

4 CHALKRIDGE ROAD PORTSMOUTH PO6 2BE

CHANGE OF USE FROM A PURPOSE FALLING WITHIN DWELLINGHOUSE (CLASS C3)  
TO A 7 PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)  
[NOTE CHANGE OF DESCRIPTION]

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RP431DMOGQ900](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RP431DMOGQ900)

**Application Submitted By:**

Mr Kercher  
incollective.works

**On behalf of:**

Mr Joseph Williams

**RDD:** 27th January 2023

**LDD:** 5th May 2023

## 1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee at the request of Councillor Vernon-Jackson. The application also has 1 objection.

1.2 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

### 1.3 Site and surroundings

1.3 The application site is a two storey semi-detached dwelling with rooms in the roof in a predominately residential area.

### 1.4 The Proposal

1.5 The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use to allow up to 7 individuals to live together as an HMO. Planning permission has been granted for the change of use of the existing dwelling, which was last occupied as a C3 dwelling, to be either a C3 or C4 (6 person) HMO (see below). Use as a 6-bed HMO under that permission has not yet been commenced, though building work has been carried out under permitted development and the property is ready for occupation, no licence for HMO occupation has yet been granted at the time of writing this report and no occupation as an HMO has been confirmed to have occurred. The site therefore remains in Use Class C3 at the time of determination by the Planning Committee and the change of use, to form a 7-bed HMO must be considered in that context. The application description has been changed accordingly, and for clarity the application has been brought to Committee notwithstanding the fact it has only a single adverse representation.

### 1.6 Planning History

- 1.7 22/01312/FUL - Change of use from Dwelling House (Class C3) to purposes falling within Class C3 (Dwelling House) or Class C4 (House in Multiple Occupation); to include alterations to fenestration and construction of single storey rear extension. (*Approved*)

## **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 1 representation has been received and can be summarised as; potential for 14 people without a WC, does not meet space standards, parking, boundary issue original permission was for C3 use not for C4 use. These points are incorrect as detailed within this report.

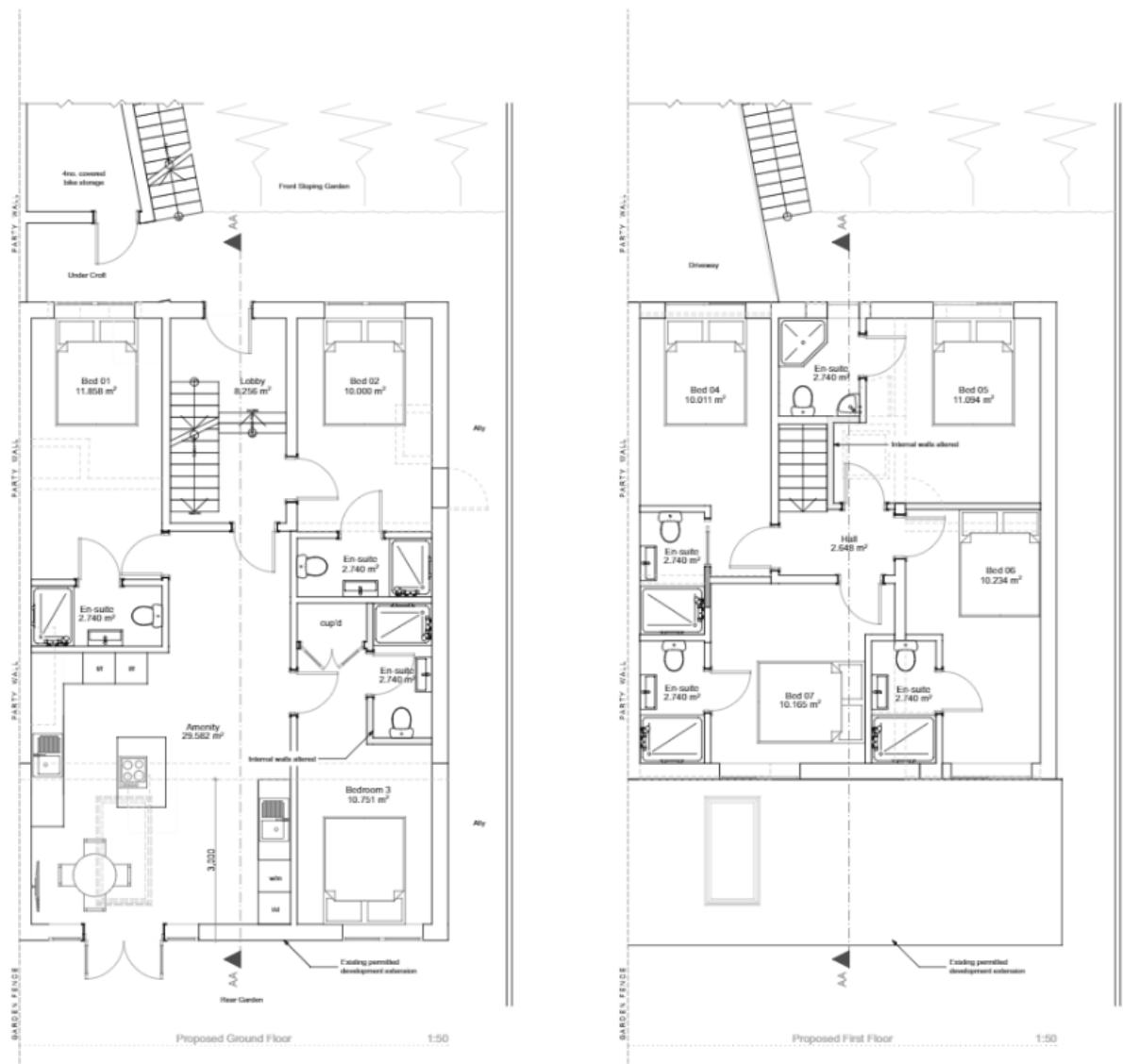
## **5.0 COMMENT**

- 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 has already been granted planning permission for use as an HMO and the application has been made to seek an alternative internal layout allowing 7 occupants rather than 6, an increase in occupation by 1 occupant compared to that granted under the 2022 dual use planning permission. This minor change in occupancy 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 approved 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 2 HMOs out of 25 properties, a percentage of 8%. 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 A HMO License for 7 persons is currently pending at this site at the time of writing this report.
- 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             | 11.858m <sup>2</sup> | 6.51m <sup>2</sup>  |
| Bedroom 2             | 10.000m <sup>2</sup> | 6.51m <sup>2</sup>  |
| Bedroom 3             | 10.751m <sup>2</sup> | 6.51m <sup>2</sup>  |
| Bedroom 4             | 10.011m <sup>2</sup> | 6.51m <sup>2</sup>  |
| Bedroom 5             | 11.094m <sup>2</sup> | 6.51m <sup>2</sup>  |
| Bedroom 6             | 10.234m <sup>2</sup> | 6.51m <sup>2</sup>  |
| Bedroom 7             | 10.165m <sup>2</sup> | 6.51m <sup>2</sup>  |
| Ensuite 1             | 2.74m <sup>2</sup>   | 2.74m <sup>2</sup>  |
| Ensuite 2             | 2.74m <sup>2</sup>   | 2.74m <sup>2</sup>  |
| Ensuite 3             | 2.74m <sup>2</sup>   | 2.74m <sup>2</sup>  |
| Ensuite 4             | 2.74m <sup>2</sup>   | 2.74m <sup>2</sup>  |
| Ensuite 5             | 2.74m <sup>2</sup>   | 2.74m <sup>2</sup>  |
| Ensuite 6             | 2.74m <sup>2</sup>   | 2.74m <sup>2</sup>  |
| Ensuite 7             | 2.74m <sup>2</sup>   | 2.74m <sup>2</sup>  |
| Combined Living Space | 29.582m <sup>2</sup> | 22.5m <sup>2</sup> (as all bedrooms are over 10m <sup>2</sup> ) |



- 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 except for the communal space. 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 22.5m<sup>2</sup>) for combined living accommodation in circumstances where all bedrooms are at least 10m<sup>2</sup> 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.

### Amenity and Parking

- 5.8 The proposal would increase the occupancy of the existing approved HMO by 1 occupant. 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. Compared to the existing, alternative C3 use more activity would again be expected, but not at a level that can objectively be described as resulting in demonstrable adverse effect.
- 5.9 Similarly the minor increase of approved 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 A 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 a permission for a 6 bed HMO is in the process of being implemented. While the site remains in lawful C3 use at the time of concluding this recommendation it is recognised that the change of use to a six bed HMO, in use class C4 can occur at any point. When compared to that use, the addition of only 1 occupant would not be 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 were against three such Planning Committee decisions and the Planning Inspector in those cases 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 must first be noted that it is considered that the existing lawful use is within use class C3 and the proposed change of use to a 7 bedroom HMO is considered to be a material change of use that requires planning permission. For the avoidance of doubt, as discussed above that change of use is considered to fully comply with the Council's Development Plan. However weight can also be given to the fact that it is considered that the increase in occupancy to seven occupants, subsequent to a commencement of the current permission for a 6 bed HMO, is not considered to result in a significant difference in the character of the activities that would occur. As such it is considered that such a change of use would not be material and planning permission would not be 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 use proposed in this application, albeit through implementation of the intervening steps of the current permission, without the benefit of further Planning Permission.
- 5.13 In addition 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 bedspaces of occupation within the dwelling. 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 relatively 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.

**5.15    Impact on Special Protection Areas**

- 5.16    Changing the use of the premises from a C3 dwelling to a 7 bed HMO will result in an increase in occupancy which will have an adverse impact on the Solent Special Protection Area and cause an increase in nitrate output and therefore a condition should be applied requiring mitigation to be secured.

**6.0    CONCLUSION**

- 6.1    As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. As the application itself, notwithstanding any weight that should be given to potential alternative routes to allowing a similar occupation, requires planning permission it is recommended that permission be granted subject to the imposition of conditions requiring implementation of the additional occupancy within 3 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                      Grant conditional permission**

**Conditions:**

**1) Time Limit**

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

**2) Approved Plans**

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: Sui Gen Plans PG.6180.21.6 Rev A, TQRQM22306133813088.

**3) Cycle Storage**

Prior to the occupation of the dwelling as a HMO for 7 persons, secure and weatherproof cycle storage for four or more bicycles shall be provided as shown on the approved plans and retained thereafter for the storage of bicycles. The storage shall accord with Permitted Development rights.

**4) Mitigation - Special Protection Areas**

(a) The development hereby permitted shall not be occupied/brought into use until a scheme each for the (i) mitigation of increased recreational disturbance resulting from an increased population within 5.6km of the Solent Special Protection Areas; and (ii) for an increase in nitrogen levels within the Solent water environment have been submitted to and approved in writing by the Local Planning Authority; and

(b) The development shall then be carried out in full accordance with both schemes of mitigation approved pursuant to part a) of this condition with any mitigation measures for (ii) thereafter permanently retained as approved.

5) Water Efficiency

The proposal hereby permitted shall not (unless otherwise agreed in writing with the LPA) be occupied until written documentary evidence has been submitted to and approved in writing by the Local Planning Authority demonstrating that the development has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)b of the Building Regulations (2010) (as amended). Such evidence shall be in the form of a post construction water efficiency calculator.

The reasons for the conditions are:-

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To provide adequate cycle storage in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.
- 4) In the interest of mitigating harm arising from recreational disturbance of wading birds as a result of new residential accommodation in the Solent SPA, and the increase of output of nutrients into the Solent in accordance with the Habitats Regulations and Policy PCS15 of the Portsmouth Plan.
- 5) To ensure that the development complies with PCS15 of the Portsmouth Plan and does not exceed the scope of Nitrate Mitigation Credits purchased.