

32 NORMAN ROAD SOUTHSEA PO4 0LP**CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO 7 PERSON, SEVEN BEDROOM, HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS) (RESUBMISSION OF 18/01429/FUL)****Application Submitted By:**

Thorns Young Ltd
FAO Mrs Carianne Wells

On behalf of:

Mr Robert Leatherland

RDD: 6th December 2019

LDD: 3rd February 2020

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson.
- 1.2 The main issues for consideration in the determination of the application are as follows:
- Principle of Development including compliance with policy
 - Impacts on Amenity including parking
 - Other material considerations
- 1.3 Site and surroundings
- 1.4 The application site is a two storey terraced dwelling with rooms in the roof in a predominately residential area.
- 1.5 The Proposal
- 1.6 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application
- 1.7 Planning History
- 1.8 The change of use from Class C4 (HMO) to mixed use Class C3 (Residential Dwelling)/ Class C4 (HMO) was permitted in 2014 under planning ref: 14/00118/FUL.
- 1.9 The change of use from purposes falling within Class C4 (house in multiple occupation) to a 7 bedroom house in multiple occupation (Sui Generis) was refused in 2018 under planning ref: 18/01429/FUL. The reasons for refusal were as follows:
1. *The proposed change of use from dwellinghouse (Class C3)/HMO (Class C4) to Sui-Generis HMO would fail to support a mixed and balanced community in an area already imbalanced by the level of similar such uses. The proposal is therefore contrary to Policy PCS20 of the Portsmouth Plan and the Houses in Multiple Occupation Supplementary Planning Document (July 2018).*
 2. *The proposed use of the building as a seven bedroom sui generis House in Multiple Occupation would, as a result of its undersize communal living space fail to provide the necessary space for an adequate standard of living accommodation*

for future occupiers and would represent an overintensive use of the site. The proposal is therefore contrary to Core Planning Principles of the National Planning Policy Framework and Policies PCS20 and PCS23 of the Portsmouth Plan, including the supporting Houses in Multiple Occupation Supplementary Planning Document (July 2018).

3. *Without appropriate mitigation the development would be likely to have a significant effect on the Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas and so is contrary to Policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended).*

1.10 The appeal against the refusal of planning permission was dismissed (26.06.2019) with the only reason for refusal upheld by the Planning Inspector being the impact upon SPA mitigation. Their concluding comments were:

1.11 *"Whilst the proposal would not lead to an imbalance in the HMOs in the surrounding community and would not harmfully affect the living conditions of future residents with regard to communal internal space provision, the proposal would be likely to harmfully affect the integrity of the SPAs considered in combination with other projects and plans."*

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

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 representation has been received from a neighbouring resident raising an objection on the following grounds:

- (a) Previous appeal should have considered the increase of three residents due to external alterations.
- (b) Set a precedent for other properties in the area.
- (c) Combined impact of similar increases by 1-3 residents within other HMOs resulting in a significant increase in population density in area.
- (d) Increase in waste and recycling.

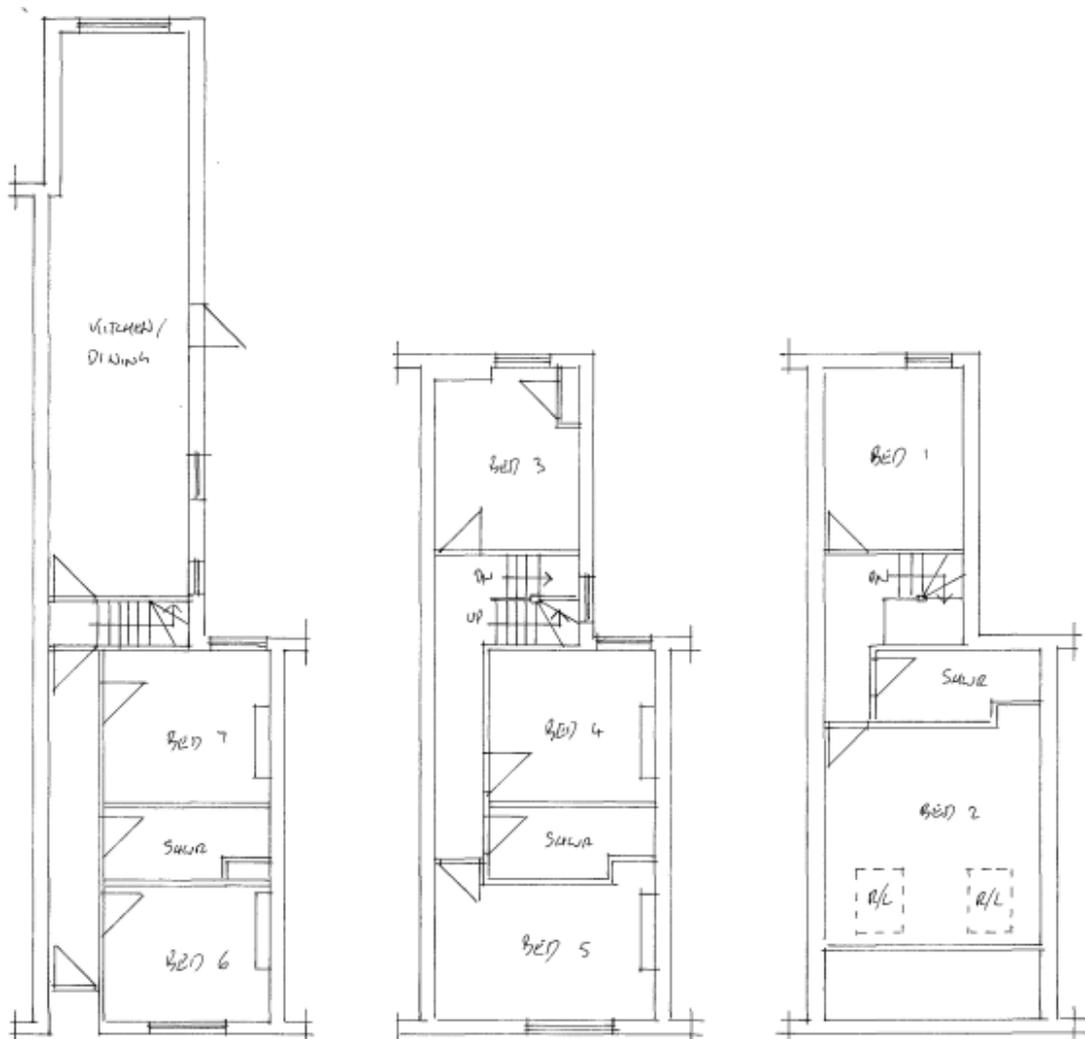
5.0 COMMENT

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 31 HMOs out of 69 properties, a percentage of 44.9%. 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	12.68m ²	6.51m ²
Bedroom 2	8.42m ²	6.51m ²
Bedroom 3	10.34m ²	6.51m ²
Bedroom 4	8.39m ²	6.51m ²
Bedroom 5	8.75m ²	6.51m ²
Bedroom 6	10.22m ²	6.51m ²
Bedroom 7	10.22m ²	6.51m ²
WC	1.19m ²	1.17m ²
Combined Living Space	25.78m ²	34m ²
Bathroom 1	3.33m ²	2.74m ²
Bathroom 2	3.33m ²	2.74m ²



5.7 As is shown in the table above, the proposal results in an internal layout, which due to the size of the communal living space, does not meet the guidance provided to describe a satisfactory standard of living environment as such the proposal is not considered to comply with Local Plan policy PCS23.

5.8 With regards to the above, consideration should be had to the previous Inspectors decision on the site for the same proposal, while it was dismissed this was only on the failure to pay for SPA mitigation, which the Inspector stating *"Taking into account the proposed increase of one occupant and the living environment of the house as a whole therefore, I conclude that the proposal would not harm the living conditions of future residents with regard to the communal living space provision. As such, I find no conflict with PP Policy PCS23 which, amongst other things, requires that new development provides a good standard of living environment for neighbouring and future occupiers. PP Policy PCS20 does not refer to living standards in HMOs and is not therefore relevant to this issue."* It is however noted that this appeal decision was considered under the previous HMO SPD which required 27m² for a combined living space and as such the under provision in space was not as significant, in Policy terms.

5.8 Amenity and Parking

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

- 5.10 Similarly the minor increase of occupants is not considered to have a demonstrable impact on the parking need and thus parking availability in the wider area. It is noted that the Council's adopted Parking Standards, within the associated SPD has the same expectation for the number of parking spaces, 2 spaces per dwelling, for any scale of HMO with 4 or more dwellings. 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 previous decisions of Portsmouth's Planning Committee in, for example, February and May 2022 which have assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of a number of HMO with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to Officer recommendation in these cases the Committee determined that these changes in occupation amounted to a material change in use, primarily due to a conclusion that due to the intensity of the use of the accommodation; the impact on parking, waste, amenity impact upon neighbouring residents; and the impact on the solent special protection area the changes considered in those cases on their own individual merits amount to development requiring planning permission.
- 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 Impact on Special Protection Areas
- 5.14 Whilst it is acknowledged that there are ongoing issues around the nitrification of the Solent due to increased levels of runoff from residential development. The applicants above fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would not amount to development and therefore not have a likely significant effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

6.0 CONCLUSION

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

RECOMMENDATION

Unconditional Permission

Conditions: None