

69 KENSINGTON ROAD PORTSMOUTH PO2 0EA

**CHANGE OF USE FROM A CLASS C3 DWELLINGHOUSE TO A 7-BED/7-PERSON HOUSE
IN MULTIPLE OCCUPATION**

[23/01174/FUL | Change of use from a Class C3 dwellinghouse to a 7-bed/7-person House
in Multiple Occupation | 69 Kensington Road Portsmouth PO2 0EA](#)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Pell - Pellchester Green Property Ltd

RDD: 19th September 2023

LDD: 21st November 2023

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee by reason of the number of 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; and
- Other material considerations.

1.3 Site and surroundings

1.4 The application site is an end-of-terrace dwelling in a predominately residential area. It is located at the western side of Kensington Avenue.

1.5 The Proposal

1.6 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 7 individuals to live together as an HMO.

1.7 The proposed internal accommodation, comprises the following:

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

1.8 The Applicant intends to construct a single storey rear/side extension, a rear dormer extension within the main roof and insert a rooflight within the front roof slope under permitted development, as shown in the drawing below, to facilitate the enlargement of the property before undertaking the proposed change of use. The extensions and alterations can be completed under permitted development regardless of the use of the property.

1.9 Given that the external alterations and enlargements to the property are considered to be permitted development, it is not possible to consider the design or amenity impact of the rear dormer or the ground floor extension as part of this application. There would be no

external operational development forming part of this application with the exception of the siting of a cycle store within the rear garden, details of which could be secured by planning condition.

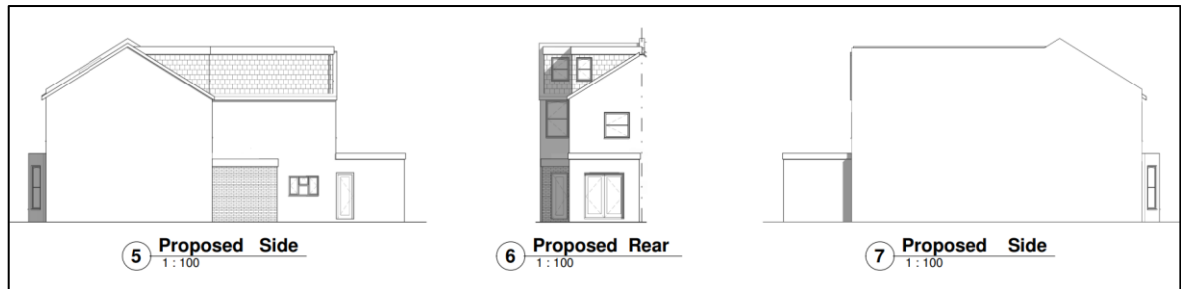


Figure 1: Proposed external alterations.

1.10 Planning History

- 1.11 23/00035/GPDC: Construction of single storey rear extension, extending 5m beyond the rear wall, with a height of 2.8m to the eaves and a maximum height of 3m. Prior-Approval Required and Refused (28.06.2023).
- 1.12 23/00047/GPDC: Construction of single storey rear extension, extending 4.9m beyond the rear wall, with a height of 2.8m to the eaves and a maximum height of 3m. prior approval Required and Refused (21.08.2023).

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 Strategy (2022), and The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD')

3.0 CONSULTATIONS

- 3.1 Private Sector Housing: Required to be licenced under Part 2, Housing Act 2004.
- 3.2 Highways: Given the additional of up to four bedrooms, there is the potential for increased instances of residents driving around hunting for a car-parking spaces, although this is an issue of residential amenity. We do not consider the size of development would lead to a material impact to the function of the highway. Cycle parking should be implemented prior to occupation.

4.0 REPRESENTATIONS

- 4.1 12 representations have been received from 9 addresses including one from Councillor Swann, objecting to the proposal on the following grounds:
- a) Increase in waste due to increase in bathrooms;
 - b) Parking concerns;
 - c) Loss of family house stock;
 - d) Impact on road and sewage infrastructure;
 - e) Works already gone ahead;
 - f) Noise and disturbance from building works;

- g) Waste and rubbish from building works;
- h) Loss of light;
- i) Impact from noise of the HMOs;
- j) Health and Safety of the works;
- k) Structural damage from the works;
- l) Loss of privacy;
- m) Impact on local services;
- n) Fire hazards; and
- o) Anti-social behaviour.

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 two HMOs in a 50m radius of the property. Were the application to be approved, there would be three HMOs out of the 49 houses and flats in the 50m radius, equalling 6.12%. The proposal is therefore in accordance with the HMO SPD, as it is 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.

5.6 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.



Figure 2: 50m radius of HMOs

- 5.7 Having regard to the above, the proposal would comply with the aims and objectives of Policies PCS19 and PCS20 of the Portsmouth Plan (2012).
- 5.8 Amenity and Parking
- 5.9 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	10.08m ²	10.00m ²
Bedroom 2	11.3m ²	10.00m ²
Bedroom 3	10.21m ²	10.00m ²
Bedroom 4	10.24m ²	10.00m ²
Bedroom 5	10.75m ²	10.00m ²
Bedroom 6	10.01m ²	10.00m ²
Bedroom 7	11.04	10.00m ²
Combined Living Space	23.03m ²	22.5m ²
Ensuite B1	2.74m ²	2.74m ²
Ensuite B2	2.74m ²	2.74m ²
Ensuite B3	2.74m ²	2.74m ²
Shared Bathroom (FF)	3.74m ²	2.74m ²
Ensuite B7	2.74m ²	2.74m ²
Ensuite B8	3.96m ²	2.74m ²

- 5.10 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 in accordance with your HMO SPD, which at para 2.6 advises that more detailed guidance, beyond the headline requirements should be referred to within the Councils 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. Aside from room sizes alone, layout and light appear satisfactory.

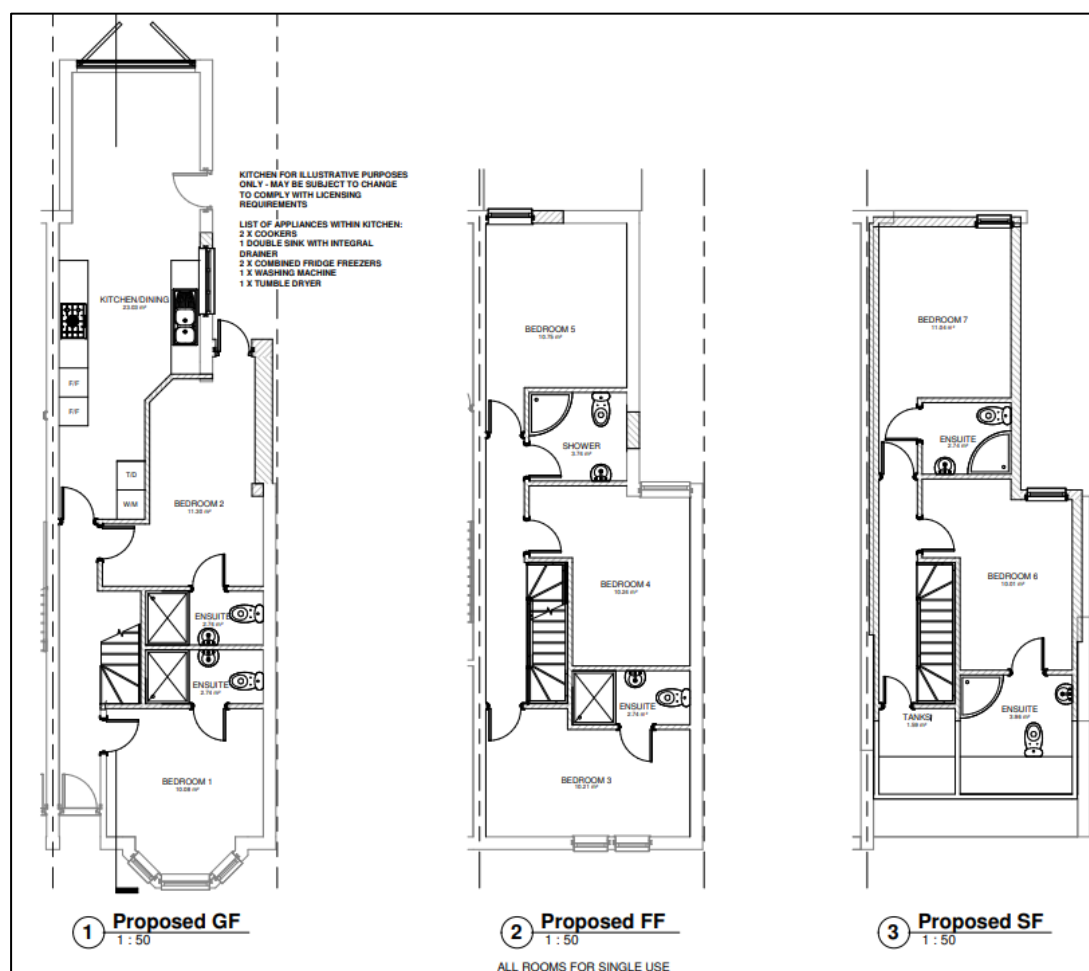


Figure 3: Proposed Floorplans

- 5.11 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 be described as resulting in demonstrable adverse effect.
- 5.12 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.
- 5.13 Other Material Considerations
- 5.14 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 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.
- 5.15 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 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 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 3.31 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.
- 5.16 Impact on Special Protection Areas
- 5.17 Changing the use of the premises from a C3 dwelling to a 7 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.
- 5.18 Impact on refuse and recycling
- 5.19 In Portsmouth a 7 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.

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

5.21 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.

5.22 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.

5.23 Other Matters and Considerations

5.24 It is not considered that the increase in occupation would, in and of itself, give rise to any significant impact upon the sewage system or other local services.

5.25 The consideration of a loss of a C3 Dwelling is set out within the PCS20 of the Portsmouth Plan (2012) which the proposal is considered to be acceptable.

5.26 The works being undertaken at the property are as stated Permitted Development and therefore can go ahead without Planning Permission. The noise or waste from these works would not be material to the Application.

5.27 Fire risk would be managed through the Building Control and Private Sector Housing Teams and therefore would not be a planning consideration.

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 and SPA mitigation.

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: Location PLAN - TQRQM23130110655513; Block Plan - TQRQM23130100813410; Sui Gen Plan - PG.8060.23.6 Rev A; and 4 Cycle Storage Shed - 1.

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 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.

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.