

118 PRINCE ALBERT ROAD SOUTHSEA PORTSMOUTH PO4 9HT

RETROSPECTIVE APPLICATION FOR CHANGE OF USE FROM PURPOSES FALLING WITHIN HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO A 7 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RI8Y2GMOM1J00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RI8Y2GMOM1J00)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Mr Tom Bunday
Woodworx Resort Ltd

RDD: 16th September 2022

LDD: 15th November 2022

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

1.3 The application site is a two storey mid-terraced dwelling with rooms in the roof in a predominately residential area.

1.4 The Proposal

1.5 The Applicant has sought retrospective 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 (i.e the lounge).

1.6 The works to carry out the proposed side extension to the lightwell shown in the plans do not form part of this application and are delivered through permitted development.

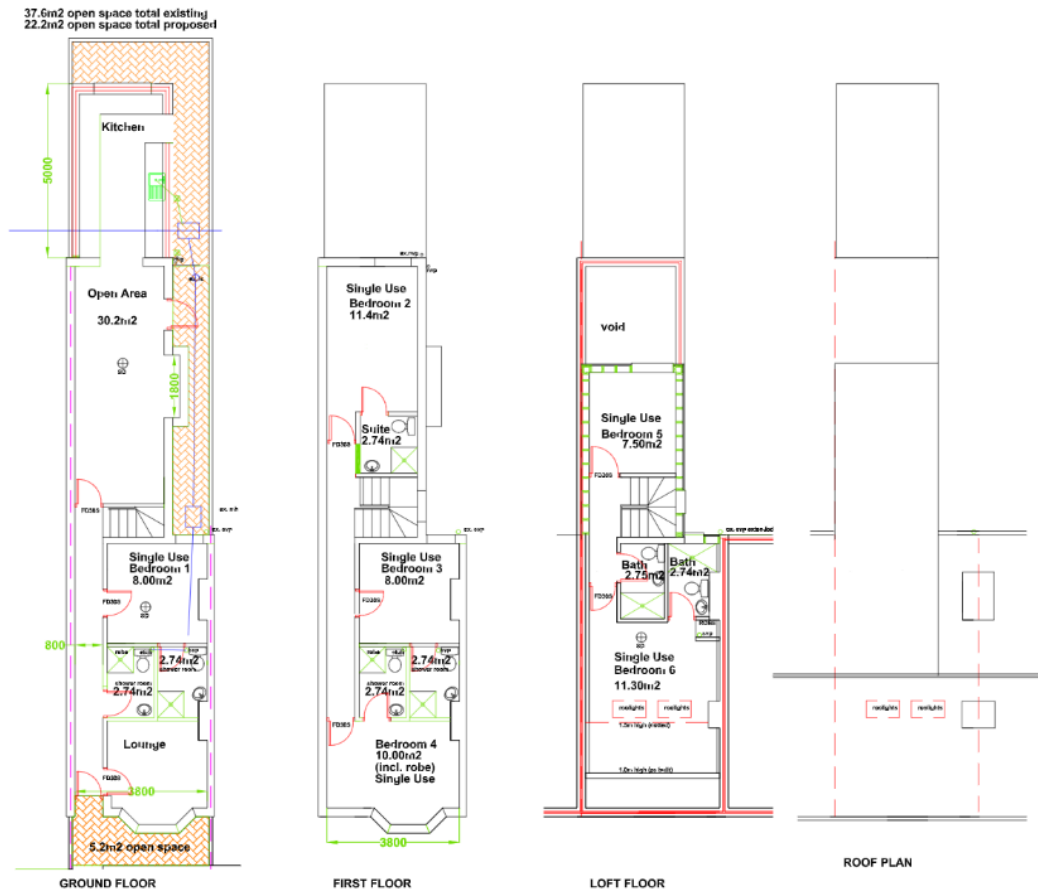


Figure 1: Existing plans

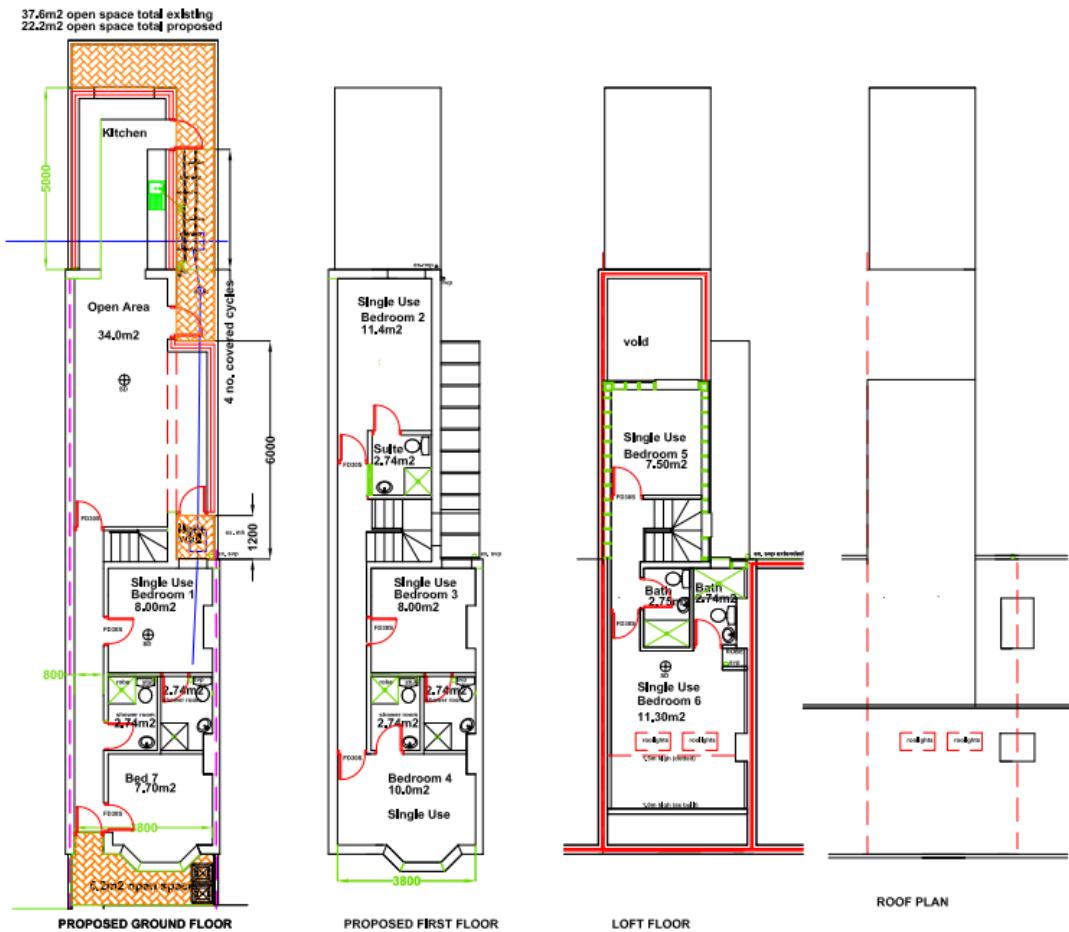


Figure 2: Proposed plans

1.7 Planning History

- 1.8 19/00112/GPDC - Construction of single storey rear extension. Prior Approval not required, 14 November 2019 (Implemented).
- 1.9 19/01621/FUL - Change of use from house in multiple occupation (Class C4) to purposes falling within Class C3 (dwellinghouse) and Class C4 (house in multiple occupation). Approved, 15 January 2020.
- 1.10 20/00276/FUL - Change of use from house in multiple occupancy (Class C4) from 6 to seven person/seven bedroom house in multiple occupancy (Sui Generis). Refused and appeal dismissed on 01 September 2021. The reason for refusal was as follows:

The proposal, by reason of the under provision of communal living space (approximately 4m² below the minimum requirement of 34 m²) would fail to provide a good standard of living accommodation for occupiers and represent an over intensive use of the property. 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).

- 1.11 22/00058/GPDC -Construction of single-storey rear extension that comes out a maximum of 6m beyond the rear wall of the original house with a maximum height of 3m and a maximum height of 2.8m to the eaves. Prior Approval not required, 30 August 2022

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:

- 3.2 The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.

3.3 Highways Engineer:

- 3.4 Considering the small scale of the proposal, it is the belief of the LHA that the proposal is unlikely to have a material impact upon the highway network and as such is satisfied that a traffic assessment would not be required.
- 3.5 Portsmouth's residential parking standards expect that dwelling houses (C3) and Houses in Multiple Occupation (HMO) (C4/ sui generis) with more than 4bedrooms should provide 2 car parking spaces per dwelling. Where no on-site parking is provided, it is assumed that existing parking demand is met on-street. Where an application property already has 4 or more bedrooms, the expected parking demand of a HMO(sui generis) would be the same as the existing use as per SPD standards and as such would not be required to provide any further spaces despite an increase in the number of bedrooms.

- 3.6 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.
- 3.7 Given the established policy position, the Highways Authority would see no grounds for objection for such an application.

4.0 REPRESENTATIONS

- 4.1 One letter of objection received raising the following concerns:

- Overcrowded dwelling and noise
- Fowl smelling sewage odour after the extension was built
- Loss of privacy from kitchen window facing onto neighbouring property (*Officer note: The extension was approved under 19/00112/GPDC*)
- Light pollution from exterior light (*Officer note: Minor domestic light fittings, are not subject to planning controls.*)

5.0 COMMENT

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

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 8 HMOs out of 68 properties, a percentage of 11.77%. This proposal of course has no effect on that percentage and would have a negligible impact on the mix and balance of the community. 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.
- 5.4 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 1/4/2020 and it is due to expire on 31/3/2025.
- 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, as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Required Standard:
Bedroom 1	8m ²	6.51m ²
Ensuite B1	2.74m ²	2.74m ²
Bedroom 2	11.4m ²	6.51m ²
Ensuite B2	2.74m ²	2.74m ²
Bedroom 3	8m ²	6.51m ²
Ensuite B3	2.74m ²	2.74m ²
Bedroom 4	10m ²	6.51m ²
Ensuite B4	2.74m ²	2.74m ²
Bedroom 5	7.5m ²	6.51m ²
Bedroom 6	11.3m ²	6.51m ²
Ensuite B6	2.74m ²	2.74m ²
Bedroom 7	7.7m ²	6.51m ²
Combined Living Space	34m ² with extension shown or 30.2m ² without the extension	34m ² (based on 6.51m ² sized bedrooms) 4 out of the 7 bedrooms measure between 7.5m ² and 8m ² .
GF Bathroom 1	2.74m ²	3.74m ²
Loft Bathroom 2	2.75m ²	3.74m ²

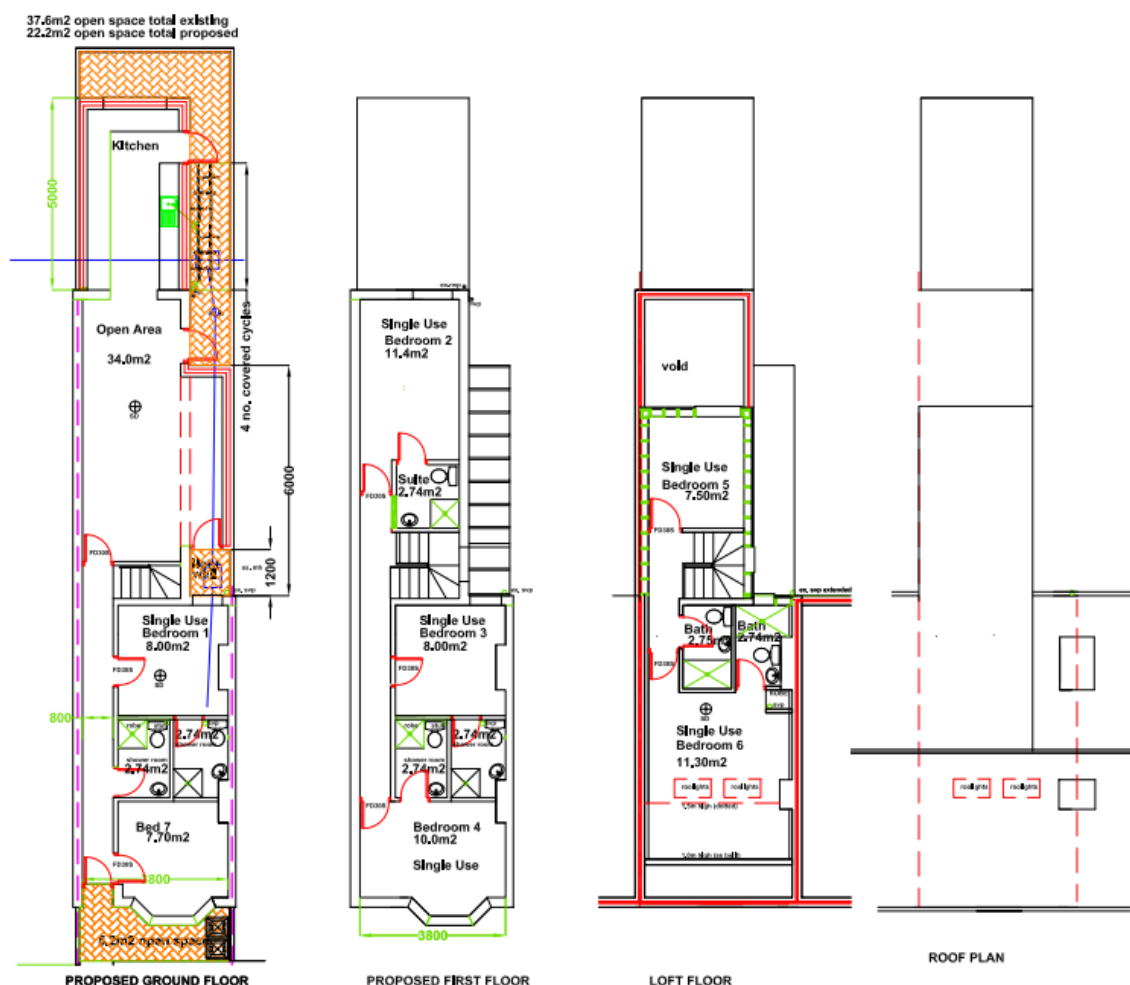


Figure 3: Proposed plans

- 5.6 The existing communal area measures 30.2m² which would be 4m² short of the required 34m² based on bedroom sizes of below 10sqm. This is the current circumstance as the dwelling is a long established HMO with the right, in planning terms, to be occupied by up to six individuals. However, if the proposed side/rear extension as shown on the plans were to be implemented this would result in a combined living space of 34m². This extension is permitted development, as confirmed by application 22/00058/GPDC and can be completed at any time.
- 5.7 Officer's would note that the delivery of the proposed extension, alongside an intention to use the room annotated as 'bedroom 1' as a habitable bedroom would result in a less than satisfactory outlook for that bedroom. It will be for the Private Sector Housing team has part of the licensing regime to determine whether that room benefits from adequate light and outlook to allow it to be used as bedroom. From a planning perspective since the proposed change of use is not considered a material change of use as set out below in paragraph 5.11, irrespective of the compliance with policy regarding the quality of living environment, the landowner benefits from the fall back of being able to undertake that occupation without planning permission in any case. This matter is sufficiently weighty to overcome this identified harm.

Amenity and Parking

- 5.8 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.
- 5.9 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 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 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 lawfully carry out the change in occupation without the benefit of Planning Permission.

Impact on Special Protection Areas

- 5.13 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 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 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, though the adverse implications to outlook of the side extension to bedroom 1 are noted. 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. A key consideration in that case would be whether the scheme would be acceptable with or without the side extension. That extension results in a notional increase in the shared communal space, but to the detriment of the future occupier of bedroom 1. It is therefore a matter of judgement, noting that this dwelling is already lawful, from a planning perspective, allowed to accommodate 6 residents, which has the same communal space requirements as 7 residents in accordance with the Council guidance, whether this extension is, overall beneficial to the living conditions of occupiers. In such a circumstance the Committee would need to consider whether to resolve to grant permission, and 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