

14 HUDSON ROAD SOUTHSEA PO5 1HD

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4), TO SEVEN BEDROOM/SEVEN PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)
(RESUBMISSION OF 20/01001/FUL)

LINK TO DOCUMENTS:

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=QV3SB
CMOK1000](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=qv3sbcmok1000)

Application Submitted By:

Applecore PDM Ltd
FAO Mrs Carianne Wells

On behalf of:

Mr James Oliver

RDD: 22nd June 2021

LDD: 18th August 2021

REPORT BACK TO COMMITTEE FOLLOWING MEMBERS SITE VISIT 17TH MARCH 2023

This application is being represented to Members following a deferral at the 25th May 2022 in order to conduct a site visit. The application was previously considered by Committee Members who resolved that:

1. The proposal is considered to be development requiring planning permission 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.

Following this resolution Members then went on to consider the merits of the proposal against the Councils Policy. Members resolved to carry out a site visit in order to better understand the standard of accommodation being provided.

Following this deferral, there was a prolonged period of discussion between the Council and the applicant around organising a Members site visit. This was finally agreed and took place on 17th March 2023. The Members in attendance were:

- Councillor Gerald Vernon-Jackson;
- Councillor John Smith; and
- Councillor Russell Simpson.

The Councillors viewed the internal and external space within the site. No questions were raised to the Case Officer to resolve in the Committee Report. For consistency the previous report has been provided below without alteration. Members will however want to note that since the previous consideration of this report three further appeal decisions, the "Lane Appeal Decisions" have been received by the Council which provide guidance to decision makers on the critical question of when planning permission is needed and how Planning Committees should approach their decision making in such cases. These decisions are a Material Consideration to this application. Members will also want to note the current 5 year housing land supply which stands at 2.9 years, meaning that developments providing additional housing supply are subject to a presumption in favour of sustainable development.

COPY OF THE PREVIOUS REPORT

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee due to the requests 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 This application relates to a two-storey, mid-terrace property located on the southern side of Hudson 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 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 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.

1.7 Planning History

1.8 Application for Certificate of Lawful Development for the existing use as a House of Multiple Occupation (Class C4) was granted in 2098 under planning ref: 19/01211/CPE.

1.9 The 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 was refused under Prior-Approval in 2019 under planning ref: 19/00126/GPDC.

1.10 The 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) was the subject of a non-determination appeal in April 2019. This appeal was dismissed solely on the failure of the applicant to provide mitigation for the impacts of the development upon the Solent Special Protection Areas. With the Inspectors concluding comments being:

1.11 *"Although I have found that the development provides adequate living conditions for 7 persons, this is not sufficient to outweigh the conflict with the development plan and the Habitats Regulations I have identified above. Therefore, and having regard to the other matters raised, the appeal is dismissed and planning permission is refused."*

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

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 None.

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

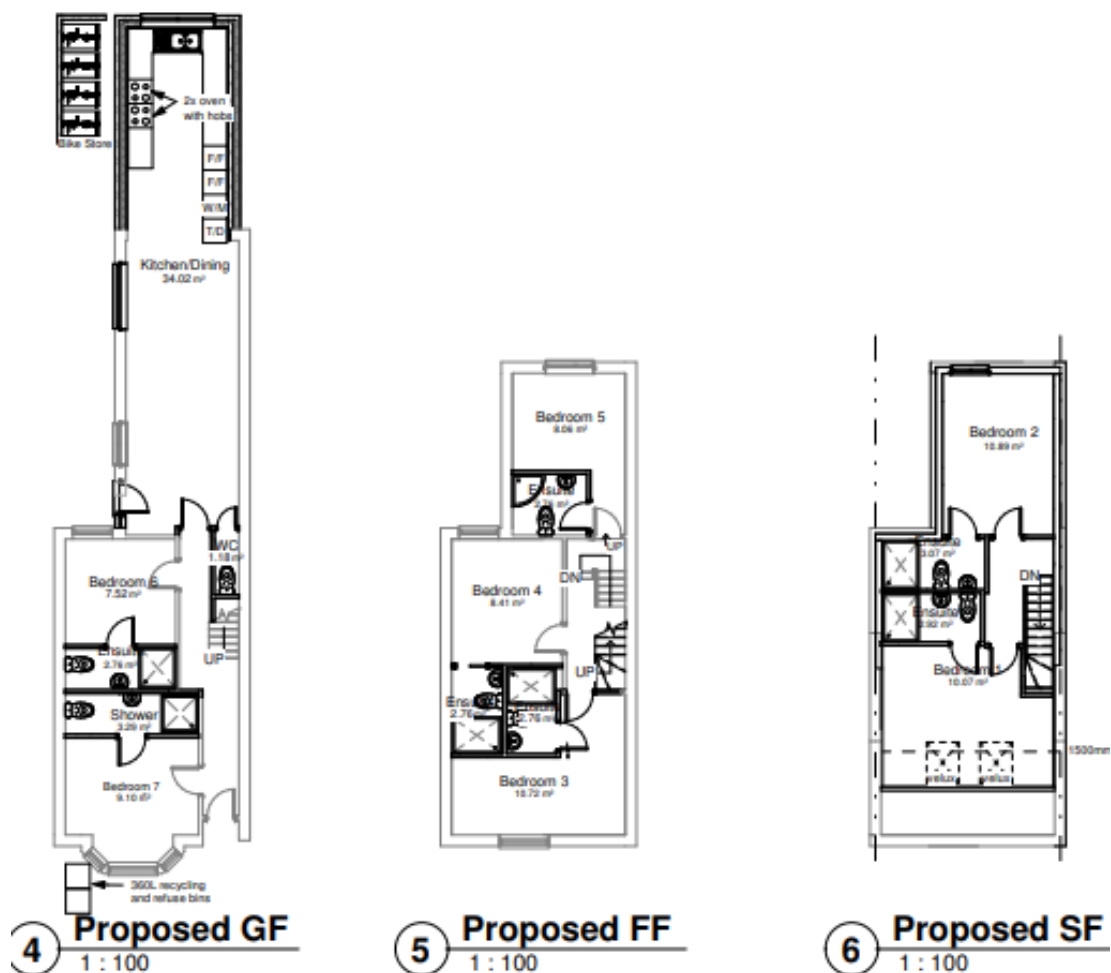
- 5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of 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 51 HMOs out of 83 properties, a percentage of 61.4%. 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	10.07m ²	6.51m ²
Ensuite B1	2.92m ²	2.74m ²
Bedroom 2	10.89m ²	6.51m ²
Ensuite B2	3.07m ²	2.74m ²
Bedroom 3	10.72m ²	6.51m ²
Ensuite B3	2.76m ²	2.74m ²

Bedroom 4	8.41m ²	6.51m ²
Ensuite B4	2.76m ²	2.74m ²
Bedroom 5	8.06m ²	6.51m ²
Ensuite B5	2.76m ²	2.74m ²
Bedroom 6	7.52m ²	6.51m ²
Ensuite B6	2.76m ²	2.74m ²
Bedroom 7	9.1m ²	6.51m ²
Ensuite B7	3.29m ²	2.74m ²
WC	1.18m ²	1.17m ²
Combined Living Space	34.02m ²	34m ²



- 5.6 As is shown in the table above, the proposal would meet the Council's adopted space standards.
- 5.7 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. 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 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.
- 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.
- 5.13 The objection points concerning intensity / character of use of the property and effect on the wider area are covered by the text above. With respect to work already commenced, it is not known what the works alleged may be and whether they require planning permission. Action is unlikely pending the decision on the current application.
- #### 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 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.

5.16 **CONCLUSION**

- 5.17 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 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 use 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.

RECOMMENDATION

Unconditional Permission

Conditions: None