

59 MANNERS ROAD SOUTHSEA PO4 0BA

**APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT FOR THE PROPOSED CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO AN 8 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)**

[22/01166/CPL | Application for Certificate of Lawful Development for the proposed change of use from House in Multiple Occupation \(Class C4\) to an 8 bedroom House in Multiple Occupation \(Sui Generis\) | 59 Manners Road Southsea PO4 0BA \(portsmouth.gov.uk\)](#)

**Application Submitted By:**

Mr Robert Tutton

Robert Tutton Town Planning Consultants Ltd

**On behalf of:** Mr I. Hebbard

**RDD:** 12th August 2022

**LDD:** 7th October 2022

**1.0 SUMMARY OF MAIN ISSUES**

- 1.1 This application is brought before the 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 sole issue for consideration in the determining of this application is whether the change of use of 59 Manners Road from a 5 bedroom House in Multiple Occupation (HMO) to an 8 bedroom HMO would result in a material change of use as defined under s55 of the Town and Country Planning Act 1990 and therefore whether planning permission is required.

Site

- 1.3 This application relates to a two-storey, mid-terrace HMO property located on the northern side of Manners Road. The application site is located within the Central Southsea Ward.

The Proposal

- 1.4 The property has been used as a 5 bedroom HMO since 4<sup>th</sup> January 2010. A letter from the Council Tax team, dated 11<sup>th</sup> October 2021, and a 'Statement of Truth' from the applicant, dated 31<sup>st</sup> January 2023 have been submitted to evidence this.
- 1.5 An HMO Licence (Ref. DISREUO22/00754/HMO) was recently granted by the Council's Licensing Team on 27<sup>th</sup> October 2022 for the use of the property as an HMO for no more than 8 persons for a period of 5 years (until 26<sup>th</sup> October 2027).

- 1.6 This application seeks to demonstrate that the change of use of the property from a 5 bedroom HMO to an 8 bedroom, 8 person HMO would not result in a material change of use and therefore would not require planning permission.

### Relevant Planning History

- 1.7 Prior Approval was granted on 13<sup>th</sup> December 2021 (reference: 21/00136/GPDC) for the construction of a single-storey rear extension that came out a maximum of 4.6m beyond the rear wall of the original house with a maximum height of 3.3m and a maximum height of 3m to the eaves.

## **2.0 POLICY CONTEXT**

- 2.1 Not applicable.

## **3.0 CONSULTATIONS**

- 3.1 None.

## **4.0 REPRESENTATIONS**

- 4.1 None.

## **5.0 COMMENT**

- 5.1 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 TCPA '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.
- 5.2 Members will note a number of joint appeal decisions, the 'Campbell Properties' appeal dated 29<sup>th</sup> April 2021, and the 'Lane' appeal decision dated 9<sup>th</sup> March 2023 wherein the Inspector considered a number of nominally 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.
- 5.3 Members may also note the previous decisions of Portsmouth's Planning Committee which have contrary to Officer recommendation determined similar 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. The 'Lane' appeal decisions of 9<sup>th</sup> March 2023 were against three such Planning Committee decisions and the Planning Inspector in those case disagreed both with the judgement of the Committee and was critical of the justification, noted above, as a basis for that judgement.

- 5.4 In the case of this application for a certificate of lawfulness the applicant has suggested that a change in the use of the site from the established use as a 5 bed HMO to the current use as an 8 bed HMO should similar be considered a non-material change in the use that does not require planning permission. No evidence as to why the LPA should make that decision has been provided by the applicant other than reference to decisions within the 'Campbell Properties' appeal, which concluded that a change of use in that case from a 6 bed HMO to an 8 bed HMO did not amount to development requiring planning permission. The LPA must therefore make a judgement on the specific facts of this case 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. If there has not then a certificate of lawfulness should be granted.
- 5.5 The change in occupation from 5 occupants to 8 would of course result in differences in the character of activities associated with the residential occupation whether those differences are significant can be individually assessed. Based on previous decisions of the Council it is considered that the likely differences would be to the impact on residential amenity, the impact on waste water output, the impact on parking stress and the impact on recycling and residual waste capacity.
- 5.6 When considering the impact on amenity it is noted that the change in occupation will increase 60%, from 5 to 8. 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.
- 5.7 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.
- 5.8 Parking demand/stress is however considered to be more likely in the scenario of an increased 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 at the Pompey Centre, bus routes on Goldsmiths Avenue and Fratton station, 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.
- 5.9 In respect of waste and recycling, while 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 it has been 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 benefits

from a front forecourt, where it would be expected bins would be stored and as such this significant increase in refuse bins would be readily evident.

## **6.0 CONCLUSION**

- 6.1 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 change in occupation described in this application for a certificate of lawfulness is therefore considered to be a material change of use constituting development requiring planning permission and the certificate is therefore recommended to be refused.

## **RECOMMENDATION**

## **Refuse Certificate of Lawfulness**