

# **PLANNING COMMITTEE**

## **27 JULY 2022**

**1030 AM COUNCIL CHAMBERS,  
GUILDHALL**

### **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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CHANGE OF USE FROM DUAL USE DWELLING HOUSE (CLASS C3)/HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO HOUSE IN MULTIPLE OCCUPATION FOR MORE THAN SIX PEOPLE (SUI GENERIS).

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R2216EMOFMX00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R2216EMOFMX00)

**Application Submitted By:**

Applecore PDM Ltd  
FAO Mrs Carianne Wells

**On behalf of:**

Mr Christian Reynolds

**RDD:** 4<sup>th</sup> November 2021

**LDD:** 31<sup>st</sup> December 2021

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought to the Planning Committee at the request of Councillors Wemyss and Vernon-Jackson, in addition to receiving due to four objections.

1.2 The application is currently the subject of appeal on grounds of non-determination and the Secretary of State is now the determining authority in this case.

1.3 The main issues for consideration relate to:

- The principle of Development;
- The standard of accommodation;
- Impacts on Amenity including parking
- Other Material consideration and

### 1.4 Site and Surrounding

1.5 This application relates to a two-storey, mid-terrace property with a bay window that is separated from the road by a small front forecourt. To the rear of the dwelling is an enclosed garden. The site is located on the southern side of Shadwell Road, west from its junction with London Road.

1.6 The application site is within a predominantly residential area that is characterised by rows of similar two-storey terraced properties with a similar visual style. A number of the properties have been subdivided into flats.

### 1.7 Proposal

1.8 Planning Permission is sought for change of use from dual use Dwelling house (Class C3)/House in multiple occupation (Class C4) to House in multiple occupation for more than six people (Sui Generis) in this case with 7 bedrooms. The plans state that the bedrooms would be for single occupancy, i.e. a total of seven occupiers.

The internal accommodation would comprise the following:

Ground floor - Two bedrooms both with ensuite, WC, study, communal living area and access to communal garden

First floor - Three bedrooms all with ensembles

Second floor - Two bedrooms both with ensembles

## 1.9 Planning History

1.10 Planning permission was refused in 1977 (reference: A\*3025) for the continued use of the property as three, self-contained flats. An enforcement notice was later served but the development was allowed at appeal.

1.11 Planning permission was granted in 2021 (20/00485/FUL) for change of use from a dwellinghouse (Class C3) to a dwellinghouse with dual use of Class C4 (house in multiple occupation) or class C3 (dwellinghouse)

Note: The internal alterations approved in the above application have been implemented. In addition, a single storey rear extension which provides a communal Study and a second floor loft conversion have also been constructed. The applicant's agent has stated that these have been carried out under permitted development.

1.12 Appeal under ref. no. APP/Z1775/W/22/3296133 was submitted on 5<sup>th</sup> July 2022 by the appellant for non-determination of the planning application which is the subject of this report.

## 2.0 **POLICY CONTEXT**

2.1 Portsmouth Plan (2012)

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

2.2 In accordance with the National Planning Policy Framework (NPPF) 2021 due weight has been given to the relevant policies in the above plan.

2.3 Other guidance:

- National Planning Policy Framework (2021)
- National Planning Practice Guidance
- The Parking Standards and Transport Assessments Supplementary Planning Document (2014)
- The Houses in Multiple Occupation (HMOs) Supplementary Planning Document 2019

## 3.0 **CONSULTATIONS**

3.1 Private Sector Housing -. This property would require to be licenced under Part 2, Housing Act 2004.

## 4.0 **REPRESENTATIONS**

4.1 Site notice displayed 16/11/21, expiry 15/12/21

4.2 Neighbour letters sent: 16/11/21, expiry 15/12/21

4.3 Letters of representation received from 4 households and Cllr Wemyss have been received with following comments:

- a) Opposing this HMO and stating that they are a 'blight on our society'.
- b) Urging change in policy
- c) Additional head count should not be allowed as the property is already part of maximum permissible HMOs.
- d) Parking issues on Shadwell Road affecting London Road and commercial users causing accidents.
- e) Loss of family stock of housing
- f) Increase strain on local services, sewage and water
- g) Issues with waste and debris
- h) Noise Pollution
- i) Lack of quality of life for tenants

## 5 COMMENT

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

- The principle of Development;
- The standard of accommodation;
- Amenity and parking;
- Other Material consideration and
- Impact upon the Special Protection Areas

5.2 Principle of development

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 for up to 6 residents. This application has been made to convert the ground floor lounge into a bedroom and together with the use of the 2 bedrooms already created in the loft, the occupancy would be up to 7 residents. As an HMO already, the application is not considered, on its individual facts to create any material impact on the balance of the community in the area. The HMO SPD suggests a threshold of 10% of dwellings in any area of 50m radius as a maximum proportion of HMO dwellings to C3, single household, dwellings. As the minor increase in occupancy does not change this mix of dwellings the proposal has no impact on this guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 42 HMOs out of 75 properties, a percentage of 56%. 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 Private Sector Housing Licensing Team has stated the property does not currently have a Licence for HMO use.

5.6 The repurposing of one room and corresponding one extra occupier would have an effect on the ratio of communal/amenity space compared to private bedroom space available internally for future occupants. While this matter will also be considered as part

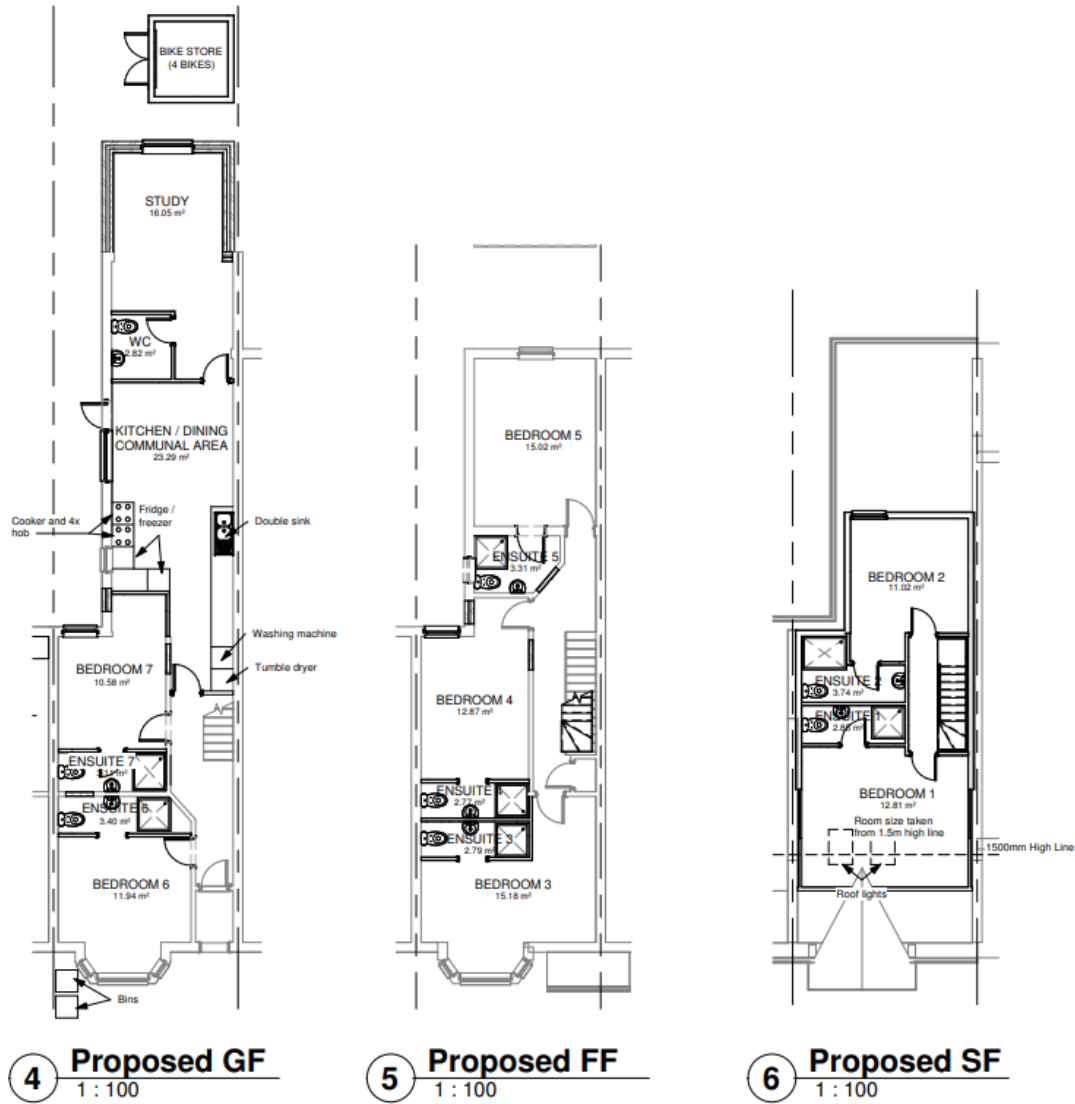
of the necessary licensing of the HMO by the Private Sector Housing team under the Housing Act, the HMO SPD identifies this as a consideration as part of the assessment of whether a good standard of living environment is provided for future residents as required by Local Plan Policy PCS23. Under the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

#### 5.7 Standard of accommodation

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

HMO SPD (OCT 2019)	Area Provided	Required Standard:
Bedroom 1	12.81 sq.m.	6.51 sq.m
Bedroom 1 Ensuite	2.85 sq.m.	2.74 sq.m.
Bedroom 2	11.02 sq.m.	6.51 sq.m.
Bedroom 2 Ensuite	3.74 sq.m.	2.74 sq.m.
Bedroom 3	15.18 sq.m.	6.51 sq.m
Bedroom 3 Ensuite	2.79 sq.m.	2.74 sq.m.
Bedroom 4	12.87 sq.m.	6.51 sq.m.
Bedroom 4 Ensuite	2.77 sq.m.	2.74 sq.m.
Bedroom 5	15.02 sq.m.	6.51 sq.m
Bedroom 5 Ensuite	3.31 sq.m.	2.74 sq.m.
Bedroom 6	11.94 sq.m	6.51 sq.m.
Bedroom 6 Ensuite	3.40 sq.m	2.74 sq.m.
Bedroom 7	10.58 sq.m.	6.51 sq.m.
Bedroom 7 Ensuite	3.11 sq.m.	2.74 sq.m.
Combined Living Space	23.29 sq.m.	22.5 sqm
Study (communal)	16.05 sq.m.	Undefined
WC	2.82 sq.m.	1.17 sq.m.

Each of the bedrooms significantly exceeds the bedroom size minimum standard, and each exceeds 10 sqm. As such, the SPD guidance allows for the shared communal space to be from 22.5sqm. The application meets this standard, and provides the 'study' room as an effective extra.



ALL ROOMS FOR SINGLE USE.

### 5.8 Amenity and Parking

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

Similarly, the 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. A bike store is in the rear yard, as required by the previous consent 20/00485/FUL.

### 5.9 Other Material Considerations

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. 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.

- 5.10 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.

#### 5.11 Impact upon the Special Protection Area

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.

#### Community Infrastructure Levy (CIL)

- 5.11 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.

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

- 5.12 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.
- 5.13 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their



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

## **6 CONCLUSION**

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However, notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the use described in the application and the proposal could be carried out as a fallback 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. This is now the decision to take for the Planning Inspectorate, given the appeal against the LPA's non-determination of the application.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, the committee can note that the merits of the proposed use comply fully with the associated guidance regarding the relevant local plan policies in respect of room sizes to support a good standard of living, the Committee would therefore need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

**RECOMMENDATION:** That the Secretary of State be advised that Portsmouth City Council Planning Committee resolve to grant unconditional planning permission.

**Conditions: None**