

44 HUDSON ROAD, SOUTHSEA, PORTSMOUTH, PO5 1HD.

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)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DETAILS&KEYVAL=QHKUERM0L7V00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=details&keyval=qhkuerm0l7v00)

Application Submitted By:

Applecore PDM Ltd

On behalf of:

Mr Simon Birmingham

RDD: 4th January 2021

LDD: 1st March 2021

1.0 SUMMARY OF MAIN ISSUES

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

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

Site and surroundings

1.3 The application site is a two storey mid-terrace property located within a predominantly residential area characterised by similar two storey terrace properties.

The Proposal

1.4 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as an HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of an internal room but no external operational development forms part of this application

Planning History

1.5 The relevant planning history is listed below:

- 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)
Ref. No: 20/01118/FUL | Received: Fri 02 Oct 2020 | Validated: Mon 04 Jan 2021 | Status: Pending Consideration
- Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse)

- Construction of single storey rear extension
Ref. No: 19/00088/GPDC | Received: Wed 28 Aug 2019 | Validated: Wed 28 Aug 2019 | Status: Prior Approval not required

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 The Highways Authority have been consulted but no comments have been received.

4.0 REPRESENTATIONS

- 4.1 Three letters of objection has been received, raising the following matters:
- Constant increase in HMO intensity that is tantamount to an additional dwelling in the area and contrary to Policy PCS23;
 - Impact on residents' amenity with regard to litter, noise, car parking, fly tipping and other issues including water and drainage;
 - This is unsuitable of such a property becoming a home for 7/8 people.

5.0 COMMENT

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

- i. The principle of development;
- ii. The impacts on residential amenity; and
- iii. Other Issues.

Principle

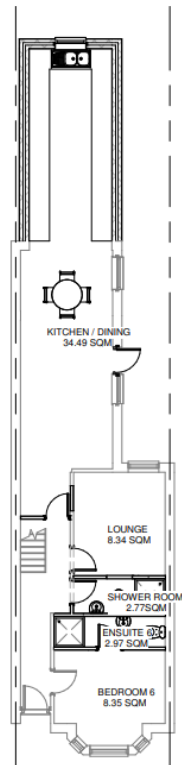
- 5.2 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of 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.
- 5.3 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 58 HMOs out of 86 properties, a percentage of 67.4%. This proposal of course has no effect on that percentage. The HMO SPD also describes 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 material to the determination of this application.

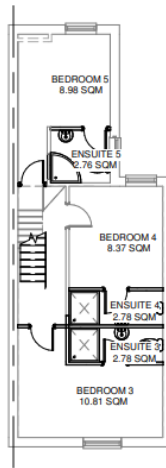
- 5.4 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 21st October 2020 and expires on 20th October 2025.
- 5.5 The repurposing of internal rooms to accommodate the additional occupants 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, with the images below showing the existing and proposed layouts, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	9.89. m2	6.51 m2
Ensuite 1	2.74 m2	2.74 m2
Bedroom 2	12.43 m2	6.51 m2
Ensuite 2	2.75 m2	2.74 m2
Bedroom 3	10.81 m2	6.51 m2
Ensuite 3	2.78 m2	2.74 m2
Bedroom 4	8.37 m2	6.51 m2
Ensuite 4	2.78 m2	2.74 m2
Bedroom 5	8.98 m2	6.51 m2
Ensuite 5	2.76 m2	2.74 m2
Bedroom 6	8.35 m2	6.51 m2
Ensuite 6	2.97 m2	2.74 m2
Bedroom 7	8.34 m2	6.51 m2
Ensuite 7	2.77 m2	2.74 m2
Kitchen/Dinner (Combined Space)	34.49 m2	34 m2

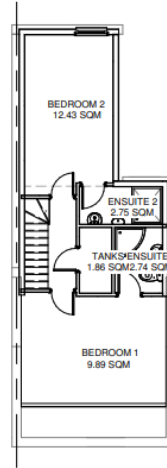
Existing Layout:



1 Existing GF SUI GEN
1 : 100

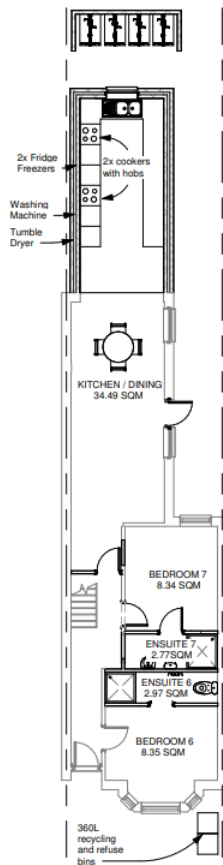


2 Existing FF SUI GEN
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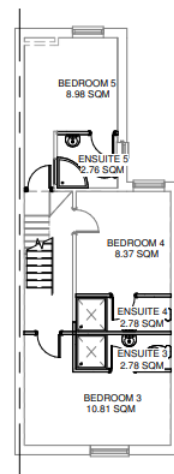


3 Existing SF SUI GEN
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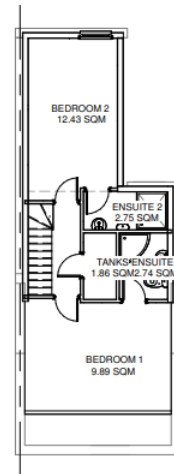
Proposed Layout:



Proposed GF SUI GEN
1 : 100



5 Proposed FF SUI GEN
1 : 100



6 Proposed SF SUI GEN
1 : 100

- 5.6 As is shown in the table above, the proposal results in an internal layout that meets or exceeds the minimum internal space standards set out in the HMO SPD. Based on 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 thereby according with Policy PCS23 of the Local Plan.

Amenity and Parking

- 5.7 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 very 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.
- 5.8 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.

Other Material Considerations

- 5.9 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.
- 5.10 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 an 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.

- 5.11 The letters of objection refer to the increase in the intensity of the HMO and the negative impacts on the amenities of residents amenity and that when considered against the other HMO's in the area that the application is tantamount to a new dwelling and needs to be considered in this regard. The application, as noted above, does not represent a new HMO and would only represent an increase of 1 additional person. Such a small increase would not result in any adverse impacts over and above the existing situation.

Impact on Special Protection Areas

- 5.12 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 fall-back position would allow the occupation of the site without Planning Permission. As such it is considered that the proposal would 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)

- 5.13 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")

- 5.14 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.
- 5.15 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

6.0 CONCLUSION

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the local plan as the size of the resulting accommodation meets the adopted standards for room sizes considered to provide a good standard of living accommodation in accordance with Local Plan Policy PCS23. However, notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that the on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the described in the application and the proposal could be carried out as a fall-back position

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

- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. 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