

22 MONTGOMERIE ROAD SOUTHSEA PO5 1ED

CHANGE OF USE FROM 6 BEDROOM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO 7 BEDROOM HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS). (RESUBMISSION OF 21/01733/FUL)

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RM4524MOFOP00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RM4524MOFOP00)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Mr Birmingham
Bunked

RDD: 30th November 2022

LDD: 25th January 2023

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to the request of Councillor Vernon-Jackson.
- 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
- 1.4 The application site is a two-storey mid-terrace dwelling with rooms in the roof in a predominately residential area.
- 1.5 The Proposal
- 1.6 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 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms (a ground floor lounge will be converted into a bedroom) but no external operational development forms part of this application.
- 1.7 An appeal against the non-determination of this application has been submitted by the applicant, but has not yet started. The authority to determine the application therefore remains with the Council.

Planning History

- 1.8 21/01733/FUL: Change of use from house in multiple occupation (Class C4) to House in multiple occupation for more than 6 persons (Sui Generis). Committee Refusal (01.06.2022). Reasons for refusal:
 1. *The proposal is considered to be development requiring planning permission 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.*

Furthermore:

On balance the proposed development would give rise to a poor quality living environment for existing and future occupiers of the property due to the insufficient provision of communal living space, having regard to the shortfall of bedroom 6 and bedroom 7. This would be contrary to Policy PCS23 (Design and Conservation) of the Portsmouth Local Plan (2012).

2. 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 nutrient output; with mitigation against these impacts being required. No mitigation measures have been secured and, until such time as this has been provided, the proposal would have a significant detrimental impact on the Special Protection Areas; contrary to Policy PCS13 of The Portsmouth Plan 2012, the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981, and Section 15 of the NPPF 2021.

- 1.10 This decision was appealed, and the appeal dismissed (APP/Z1775/W/22/3297557). It is noted that the inspector did not comment on the whether the change of occupation resulted in development requiring Planning Permission, specifically stating "*However, whether or not a material change of use has occurred is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990 (as amended)*". The appeal was dismissed but only due to a failure to mitigate against increase impact on the SPA, with his concluding comments being "*Whilst I have found that **the development provides satisfactory living conditions for existing and future occupiers**, this does not outweigh the conflict which I have identified with the development plan and the Habitats Regulations. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.*"
- 1.11 21/01246/FUL: Change of use from Class C4 (House in Multiple Occupation) to purposes falling within Class C3 (Dwellinghouse) or Class C4 (House in Multiple Occupation). Conditional Permission (22.11.2021).

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 None received.

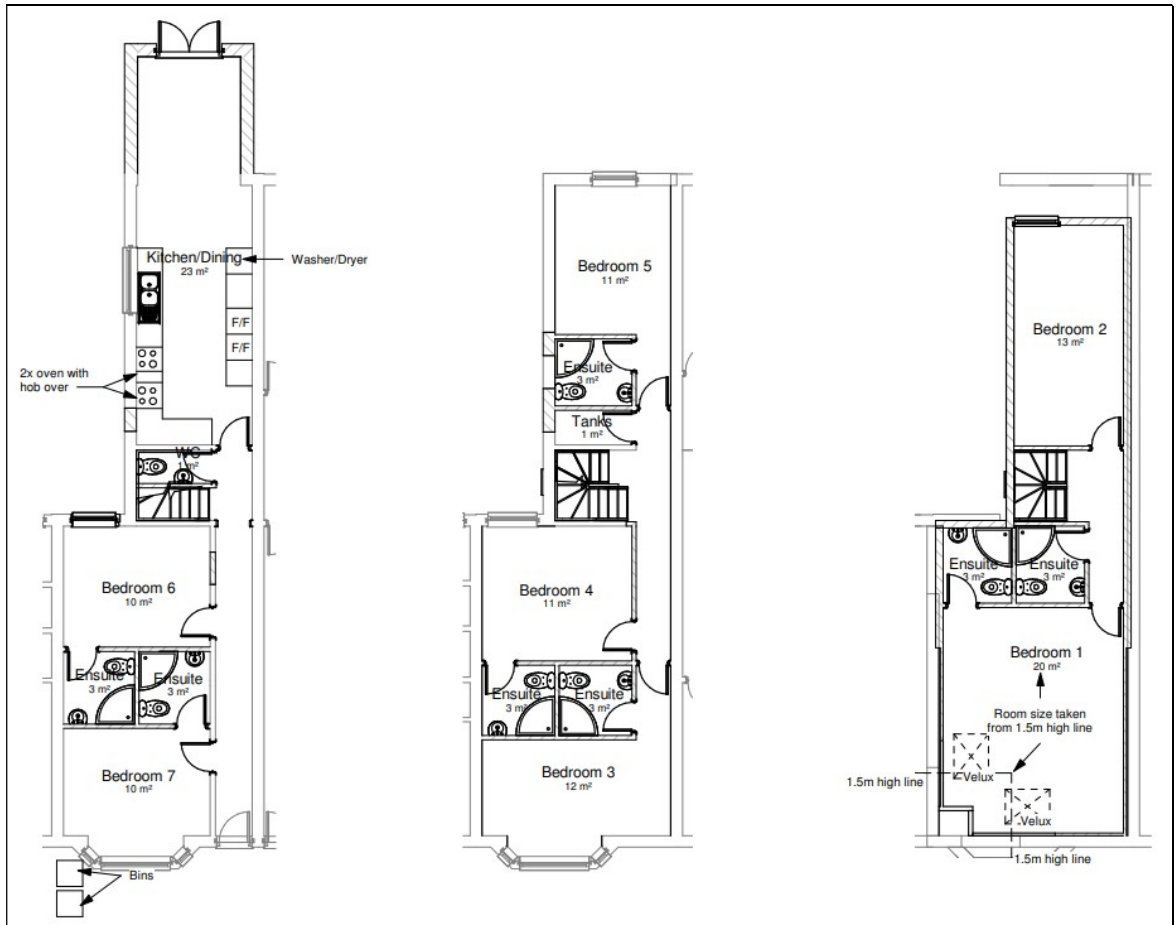
5.0 COMMENT

- 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 32 HMOs out of 80 properties, a percentage of 40%. This proposal of course has no effect on that percentage and the single additional occupant is not considered to have a material adverse impact on amenity at this dwelling. 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 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	15.8m ²	10.00m ²
Ensuite B1	2.8m ²	2.74m ²
Bedroom 2	13.2m ²	10.00m ²
Ensuite B2	2.9m ²	2.74m ²
Bedroom 3	12m ²	10.00m ²
Ensuite B3	2.76m ²	2.74m ²
Bedroom 4	11m ²	10.00m ²
Ensuite B4	2.74m ²	2.74m ²
Bedroom 5	11m ²	10.00m ²
Ensuite B5	2.75m ²	2.74m ²
Bedroom 6	9.5m ²	10.00m ²
Ensuite B6	2.74m ²	2.74m ²
Bedroom 7	9.6m ²	10.00m ²
Ensuite B7	2.75m ²	2.74m ²
Combined Living Space	23m ²	22.5m ²
GF WC	1.3m ²	1.17m ²



5.6 As mentioned above the proposal has already been to appeal and while the internal living conditions did make one of the Council's previous reason for refusal, the Inspector disagreed with this judgement and stating that they were "*satisfied that the development provides satisfactory living conditions for the occupiers of the premises*". On the basis of the information supplied within the application and the previous appeal decision, the resulting layout is considered to result in a satisfactory standard of living environment.

5.7 Amenity and Parking

5.8 The proposal would increase the occupancy of the existing 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.

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 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 the addition of only 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s77 Town and Country Planning Act 1990 ('TCPA') there is a general requirement that development

should not to 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. This is of course the case on this site when the committee previously determined that permission was required for this proposal. Members can note that the 'Lane' appeal decisions of 9 March 2023 were against three similar 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.

- 5.13 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. Consideration to the previous, June 2022, decision of the planning committee at this site has been given, but the weight given to it by professional officers particularly noting the commentary from an inspector in the 'Lane' appeal decisions in March 2023 is very limited. 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.
- 5.14 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 It is not considered that the addition of one additional occupant would result in a significant impact on the drainage/sewage system

5.16 Impact on Special Protection Areas

5.11 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 the 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 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

Unconditional Permission

Conditions: None