

41 MARGATE ROAD SOUTHSEA PO5 1EY

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO A 7 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)

[22/01607/FUL | Change of use from house in multiple occupation \(Class C4\) to a 7 bedroom house in multiple occupation \(Sui Generis\) | 41 Margate Road Southsea PO5 1EY \(portsmouth.gov.uk\)](https://www.portsmouth.gov.uk/planning-and-building-control/planning-applications/22/01607/FUL)

Application Submitted By:

Ms Carianne Wells
Applecore PDM Ltd

On behalf of: Birmingham Bunked

RDD: 22nd November 2022

LDD: 17th January 2023

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is being brought before Planning Committee at the request of Councillor Vernon-Jackson.

1.1 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

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

The Proposal

1.3 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use as an HMO with up to six individuals living together to allow up to seven individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms and a small extension to the existing rear wing roof enlargement, achieved under Permitted Development Rights.

1.4 The proposal is a re-submission of planning application ref. 20/01199/FUL with amendments being made to the floor plans to increase the size of the combined living space and Bedrooms 1, 5, 6 and 7 as detailed in **Table 1** below.

Planning History

1.5 19/00003/GPDC:
Ground floor extension constructed after Prior Approval 19/00003/GPDC.
A roof extension was built as Permitted Development.

- 1.6 19/00146/FUL:
The current HMO (Class C4) use was approved under planning ref: 19/00146/FUL on 2nd of April 2019.
- 1.7 19/01396/FUL:
A non-determination appeal was dismissed on 16th of September 2020 for the change of use of the property from the existing Class C4 (house in multiple occupation) to Sui Generis house in multiple occupation (for 7 persons) under planning ref: 19/01396/FUL and appeal ref: APP/Z1775/W/20/3253960. The Inspector's concluding comments were: *"Therefore, in conclusion on the main issue, I find that the proposal would be harmful to the living conditions of future occupiers having particular regard to the internal space provision. As such, the proposal would be contrary to Policy PCS23 of the CS, Section 12 of the Framework and guidance in the SPD"*.
- 1.8 20/01199/FUL:
Following the appeal decision for 19/01396/FUL, a subsequent application was submitted to the Council under planning ref: 20/01199/FUL which sought to make amendments to the floor plans to increase the size of Bedrooms 2 (10m²), 4 (11.65m²) and 7 (10.71m²). Bedroom 5 (9.02m²) was the only bedroom that remained under the 10m² size standard. This application was refused on 21st of October 2022 for the following reasons:
- 1) The proposal would be harmful to the living conditions of future occupiers having particular regard to the internal space provision. As such, the proposal would be contrary to Policy PCS23 of the CS, Section 12 of the Framework and guidance in the SPD and that the proposal would have unmitigated adverse effect to the Special Protection Area.
 - 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 2021.

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) are policies 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 objection. The City Council Private Sector Housing team advise that this property would require to be licenced under Part 2, Housing Act 2004.
- 3.2 Transport Planning: No objection. The proposal would not have a material impact upon the function of local highway network. A condition should be attached to any permission granted requiring secure cycle storage to be provided prior to occupation.

4.0 REPRESENTATIONS

- 4.1 Three representations have been received from neighbouring residents raising objections on the following grounds:
- Over concentration of HMOs in the local area;
 - Increase noise and disturbance;
 - Increase in waste and litter;
 - Increase in parking concerns; and
 - Crime and 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 HMOs could have in Portsmouth, most notably in relation to residential amenity, both for occupiers of HMOs and neighbouring properties, and the 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 property is already in lawful use as an HMO and the application seeks to increase its occupation by 1 occupant. As such, the application proposal would not have any material impact on the balance of the housing mix 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 proposed does not change this mix of dwellings, the proposal would not conflict with this guidance. For reference, it is noted that the relevant 50m radius area is currently made up of 51 HMOs out of 89 properties, a percentage of 57.30%. This proposal of course has no effect on this percentage. The HMO SPD also describes a number of circumstances where new HMOs are not considered 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 pertinent to this application.
- 5.5 The repurposing of internal rooms to accommodate the additional occupants within this proposal, as shown in **Figure 1** below, 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.

- 5.6 Under the current proposal, the following room sizes, as set out in **Table 1** below, would be provided, as compared to the previously refused planning application ref: 20/01199/FUL and the minimum size prescribed in the Council's adopted guidance:

Room	Refused Application 20/01199/FUL	Area now Provided:	Required Standard:
Bedroom 1	10.2m ²	12.47m ²	6.51m ²
Bedroom 2	10m ²	10m ²	6.51m ²
Bedroom 3	11.2m ²	11.2m ²	6.51m ²
Bedroom 4	11.65m ²	10.71m ²	6.51m ²
Bedroom 5	9.02m ²	10.41m ²	6.51m ²
Bedroom 6	10.69m ²	12.1m ²	6.51m ²
Bedroom 7	10.71m ²	12.22m ²	6.51m ²
Combined Living Space	27.03m ²	28.82m ²	22.5m ²
Shower room 1	2.17m ²	Removed	3.74m ²
Shower room 2	3.75m ²	3.75m ²	3.74m ²
Shower room 3	3.74m ²	3.78m ²	3.74m ²
WC	1.5m ²	1.81m ²	1.17m ²

Table 1 - Proposed Room Sizes



Figure 1: Proposed Floor Plans

- 5.7 The HMO Standards advise that where bedrooms are more than 10m² then a shared living space/kitchen can be at least 22.5m² (for 6-10 persons). The application addresses the previous standard of living environment concerns raised in both applications ref: 19/01396/FUL (dismissed on appeal) and ref: 20/01199/FUL by increasing the size of all the bedrooms to over the 10m² standard and the combined living space to 28.82m² as shown in **Table 1** above. The proposal now results in an internal layout and space provision that would provide a satisfactory standard of living environment for future occupiers fully in accordance with Policy PCS23 of the Local Plan and the guidance in the HMO SPD.

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 bedrooms. As such, the proposal remains in accordance with the Council's adopted guidance on parking provision.

Other Material Considerations

- 5.10 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.
- 5.11 Under s57 of the 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 the 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.
- 5.12 Members will note the 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.
- 5.13 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 HMOs with up to 6 occupants to either a 7 or 8 bedroom, 7 or 8 occupant HMO. Contrary to the Officer recommendations in these cases, the Committee determined that these changes in occupation amounted to a material change in use, primarily by concluding 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 amounted to development requiring planning permission.
- 5.14 In the case of this application proposal, the increase in occupancy proposed would 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 proposed 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

- 5.15 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 fall-back position above 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 will 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 be fully comply with the relevant policies of the Local Plan meeting the adopted standards for room sizes and providing a good standard of living accommodation in accordance with Policy PCS23 of the Local Plan.
- 6.2 However, notwithstanding the compliance or otherwise of the proposal with the polices of the Local Plan, it is noted that in this particular 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, it is not considered that planning permission is required for the proposal, and it could be carried out anyway irrespective of the determination of this application. This is considered to be a material consideration of overriding weight, and unconditional planning permission should therefore be granted.
- 6.3 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 proposal fully complies with the associated guidance regarding the relevant local plan polices [in respect of room sizes to support a good standard of living] and officers are satisfied that the amount and configuration of the dwelling does not create an unacceptable living environment], 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 the 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