

# PLANNING COMMITTEE

## 25 MAY 2022

### REPORT BY THE ASSISTANT DIRECTOR - PLANNING AND ECONOMIC GROWTH 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 Councils 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 - Planning and Economic Growth 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 relevant 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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# 01

20/00071/UND

118 PRINCE ALBERT ROAD, PORTSMOUTH PO4 9HT

## ENFORCEMENT REPORT: ALLEGED BREACH OF PLANNING CONTROL OF THE UNAUTHORISED CHANGE OF USE OF A 6 BED HMO TO HOUSE 7 PEOPLE

### 1.0 Site description / Investigation report

1.1 118 Prince Albert Road is a two storey mid terrace property with accommodation over three floors, situated on the western side of Prince Albert Road, within the Milton Ward of the city.

1.2 This matter was first brought to the attention of Planning Enforcement by Portsmouth City Council's Licensing department notifying of an application for an HMO license for 7 persons.

1.3 Planning permission was refused on 18th of January 2021, under ref. no. 20/00276/FUL for: Change of use from house in multiple occupancy (Class C4) from six to seven person/seven bedroom house in multiple occupancy (Sui Generis). The floorplans for this use are provided in Appendix A.

1.4 The reason for refusal was as follows:  
"The proposal, by reason of the under provision of communal living space would fail to provide a good standard of living accommodation for occupiers and represent an over intensive use of the property. The proposal is therefore contrary to Core Planning Principles of the NPPF and Policy PCS23 of the Portsmouth Plan and the Houses in Multiple Occupation Supplementary Planning Document (October 2019)."

1.5 This decision was appealed, and the Inspector dismissed the appeal in September 2021, commenting:

*"The property was a house in multiple occupation (HMO) for 6 people (Class C4). The ground floor front room has now been converted from a lounge to a bedroom with en-suite facilities to provide accommodation for a seventh person thereby changing the use to a Sui Generis HMO.*

*The communal area is provided in the form of one combined kitchen/dining/living space. The galley style kitchen is a good size and provides sufficient space and width for 2 or 3 people to work in the area at the same time. There is a breakfast bar with space for 2 people to comfortably sit and eat without blocking access/doorways; a simple table/bench seating arrangement which looked as though it would seat up to 4 people; and two 2-seater sofas placed opposite each other, allowing access through to the kitchen/dining area beyond. Due to the nature of the property, the space has a long, linear shape. It seems to me that it would therefore be difficult to accommodate more furniture or a different layout that would both retain access through the living area to the kitchen and allow larger tables or additional seating.*

*The Council seeks to ensure a good standard of accommodation is provided for all occupants of HMOs. This is achieved through its Local Plan and Supplementary Planning Document on HMOs (SPD). Amongst other things, these documents provide information and guidance on room sizes and indicate a communal space of 34m<sup>2</sup> would be the minimum requirement for this*

property. There is a slight disagreement between the main parties as to the exact size of the communal space provided but based on either calculation it would be approximately 4m<sup>2</sup> below this minimum requirement.

*I accept that not all residents may wish to use the communal space at the same time. However, the linear nature of the accommodation and the need to maintain access means that the amount of floorspace given over to the dining/living accommodation in particular, is restricted. As such, it is not a space in which it is easy for a small group of people to comfortably socialise or relax together. An additional occupant is likely to add to the congested nature and feel of the communal space. I also note that the additional occupant would have one of the smaller bedrooms and so there is a real prospect of putting greater pressure on the communal space.*

*I therefore find that the under provision of communal space would cause harm to the living conditions of occupants of the property. Consequently, the proposed development would not accord with Policy PCS23 of the Local Plan, which amongst other things, seeks to ensure that development provides a good standard of living environment for future occupants. The proposal would also be contrary to the SPD, which amongst other things, seeks to ensure that communal spaces within HMOs meet a minimum space requirement. The harm I have found would accordingly lead to conflict with the Framework, in particular paragraph 130, which amongst other things, seeks to ensure development provides a high standard of amenity to existing and future user."*

#### 1.6 Planning History

1.7 Other than detailed above:

1.8 19/00112/GPDC: Construction of single storey rear extension. Decision issued 14/09/2019; prior approval not required.

1.9 19/01621/FUL: Change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwellinghouse) and Class C4 (house in multiple occupation). Planning permission granted 15/01/2020

#### 2.0 **POLICY CONTEXT**

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

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

#### 3.0 **ANALYSIS**

3.1 In order for a breach of planning control to have taken place, development must have occurred. Development is defined in the Town and Country Planning Act (1990):  
"*...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*"

- 3.2 Since the refusal of planning application 20/00276/FUL: Change of use from house in multiple occupancy (Class C4) from six to seven person/seven bedroom house in multiple occupancy (Sui Generis) the Council must take into consideration the appeal outcome resulting from the appeals made by Campbell Properties against the service of six of planning enforcement notices against the use of six C4 HMO properties moving to Sui Generis HMO properties without planning permission.
- 3.3 This joint inquiry against PCC planning enforcement notices was determined in April 2021. The Inspector's decision stated that an increase of 1 or 2 occupants within a HMO, even where it technically moves the property between use classes, was not a material change of use in the case of all 6 properties heard at appeal. This decision was reviewed by Senior Planners, Solicitors and Barristers and was found to be sound. Accordingly, should application 20/00276/FUL come before planning officers today it is likely that it would now, in light of the above appeal outcome and associated legal advice, not be considered development requiring planning permission.
- 3.4 There is an obvious date discrepancy in respect of the Inspector's appeal decision issued in regard to the refusal of 20/00276/FUL in September 2021 and the outcome of the enquiry in April 2021. However, it should be noted that the Inspector's decision makes no reference to the inquiry decision and was made independently to it. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis. This gives an alternative view to that of the appeal case discussed above. Nevertheless it means that the Council must now consider whether it is expedient to pursue enforcement action against the use of 118 Prince Albert Road as a 7 person HMO.
- 3.5 In this instance, the Council must consider whether the addition of a further occupant into an existing C4 HMO, where it then becomes, by definition, a Sui Generis HMO with 7 is a material change of use, and is therefore development.
- 3.6 While the increase of occupancy does, by definition, move the property between use classes, it has been held in law and at appeal that the Use Classes Order (1987) (as amended) is permissive and should be used as guidance only. Therefore, the materiality of each individual circumstance must still be fully considered by the LPA to determine whether a material change of use, and therefore a breach of planning control has occurred.
- 3.7 In this instance, while there has been some intensification of the occupancy of the property in question, this does not appear to have quantifiably or quantitatively altered how the property is used. For example, the addition of the extra occupant into the property has not changed the nature of how the occupants reside and use/share the facilities, in that they still have their own bedrooms and share communal facilities. There is nothing to suggest that this results in a materially different use to that which would fall within a higher occupancy C4 HMO. It should also be noted that internal alterations do not constitute development in themselves.
- 3.8 Again, while each instance must be assessed on its own merits in order to ascertain whether development has occurred, a primary material planning consideration is precedent set by past decisions, particularly appeal decisions, in materially similar circumstances.

- 3.9 In the cases of Campbell Properties, a joint inquiry against PCC planning enforcement notices determined in April 2021, the decision was made by Inspector P Hocking that an increase of 1 or 2 occupants within a HMO, even where it technically moves the property between use classes, was not a material change of use in the case of all 6 properties heard at appeal. This decision was reviewed by Senior Planners, Solicitors and Barristers and was found to be sound. This decision appears to be materially very similar to the property in question and therefore should be given significant weight in considering whether a material change of use has occurred in this instance.
- 3.10 Officers are therefore satisfied that the change in the occupancy of this established HMO is not a material one, and as such cannot be considered development requiring planning permission. As such no breach of planning control has occurred at this site and no planning enforcement action can be taken.
- 3.11 The Planning Merits of the Use
- 3.12 Even in the instance that it is concluded that a material change of use had occurred, the LPA must then consider the planning merits of the development in order to decide whether it would have been expedient to pursue formal enforcement action.
- 3.13 The first relevant policy that the development should be considered against is PCS20's mixed and balanced communities objective. This is implemented through the HMO SPD through assessing whether the addition of a new HMO would imbalance a community. This is achieved by calculating whether a new HMO would cause more than 10% of HMOs within a 50m radius of the site to be HMOs.
- 3.14 While this policy is robust and has been upheld at appeal, it has been agreed by the Planning Inspector and the Planning Committee that this is not applicable to existing HMOs that are increasing in occupancy, as it does not increase the number of HMOs in an area. This is the case in this instance, and therefore, the property's use in question is not contrary to this aspect of PCS20.
- 3.15 The other relevant policy is space standards, as the SPD states the minimum sizes of each room within a HMO. These standards are in line with Private Sector Housing guidance. The Council's Private Sector Housing team have reviewed floor plans and inspected the property and come to the conclusion that it reaches those standards and accordingly issued a licence for the property (see Appendix B - 118 Prince Albert Full Licence).
- 3.16 Although this property was originally refused planning permission due to concerns surrounding the under provision of communal living space, see Appendix C, that provides the officers report for application 20/00276/FUL, and these concerns were also echoed in the Inspector's decision to dismiss the appeal against this refusal, Officers are satisfied that in the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission. This is a key and overriding material consideration in the assessed as to whether to pursue enforcement action.

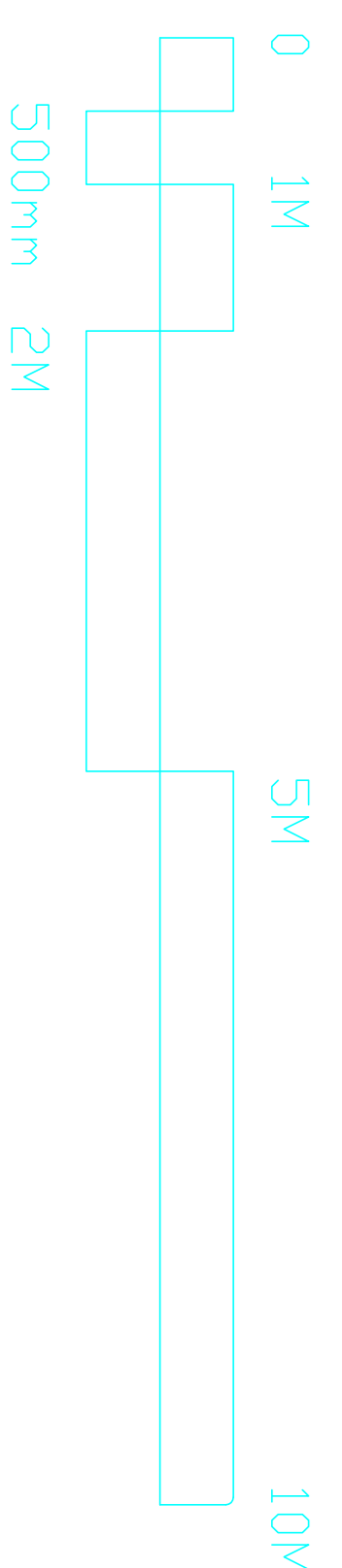
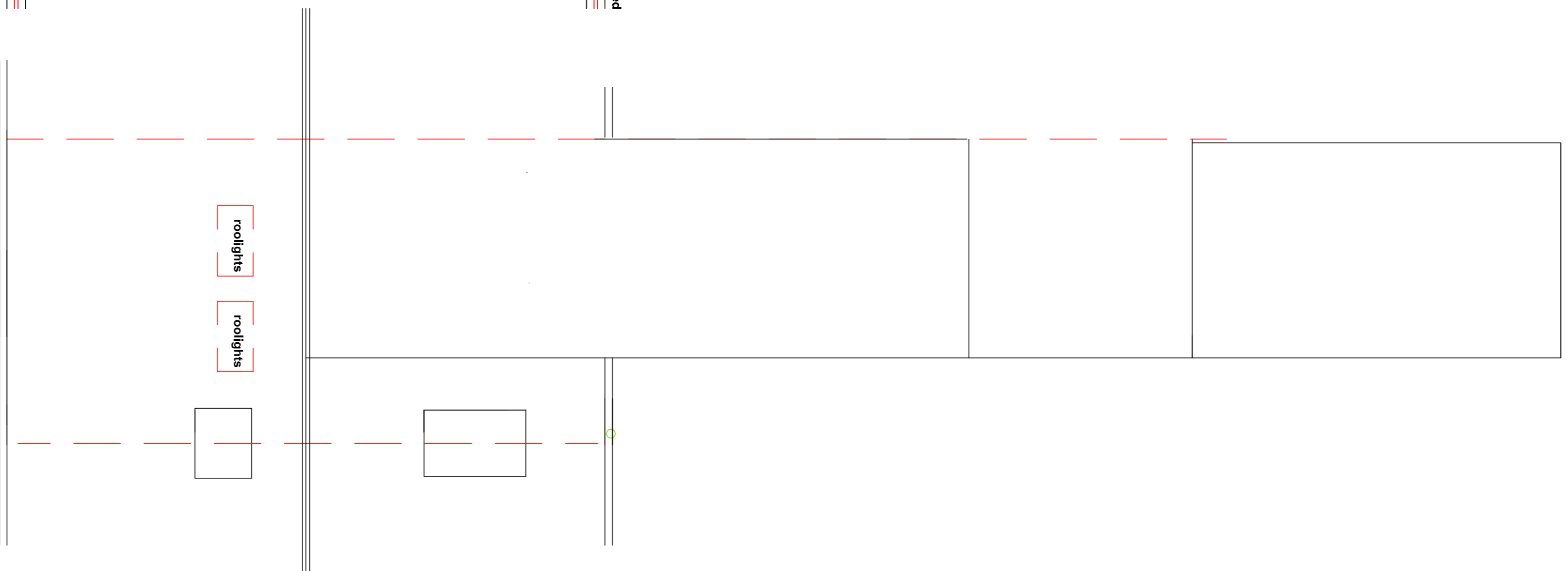
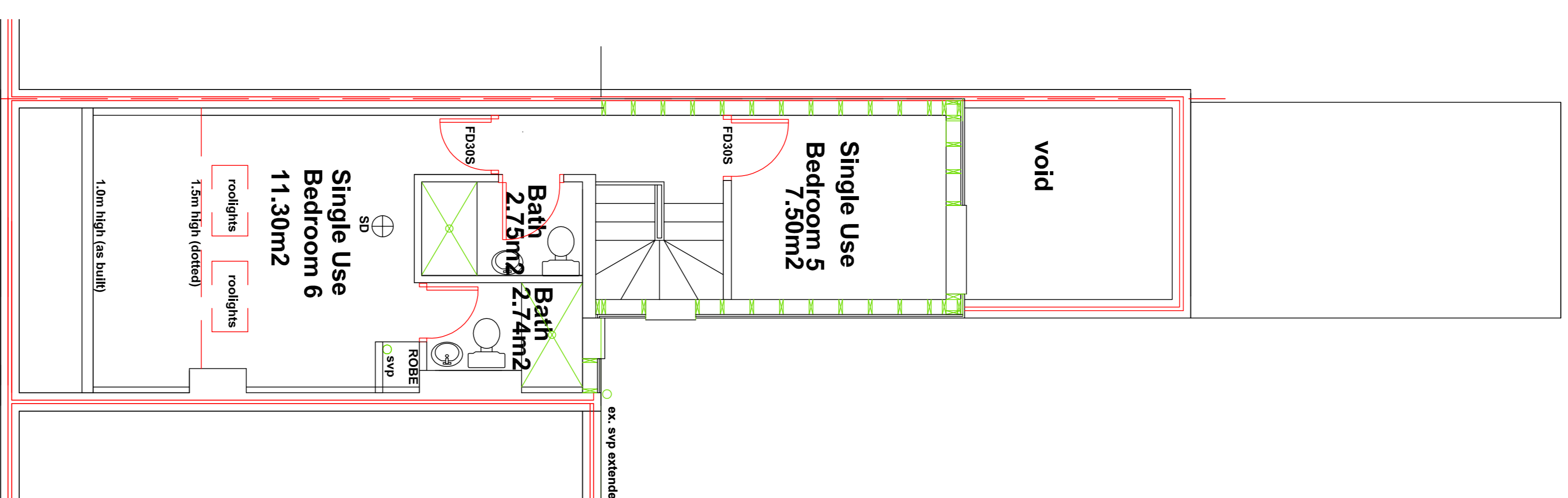
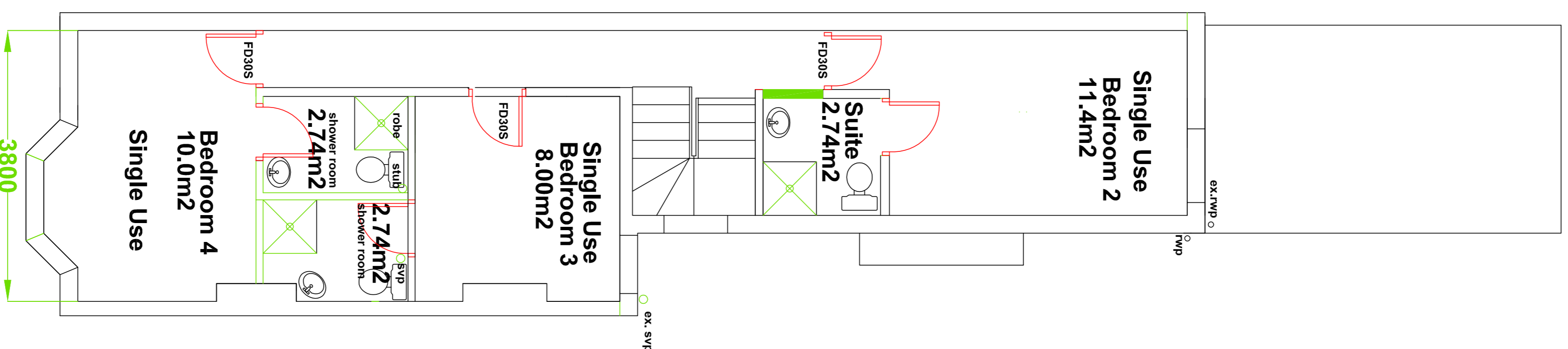
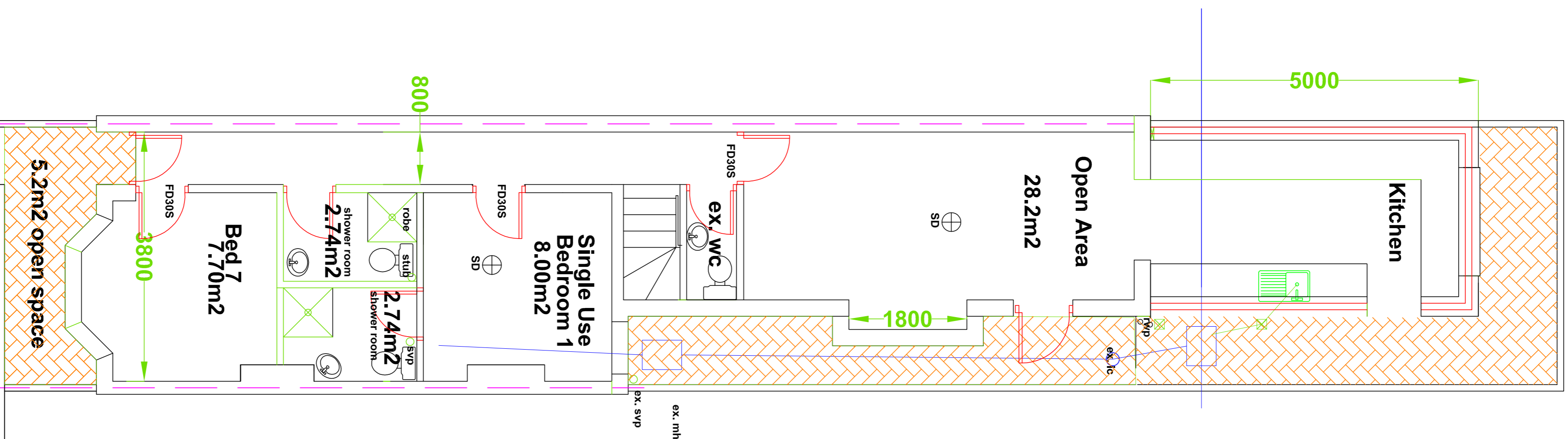
#### 4. **CONCLUSION**

- 4.1 Officers recommend that this case be closed because there has been no material change of use identified, and therefore no breach of planning control against which formal enforcement action can be taken.

**RECOMMENDATION**

**No Further Action**

37.6m<sup>2</sup> open space total existing  
22.2m<sup>2</sup> open space total proposed



REVISION A AMENDED - 21/02/20 - PG

SCALE 1/50

TITLE Conversion to 7 Bedrooms (HMO)

DATE Nov. 2019

118, Prince Albert Road - Southsea

DETAILED General Arrangement (Sui Generis) Proposed

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**p3p**





## Housing Act 2004 (c.34) Part 2

### House in Multiple Occupation Licence

In accordance with the above-mentioned legislation, Portsmouth City Council hereby licence Mr Tom Bunday of 20 Dene Road Southampton SO40 7BJ

to operate a House in Multiple Occupation (HMO) known as:

**118 Prince Albert Road  
Southsea  
PO4 9HT**

for occupation by no more than 7 persons under section 61 of the Housing Act 2004.

This licence is for the period of 5 years and will expire on 31 March 2025.  
This licence is subject to review by the Council following an inspection of the property

This licence is awarded subject to the conditions attached.

Dated 1st day of April 2020

Signed

**James Hill**  
Director of Housing, Neighbourhood and Building Services

#### **THIS LICENCE IS NOT TRANSFERABLE.**

Note: The above house in multiple occupation is required to be licensed under the provisions of Part 2 of the Housing Act 2004. The granting of this licence does not imply that the use and condition of the property are lawful under other legislation. It is a requirement that the house is managed in accordance with the attached conditions; failure to do so is an offence, which may result in prosecution and/or withdrawal of the licence.

The Conditions of the licence for **118 Prince Albert Road Southsea PO4 9HT** are as follows:

1. The licence holder will provide to Portsmouth City Council (The Council) copies of the following documents on, or within, 2 weeks of each anniversary of the granting of this licence:
  - a. A current certificate certifying the safety of the landlord's gas appliances and installations (if present).
  - b. A current certificate of service demonstrating the proper operation of the fire alarm system(s) (If required).
  - c. Details of visual inspection and testing of the fire alarm system by the licence holder.
  - d. A current certificate of service demonstrating the proper operation of the emergency lighting system (if present).
  - e. A current PAT certificate (electrical appliance safety certificate) for appliances provided by the landlord (if required).
2. With the exception of item (c) above, all these documents are to be provided by a competent person (fully qualified Electrician who is a member of a recognised Electrical association such as NAPIT or other similar association). Or a member of Gas Safe association with regards to gas safety certificates.
3. The following rooms are to be occupied for sleeping purposes by no more than the number of persons stated below:

Room number on plan	Occupancy level
1	One person aged over 10 years of age
2	One person aged over 10 years of age
3	One person aged over 10 years of age
4	One person aged over 10 years of age
5	One person aged over 10 years of age
6	One person aged over 10 years of age
7	One person aged over 10 years of age

4. The following room are NOT to be used as sleeping accommodation by any person:
5. The licence holder will inform the local housing authority of any rooms within the property have a floor area of less than 4.64 square metres.
6. A copy of the following documents shall be displayed in the HMO to which all tenants have access:

- a. this licence, and the conditions attached thereto;
  - b. the manager's contact details; and
  - c. the procedure for notifying the manager of any emergency and other complaints concerning the property and details of how the manager will address them.
7. The licence holder must comply with any waste management scheme, introduced by the local housing authority in respect of the storage and disposal of the household waste from the property pending collection.
8. Any alteration to the electrical wiring must be completed by a competent fully qualified Electrician as mentioned in section 2.
9. The licence holder is required to ensure that smoke alarms are installed on each storey of the house on which there is a room used wholly or partly as living accommodation and that these are kept in proper working order. Further, a licence holder will be required to supply the local housing authority, on demand, with a written declaration by him as to the condition and positioning of such alarm
10. The licence holder is required to ensure that the carbon monoxide alarm is installed in any room in the house which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance and that these are kept in proper working order. Further, a licence holder will be required to supply the local housing authority, on demand, with a written declaration by him as to the condition and positioning of such alarm.
11. The licence holder is required to ensure that furniture made available by him in the house is in a safe condition. Further a licence holder will supply to the local housing authority on demand, with a written declaration by him of the safety of such furniture
12. At the start of each tenancy, occupants must be given appropriate fire safety advice regarding the means of escape in case of fire and other fire precautions. In particular, the importance of keeping fire doors closed and keeping the escape route clear, plus how to use the fire alarm system, fire extinguishers and fire blankets.
13. The licence holder is to ensure that the requirements of landlord and tenant legislation are properly adhered to. In particular, the licence holder will ensure that **written terms of tenancy** are to be provided for all occupiers. These terms will describe and give details of:
  - a. The type of tenancy, its duration and terms of notice.
  - b. The amount of rent due together with dates and method of payment, and the circumstances when the rent may be reassessed.
  - c. The amount of deposit taken, how it is held and the terms for its return.
  - d. An inventory of contents and condition at the commencement of the tenancy.

- e. The means of contacting the property owner and/or property manager to report repairs, etc.
14. The licence holder (or the property manager) shall attend the property at frequent intervals. The frequency of the inspections will be determined by Portsmouth City Council and the licence holder. The purpose of the inspections is to:
    - a) Ensure the proper management of the property;
    - b) Ensure compliance with The Management of Houses in Multiple Occupation (England) Regulations 2006, and any revisions thereto; and
    - c) Ensure the property is maintained in such a condition that category 1 hazards, within the meaning of Part 1 of the Housing Act 2004, are not present or quickly eliminated.
  15. The licence holder will provide to the council copies of all the current tenancy agreement(s), and details of where any security deposit is held, on demand.
  16. The licence holder is required to notify the Council of any changes to the property, including structural alterations, changes to the ownership or management, or events that may affect the fit and proper person status of the owner, licence holder or manager, which may affect the licence.
  17. The licence holder (or his manager) will attend the property as may be reasonably necessary for the purposes of inspection by the council.
  18. The licence holder will work pro-actively and responsibly with all enforcement agencies in response to anti-social behaviour caused by tenants within the curtilage of the property and take all reasonable steps to prevent anti-social behaviour from within the boundaries of the property.
  19. The licence holder and, where appropriate, their nominated managing agent are required to undertake a detailed investigation of any complaints which have been made either directly to them, or via the Local Housing Authority, regarding their tenants and keep a written record.
  20. The licence holder must inform the Council if they no longer reside at the address given and provide the Council with the new address details within 21 days.
  21. The licence holder must inform the Council if there is a change in managing agent within 21 days.
  22. If the licence holder is a managing agent they must inform the Council if the person who is specified as the main contact ceases to be employed by them and inform the Council of a new contact, within 21 days.

23. If the licence holder is a managing agent they must inform the Council if they cease to have an interest in the property, within 21 days.
24. A written record of visual inspections of the property undertaken by the licence holder relating to the overall condition of the property and Management Regulations shall be maintained by the licence holder and produced to the council when requested.
25. Produce to the local housing authority for their inspection a written copy of the Fire Risk Assessment. (Reviewed annually).
26. The licence holder and/or manager shall attend a specified training course if and when required to do so by the Council. (The arrangements for this will be by negotiation, but an unreasonable failure to attend such a course will be a breach of the conditions of licence).
27. The licence holder is to ensure that any works carried out at the property are done so with due regard to the comfort of the occupying tenants.

**NOTE:** Where on demand is stated within these licence conditions, this means within 7 (seven) days from the written request by the licensing authority.

Special conditions relating to the provision of a licence for 118 Prince Albert Road Southsea PO4 9HT

The licence holder will carry out the following works, within the times set out below, to the satisfaction of the Council:

20/00276/FUL

EXPIRY DATE: 20<sup>TH</sup> August 2020

118 PRINCE ALBERT ROAD, PORTSMOUTH PO4 9HT

**Change of use from house in multiple occupancy (Class C4) to seven person/seven bedroom house in multiple occupancy (Sui Generis).**

#### **APPLICATION SITE**

This application relates to a two storey mid terrace property situated on the western side of Prince Albert Road. This property consists of a lounge, 1 bed/1person bedroom, a communal living area, kitchen and a WC at ground floor level, 3no. 1 bed/1person bedroom each with en-suite toilet and shower at first floor level and two bedrooms and 2no. toilets and showers in the loft. Existing building materials include brickwork, rendered in white and concrete roof tiles. The property is currently in use as a 6 bedroom houses in multiple occupancy (HMO) dwelling.

#### **DEVELOPMENT PROPOSAL**

This application seeks planning permission for the change of use of the existing property from a house in multiple occupancy (Class C4) for up to six persons to a seven person/seven bedroom house in multiple occupancy (Sui Generis). The proposal involves converting an existing lounge at the front to another 1bed/1person bedroom with en-suite bathroom, open area/kitchen and toilet and shower room at ground floor, 2no. 1 bed/1person bedroom with en-suite bathroom and 1no. 1 bed/1person bedroom and toilet and bathroom at first floor level and 2no. 1bed/1person bedrooms with 2no. toilets and showers in the loft. The proposed development would incorporate 4 bicycle storage spaces at the rear and refuse and recycling bins at the front.

#### **PLANNING HISTORY**

19/00112/GPDC - Construction of single storey rear extension. Prior Approval Not Required 14.11.2019.

19/01621/FUL - Change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwellinghouse) and Class C4 (house in multiple occupation). Conditional Permission granted 15/01/2020.

#### **POLICY CONTEXT**

The relevant policies within the Portsmouth Plan would include

PCS17 (Transport)

PCS20 (Houses in Multiple Occupation (HMOs)

PCS23 (Design and Conservation).

Other Guidance

The Houses in Multiple Occupation (HMOs) Supplementary Planning Document

National Planning Policy Framework

#### **CONSULTATIONS**

**Natural England**

Natural England commented that concerning recreational disturbance that the proposal will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar site(s) may result from increased recreational pressure. Natural England commented that provided the appropriate financial contribution being secured, the proposal will mitigate against the potential recreational impacts of the development on the site(s) in line with the Solent Recreation Mitigation Strategy. With regard to deterioration of the water environment, Natural England noted that the proposal would result in a positive contribution of 0.42 Kg/N/year. It is noted that the approach to address the positive nitrogen budget for this development is to offset against the interim strategy through the purchase of mitigation 'credits'. Natural England is satisfied that the approach will ensure the proposal is nutrient neutral and the necessary measures can be fully secured. Natural England raises no further concerns.

### **Highways**

No comments received

### **REPRESENTATIONS**

8 neighbours were consulted. 1 letter of objection was received and the basis of objection were lack of car parking spaces, existing HMOs in the vicinity and overpopulation.

### **COMMENT**

During the consideration of this application, the proposal was revised by way of increasing the floor space of the private amenity space. The main issues to be considered in the determination of this application are whether the proposal is acceptable in principle, impact on the character and appearance of the host dwelling, whether it would have a detrimental impact on the living conditions of adjoining residents. Other considerations are whether the proposal complies with policy requirements in respect of car and cycle parking, and refuse and recyclable material storage. These main issues are as follows;

- Principle of development;
- Standard of accommodation;
- Parking;
- Waste
- Amenity impacts upon neighbouring residents; and
- Impact upon the Solent Special Protection Area.

### **Principle of development**

Permission is sought for the change of use from house in multiple occupancy (Class C4) to seven person/seven bedroom house in multiple occupancy (Sui Generis). 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) as amended in October 2019, sets out how Policy PCS20 will be implemented and details how the City Council will apply this policy to all planning applications for HMO uses.

The amended HMO SPD has been published to provide a tool for addressing the recognised negative impacts that HMO's would have in Portsmouth, most notably in relation to the residential amenity and housing mix of certain communities.

Paragraph 2.3 of the HMO SPD states that in situations such as this "where planning permission is sought for the change of use of a Class C4 or mixed C3/C4 use to a HMO in Sui Generis use, in areas where concentration of HMOs exceed the 10% threshold, the Council will consider the potential harm to amenity caused by an increase in the number of bedrooms in an already unbalanced community". This is supported by the guidance within the National Planning Policy Framework which seeks to 'deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities'.

The 10% threshold contained within the HMO SPD applies to an area within a 50m radius of an application site. In this instance, a total of 69 residential properties fall within this geographic space, 9 of which are in HMO use. This accounts for 13.04% of properties within a 50m radius. These statistics reflect the degree of imbalance between residential properties and HMO's in the wider area, in excess of the 10% threshold outlined within the HMO SPD.

However, the application property is already in use as an HMO. As such there is no change to the overall community balance, at least in the total number of existing HMOs. However, as the change would result in a more intensive use (from a 6 bedroom HMO to a 7 bedroom HMO with 7 occupants) of the property, the potential amenity impact of the additional bedrooms is considered further below, in accordance with paragraphs 2.3, 2.17 and 2.18 of the SPD.

### Standard of Accommodation

The internal floor spaces of the property are as follows

	Proposed	Required
Bedroom 7 (Ground Floor)	7.7m <sup>2</sup>	6.51m <sup>2</sup>
En-suite Shower Room (Ground Floor)	2.74m <sup>2</sup>	not defined
Shower room (Ground Floor)	2.74m <sup>2</sup>	not defined
Bedroom 1 (Ground Floor)	8.0m <sup>2</sup>	6.51m <sup>2</sup>
Combined Open Area + kitchen (Ground Floor)	29.79m <sup>2</sup>	34.0m <sup>2</sup>
Bedroom 4 (First Floor)	10.0m <sup>2</sup>	6.51m <sup>2</sup>
En-suite Shower Room (First Floor)	2.74m <sup>2</sup>	not defined
Bedroom 3 (First Floor)	8.0m <sup>2</sup>	6.51m <sup>2</sup>
En-suite Shower Room (First Floor)	2.74m <sup>2</sup>	not defined
Bedroom 2 (First Floor)	11.4m <sup>2</sup>	6.51m <sup>2</sup>
En-suite Shower Room (First Floor)	2.74m <sup>2</sup>	not defined
Bedroom 6 (Loft)	11.3m <sup>2</sup>	6.51m <sup>2</sup>
En-suite Shower Room (Loft)	2.74m <sup>2</sup>	not defined
Bedroom 5 (Loft)	7.5m <sup>2</sup>	6.51m <sup>2</sup>
En-suite Shower Room (Loft)	2.74m <sup>2</sup>	not defined
Total	112.87m <sup>2</sup>	79.57m <sup>2</sup>

The HMO SPD (October 2019) states that large HMOs should incorporate a communal living area measuring a minimum of 34m<sup>2</sup>. At paragraph 2.6 the SPD states that this guidance has been set to reflect licensing standards provided within the Council's 'Standards for Houses in Multiple Occupation' guidance document



(2018) (produced by the Private Sector Housing Department), and this document should be applied when assessing space requirements in detail.

The proposed internal layout of the property would feature an under-provision of 4.21m<sup>2</sup> in communal living space, below the guideline standard set out within the HMO SPD of October 2019. The communal space (open area) is a relatively narrow and most of its size is contained within its depth which limits its functionality. The majority of the room would act as a thoroughfare between the kitchen and the rest of the house, so not to act as a true living space as it would also function as the main access to the kitchen. Given that there is no other communal space, this area is not considered to be suitable for seven individuals sharing who don't all benefit from good-sized bedrooms where they can also relax with flatmates or friends.

The 'Standards for Houses in Multiple Occupation' guidance document goes on to state that in cases where bedrooms achieve 10m<sup>2</sup> or larger, the communal living area expectations can be lowered to 22.5m<sup>2</sup>. The proposed bedroom sizes range from 7.5m<sup>2</sup> to 11.4m<sup>2</sup> as presented below. All the bedrooms meet the minimum requirements for HMO's bedroom size. In this instance, not all proposed bedrooms are above 10m<sup>2</sup>. It is considered that the proposed communal living area (open area and kitchen) will be 29.79m<sup>2</sup> internal floor space which does not meet the minimum requirement. The existing layout provide adequate communal living area by combining the open area and the lounge at the front. The loss of the existing lounge to provide additional bedroom will compromise the provision of adequate communal living area and would not be acceptable for the proposed number of occupiers.

This view has been demonstrated in recent appeal decisions which have been dismissed by the Planning Inspector where the properties have failed to meet the space standards as detailed above. Even where some bedrooms are over 10m<sup>2</sup> in area. The two recent appeals, both of which were determined in accordance with the new space standards set out by the HMO SPD (October 2019) are APP/Z1775/W/20/3248561 and APP/Z1775/W/20/3247887.

The Inspector on 7 Beatrice Road (APP/Z1775/W/20/3248561) stated "The HMO SPD provides two different ways of assessing internal communal living space. The first is where the living room, dining room and kitchen are assessed individually and the second is where they are assessed as a combined living space". In this case the communal living space amounts to one room; in effect a combined living room/dining room/kitchen. Whilst the room would remain unaltered, by virtue of the proposal to increase the number of bedrooms from 6 to 7, it would be required to be of an adequate size to provide a good standard of living environment for 7 persons. The area of the communal living space, shown as the 'open area and kitchen' on the submitted plans, at around 29.79m<sup>2</sup>, is about 4.29m<sup>2</sup> below the minimum of 34m<sup>2</sup> for a combined living space for 6 or more persons indicated in the HMO SPD.

I acknowledge that the proposal relates to only one additional occupier and that the proposal is for seven persons and therefore towards the lower end of the 6 or more number of persons range. However, the layout and shortfall in communal living space would, in my judgement, lead to an inadequate standard of accommodation for 7 persons within the context of the Council's stated aim in the HMO SPD to secure a good standard of living accommodation within Sui Generis HMOs, which includes a minimum of 34m<sup>2</sup> of combined living space for 6 or more persons."

Having due regard to the significant under-provision in communal space, it is considered that the proposal would result in cramped and unacceptable living conditions for its occupants and therefore conflict with Policy PCS23 of the Portsmouth Plan and supporting guidance in the SPD.

### **Impact on residential amenity**

The property is presently in use as a HMO. Whilst 13.04% of the properties within a 50m radius are HMOs, they have an even coverage within the area and its general character will not be significantly altered by the increase in the number of bedrooms to seven. The proposed ground floor bedroom would utilise the existing lounge in the host dwelling. The proposed development would not result in substantial loss of daylight and sunlight, overlooking and loss of privacy to neighbouring occupiers at Nos. 116 and 120 Prince Albert Road given the scale and nature of proposed development.

In terms of potential impacts on immediate adjoining properties, the proposal would result in a more intensive occupation of the property. It is noted that the new bedroom would be located at ground floor level, this change in use of the rooms will focus the majority of the noise into the existing open area/kitchen away from the frontage of the property. However, given that this space is currently used by 6 residents, it is not considered that the potential impact caused by an increased level of noise and disturbance will be so significant as to justify refusal of this application.

Therefore, the proposal is deemed to be in accordance with the amended HMO SPD (and in particular the guidance on potential impacts described in para 2.17), and Policies PCS20 and PCS23 of the Portsmouth Plan (2012).

### **Highways (Parking)**

The Council's Adopted Parking Standards set out a requirement for Sui Generis HMO's to provide 2 car parking spaces and at least 4 bicycle storage spaces. The application site does not benefit from off-street parking and no additional parking is proposed as part of this application. Given that the site's sustainable location within the town centre and a short walk of local transport links, shops and services, the proposed provision of secure cycle storage for 4 bicycles and taking account of the current use as a Class C4 HMO, it is considered that a car free development would be acceptable.

### **Waste and recycling**

In relation to refuse requirements, the proposal incorporates 2 no. bins at the frontage of the application site but there is lack of details because these bins are not annotated to show their capacity. These bins should be 1 no. 360 litre refuse bin and 1 no. 360 litre recycling bin to cater for the additional resident. This applicant has not demonstrated to meet the requirement for refuse and recycling storage requirement. The assurance for appropriate refuse and recycling storage capacity can be secured by condition.

### **Impact on the Solent Special Protection Area (SPA) and Nitrates**

The application site is within 5.6 m of Portsmouth Harbour Special Protection Area (SPA) and will lead to a net increase in residential (3 bedrooms) accommodation.

The Conservation of Habitats and Species Regulations 2010 [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 likely effect on the interest features of the Solent Special Protection Areas, 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.

There are two potential impacts resulting from this development, the first being potential recreational disturbance around the shorelines of the harbours and the second from increased levels of nitrogen and phosphorus entering the Solent water environment.

### Wading birds

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. Mitigation in this development is considered necessary for the management of the SPA.

Based on the methodology set out within the Strategy, an appropriate scale of mitigation for this development is £356 which the Applicant has opted to pay through a S106 legal agreement. With this mitigation, the LPA can conclude that the adverse effects arising from the proposal would be consistent with the requirements of the Solent Recreation Mitigation Strategy. The requirement for a payment to secure mitigation is both directly related to the development and is fairly and reasonably related in scale to the development.

### Nitrates

Natural England has provided guidance advising that increased residential development is resulting in higher levels of nitrogen and phosphorus input to the water environment in the Solent with evidence that these nutrients are causing eutrophication at internationally designated sites. A sub-regional strategy for the nitrates problem is being developed by the Partnership for South Hampshire, Natural England, and various partners and interested parties. In the meantime, Portsmouth City Council wishes to avoid a backlog of development in the city, with the damaging effects on housing supply and the construction industry, so the Council has therefore developed its own interim strategy.

The Council's Interim Nutrient-Neutral Mitigation Strategy expects Applicant to explore their own mitigation solutions first. These solutions could be Option 1: 'off-setting' against the existing land use, or extant permission, or other land controlled by the Applicant. Or it could be Option 2: mitigation measures such as Sustainable Urban Drainage Systems (SUDS), interception, or wetland creation. If, however, the Applicant sets out to the Council that they have explored these options but are unable to provide mitigation by way of these, they may then request the purchase of 'credits' from the Council's Mitigation Credit Bank. These credits are accrued by the Council's continuous programme of installation of water efficiencies into its own housing stock, and making these credits available to new development.

The Council's Mitigation Strategy sets out that the credit per new unit for non-major schemes will be charged at £200. The credit costs required to mitigate against this scheme in its entirety would therefore amount to £200. Natural England have confirmed they have no objection to the approach of the Council's Interim Strategy, subject to mitigation.

The instance, the applicant has provided a statement, which confirms they are unable to provide nitrate mitigation via Option 1 or 2, and they would like to provide mitigation by using the Council's Mitigation Credit Bank. This is accepted in this instance. A condition is attached which prevents occupation of the development until the mitigation is provided, i.e. the credits are purchased. In accordance with the Strategy, the sum charged for the credit will be finalised and secured by way of a Section 106 legal agreement. It is also considered necessary to restrict the time implementation (condition) limit to one year, given the limited availability of Council mitigation 'credits'.

Therefore, the nitrates mitigation will be provided, by way of the condition and legal agreement, and subject to further consultation with Natural England. Subject to these matters, the development would address the nitrate impact on the Solent Special Protection Areas.

### **Other Considerations**

I am mindful of neighbour's objection as it relates to lack of car parking spaces, the number of existing HMOs in the vicinity and overpopulation. While these are material consideration in this assessment, they do not carry substantial weight to justify a refusal as presented in this case.

### **Conclusion**

As highlighted above, the proposal is not considered to be acceptable in terms of the standards of accommodation. The proposal therefore conflicts with Policy PCS20 of the Portsmouth Plan 2012, local guidance and the NPPF 2019.

### **RECOMMENDATION**

### **REFUSE**

#### **Conditions**

#### **The reason for the Local Planning Authority's decision is:-**

- 1) The proposal, by reason of the under provision of communal living space would fail to provide a good standard of living accommodation for occupiers and represent an over intensive use of the property. The proposal is therefore contrary to Core Planning Principles of the NPPF and Policy PCS23 of the Portsmouth Plan and the Houses in Multiple Occupation Supplementary Planning Document (October 2019).

#### **1 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 unacceptable and 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.

PREPARED BY	Obafemi Okusipe	Date	14th January 2021
CHECKED BY	Christopher Peters	Date	15 <sup>th</sup> January 2021
2 <sup>nd</sup> Signature	Edward Chetwynd-Stapylton	Date	15 January 2021

123 TALBOT ROAD SOUTHSEA PO4 0HD

**CHANGE OF USE FROM PURPOSES FALLING WITHIN A CLASS C4 (HOUSE IN MULTIPLE OCCUPANCY) TO HOUSE IN MULTIPLE OCCUPANCY FOR MORE THAN 6 PERSONS (SUI GENERIS)**

**LINK TO DOCUMENTS:**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QFO7XKMOKA600](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=QFO7XKMOKA600)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Antony Lane

**RDD:** 26th August 2020

**LDD:** 11th February 2021

**1.0 SUMMARY OF MAIN ISSUES**

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

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

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

1.3 Site and surroundings

1.4 This application relates to a two-storey mid-terraced dwelling located on the western side of Talbot Road between its junctions with Orchard Road and Telephone Road.

1.5 The Proposal

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

1.7 Planning History

1.8 12/00962/FUL - Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwelling house) - Conditional Permission October 2012

- 1.9 19/00991/FUL - Change of use from purposes falling within a house in multiple occupation (Class C4) to a 7 bedroom house in multiple occupation (sui generis). Refused February 2020. The two reasons for refusal were:

*1. The provision of an additional bedroom at the property to create a 'larger' Sui Generis HMO, couple with the under provision of communal living space, would create a situation that would result in inadequate amenity provisions for occupiers of the property and as such would represent an over intensive use of the site that would be contrary to Core Planning Principles of the NPPF and Policy PCS23 of the Portsmouth Plan, and the Houses in Multiple Occupation Supplementary Planning Document (October 2019).*

*2. In the absence of a suitable agreement to secure appropriate mitigation measures for the increased discharge of nitrogen and phosphorous into the Solent water environment, the development would be likely to have a significant effect on the Solent Special Protection Areas and is therefore contrary to the National Planning Policy Framework, policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Special Regulations (as amended).*

- 1.13 The appeal (ref: APP/Z1775/W/20/3246589) was dismissed by the Planning Inspectorate in August 2020, however PINS only dismissed the appeal on the second reason for refusal, with their concluding comments being:

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

## 2.0 POLICY CONTEXT

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

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

## 3.0 CONSULTATIONS

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

## 4.0 REPRESENTATIONS

- 4.1 Two objection comments have been received from neighbouring residents objecting to the proposal on the following grounds:

- a) Overdevelopment of the site; and
- b) Noise.

## 5.0 COMMENT

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 26 HMOs out of 64 properties, a percentage of 40.6%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	8.88m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	10.09m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	9.66m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	8.88m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	7.74m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	7.88m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	8.48m <sup>2</sup>	6.51m <sup>2</sup>
WC	2.17m <sup>2</sup>	1.17m <sup>2</sup>
Shower room	3.97m <sup>2</sup>	2.74m <sup>2</sup>
Shower room	2.77m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	26.84	34m <sup>2</sup>



5.6 As is shown in the table above, the proposal results in would not meet the Council's adopted space standards. However, as stated above this application was already considered by the Planning Inspectorate, who found the proposed layout to be suitable for the occupation by 7 individuals sharing's, with their concluding comments being:

*"I therefore conclude that the proposed development would provide adequate living conditions for the occupiers of the property with respect to the provision of communal space and would not represent an over intensive use of the property. Accordingly, I find no conflict in this respect with Policy PCS23 of the Core Strategy which, amongst other things, requires that new development provides a good standard of living environment for future occupiers. Whilst the communal area would not meet the standard in the SPD, this is guidance and I cannot give it the full weight of a development plan policy."*

5.7 Amenity and Parking

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

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

5.10 Other Material Considerations

5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not



considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.

- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.
- 5.13 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above. With respect to work already commenced, it is not known what the works alleged may be and whether they require planning permission. Action is unlikely pending the decision on the current application.
- 5.14 Impact on Special Protection Areas
- 5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicant's above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.
- 5.16 **CONCLUSION**
- 5.17 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the use described in the application and the

proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

**03**

21/00303/FUL

WARD: HILSEA

331 LONDON ROAD, PORTSMOUTH, PO2 9HQ

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

**LINK TO DOCUMENTS:**

<HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QFOAQ0MOKA900>

**Application Submitted By:**

Town Planning Experts  
FAO Mr Jonathan McDermott

**On behalf of:**

Mr and Mrs Andre and Elise Brink

**RDD:** 2<sup>nd</sup> March 2021

**LDD:** 28<sup>th</sup> April 2021

**1.0 SUMMARY OF MAIN ISSUES**

1.2 This application is brought before Planning Committee due to the number of objections which have been received (three)

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

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

1.3 Site and surroundings

1.4 This application relates to a two-storey, terrace property located on the western side of London Road. The dwelling is separated from the road by a forecourt and to the rear of the dwelling is an enclosed garden

1.5 The Proposal

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

1.7 Planning History

1.8 20/00128/GPDC - Construction of single-storey rear extension that comes out a maximum of 6m beyond the rear wall of the original house with a maximum height of 3.03m and a maximum height of 2.78m to the eaves. Prior approval not required. January 2021.

- 1.8 20/00127/GPDC - Construction of single-storey rear extension that comes out a maximum of 6m beyond the rear wall of the original house with a maximum height of 3m and a maximum height of 2.47m to the eaves. Prior approval not required. January 2021.
- 1.9 20/00108/GPDC - Construction of two single-storey rear extensions. Extension 'A' to the light well with a maximum depth of 6 metres, eaves height of 2.78 metres and maximum height of 3.08 metres and Extension 'B' to the rear of the two-storey outshot with a maximum depth of 6 metres, eaves height of 2.78 metres and maximum height of 3.08 metres. GPDR - General Permitted Development (Refuse) November 2020.
- 1.10 16/01269/FUL - Change of use from residential dwelling (Class C3) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwelling house). Conditional Permission November 2016.

## 2.0 **POLICY CONTEXT**

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

## 3.0 **CONSULTATIONS**

- 3.1 Highways - No comments received.
- 3.2 HMO Consultation - Consultation map and address lists provided

## 4.0 **REPRESENTATIONS**

- 4.1 Three objection comments have been received from neighbouring residents objecting to the proposal on the following grounds:
- c) Overdevelopment of the site;
  - d) Impact on neighbour amenity in terms of noise, anti-social behaviour and inadequate soundproofing
  - e) Parking issues
  - f) Increased population density
  - g) Impact on the environment in terms of pollution, nitrates, drainage.

## 5.0 **COMMENT**

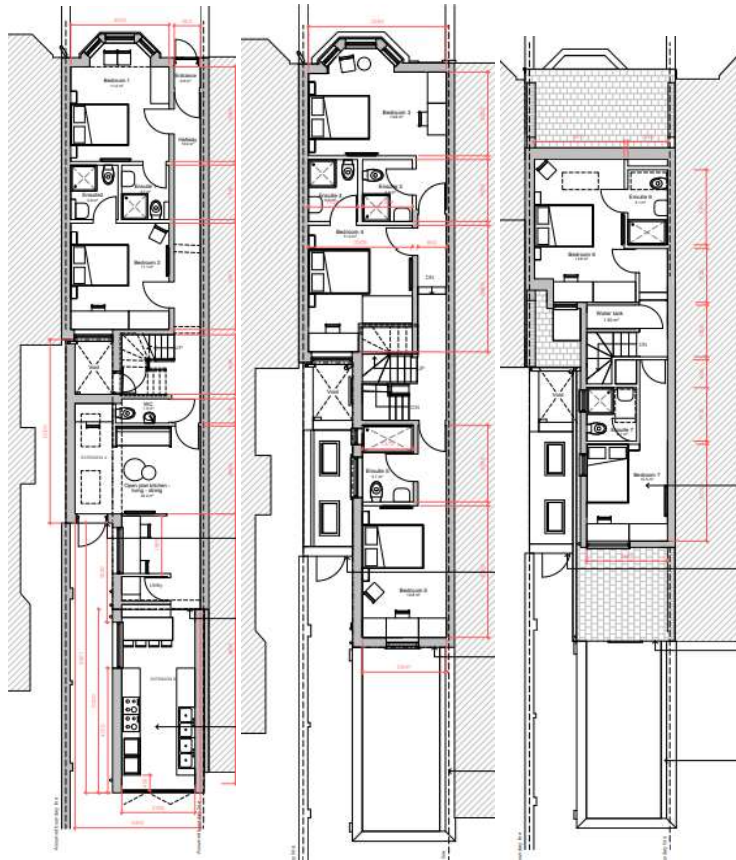
- 5.1 The main issues to consider in the determination of this application are;

### 5.2 Principle

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

- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupants. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 5 HMOs out of 35 properties, a percentage of 14.29%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO, these considerations are not brought into effect.
- 5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	11.2m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	11.1m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	13.8m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	11m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	12.8m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	12.8m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	10.5m <sup>2</sup>	6.51m <sup>2</sup>
En-suite 1	2.7m <sup>2</sup>	2.74m <sup>2</sup>
En-suite 2	2.6m <sup>2</sup>	2.74m <sup>2</sup>
En-suite 3 & 4	2.9m <sup>2</sup>	2.74m <sup>2</sup>
En-suite 5	3.7m <sup>2</sup>	2.74m <sup>2</sup>
En-suite 6	3.1m <sup>2</sup>	2.74m <sup>2</sup>
En-suite 7	2.7m <sup>2</sup>	2.74m <sup>2</sup>
Living/dining/Kitchen	34.2m <sup>2</sup>	22.5m <sup>2</sup>



### Proposed Floor Plans

- 5.6 As is shown in the table above, the proposal would meet the Council's adopted space standards. As such the proposed layout to be suitable for occupation by 7 individuals sharing.
- 5.7 Amenity and Parking
- 5.8 The proposal would increase the occupancy of the existing HMO by 4 occupants. While this would have a proportionate increase in activity within and coming and goings from the property, this increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more bedrooms. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.
- 5.10 Other Material Considerations
- 5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes

of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.

- 5.12 In the circumstances of the case, the subject of this report, it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.
- 5.13 The objection points concerning intensity / character of use of the property and effect on the wider area, including neighbour amenity and parking issues are covered by the text above.
- 5.14 Impact on Special Protection Areas
- 5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicant's above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.
- 5.16 **CONCLUSION**
- 5.17 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the use described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**



34 QUEENS ROAD FRATTON PORTSMOUTH PO2 7NA

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

**LINK TO DOCUMENTS:**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QBG8DXMO13V00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qbg8dxmo13v00)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mrs T Powell

**RDD:** 5th June 2020

**LDD:** 12th January 2021

**1.0 SUMMARY OF MAIN ISSUES**

1.3 This application is brought before Planning Committee in order to provide a view to the Planning Inspectorate as to how the Local Planning Authority would have determined the application as part of a non-determination appeal. Additionally Councillor Vernon-Jackson has requested that all C4 to Sui Generis application are brought to Planning Committee.

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

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

1.3 Site and surroundings

1.4 This application relates to a two-storey, semi-detached property located on the southern side of Queens Road. The dwelling is separated from the road by a forecourt and to the rear of the dwelling is an enclosed garden

1.5 The Proposal

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

1.7 Planning History

- 1.8 12/00478/FUL - Change of use from C3 dwelling to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwelling house). Conditional Permission 02.07.2012.
- 1.9 The Council has been made aware that an appeal has been made for the non-determination of this application however at the time of the finalisation of this agenda confirmation had not been received from the Planning Inspectorate as to the validity of that appeal. This matter will be updated at the meeting.

## 2.0 **POLICY CONTEXT**

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

## 3.0 **CONSULTATIONS**

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.
- 3.2 Based on the plans provided, the two ground floor bedrooms to the rear of the property would require means of escape windows or doors with access to an ultimate place of safety.
- 3.3 The ensuite to the bedroom closest to the kitchen to the rear of the property is recorded as 2.76m<sup>2</sup>. This is very close to the minimum size requirement of 2.74m<sup>2</sup>.

## 4.0 **REPRESENTATIONS**

- 4.1 One objection comments has been received from a neighbouring resident objecting to the proposal on the following grounds:
- h) Area already imbalanced by concentration of HMOs;
  - i) Parking concerns;
  - j) Anti-social behaviour;
  - k) Loss of family homes;

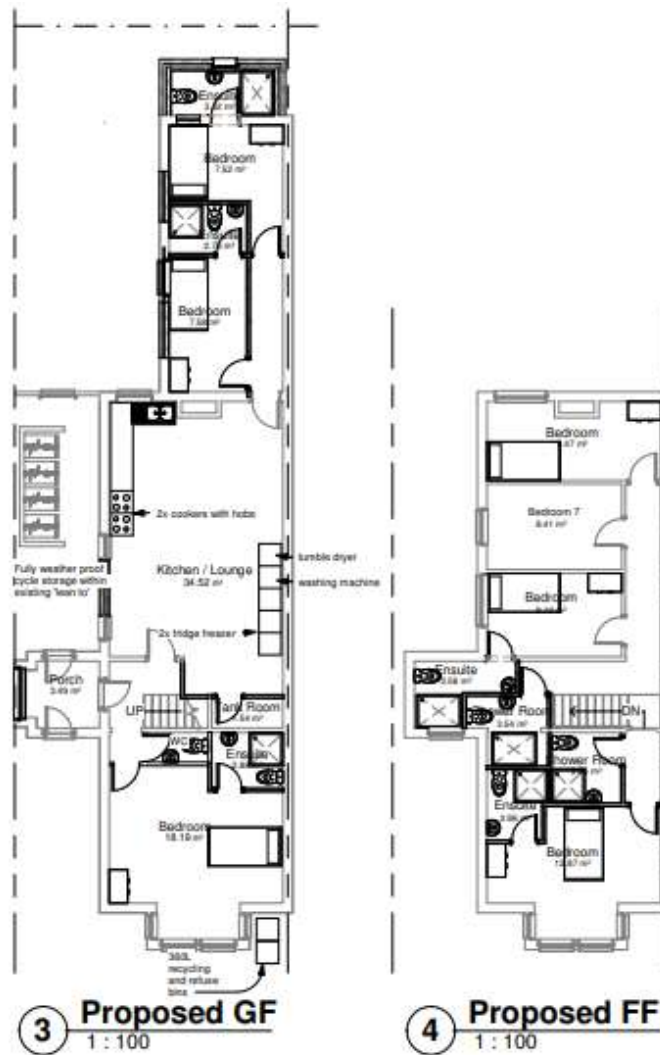
## 5.0 **COMMENT**

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application

of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.

- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 2 HMOs out of 76 properties, a percentage of 2.63%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	20.6m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	2.88m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	7.58m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	2.78m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	7.52m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	3.32m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	12.87m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.96m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	8.18m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B5	3.56m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	8.41m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	9.47m <sup>2</sup>	6.51m <sup>2</sup>
WC	1.3m <sup>2</sup>	1.17m <sup>2</sup>
Shower room	3.35m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	34.52m <sup>2</sup>	34m <sup>2</sup>



- 5.6 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards.
- 5.7 Amenity and Parking
- 5.8 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more bedrooms. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.
- 5.10 Other Material Considerations
- 5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is

refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis

- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.
- 5.13 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above. With respect to work already commenced, it is not known what the works alleged may be and whether they require planning permission. Action is unlikely pending the decision on the current application.
- 5.14 Impact on Special Protection Areas
- 5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicant's above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.
- 5.16 **CONCLUSION**
- 5.17 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such

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

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

85 MARGATE ROAD SOUTHSEA PO5 1EY

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

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QD5AAYMOIYH00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qd5aaymoiYH00)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Simon Birmingham

**RDD:** 11th June 2021

**LDD:** 6th August 2021

**1.0 SUMMARY OF MAIN ISSUES**

1.1 This application is brought before Planning Committee due to the number of objections as well as the request of Councillor Vernon-Jackson.

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

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

1.3 Site and surroundings

1.4 The application site is a two storey terraced dwelling in a predominately residential area.

1.5 The Proposal

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

1.7 Planning History

1.8 The change of use from House in Multiple Occupation (Class C4) to purposes falling within Class C3 (dwellinghouse) or Class C4 (house in multiple occupation) was granted conditional permission in 2019 under planning ref: 19/01556/FUL.

**2.0 POLICY CONTEXT**

2.1 In addition to the aims and objectives of the National Planning Policy Framework (2021), the relevant policies within the Portsmouth Plan (2012) would include:PCS17

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

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

### 3.0 **CONSULTATIONS**

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004. There are no adverse comments to be made by Private Sector Housing.

### 4.0 **REPRESENTATIONS**

- 4.1 3 representations have been received from neighbouring residents, objecting to the application on the following grounds:

- a) Lack of Parking;
- b) Noise and Disturbance;
- c) Anti-social behaviour;
- d) Waste and rubbish; and
- e) Publicity of the application.

### 5.0 **COMMENT**

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

#### 5.2 Principle

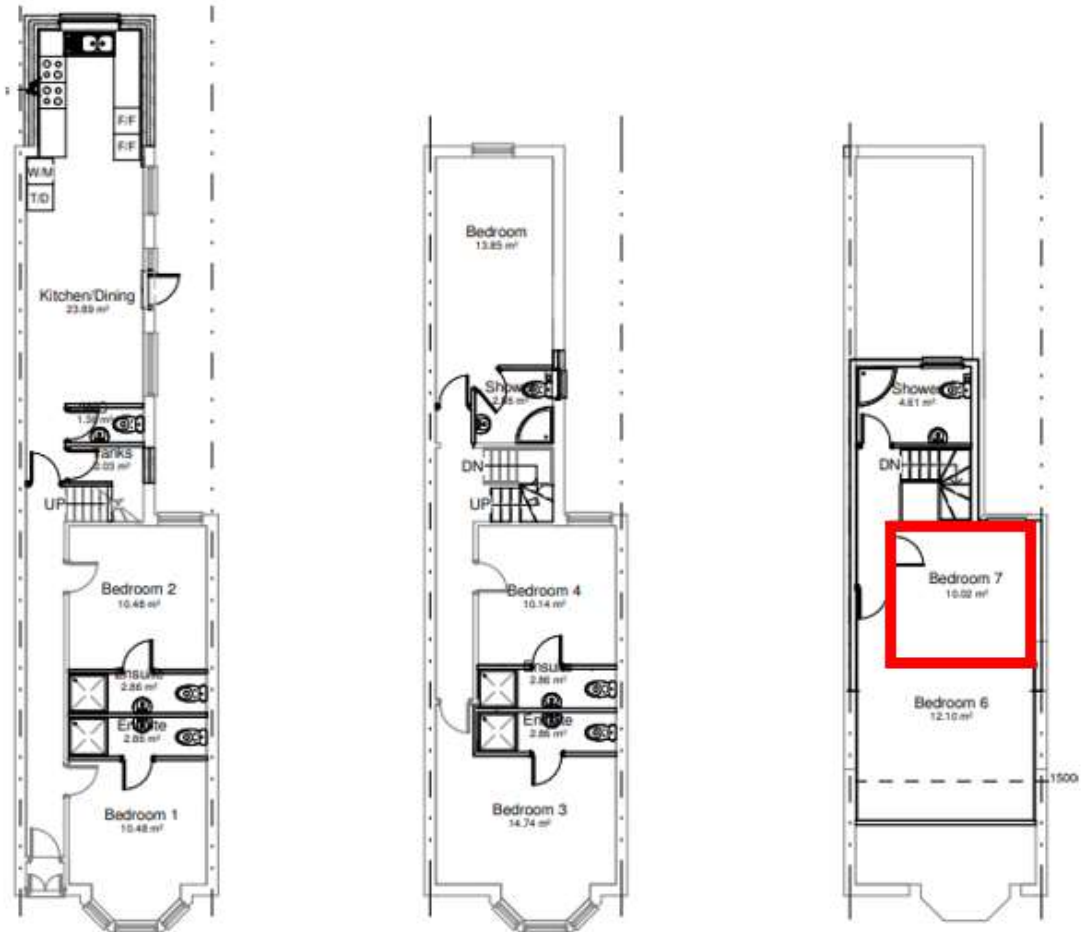
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of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

- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupants. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 32 HMOs out of 87 properties, a percentage of 36.7%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.



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

Room	Area Provided:	Required Standard:
Bedroom 1	10.48m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	2.86m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	10.48m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	2.86m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	14.74m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	2.86m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	10.14m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.86m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	13.85m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B5	2.86m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	12.1m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	10.02m <sup>2</sup>	6.51m <sup>2</sup>
Shower room	4.61m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	23.89m <sup>2</sup>	22.5m <sup>2</sup>
WC	1.4m <sup>2</sup>	1.17m <sup>2</sup>



The only change proposed within the property is the use of the room outlined in red above, from a room labelled as a study, to the proposed seventh bedroom.

- 5.6 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards except for the combined living space. However the HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements for combined living accommodation in circumstances where all bedrooms are at least 10m<sup>2</sup> and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.
- 5.7 Amenity and Parking
- 5.8 The proposal would increase the occupancy of the existing HMO by 1 occupants. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more bedrooms. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.
- 5.10 Other Material Considerations
- 5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the

occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.

- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.
- 5.13 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above. With respect to whether the correct application publicity was carried out, it is confirmed that guidelines were followed with the use of individual letters sent to nearest neighbours and a site notice displayed.
- 5.14 Impact on Special Protection Areas
- 5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.
- 5.16 **CONCLUSION**
- 5.17 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.

## **RECOMMENDATION                      Unconditional Permission**

**Conditions: None**

**48 JESSIE ROAD SOUTHSEA PO4 0EN****CHANGE OF USE FROM PURPOSES FALLING WITHIN A CLASS C4 (HOUSE IN MULTIPLE OCCUPANCY) TO HOUSE IN MULTIPLE OCCUPANCY FOR MORE THAN 6 PERSONS (SUI GENERIS)****LINK TO DOCUMENTS:**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QFO552MOKA100](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=QFO552MOKA100)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Antony Lane

**RDD:** 26th August 2020

**LDD:** 11th February 2021

**1.0 SUMMARY OF MAIN ISSUES**

1.4 This application is brought before Planning Committee due to the requests of Councillor Vernon-Jackson.

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

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

**1.3 Site and surroundings**

1.4 This application relates to a two-storey, mid-terrace property located on the southern side of Jessie Road. The dwelling is separated from the road by a forecourt and to the rear of the dwelling is an enclosed garden

**1.5 The Proposal**

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

**1.7 Planning History**

1.8 10/00669/FUL - Change of use from dwelling (Class C3) to house in multiple occupation (Class C4). Conditional Permission August 2010.

- 1.8 12/01085/FUL - Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwelling house). Permission November 2012.
- 1.9 19/00349/FUL - Change of use from purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a sui generis (7 bedroom house in multiple occupation). Application Withdrawn March 2019.
- 1.10 19/00682/FUL - Change of use from purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a Sui Generis house in multiple occupation. Non-determination June 2020. Within the Councils Appeal Statement, two reasons for refusal were set, they were:
- 1.11 *1. The change of use of the property, by reason of the under provision of communal living space would fail to provide a good standard of living accommodation for the occupiers and represent an over intensive use of the site. The proposal is therefore contrary to Core Planning Principles of the NPPF and Policy PCS23 of the Portsmouth Plan and the Houses in Multiple Occupation Supplementary Planning Document (October 2019).*
- 1.12 *2. It has been identified that any residential development in the city will result in a significant effect on the Solent Special Protection Areas, through additional nutrient output; with mitigation against these impacts being required. No mitigation measures have been secured and, until such time as this has been provided, the proposal would have a significant detrimental impact on the Special Protection Areas; contrary to Policy PCS13 of The Portsmouth Plan 2012, the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981, and Section 15 of the NPPF 2019.*
- 1.13 The appeal (ref: APP/Z1775/W/20/3246262) was dismissed by the Planning Inspectorate in August 2020, however PINS only dismissed the appeal on the second reason for refusal, with their concluding comments being:
- 1.14 *"Although I have found that the development would not result in inadequate living conditions for 7 persons, this is not sufficient to outweigh the likely significant effect on the integrity of designated habitats sites which would be adverse and for which there is no adequate mitigation before me, with consequent conflict with the development plan, the Framework and the Habitats Regulations. Therefore, and having had regard to the other matters raised, the appeal is dismissed, and planning permission is refused."*

## 2.0 POLICY CONTEXT

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

## 3.0 CONSULTATIONS

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

#### 4.0 REPRESENTATIONS

4.1 None received.

#### 5.0 COMMENT

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

##### 5.2 Principle

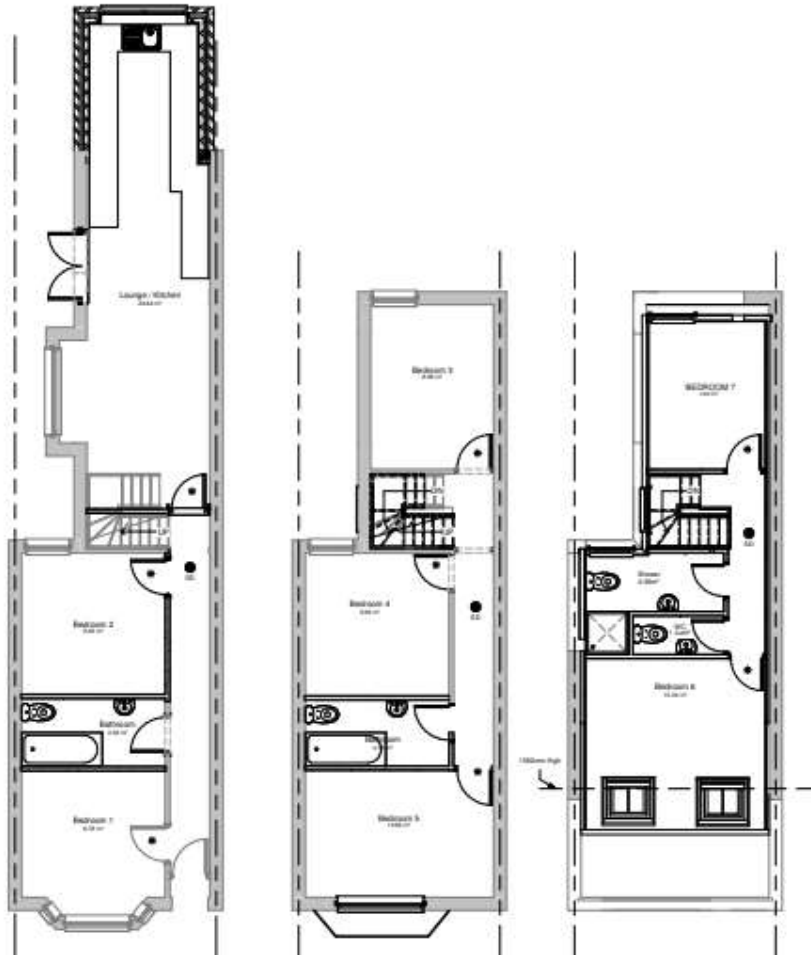
5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of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

5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 33 HMOs out of 85 properties, a percentage of 38.8%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

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

Room	Area Provided:	Required Standard:
Bedroom 1	8.78m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	9m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	8.96m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	9.09m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	10.6m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	10.34m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	7.65m <sup>2</sup>	6.51m <sup>2</sup>
WC	1.52m <sup>2</sup>	1.17m <sup>2</sup>
Shower room	4.38m <sup>2</sup>	2.74m <sup>2</sup>
Bathroom	4.18m <sup>2</sup>	3.74m <sup>2</sup>

Bathroom	4.3m <sup>2</sup>	3.74m <sup>2</sup>
Combined Living Space	26.84	34m <sup>2</sup>



- 5.6 As is shown in the table above, the proposal results in would not meet the Council's adopted space standards. However, as stated above this application was already considered by the Planning Inspectorate, who found the proposed layout to be suitable for the occupation by 7 individuals sharing's, with their concluding comments being:

*"I conclude that the proposed development would not be harmful to the living conditions of the occupiers of the property with respect to the provision of the communal living area and would not represent an over intensive use of the property. Accordingly, I find no conflict with Policy PCS23 of the Core Strategy which, amongst other things, requires that new development provides a good standard of living environment for neighbouring and future occupiers. Whilst the communal area would not meet the standard in the SPD, this is guidance and I cannot give it the full weight of a development plan policy."*

#### 5.7 Amenity and Parking

- 5.8 The proposal would increase the occupancy of the existing HMO by 1 occupant. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted

that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more bedrooms. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.

5.10 Other Material Considerations

5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.

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

5.13 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above. With respect to work already commenced, it is not known what the works alleged may be and whether they require planning permission. Action is unlikely pending the decision on the current application.

5.14 Impact on Special Protection Areas

5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicant's above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development



and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

**5.16 CONCLUSION**

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

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

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56 JESSIE ROAD SOUTHSEA PO4 0EN

**CHANGE OF USE FROM PURPOSES FALLING WITHIN A CLASS C4 (HOUSE IN MULTIPLE OCCUPANCY) TO HOUSE IN MULTIPLE OCCUPANCY FOR MORE THAN 6 PERSONS (SUI GENERIS)**

**LINK TO DOCUMENTS:**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QFOAQ0MOKA900](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qfoaQ0MOKA900)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Antony Lane

**RDD:** 26th August 2020

**LDD:** 11th February 2021

**1.0 SUMMARY OF MAIN ISSUES**

1.5 This application is brought before Planning Committee due to the requests of Councillor Vernon-Jackson.

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

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

1.3 Site and surroundings

1.4 This application relates to a two-storey, mid-terrace property located on the southern side of Jessie Road. The dwelling is separated from the road by a forecourt and to the rear of the dwelling is an enclosed garden

1.5 The Proposal

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

1.7 Planning History

1.8 The change of use from purposes falling within class C4 (House in Multiple Occupation) to a class C3 (Dwelling House) or class C4 (House in Multiple Occupation) was permitted in 2018 under planning ref: 18/01232/FUL.

- 1.10 19/00350/FUL- Change of use from purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a sui generis (7 bedroom house in multiple occupation). Non-determination March 2020. Within the Councils Appeal Statement, two reasons for refusal were set, they were:

*1. The change of use of the property, by reason of the under provision of communal living space would fail to provide a good standard of living accommodation for the occupiers and represent an over intensive use of the site. The proposal is therefore contrary to Core Planning Principles of the NPPF and Policy PCS23 of the Portsmouth Plan and the Houses in Multiple Occupation Supplementary Planning Document (October 2019).*

*2. It has been identified that any residential development in the city will result in a significant effect on the Solent Special Protection Areas, through additional nutrient output; with mitigation against these impacts being required. No mitigation measures have been secured and, until such time as this has been provided, the proposal would have a significant detrimental impact on the Special Protection Areas; contrary to Policy PCS13 of The Portsmouth Plan 2012, the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981, and Section 15 of the NPPF 2019.*

- 1.13 The appeal (ref: APP/Z1775/W/20/3246266) was dismissed by the Planning Inspectorate in August 2020, however PINS only dismissed the appeal on the second reason for refusal, with their concluding comments being:

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

## 2.0 **POLICY CONTEXT**

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

## 3.0 **CONSULTATIONS**

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

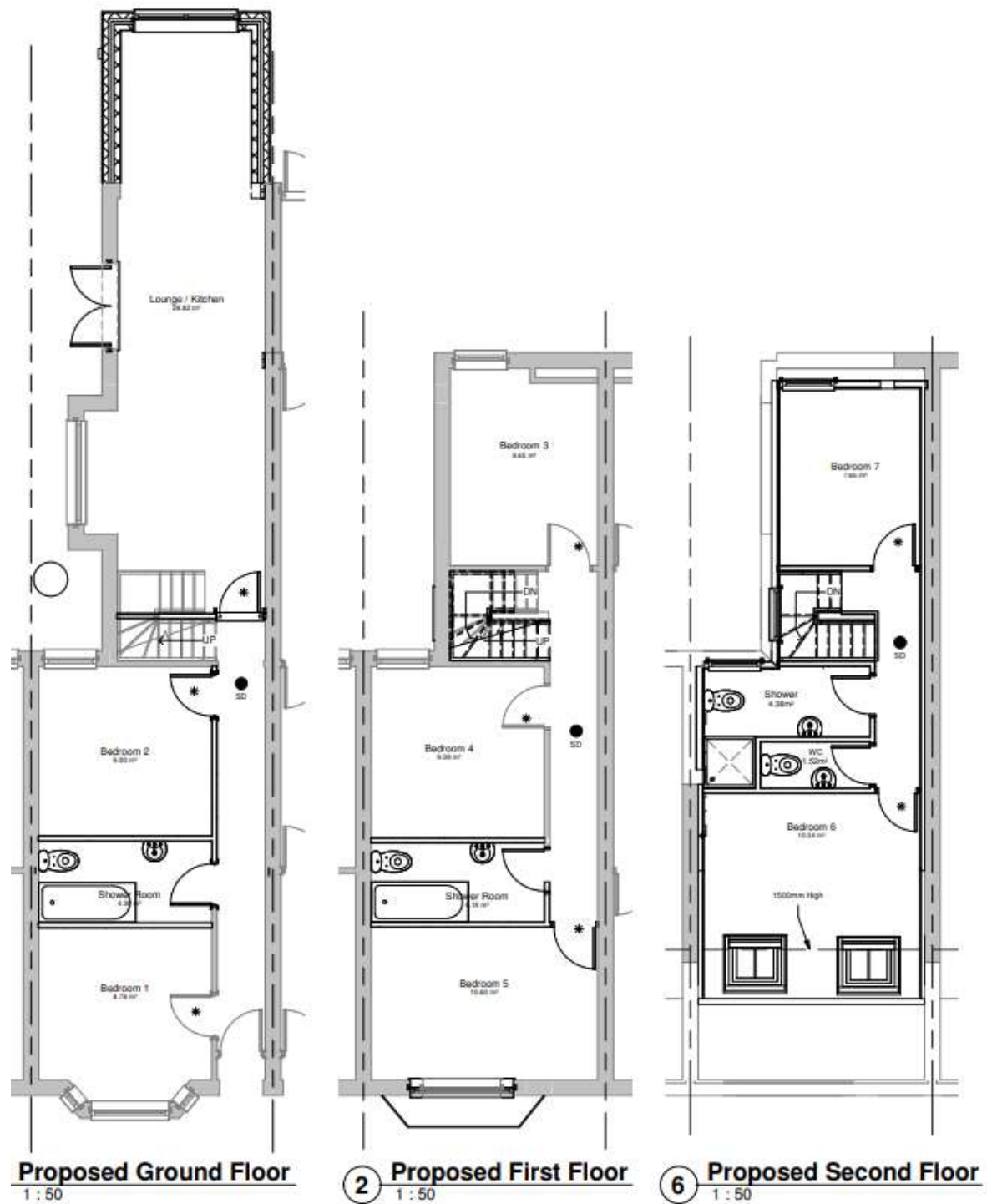
## 4.0 **REPRESENTATIONS**

- 4.1 None.

## 5.0 **COMMENT**

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 30 HMOs out of 78 properties, a percentage of 38.4%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	8.78m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	9m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	8.65m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	9.09m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	10.6m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	10.34m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	7.85m <sup>2</sup>	6.51m <sup>2</sup>
WC	1.52m <sup>2</sup>	1.17m <sup>2</sup>
Shower room	4.38m <sup>2</sup>	2.74m <sup>2</sup>
Bathroom	4.18m <sup>2</sup>	3.74m <sup>2</sup>
Bathroom	4.3m <sup>2</sup>	3.74m <sup>2</sup>
Combined Living Space	26.82	34m <sup>2</sup>



5.6 As is shown in the table above, the proposal results in would not meet the Council's adopted space standards. However, as stated above this application was already considered by the Planning Inspectorate, who found the proposed layout to be suitable for the occupation by 7 individuals sharing's, with their concluding comments being:

*"I therefore conclude that the proposed development would provide adequate living conditions for the occupiers of the property with respect to the provision of communal*

*space and would not represent an over intensive use of the property. Accordingly, I find no conflict in this respect with Policy PCS23 of the Core Strategy which, amongst other things, requires that new development provides a good standard of living environment for neighbouring and future occupiers. Whilst the communal area would not meet the standard in the SPD, this is guidance and I cannot give it the full weight of a development plan policy."*

5.7 Amenity and Parking

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

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

5.10 Other Material Considerations

5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.

5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change

of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.

5.13 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above. With respect to work already commenced, it is not known what the works alleged may be and whether they require planning permission. Action is unlikely pending the decision on the current application.

5.14 Impact on Special Protection Areas

5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicant's above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

5.16 **CONCLUSION**

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

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

**4 PLAYFAIR ROAD SOUTHSEA PO5 1EQ**

**CHANGE OF USE FROM CLASS C4 HOUSE OF MULTIPLE OCCUPATION USE TO SUI  
GENERIS HOUSE OF MULTIPLE OCCUPATION FOR USE BY MORE THAN SIX PERSONS.**

**LINK TO DOCUMENTS:**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-  
APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QJIZY  
6MO0BJ00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qjizy6mo0bj00)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Simon Birmingham

**RDD:** 5th November 2020

**LDD:** 31st December 2020

**1.0 SUMMARY OF MAIN ISSUES**

1.6 This application is brought before Planning Committee due to the requests of Councillor Vernon-Jackson.

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

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

**1.3 Site and surroundings**

1.4 This application relates to a two-storey, mid-terrace property located on the southern side of Playfair Road. The dwelling is separated from the road by a small forecourt and to the rear of the dwelling is an enclosed garden. The site is within a predominantly residential area that is characterised by rows of similar two-storey terraced properties of a similar size and design. It is noted that the area features a large number of HMOs within the street and wider area.

**1.5 The Proposal**

1.6 The Applicant has sought planning permission for the change of use of the property from the current lawful use of as a Class C4 House in Multiple Occupation (HMO) with up to six individuals living together, to allow up to 8 individuals to live together as an Sui Generis HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application.

**1.7 Planning History**



- 1.8 19/00009/GPDC - Construction of single storey rear extension. Prior approval not required 12.03.2019
- 1.9 19/00238/FUL - Change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwellinghouse) or Class C4 (house in multiple occupation). Conditional Permission 17.04.2019
- 1.10 19/01397/FUL - Change of use from Class C4 House of Multiple Occupation use to Sui Generis House of multiple occupation for use by more than six persons. Non-determination Appeal.19.06.2020.
- 1.11 APP/Z1775/W/20/3254139 - appeal against the refusal of 19/01397/FUL - Change of use from Class C4 House of Multiple Occupation use to Sui Generis House of multiple occupation for use by more than six persons. Appeal Dismissed.16.09.2020.
- 1.12 The inspectors concluding comments were: *"Therefore, in conclusion on the main issue I find that the proposal would be harmful to the living conditions of future occupiers having particular regard to the internal space provision. As such, the proposal would be contrary to Policy PCS23 of the CS, Section 12 of the Framework and guidance in the SPD."*
- 1.13 This re-submission has attempt to address the issues surrounding the internal space provision by altering the internal proportions of the property, by removing a ground floor WC to enlarge the combined living space; changing the first floor shower room to a WC to enlarge

## 2.0 **POLICY CONTEXT**

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

## 3.0 **CONSULTATIONS**

- 3.1 Private Sector Housing: The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004. There are no adverse comments to be made by Private Sector Housing.

## 4.0 **REPRESENTATIONS**

- 4.1 Two objection comments has been received from neighbouring residents objecting to the proposal on the following grounds:
- l) Overdevelopment of the site;
  - m) Increase noise and disturbance;
  - n) Issues with litter and bins blocking pavement;
  - o) Area already imbalanced by concentration of HMOs; and
  - p) Loss of privacy from the rear window.

## 5.0 **COMMENT**

- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 5.2 Principle
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 2 occupants. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 18 HMOs out of 49 properties, a percentage of 36.7%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	10m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	10m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	7.6m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	7.6m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	10m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	10.6m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	12.5m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 8	11.2m <sup>2</sup>	6.51m <sup>2</sup>
Shower room	4.2m <sup>2</sup>	3.74m <sup>2</sup>
WC	1.3m <sup>2</sup>	1.17m <sup>2</sup>
Shower room	4.99m <sup>2</sup>	3.74m <sup>2</sup>
Combined Living Space	32.4m <sup>2</sup>	34m <sup>2</sup>



5.6 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards except for the combined living space. This was previously highlighted by the Inspector within the previous appeal, who stated that:

*"The configuration of the combined living space is relatively long and narrow. As such, parts of the room function as a thoroughfare through the living and dining spaces to the rear garden and the kitchen. This diminishes the functionality of the space and the quality of the living environment for occupants. Furthermore, I note that the rear garden is very limited in size. For example, there is little space for storage, clothes drying and outside recreation. This places greater emphasis on the quality of the internal living space so as to ensure a good standard of living environment for occupants.*

5.7 The above could justify a reason for refusing the application, however as addressed later in the report, an overriding factor in assessing the application is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. As summarised below, the application in the Officer's view does not amount to development requiring Planning Permission. On this basis, it would therefore be unreasonable to refuse the scheme based on the standard of accommodation being provided. As highlighted above this property would also be assessed by the Council's Private Sector Housing Team, whose standards mirror those of the Planning Service.

5.7 Amenity and Parking

- 5.8 The proposal would increase the occupancy of the existing HMO by 2 occupants. While this would have a proportionate increase in activity within and coming and going from the property this small increase in the number of residents is not considered likely to have any demonstrable adverse effect on residential amenity for neighbours of the surrounding area.
- 5.9 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more bedrooms. Consequently the proposal remains in accordance with the Council's adopted guidance on parking provision.
- 5.10 Other Material Considerations
- 5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.
- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawful carry out the change in occupation without the benefit of Planning Permission.
- 5.13 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above. With respect to work already commenced, it is not known what the works alleged may be and whether they require planning permission. Action is unlikely pending the decision on the current application.

5.14 Impact on Special Protection Areas

5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicant's above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

5.16 **CONCLUSION**

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

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

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**3 PLAYFAIR ROAD SOUTHSEA PO5 1EQ**

**CHANGE OF USE FROM CLASS C4 (HOUSE OF MULTIPLE OCCUPATION) USE TO SUI GENERIS (LARGER HOUSE OF MULTIPLE OCCUPATION) FOR USE BY MORE THAN SIX PERSONS.**

**LINK TO DOCUMENTS:**

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QMTM RPMO0BJ00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qmtmRPMO0BJ00)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Simon Birmingham

**RDD:** 11th January 2021

**LDD:** 20th May 2021

**1.0 SUMMARY OF MAIN ISSUES**

1.7 This application is brought before Planning Committee due to the number of objections, as well as due to the request of Councillors Vernon-Jackson.

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

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

**1.3 Site and surroundings**

1.4 This application relates to a two-storey, mid-terrace property located on the northern side of Playfair Road. The dwelling is separated from the road by a small forecourt and to the rear of the dwelling is an enclosed garden. The site is within a predominantly residential area that is characterised by rows of similar two-storey terraced properties of a similar size and design. It is noted that the area features a large number of HMOs within the street and wider area.

**1.5 The Proposal**

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

**1.7 Planning History**

- 1.8 The change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwellinghouse) and Class C4 (house in multiple occupation) was permitted in 2020 under planning ref: 20/00018/FUL.

## 2.0 **POLICY CONTEXT**

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

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

## 3.0 **CONSULTATIONS**

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

## 4.0 **REPRESENTATIONS**

- 4.1 Six representations have been received objecting to the proposed development on the following grounds:

- a) Increase noise and disruption - anti-social behaviour;
- b) Increase litter and issues of bins storage and blocking of pavements;
- c) Traffic and parking issues - no designated parking for the development;
- d) Overdevelopment of site;
- e) Area already imbalanced by concentration of HMOS;
- f) Increase parties and late night noise - especially towards garden;
- g) Noise disrupting the ground floor bedroom
- h) No bio-diversity net gain;
- i) Previous committee and Appeal refusal on HMOs;
- j) Lack of student market for HMOs;
- k) Waste and sewage problems; and
- l) Overloading of communal facilities

## 5.0 **COMMENT**

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

### 5.2 Principle

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

- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupants. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 36 HMOs out of 69 properties, a percentage of 47.8%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.
- 5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	8.6m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	2.76m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 2	8.27m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	2.75m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 3	8.93m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	2.75m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 4	8.57m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.79m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 5	8m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B5	2.76m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 6	8.57m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B6	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	7.5m <sup>2</sup>	6.51m <sup>2</sup>
Shower room	2.79m <sup>2</sup>	2.74m <sup>2</sup>
Lounge	16.3m <sup>2</sup>	14m <sup>2</sup>
Kitchen	11m <sup>2</sup>	11m <sup>2</sup>
Dining room	14m <sup>2</sup>	14m <sup>2</sup>





5.6 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

5.7 Amenity and Parking

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

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

5.10 Other Material Considerations

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

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

- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.
- 5.13 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above. With respect to work already commenced, it is not known what the works alleged may be and whether they require planning permission. Action is unlikely pending the decision on the current application.
- 5.14 Impact on Special Protection Areas
- 5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicant's above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.
- 5.16 **CONCLUSION**
- 5.17 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the use described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

14 HUDSON ROAD SOUTHSEA PO5 1HD

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

**LINK TO DOCUMENTS:**

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

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr James Oliver

**RDD:** 22nd June 2021

**LDD:** 18th August 2021

**1.0 SUMMARY OF MAIN ISSUES**

1.8 This application is brought before Planning Committee due to the requests of Councillor Vernon-Jackson.

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

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

1.3 Site and surroundings

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

1.5 The Proposal

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

1.7 Planning History

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

- 1.9 The construction of single-storey rear extension that comes out a maximum of 6m beyond the rear wall of the original house with a maximum height of 3m and a maximum height of 2.8m to the eaves was refused under Prior-Approval in 2019 under planning ref: 19/00126/GPDC.
- 1.10 The change of use from purposes falling within a Class C4 (house in multiple occupancy) to house in multiple occupancy for more than 6 persons (Sui Generis) was the subject of a non-determination appeal in April 2019. This appeal was dismissed solely on the failure of the applicant to provide mitigation for the impacts of the development upon the Solent Special Protection Areas. With the Inspectors concluding comments being:
- 1.11 *"Although I have found that the development provides adequate living conditions for 7 persons, this is not sufficient to outweigh the conflict with the development plan and the Habitats Regulations I have identified above. Therefore, and having regard to the other matters raised, the appeal is dismissed and planning permission is refused."*

## 2.0 POLICY CONTEXT

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

## 3.0 CONSULTATIONS

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

## 4.0 REPRESENTATIONS

- 4.1 None.

## 5.0 COMMENT

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

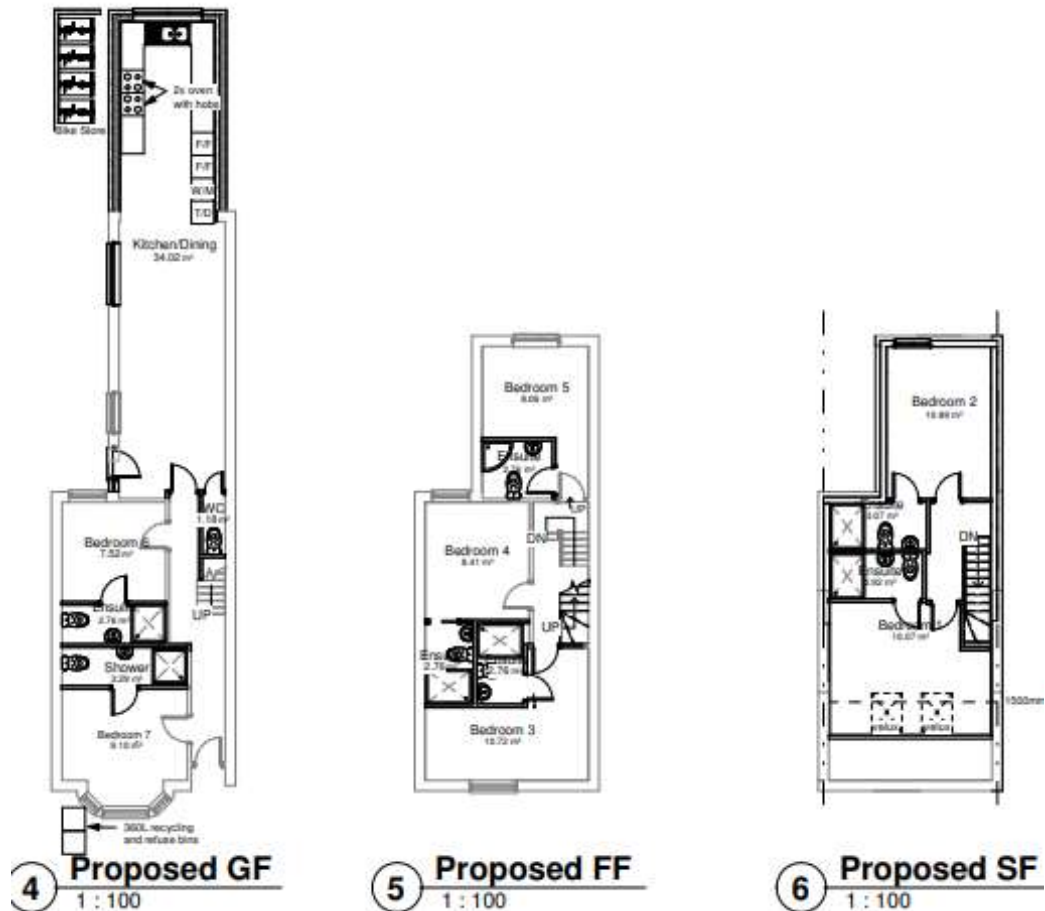
### 5.2 Principle

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

threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 51 HMOs out of 83 properties, a percentage of 61.4%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

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

Room	Area Provided:	Required Standard:
Bedroom 1	10.07m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B1	2.92m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	10.89m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	3.07m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	10.72m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	8.41m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	8.06m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B5	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	7.52m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B6	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	9.1m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B7	3.29m <sup>2</sup>	2.74m <sup>2</sup>
WC	1.18m <sup>2</sup>	1.17m <sup>2</sup>
Combined Living Space	34.02m <sup>2</sup>	34m <sup>2</sup>



5.6 As is shown in the table above, the proposal would meet the Council's adopted space standards.

5.7 Amenity and Parking

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

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

5.10 Other Material Considerations

5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development

should not to be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.

- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.
- 5.13 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above. With respect to work already commenced, it is not known what the works alleged may be and whether they require planning permission. Action is unlikely pending the decision on the current application.
- 5.14 Impact on Special Protection Areas
- 5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicant's above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.
- 5.16 **CONCLUSION**
- 5.17 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the use described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of



this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**

## 3 PAINS ROAD SOUTHSEA PO5 1HE

CHANGE OF USE FROM PURPOSES FALLING WITHIN CLASS C4 (HOUSE IN MULTIPLE OCCUPATION) TO A 7 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS) (RESUBMISSION OF 19/00866/FUL)

## LINK TO DOCUMENTS

[21/01615/FUL | CHANGE OF USE FROM PURPOSES FALLING WITHIN CLASS C4 \(HOUSE IN MULTIPLE OCCUPATION\) TO A 7 BEDROOM HOUSE IN MULTIPLE OCCUPATION \(SUI GENERIS\) \(RESUBMISSION OF 19/00866/FUL\) | 3 PAINS ROAD SOUTHSEA PO5 1HE \(PORTSMOUTH.GOV.UK\)](https://www.portsmouth.gov.uk/planning-and-building-control/planning-applications/21/01615/FUL)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Simon Lees

**RDD:** 3rd November 2021

**LDD:** 30th December 2021

1.0 **SUMMARY OF MAIN ISSUES**

1.9 This application is brought before Planning Committee due to the requests of Councillor Vernon-Jackson.

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

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

1.3 Site and surroundings

1.4 This application relates to a two-storey semi-detached dwelling with a ground floor bay window that is separated from the road by a small front forecourt. The site is located on the northern side of Pains Road, east from its junction with Somers Road.

1.5 The application site is within a predominately residential area that is characterised by rows of similar two-storey terrace and semi-detached properties within a similar visual style.

1.6 The Proposal

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

## 1.7 Planning History

1.8 The change of use from a house in multiple occupation (Class C4) to purposes falling within Class C3 (dwelling house) or Class C4 (house in multiple occupation) was permitted in 2019 under planning ref: 18/01996/FUL.

1.9 The change of use from Class C4 (house in multiple occupation) to Sui Generis (House in multiple occupation for over 6 persons) was refused by Committee Decision in 2021. The reasons for refusal were:

*1. The proposed development would give rise to a poor quality living environment for existing and future occupiers of the property, having regard to reduced room sizes, distance from bathroom facilities and poor levels of light and outlook. This would be contrary to Policy PCS23 (Design and Conservation) of the Portsmouth Local Plan (2012), the Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) and the National Planning Policy Framework (2019).*

*2. It has been identified that any residential development in the city will result in a significant effect on the Solent Special Protection Areas, through additional nutrient output; with mitigation against these impacts being required. No mitigation measures have been secured and, until such time as this has been provided, the proposal would have a significant detrimental impact on the Special Protection Areas; contrary to Policy PCS13 of The Portsmouth Plan 2012, the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981, and Section 15 of the NPPF 2019.*

1.10 The appeal (ref: APP/Z1775/W/21/3270358) was dismissed by the Planning Inspectorate in November 2021, however PINS only dismissed the appeal on the second reason for refusal, with their concluding comments being:

*"Although I have found that the development provides adequate living conditions for 7 persons, this is not sufficient to outweigh the conflict with the development plan and the Habitats Regulations I have identified above. There are no other considerations that indicate that a decision should be made other than in accordance with the development plan. Therefore, and having regard to the other matters raised, the appeal is dismissed."*

## 2.0 **POLICY CONTEXT**

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

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

## 3.0 **CONSULTATIONS**

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

3.2 Based on the plans provided, no windows can be seen in the basement area. The room must have standard window(s) that are 20% of the floor space. Where necessary suitable lights are to be installed to ensure the required lighting levels are achieved. Appropriate ventilation must be provided to mitigate any hazards that may occur as consequence of minimal ventilation, for example damp and mould, collision

### 3.2 **Comments**

3.3 Based on the plans provided, no windows can be seen in the basement area. The room must have standard window(s) that are 20% of the floor space. Where necessary suitable lights are to be installed to ensure the required lighting levels are achieved. Appropriate ventilation must be provided to mitigate any hazards that may occur as consequence of minimal ventilation, for example damp and mould, collision

## 4.0 **REPRESENTATIONS**

4.1 One objection comment has been received from a local resident objecting to the proposal on the following grounds:

- q) Overdevelopment of the site;

## 5.0 **COMMENT**

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

### 5.2 Principle

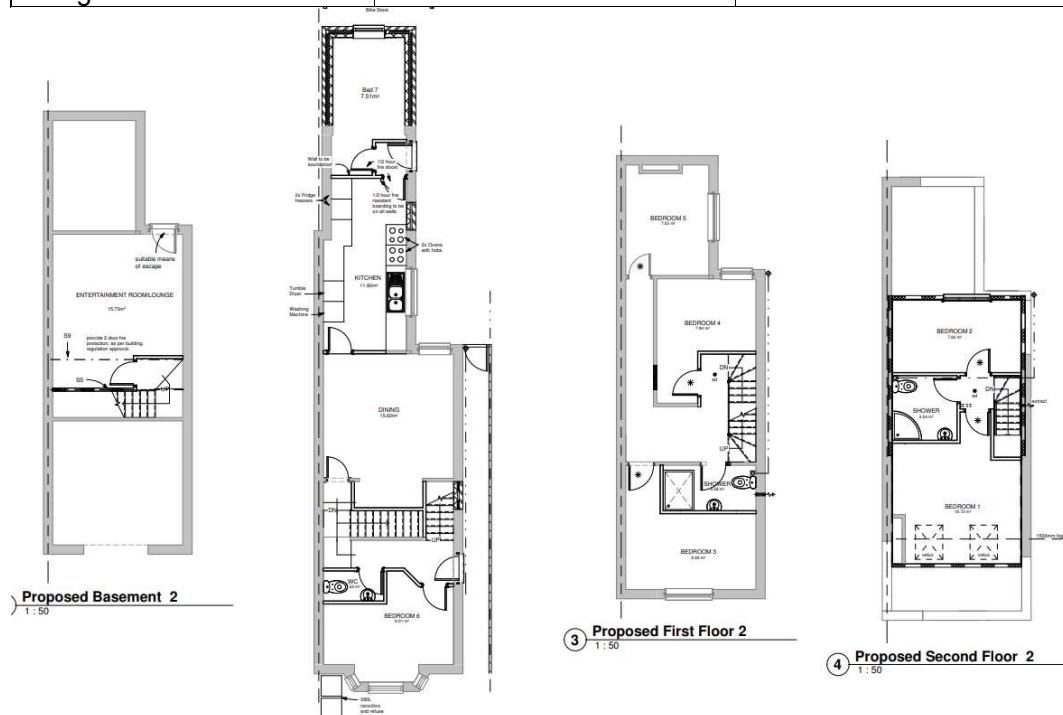
5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of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

5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 39 HMOs out of 80 properties, a percentage of 48.75%. This proposal of course has no effect on that percentage. The HMO SPD also described a number of circumstances where new HMOs are considered not desirable, such as where they 'sandwich' single household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO these considerations are not brought into effect.

5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of

the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the following room sizes would be provided, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	10.72m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2	7.92m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3	9.84m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	7.94m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5	7.53m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 6	9.01m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7	7.51m <sup>2</sup>	6.51m <sup>2</sup>
WC	1.52m <sup>2</sup>	1.17m <sup>2</sup>
Shower room	3.58m <sup>2</sup>	2.74m <sup>2</sup>
Shower room	3.54m <sup>2</sup>	2.74m <sup>2</sup>
Dining room	15.6m <sup>2</sup>	14m <sup>2</sup>
Kitchen	11.8m <sup>2</sup>	11m <sup>2</sup>
Entertainment room/ lounge	15.73m <sup>2</sup>	14m <sup>2</sup>



5.6 As is shown in the table above, the proposal would exceed the Council's adopted space standards. Within the previous application the Council took a view that due restricted light and outlook of the 'Entertainment room/ Lounge' that the development would have resulted in a poor quality of living environment. However, as stated above this application was already considered by the Planning Inspectorate, who found the proposed lounge received 'adequate natural light' and that the property was suitable for the occupation by 7 individuals sharing's, with their concluding comments being:

*"I therefore conclude that the development provides satisfactory living conditions for the occupiers of the property with regard to the provision of both personal and communal space and access to bathroom facilities. Accordingly I find no conflict in this respect with Policy PCS23 of the Core Strategy which, amongst other things, requires that new development provides a good standard of living environment for occupiers."*

5.7 Amenity and Parking

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

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

5.10 Other Material Considerations

5.11 A key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.

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

- 5.13 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above. With respect to work already commenced, it is not known what the works alleged may be and whether they require planning permission. Action is unlikely pending the decision on the current application.
- 5.14 Impact on Special Protection Areas
- 5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicant's above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.
- 5.16 **CONCLUSION**
- 5.17 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the use described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted.

## **RECOMMENDATION**

## **Unconditional Permission**

**Conditions: None**

22 MONTGOMERIE ROAD SOUTHSEA PO5 1ED

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

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Simon Birmingham

**RDD:** 29th November 2021

**LDD:** 25th January 2022

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee in order to provide a view to the Planning Inspectorate as to how the Local Planning Authority would have determined the application as part of a non-determination appeal. Additionally Councillor Vernon-Jackson has requested that all C4 to Sui Generis application are brought to Planning Committee.

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

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

### 1.3 Site and Surroundings

1.4 This application relates to a two-storey, mid-terraced property located on the northern side of Montgomerie Road. The dwelling is separated from the road by a forecourt and to the rear of the dwelling is an enclosed garden.

### 1.5 The Proposal

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

### 1.7 Planning History

1.8 21/01246/FUL- Change of use from Class C4 (House in Multiple Occupation) to purposes falling within Class C3 (Dwellinghouse) or Class C4 (House in Multiple Occupation). Conditional Permission November 2021.

## 2.0 POLICY CONTEXT



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

### 3.0 **CONSULTATIONS**

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

### 4.0 **REPRESENTATIONS**

- 4.1 One objection comments has been received from a neighbouring resident objecting to the proposal on the following grounds:

- a) Noise and disturbance during construction period;
- b) Increased noise
- c) Parking; and
- d) Alternative accommodation available in city centre

### 5.0 **COMMENT**

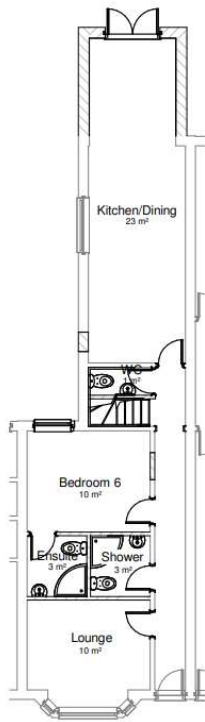
- 5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

#### 5.2 Principle

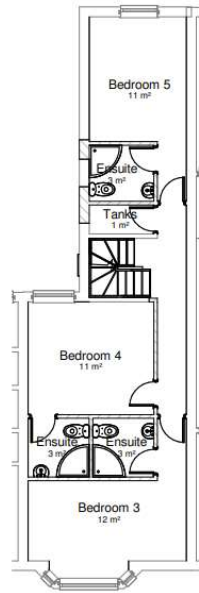
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of principles explained in the HMO SPD are the assessment of housing mix to ensure balanced communities and the application of minimum room sizes, reflecting those in force as part of the private sector housing licencing regime, to ensure an appropriate living environment for future residents.
- 5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance.
- 5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal will have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the current proposal the

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

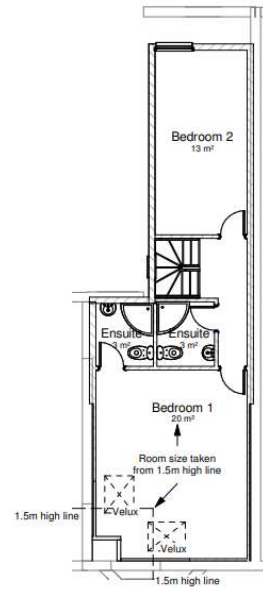
Room	Area Provided:	Required Standard:
Bedroom 1	15.8	6.51m <sup>2</sup>
Ensuite B1	2.8m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	13.2m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B2	2.9m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	12m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B3	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 4	11m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B4	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	11m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B5	2.75m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 6	9.5m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B6	2.74m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 7	9.6m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite B7	2.75m <sup>2</sup>	2.74m <sup>2</sup>
Combined Living Space	23m <sup>2</sup>	34m <sup>2</sup>
WC	1.3m <sup>2</sup>	1.17m <sup>2</sup>



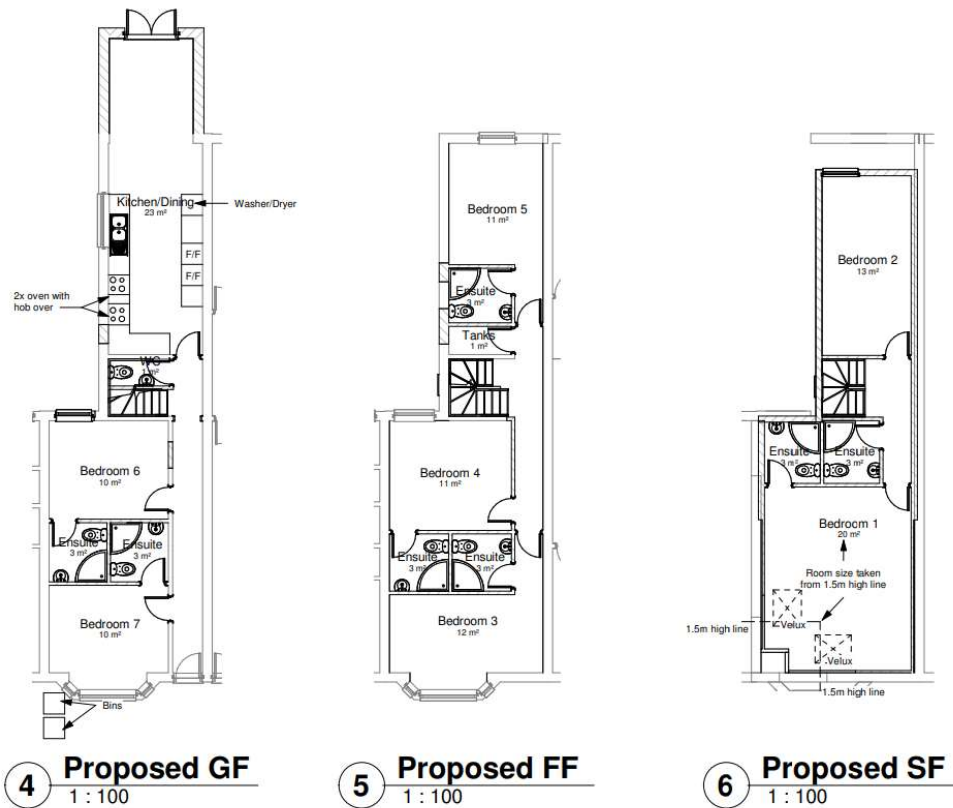
**1 Existing GF**  
1 : 100



**2 Existing FF**  
1 : 100



**3 Existing SF**  
1 : 100



ALL ROOMS FOR SINGLE USE.

5.6 All the bedrooms and bathrooms would comply with the required space standards. In terms of the communal area, the communal kitchen/ living area would meet the requirements for a 3-5 person HMO however, as two of the seven bedrooms do not exceed 10m<sup>2</sup>, the reduction in communal space to be provided cannot be applied and the requirement is 34m<sup>2</sup>. However, having regard to the modest shortfall of 0.5m<sup>2</sup> (bedroom 6) and 0.4m<sup>2</sup> (bedroom 7) and the sizes of the remaining 5 bedrooms which exceed 10m<sup>2</sup>, it is considered on balance, the communal living space is sufficient.

#### 5.7 Amenity and Parking

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

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

#### 5.10 Other Material Considerations

- 5.11 While the issue relating to the undersized communal area is noted, a key and overriding consideration in this case is the necessity to recognise the fall-back position available to the applicant; that is the position they could take if this application is refused. In this case the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development should not be carried out, except with planning permission. However not all changes of use are considered to be 'development' and therefore not all changes require planning permission. Under s55 of the Town and Country Planning Act 1990 'development' is defined as making of a *material* change in the use of any buildings or land. Whether or not a change is a material change is a matter of fact and degree to be assessed on its own merits. Members will note a recent joint appeal decision (the 'Campbell Properties' appeal dated 29 April 2021) wherein the Inspector considered a number of similar changes of use and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to 6 occupants to an occupancy up to 7 occupants, and a change in occupancy from up to 6 occupants to an occupancy of up to 8 occupants was not considered to be a material change of use notwithstanding it moved the classification of the dwellings outside of Use Class C4 of the Use Classes Order. While every application must be considered on their own individual merits these examples provide clear guidance on the correct interpretation of s55 of the TCPA and that appeal decision is considered to be a material consideration in the determination of similar applications. Members may also note the decision of Portsmouth's Planning Committee on 23<sup>rd</sup> February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.
- 5.12 In the circumstances of the case the subject of this report it is considered that the increase in occupancy does not result in a significant difference in the character of the activities that would occur under the proposed occupation compared to the existing lawful use as a HMO with up to six occupants. As such it is considered that the change of use is not material and planning permission is not required for the increase in occupancy described in the application. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without the benefit of Planning Permission.
- 5.14 Impact on Special Protection Areas
- 5.15 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development, the applicant's above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.
- 5.16 Matters Raised in the Representations
- 5.17 With respect to work already commenced, it is understood the works are being carried out under permitted development and do not form part of this application.
- 5.18 Conclusion
- 5.19 Notwithstanding the concern regarding the under provision of communal space, it is noted that on the details of this case the changes in the character of activities are not

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

**RECOMMENDATION**

**Unconditional Permission**

**Conditions: None**