

23/00568/FUL

WARD: CENTRAL SOUTHSEA

198 FAWCETT ROAD, SOUTHSEA, PORTSMOUTH PO4 0DP

CHANGE OF USE FROM A 5-BED/5-PERSON HOUSE IN MULTIPLE OCCUPATION TO A 7-BED/7-PERSON HOUSE IN MULTIPLE OCCUPATION

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**Application Submitted By:**

Mr Tim Willment  
HMO Designers

**On behalf of:**

Burton

**RDD:** 11th May 2023

**LDD:** 17th July 2023

## **1.0 SUMMARY OF MAIN ISSUES**

1.1 This application is brought before Planning Committee due to the blanket call-in by Councillor Vernon-Jackson for this type of proposed change of use.

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 and internal space
- Other material considerations

### **1.3 Site and surroundings**

1.4 The application site is a two storey mid-terrace property which is located in Fawcett Road. The surrounding area is densely populated and dominated by similar two storey terrace properties. To the east is the Golden Eagle public house and to the west the Fawcett Inn.

### **1.5 The Proposal**

1.6 The Applicant has sought planning permission for the change of use of the dwelling from a 5-bed/5-person House in Multiple Occupation to a 7-bed/7-person House in Multiple Occupation. This change in occupancy would involve the repurposing of internal rooms but no external operational development forms part of this application.

### **1.7 Planning History**

1.8 22/00159/CPE - Application for certificate of lawful development for the existing use of dwelling house as a house in multiple occupation (Class C4) - Certificate Granted.

## **2.0 POLICY CONTEXT**

2.1 In addition to the aims and objectives of the National Planning Policy Framework (2023), 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 Interim 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: this property would require to be licenced under Part 2, Housing Act 2004. No adverse comments for the proposed size and layout of the property.
- 3.2 Transport: The parking requirement for a 5 bedroom/ 5 person and 7 bedroom/ 7 person HMO is the same 2 vehicle spaces and 4 cycle spaces - the proposal does not increase the parking demand associated with the site.

### 4.0 REPRESENTATIONS

- 4.1 Four letters of objection have been received from three addresses with the following concerns:
- Noise
  - Parking
  - Drainage
  - Anti-social behaviour
  - Over development - too many people in the household
  - Party wall issues
  - Increase in litter/ rubbish
  - Increase in traffic

### 5.0 COMMENT

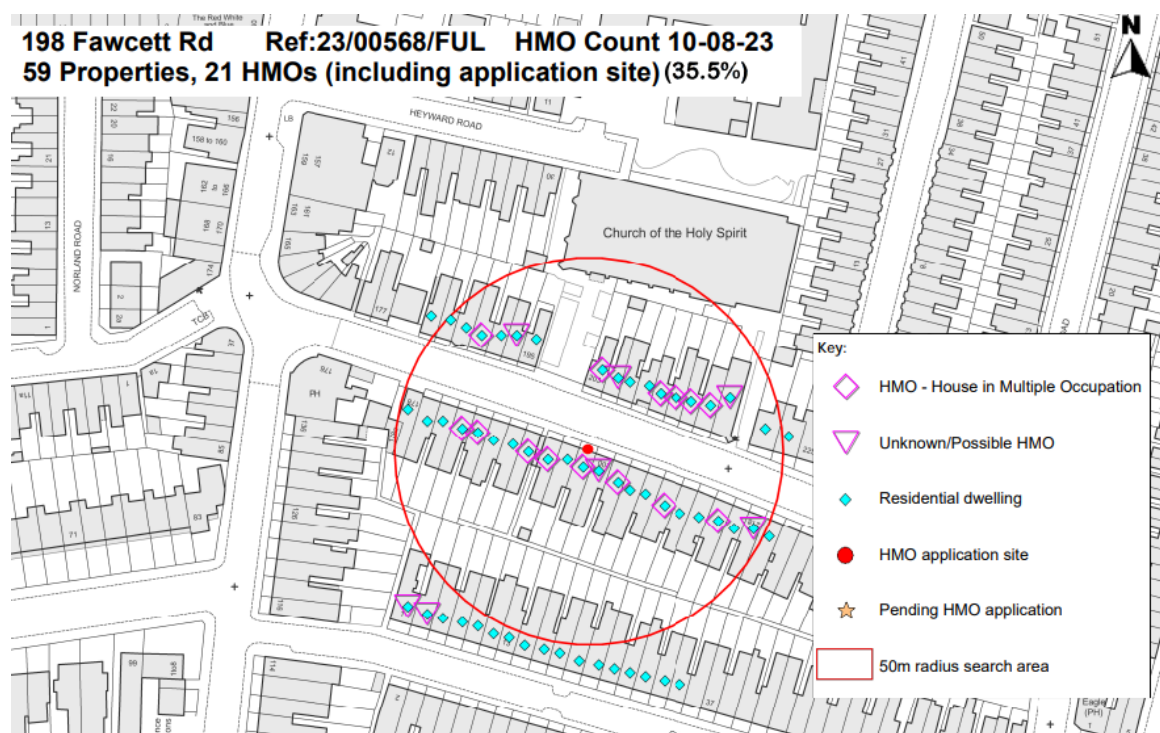
- 5.1 The main issues to consider in the determination of this application are

- i. Principle of development;
- ii. Impacts on residential amenity; and
- iii. Other issues.

#### 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 2 occupants.
- 5.5 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.
- 5.6 The Certificate of Lawfulness granted last year establishes that the lawful use of the property is already a Class C4 HMO, *so the relatively minor increase in occupancy*

*proposed does not change the local mix of dwellings* - the proposal would have no impact on the guidance for a mixed and balanced community. For reference, it can be noted that the relevant 50m radius area is currently made up of 21 HMOs out of 59 properties, a percentage of 35.5%. 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, compared to that already consented these considerations are not brought into effect.



5.7 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. Further below are the existing and proposed floor plans. 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	13.04m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite 1	2.82m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 2	10.08m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite 2	2.75m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 3	11.68m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4	10.11m <sup>2</sup>	6.51m <sup>2</sup>
Shared 'bathroom'	3.26m <sup>2</sup>	2.74m <sup>2</sup>
Bedroom 5	13.03m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite 5	2.99 m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 6	10.56m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite 6	2.8m <sup>2</sup>	2.74 m <sup>2</sup>
Bedroom 7	12.7m <sup>2</sup>	6.51m <sup>2</sup>
Ensuite 7	2.8m <sup>2</sup>	2.74 m <sup>2</sup>

Kitchen/Dining/Living	22.84m <sup>2</sup>	22.5m <sup>2</sup> (if all bedrooms exceed 10m <sup>2</sup> )
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### Proposed Layout:



5.8 As is shown in the table above, the proposal results in an internal layout that performs positively against the internal space standards set out in the Council's HMO SPD. It is also considered that the rooms have an adequate layout, and access to natural light. As such the scheme is considered on balance to adhere to the objectives of Local Plan Policy PCS23.

### 5.9 Amenity and Parking

5.10 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. Further to this there have been no objections raised from the Highways Department.

5.11 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.

### 5.12 Other Material Considerations

5.13 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 two 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. 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 where 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.

- 5.14 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 lawful carry out the change in occupation without the benefit of Planning Permission.
- 5.15 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 two additional bedspaces 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.

- 5.16 The letters of objection refer to the increase in persons, HMO's, anti-social behaviour, noise, parking and other issues. Whilst such matters are not usually a planning matter the development would only result in an additional 2 additional people. Such an increase would not result in a material increase in the potential for such behaviour and would not thereof represent a reason to withhold planning permission.

#### Impact on Special Protection Areas

- 5.17 The application is for Class C4 small HMO to a Sui Generis Large HMO. 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 applicant's 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.**