

305 FAWCETT ROAD SOUTHSEA PO4 0LE

CHANGE OF USE FROM HOUSE OF MULTIPLE OCCUPATION (CLASS C4) TO SEVEN BEDROOM/SEVEN PERSON HOUSE OF MULTIPLE OCCUPATION (SUI GENERIS) (RESUBMISSION OF 19/01815/FUL)

Application Submitted By:

Applecore PDM Ltd
FAO Mrs Carianne Wells

On behalf of:

Mr Simon Birmingham

RDD: 15th January 2021

LDD: 14th May 2021

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.
- 1.4 The Proposal
- 1.5 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
- 1.6 Planning History
- 1.7 The change of use from Class C3 (dwelling house) or Class C4 (house in multiple occupation) to a seven person, seven bedroom HMO (Sui Generis) was sought in 2018 under planning ref: 18/00016/FUL. Non-determination appeal. Dismissed.
- 1.8 The change of use from house of multiple occupancy (Class C4) to purposes falling within Class C3 (dwelling house) or C4 (house of multiple occupancy) was permitted in 2019 under planning ref: 19/01326/FUL
- 1.9 The change of use from a dwellinghouse (Class C3) or house in multiple occupation (Class C4) to purposes falling within Sui Generis (house in multiple occupation) was sought in 2020 under planning ref: 19/01815/FUL. Non-determination was appealed on the application and the appeal dismissed; the Council two identified reason for refusal 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.

- 1.10 The inspector's concluding comments were: *"I therefore conclude that the change of use has resulted in inadequate living conditions for the occupiers of the property. Accordingly, in this respect it conflicts with Policy PCS23 of The Portsmouth Plan Portsmouth's Core Strategy (2012) which, amongst other things, requires that new development provides a good standard of living environment for future occupiers. The development also conflicts with paragraph 127 f) of the National Planning Policy Framework which requires developments to create places with a high standard of amenity for existing and future users... Therefore, had I reached a different conclusion on the main issue, it would have been necessary for me to undertake an AA and give further consideration to the likely effectiveness of mitigation measures. In doing so I would have had regard to the updated financial contribution towards the mitigation measures set out in the Solent Recreation Mitigation Strategy (2017) with regard to the recreational pressure arising from the development. I would also have had regard to the S.106 agreement provided to me securing a financial contribution for the purchase of nutrient mitigation credits in line with the Council's Interim Nutrient Neutral Mitigation Strategy (2019). However, as I am dismissing this appeal for another reason, this has not been necessary... For the reasons given above, and having had regard to the other matter raised, the appeal is dismissed."*
- 1.11 Since this appeal, the applicant has amended the internal floorplans for the property, increasing the size of bedroom 2 (rear, loft bedroom) to achieve all bedrooms being above 10m².
- 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, objecting to the proposal on the following grounds:

- a) Noise and disturbance
- b) Increased anti-social behaviour;

5.0 COMMENT

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

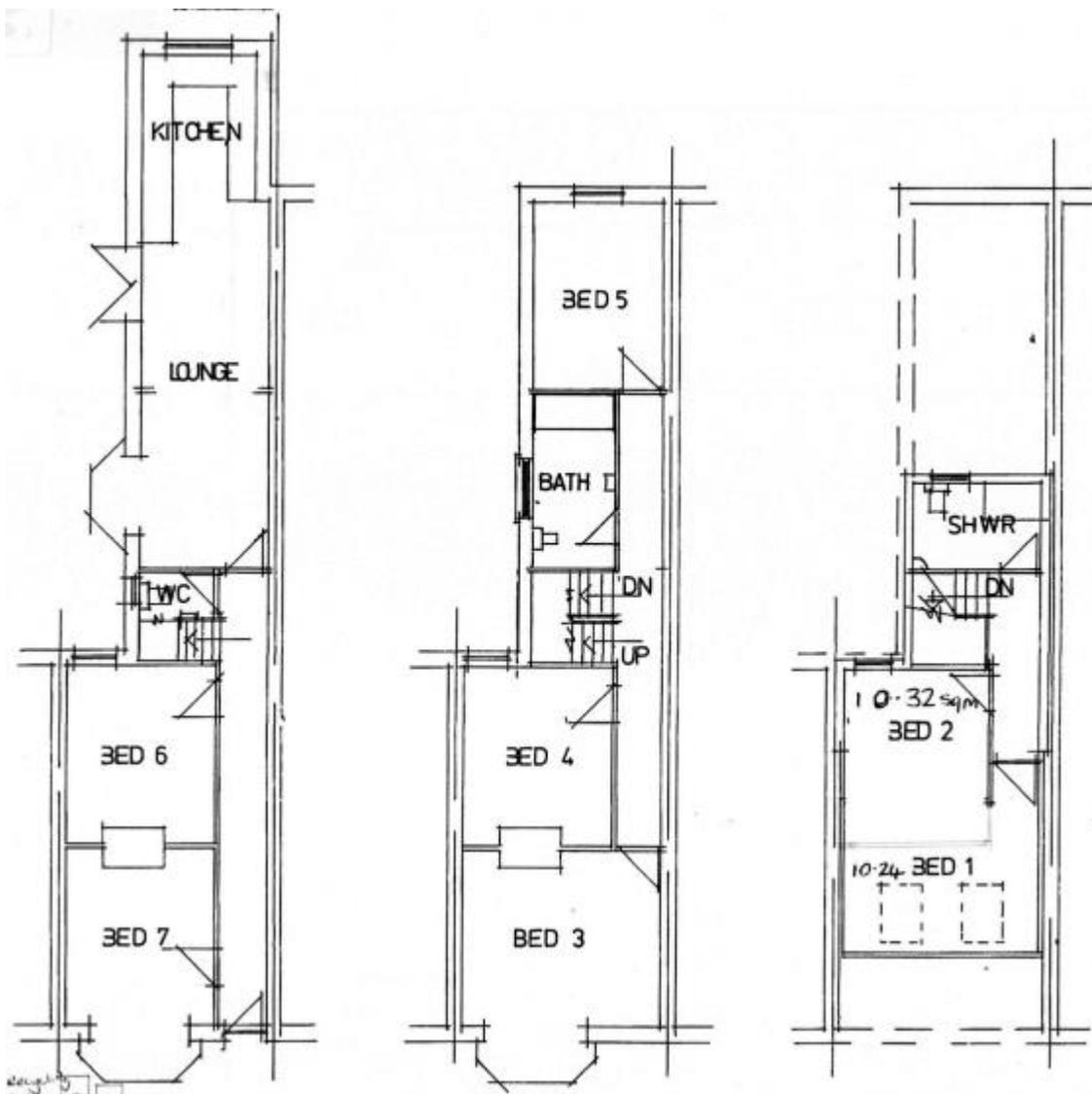
5.2 Principle

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 19 HMOs out of 62 properties, a percentage of 30.6%. 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	10.24m ²	6.51m ²
Bedroom 2	10.32m ²	6.51m ²
Bedroom 3	16.86m ²	6.51m ²
Bedroom 4	10.8m ²	6.51m ²
Bedroom 5	10.26m ²	6.51m ²
Bedroom 6	10.8m ²	6.51m ²
Bedroom 7	12.9m ²	6.51m ²
Combined Living Space	27.15m ²	22.5m ²
Bathroom 1	6.12m ²	3.74m ²
Bathroom 2	4.68m ²	3.74m ²
WC	1.35m ²	1.17m ²



- 5.7 As is shown in the table above, the proposal results in an internal layout that meets the Council's adopted space standards, and is therefore considered to result in a satisfactory standard of living environment.
- 5.8 Amenity and Parking
- 5.9 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.
- 5.10 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.
- 5.11 Other Material Considerations
- 5.12 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.

5.13 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.

5.14 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.

6.0 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 polices 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. In such a circumstance, as the merits of the proposed use comply fully with the relevant policies of the Local Plan and associated guidance, 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