

23/01584/CPL

WARD:ST THOMAS

73 MARGATE ROAD SOUTHSEA PO5 1EY

APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT FOR PROPOSED USE AS A 7-BED/7-PERSON HOUSE IN MULTIPLE OCCUPATION

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Application Submitted By:

Mrs Chris Pipe
Planning House

On behalf of:

Mr Briscoe

RDD: 19th December 2023

LDD: 20th March 2024

1.0 SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before the Planning Committee at the request of the Councillor Vernon Jackson.
- 1.2 The sole issue for consideration in the determining of this application is whether the increase from six occupants to seven occupants in an existing Class C4 House in Multiple Occupation would result in a material change of use as defined under s55 of the Town and Country Planning Act 1990 and therefore whether planning permission is required.
- 1.3 Site and surroundings
- 1.4 The application site is a two storey terraced dwelling with rooms in the roof in a predominately residential area.

2.0 PROPOSAL

- 2.1 This application seeks to demonstrate that increasing the number of occupiers in an existing lawful HMO by one to make it a seven person House in Multiple Occupation (HMO) would not result in a material change of use and therefore would not require planning permission.

2.2 Plans - Existing and Proposed Floorplans.



2.3 Relevant Planning History

2.4 The Local Planning Authority (LPA) refused application reference 23/00905/FUL for Change of use from 6-bed/6-person House in Multiple Occupation to 7-bed/7-person House in Multiple Occupation in November 2023. It was considered that:

- The development hereby proposed is development constituting a material change of use due to the impact on parking, increase in waste, noise and antisocial behaviour.

Further:

1. *The proposed development does not provide a suitable living environment for future residents as the insufficient space/layout of two bedrooms will place undue pressure on the small size communal living area. This is contrary to policy PCS23 of The Portsmouth Plan 2012 and the Houses In Multiple Occupation Supplementary Planning Document (2019).*
2. *The proposal, in combination with other housing developments in the city is considered to have a likely significant effect on the conservation objectives of relevant designated sites. This impact, caused by recreational disturbance and increase nitrate production has not been mitigated and planning permission should therefore be withheld in accordance with the Habitats Regulations in accordance with guidance within the Solent Recreation Mitigation Strategy and Updated Interim Nutrient Neutral Strategy.*

2.5 This refusal is currently with the Planning Inspector (Ref: APP/Z1775/W/23/3335595).

2.6 20/00972/CPL: Application for a lawful development certificate for a proposed loft conversion, to include rear dormer and outrigger roof extensions the installation of 2 no. roof lights to front roofslope. Granted 22.12.2020.

2.7 20/00218/CPE: Application for Certificate of Lawful Development for the existing use as a house in multiple occupancy (Class C4). Granted 01.07.2020. Evidence submitted within the certificate showed that the property had been primarily occupied by between 4 unrelated tenants from 2011-2021.

3.0 **POLICY CONTEXT**

3.1 Not applicable.

4.0 **CONSULTATIONS**

4.1 None.

5.0 **REPRESENTATIONS**

5.1 As the application is for a Certificate of Proposed Lawfulness and not a Planning Application, no neighbour publication is required under the Council's Statement of Community Involvement.

6.0 **COMMENT**

6.1 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 TCPA, 'development' is defined as the making of a material change in the use of any buildings or land. For a change to be material there must be some significant difference in the character of the activities from what was going on previously as a matter of fact and degree.

6.2 The Committee decision on the previous Full Planning Application is given significant weight by Officer in their assessment of whether the proposed change of use constitutes development. The reasons for considering the change to be development in this particular instance in the Committee view was due to the increase in parking, waste, noise and antisocial behaviour. Similar justifications have been provided in recent appeal decisions at 83 Margate Road (21/01287/CPE/APP/Z1775/X/22/3298877) and 127 Powerscourt Road (21/01417/CPL/APP/Z1775/C/23/3327364), in both of those instances the Planning Inspectorate took an alternative view and did not consider the change or increase in these

matters to result in a material change of use. To examine the possible matter raised they will be taken individually.

- 6.3 The use of the property under the Council's Parking standards and transport assessments SPD would be expected to provide 2 parking spaces as either a 6-person/6-bedroom or 7-person/7-bedroom HMO and therefore considered unlikely that the additional occupant would result in a material impact on parking. The require cycle storage for the site would also be unchanged.
- 6.4 The number of bins required for the property as either a 6 or a 7 person HMO would also be unchanged, the standard of 360-litre refuse bin and a 360-litre recycling bin is the same for a 6- or 7-bedroom HMO.
- 6.5 The additional bedroom is to be created within the roof space of the building. The use of the space as 1 or 2 bedrooms is unlikely to result in any demonstrable change in the level of noise for the adjacent neighbours. Further while the occupation will increase, the use of the communal space is unlikely to change in function and the addition of one occupant is therefore not considered to result in a material change to noise levels within the property.
- 6.6 There is no evidence linking higher occupation levels within HMOs of this nature to increases in anti-social behaviour.
- 6.7 It is therefore considered in the Officer's view, that in this instance, the increase in occupancy from a six-person, six-bedroom House in Multiple Occupation to a seven-bedroom, seven person House in Multiple Occupancy would not result in a significant difference in the character of the activities that would occur within the property or the character of the area. Therefore, there would not be a material change of use, and so planning permission is not required.
- 6.8 This view is supported by the Campbell Properties enforcement appeals dated 29th April 2021. The Planning Inspector considered a number of similar changes of use at six different properties and, on their individual merits, identified examples whereby a change in the occupancy of an existing HMO with up to six occupants to seven, and a change in occupancy from up to six occupants to eight would not result in a material change of use. While the Inspector recognised the increase of one or two occupants would result in a more intensive use of the property, he was of the opinion that there would not be material effects arising from a seventh or eighth resident. The Inspector was of the opinion the change of use from a six person to seven or eight person HMO was a continuation of the existing use.
- 6.9 In a further three recent decisions, received on 9th March 2023, for applications 20/00964/FUL (123 Talbot Road), 20/00963/FUL (48 Jessie Road) and 20/00965/FUL (56 Jessie Road). The planning inspector noted the similarities with the Campbell Properties cases and agreed with the reasoning in that ruling. The inspector disagreed that the provision of an additional bedroom would result in unacceptable living conditions for current and future occupiers.
- 6.10 Two more recent certificate appeal decisions received on 20th November 2023 and 22nd January 2024, for 83 Margate Road (21/01287/CPE) and 127 Powerscourt Road (21/01417/CPL) also considered that the change of use from a 6-person/6-bedroom or 7-person/7-bedroom HMO. Both appeals where allowed, with the Inspector noting the similarities to the above cases.
- 6.11 The Council's previous decision at this site, including the conclusion that planning permission was required to increase the occupancy from 6 to 7 is a material planning consideration, however having regard to the assessment above and the fact the further listed appeal decisions are also material planning considerations, the LPA is of the opinion that increasing the number of occupants at no.73 Margate Road from six to seven persons, on the specific merits and facts of the case, would not result in a material change of use,

meaning planning permission would not be required and the proposed change of use is lawful.

7.0 **CONCLUSION**

7.1 The LPA is of the opinion that increasing the number of occupants at no.73 Margate Road from six to seven persons would not result in a material change of use as defined under s55 of the Town and Country Planning Act 1990, meaning planning permission would not be required and the proposed change of use is therefore lawful.

8.0 **RECOMMENDATION**

8.1 Grant Certificate of Lawfulness.