

13 SHADWELL ROAD PORTSMOUTH PO2 9EH

CHANGE OF USE FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO AN 8 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS) (RESUBMISSION OF 21/01622/FUL)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RLWK OEMOFML00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RLWK OEMOFML00)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Mr Reynolds

RDD: 28th November 2022

LDD: 24th January 2023

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee due to the number of objections (7) including an objection and call-in request from (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.

1.1 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

1.2 Site and surroundings

1.3 This application relates to a two-storey (with loft conversion providing 2nd floor accommodation), mid-terrace property with a bay window that is separated from the road by a small front forecourt. To the rear of the dwelling is an enclosed garden. This property comprises at ground floor level, a kitchen/dining room, lounge, study, WC (with handbasin), and a bedroom with ensuite. At first floor there are three bedrooms all with ensuite facilities and at second floor level a further two bedrooms with ensuite facilities. The site is located on the southern side of Shadwell Road, west from its junction with London Road

1.3 The Proposal

1.4 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use of as an HMO with up to six individuals living together to allow up to eight individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application. Plans indicate that all bedrooms will be single occupancy.

1.5 Planning History

- 1.6 20/00485/FUL- Change of use from three self-contained flats (Class C3) to one dwellinghouse to be used for purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwellinghouse) (description amended) - Approved 12.07.2021.
- 1.7 21/01622/FUL - Change of use from dual use Dwelling house (Class C3)/House in multiple occupation (Class C4) to House in multiple occupation for more than six people (Sui Generis) - Non-Determination, Appeal dismissed 22.11.2022 in respect of failure to mitigate impact on the SPA alone, albeit his decision noted that notwithstanding the assessment and submitted drawings for that site the dwelling has in fact be used for 8 occupants.
- 1.8 That Inspectors conclusion was:
"Although I have found that the mix and balance of housing in the area, the standard of accommodation for future occupants, the living conditions of neighbouring occupants and parking is all acceptable within the policy framework adopted by the Council for assessing HMO uses, because of the lack of suitable mitigation I am unable to conclude that the development would have no adverse effect on the Solent special protection areas. The development would therefore conflict with the Habitat Regulations and the Framework. I consider these are material considerations that outweigh the other matters which accord with the development plan."
- 1.9 It can also be noted that the Inspector on the above appeal in respect of 21/01622/FUL declined to comment on whether the proposal needed planning permission, notwithstanding the fact that the Appellant questioned this matter.

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 Updated Nutrient Neutral Mitigation Strategy (2022), 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 7 letters of representation received objecting on the following summarised grounds:
- Concerns about, social, drainage, suitability/building standard of 120-year construction, noise, neighbouring properties, plumbing, local infrastructure, parking
 - Too many HMOs in the area, impacting the 10% threshold.
 - Impact on drainage, noise, air quality
 - Loss of family dwellings
 - Poor quality living for future occupants of the application dwelling

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.

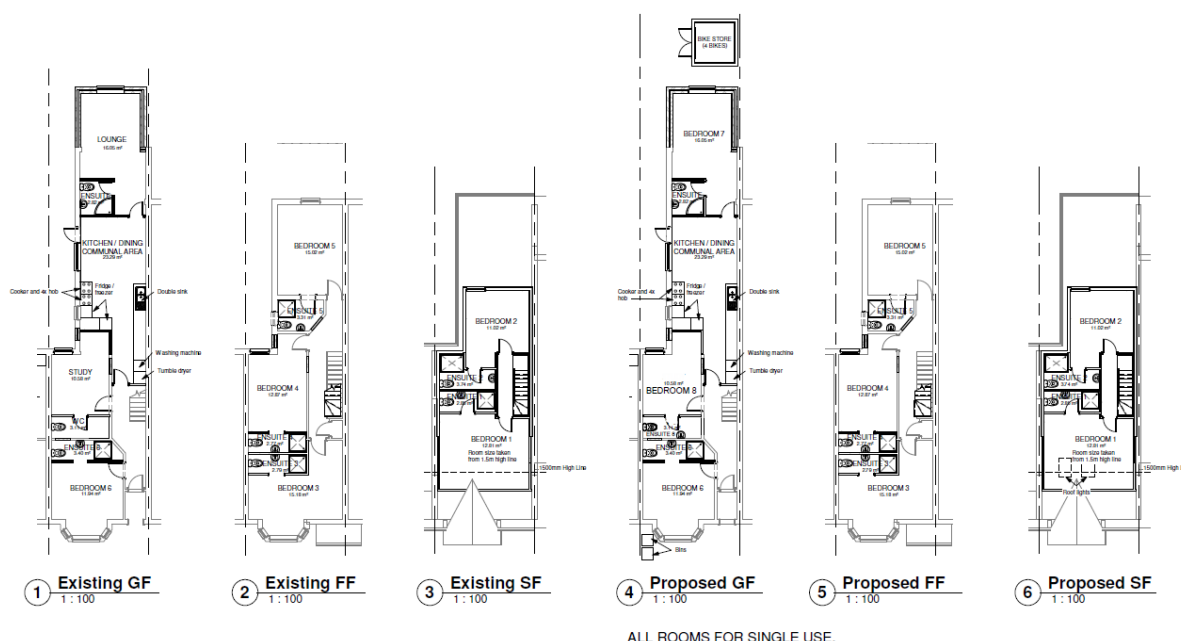
5.4 In this case the application site is already in lawful use as an HMO and the application has been made to recognise the intention to increase its occupation by 1 occupant. As such the application is not considered, on its individual facts to create any material impact on the balance of the community 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 3 HMOs out of 92 properties, a percentage of 3.26%. This includes any pending HMO applications. 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 property is currently licenced as an HMO for 8 persons. The property was granted a 1-year licence (ends Aug 2023) for 8 people. The City Council Private Sector Housing team inform that the property has been granted a licence for only 1 year to enable the landlord to deal with outstanding issues with Planning and Building Control.

5.6 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 with ensuite	12.81m ² + 2.85m ² ensuite	6.51m ²
Bedroom 2 with ensuite	11.02m ² + 3.74m ² ensuite	6.51m ²
Bedroom 3 with ensuite	15.18m ² + 2.79m ² ensuite	6.51m ²
Bedroom 4 with ensuite	12.87m ² + 2.77m ² ensuite	6.51m ²
Bedroom 5 with ensuite	15.02m ² + 3.31m ² ensuite	6.51m ²
Bedroom 6 with ensuite	11.94m ² + 3.40m ² ensuite	6.51m ²

Bedroom 7 with ensuite	16.05m2 + 2.82m2 ensuite	6.51m2
Bedroom 8 with ensuite	10.58m2 +2.82m2 ensuite	6.51m2
Combined Living Space	23.29m2	34m2 / 22.5m2



1 Existing and Proposed Floor Plans

5.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards. The HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m2) for combined living accommodation in circumstances where all bedrooms are at least 10m2 and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment

5.8 Amenity and Parking

5.9 The proposal would increase the occupancy of the existing HMO by 2 occupants. 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 Noting that in addition to the previous conclusion of the Inspectorate on appeal that the development, subject to SPA mitigation is acceptable, a further 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 2 occupants 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 number of joint appeal decisions, the 'Campbell Properties' appeal dated 29 April 2021, and the 'Lane' appeal decision dated 9 March 2023 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 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 March 2023 where 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.
- 5.12 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 Should it be considered necessary to assess the merits of the application, notwithstanding the advice of Officers' above, 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 to 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.

5.15 Impact on Special Protection Areas

- 5.16 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 applicants 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 Likely Significant Effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

6.0 CONCLUSION

- 6.1 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 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.
- 6.2 Should the Committee conclude, contrary to this recommendation, that the change in occupation, as a matter of planning judgement, fact and degree in this specific case results in a material change of use requiring planning permission then they should consider whether permission should be granted with conditions. In such a circumstance, as the merits of the proposed use comply fully with the relevant policies of the Local Plan and associated guidance, the Committee would need to consider whether to resolve to grant permission, subject to the imposition of conditions requiring implementation of the additional occupancy within 1 year (a Time Limit condition), requiring that the development be carried out in accordance with plans submitted (an Approved Plans condition), and requiring that that increased occupancy should not occur until an appropriate scheme of mitigation is submitted and approved to mitigate any impact on the Solent Special Protection Area.

RECOMMENDATION - That the Secretary of State be advised, in respect of the ongoing appeal, that the Local Planning Authority would have granted Unconditional Permission

Conditions: None