

327 QUEENS ROAD FRATTON PORTSMOUTH PO2 7LY

CHANGE OF USE FROM CLASS C3 (DWELLING HOUSE)/CLASS C4 (HOUSE IN MULTIPLE OCCUPATION) TO 7 PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)

LINK TO DOCUMENTS:

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RAA849MOJ6D00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RAA849MOJ6D00)

Application Submitted By:

Kercher
Collective Studio

On behalf of:

Wheelhouse

RDD: 14th April 2022

LDD: 14th June 2022

1 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to four letters of objection, and a call-in request of Councillor Swann.
- 1.2 The main issues for consideration in the determination of the application are as follows:
 - The principle of Development;
 - The standard of accommodation;
 - Parking;
 - Amenity impacts upon neighbouring residents;
 - Impact upon the Solent Protection Areas; and
 - Any other raised matters
- 1.3 Site and surroundings
- 1.4 This application relates to a two-storey (with dormer roofs added) mid-terrace dwelling, which features a single storey bay window and is located on the northern side of Queens Road. The property is set back from the roadway by a front forecourt and benefits from a rear garden.
- 1.5 As existing the property has no off-street parking provision but relies on on-street parking.
- 1.6 The Proposal
- 1.7 Planning permission is sought for the change of use of the property from the current lawful use of as a Class C4 House in Multiple Occupation (HMO) with up to six individuals living together, to allow up to 7 individuals to live together as a Sui Generis HMO. This change in occupancy will involve the repurposing of the living room but no external operational development forms part of this application.

1.8 Planning History

1.9 22/00015/FUL- Change of use from House in Class C3 (Dwellinghouse) to purposes falling within Class C3 (dwelling house) or Class C4 (House in Multiple Occupation) Conditional Permission 23.02.2012.

2 **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').

2.3 **CONSULTATIONS**

2.4 Private Sector Housing:

2.5 No comments received

2.6 Highways Engineer:

2.7 No comments received

2.8 **REPRESENTATIONS**

2.9 Four letters of representation received objecting on the following summarised grounds:

- Noise;
- Parking concerns;
- Anti-social behaviour;
- Loss of family homes;
- Over concentration of HMOs in the area
- Proposed plans do not provide any measurements re: proposed single storey extension exceeds the permitted development;
- Proposal not in keeping with character of the area;
- Loss of light;
- Loss of privacy from rear dormer;
- Increased pressure on local infrastructure and services from intensification of use;
- Would set a precedent

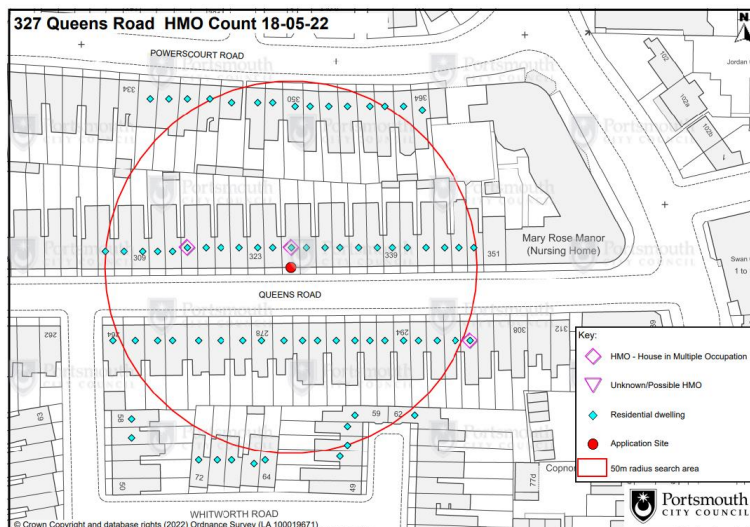
3 **COMMENT**

3.1 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.

4 **Principle**

- 4.1 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.
- 4.2 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 3 HMOs out of 70 properties, a percentage of 4.28%. 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.



4.3 **Figure 1: HMO Count map (50m radius)**

4.4 **Standard of accommodation**

- 4.5 The application seeks, in addition to a flexible C3/C4 use, the opportunity to use the property as a 7 person (sui generis) HMO.
- 4.6 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	10.88m ²	6.51m ²
Ensuite B1	3.2m ²	2.74m ²

Bedroom 2	10.79m ²	6.51m ²
Ensuite B2	2.83m ²	2.74m ²
Bedroom 3	10.45m ²	6.51m ²
Ensuite B3	3.52m ²	2.74m ²
Bedroom 4	10.02m ²	6.51m ²
Ensuite B4	2.83m ²	2.74m ²
Bedroom 5	10.51m ²	6.51m ²
Ensuite B5	3.05m ²	2.74m ²
Bedroom 6	11.21m ²	6.51m ²
Ensuite B6	2.8m ²	2.74m ²
Bedroom 7	11.37m ²	6.51m ²
Ensuite B7	2.96m ²	2.74m ²
Combined Living Space	24.73m ²	22.5sqm (based on 10m ² sized bedrooms)

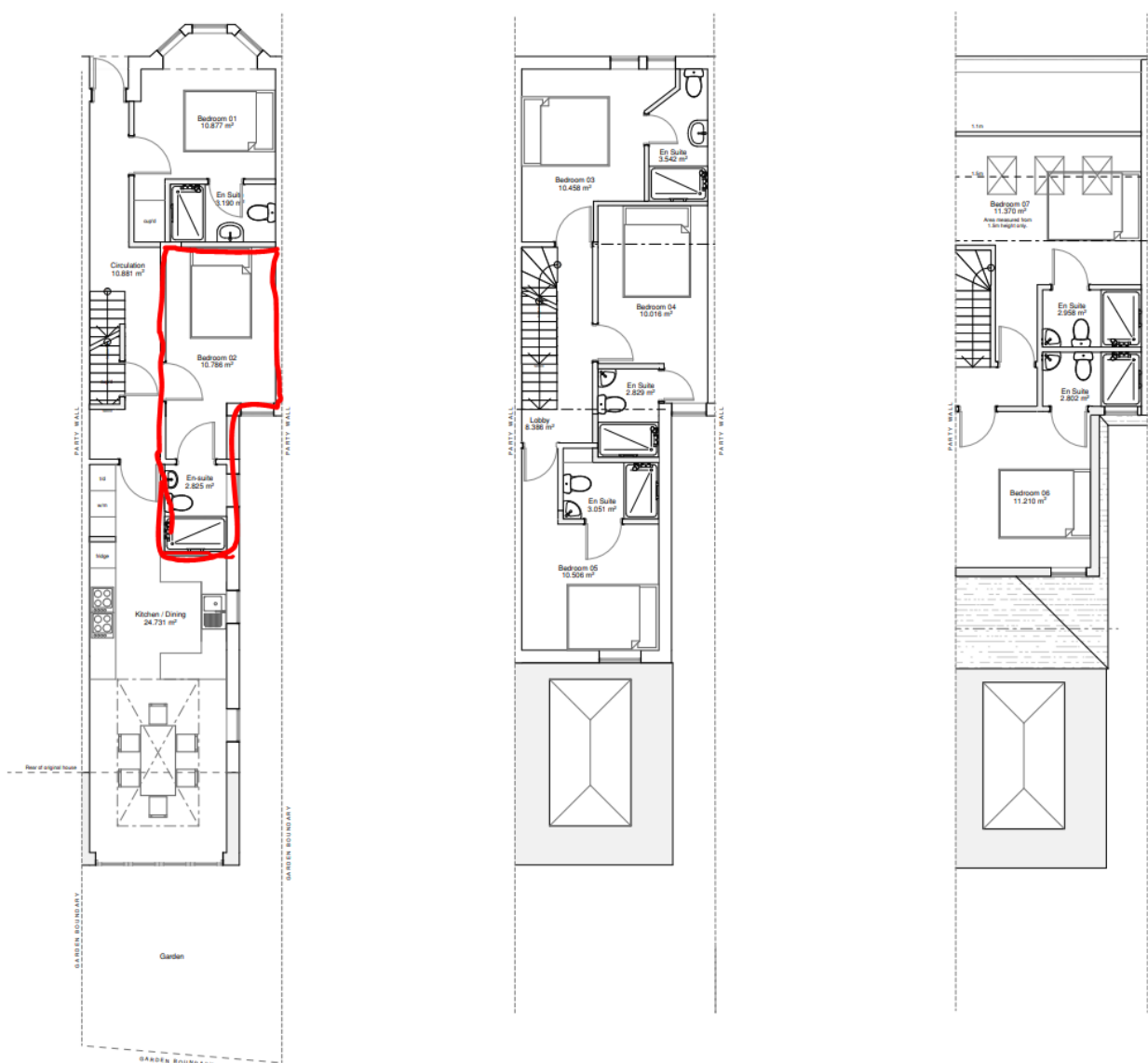


Figure 2: The only change proposed within the property is the use of the room outlined in red above, from a living room, to the proposed seventh bedroom.

- 4.7 As is shown in the table above, all of the 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. Given the bedrooms all meet or exceed 10sqm, the size expected of the communal living area is 22.5sqm, and 24.73m² combined living space would be provided.

- 4.8 The combination of ensembles would provide a suitable overall arrangement of sanitary facilities. Furthermore, all habitable rooms would have good access to natural light and would be of an appropriate configuration/layout.
- 4.9 As such, it is considered the proposal would provide an adequate standard of living accommodation to facilitate up to 7 persons sharing and the proposals would accord with the SPD.
- 4.10 **Impact on neighbour amenity**
- 4.11 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.
- 4.12 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 there is not an over-concentration of HMOs within the surrounding area, it is considered that the impact of one further HMO would not be significantly harmful.
- 4.13 Having regard to this material consideration, it is considered there would not be a significant impact on residential amenity from the proposal.
- 4.14 **Amenity and Parking**
- 4.15 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 bedrooms. Where no on-site parking is provided, it is assumed that existing parking demand is met on-street and as such would not be required to provide any car parking spaces despite an increase in the number of bedrooms. It is therefore considered that an objection on car parking requirement can be sustained on refusal. It should also be noted that the property could be occupied by a large family with grown children, each owning a separate vehicle.
- 4.16 The Portsmouth parking SPD also gives the expected level of cycle parking that should be provided for residential developments. An existing property with 4 bedrooms has an expected demand for 4 cycle parking spaces; upon changing to a HMO (Sui generis), the cycle parking provision required would remain the same as the current use and therefore additional cycle parking spaces are not required. It should however be ensured that the existing property already provides for 4 cycle parking spaces as per SPD standards.
- 4.17 According to the submitted Design and Access Statement as part of these proposals, the property will provide 4 no. weatherproof bicycle storage facilities. No details of the bicycle storage facilities have been submitted with this application, but this can however be secured via condition.
- 4.18 **Waste**
- 4.19 The storage of refuse and recyclable materials would remain unchanged and an objection on waste grounds would not form a sustainable reason for refusal.
- 4.20 **Other Material Considerations**

- 4.21 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 decision of Portsmouth's Planning Committee on 23rd February 2022 which assessed applications both for certification of lawfulness and in respect of planning permission for change of use, to alter the occupation of 83 Margate Road from an HMO with up to 6 occupants to a 7 bedroom, 7 occupant HMO, references 21/01287/CPE and 21/00883/FUL respectively. Contrary to Officer recommendation in response to the appeal described above the Committee determined that this change in occupation amounted to a material change in use in that case and assessed those applications on that basis.
- 4.22 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 lawful carry out the change in occupation without the benefit of Planning Permission.
- 4.23 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above.
- 4.24 **Impact on Special Protection Areas**
- 4.25 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.
- 4.26 **Community Infrastructure Levy (CIL)**
- 4.27 The development would not be CIL liable as there would be no increase in the Gross Internal Area of the application property.
- 4.28 **Human Rights and the Public Sector Equality Duty ("PSED")**
- 4.29 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.

4.30 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.

4.31 **CONCLUSION**

4.32 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 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.

4.33 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.

4.34 **RECOMMENDATION** Approve unconditionally