

15 SHADWELL ROAD PORTSMOUTH PO2 9EH

CHANGE OF USE FROM DWELLINGHOUSE (CLASS C3) TO 8 PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)

Application Submitted By:

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Applecore PDM Ltd

On behalf of:

Mr Reynolds
CER Property Ltd

RDD: 9th November 2022

LDD: 10th January 2023

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to a total of 11 objections from local residents and an objection and call-in request from Cllr Wemyss and (previous) Cllr Payter-Harris. The application is now the subject of an appeal on grounds of non-determination and as such this report seeks a resolution by the Committee as to its likely determination should it had retained jurisdiction over the application. It differs from other applications on the agenda in this respect, but has been added due to this urgency.
- 1.2 The main issues for consideration in the determination of the application are considered to be as follows:
- The principle of development;
 - Standard of accommodation;
 - Relevant planning history providing fallback position
 - Parking;
 - Waste;
 - Amenity impacts upon neighbouring residents;
 - Impact upon the Solent Protection Areas; and
 - Any other raised matters.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site comprises a two-storey, mid-terrace dwelling located on the southern side of Shadwell Road as shown in **Figure 1** below. The dwelling is set back from the highway with a shallow-walled forecourt. To the rear of the dwelling is an enclosed garden backing on to properties fronting Oriel Road. It should be noted that planning permission was granted for a dual use as a dwelling house in either use class C3 or C4 in July 2021 but this permission is not considered to have yet been implemented. The extant permission is within the 3 year time limit for implementation and thus provides a fallback position but the site currently remains in last use as a C3 dwelling. The dwellinghouse is served by bay windows to the front and has a reasonably large front forecourt and rear garden (which has a rear access alleyway which serves as good access to the existing rear bike store). The existing layout comprises a lounge, living room, shower room, utility room, kitchen/dining room at ground floor level, and 3 bedrooms and a shower room on the first floor.

- 2.2 The application site falls within a residential area characterised by rows of two-storey terraced properties.



Figure 1 Location plan

3.0 THE PROPOSAL

- 3.1 Planning permission is sought for the Change of use from dwellinghouse (Class C3) to House in Multiple Occupation for eight people. Amended floor plans have been submitted showing an increased communal area and to remove a previously proposed GF rear bedroom. All bedrooms will be for single occupancy except for bedroom 3 which will be for double occupancy.
- 3.2 The proposed internal accommodation, as shown in **Figure 2** below, comprises the following:

- Ground Floor - Two bedrooms (all with ensuite shower, toilet and handbasin), communal Kitchen/Dining room, and a shared WC (with handbasin).
- First Floor - Three bedrooms (all with a shower, toilet and handbasin ensuite)
- Second Floor - Two bedrooms (all with a shower, toilet and handbasin ensuite).

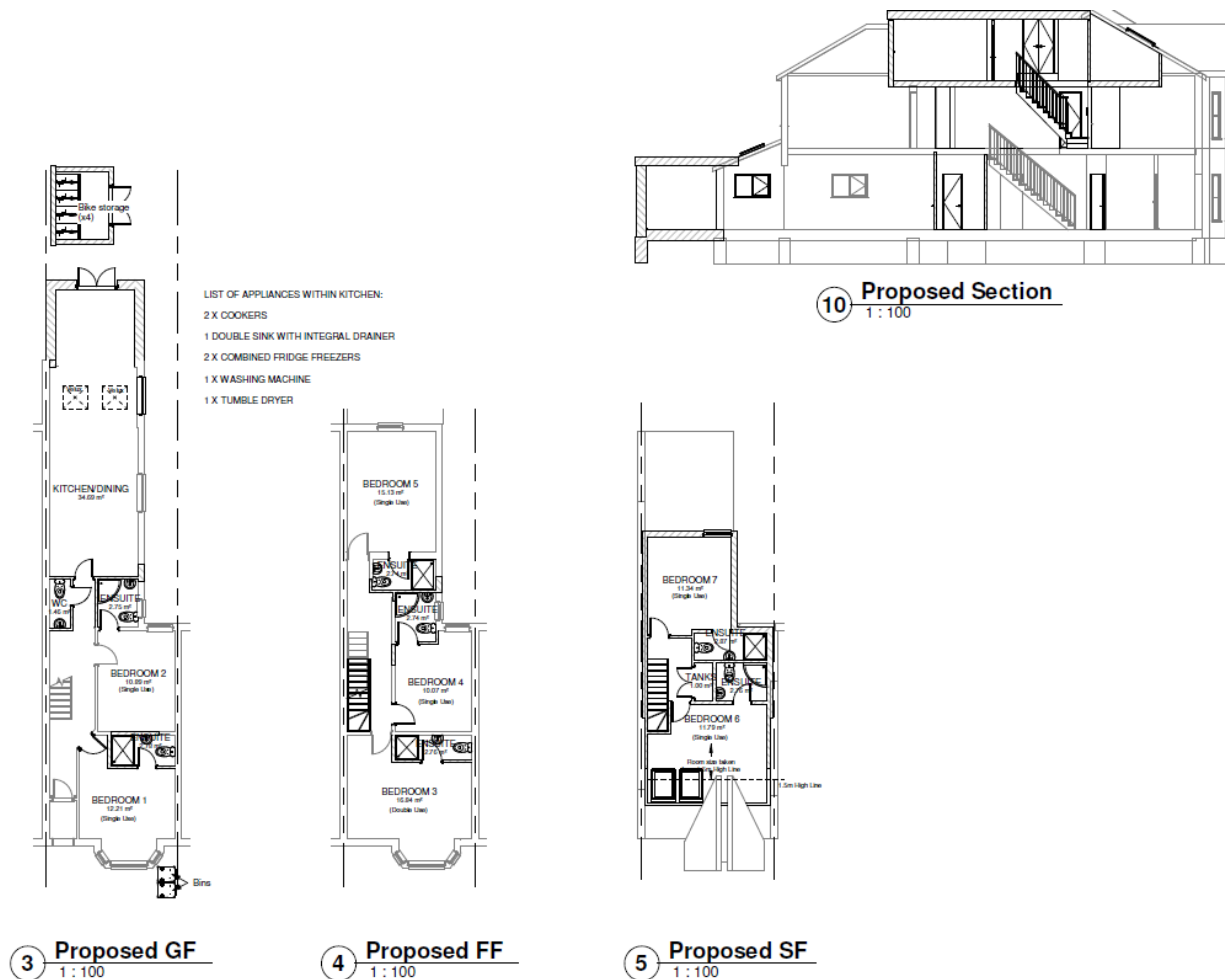


Figure 2 Proposed floor plan.

3.3 The Applicant has stated that works to extend the property are to be undertaken under permitted development (without the need to apply for planning permission). The extensions and alterations can be completed under permitted development regardless of whether the property is in Class C3 or C4 use. These works include a single storey rear extension and rear dormer and are not included in the application. They should not be considered as part of the application but would be necessary to meet the space standards required for the proposed use. Should the applicant wish, these works could, and likely would, go ahead with or without consent for the change of use being considered under this application. It is suggested that it would be prudent to impose a pre-occupation condition should the committee be minded to grant permission requiring that the permitted development works take place prior to the property's occupation as a HMO for 8 persons.

4.0 PLANNING HISTORY

4.1 **20/01540/FUL**- Change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwellinghouse) and Class C4 (house in multiple occupation) - Approved 23/07/2020. The applicant has stated that this planning permission has not been implemented and there is no evidence to suggest it has (being that no license has been

applied for as yet), this application should be considered as a change of use from C3 rather than from C4. It should be noted that the extant permission is still implementable and as such presents a fallback position of use as a C4 HMO with a broadly similar layout and 3 fewer bedrooms.

21/01162/VOC - Application to remove condition 4 of 20/01540/FUL to allow occupancy for more than 4 residents and users - Refused 09/12/2021.

5.0 POLICY CONTEXT

5.1 Portsmouth Plan (2012)

5.2 In addition to the aims and objectives of the National Planning Policy Framework (2021), due weight has been given to the relevant policies within the Portsmouth Plan (2012), which include:

- PCS17 (Transport)
- PCS20 (Houses in Multiple Occupation)
- PCS23 (Design and Conservation).

5.3 Other Guidance

5.4 Guidance for the assessment of applications that is relevant to the application includes:

- National Planning Practice Guidance (revised 2021)
- The Parking Standards and Transport Assessments Supplementary Planning Document (2014)
- The Solent Recreation Mitigation Strategy (2017)
- The Updated Interim Nutrient Neutral Mitigation Strategy (2022)
- The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD').

6.0 CONSULTATIONS

6.1 Private Sector Housing - Based on the layout and sizes provided with this application this property would require to be licenced under Part 2, Housing Act 2004. The property will need to be inspected by private sector housing to ensure it meets licensing requirements.

6.2 Highways Engineer - no objection. Highlights that there would be no increase in parking requirement (2 spaces) from the fallback position of being able to implement the C4 permission. However, the LHA also acknowledge that in theory an increase in the number of bedrooms could result in an increase in the level of cars at the property. This may, in turn, result in increased instances of drivers searching for parking spaces, but this would be a matter of residential amenity to consider. Recommend a condition to secure cycle storage prior to occupation.

7.0 REPRESENTATIONS

7.1 13 objections receive, including one from Councillor Payter-Harris, summarised as:

- a) Too many HMOs within the area
- b) Lack of car parking provision leading to an increase in traffic and exacerbation of existing on-street parking problems
- c) Loss of family home from the existing housing stock

- d) Poor standard of living for future residents
- e) Proposed extensions beyond permitted development limits.
- f) Undue strain on local services and infrastructure, including the sewage, drainage and Doctors/Dentists
- g) Concerns about impact on community

8.0 COMMENT

8.1 The main determining issues for this application relate to the following:

- The principle of Development;
- The standard of accommodation;
- Impact upon amenity neighbouring residents;
- Parking;
- Waste;
- Impact upon the Solent Protection Areas; and
- Any other raised matters

8.2 Principle of development

Five year Housing Land supply.

8.3 The National Planning Policy Framework (NPPF) states that planning decisions should be based on a presumption in favour of sustainable development (paragraph 11). That presumption does not apply where the project is likely to have a significant effect on a 'habitats site' (including Special Protection Areas) unless an appropriate assessment has concluded otherwise (paragraph 182). Where a local planning authority cannot demonstrate a five year housing land supply of deliverable sites, the NPPF deems the adopted policies to be out of date and states that permission should be granted for development unless:

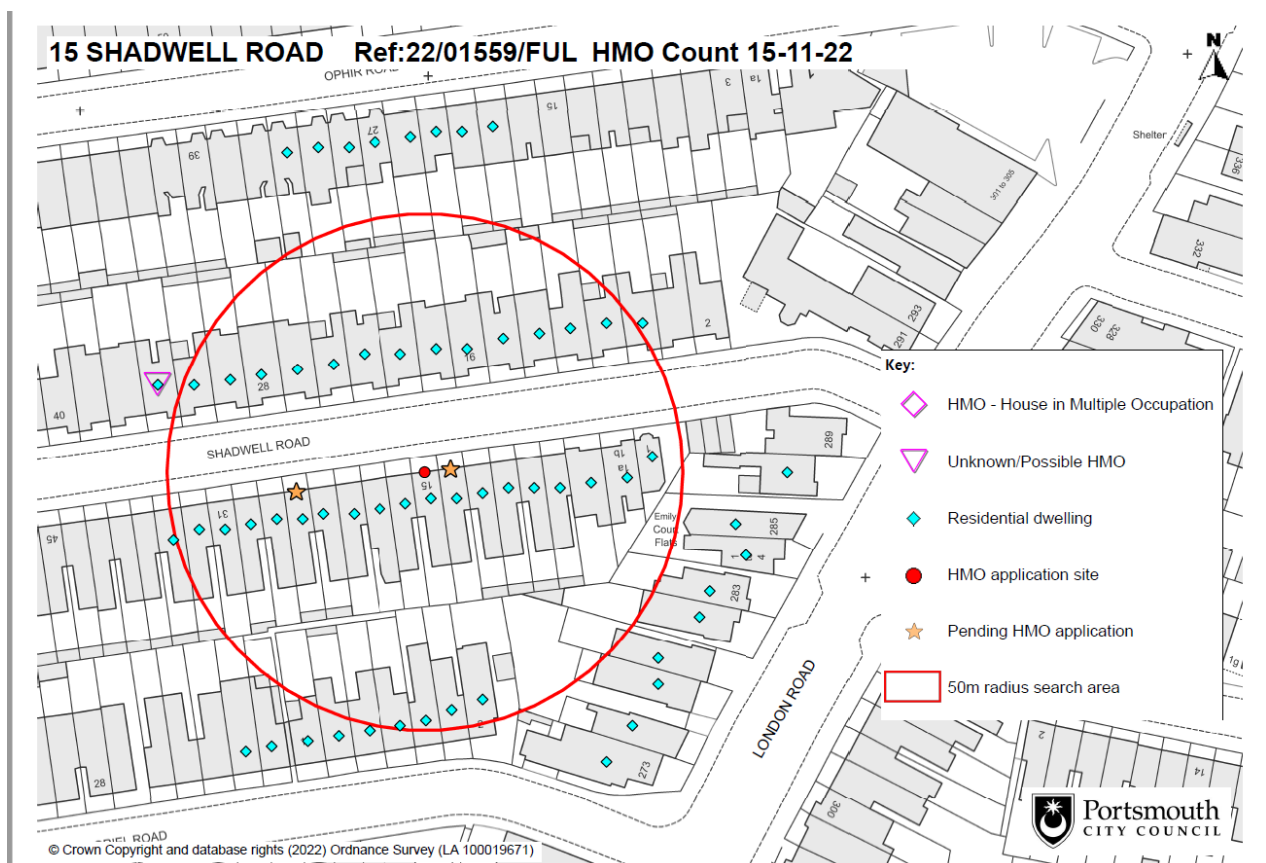
- I. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or
- II. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

8.4 Currently, the Council can demonstrate 2.9 years supply of housing land. The starting point for determination of this application is therefore the fact that the authority cannot demonstrate a five year supply of housing. This development would provide greater occupation of the building, so make a small, additional contribution towards the City's housing needs, at a sustainable location in the city, with good public transport, retail and services, employment, leisure, health facilities, etc. These factors weigh in favour of the proposed development. The further, specific impacts of the proposal must still be considered as to whether the development is appropriate in detail, as set out below.

HMO Policy

8.5 Permission is sought for the use of the property as a Sui Generis HMO for 8 persons. The property is currently considered to have a lawful use as a self-contained dwelling (Class C3), however, an extant permission for dual C3/C4 use has already established the acceptability of a HMO in the area and presents a fallback position which should be given significant weight in the consideration.

- 8.6 Policy PCS20 of the Portsmouth Plan states that applications for change of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses, or where the development would not create an imbalance. The adopted Houses in Multiple Occupation SPD (as amended October 2019), sets out how Policy PCS20 will be implemented and details how the City Council will apply this policy to all planning applications for HMO uses. The SPD states that a community will be considered to be imbalanced where more than 10% of residential properties within the area surrounding the application site (within a 50m radius) are already in HMO use.
- 8.7 It should be noted that HMO use has already been granted at this property and therefore there would be no further increase in the numbers of HMOs should this application be granted. Therefore, it would not be sustainable at appeal, or reasonable in a costs defence, to refuse this application under Policy PCS20 (Mixed and Balanced Communities).
- 8.8 Based on information held by the City Council, of the 74 properties within a 50 metre radius of the application site, one property has been identified as an HMO in lawful use (at no.34 Shadwell Road). Therefore, the existing number of HMOs equates to 1.35% of the properties within the search area. The addition of the application property would result in 2.70% of properties being an HMO within the 50m radius, which, regardless of the fallback falls below the 10% threshold limit above which an area is considered to be imbalanced.



- 8.9 A further policy strand introduced in July 2018, amended in October 2019, seeks to ensure that the amenity and standard of living environment of neighbours and local occupiers is protected. This is explained within Appendix 6 of the HMO SPD, which

references the specific proximity of HMOs to adjacent dwellings and how these circumstances may give rise to a particular risk of harm to amenity and disturbance. These are where: the granting of the application would result in three or more HMOs adjacent to each other, or where the granting of the application would result in any residential property being 'sandwiched' between two HMOs. There is no conflict caused by this proposal with this guidance.

- 8.10 Having regard to the above, the proposal would comply with the aims and objectives of Policies PCS19 and PCS20 of the Portsmouth Plan (2012).

8.11 Standard of accommodation

- 8.12 The application seeks Sui Generis HMO use for 8 persons and proposes the following room sizes, as shown in **Table 1** below.

Room	Area Provided	Required Standard
Bedroom 1 (Single use)	12.21m ²	6.51m ²
Bedroom 2 (Single use)	10.89m ²	6.51m ²
Bedroom 3 (Double use)	16.84m ²	11.00m ²
Bedroom 4 (Single use)	10.07m ²	6.51m ²
Bedroom 5 (Single use)	15.13m ²	6.51m ²
Bedroom 6 (Single use)	11.79m ²	6.51m ²
Bedroom 7 (Single use)	11.34m ²	6.51m ²
Shared WC	1.46m ²	1.17m ²
Communal Kitchen/Dining area (ground floor)	34.69m ²	34m ² / 22.5m ² (22.5m ² if all bedrooms exceed 10m ²)
Ensuite bathroom 1	2.78m ²	2.74m ²
Ensuite bathroom 2	2.75m ²	2.74m ²
Ensuite bathroom 3	2.76m ²	2.74m ²
Ensuite bathroom 4	2.74m ²	2.74m ²
Ensuite bathroom 5	2.74m ²	2.74m ²
Ensuite bathroom 6	2.76m ²	2.74m ²
Ensuite bathroom 7	2.87m ²	2.74m ²

Table 1 - HMO SPD (Oct 2019) compliance

- 8.13 All rooms comfortably exceed the required space standards and the proposal is considered to provide a good standard of living for future occupiers.

8.14 Impact on neighbouring living conditions

- 8.15 In terms of the impact on the living conditions of the adjoining occupiers, it is considered that the level of activity that could be associated with the use of any individual property as a dwellinghouse in Class C3, would be unlikely to be significantly different from the occupation of the as a house in multiple occupation, and would not be discernible from the fallback position of 6 unrelated individuals.

- 8.16 The HMO SPD is supported by an assessment of the need for, and supply of, shared housing in Portsmouth and of the impacts of high concentrations of HMOs on local communities. Paragraphs 9.1-9.10 discuss the negative impacts of HMO concentrations on local communities and points to the cumulative environmental effects of HMO concentrations. However, given that there is not an over-concentration of HMOs within

the surrounding area, it is considered that the impact of one HMO would not be significantly harmful, nor would the increase in 1 occupant when considered against the fallback position. The principle of an HMO use at this dwellinghouse has already been established as acceptable.

- 8.20 Having regard to this material consideration, it is considered there would not be a significant impact on residential amenity from the proposal.

8.21 Highways/Parking

- 8.22 The City Council's Parking Standards SPD sets the level of off-road parking facilities for new developments within the city and places a requirement of 2 off-road spaces for Sui Generis HMOs with four or more bedrooms. However, it should be noted that the expected level of parking demand for a Class C3 dwellinghouse with three bedrooms would be 1.5 off-road spaces, a difference of just 0.5 spaces. The proposal has no off-street parking, which is no change from the current use, or the fallback position.

- 8.23 As explained above, neither the Highways Officer nor Planning Officer highlights a serious issue with the scheme on the grounds of a lack of off-street parking. As the SPD requirement for parking is not materially different for the proposal than a similarly sized Class C3 dwellinghouse or C4 HMO (2 spaces), it is considered that refusal on a lack of parking is not reasonable or defensible. There is no objection on either highway safety grounds and therefore refusal could not be sustained on appeal. It should be noted that the property could be occupied by a large family and/or with adult children, each potentially owning a separate vehicle, or even more than 1 vehicle each.

- 8.24 The Council's Adopted Parking Standards set out a requirement for C4 HMO's to provide space for the storage of at least 4 bicycles. The property has a rear garden where a proposed secure cycle storage is shown to be located - it is acknowledged that access to the cycle storage can only be achieved through the house given that there is no rear access to the garden. The requirement for cycle storage is recommended to be secured by condition.

8.25 Waste

- 8.26 The storage of refuse and recyclable materials would remain unchanged, to be accommodated in the suitable front forecourt area. An objection on waste grounds would not form a sustainable reason for refusal and it is not considered necessary to require details of formalised waste storage.

8.27 Impact on Special Protection Areas

- 8.28 As there is a measurable increase in occupancy from 2.4 persons (for a C3 dwelling) to 8 persons, 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.

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

- 8.32 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.

- 8.33 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.

8.34 Other Matters raised in the representations.

- 8.35 Concerns have been raised by residents of the road regarding the pressure the additional occupants would put on local services and drainage/sewerage. However, having regard to the existing lawful C3 use of the property which allows the occupation of a family of unrestricted size, it is considered the use of the property would not have a significantly greater impact on local services and drainage/sewerage than if the property was occupied by a single family of eight. Noting also that securing any required additional drainage capacity is a matter managed outside the planning process.
- 8.36 Many objections centre around parking issues. This matter is discussed above in greater length. In summary, a lack of parking could not be defended at appeal due to policy having the same parking requirement for the fallback position of C4 use which can be implemented, and the current C3 use (with some minor internal/PD works).
- 8.37 Comments raised over the impact of the PD works. These works are not included in this application and are beyond the control of the Local Planning Authority. These works could be implemented without the need to apply for permission under the current C3 use or the allowed C4 use.
- 8.38 Some comments object due to the apparent poor quality of living for future occupiers and the high number of HMOs already in the area. Both of these objections are considered to be unfounded because the proposal is found to comply with both policies PCS20 and PCS23 of the Portsmouth Plan.
- 8.39 The application is for 8 persons and this would be monitored and controlled through the licensing regime. However, members may consider imposing an occupancy condition (although this is not considered necessary).

9.0 CONCLUSION

- 9.1 Having regard to all material planning considerations, giving significant weight to the fallback position available to applicant of implementing the previous permission for a 4 person HMO, and 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:

That the Secretary of State be advised, in respect of the ongoing appeal, that the Local Planning Authority would have concluded that the application be granted subject to the satisfactory completion of a Legal Agreement necessary to secure the mitigation of the impact of the proposed residential development on Solent Special Protection Areas (recreational disturbance and nitrates) by securing the payment of a financial contribution and conditions (below)

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 drawing:

- Sui Gen Plan - Dwg No. PG.7094 · 22 · 4 REV D

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.

Completion of Permitted Development Works

- 4) Prior to the occupation of the property as a HMO for 8 persons, the single storey rear extension and rear dormer proposed to be constructed under permitted development allowances shall be completed.

Reason: In order to ensure that the property meets the required space standards and therefore provides a good standard of living in accordance with Policy PCS23 of the Portsmouth Plan.