policy Framework and Policies PCS17 & PSC23 of the Portsmouth Plan and the Portsmouth Parking SPD.
- 4) Without appropriate mitigation the development would be likely to have a significant effect on the Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas and so is contrary to Policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended).

18/00413/FUL: Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse). Conditional permission (13.06.2018).

## POLICY CONTEXT

The relevant policies within would include:

In addition to the National Planning Policy Framework, the relevant policies within the Portsmouth Plan would include: PCS14 (A Healthy City), PCS17 (Transport), PCS20 (houses in multiple occupation) and PCS23 (Design and Conservation). The revised Houses in Multiple Occupation Supplementary Planning Document (HMO SPD, July 2018), Parking Standards SPD and Solent Special Protection Areas SPD would also be material considerations.

## CONSULTATIONS

### Highways Engineer

For applications where a change of use is sought from a dwelling house (C3) or dwelling house in multiple occupation (C4) to a House of Multiple Occupation (Sui Generis) the following comments can be applied;

Considering the small scale of the proposal, it is the belief of the LHA that the proposal is unlikely to have a material impact upon the highway network and as such is satisfied that a traffic assessment would not be required.

Portsmouth's residential parking standards expect that dwelling houses (C3) and Houses in Multiple Occupation (HMO) (C4/Sui Generis) with more than 4 bedrooms should provide 2 car parking spaces per dwelling. Where no on-site parking is provided, it is assumed that existing parking demand is met on-street.

Where an application property already has 4 or more bedrooms, the expected parking demand of a HMO (Sui Generis) would be the same as the existing use as per SPD standards and as such would not be required to provide any further spaces despite an increase in the number of bedrooms.

The Portsmouth parking SPD also gives the expected level of cycle parking that should be provided for residential developments. An existing property with 4 bedrooms has an expected demand for 4 cycle parking spaces; upon changing to a HMO (Sui generis), the cycle parking provision required would remain the same as the current use and therefore additional cycle parking spaces are not required. It should however be ensured that the existing property already provides for 4 cycle parking spaces as per SPD standards.

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

### **Private Sector Housing**

#### Definitions

Dwelling and Flat: Housing Act 2004, Part 1, Chapter 1, Section 1 (5).

"Dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling.

"Flat" means a separate set of premises (whether or not on the same floor) —

- (a) Which forms part of a building;
- (b) Which is constructed or adapted for use for the purposes of a dwelling, and;
- (c) Either the whole or a material part of which lies above or below some other part of the building.

#### Proposal

Change of use from purposes falling within Class C3 (dwelling house) or Class C4 (house in multiple occupation) to a 10 person 6 bed house in multiple occupation (Sui Generis) (amended description)

#### Summary

- 3 storeys
- 6 bedrooms/10 persons

Based on the layout and sizes this property would require to be licenced under Part 2, Housing Act 2004.

#### Personal hygiene

There is currently an inadequate number of bath/shower rooms for 10 people sharing. The requirement is:

- Two bath/shower rooms and 2 separate WC's of which one WC can be contained within a bath/shower room.

The minimum size for a bath/shower room is 3.74m<sup>2</sup> and 2.74m<sup>2</sup> respectively and must include a bath/shower, WC, wash hand basin, ventilation and heating within a proper room with a lockable door.

The room must have a suitable layout to provide sufficient space for drying and changing. Wall finished and flooring shall be readily cleansable, the flooring well fitted and non-absorbent.

Where WCs are proposed in the property they must be a minimum of 1.17m<sup>2</sup> (1300mm x 900mm) and include a wash hand basin.

## **REPRESENTATIONS**

One representation has been received raising objections on the grounds of: (a) There are many flats in the area and the Victorian family housing stock should be preserved for future generations; (b) The proposal will increase pressure on parking; (c) The proposal will increase the number of unsightly refuse/recycling bins; (c) With every available living space used as bedrooms the property will end up looking like a commercial property or student bedsits; and, (d) If the property is already being used as a HMO this may not be a legitimate use of the property currently.

## **COMMENT**

The determining issues for this application relate to the suitability of the proposed Sui Generis HMO use within the existing community and whether the proposal complies with policy requirements in respect of providing a suitable standard of accommodation. Other considerations include the potential impact upon the living conditions of adjoining and neighbouring residents, SPA mitigation and parking/waste.

### **Principle of the use**

Planning permission is sought for the use of the property as a six bedroom/ten person Sui Generis house in multiple occupation.

Policy PCS20 of the Portsmouth Plan states that applications for the change of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses or where the development would not create an imbalance. The adopted Houses in Multiple Occupation SPD (HMO SPD July 2018) sets out how Policy PCS20 will be implemented and details how the City Council will apply this policy to all planning applications for HMO uses.

The property has a lawful use as a Class C4 (HMO) which was previously approved in June 2018, under planning application reference: 18/00413/FUL. As the property had a historic C4 use, the granting of the above permission (ref.18/00413/FUL) did not result in the creation of a new HMO.

Paragraph 1.15 of the HMO SPD states: 'Where planning permission is sought to change the use of a Class C4 or mixed C3/C4 use to a HMO in Sui Generis use, the City Council will seek to refuse applications 'in areas where concentrations of HMOs already exceed the 10% threshold'.

Having regard to the current lawful use of the property as a Class C4 HMO, the proposed change of the use to a larger HMO (Sui Generis) would therefore not result in an overall change to the balance of uses in the context of the surrounding area and would therefore, be in accordance with policy PCS20 of the Portsmouth Plan and the supporting HMO SPD.

In considering several recent appeals which related to similar developments, whilst the Inspector recognised Policy PCS20 it was opined that as the development was not creating a new HMO, there was no material change to the balance of uses in the area. In a recent appeal

(APP/Z1775/W/18/3193995, July 2018) at 18 Bramble Road (0.3 miles away), the Inspector stated: 'I saw that the works as shown on the proposed ground floor plan to change the layout to one containing 7 bedrooms had been implemented and occupied as such. Importantly, in this case, this has not increased the number of HMOs in the area as the property already benefits from a lawful use as a Class C3 dwelling house or Class C4 HMO. The HMO SPD does also state that the Council will seek to refuse planning applications for changes of use of the nature relating to the appeal in those same circumstances concerning the 10% threshold.

Nevertheless, in this case the addition of just one single sized bedroom to an existing lawful HMO would be unlikely to materially increase the community imbalance and I have received insufficient substantive evidence to the contrary...In this respect, although determining the appeal on its own merits, I have also had regard to other similar recent cases allowed on appeal as referred to by the appellant. Similar conclusions were reached in those decisions in respect of this issue, all of which related to sites not far from that of this appeal, albeit not in the same immediate vicinity. I have therefore afforded significant weight to those other decisions...For the above reasons, the development does not cause unacceptable harm to the mix and balance of the local community. As such, it accords with policy PCS20 of the Core Strategy and is not at odds with the general principles set out in the HMO SPD'.

In considering an appeal at 11 Baileys Road (APP/Z1775/W/16/3159989, February 2017) which related to a similar development, the Inspector opined that: 'Policy PCS20 of The Portsmouth Plan seeks to avoid concentrations of HMOs within the city. However, the policy is clear in that it states 'for the purposes of this policy, dwellings in use as Class C4, mixed C3/C4 use and HMOs in Sui Generis use will be considered to be HMOs'. Consequently, as the appeal property already has consent for a C4 use, the proposal could not result in an increase in concentration of HMOs in the City'.

Similar decisions were reached by the Inspector at 14 Wisborough Road, December 2018, APP/Z1775/W/18/3208412; 50 Hudson Road, December 2018, APP/Z1775/W/17/3191358; 30 Hudson Road, August 2018, APP/Z1775/W/17/3189609; 8 Pitcroft Road, August 2018, APP/Z1775/W/17/3188485; 239 Powerscourt Road, July 2017, APP/Z1775/W/17/3169402; 103 Manners Road, April 2018, APP/Z1775/W/17/3187443; 63 Jessie Road, March 2018, APP/Z1775/W/17/3185652; 59 Liss Road, February 2018, APP/Z1775/W/17/3185768; 1 Edmund Road, February 2018, APP/Z1775/W/17/3185758; 22 Jessie Road, December 2017, APP/Z1775/W/17/3179404; 80 Margate Road, February 2017, APP/Z1775/W/16/3159993; 37 Margate Road, February 2017, APP/Z1775/W/16/3159992; 12 Beatrice Road, October, APP/Z1775/A/12/2177272 (15 appeals in total).

Placing significant weight on these appeal decisions, the LPA must accept that the proposal would not result in a further imbalance of HMO uses, and would be unable to defend the position set out within the HMO SPD (July 2018) at appeal.

#### Standard of Accommodation

In terms of internal living conditions, the property benefits from the following:

Area:	Provided:	Required Standard: (HMO SPD-JULY 2018)
Bedroom 1 (Ground Floor)	14.8m <sup>2</sup>	7.5m <sup>2</sup>
Bedroom 2 (Ground Floor)	20.61m <sup>2</sup>	7.5m <sup>2</sup>
Bedroom 3 (First Floor)	14.08m <sup>2</sup>	7.5m <sup>2</sup>
Bedroom 4 (First Floor)	14.58m <sup>2</sup>	7.5m <sup>2</sup>
Bedroom 5 (First Floor)	17.6m <sup>2</sup>	7.5m <sup>2</sup>
Bedroom 5 en-suite (First Floor)	3.68m <sup>2</sup>	Not defined
Bedroom 6 (Second Floor)	10.45m <sup>2</sup>	7.5m <sup>2</sup>
Bedroom 6 en-suite (Second Floor)	3.2m <sup>2</sup>	Not defined

Kitchen/Communal Space (Ground Floor)	31.5m2	27m2
Additional Communal space (Conservatory)	28m2	
Additional kitchen (Second Floor)	9m2	11m2
Shower room (Ground Floor)	4.23m2	3.74m2
Bathroom (Second Floor)	5.94m2	3.74m2
W.C (Second Floor)	1.53m2	Not defined

Whilst it is recognised the additional second floor kitchen would measure under the required size standard (by 2m2), it is noted that a kitchen/communal space measuring 31.5m2 would be provided at ground floor. Furthermore, the conservatory would provide another 28m2 of additional communal space. Given the total combined communal space, the property is therefore considered to provide an adequate standard of living accommodation.

All the bedrooms would exceed the minimum size standards and the shared facilities meet the minimum size standards set out within the HMO SPD (July 2018). It is noted that 11.5m2 is the minimum size for a double room, and all but one of the bedrooms exceed this standard. However, confirmation has been sought from the applicant that the maximum number of people intended to be accommodated in the property would be 10. A suitably worded condition would be imposed to restrict the level of occupancy to 10 people.

In terms of bathroom facilities, bedrooms 5 and 6 would have an en-suite bathroom/shower room. There are no minimum size standards for en-suites. In addition, there would be two separate bathrooms and a W.C located across ground and first floor.

The Private Sector Housing Team advise that the property would require to be licenced under Part 2, Housing Act 2004.

For the reasons stated above, in accordance with the requirements outlined on pages 8 and 9 of the HMO SPD (July 2018), the property is considered to provide an adequate standard of living accommodation to facilitate 10 persons sharing.

#### Impact on Residential Amenity

Whilst the proposal would see the number of bedrooms remain unaltered the proposal would increase the number of occupants from 6 to 10 people. The current proposal therefore represents an increase in 4 people over the level of occupancy that would be allowed within the current C4 use.

Whilst the accommodation of additional occupants would lead to a more intensive occupation of property that could result in the transmission of noise and disturbance to the adjoining occupiers, regard must be made to the lawful use of the property that allows for its occupation by up to six unrelated persons or by a family of an unrestricted size.

The impact of increasing the occupancy of an HMO on the amenities of neighbouring residents has been considered in a number of recent appeals.

In considering a recent appeal at 11 Baileys Road (APP/Z1775/W/16/3159989, February 2017), the Inspector opined: 'The current use of the property for C4 purposes would enable occupation by up to six residents. The appeal concerns the accommodation being increased by 2 additional bedrooms, making a total of 8 bedrooms; however, this would not change the nature of the use. To effect this change the ground floor lounge and study would be converted to bedrooms. No other rooms would be affected ... I am not persuaded that sufficient evidence has been submitted to substantiate that the proposed 2 additional bedrooms, would result in material harm to their [local residents] living conditions or unbalance the local community'.

Furthermore, having regards to an allowed appeal relating to this issue at 12 Beatrice Road (APP/Z1775/A/12/2177272, October 2012) the Inspector stated that 'I do not consider that one additional resident would amount to an over-intensive use of the property. Having regard to the site's urban location and the density of housing in the area, such a small increase in occupancy would not have a significant impact on the intensity of activity in the surrounding area thereby affecting its character and appearance. Equally, an increase from six persons to seven would not result in a use demonstrably different from that already authorised. Any increase in activity, noise or disturbance is unlikely to be significant'.

Following an appeal relating to 'over-intensification' at 37 Margate Road (APP/Z1775/W/16/3159992, September 2016), the Inspector concluded that: 'having regard to the site's urban location and the density of housing in the area, any increase in occupancy at the property derived from such a small increase in bedroom accommodation would not be materially discernible when considered in the context of the existing activity in the surrounding urban area. In reaching this conclusion I have carefully considered the representations from local residents, however, I am not persuaded that sufficient evidence has been submitted to substantiate that the proposed 1 additional bedroom, would result in material harm to their living conditions or unbalance the local community'.

In a more recent appeal at 59 Liss Road (APP/Z1775/W/17/3185768, February 2018), the Inspector agreed with the decision of the previous Inspector for 37 Margate Road in respect of the impact of the additional occupancy.

Having regard to these various appeal decisions, and on the basis that the proposal would result in 4 additional occupants, it is not considered that an objection could reasonably be sustained on the basis of the impact on the amenities of neighbouring residents in terms of increased noise or disturbance.

#### Highways and waste

The application site does not benefit from any off-street parking and none is proposed as part of this application (the constraints of the site are such that none can be provided). However, given the current use of the property, the view of the planning Inspector detailed above and the sites proximity to local shops, services and transport facilities, it is considered that an objection on car parking standards could not be sustained.

The Councils Adopted Parking Standards set out a requirement for Sui Generis HMOs to provide space for the storage of at least 4 bicycles. The property has a rear garden where secure cycle storage could be located. This can be secured by condition.

In relation to refuse requirements, the owners of the site would need to apply for communal waste collection. It is considered that the waste facilities could either be stored within the front forecourt or rear garden, and can be secured by condition.

#### Solent Special Protection Areas

The Conservation of Habitats and Species Regulations 2017 [as amended] and the Wildlife and Countryside Act 1981 place duties on the Council to ensure that the proposed development would not have a significant effect on the interest features for which Portsmouth Harbour is designated, or otherwise affect protected species. The Portsmouth Plan's Greener Portsmouth policy (PCS13) sets out how the Council will ensure that the European designated nature conservation sites along the Solent coast will continue to be protected.

It has been identified that any development in the city which is residential in nature will result in a significant effect on the Special Protection Areas, due to increased recreational pressure. A Bird Aware Strategy came into effect on 1 April 2018. This sets out how development schemes

can provide mitigation to remove this effect and enable development to go forward in compliance with the Habitats Regulations. The mitigation can be provided in the form of a financial contribution towards a Solent wide mitigation strategy. For proposals for a change of use from C4 HMOs to Sui Generis HMOs the amount sought depends on the number of additional bedrooms proposed. In this case, the proposal would not result in any additional bedrooms within the property and as such no SPA mitigation fee has been sought.

## **RECOMMENDATION**

## **Conditional Permission**

### **Conditions**

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.
- 2) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Location plan (BLJT-00703777); and, proposed floor plans (ground, first and second).
- 3) The premises shall only be used as a house in multiple occupation for a maximum of 10 residents.
- 4) Prior to first occupation of the property as a ten person/six bedroom (Sui Generis) House in Multiple Occupation, secure and weatherproof bicycle storage facilities for 4 bicycles shall be provided at the site and shall thereafter be retained for the parking of bicycles at all times.
- 5) Prior to the first occupation of the property as a ten person/six bedroom (Sui Generis) House of Multiple Occupation, two 360L refuse bins and one 360L recycling bin shall be provided and thereafter retained in the forecourt of the property (or such other waste arrangements as may be submitted to and approved by the Local Planning Authority in writing).

### **The reasons for the conditions are:**

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To allow the Local Planning Authority to assess the impact of any further intensification of the use on the amenity of neighbouring residents and the character of the area, in accordance with Policies PCS20 and PCS23 of the Portsmouth Plan.
- 4) To ensure that adequate provision is made for cyclists using the premises in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.
- 5) In the interest of amenity, in accordance with Policy PCS23 of the Portsmouth Plan.

### **PRO-ACTIVITY STATEMENT**

In accordance with the National Planning Policy Framework the City Council has worked positively and pro-actively with the applicant through the application process, and with the submission of amendments an acceptable proposal has been achieved.

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**3**

**18/01644/FUL**

**WARD:CENTRAL SOUTHSEA**

**10 TELEPHONE ROAD SOUTHSEA PO4 0AY**

**CHANGE OF USE FROM PURPOSES FALLING WITHIN A CLASS C4 (HOUSE IN MULTIPLE OCCUPATION) TO A 7 BEDROOM, 7 PERSON HMO (SUI GENERIS) (RESUBMISSION OF 18/01239/FUL)**

**Application Submitted By:**

Thorns Young Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Simon Birmingham

**RDD:** 2nd October 2018

**LDL:** 25th December 2018

**SUMMARY OF MAIN ISSUES**

The application is being presented to the Planning Committee for determination because the creation of a 7 bedroom/7 person Sui Generis HMO would be contrary to Policy PCS20 of the Portsmouth Plan and the revised Houses in Multiple Occupation Supplementary Planning Document (HMO SPD, July 2018).

The determining issues for this application relate to the suitability of the proposed Sui Generis HMO use within the existing community and whether the proposal complies with policy requirements in respect of providing a suitable standard of accommodation. Other considerations include the proposals potential impact upon the living conditions of adjoining and neighbouring residents, SPA mitigation and parking.

**The site**

This application relates to a two-storey, mid-terrace dwellinghouse (Class C4) located to the south of Telephone Road, close to its intersection with Fawcett Road to the west. The property sits flush with the highway to the front and benefits from a moderate size yard to the rear.

**The proposal**

Planning permission is sought for a change of use from Class C4 (house in multiple occupation) to a 7 bedroom/7 person, Sui Generis (house in multiple occupation). A rear 'L shaped' dormer and single-storey rear extension have been constructed under permitted development. It is noted that prior approval for the larger single-storey rear extension was not required, under planning ref.18/00099/GPDC.

**Planning History**

18/00099/GPDC: Construction of single storey rear extension. Prior Approval not required (08.11.2018).

18/01284/FUL: Proposed change of use from House of Multiple Occupation (Class C4) to purposes falling within Class C3 (Dwelling House) and Class C4 (House of Multiple Occupation). Conditional permission (26.09.2018).

18/01239/FUL: Change of use from purposes falling within a Class C4 (House In Multiple Occupation) to a 7 bedroom, 7 person HMO (Sui Generis). Withdrawn (01.08.2018).

## POLICY CONTEXT

The relevant policies within would include:

In addition to the National Planning Policy Framework, the relevant policies within the Portsmouth Plan would include: PCS14 (A Healthy City), PCS17 (Transport), PCS20 (houses in multiple occupation) and PCS23 (Design and Conservation). The revised Houses in Multiple Occupation Supplementary Planning Document (HMO SPD, July 2018), Parking Standards SPD and Solent Special Protection Areas SPD would also be material considerations.

## CONSULTATIONS

### Private Sector Housing

#### Definitions

Dwelling and Flat: Housing Act 2004, Part 1, Chapter 1, Section 1 (5).

"Dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling.

"Flat" means a separate set of premises (whether or not on the same floor) —

- (a) Which forms part of a building;
- (b) Which is constructed or adapted for use for the purposes of a dwelling, and;
- (c) Either the whole or a material part of which lies above or below some other part of the building.

#### Summary

- 3 storeys

- 7 bedrooms

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

Please note the following amenities are to be provided.

#### Combined kitchen/dining and lounge

The kitchen area must be a minimum of 11sqm in a combined open planned kitchen/dining and lounge. The following facilities must be supplied:

- 2 x conventional cookers (a combination microwave may be used in lieu of a second cooker).
- 1 x double bowl sink and integral drainer (a one and half bowl sink is acceptable where a dishwasher is provided).
- 2 x under the counter fridge and a separate freezer or 2 x equivalent combined fridge/freezer.
- 4 x 500mm base units and 2 x 1000mm wall units with doors or equivalent.
- Worktops 2500mm (l) x 500mm (d).
- 3 x twin sockets located at least 150mm above the work surface.

#### Highways Engineer

For applications where a change of use is sought from a dwelling house (C3) or dwelling house in multiple occupation (C4) to a House of Multiple Occupation (Sui Generis) the following comments can be applied;

Considering the small scale of the proposal, it is the belief of the LHA that the proposal is unlikely to have a material impact upon the highway network and as such is satisfied that a traffic assessment would not be required.

Portsmouth's residential parking standards expect that dwelling houses (C3) and Houses in Multiple Occupation (HMO) (C4/Sui Generis) with more than 4 bedrooms should provide 2 car parking spaces per dwelling. Where no on-site parking is provided, it is assumed that existing parking demand is met on-street.

Where an application property already has 4 or more bedrooms, the expected parking demand of a HMO(sui generis) would be the same as the existing use as per SPD standards and as such would not be required to provide any further spaces despite an increase in the number of bedrooms.

The Portsmouth parking SPD also gives the expected level of cycle parking that should be provided for residential developments. An existing property with 4 bedrooms has an expected demand for 4 cycle parking spaces; upon changing to a HMO (Sui Generis), the cycle parking provision required would remain the same as the current use and therefore additional cycle parking spaces are not required. It should however be ensured that the existing property already provides for 4 cycle parking spaces as per SPD standards.

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

## **REPRESENTATIONS**

None received.

## **COMMENT**

The determining issues for this application relate to the suitability of the proposed Sui Generis HMO use within the existing community and whether the proposal complies with policy requirements in respect of providing a suitable standard of accommodation. Other considerations include the potential impact upon the living conditions of adjoining and neighbouring residents, SPA mitigation and parking/waste.

### Principle of the use

Planning permission is sought for the use of the property as a seven bedroom/seven person Sui Generis house in multiple occupation.

Policy PCS20 of the Portsmouth Plan states that applications for the change of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses or where the development would not create an imbalance. The adopted Houses in Multiple Occupation SPD (HMO SPD July 2018) sets out how Policy PCS20 will be implemented and details how the City Council will apply this policy to all planning applications for HMO uses.

The property has a lawful use as a Class C4 (HMO) which was previously approved in September 2018, under planning application reference: 18/01284/FUL. As the property had a historic C4 use, the granting of the above permission (ref.18/01284/FUL) did not result in the creation of a new HMO.

Paragraph 1.15 of the HMO SPD states: 'Where planning permission is sought to change the use of a Class C4 or mixed C3/C4 use to a HMO in Sui Generis use, the City Council will seek to refuse applications 'in areas where concentrations of HMOs already exceed the 10% threshold'.

Having regard to the current lawful use of the property as a Class C4 HMO, the proposed change of the use to a larger HMO (*Sui Generis*) would therefore not result in an overall change to the balance of uses in the context of the surrounding area and would therefore, be in accordance with policy PCS20 of the Portsmouth Plan and the supporting HMO SPD.

In considering several recent appeals which related to similar developments, whilst the Inspector recognised Policy PCS20 it was opined that as the development was not creating a new HMO, there was no material change to the balance of uses in the area. In a recent appeal (APP/Z1775/W/18/3193995, July 2018) at 18 Bramble Road (0.3 miles away), the Inspector stated: 'I saw that the works as shown on the proposed ground floor plan to change the layout to one containing 7 bedrooms had been implemented and occupied as such. Importantly, in this case, this has not increased the number of HMOs in the area as the property already benefits from a lawful use as a Class C3 dwelling house or Class C4 HMO. The HMO SPD does also state that the Council will seek to refuse planning applications for changes of use of the nature relating to the appeal in those same circumstances concerning the 10% threshold.

Nevertheless, in this case the addition of just one single sized bedroom to an existing lawful HMO would be unlikely to materially increase the community imbalance and I have received insufficient substantive evidence to the contrary...In this respect, although determining the appeal on its own merits, I have also had regard to other similar recent cases allowed on appeal as referred to by the appellant. Similar conclusions were reached in those decisions in respect of this issue, all of which related to sites not far from that of this appeal, albeit not in the same immediate vicinity. I have therefore afforded significant weight to those other decisions...For the above reasons, the development does not cause unacceptable harm to the mix and balance of the local community. As such, it accords with policy PCS20 of the Core Strategy and is not at odds with the general principles set out in the HMO SPD'.

In addition, following an appeal at 11 Baileys Road (APP/Z1775/W/16/3159989, February 2017) which related to a similar development, the Inspector opined that: 'Policy PCS20 of The Portsmouth Plan seeks to avoid concentrations of HMOs within the city. However, the policy is clear in that it states 'for the purposes of this policy, dwellings in use as Class C4, mixed C3/C4 use and HMOs in *Sui Generis* use will be considered to be HMOs'. Consequently, as the appeal property already has consent for a C4 use, the proposal could not result in an increase in concentration of HMOs in the City'.

Similar decisions were reached by the Inspector at 14 Wisborough Road, December 2018, APP/Z1775/W/18/3208412; 50 Hudson Road, December 2018, APP/Z1775/W/17/3191358; 30 Hudson Road, August 2018, APP/Z1775/W/17/3189609; 8 Pitcroft Road, August 2018, APP/Z1775/W/17/3188485; 239 Powerscourt Road, July 2017, APP/Z1775/W/17/3169402; 103 Manners Road, April 2018, APP/Z1775/W/17/3187443; 63 Jessie Road, March 2018, APP/Z1775/W/17/3185652; 59 Liss Road, February 2018, APP/Z1775/W/17/3185768; 1 Edmund Road, February 2018, APP/Z1775/W/17/3185758; 22 Jessie Road, December 2017, APP/Z1775/W/17/3179404; 80 Margate Road, February 2017, APP/Z1775/W/16/3159993; 37 Margate Road, February 2017, APP/Z1775/W/16/3159992; 12 Beatrice Road, October, APP/Z1775/A/12/2177272 (15 appeals in total).

Placing significant weight on these appeal decisions, the LPA must accept that the proposal would not result in a further imbalance of HMO uses, and would be unable to defend the position set out within the HMO SPD (July 2018) at appeal.

## Standard of Accommodation

In terms of internal living conditions, the property benefits from the following:

Area:	Provided:	Required Standard: (HMO SPD-JULY 2018)
Bedroom 1 (Second Floor)	14.63m2	7.5m2
Bedroom 2 (Second Floor)	8.63m2	7.5m2
Bedroom 3 (First Floor)	10.27m2	7.5m2
Bedroom 4 (First Floor)	9.6m2	7.5m2
Bedroom 5 (First Floor)	8.93m2	7.5m2
Bedroom 6 (Ground Floor)	10.80m2	7.5m2
Bedroom 7 (Ground Floor)	9.6m2	7.5m2
 Kitchen/Communal Space (Ground Floor)	 29m2	 27m2
Shower room (First Floor)	3.54m2	3.74m2
Shower room (Second Floor)	3.35m2	3.74m2
W/C (Ground Floor)	1.17m2	Not defined

The HMO SPD (July 2018), states that for an HMO for 7-10 people, there must be 2 separate bathrooms and 2 separate W.Cs with hand washbasins (one W.C could be contained with one bathroom). Whilst, it is noted that the proposed shower rooms/bathrooms would be slightly undersized, by approx. 0.3m2, it is considered this would not be so severe to warrant a reason for refusal of this application. Furthermore, there would be W.Cs in the shower rooms to compensate. The Private Sector Housing Team advise that a licence would be required but do not raise any adverse comments to the proposal.

For the reasons stated above, in accordance with the requirements outlined on pages 8 and 9 of the HMO SPD (July 2018), the property is considered to provide an adequate standard of living accommodation to facilitate 7 persons sharing.

## Impact on Residential Amenity

Whilst the accommodation of additional occupants would lead to a more intensive occupation of property that could result in the transmission of noise and disturbance to the adjoining occupiers, regard must be made to the lawful use of the property that allows occupation by six unrelated individuals or a family of an unrestricted size.

In considering an allowed appeal (October 2012, APP/Z1775/A/12/2177272) relating to this issue at 12 Beatrice Road the Inspector stated that 'I do not consider that one additional resident would amount to an over-intensive use of the property. Having regard to the site's urban location and the density of housing in the area, such a small increase in occupancy would not have a significant impact on the intensity of activity in the surrounding area thereby affecting its character and appearance. Equally, an increase from six persons to seven would not result in a

use demonstrably different from that already authorised. Any increase in activity, noise or disturbance is unlikely to be significant'.

A further allowed appeal (December 2012) relating to very similar issues at a property at 74 Telephone Road (APP/Z1775/A/12/2177629) stated that 'the comings and goings, internal activity and resultant noise associated with one more person are not significant compared to the impact of the six that could reside in the property anyway'. The Inspector did recognise that 'if there were more than seven residents this would, of necessity, involve either the sharing of bedrooms or a significant reduction in the extent of the communal space to create additional bedrooms'.

The Inspector determined that 'in these circumstances such a use would have an appreciably greater potential for resulting in undue noise and disturbance.' In the event that planning consent were to be granted, a condition could be applied to limit the maximum occupation of the property to seven persons.

Following an appeal relating to 'over-intensification' at 37 Margate Road (APP/Z1775/W/16/3159992, September 2016), the Inspector concluded that: 'having regard to the site's urban location and the density of housing in the area, any increase in occupancy at the property derived from such a small increase in bedroom accommodation would not be materially discernible when considered in the context of the existing activity in the surrounding urban area. In reaching this conclusion I have carefully considered the representations from local residents, however, I am not persuaded that sufficient evidence has been submitted to substantiate that the proposed 1 additional bedroom, would result in material harm to their living conditions or unbalance the local community'.

In a more recent appeal at 59 Liss Road (APP/Z1775/W/17/3185768, February 2018), the Inspector agreed with the decision of the previous Inspector for 37 Margate Road in respect of the impact of the additional occupancy.

In light of the decisions above, it is considered that the occupation of the property by seven (an increase by one person as set out in the above appeals) individuals would not result in any significant increase in noise and disturbance, and is unlikely to have a significant additional impact on the occupiers of adjoining or nearby properties.

#### Highways and waste

The application site does not benefit from any off-street parking and none is proposed as part of this application (the constraints of the site are such that none can be provided). However, given the current use of the property, the view of the planning Inspector detailed above and the sites proximity to local shops, services and transport facilities, it is considered that an objection on car parking standards could not be sustained.

The Councils Adopted Parking Standards set out a requirement for Sui Generis HMOs to provide space for the storage of at least 4 bicycles. The property has a rear garden where secure cycle storage could be located. This can be secured by condition.

In relation to refuse requirements, the owners of the site would need to apply for communal waste collection. It is considered that the waste facilities could be stored in the rear garden, and can be secured by condition.

#### Solent Special Protection Areas

The Conservation of Habitats and Species Regulations 2017 [as amended] and the Wildlife and Countryside Act 1981 place duties on the Council to ensure that the proposed development would not have a significant effect on the interest features for which Portsmouth Harbour is designated as a Special Protection Area, or otherwise affect protected habitats or species. The Portsmouth Plan's Greener Portsmouth policy (PCS13) sets out how the Council will ensure that

the European designated nature conservation sites along the Solent coast will continue to be protected.

The Solent Recreation Mitigation Strategy (December 2017) was adopted by Portsmouth City Council on 1st April 2018 and replaces the Interim Solent Recreation Mitigation Strategy (December 2014) and the associated Solent Special Protection Areas Supplementary Planning Document (SPD) which was revoked by the City Council from 1st April 2018. The Strategy identifies that any development in the city which is residential in nature will result in a significant effect on the Special Protection Areas (SPAs) along the Solent coast. It sets out how development schemes can provide a mitigation package to remove this effect and enable the development to go forward in compliance with the Habitats Regulations.

The proposal would lead to a net increase in population, which would be likely to lead to a significant effect as described in section 61 of the Habitats Regulations on the Portsmouth Harbour and the Chichester and Langstone Special Protection Areas (SPAs). The development is not necessary for the management of the SPA.

Mitigation payments to the value of £337 would be required for this type of development. The applicant has provided this payment, in accordance with Policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended). This contribution is sufficient to mitigate the likely significant effect of the proposal on the Solent Special Protection Areas.

## **RECOMMENDATION                      Conditional Permission**

### **Conditions**

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.
- 2) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Location plan (TQRQM18198125217246); proposed floor plans (PG.3070.18.SUI/A); and, proposed elevations and plans (PG.3070.18.2/A). \*\*\*\* \* \* \* \* \* \* \* \* \* \* \* \* .
- 3) The premises shall only be used as a house in multiple occupation for a maximum of 7 residents.
- 4) Prior to first occupation of the property as a seven person/seven bedroom (Sui Generis) House in Multiple Occupation, secure and weatherproof bicycle storage facilities for 4 bicycles shall be provided at the site and shall thereafter be retained for the parking of bicycles at all times.
- 5) Prior to the first occupation of the property as a seven person/seven bedroom (Sui Generis) House of Multiple Occupation, two 360L refuse bins and one 360L recycling bin shall be provided and thereafter retained in the rear garden of the property (or such other waste arrangements as may be submitted to and approved by the Local Planning Authority in writing).

### **The reasons for the conditions are:**

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To allow the Local Planning Authority to assess the impact of any further intensification of the use on the amenity of neighbouring residents and the character of the area, in accordance with Policies PCS20 and PCS23 of the Portsmouth Plan.

- 4) To ensure that adequate provision is made for cyclists using the premises in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.
- 5) In the interest of amenity, in accordance with Policy PCS23 of the Portsmouth Plan.

#### PRO-ACTIVITY STATEMENT

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

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**1 DARLINGTON ROAD SOUTHSEA PO4 0ND****CHANGE OF USE FROM PURPOSES FALLING WITHIN C4 (HOUSE IN MULTIPLE OCCUPATION) TO A SEVEN BEDROOM/SEVEN PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)****Application Submitted By:**

Thorns Young Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Simon Birmingham

**RDD:** 17th October 2018

**LDL:** 14th December 2018

**SUMMARY OF MAIN ISSUES**

The application is being presented to the Planning Committee for determination because of: (a) a deputation request from No.5 Darlington Road; (b) a petition containing 15 signatures; and, (c) the creation of a 7 bedroom/7 person Sui Generis HMO would be contrary to Policy PCS20 of the Portsmouth Plan and the revised Houses in Multiple Occupation Supplementary Planning Document (HMO SPD, July 2018).

The determining issues for this application relate to the suitability of the proposed Sui Generis HMO use within the existing community and whether the proposal complies with policy requirements in respect of providing a suitable standard of accommodation. Other considerations include the proposals potential impact upon the living conditions of adjoining and neighbouring residents, SPA mitigation, parking and other matters raised in representations.

**The site**

This application relates to a two-storey end of terrace dwellinghouse (Class C4) located to the north of Darlington Road, close to its intersection with Lawrence Road to the west. The property benefits from a small enclosed forecourt, currently used for the storage of bins and a moderate size yard to the rear.

**The proposal**

Planning permission is sought for a change of use from Class C4 (house in multiple occupation) to a 7 bedroom/7 person, Sui Generis (house in multiple occupation). A rear 'L shaped' dormer and single-storey rear extension have been constructed under permitted development.

**Planning History**

18/01310/FUL: Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse). Conditional permission (12.10.2018).

## POLICY CONTEXT

The relevant policies within would include:

In addition to the National Planning Policy Framework, the relevant policies within the Portsmouth Plan would include: PCS14 (A Healthy City), PCS17 (Transport), PCS20 (houses in multiple occupation) and PCS23 (Design and Conservation). The revised Houses in Multiple Occupation Supplementary Planning Document (HMO SPD, July 2018), Parking Standards SPD and Solent Special Protection Areas SPD would also be material considerations.

## CONSULTATIONS

### Environmental Health

I note there are a number of objections to this application concerning potential issues including noise from the proposed use. A house of multiple occupation will potentially result in a higher concentration of occupants to that of a normal house hold and we have evidence to support that these types of properties attract an increased number of noise complaints. Where such premises are structurally adjoined to other residential uses the risk of complaints is likely to increase due to potential lifestyle clashes exacerbated by poor party wall sound insulation.

The proposal property is structurally adjoined to 3 Darlington Road, a residential property. No information has been provided concerning the acoustic insulation of the party wall nor any proposals to improve the sound insulation. Communal areas are of particular concern due to the likely concentration of occupants that this area is likely to experience. Furthermore, no information has been provided concerning the management of the proposed premises and how issues of noise and nuisance would be tackled.

I would recommend that should planning permission be granted a scheme for sound insulation is submitted and approved by the Local Planning Authority prior to the change of use. The sound insulation shall be carried out in accordance with the approved scheme and implemented prior to occupation and thereafter maintained.

Further comments received on 9th January 2019:

Further to my comments dated 27th November 2018 and your email dated 7th January 2019, I have searched our complaints data base and can confirm that no noise complaints have been received by this service in relation to this property. We have however received 13 complaints concerning similar properties (HMOs) in Darlington Road between 2013 and 2017. One resulted in noise abatement notices being served upon the occupants and the other complaints were dealt with informally.

I would however bring it to your attention that whilst we can deal with noise complaints using the Environmental Protection Act 1990, especially loud music, we often encounter problems (late at night and during the early hours of the morning) where the voices of occupants can be heard due to poor sound insulation. Unless the occupants are acting unreasonably i.e. shouting, whooping we are unable to take any action to resolve this matter due to case law donating that normal behaviour i.e. talking cannot be considered as a statutory noise nuisance. Consideration was therefore given at the planning application stage to act proactively in order to prevent the adjacent residential property being disturbed by noise, hence my recommendation for sound insulation.

Due to information that you provided in your email concerning the decisions made by Planning Inspector on appeals for additional rooms being added to existing HMOs and no complaints being registered against the applicants property I have insufficient evidence to demonstrate that a loss of amenity is likely to occur.

## **Private Sector Housing**

### Definitions

Dwelling and Flat: Housing Act 2004, Part 1, Chapter 1, Section 1 (5).

"Dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling.

"Flat" means a separate set of premises (whether or not on the same floor) —

- (a) Which forms part of a building;
- (b) Which is constructed or adapted for use for the purposes of a dwelling, and;
- (c) Either the whole or a material part of which lies above or below some other part of the building.

### Proposal

Change of use from purposes falling within C4 (house in multiple occupation) to a seven bedroom/seven person house in multiple occupation (sui generis).

### Summary

- 3 storeys
- 7 bedrooms

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

### **Highways Engineer**

For applications where a change of use is sought from a dwelling house (C3) or dwelling house in multiple occupation (C4) to a House of Multiple Occupation (Sui generis) the following comments can be applied;

Considering the small scale of the proposal, it is the belief of the LHA that the proposal is unlikely to have a material impact upon the highway network and as such is satisfied that a traffic assessment would not be required.

Portsmouth's residential parking standards expect that dwelling houses (C3) and Houses in Multiple Occupation (HMO) (C4/Sui Generis) with more than 4 bedrooms should provide 2 car parking spaces per dwelling. Where no on-site parking is provided, it is assumed that existing parking demand is met on-street.

Where an application property already has 4 or more bedrooms, the expected parking demand of a HMO(sui generis) would be the same as the existing use as per SPD standards and as such would not be required to provide any further spaces despite an increase in the number of bedrooms.

The Portsmouth parking SPD also gives the expected level of cycle parking that should be provided for residential developments. An existing property with 4 bedrooms has an expected demand for 4 cycle parking spaces; upon changing to a HMO (Sui Generis), the cycle parking provision required would remain the same as the current use and therefore additional cycle parking spaces are not required. It should however be ensured that the existing property already provides for 4 cycle parking spaces as per SPD standards.

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

## **REPRESENTATIONS**

Five representations have been received raising objections on the grounds of: (a) Increase on parking pressure; (b) there are too many HMOs already; (c) the HMO would impact negatively on the neighbourhood; (d) anti-social behaviour associated with HMOs; (e) increase in noise associated with HMOs; (f) increased pressure on refuse collection; (g) application does not take into account the demographics of the community within the road; (h) loss of privacy; (i) increase in litter and waste associated with HMOs; (j) proposed extension will over shadow our garden and take away privacy; (k) increase lack of community atmosphere; and, (l) other HMO applications have been refused within the street.

A deputation request from No.5 Darlington Road has been received (should the application be recommended for approval).

An objection with a petition containing No.15 signatures has also been received in objection to the proposed development. The objection relates to the following issues: (a) Over population of existing HMOs in this road; (b) street noise levels; (c) garden noise levels and loss of privacy; (d) parking; and, (e) rubbish disposal.

## **COMMENT**

The determining issues for this application relate to the suitability of the proposed Sui Generis HMO use within the existing community and whether the proposal complies with policy requirements in respect of providing a suitable standard of accommodation. Other considerations include the potential impact upon the living conditions of adjoining and neighbouring residents, SPA mitigation, parking, waste and other matters raised in representations.

### **Principle of the use**

Planning permission is sought for the use of the property as a seven bedroom/seven person Sui Generis house in multiple occupation.

Policy PCS20 of the Portsmouth Plan states that applications for the change of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses or where the development would not create an imbalance. The adopted Houses in Multiple Occupation SPD (HMO SPD July 2018) sets out how Policy PCS20 will be implemented and details how the City Council will apply this policy to all planning applications for HMO uses.

The property has a lawful use as a Class C4 (HMO) which was previously approved in October 2018, under planning application reference: 18/01310/FUL. As the property had a historic C4 use, the granting of the above permission (ref.18/01310/FUL) did not result in the creation of a new HMO.

Paragraph 1.15 of the HMO SPD states: 'Where planning permission is sought to change the use of a Class C4 or mixed C3/C4 use to a HMO in Sui Generis use, the City Council will seek to refuse applications 'in areas where concentrations of HMOs already exceed the 10% threshold'.

Having regard to the current lawful use of the property as a Class C4 HMO, the proposed change of the use to a larger HMO (Sui Generis) would therefore not result in an overall change to the balance of uses in the context of the surrounding area and would therefore, be in accordance with policy PCS20 of the Portsmouth Plan and the supporting HMO SPD.

In considering several recent appeals which related to similar developments, whilst the Inspector recognised Policy PCS20 it was opined that as the development was not creating a new HMO, there was no material change to the balance of uses in the area. In a recent appeal (APP/Z1775/W/18/3193995, July 2018) at 18 Bramble Road (0.3 miles away), the Inspector stated: 'I saw that the works as shown on the proposed ground floor plan to change the layout to

one containing 7 bedrooms had been implemented and occupied as such. Importantly, in this case, this has not increased the number of HMOs in the area as the property already benefits from a lawful use as a Class C3 dwelling house or Class C4 HMO. The HMO SPD does also state that the Council will seek to refuse planning applications for changes of use of the nature relating to the appeal in those same circumstances concerning the 10% threshold.

Nevertheless, in this case the addition of just one single sized bedroom to an existing lawful HMO would be unlikely to materially increase the community imbalance and I have received insufficient substantive evidence to the contrary...In this respect, although determining the appeal on its own merits, I have also had regard to other similar recent cases allowed on appeal as referred to by the appellant. Similar conclusions were reached in those decisions in respect of this issue, all of which related to sites not far from that of this appeal, albeit not in the same immediate vicinity. I have therefore afforded significant weight to those other decisions...For the above reasons, the development does not cause unacceptable harm to the mix and balance of the local community. As such, it accords with policy PCS20 of the Core Strategy and is not at odds with the general principles set out in the HMO SPD'.

In addition, following an appeal at 11 Baileys Road (APP/Z1775/W/16/3159989, February 2017) which related to a similar development, the Inspector opined that: 'Policy PCS20 of The Portsmouth Plan seeks to avoid concentrations of HMOs within the city. However, the policy is clear in that it states 'for the purposes of this policy, dwellings in use as Class C4, mixed C3/C4 use and HMOs in Sui Generis use will be considered to be HMOs'. Consequently, as the appeal property already has consent for a C4 use, the proposal could not result in an increase in concentration of HMOs in the City'.

Similar decisions were reached by the Inspector at 14 Wisborough Road, December 2018, APP/Z1775/W/18/3208412; 50 Hudson Road, December 2018, APP/Z1775/W/17/3191358; 30 Hudson Road, August 2018, APP/Z1775/W/17/3189609; 8 Pitcroft Road, August 2018, APP/Z1775/W/17/3188485; 239 Powerscourt Road, July 2017, APP/Z1775/W/17/3169402; 103 Manners Road, April 2018, APP/Z1775/W/17/3187443; 63 Jessie Road, March 2018, APP/Z1775/W/17/3185652; 59 Liss Road, February 2018, APP/Z1775/W/17/3185768; 1 Edmund Road, February 2018, APP/Z1775/W/17/3185758; 22 Jessie Road, December 2017, APP/Z1775/W/17/3179404; 80 Margate Road, February 2017, APP/Z1775/W/16/3159993; 37 Margate Road, February 2017, APP/Z1775/W/16/3159992; 12 Beatrice Road, October, APP/Z1775/A/12/2177272 (15 appeals in total).

Placing significant weight on these appeal decisions, the LPA must accept that the proposal would not result in a further imbalance of HMO uses, and would be unable to defend the position set out within the HMO SPD (July 2018) at appeal.

#### Standard of Accommodation

In terms of internal living conditions, the property benefits from the following:

Area:	Provided:	Required Standard: (HMO SPD-JULY 2018)
Bedroom 1 (Second Floor)	9.02m2	7.5m2
Bedroom 2 (Second Floor)	8.64m2	7.5m2
Bedroom 3 (First Floor)	12.9m2	7.5m2
Bedroom 4 (First Floor)	9.9m2	7.5m2
Bedroom 5 (First Floor)	9.72m2	7.5m2
Bedroom 6 (Ground Floor)	10.77m2	7.5m2
Bedroom 7 (Ground Floor)	9.9m2	7.5m2
Kitchen/Communal Space (Ground Floor)	27.02m2	27m2

Shower room (First Floor)	3.84m <sup>2</sup>	3.74m <sup>2</sup>
Shower room (Second Floor)	3.84m <sup>2</sup>	3.74m <sup>2</sup>
W/C (Ground Floor)	3.84m <sup>2</sup>	Not defined

The City Council Private Sector Housing Team (PSHT) advise that a licence would be required but do not raise any adverse comments to the proposal.

For the reasons stated above, in accordance with the requirements outlined on pages 8 and 9 of the HMO SPD (July 2018), the property is considered to provide an adequate standard of living accommodation to facilitate 7 persons sharing.

#### Impact on Residential Amenity

Whilst the accommodation of additional occupants would lead to a more intensive occupation of property that could result in the transmission of noise and disturbance to the adjoining occupiers, regard must be made to the lawful use of the property that allows occupation by up to six unrelated individuals or a family of an unrestricted size.

The Environmental Health Team notes that: 'The proposal property is structurally adjoined to 3 Darlington Road, a residential property. No information has been provided concerning the acoustic insulation of the party wall or any proposals to improve the sound insulation. Communal areas are of particular concern due to the likely concentration of occupants that this area is likely to experience. Furthermore, no information has been provided concerning the management of the proposed premises and how issues of noise and nuisance would be tackled'. In light of the concern raised, the Environmental Health team recommend that a condition relating to sound insulation should be imposed.

However, in considering an allowed appeal relating to this issue at 12 Beatrice Road (APP/Z1775/A/12/2177272, October 2012) the Inspector stated that 'I do not consider that one additional resident would amount to an over-intensive use of the property. Having regard to the site's urban location and the density of housing in the area, such a small increase in occupancy would not have a significant impact on the intensity of activity in the surrounding area thereby affecting its character and appearance. Equally, an increase from six persons to seven would not result in a use demonstrably different from that already authorised. Any increase in activity, noise or disturbance is unlikely to be significant'.

A further allowed appeal relating to very similar issues at a property at 74 Telephone Road (APP/Z1775/A/12/2177629, December 2012) stated that 'the comings and goings, internal activity and resultant noise associated with one more person are not significant compared to the impact of the six that could reside in the property anyway'. The Inspector did recognise that 'if there were more than seven residents this would, of necessity, involve either the sharing of bedrooms or a significant reduction in the extent of the communal space to create additional bedrooms'. The Inspector determined that 'in these circumstances such a use would have an appreciably greater potential for resulting in undue noise and disturbance'. In the event that planning consent were to be granted, a condition could be applied to limit the maximum occupation of the property to seven persons.

Following an appeal relating to 'over-intensification' at 37 Margate Road (APP/Z1775/W/16/3159992, September 2016), the Inspector concluded that: 'having regard to the site's urban location and the density of housing in the area, any increase in occupancy at the property derived from such a small increase in bedroom accommodation would not be materially discernible when considered in the context of the existing activity in the surrounding urban area. In reaching this conclusion I have carefully considered the representations from local residents, however, I am not persuaded that sufficient evidence has been submitted to substantiate that the proposed 1 additional bedroom, would result in material harm to their living conditions or unbalance the local community'.

In a more recent appeal at 59 Liss Road (APP/Z1775/W/17/3185768, February 2018), the Inspector agreed with the decision of the previous Inspector for 37 Margate Road in respect of the impact of the additional occupancy.

In light of the decisions above, it is considered that the occupation of the property by seven (an increase in one as set out in the above appeals) individuals would not result in any significant increase in noise and disturbance, and is unlikely to have a significant additional impact on the occupiers of adjoining or nearby properties.

#### Highways and waste

The application site does not benefit from any off-street parking and none is proposed as part of this application (the constraints of the site are such that none can be provided). However, given the current use of the property, the view of the planning Inspector detailed above and the sites proximity to local shops, services and transport facilities, it is considered that an objection on car parking standards could not be sustained.

The Councils Adopted Parking Standards set out a requirement for Sui Generis HMOs to provide space for the storage of at least 4 bicycles. The property has a rear garden where secure cycle storage could be located. This can be secured by condition.

In relation to refuse requirements, the owners of the site would need to apply for communal waste collection. It is considered that the waste facilities could either be stored in the front forecourt, and can be secured by condition.

#### Solent Special Protection Areas

The Conservation of Habitats and Species Regulations 2017 [as amended] and the Wildlife and Countryside Act 1981 place duties on the Council to ensure that the proposed development would not have a significant effect on the interest features for which Portsmouth Harbour is designated as a Special Protection Area, or otherwise affect protected habitats or species. The Portsmouth Plan's Greener Portsmouth policy (PCS13) sets out how the Council will ensure that the European designated nature conservation sites along the Solent coast will continue to be protected.

The Solent Recreation Mitigation Strategy (December 2017) was adopted by Portsmouth City Council on 1st April 2018 and replaces the Interim Solent Recreation Mitigation Strategy (December 2014) and the associated Solent Special Protection Areas Supplementary Planning Document (SPD) which was revoked by the City Council from 1st April 2018. The Strategy identifies that any development in the city which is residential in nature will result in a significant effect on the Special Protection Areas (SPAs) along the Solent coast. It sets out how development schemes can provide a mitigation package to remove this effect and enable the development to go forward in compliance with the Habitats Regulations.

The proposal would lead to a net increase in population, which would be likely to lead to a significant effect as described in section 61 of the Habitats Regulations on the Portsmouth Harbour and the Chichester and Langstone Special Protection Areas (SPAs). The development is not necessary for the management of the SPA.

Mitigation payments to the value of £337 would be required for this type of development. The applicant has provided this payment, in accordance with Policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended). This contribution is sufficient to mitigate the likely significant effect of the proposal on the Solent Special Protection Areas. This contribution is sufficient to mitigate the likely significant effect of the proposal on the Solent Special Protection Areas.

## Other matters raised in representations

- In response to representations relating to undesirable behaviour, in addition to ensuring adequate size standards, sanitary facilities and fire safety, the City Council's Private Sector Housing Team can assist should the property not be managed in an appropriate manner.
- With regards to representations relating to loss of privacy it is noted the 'L shaped' dormer and single-storey rear extension have been constructed under permitted development (i.e. without the need for planning permission).

## **RECOMMENDATION                      Conditional Permission**

### **Conditions**

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.
- 2) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Location plan (TQRQM1821112026139); and, proposed elevations and plans (PG.3095.18.RN/A).
- 3) The premises shall only be used as a house in multiple occupation for a maximum of 7 residents.
- 4) Prior to first occupation of the property as a seven person/seven bedroom (Sui Generis) House in Multiple Occupation, secure and weatherproof bicycle storage facilities for 4 bicycles shall be provided at the site and shall thereafter be retained for the parking of bicycles at all times.
- 5) Prior to the first occupation of the property as a seven person/seven bedroom (Sui Generis) House of Multiple Occupation, two 360L refuse bins and one 360L recycling bin shall be provided and thereafter retained in the forecourt of the property (or such other waste arrangements as may be submitted to and approved by the Local Planning Authority in writing).

### **The reasons for the conditions are:**

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To allow the Local Planning Authority to assess the impact of any further intensification of the use on the amenity of neighbouring residents and the character of the area, in accordance with Policies PCS20 and PCS23 of the Portsmouth Plan.
- 4) To ensure that adequate provision is made for cyclists using the premises in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.
- 5) In the interest of amenity, in accordance with Policy PCS23 of the Portsmouth Plan.

### **PRO-ACTIVITY STATEMENT**

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in

this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

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**18/01869/PLAREG**

**WARD:DRAYTON & FARLINGTON**

**84 STATION ROAD DRAYTON AND FARLINGTON PORTSMOUTH PO6 1PJ**

## **RETROSPECTIVE APPLICATION FOR THE CONSTRUCTION OF PIGEON LOFT TO REAR GARDEN**

### **Application Submitted By:**

A. J. Glanman  
FAO Anthony Gladman

### **On behalf of:**

Mr Anthony Barrett

**RDD:** 8th November 2018

**LDL:** 8th January 2019

## **SUMMARY OF MAIN ISSUES**

This application has been called to be determined at the Planning Committee by two deputation requests from neighbouring residents.

The determining issues in this application are whether the proposal is acceptable in design terms and whether it results in any significant impact on the amenities of the surrounding occupiers.

### **Site and surroundings**

The application relates a detached bungalow that is located on the western side of Station Road, north from its junction with Grove Road. The surrounding area is primarily residential and is characterised by a variety of semi-detached properties.

### **Proposal**

The application seeks to gain retrospective planning permission for the construction of a pigeon loft in the rear garden. The existing pigeon loft has a flat roof that achieves a maximum height of 2.6m, a width of 12.2m and a depth of 3.1m. It is finished with black felt roofing and timber board with varnished external walls.

It should be noted that as existing the loft features a timber board trellis to its front and side elevations, this increases its overall height to 3.1m. As part of the application process this was agreed to be removed if permission is granted and amended plans have been received omitting it.

A pigeon loft is used to house pigeons; they can vary in terms of their design and size. The applicant has indicated that the pigeon loft is to be used for purposes incidental to the enjoyment of the dwellinghouse and not with commercial intent. It is noted that there are two smaller pigeon lofts currently on site, which would be removed. The applicant has also indicated that the number of pigeons on site would not increase above what it is currently.

### **Planning History**

There is no relevant planning history associated with the application site.

## **POLICY CONTEXT**

The relevant policies within the Portsmouth Plan would include:  
PCS23 (Design and Conservation),

The aims and objectives of the revised NPPF (July 2018) would also be relevant in the determination of this application.

## **CONSULTATIONS**

### **Environmental Health**

## **REPRESENTATIONS**

Two letters of objection have been received from neighbouring residents on the following grounds: (a) overbearing impact and (b) environmental impact.

## **COMMENT**

The main considerations in the determination of this application relate to the impact of the development on the appearance and character of the building, and the amenities of adjacent occupiers.

In considering whether to grant planning permission, account will be taken of sunlight and daylight factors, together with orientation, slope, overall height relationships and the existing boundary treatment.

### **Design**

Amendments have been carried out towards the application to remove a trellis from the top of the pigeon loft. This was done to reduce its overall height and the bulk of the scheme; to the benefit of both its design and amenity.

Policy PCS23 of the Portsmouth Plan echoes the principles of good design set out within the National Planning Policy Framework which requires that all new development: will be of an excellent architectural quality; will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; will establish a strong sense of place; will respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation; relates well to the geography and history of Portsmouth and protects and enhances the city's historic townscape and its cultural and national heritage; and is visually attractive as a result of good architecture and appropriate landscaping.

The outbuilding is located in the rear of the property's curtilage and features a substantial height and width. The application site has sufficient rear curtilage to accommodate this without being completed dominated. The outbuilding is a significant addition to the rear garden it is however conceded that the applicant could amend the outbuildings placement to fall within the conditions and limitation of Schedule 2, Class E of the General Permitted Development Order (GPDO) (as amended) 2015. To achieve this, the applicant would only have to move the loft 0.5m to the south, 0.5m to the east and remove the trellis to keep its height under 3m.

## Environmental Health

As part of the application process Environmental Health were consulted due to concerns raised by neighbouring residents around possible health risks of the pigeon loft. The view taken by Environmental Health was that "explicit legislation is likely to provide adequate protection in respect to such concerns and therefore providing protection through the planning regime is probably unjustified." As such no conditions have been imposed in respect to Environmental Health; further details of explicit legislation will be available to committee at the upcoming meeting.

## Amenity

Policy PCS23 of the Portsmouth Plan includes, amongst other things, that new development should ensure the protection of amenity and the provision of a good standard of living environment for neighbouring and local occupiers as well as future residents and users of the development.

The pigeon loft has a fair placement within its curtilage, with a significant separation distance of approximately 6m from the gardens southern boundary. This distance mitigates the direct impacts of the scheme on the neighbouring occupiers to the south. It is still visible from these neighbouring properties however it is not considered to present a substantial enough impact as to warrant refusal on this alone.

The impacts on the dwelling to the north (No82 Station Road) are mitigated due to the loft's placement away from the immediately usable garden area by 13m as well as existing outbuildings at this residence.

Taking into consideration the design of the proposal, its limited impacts on the surrounding properties and the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) that could allow for the construction of a very similar outbuilding subject to minor amendments, it is considered that the development would be in accordance with Policy PCS23 of the Portsmouth Plan.

## RECOMMENDATION

## Conditional Permission

### Conditions

- 1) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Location Plan - 1:1250@A4 and Elevations & Plans - 1:100 AMENDED PLAN.

### The reasons for the conditions are:

- 1) To ensure the development is implemented in accordance with the permission granted.
- 1) NB This permission is granted in accordance with the provisions of Section 73 of the Town and Country Planning Act 1990, which makes provision for the retrospective granting of planning permission for development which has commenced and/or been completed.

## PRO-ACTIVITY STATEMENT

In accordance with the National Planning Policy Framework the City Council has worked positively and pro-actively with the applicant through the application process, and with the submission of amendments an acceptable proposal has been achieved.

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# **6**

**18/01917/TPO**

**WARD:BAFFINS**

**29 SISKIN ROAD SOUTHSEA PO4 8UG**

**WITHIN TREE PRESERVATION ORDER 184 - FELL LOMBARDY POPLAR (*POPULUS NIGRA ITALICA*) (T25)**

**Application Submitted By:**

Mr Garry Shortman

**On behalf of:**

Mr Garry Shortman

**RDD:** 20th November 2018

**LDL:** 15th January 2019

## **SUMMARY OF MAIN ISSUES**

This application has been called to the Planning Committee at the request of Councillor Darren Sanders.

Summary of the main issues

The determining issues are whether there are sufficient grounds to fell the tree and whether the loss would have any significant impact on the visual amenity of the surrounding area.

Site and surroundings

This application relates to a Lombardy Poplar (T25) which is located to the north of number 29 Siskin Road within the area of turf, adjacent to the parking area to the front of 21 - 29 Siskin Road.

TPO 184 encompasses the tree line which it is believed formed part of the northern boundary to the area used previously by St James Hospital as farm land and then sports fields prior to redevelopment, the area now occupied by Milebush Park, Siskin Road and Reedling Drive comprises of mainly Lombardy Poplar and Willow. This area is now extensively developed as housing which largely includes the tree line within private gardens.

Proposal

The applicant seeks consent to fell T25.

Planning History

Recorded management history suggests two previous management operations:

25 Poplar

15/00978/TPO - FELL - Refused -5/8/15

Appeal lodged 16/9/15

Appeal dismissed 22/12/15.

17/01541/TPO - pollard to a height of 8m - 16/11/17

## **POLICY CONTEXT**

The relevant policies within the Portsmouth Plan would include:  
PCS13 (A Greener Portsmouth),

The aims and objectives of the NPPF would also be relevant in the determination of this application.

## **CONSULTATIONS**

**None.**

## **REPRESENTATIONS**

None

## **COMMENT**

The determining issues are whether there are sufficient grounds to fell the tree and whether the loss would have any significant impact on the visual amenity of the surrounding area.

T25 appears to be an over mature, vigorous specimen of Lombardy Poplar. Following several failures and incidences of decay in other specimens of Lombardy Poplar across this area recent applications to pollard or reduce have been granted consent. T25 has been pollarded and is an example of the trees which previously marked a boundary of the old St James Hospital site, they are of some amenity value in their current reduced form.

Poplars grow very rapidly in the early years, they have been planted in the past to create a quick screen. Unlike other species Poplars are prone to breakage and not long lived. In evolutionary terms they are a pioneer species, colonising open ground. They have adopted a strategy of rapid growth, at the partial expense of wood strength. This renders them more likely to fail in high winds than other trees. A life span of only 50 years is quite typical for this species.

These trees are approaching the end of their safe lives, they were old when the TPO was made. They appear to have formed part of the hospital boundary and should probably not have been included when the site was protected by TPO once redevelopment became a possibility. Common sense should have prevailed here and if lost to the development more suitable species could have been planted as a condition of the development. These were fine for a field boundary; their value within a housing development is questionable.

In this circumstance pollarding has resulted in prolific suckering growth from the base of the trunk and shallow roots which radiate from the base of the trunk. This growth has appeared through turf, Tarmac, block paving drives and pathways and in several gardens.

The content of Tree Management Strategy Report 1029.bjh.Sept18 prepared by Mr Bernie Harverson is accepted and agreed.

Management of the suckering growth technically requires LPA consent if it is to be pruned off. Use of Glyphosate herbicide could result in death of roots and the onset of decay resulting in failure. Neither course of action will remedy the existing damage, pruning off the suckers below ground level and making good any damage will result in a recurrence as roots put on annual incremental growth or throw up new suckers.

As a practical permanent solution to the cause of the damage and mitigation of risk of failure, felling, chasing out of larger roots and replacement by a species whose root system is less invasive must be a consideration, thus allowing permanent repair to surfaces and gardens.

It is therefore considered that there are sufficient grounds to fell the tree, subject to the planting of a suitable replacement (to be secured by planning condition). Therefore the proposal is considered to be acceptable and in accordance with policy PCS13 of the Portsmouth Plan.

## **RECOMMENDATION                      Conditional Consent**

### **Conditions**

- 1) The works hereby approved shall be carried out within 2 years of the date of this consent.
- 2) The Lombardy Poplar (T25) shall be felled to the ground and the stump removed.
- 3) A replacement specimen the size to be of "Heavy Standard" as specified in British Standard 3936 Part 1 (Nursery Stock Specification for trees and shrubs) shall be planted in the same position as the tree to be felled within 1 year of the removal of the the Lombardy Poplar (T25). The species to be selected from the following:

Liriodendron tulipifera - Tulip Tree

Fagus sylvatica 'Dawyck' - Beech

Pterocarya fraxinifolia 'Heerenplein' - Caucasian Wingnut

Quercus castaneifolia 'Green Spire' - Chestnut Leaved Oak

All of which are of similar fastigiate form to the Lombardy Poplar.

Or such other species, size, position or time period as may be agreed in writing by the Local Planning Authority.

- 4) All work shall be carried out in accordance with BS3998:2010 (Tree Work Recommendations) and BS 8545:2014 (Trees: from nursery to independence in the landscape - Recommendations)

### **The reasons for the conditions are:**

- 1) To comply with Regulation 17 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2) To ensure the amenity afforded by the tree is continued into the future in accordance with PCS13 of the Portsmouth Plan.
- 3) To ensure the amenity afforded by the tree is continued into the future in accordance with PCS13 of the Portsmouth Plan
- 4) To ensure the amenity afforded by the tree is continued into the future in accordance with PCS13 of the Portsmouth Plan.

### **PRO-ACTIVITY STATEMENT**

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

**21 SISKIN ROAD SOUTHSEA PO4 8UG****WITHIN TREE PRESERVATION ORDER 184 - FELL LOMBARDY POPLAR (POPULUS NIGRA ITALICA) (T27)****Application Submitted By:**

Mr Colin Turnbull

**On behalf of:**

Mr Colin Turnbull

**RDD:** 20th November 2018**LDL:** 15th January 2019**SUMMARY OF MAIN ISSUES**

This application has been called to the Planning Committee at the request of Councillor Darren Sanders.

**Summary of the main issues**

The determining issues are whether there are sufficient grounds to fell the tree and whether the loss would have any significant impact on the visual amenity of the surrounding area.

**Site and surroundings**

This application relates to a Lombardy Poplar (T27) which is located to the north of number 29 Siskin Road within the area of turf, adjacent to the parking area to the front of 21 - 29 Siskin Road.

TPO 184 encompasses the tree line which it is believed formed part of the northern boundary to the area used previously by St James Hospital as farm land and then sports fields prior to redevelopment, the area now occupied by Milebush Park, Siskin Road and Reedling Drive comprises of mainly Lombardy Poplar and Willow. This area is now extensively developed as housing which largely includes the tree line within private gardens.

**Proposal**

The applicant seeks consent to fell T27.

**Planning History**

Recorded management history suggests two previous management operations:

27 Poplar  
15/00967/TPO - FELL - REFUSED 5/8/15  
17/00346/TPO - pollard to a height of 12 metres - 7/4/17

## **POLICY CONTEXT**

The relevant policies within the Portsmouth Plan would include:  
PCS13 (A Greener Portsmouth),

The aims and objectives of the NPPF would also be relevant in the determination of this application.

## **CONSULTATIONS**

**None.**

## **REPRESENTATIONS**

None

## **COMMENT**

The determining issues are whether there are sufficient grounds to fell the tree and whether their loss would have any significant impact on the visual amenity of the surrounding area.

T27 appears to be an over mature, vigorous specimen of Lombardy Poplar. Following several failures and incidences of decay in other specimens of Lombardy Poplar across this area recent applications to pollard or reduce have been granted consent. T27 has been pollarded and is an example of the trees which previously marked a boundary of the old St James Hospital site.

Poplars grow very rapidly in the early years, they have been planted in the past to create a quick screen.

Unlike other species Poplars are prone to breakage and are not long lived. In evolutionary terms they are a pioneer species, colonising open ground. They have adopted a strategy of rapid growth, at the partial expense of wood strength. This renders them more likely to fail in high winds than other trees. A life span of only 50 years is quite typical for this species.

These trees are approaching the end of their safe lives. They appear to have formed part of the hospital boundary and should probably not have been included when the site was protected by TPO once redevelopment became a possibility. Granted they are of some amenity value in their current reduced form, they were old when the TPO was made. Common sense should have prevailed here and if lost to the development more suitable species could have been planted as a condition of the development. These were fine for a field boundary, their value within a housing development is questionable.

In this circumstance pollarding has resulted in prolific suckering growth from the base of the trunk and shallow roots which radiate from the base of the trunk. This growth has appeared through turf, Tarmac, block paving drives and pathways and in several gardens.

The content of Tree Management Strategy Report 1029.bjh.Sept18 prepared by Mr Bernie Harverson is accepted and agreed.

Management of the suckering growth technically requires LPA consent if it is to be pruned off. Use of Glyphosate herbicide could result in death of roots and the onset of decay resulting in failure. Neither course of action will remedy the existing damage, pruning off the suckers below ground level and making good any damage will result in a recurrence as roots put on annual incremental growth or throw up new suckers.

As a practical permanent solution to the cause of the damage and mitigation of risk of failure, felling, chasing out of larger roots and replacement by a species whose root system is less invasive must be a consideration, thus allowing permanent repair to surfaces and gardens.

It is therefore considered that there are sufficient grounds to fell the tree, subject to the planting of a suitable replacement (to be secured by planning condition). Therefore the proposal is considered to be acceptable and in accordance with policy PCS13 of the Portsmouth Plan.

## **RECOMMENDATION                      Conditional Consent**

### **Conditions**

- 1) The works hereby approved shall be carried out within 2 years of the date of this consent.
- 2) The Lombardy Poplar (T27) shall be felled to the ground and the stump removed.
- 3) A replacement specimen the size to be of "Heavy Standard" as specified in British Standard 3936 Part 1 (Nursery Stock Specification for trees and shrubs) shall be planted in the same position as the tree to be felled within 1 year of the removal of the the Lombardy Poplar (T27). The species to be selected from the following:

Liriodendron tulipifera - Tulip Tree

Fagus sylvatica 'Dawyck' - Beech

Pterocarya fraxinifolia 'Heerenplein' - Caucasian Wingnut

Quercus castaneifolia 'Green Spire' - Chestnut Leaved Oak

All of which are of similar fastigiate form to the Lombardy Poplar.

Or such other species, size, position or time period as may be agreed in writing by the Local Planning Authority.

- 4) All work shall be carried out in accordance with BS3998:2010 (Tree Work Recommendations) and BS 8545:2014 (Trees: from nursery to independence in the landscape - Recommendations)

### **The reasons for the conditions are:**

- 1) To comply with Regulation 17 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2) To ensure the amenity afforded by the tree is continued into the future in accordance with PCS13 of the Portsmouth Plan.
- 3) To ensure the amenity afforded by the tree is continued into the future in accordance with PCS13 of the Portsmouth Plan.
- 4) To ensure the amenity afforded by the tree is continued into the future in accordance with PCS13 of the Portsmouth Plan.

### **PRO-ACTIVITY STATEMENT**

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

# **8**

**18/01921/TPO**

**WARD:BAFFINS**

## **4 REEDLING DRIVE SOUTHSEA PO4 8UF**

### **WITHIN TREE PRESERVATION ORDER 184 - FELL LOMBARDY POPLAR (*POPULUS NIGRA ITALICA*) (T23)**

#### **Application Submitted By:**

Ms Gillian Hickling

#### **On behalf of:**

Ms Gillian Hickling

**RDD:** 20th November 2018

**LDL:** 4th February 2019

## **SUMMARY OF MAIN ISSUES**

This application has been called to the Planning Committee at the request of Councillor Darren Sanders.

#### **Summary of the main issues**

The determining issues are whether there are sufficient grounds to fell the tree and whether the loss would have any significant impact on the visual amenity of the surrounding area.

#### **Site and surroundings**

This application relates to a Lombardy Poplar (T23) which is located to the north of number 4 Reedling Drive within the rear garden, to the west of the adjacent trees located on Siskin Road. TPO 184 encompasses the tree line which it is believed formed part of the northern boundary to the area used previously by St James Hospital as farm land and then sports fields prior to redevelopment, the area now occupied by Milebush Park, Siskin Road and Reedling Drive comprises of mainly Lombardy Poplar and Willow. This area is now extensively developed as housing which largely includes the tree line within private gardens.

#### **Proposal**

The applicant seeks consent to fell T23.

#### **Planning History**

Recorded management history suggests two previous management operations:

23 Poplar

09/00753/TPO - crown lift to 5m - 21/7/09 Works completed 17/8/09

16/01610/TPO - crown reduce in height by 6m - REFUSED - 6/12/2016

17/01541/TPO - pollard to a height of 8m - 16/11/17

## **POLICY CONTEXT**

The relevant policies within the Portsmouth Plan would include:  
PCS13 (A Greener Portsmouth),

The aims and objectives of the NPPF would also be relevant in the determination of this application.

## **CONSULTATIONS**

**None.**

## **REPRESENTATIONS**

None

## **COMMENT**

The determining issues are whether there are sufficient grounds to fell the tree and whether the loss would have any significant impact on the visual amenity of the surrounding area.

T23 appears to be an over mature, vigorous specimen of Lombardy Poplar. Following several failures and incidences of decay in other specimens of Lombardy Poplar across this area recent applications to pollard or reduce have been granted consent. T23 has been pollarded and is an example of the trees which previously marked a boundary of the old St James Hospital site, they are of some amenity value in their current reduced form.

Poplars grow very rapidly in the early years, they have been planted in the past to create a quick screen. Unlike other species Poplars are prone to breakage and not long lived. In evolutionary terms they are a pioneer species, colonising open ground. They have adopted a strategy of rapid growth, at the partial expense of wood strength. This renders them more likely to fail in high winds than other trees. A life span of only 50 years is quite typical for this species.

These trees are approaching the end of their safe lives, they were old when the TPO was made. They appear to have formed part of the hospital boundary and should probably not have been included when the site was protected by TPO once redevelopment became a possibility. Common sense should have prevailed here and if lost to the development more suitable species could have been planted as a condition of the development. These were fine for a field boundary; their value within a housing development is questionable.

In this circumstance pollarding has resulted in prolific suckering growth from the base of the trunk and shallow roots which radiate from the base of the trunk. This growth has appeared through turf, Tarmac, block paving drives and pathways and in several gardens.

The content of Tree Management Strategy Report 1029.bjh.Sept18 prepared by Mr Bernie Harverson is accepted and agreed.

Management of the suckering growth technically requires LPA consent if it is to be pruned off. Use of Glyphosate herbicide could result in death of roots and the onset of decay resulting in failure. Neither course of action will remedy the existing damage, pruning off the suckers below ground level and making good any damage will result in a recurrence as roots put on annual incremental growth or throw up new suckers.

As a practical permanent solution to the cause of the damage and mitigation of risk of failure, felling, chasing out of larger roots and replacement by a species whose root system is less invasive must be a consideration, thus allowing permanent repair to surfaces and gardens.

It is therefore considered that there are sufficient grounds to fell the tree, subject to the planting of a suitable replacement (to be secured by planning condition). Therefore the proposal is considered to be acceptable and in accordance with policy PCS13 of the Portsmouth Plan.

## **RECOMMENDATION**

## **Conditional Consent**

### **Conditions**

- 1) The works hereby approved shall be carried out within 2 years of the date of this consent.
- 2) The Lombardy Poplar (T23) shall be felled to the ground and the stump removed.
- 3) A replacement specimen the size to be of "Heavy Standard" as specified in British Standard 3936 Part 1 (Nursery Stock Specification for trees and shrubs) shall be planted in the same position as the tree to be felled within 1 year of the removal of the Lombardy Poplar (T23). The species to be selected from the following:

Liriodendron tulipifera - Tulip Tree

Fagus sylvatica 'Dawyck' - Beech

Pterocarya fraxinifolia 'Heerenplein' - Caucasian Wingnut

Quercus castaneifolia 'Green Spire' - Chestnut Leaved Oak

All of which are of similar fastigiate form to the Lombardy Poplar.

Or such other species, size, position or time period as may be agreed in writing by the Local Planning Authority.

- 4) All work shall be carried out in accordance with BS3998:2010 (Tree Work Recommendations) and BS 8545:2014 (Trees: from nursery to independence in the landscape - Recommendations)

### **The reasons for the conditions are:**

- 1) To comply with Regulation 17 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2) To afford good arboricultural practice.
- 3) To ensure the amenity afforded by the tree is continued into the future in accordance with PCS13 of the Portsmouth Plan.
- 4) To ensure the amenity afforded by the tree is continued into the future in accordance with PCS13 of the Portsmouth Plan.

### **PRO-ACTIVITY STATEMENT**

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

**9**

**18/01980/PLAREG**

**WARD:ST JUDE**

**112 PALMERSTON ROAD SOUTHSEA PO5 3PT**

**RETROSPECTIVE APPLICATION FOR THE INSTALLATION OF OUTWARD OPENING  
WINDOWS TO SOUTH AND EAST ELEVATIONS**

**Application Submitted By:**

Martin Ralph Chartered Surveyors  
FAO Mr Jason Ralph

**On behalf of:**

Mr Ralls

**RDD:** 29th November 2018

**DDD:** 25th January 2019

**SUMMARY OF MAIN ISSUES**

The main issues for consideration in this application relate to the following:

- a) Pedestrian safety;
- b) Noise impact;
- c) Whether previous reasons for refusal have been addressed.

**Site and Proposal**

The application relates to single-storey commercial premises located on the west side of Palmerston Road with a return frontage to Auckland Road West. The site lies at the southern end of Southsea Town Centre, within an area defined as the Restaurant Quarter and Secondary Shopping Frontage within the Southsea Town Centre Area Action Plan (2007). The premises are currently in use as a bar/restaurant called 'The Meat and Barrel'. There is a mix of commercial uses within the southern part of Palmerston Road, including bars, restaurants and shops and a number of the properties have residential use on the upper floors. To the south of the site is a block of flats (Queen's Keep) and Auckland Road West is characterised predominantly by housing on its northern side, with garages and outbuildings on the southern side associated with the residential properties on Clarence Parade.

The application seeks retrospective permission for the installation of outward opening windows fronting Palmerston Road and Auckland Road West, and has provided details of the latch mechanism to hold them in place.

**Planning History**

The application follows a number of previous applications relating to the shopfront and windows. The most relevant are summarised below.

17/01014/PLAREG - retrospective application for installation of outward opening windows fronting Palmerston Road and Auckland Road West - refused 25 September 2018 for the following reason:

The installation of outward opening windows represents an unacceptable risk of injury to pedestrians using the footpath adjacent to the premises on Auckland Road West. The proposal is therefore contrary to Policies PCS17 and PCS23 of the Portsmouth Plan.

An appeal against that decision was dismissed by the Planning Inspectorate, and a copy of the Inspector's decision letter is attached as an Appendix to this report.

16/00479/PLAREG - retrospective application for change of operation to existing windows facing Palmerston Road and Auckland Road West - refused 31 May 2016 for the following reason:

"The retrospective application to change the operation to existing windows to open outwards over the adjacent public highway, would result in an unacceptable risk of injury to pedestrians using the footpath adjacent to the premises. The proposal is therefore contrary to Policy PCS17 of the Portsmouth Plan."

15/00570/VOC - application to vary condition 2 of planning permission 14/015451/PLAREG to approve amended drawings showing revised window openings to shopfront - refused 23 July 2015 for the following reason:

"The proposed variation of condition 2 of planning permission 14/015451/PLAREG to allow the windows to open outwards over the adjacent public highway, would result in an unacceptable risk of injury to pedestrians using the footpath adjacent to the premises. The proposal is therefore contrary to Policy PCS17 and PCS23 of the Portsmouth Plan."

14/01545/PLAREG - retrospective application for the installation of a new shopfront - conditional permission 10 February 2015.

Following the decision to refuse permission in relation to application reference 17/01014/PLAREG the Council issued an Enforcement Notice that required the applicant to:- Either:-

a) Fix permanently shut all windows and doors on the south elevation fronting Auckland Road West and fix permanently shut all windows on the east elevation fronting Palmerston Road and alter the operation of the door located between the columns on the east elevation fronting Palmerston road so that it does not open outwards over the highway to accord with the permission;

Or:-

b) alter the operation of the windows and doors on the south elevation fronting Auckland Road West and east elevation fronting Palmerston Road so that they do not open outwards over the highway to accord with the permission.

The Notice became effective on 17 December 2018 and becomes operational on 11 February 2019. Rather than appeal the Notice the applicant submitted this application to enable re-consideration of the issue by the local planning authority.

## POLICY CONTEXT

The relevant policies within the Portsmouth Plan would include:  
PCS17 (Transport), PCS23 (Design and Conservation),

In addition to the aims and objectives of the National Planning Policy Framework (NPPF), the following policies of the Portsmouth Plan are relevant to the application: PCS17 (Transport), and PCS23 (Design and Conservation).

## **CONSULTATIONS**

**None.**

## **REPRESENTATIONS**

At the time of preparing this report five representations, two from the same individual, have been received objecting to the application on the following grounds:-

- a) unacceptable noise and disturbance when windows are open;
- b) granting permission would set a precedent for similar outward opening windows on other premises in the area;
- c) health and safety risk to pedestrians;
- d) windows being opened even though currently unauthorised;
- e) the previous application was dismissed on appeal;
- f) this is a vexatious application;
- g) rear courtyard needs to be tidied up.

## **COMMENT**

Whilst the issues in determining this application relate to pedestrian safety and amenity, the principal matter is whether the applicant has satisfactorily addressed the shortcomings identified by the Planning Inspector in the recent appeal decision.

In reaching his decision the Planning Inspector noted that these premises are located in an area where there are other similar uses including, as is the case here, some associated outdoor seating areas which do not have any barriers to noise transmission. The Inspector concluded that it would be unlikely that the premises would generate sufficient additional noise with the windows open so as to amount to an unacceptable harmful effect. The Inspector also noted that the Council would be able to deal with any statutory nuisance relating to noise under separate legislation.

In these circumstances the issue that falls for consideration is whether the applicant's revised proposals for opening and closing the windows and means to keep the open windows in place would be sufficient to avert risk to pedestrian safety.

The application is supported by annotated drawings, along with a statement setting out a procedure for the opening of the windows to mitigate the risk to pedestrian safety.

The plans confirm that the windows open outwards with a swing of 180 degrees to enable them to be fixed flush with the face of the adjoining window. The windows would be secured in their open position using integral Yale 76mm Security Bolts and external stout angle brackets screwed to the frames. Once the windows are opened into place the security bolts are extended into the angle brackets by inserting and turning a grooved key into the window frame. In order to establish a safe procedure by which windows would be opened the applicant has confirmed the following:-

All staff will be trained in the correct procedure to operate windows on a regular basis, this will run parallel with standard Health and safety training.

Until a staff member has completed the window opening/closing procedure they will not be permitted to operate the windows in any way.

Once the site manager is satisfied that a team member has completed and understood the procedure then they will be allowed to assist in the operation of the windows.

Windows will only be operated when a manager/supervisor is present to observe that safety procedures are adhered to.

Every time the windows are opened/closed two members off staff will adhere to the following procedures:-

1. One staff member will operate the mechanism internally, whilst a second will monitor on the public highway.
2. Having checked the public highway is clear the staff member inside will unlock the window and release it towards the outside staff member.
3. This outside staff member will guide the window into its exterior locking position where it will be locked into the open position and checked for stability (if it is not able to be properly secured due to weathering or vandalism it will not be used and will be relocked from the interior until repairs are completed).
4. Once the safety check has completed the staff members will repeat the process for any other windows that are to be opened.
5. The duty manager will also observe and re-check that the procedure has been carried out correctly every time.
6. When windows are due to be closed, the reverse procedure will be carried out.
7. Mechanisms will be checked weekly to ensure they are in working order.

The Highway Authority has previously reviewed the procedure for opening the windows and was satisfied that, provided the procedure is adhered to, the risk of incidents with pedestrians would be mitigated. It was considered that adherence to the procedure can be satisfactorily controlled by condition and on that basis, no highway safety objection was raised. In reaching his decision the Inspector's sole concern was that the open windows could be dislodged from the fittings at that time holding them open and would therefore require some form of locking mechanism. The installed security bolts need to be operated by a spindled key and extend into robust angle brackets. The locking mechanism and securing brackets were inspected by the case officer and found to be satisfactory. Once locked into place neither the window nor the bracket could be easily removed. The undertaking given by the applicant set out above would ensure that any damage could be identified and repaired. The secure method of retaining the windows in the open position together with the "opening procedure" would be considered to adequately address the Inspector's concerns.

#### Other matters raised in representations

Concerns have been raised that allowing the windows to be retained on this premises would result in similar types of windows being installed on other buildings within Palmerston Road, with the potential to further increase noise and disturbance and increase the risk to pedestrian safety. However, this application, and any subsequent proposal in relation to other premises, must be considered on their individual merits.

Concerns have also been raised in relation to rubbish from the rear of the premises over spilling onto the pavement in Auckland Road West. This is a separate matter that would need to be assessed outside of the planning system in accordance with Environmental Protection legislation.

## **RECOMMENDATION**

## **Conditional Permission**

#### **Conditions**

- 1) Unless 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: 16/123/SP 02A1 Rev A.

- 2) At no time shall the windows to the premises be opened over the highway unless in full compliance with the submitted "Procedure for operation of windows opening into public highway" dated 23/11/2018, and the securing bolts and angle-brackets shall thereafter be maintained in accordance with that document.
- 3) The windows hereby approved shall either be locked shut or secured in an open position in accordance with the approved details, and at no time shall be opened in such a way as to be left overhanging the highway in an unsecured manner.

**The reasons for the conditions are:**

- 1) To ensure the development is implemented in accordance with the permission granted.
- 2) To mitigate the risk of injury to pedestrians, in accordance with Policy PCS23 of the Portsmouth Plan.
- 3) To mitigate the risk of injury to pedestrians, in accordance with Policy PCS23 of the Portsmouth Plan.

**PRO-ACTIVITY STATEMENT**

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

NB This permission is granted in accordance with the provisions of Section 73 of the Town and Country Planning Act 1990, which makes provision for the retrospective granting of planning permission for development which has commenced and/or been completed.



# Appeal Decision

Site visit made on 20 June 2018

**by Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 July 2018**

**Appeal Ref: APP/Z1775/W/18/3194777**

**112 Palmerston Road, Southsea PO5 3PT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Ralls against the decision of Portsmouth City Council.
- The application Ref 17/01014/PLAREG, dated 12 June 2017, was refused by notice dated 25 September 2017.
- The development is installation of outward opening windows.

## **Decision**

1. The appeal is dismissed.

## **Main Issue**

2. The main issue is the effect of the development on pedestrian safety.

## **Reasons**

### *Main issue*

3. The windows concerned have been installed. Those relating to the Auckland Road West elevation are adjacent to a fairly narrow footway along that side of the road. However, with the windows fully open abutting the adjacent fixed windows, the degree of projection over the footway would be very small and so in itself would not cause a material obstruction.
4. There would be the potential risk of causing injury to passing pedestrians during the process of opening and closing the windows due to them having to be swung out over a significant part of the footway. However, due to the significant extent of glazing across the whole of both street frontages, there is a good degree of visibility to enable those carrying out that process to see if any pedestrians are approaching. Together with the submitted procedure for opening the windows, including the presence of a member of staff on the footway, it is therefore likely that collisions with on-coming pedestrians would be prevented during that process. Adherence to the window opening procedure could be secured by a condition, which I consider would be sufficiently enforceable through any remotely recorded observations.

5. The windows on the Palmerston Road elevation relate to a wider footway where pedestrians are less likely to walk close to the building. This would be all the more likely due to the presence of outdoor seating on part of that footway that would tend to divert the pedestrian flow away from it to some extent. The good degree of visibility from inside due to the extent of glazing, together with the window opening procedure in place, would be likely to further prevent collisions with pedestrians on that footway during the opening and closing of the windows.
6. I note the representation from a local resident concerning a collision that nearly happened on one occasion. However, it is evident that the window opening procedure, including the presence of a member of staff on the footway, was not in operation on that occasion and was not in itself then the subject of any control through a planning condition. The risk to pedestrians would also be unlikely to be compounded by cars parked partly on the footway, unless done so illegally, as there are double yellow line restrictions on the adjacent highway.
7. I have also had regard to the eventuality of customers within the building leaning out of the windows. This would be possible regardless of whether the windows were outward or inward opening. Nevertheless, I consider that were it to occur, the good degree of visibility from inside due again to the extent of frontage glazing would be likely to prevent collisions with passing pedestrians. Furthermore, it would be unlikely for any objects within the building to significantly overhang the footway through the window openings due to the temporary extent to which those windows would be open on each occasion.
8. Despite the above factors the windows, once opened, could be dislodged from the existing fittings holding them in the fully open position. I note that the window opening procedure includes a requirement for the windows to be guided into their exterior locking position and secured. However, I saw that there is currently no means of securing the windows so as to prevent anyone, whether customers or passing pedestrians, from dislodging them from that fully open position. In order to prevent the potential for such a circumstance and therefore the creation of a potential obstruction and hazard to pedestrians, the installation of appropriate locks for the windows in the open position would be necessary. Importantly, it is unclear from the submissions and my observations as to whether or how such locks could be designed and fitted to fulfil that function. In light of that uncertainty, it would be inappropriate to impose a condition requiring details and the implementation of appropriate locks.
9. Therefore, despite finding that the opening and closing of the windows by staff members could be safely achieved, this does not deflect from the potential for collisions with pedestrians caused if the windows were to be dislodged in the above other circumstances. For those reasons, the development is therefore likely to pose a risk to pedestrian safety. As such, it would be contrary to policy PCS23 of the Portsmouth Plan (the PP) which, amongst other things, seeks development to provide accessibility to all users. It would also be contrary to the National Planning Policy Framework in respect of this issue, which in paragraph 35 requires, amongst other things, that development should be located and designed where practical to create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians.

#### *Other matters*

10. I have had regard to concerns raised relating to the noise and disturbance to local residents generated by customers when the windows are open. However, I note that the site is located in an area where there are other similar uses including, as is the case with the appeal site, some associated outdoor seating areas which do not have any barriers to noise transmission. It is therefore unlikely that the premises concerned would generate sufficient additional noise with the windows open so as to

amount to an unacceptably harmful effect. I also note that the Council would be able to deal with any statutory nuisance relating to noise under separate legislation.

11. It has been questioned as to whether the windows concerned need to be openable. Whether that is the case or not, I have determined this appeal on its merits, as it is presented to me.

**Conclusion**

12. For the above reasons, I conclude that the appeal should be dismissed.

*Andrew Dawe*

INSPECTOR