

20/00997/FUL

WARD:CENTRAL SOUTHSEA

57 ORCHARD ROAD SOUTHSEA PO4 0AA

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:

[20/00997/FUL | CHANGE OF USE FROM PURPOSES FALLING WITHIN A CLASS C4 \(HOUSE IN MULTIPLE OCCUPANCY\) TO HOUSE IN MULTIPLE OCCUPANCY FOR MORE THAN 6 PERSONS \(SUI GENERIS\) | 57 ORCHARD ROAD SOUTHSEA PO4 0AA \(PORTSMOUTH.GOV.UK\)](https://www.portsmouth.gov.uk/planning-and-building-control/planning-applications/20/00997/FUL)

Application Submitted By:

Applecore PDM Ltd
FAO Mrs Carianne Wells

On behalf of:

Mr Simon Birmingham

RDD: 3rd September 2020

LDD: 16th February 2021

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee because it relates to a Sui Generis (going from a 6 bed to a 8 bed) HMO.

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 Orchard 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 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. The existing lounge and study would be converted into bedrooms.

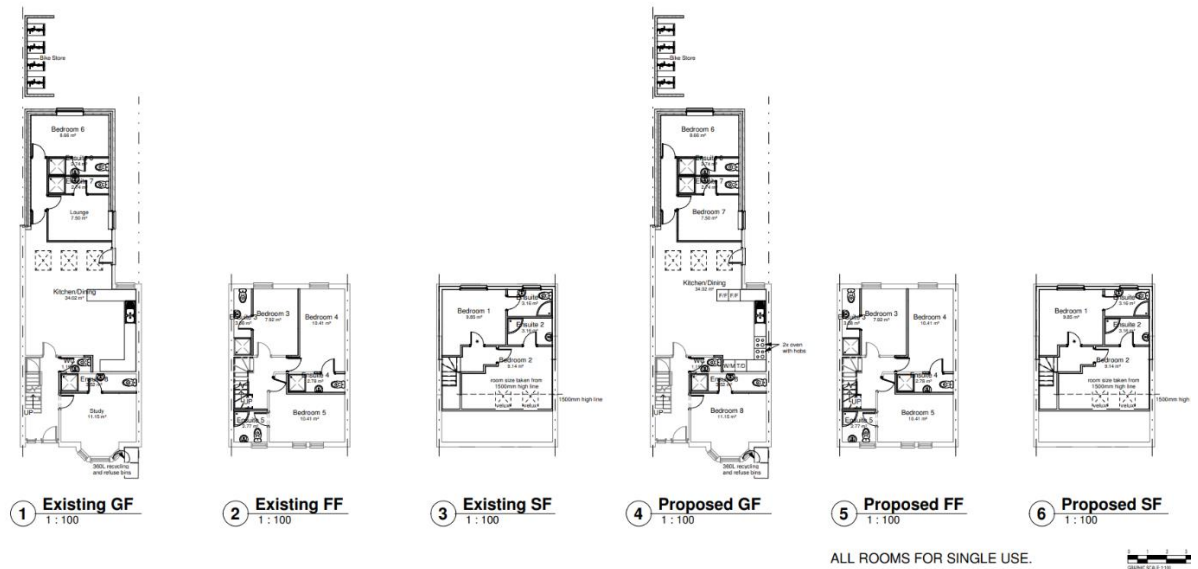


Figure 1: Existing and proposed floor plans

1.7 Planning History

19/00090/GPDC - Single Storey Rear Extension -Prior Approval was granted 01.10.2019

19/01385/FUL - Change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwelling house) or Class C4 (house in multiple application) - Permitted 09.09.2019

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: No comment received
- 3.2 Highways Engineer: No comment received

4.0 REPRESENTATIONS

- 4.1 None.

5.0 COMMENT

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

- The principle of Development;
- The standard of accommodation;
- Impact upon amenity neighbouring residents;
- Parking;
- Impact upon the Solent Protection Areas; and
- Any other raised matters

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 having been granted permission for flexible C3/C4 Use under planning permission ref 19/01385/FUL which was implemented. This 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 14 HMOs out of 31 properties, a percentage of 45.16%. 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:

57 ORCHARD ROAD HMO Count 31-12-20

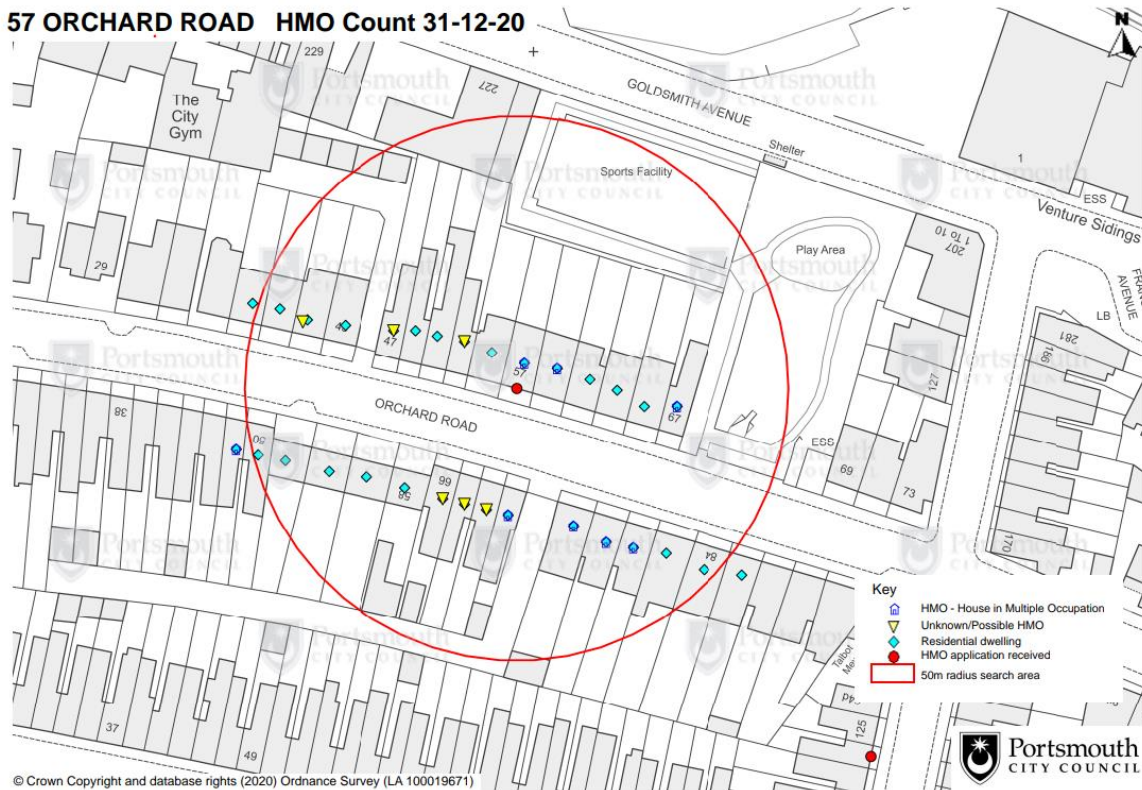


Figure 2: HMO data count (5m radius)

5.6 Standard of accommodation

5.7 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	9.85m ²	6.51m ²
Ensuite B1	3.16m ²	2.74m ²
Bedroom 2	9.14m ²	6.51m ²
Ensuite B2	3.16m ²	2.74m ²
Bedroom 3	7.92m ²	6.51m ²
Ensuite B3	3.08m ²	2.74m ²
Bedroom 4	10.41m ²	6.51m ²
Ensuite B4	2.78m ²	2.74m ²
Bedroom 5	10.41m ²	6.51m ²
Ensuite B5	2.77m ²	2.74m ²
Bedroom 6	8.66m ²	6.51m ²
Ensuite B6	2.74m ²	2.74m ²

Bedroom 7	7.5m ²	6.51m ²
Ensuite B1	2.74m ²	2.74m ²
Bedroom 8	11.15m ²	6.51m ²
Ensuite B2	3.52m ²	2.74m ²
Combined kitchen/dining space to be retained	34.02m ²	34sqm (based on 6.5m ² sized bedrooms)

- 5.8 As is shown in the table above, the new bedrooms accord with the standards as set out within the HMO SPD (October 2019) and 'The Standards for Houses in Multiple Occupation' document dated September 2018. Three out of the eight bedrooms would exceed 10sqm and the remaining five would measure between 7.5sqm and 9.85sqm. Given the bedrooms measure between 7.5sqm and 11.15sqm, the size expected of the communal living area is 34sqm and 34.02sqm combined living space would be provided.
- 5.9 The combination of ensuites would provide a suitable overall arrangement of sanitary facilities. Furthermore, the bedrooms would have good access to natural light and would be of an appropriate configuration/layout.
- 5.10 As such, it is considered the proposal would provide an adequate standard of living accommodation to facilitate up to 8 persons sharing and the proposals would accord with the SPD.
- 5.11 Impact on neighbour amenity
- 5.12 The proposal would increase the occupancy of the existing 6-bedroom HMO) by 2 extra bedrooms. 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 considered that the level of activity associated with the current use of a 6-bed HMO), would be unlikely to be significantly different than the occupation of the property by between 8 unrelated persons as a Sui Generis HMO. It is therefore not considered the proposal would result in a demonstrably higher level of harm to existing general levels of residential amenity in the area, whether from noise, additional vehicle use or any other form of nuisance/disturbance.
- 5.13 The proposal would not result in an overconcentration of HMOs within the surrounding area, and therefore it is considered that the impact of 2-extra occupants of the existing 6-bed HMO would not be significantly harmful at this particular point in time.
- 5.14 The HMO SPD is supported by an assessment of the need for, and supply of, shared housing in Portsmouth and the impacts of high concentrations of HMOs on local communities. Paragraphs 9.1-9.10 discuss the negative impacts of HMO concentrations on local communities and points to the cumulative environmental effects of HMO concentrations. However, given that this application would not impact on or result in over-concentration of HMOs within the surrounding area, it is considered that the impact of the proposed C3/C4 HMO would not be significantly harmful.
- 5.15 Having regard to this material consideration, it is considered there would not be a significant impact on residential amenity from the proposal.
- 5.16 Amenity and Parking
- 5.17 The proposal would increase the occupancy of the existing property by 2no bedrooms. The minor increase of occupants is not considered to have a demonstrable impact on

the parking need over and beyond the existing. As existing, there is no on-site parking being provided but is met on-street and due to site constraints no off-street parking.

5.18 The Portsmouth Parking SPD also gives the expected level of cycle parking that should be provided for residential developments. A 4+ bedrooms has an expected demand for 4 cycle parking spaces.

5.19 According to the submitted drawing no. PG.4102- 19-4, the property has 4no. weatherproof bicycle storage facilities which accords with the Parking SPD.

5.20 Waste

5.21 The storage of refuse and recyclable materials would remain unchanged and an objection on waste grounds would not form a sustainable reason for refusal.

5.22 Other Material Considerations

5.23 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 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 certificates 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.

5.24 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.

5.25 Community Infrastructure Levy (CIL)

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

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

5.28 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.

5.29 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 relations 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 would meet 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 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, 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), cycle parking storage provision 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.

7.0 RECOMMENDATION

Approve unconditionally