

127 POWERSCOURT ROAD, PORTSMOUTH, PO2 7JQ.

APPLICATION FOR A CERTIFICATE OF LAWFUL DEVELOPMENT FOR EXISTING USE AS HOUSE IN MULTIPLE OCCUPATION WITH 7 BEDS

LINK TO DOCUMENTS:

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=R00ZWHMOMBC00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=R00ZWHMOMBC00)

Application Submitted By:

Mr Jonathan McDermott
Town Planning Experts

On behalf of:

Mr J Verncombe

RDD: 27th September 2021

LDD: 22nd November 2021

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before the Planning Committee at the request of the Councillor Vernon Jackson.
- 1.2 The sole issue for consideration in the determining of this application is whether the increase from six occupants to seven occupants in an existing Class C4 House in Multiple Occupation 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.
- 1.3 Site and surroundings
- 1.4 This application relates to a three-storey, mid-terrace property located on the northern side of 127 Powerscourt Road. The application site is located within the Copnor Ward.

2.0 PROPOSAL

- 2.1 This application seeks to demonstrate that increasing the number of occupiers in an existing lawful HMO by one to make it a seven person House in Multiple Occupation (HMO) would not result in a material change of use and therefore would not require planning permission.

2.2 Plans - Floor plans and Elevation Plans as existing.



2.3 Relevant Planning History

2.4 The Local Planning Authority (LPA) refused application reference 19/01055/FUL for Change of use from Class C4 (House in Multiple Occupation) to a 7 bed HMO (Sui-Generis) and the construction of a single storey side extension (following the demolition of an existing side extension) (Resubmission of 18/00230/FUL), in November 2020. It was considered that;

- The proposal, by reason of the under provision of communal living space would fail to provide a good standard of living accommodation for occupiers and represent an over intensive use of the property.
- 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 recreational pressures and nutrient output; with mitigation against these impacts being required.

This refusal was appealed and dismissed in September 20201 on the inadequacy of communal spaces, though the Inspector made no consideration in respect of the impacts on the SPA. The Inspector also made no statement to indicate whether he had given any consideration as to the need for planning permission, ie whether the increase in occupancy from 6 to 7 resulted in a material change of use, nor did the appellant in that case question that fact. This is a fact that Officers discuss in the recommendation below as being highly determinative.

2.5 The Local Planning Authority (LPA) also refused an earlier application, reference 18/00230/FUL for Change of use from Class C4 (House in Multiple Occupation) to a 7 bed HMO (Sui-Generis). It was considered that;

- The proposed use of the building as a seven-bedroom sui generis House in Multiple Occupation would, as a result of the cramped and restricted size of the communal amenity space (living room and kitchen areas), fail to provide the necessary space for an adequate standard of living accommodation for future occupiers and would represent an over intensive use of the site.
- Without appropriate mitigation the development would be likely to have a significant effect on the Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas.

2.6 Planning permission was granted in 2014 (reference: 14/00146/FUL) for the flexible use of the existing C3 residential for purposes falling within Classes C3 (dwellinghouse) or Class C4 (House in Multiple Occupation). Therefore, the property currently has permission to be used as Class C4 HMO by up to six unrelated individuals.

3.0 **POLICY CONTEXT**

3.1 Not applicable.

4.0 **CONSULTATIONS**

4.1 None.

5.0 **REPRESENTATIONS**

5.1 Neighbour notification letters were sent out to all adjacent properties, and a site notice displayed in October 2021. Four letters of objection have been received from three households and can be summarised as follows;

- a) A lawful development certificate application has been submitted to avoid the requirement of planning permission, this is not what certificate of lawful developments are for, they are trying to find loopholes to expand the use;
- b) Concerns regarding anti-social behaviour, parking, noise disturbance, waste;
- c) Request attention is given to comments which have been submitted objecting to planning application reference: 21/00883/FUL;
- d) Overdevelopment of the site, over-populated, sometimes people move-in before a decision is made;
- e) Please make sure all residents are aware of these applications.

6.0 **COMMENT**

6.1 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 TCPA, 'development' is defined as the making of a material change in the use of any buildings or land. For a change to be material there must

some significant difference in the character of the activities from what was going on previously as a matter of fact and degree.

- 6.2 It is considered that in this instance, the increase in occupancy from a six-person, six-bedroom House in Multiple Occupation to a seven-bedroom, seven person House in Multiple Occupation would not result in a significant difference in the character of the activities that would occur within the property or the character of the area. Therefore, there would not be a material change of use, and so planning permission is not required.
- 6.3 This view is supported by the Campbell Properties enforcement appeals dated 29th April 2021. The Planning Inspector considered a number of similar changes of use at six different properties and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to six occupants to seven, and a change in occupancy from up to six occupants to eight would not result in a material change of use. While the Inspector recognised the increase of one or two occupants would result in a more intensive use of the property, he was of the opinion that there would not be material effects arising from a seventh or eighth resident. The Inspector was of the opinion the change of use from a six person to seven or eight person HMO was a continuation of the existing use.
- 6.4 In a further three recent decisions, received on 9th March 2023, for applications 20/00964/FUL (123 Talbot Road), 20/00963/FUL (48 Jessie Road) and 20/00965/FUL (56 Jessie Road). The planning inspector noted the similarities with the Campbell Properties cases and agreed with the reasoning in that ruling. The inspector disagreed that the provision of an additional bedroom would result in unacceptable living conditions for current and future occupiers.
- 6.5 Having regard to the above and the appeal decisions being a material planning consideration, the LPA is of the opinion that increasing the number of occupants at no.127 Powerscourt Road from six to seven persons, on the specific merits and facts of the case, would not result in a material change of use, meaning planning permission would not be required and the proposed change of use is lawful.

7.0 **CONCLUSION**

- 7.1 The LPA is of the opinion that increasing the number of occupants at no.127 Powerscourt Road from six to seven persons would not result in a material change of use as defined under s55 of the Town and Country Planning Act 1990, meaning planning permission would not be required and the proposed change of use is therefore lawful.

8.0 **RECOMMENDATION**

- 8.1 Grant Certificate of Lawfulness.