

118 OPHIR ROAD FRATTON PORTSMOUTH PO2 7NE

CHANGE OF USE FROM PURPOSES FALLING WITHIN DWELLINGHOUSE (CLASS C3) TO 8 PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS)

[23/01193/FUL | CHANGE OF USE FROM A CLASS C3 DWELLINGHOUSE TO A 8-BED/8-PERSON HOUSE IN MULTIPLE OCCUPATION | 118 OPHIR ROAD PORTSMOUTH PO2 9ET](#)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Chana
Shere Properties Ltd

RDD: 22th September 2023

LDD: 14th November 2023

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee at the request of Councillor Russell Simpson and Councillor Daniel Wemyss (citing problems caused by HMOs in relation to parking), and due to multiple objections.

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 terraced dwelling 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 Class C3 dwellinghouse use to allow up to 8 individuals to live together as an HMO. The property would be extended at the rear ground floor under Prior Approval 23/00057/GPDC, and at roof level under Permitted Development rights.

1.5 Planning History

1.6 23/00057/GPDC: Construction of single storey rear extension extending 6m beyond the rear wall, with a height of 2.8m to the eaves and a maximum height of 3m.

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 Nutrient Neutral Mitigation

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.
- 3.2 Highways: the addition of up to five bedrooms would increase the number of residents driving around hunting for a car-parking space, although this is an issue of residential amenity. The highways team do not consider the size of development would lead to a material impact to the function of the highway.

4.0 REPRESENTATIONS

- 4.1 44 representations have been received (including one from Cllr Simpson), objecting to the proposal on the following grounds:
- a) strain on existing resources in the street, eg, sewerage and waste water and water and gas pressure. increased demand on NHS services/GPs, increased pressure on refuse collection, vermin, lowered value of properties, electricity supply will not cope with a winter surge and so could cause power cuts.
 - b) Splitting 3 bedroom houses into larger dwellings will have a detrimental impact on the local community regarding noise and traffic.
 - c) Parking problems in the area would increase, especially putting strain on the existing number of electric vehicle charging points. One neighbour is disabled and often has to park some distance from their home, potential impact of losing a space outside their home.
 - d) Too many HMO applications, unclear on number allowed/practical on Ophir Road, the area would be approaching the 10% limit as set out in the HMO SPD.
 - e) impact on families looking for housing near to local education facilities.
 - f) loss of residential character of area due to loss of family dwelling, poor impact on family well-being. Failure to use brownfield sites instead of family homes.
 - g) The extension having a negative impact on the light and privacy of neighbours. One resident highlighted that they foster and there could be safeguarding issues, overlooking concerns into children's bedrooms.
 - h) The fire risk to inhabitants of the proposed HMO, as well as the lack of sufficient facilities/amenities within the property to sustain 8 people.
 - i) One resident has highlighted they have a family with additional needs, such as Anxiety and Epilepsy, especially struggling with noise. Approval of HMO next to their dwelling would cause a high level of impact on their residential amenity and be detrimental to their physical and mental well-being.
 - j) Empty shops being underutilised
 - k) The age of the buildings and their ability to sound-proof noise,
 - l) Existing HMOs by the same developer having issues in the surrounding area. Previous schemes not following the approved plans.
 - m) The size of the forecourt not being sufficient for waste for a 8 bedroom house, loss of front gardens

5.0 COMMENT

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

- Principle of Development including compliance with policy
- Impacts on Amenity including parking
- Other material considerations

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 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.
- 5.5 The HMO count plan shows there are currently no HMOs surrounding the property in the 50m radius. Were the application to be approved, there would be one HMO out of the 63 houses and flats in the 50m radius, equalling 1.59% (there are seven properties that are assumed to have been houses originally, now converted to fourteen flats). In accordance with the HMO SPD, this would be acceptable in the judgement of the application, being below the policy threshold of 10%.
Whilst this is the best available data to the Local Planning Authority (LPA) and is updated on a regular basis, there are occasions where properties have been included or omitted from the database in error or have lawfully changed their use away from Class C4 HMOs without requiring the express permission of the LPA. Following further Officer Investigation, including current applications for HMOs in the 50m radius, no additional HMOs have been uncovered by the Case Officer.

A further policy strand introduced in July 2018, amended in October 2019, seeks to ensure that the amenity and standard of living environment of neighbours and local occupiers is protected. This is explained within Appendix 6 of the HMO SPD, which references the specific proximity of HMOs to adjacent dwellings and how these circumstances may give rise to a particular risk of harm to amenity and disturbance. These are where: the granting of the application would result in three or more HMOs adjacent to each other, or where the granting of the application would result in any residential property being 'sandwiched' between two HMOs. There is no conflict caused by this proposal with this guidance.

Having regard to the above, the proposal would comply with the aims and objectives of Policies PCS19 and PCS20 of the Portsmouth Plan (2012).



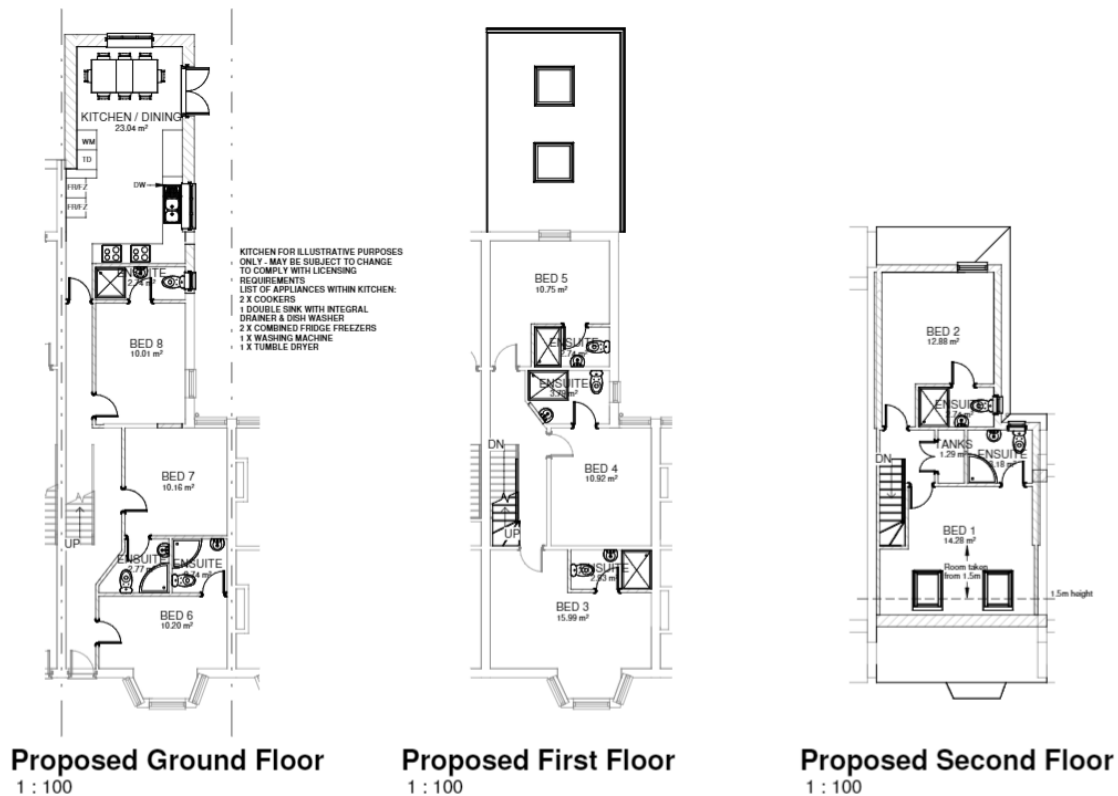
Amenity and Parking

- 5.6 The repurposing of internal rooms to accommodate the likely 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	14.28m ²	10.00m ²
Bedroom 2	12.88m ²	10.00m ²
Bedroom 3	15.99m ²	10.00m ²
Bedroom 4	10.92m ²	10.00m ²
Bedroom 5	10.75m ²	10.00m ²
Bedroom 6	10.20m ²	10.00m ²
Bedroom 7	10.16m ²	10.00m ²
Bedroom 8	10.01m ²	10.00m ²
Combined Living Space	23.04m ²	22.5m ²
Ensuite B1	3.18m ²	2.74m ²
Ensuite B2	2.74m ²	2.74m ²
Ensuite B3	2.93m ²	2.74m ²
Ensuite B4	3.79m ²	2.74m ²
Ensuite B5	2.74m ²	2.74m ²
Ensuite B6	2.74m ²	2.74m ²
Ensuite B7	2.77m ²	2.74m ²
Ensuite B8	2.74m ²	2.74m ²

- 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 area. However, 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 The proposal would likely increase the occupancy of the existing dwelling. While this could have a proportionate increase in activity within and coming and going from the property, a 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 C3 use, more activity would again be expected, but not at a level that can objectively described as resulting in demonstrable adverse effect.
- 5.9 Similarly, an 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 or Class C3 house with 4 or more bedrooms. The existing Class C3 property is shown with three bedrooms, which has an expected level of parking of 1.5 spaces, a difference of just 0.5 spaces from the proposal. Consequently, the proposal is not materially different to the Council's adopted guidance on parking provision, and a refusal on parking grounds could not be sustained at appeal, given the proximity to public transport, shops, employment and many other services.
- 5.10 Other Material Considerations
- 5.11 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 Class C3 and the proposed change of use to a

8 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.

- 5.12 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 8 bed HMO will result in a likely increase in occupancy which will have an adverse impact on the Solent Special Protection Area, through nitrates, and recreational bird disturbance. The Applicant has agreed to make the relevant mitigation, by way of a legal agreement.

5.17 Impact on refuse and recycling

- 5.18 In Portsmouth an 8 bed HMO is provided with 720 litres of bin capacity, usually in the form of a single 360l bin for recycling and a single 360l bin for residual waste. Considering the surrounding area and refuse capacity, there is not expected to be an identifiable harmful impact on waste collection/capacity as a result of the granting of this permission.

- 5.16 Changing the use of the premises from a C3 dwelling to a 8 bed HMO will result in a likely increase in occupancy which will have an adverse impact on the Solent Special Protection Area, through nitrates, and recreational bird disturbance. The Applicant has agreed to make the relevant mitigation, by way of a legal agreement.

5.17 Human Rights and the Public Sector Equality Duty ("PSED")

The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.

Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relation between those who share a relevant protected characteristic and those who do not. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered

that the officer's recommendation would breach the Council's obligations under the Equality Act 2010.

The matters of objection raised concerning anxiety and mental health are noted but it cannot be assumed that this proposal would necessarily lead to or exacerbate such matters. In the event of planning consent being granted, the Applicant's attention would be drawn to working with neighbours, to try and minimise disruption during the conversion and extension of the property.

5.18 Other Matters and Considerations

Concerns have been raised by neighbouring residents regarding the pressure the use would put on local services. However, having regard again to the existing lawful use of the property as a self-contained dwellinghouse, it is considered the use of the property would not have a significantly greater impact on local services than the existing use which could be occupied by a similar number of occupants.

As mentioned above the rear dormer and rear extension accords with Permitted Development / Prior Approval and therefore the Local Planning Authority cannot give consideration towards the impact of the built form on the neighbour amenity.

Property values are not a material planning consideration. Matters of fire safety are for Building Regulations and/or licensing, not a planning application. The front forecourt does appear of sufficient size for bin storage.

6.0 CONCLUSION

- 6.1 As detailed above the application is considered to fully comply with the relevant policies of the Local Plan and the objectives of the National Planning Policy Framework (2023). 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); a cycle storage condition; and a water efficiency condition.

RECOMMENDATION I - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to:

- (a) first receiving 'no objection' from Natural England concerning the LPA's Appropriate Assessment for SPA mitigation, and;
- (b) satisfactory completion of a Legal Agreement necessary to secure the mitigation of the impact of the proposed development on Solent Special Protection Areas (recreational disturbance and nitrates) by securing the payment of a financial contribution.

RECOMMENDATION II - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to add/amend conditions where necessary.

RECOMMENDATION III - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to refuse planning permission if a Legal Agreement has not been satisfactorily completed within three months of the date of this resolution.

Conditions:

1) Time Limit

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

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

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: 04 Sui Gen Plan, received 21st September 2023. Site Plan, received 21st September 2023.

Reason: To ensure the development is implemented in accordance with the permission granted.

3) Cycle Storage

Prior to the occupation of the dwelling as a HMO for 8 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.

Reason: To provide adequate cycle storage in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.

4) 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.

Reason: To ensure that the development complies with PCS15 of the Portsmouth Plan and does not exceed the scope of Nitrate Mitigation Credits purchased.