

101 OXFORD ROAD SOUTHSEA PO5 1NP

CHANGE OF USE FROM DWELLING HOUSE (CLASS C3) OR HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO HOUSE IN MULTIPLE OCCUPATION FOR EIGHT PEOPLE (SUI GENERIS)

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Application Submitted By:

Mr Tim Green

RDD: 30th June 2022

LDD: 28th October 2022

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee under the delegated authority of the Assistant Director for Planning and Economic Growth due to the similarity to cases requested to be determined by the Planning Committee by Cllr 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;
 - Standard of living accommodation;
 - Impact on the amenities of neighbouring residents and parking;
 - Housing Land Supply;
 - Impact on the Solent Special Protection Area; and
 - 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. The property fronts directly onto the roadway and includes a private rear garden.
- 1.5 The Proposal
- 1.6 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as a five bed HMO to allow up to 8 individuals to live together as an HMO. It is noted that the property was last occupied as a 5-bedroom HMO and that in order to enable the additional occupation Permitted Development works have been part carried out. The ground floor extension has been completed and other internal works carried out. The rear dormer has yet to be constructed and would be completed prior to the change in occupation.
- 1.7 Planning History
- 1.8 12/00443/FUL: Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwelling house). Conditional Permission (09/07/2012).
- 1.9 The Applicant has constructed a single storey rear extension. A rear dormer extension within the main roof and the installation of three rooflights within the front roofslope under permitted development is proposed, as shown in the drawing below, to facilitate the

enlargement of the property. The extensions and alterations can be completed under permitted development.

- 1.10 Given that the alterations are considered to be Permitted Development, it is not possible to consider their design or amenity impact as part of this application.



Figure 1 External works

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 5 representations have been received from nearby residents, objecting on the following grounds:
- a) Increase parking concerns and access along busy road;
 - b) Noise and disturbance;
 - c) Loss of light and space from extensions;
 - d) Work going ahead already; and
 - e) Bins and waste storage.

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 The 'fall back' position
- 5.3 Whether or not the change in occupancy of an HMO amounts to a 'material change of use' resulting in development requiring planning permission is a matter of planning judgement based on the specific circumstance of each case. That judgement will need to assess whether there is some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. As seen in other applications within this and previous agendas, Officers' view, as demonstrated by the 'Campbell properties' and the 'Lane' appeal decisions is that some changes of use do not necessarily represent development requiring Planning Permission. Therefore, in other cases, the Applicant would benefit from a 'fall-back' position of not requiring Planning Permission. A large number of application for change in the occupation of a dwelling from a 6 person HMO to a 7 or 8 person HMO have been assessed and, on their own facts Officers have concluded that they do not constitute a material change of use. It can be noted that the Planning Committee has come to a different conclusion.
- 5.4 In this instance a different circumstance falls be considered when compared to these other cases. The last use of the application property was as a 5 person HMO. The application seeks occupation of the property as an 8 person HMO. This would result in a more significant change in usage which in the Officers view would represent a material change in the use of the property and therefore would require Planning Permission. This is seen through the likely difference in impact that the additional occupants would represent and which is considered to make a significant difference in the character, and scale of the activities resulting from the proposed use. Other, nominally similar, applications changing the occupation from 6 occupants to 7 seven occupants have been found in the opinion of officers to result in insufficiently change to be considered a material change of use. The same conclusion, in material similar circumstances as noted above, has been drawn at six other sites by Inspectors in the 'Campbell Properties' and 'Lane' appeals. Those appeals are material considerations and to draw a different conclusion to that which they might superficially suggest, as is the recommendation of Officers, requires a specific and justified reason.
- 5.5 The majority of the cases within the 'Campbell Properties' and 'Lane' appeals, and those since reviewed by Officers as demonstrated elsewhere on this agenda, involve a change of use from 6 occupants to 7 occupants. Members have previously raised concerns that an increase in occupation has an impact on areas of planning relevance, namely amenity, waste water/nitrates, parking and waste/recycling. Within the 'Lane appeal decisions' the Inspector criticised the Council for failing to provide a sound, substantive and defensible basis for their decision making and felt the assertions made in those decisions were vague and generalised. Consequently Officers have carefully assessed the current application proposal to ensure that the judgement to be applied is specific to the facts and site in question and precise in their formulation.

- 5.6 The change in occupancy in an HMO from 6 people to 7 people is to increase the occupants by 17%. Ostensibly the resultant impact from this additional occupation would proportionately increase by the same percentage. However in reality each case would likely express this change in different ways. The assessment of that change can sensibly be done with reference to headings highlighted by the Planning Committee in similar applications. For example it is Officers conclusion that an increase of 1 additional occupant (+17%) cannot be evidenced to have any demonstrable impact on amenity when viewed externally. The total number of movements to and from the property, the likelihood of noise and anti-social behaviour and the day to day activity within the dwelling, while increasing by 17% would be arguably objectively imperceptible to neighbours and passers-by. Similarly the increase in waste water from an additional occupant would have an insignificant impact on the water management and disposal. While, in combination with all other increases in waste water within the catchment of the relevant Waste Water Treatment Works (Budds Farm), this can be considered to have a cumulative impact on eutrophication within the Solent Waters that precautionary and cumulative assessment is relevant only in respect of the specific Habitats Regulation assessment which is only engaged if a need for planning permission is established. Consequently the impact on waste water and nitrates from adding a single additional occupant to an HMO is not considered to demonstrate a material change in the use of that dwelling. When looking at parking implications it becomes even more challenging as the parking demand/stress resulting from occupants varies not just on the number of individuals but on accessibility to alternative modes of transport, personal mobility issues, personal economic circumstances and individual choice. When considering all those factors, especially noting that occupants of HMOs are likely to be in the lowest economic bracket for private rented accommodation, it is again considered unlikely that the minimal, 17%, increase in occupancy would result in a demonstrable implication for parking availability within any given area. In respect of waste and recycling it is however more straightforward. Councils have a good understanding of the demands of different household types and sizes in respect of waste capacity as this is used to provide bins for both recycling and residual waste and to consequently manage the amount of waste collected. In Portsmouth a 6 bed HMO is provided with 720 litres of bin capacity, usually in the form of a single 360l bin for recycling and a single 360l bin for residual waste. More, but smaller bins equivalent to the same capacity can of course be provided as an alternative if the nature of the property requires it. A 7 bed HMO is provided with exactly the same 720 litre amount. Consequently while an individual bin may be more full on collection day there is considered to be no likely difference between a 6 and 7 bed HMO in respect of waste that would be externally apparent.
- 5.7 It is therefore necessary to compare these factors, which have lead Officers to conclude many changes in occupancy from 6 to 7 do not constitute a material change of use, to the facts of the current application, which seeks a change in occupancy from 5 occupants to 8 occupants.
- 5.8 When considering the impact on amenity it is noted that the change in occupation will increase 60%, from 5 to 8, compared to the insignificantly assessed 17%. However there is no evidence that a more intensely used HMO is likely to generate more complaints, regarding noise and anti-social behaviour, than a smaller HMO. This point was examined in the 'Campbell Properties' appeal inquiry. It is of course also to be noted that such amenity impacts will be far more greatly influenced by the nature of individual tenants than the nature/scale of the property albeit the two factors cannot be entirely disentangled. Overall however and notwithstanding that the occupation is proposed to increase by 60% Officers are of the opinion that there is no specific evidence or likelihood that this increase will lead to a significant difference in the character or impact of the use in respect of amenity.
- 5.9 As noted above while the increase in waste water, and nitrates, will have a directly proportionate increase based in the additional occupants the relevance of this only occurs if planning permission is found to be needed and consequently it provides little direct evidence as to that question itself.

- 5.10 Parking demand/stress is however considered to be more likely in the application scenario, increasing occupancy from 5 to 8. While adding a single occupant, likely on lower income is considered very unlikely to have a significant impact on the parking demands in an area, the addition of 3 occupants, the equivalent occupation of an average family dwelling, is considered to be far more likely to result in an increased likelihood of parking stress. It is noted that the application site is sustainably located, within easy walking distance of facilities and bus routes on Albert Road, however the 60% increase in occupation is, notwithstanding this, considered to lead to a likely associated increase in car ownership and associated identifiable impact on parking amenity and availability.
- 5.11 In respect of waste and recycling, as noted above, an increase in a single occupant is unlikely to result in any demonstrable, externally identifiable impacts, as it would not normally require any addition bin capacity to be provided. However in the application scenario, increasing from 5 occupants to 8 the Council's Waste Service Team have been consulted on the application and they have confirmed that the required capacity would have to be significantly increased. A 5 bed HMO has a capacity need of 480 litres (normally 1 x 240l bin for recycling, and 1 x 240l bin for residual waste). An 8 bed HMO has a capacity need of 860 litres (normally 1 x 360l bin for recycling, and 1 x 360l bin plus 1 x 140l bin for residual waste). This is a 79% increase in capacity. The slight disproportionality of this increase is due to the availability of different wheelie-bin sizes. In the specific case of the application property it can be noted that it fronts directly onto the road without the benefit of a front forecourt and waste storage will have to be at the rear of the property within bins moved through the house on collection days. For this property 360 litre bins will therefore not be suitable. Instead, the residents will either have to use refuse bags, which will be allocated on a one per bedroom basis and still result in increased waste generation and need for storage or make use of smaller 180 litre bins. In which instance the property would require four 180 litre and one 140 litre bins. In that circumstance the number of bins associated with this property would likely increase from 2, 2x240l bins associated with the 5 bed HMO need; to 5, 4x180l bins and 1x140l associated with the proposed 8 bed HMO need.
- 5.12 This increase in waste would likely be stored at the rear of the property, which as mentioned has recently been extended under Permitted Development. Given that the use would also require a secure weatherproof cycle store at the rear of the property, the amount of external amenity space would be compromised, given the space taken up by the waste storage. This would fundamentally change the function of the rear garden from being an area of external amenity, to simply an area for the storage of bins and bicycles. There would also be a readily apparent change when viewed within the street scene with now up to 5 bins placed in the highway on collection days.
- 5.13 It is therefore considered that the given the above, the change of use in this instance is fundamentally different to the existing 5 bed HMO use and is distinguishable to the above appeals and distinct from previous applications presented to the Planning Committee. The proposal is considered to be a material change of use constituting development requiring planning permission and does not benefit from a fall-back position to the contrary. It falls therefore to be assessed against the policy of the Local Plan.
- 5.14 Principle
- 5.15 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.

5.16 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 3 occupants. 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 increase in occupancy does not change this mix of dwellings the proposal has no impact on this primary guidance. For reference, it can be noted however that the relevant 50m radius area is currently made up of 13 HMOs out of 105 properties, a percentage of 12.38%. This proposal of course has no effect on that headline percentage. The application does of course increase the number of HMO residents in an area that would already be considered to have a concentration of HMOs. A judgement needs to be made whether the addition of 3 HMO residents into this existing imbalanced community would result in a potential harm to the amenity of that community, as guided by paragraph 2.3 of the Council's SPD for HMOs. The assessment of that harm is considered below. 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.

5.17 Standard of living accommodation

5.18 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	11.1m ²	6.51m ²
Bedroom 2	10.83m ²	6.51m ²
Bedroom 3	9.98m ²	6.51m ²
Bedroom 4	12.9m ²	6.51m ²
Bedroom 5	12.9m ²	6.51m ²
Bedroom 6	9.98m ²	6.51m ²
Bedroom 7	15.96m ²	6.51m ²
Bedroom 8	15.96m ²	6.51m ²
Combined Living Space	23.963m ²	34m ² or 22.5m ² if all bedrooms are over 10m ²
Bathroom	5.75m ²	3.74m ²
Shower room	2.83m ²	2.74m ²
WC	1.73m ²	1.17m ²

5.19 As is shown in the table above, the proposal results in an internal layout, which due to the size of the communal living space does not meet the guidance provided to describe a satisfactory standard of living environment. However, in this instance, bedrooms 3 and 4 are under the higher standards set out within the HMO SPD by only 0.02m². On the basis of the information supplied with the application the detailed guidance within para 2.6 is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

5.20 Amenity and Parking

5.21 The proposal would increase the occupancy of the existing HMO by 3 occupants. While as noted above this would have a proportionate increase in activity within and coming and going from the property this 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.

5.22 While the increase of occupants is considered to have some 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. On balance Officers are satisfied that the minor increase in likelihood of parking demand while identifiable is unlikely to be so significantly harmful to parking amenity and availability to warrant refusal of planning permission.

5.23 Housing Land Supply

5.24 The Committee's attention is drawn to the current 5 year housing land supply position within Portsmouth. In any planning application, the decision-maker will need to 'balance' any harms identified due the development against any benefits also arising. Principally, for this HMO application, the benefits are to the provision of housing through the provision of additional bedspace of occupation within the HMO. While this is a small contribution to the overall housing stock, the Council currently is unable to identify a 'five year supply' of housing, with only a 2.9 year supply currently identifiable. In this circumstance, the Council is directed to consider that the policies which are most important to determinations associated with housing provision within the Local Plan are out of date. The consequence of this is that decision takers are directed to apply a tilted balance to determinations so that permission is only withheld when the adverse impacts '*...significantly and demonstrably outweigh the benefits...*'. Any harm associated with the increase in occupancy in this area are considered to be insignificant and therefore fall short of being able to significantly and demonstrably outweigh even the small benefit to the city's housing stock of the provision of bedspaces, should such assessment be considered necessary.

5.25 Impact on Special Protection Areas

5.26 As the increase in occupancy from a 5 person HMO to 8 persons HMO is considered to warrant planning permission the provisions of the Habitat Regulations are engaged and mitigation for increased Nitrate and Phosphate Output into the Solent and Recreational Disturbance to the SPA is required. This can be secured through a s111 agreement, which the applicant has agreed to, and is in accordance with the advice from Natural England.

5.27 Human Rights and the Public Sector Equality Duty ("PSED")

5.28 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.

5.29 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 do not. 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.

6.0 CONCLUSION

6.1 Having assessed the likely significant difference in the nature and implications of the change in occupation it is considered that the change in use is material and requires planning permission. Having regard to all material planning considerations, including the current 5 year land supply within the City and the representations received, it is concluded that the proposed change of use is acceptable and would be in accordance with the relevant policies of the Portsmouth Plan (2012) and the objectives of the National Planning Policy Framework (NPPF) (2021).

RECOMMENDATION I - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to:

- (a) satisfactory completion of a Legal Agreement necessary to secure the mitigation of the impact of the proposed development on Solent Special Protection Areas (recreational disturbance and nitrates) by securing the payment of a financial contribution.

RECOMMENDATION II - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to add/amend conditions where necessary.

RECOMMENDATION III - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to refuse planning permission if a Legal Agreement has not been satisfactorily completed within three months of the date of this resolution.

Conditions

Time Limit:

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990

Approved Plans:

- 2) Unless otherwise agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Location Plan - 101 Oxford Road; Proposed Ground Floor; Proposed Elevations and Section; and Proposed First and Second Floors.

Reason: To ensure the development is implemented in accordance with the permission granted.

Cycle Storage:

- 3) Prior to first occupation of the property as a House in Multiple Occupation, secure and weatherproof bicycle storage facilities for 4 bicycles shall be provided at the site and shall thereafter be retained for the parking of bicycles at all times.

Reason: To ensure that adequate provision is made for cyclists using the premises in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.

