

23/00553/FUL

WARD: ST THOMAS

58 SOMERS ROAD, SOUTHSEA, PO5 4PX.

CHANGE OF USE FROM 6-BED/6-PERSON HOUSE IN MULTIPLE OCCUPATION TO 7-BED/7-PERSON HOUSE IN MULTIPLE OCCUPATION

[HTTPS://PUBLICACCESS.PORTSMOUTH.GOV.UK/ONLINE-APPLICATIONS/APPLICATIONDETAILS.DO?ACTIVETAB=DOCUMENTS&KEYVAL=RFQI0GMOL7M00](https://publicaccess.portsmouth.gov.uk/online-applications/applicationdetails.do?activetab=documents&keyval=RFQI0GMOL7M00)

Application Submitted By:

Mrs Carianne Wells of Applecore PDM Ltd.

On behalf of:

Parable Properties Ltd

RDD: 11th May 2023

LDD: 06th July 2023

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee due to increase in number of occupants.

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;
- Parking; and
- Any other material considerations.

1.3 Site and surroundings

1.4 The application relates to a two-storey, mid-terrace dwellinghouse (Class C3) located on the east side of Somers Road as shown in **Figure 1** below. The dwellinghouse is set back from the road by a small front forecourt and to the rear of the property is an enclosed garden. The existing The property is in use as a house is in multiple occupation. The application site within a predominantly residential area characterised by rows of similar two-storey terraced properties with a similar visual style.

Figure 1 - Site Location Plan



1.5 The proposal

1.6 The Application has sought planning permission for the change of use of the dwelling from the current lawful use of a 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 but no external operational development forms part of this application.

The proposed internal accommodation, as shown in **Figure 2** below, comprises the following:

- Ground Floor - Two bedrooms (each with a shower, toilet and handbasin ensuite), and Kitchen/Dining
- First Floor - Three bedrooms (each with a shower, toilet and handbasin ensuite); and
- Second Floor - Two bedrooms (each with a shower, toilet and handbasin ensuite).

There would be no other external operational development forming part of this application. The bin store should be within the forecourt while the cycle would be within a rear garden shed.

1.7 Planning History

- 1.8 (22/00063/GPDC) - Construction of single-storey rear extension that comes out a maximum of 6m beyond the rear wall of the original house with a maximum height of 3m and a maximum height of 2.8m to the eaves. Prior Approval not required.

(22/01654/FUL) - Change of use from house in multiple occupation (Class C4) to purposes falling within dwellinghouse (Class C3) or house in multiple occupation (Class C4). Conditional Permission.

2.0 POLICY CONTEXT

2.1 Portsmouth Plan (2012)

- 2.2 In the addition to the aims and objectives of the National Planning Policy Framework (2023), 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).

2.3 Other Guidance

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

- National Planning Practice (revised 2023)
- The Parking Standards and Transport Assessments Supplementary Planning Document (2014)
- The Solent Recreation Mitigation Strategy (2017)
- The Interim Nutrient Neutral Mitigation Strategy (2022)
- The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD').

3.0 CONSULTATIONS

- 3.1 Private Sector Housing: Based on the layout and sizes provided there are no adverse comments to be made. This property would require to be licenced under Part 2, Housing Act 2004.

- 3.2 Highways Engineer: No objection.

Somers Road is an unclassified residential street with the terraced dwellings and blocks of flats with the majority of parking accommodated through restricted on street parking. The demand for parking on street appears to be high with the level of permits issued higher than the number of spaces.

No traffic assessment has been provided however given the small scale of the development, I am satisfied that the proposal would not have a material impact on the local highway network.

In light of the above, it is not considered that the change would result in a material impact to the highway function or safety.

4.0 REPRESENTATIONS

4.1 No representations have been 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 21 HMOs out of 81 properties, a percentage of 25.9. This proposal of course has no effect on that percentage and the small increase of HMO dwelling occupants in this area is not considered to create any demonstrable imbalance or adverse implications. 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.

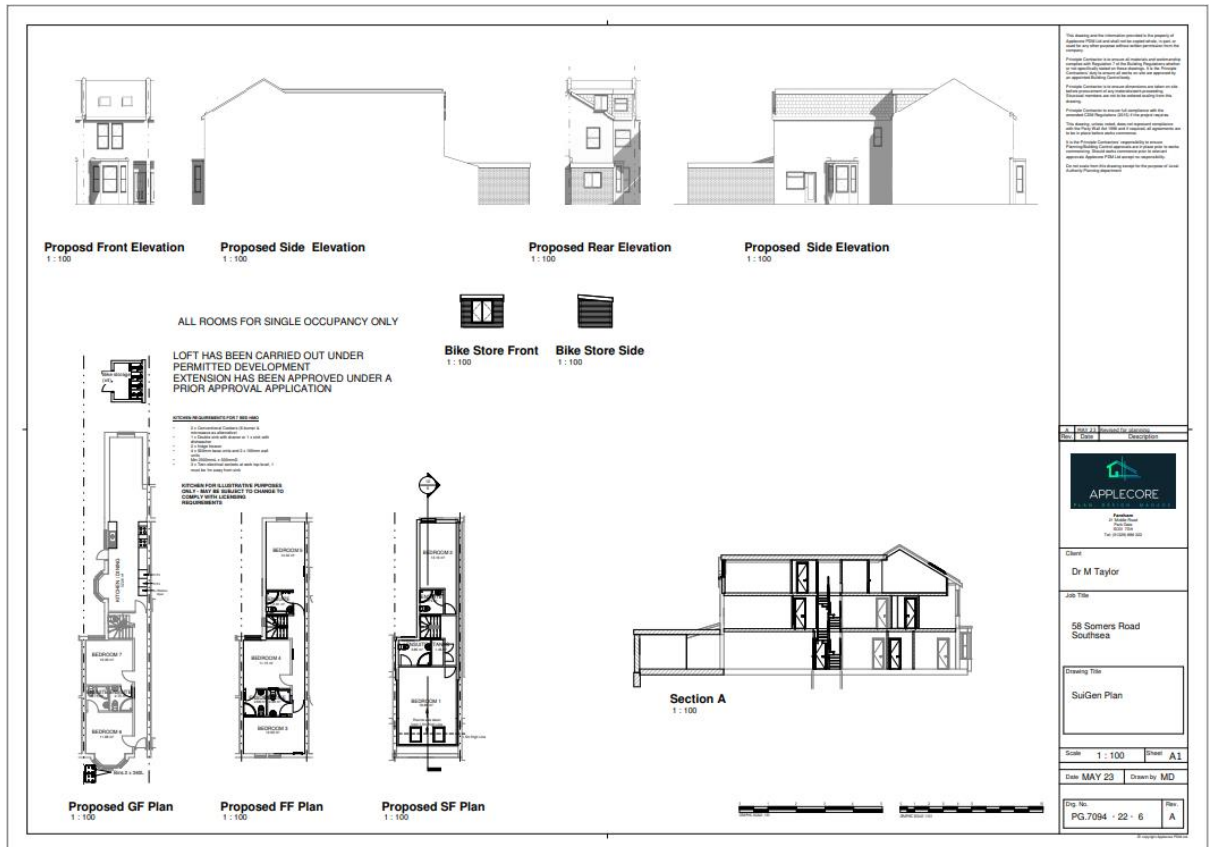
5.5 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 7 occupants. This licence was granted on 20th July 2023.

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:

Table 1 - HMO SPD (Oct 2019) compliance

Room	Area Provided	Size provided for in Guidance
Bedroom 1 (Second floor)	18.89m ²	6.51m ²
Bedroom 2 (Second floor)	13.16m ²	6.51m ²
Bedroom 3 (first floor)	12.03m ²	6.51m ²
Bedroom 4 (first floor)	11.15m ²	6.51m ²
Bedroom 5 (first floor)	14.32m ²	6.51m ²
Bedroom 6 (ground floor)	11.06m ²	6.51m ²
Bedroom 7 (ground floor)	10.30m ²	6.51m ²
Communal Kitchen/Dining area (ground floor)	32.36m ²	34m ² /22.5m ²
Ensuite bathroom 1 (second floor)	3.86m ²	2.74m ²
Ensuite bathroom 2 (second floor)	2.79m ²	2.74m ²
Ensuite bathroom 3 (first floor)	2.88m ²	2.74m ²
Ensuite bathroom 4 (first floor)	2.88m ²	2.74m ²
Ensuite bathroom 5 (first floor)	2.91m ²	2.74m ²
Ensuite bathroom 6 (ground floor)	2.75m ²	2.74m ²
Ensuite bathroom 7 (ground floor)	2.75m ²	2.74m ²



Figures 2 - Proposed Plans

5.7 As is shown in the table above, the proposal results in an internal layout that meets the Council's adopted space standards. Whilst the proposed communal living space comprising a communal kitchen dining area falls short of the required standard, as all the bedrooms sizes are above 10m² this is considered to result in a satisfactory standard of living environment.

5.8 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 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 an 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 lawful 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 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.

5.14 No representations were received from the neighbours and neither the private sector housing nor the Highways have objected to the proposal.

5.15 Impact on Special Protection Areas

5.16 As there is a measurable increase in occupancy from 2.4 persons (for a C4 dwelling) to 7 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.

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 3 years (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 PLANNING PERMISSION