

23/01420/FUL

WARD:CHARLES DICKENS

25 TOTTENHAM ROAD PORTSMOUTH PO1 1QL

**CHANGE OF USE FROM 5-BED/6-PERSON HOUSE IN MULTIPLE OCCUPATION TO 7-BED/7-PERSON HOUSE IN MULTIPLE OCCUPATION**

**WEBSITE LINK**

[23/01420/FUL | Change of use from 5 bedroom house in multiple occupation, to 7 person/7 bedroom house in multiple occupation. | 25 Tottenham Road Portsmouth PO1 1QL](#)

**Application Submitted By:**

Mr Willment  
HMO Designers

**On behalf of:**

Zengin

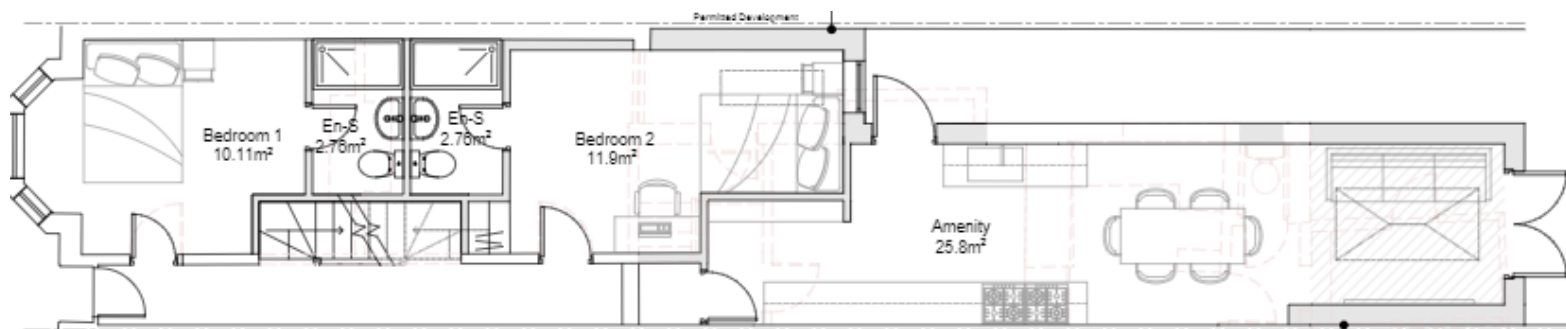
**RDD:** 14.11.2023

**LDD:** 10.01.2024

**UPDATE FOLLOWING THE COMMITTEE MEETING OF 31<sup>ST</sup> JANUARY 2024**

An officer report was previously published for the Planning Committee meeting of 31<sup>st</sup> January. The report stated that the ground floor rear-wing side extension shown on the plans was Permitted Development. However, between publication of the report and the actual meeting, officers identified the Applicant's error that the proposed extension was Permitted Development, when in fact it was not. The application was therefore withdrawn from the Agenda (i.e. not considered at all by the Planning Committee), and the Applicant has re-assessed how to provide an amended layout and seek to gain planning permission.

The Applicant has deleted the previously-shown rear-wing side extension. In order to still achieve the necessary minimum of 22.5sqm of communal kitchen-dining space, the Applicant has provided a re-arranged internal layout of Bedroom 2 and the communal kitchen-dining room. The bedroom would incorporate a rear extension achieved under Permitted Development rights, and the rear wing rear extension, also Permitted Development, would be maintained as per the January plans. Because both are Permitted Development, the effects of both on neighbours' amenities cannot be considered by the Local Planning Authority. Otherwise, for completeness, Bedroom 1 and its ensuite have changed size marginally. Therefore, all the rooms still meet the size requirements of the HMO SPD, and all would have reasonable layout and natural light. The amended plans, and schedule of room sizes and SPD standards, are provided as follows. For clarity, some of the rooms sizes provided on the plans by the Applicant differ very slightly from some of the sizes set out in the table below - the table contains the sizes as measured by the Case Officer.



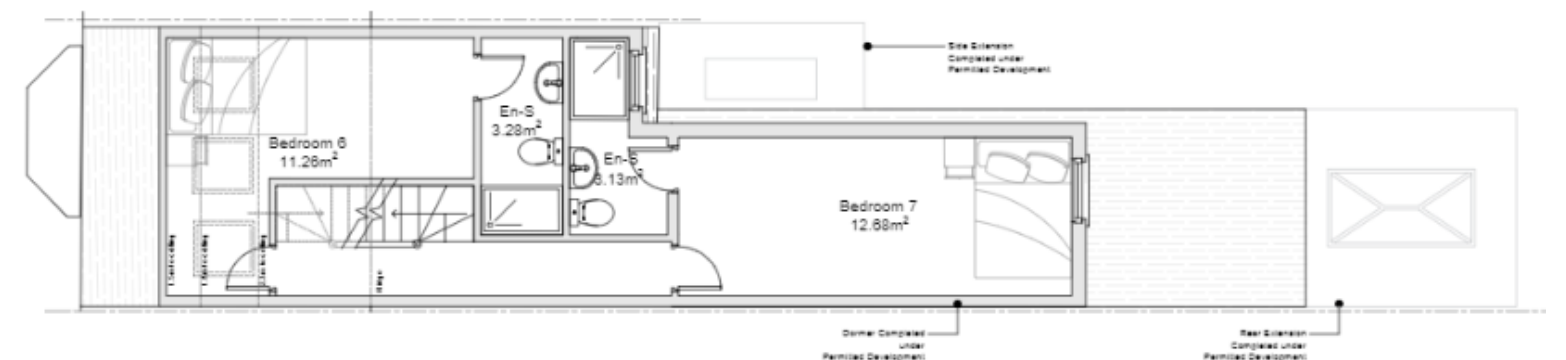
GROUND FLOOR PLAN

SCALE 1:50



FIRST FLOOR PLAN

SCALE 1:50



LOFT PLAN

SCALE 1:50

Room	Area Provided	Required Standard
Bedroom 1 (Single use)	10.1m <sup>2</sup>	10m <sup>2</sup>
Bedroom 2 (Single use)	11.9m <sup>2</sup>	10m <sup>2</sup>
Bedroom 3 (Single use)	10.5m <sup>2</sup>	10m <sup>2</sup>
Bedroom 4 (Single use)	10m <sup>2</sup>	10m <sup>2</sup>
Bedroom 5 (Single use)	11.1m <sup>2</sup>	10m <sup>2</sup>
Bedroom 6 (Single use)	11.2m <sup>2</sup>	10m <sup>2</sup>
Bedroom 7 (Single use)	12.7m <sup>2</sup>	10m <sup>2</sup>
Communal Kitchen/Dining area (ground floor)	25.8m <sup>2</sup>	22.5m <sup>2</sup> (22.5m <sup>2</sup> if all bedrooms exceed 10m <sup>2</sup> )
Ensuite bathroom 1	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite bathroom 2	2.76m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite bathroom 3	2.75m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite bathroom 4	2.93m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite bathroom 5	2.86m <sup>2</sup>	2.74m <sup>2</sup>

Ensuite bathroom 6	3.28m2	2.74m2
Ensuite bathroom 7	3.13m2	2.74m2

The Officer Report of 31<sup>st</sup> January summarised the one objection comment received from a neighbour. Upon reading the objection again, the comments should have been more fully reported. The additional summary comments are included below in italics, added to the already-reported comments.

- Lack of car parking provision leading to an increase in traffic and exacerbation of existing on-street parking problems;
- Increase in noise *through the walls, which is already an issue;*
- *Character of the area is not right for 'professionals';*
- *the proposed extension should not extend too far, and consider a possible new arrangement of boundary fence/wall;*
- *when would the work be carried out and how long would it take?*
- *Could use the car park at the end of the road for construction parking.*

Officer response: the re-purposing of the property would likely require modern noise insulation and so actually reduce noise transmission for neighbours. The character of the area would not be materially affected by two extra residents. The extensions would be Permitted Development, and the matter of a boundary wall or fence could be discussed with the Applicant outwith the planning application process, as would information about when the works would take place. The applicant would make any necessary arrangement for construction parking/skip with the City Council's highways team.

## CONCLUSION

The proposed increase in occupancy of two persons is unaffected by the amended plans, and Officers remain of the view that the increase in occupancy does not amount to a material change that requires planning permission. And with effects on other factors such as parking, noise, community mix also unaffected by the plan changes set out above, the commentary and Recommendation set out in the Officer Report of 31<sup>st</sup> January remains unchanged:

## **RECOMMENDATION            Unconditional Permission**

**Conditions: None**

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## ORIGINAL REPORT FOR THE PLANNING COMMITTEE MEETING OF 31<sup>st</sup> JANUARY 2024:

### **1.0 SUMMARY OF MAIN ISSUES**

1.1 This application is brought before Planning Committee due to Cllr Vernon-Jackson's call in.

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 Surrounds

- 1.4 The application relates to a two-storey, mid-terrace property located on the eastern side of Tottenham Road. The property is set back from the road by a small front forecourt and to the rear of the property is an enclosed garden.
- 1.5 The application site is within a predominantly residential area characterised by rows of similar two-storey terraced properties with a similar visual style.
- 1.6 The HMO use of this site currently benefits from a Licence granted by Portsmouth City Council to operate as an HMO with up to 5 occupants. This licence was granted on 22/08/2023.

### 1.7 The Proposal

The Applicant has sought planning permission for the change of use of the dwelling from the current lawful use as an HMO with up to five individuals living together to allow up to seven individuals to live together as an HMO. The property would also be extended under Permitted development rights, with a Ground Floor side extension, Ground Floor rear extension, and roof extensions.

### 1.8 Planning History

**23/00103/FUL**- Change of use from House in Multiple Occupation (Class C4) to purposes falling within Class C3 (dwelling house) or Class C4 (House in Multiple Occupation).  
Conditionally Permitted

**13/00159/FUL** - Change of use from house in multiple occupation (Class C4) to purposes falling within Class C4 (house in multiple occupation) or Class C3 (dwelling house)  
Permitted

## 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) 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 - Based on the layout and sizes provided with this application this property would require to be licenced under Part 2, Housing Act 2004. The property will need to be inspected by private sector housing to ensure it meets licensing requirements.
- 3.2 Highways Engineer - No objection. Highlights that there would be no increase in parking requirement (2 spaces). Cycle store is outlined within the rear garden and considered sufficient.

## 4.0 REPRESENTATIONS

4.1 1 objection received, summarised as:

- a) Lack of car parking provision leading to an increase in traffic and exacerbation of existing on-street parking problems
- b) Increase in noise.

## 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

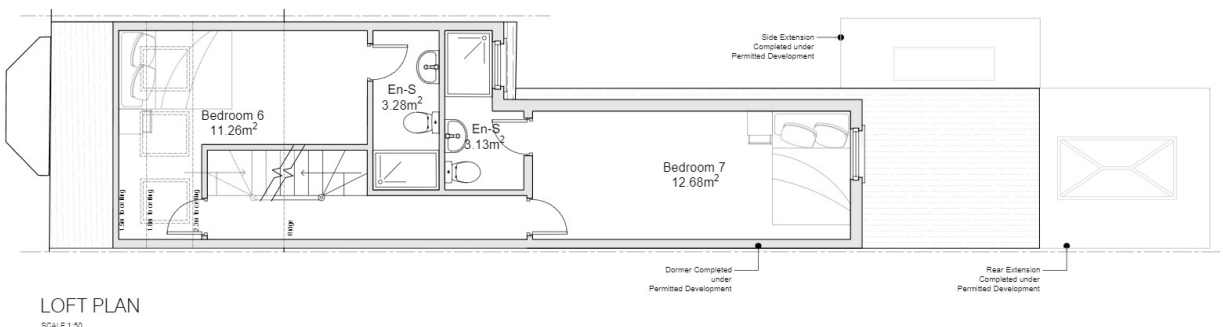
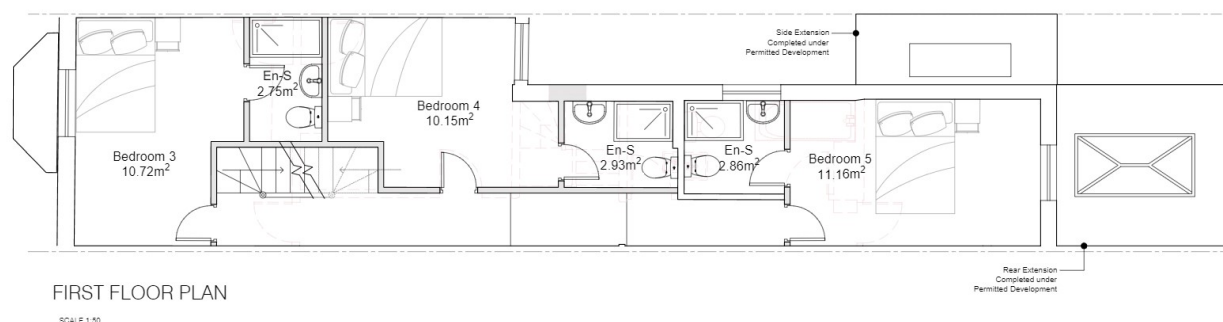
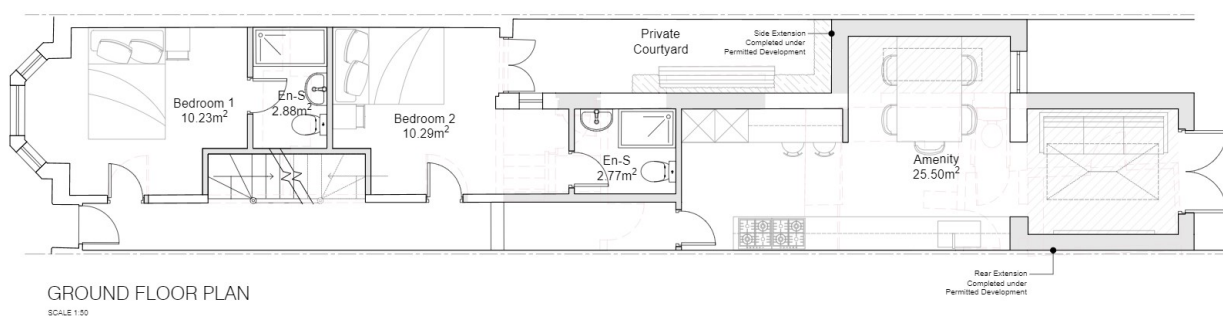
5.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and housing mix of certain communities. Two of the key matters of 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 2 occupants. 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 13 HMOs out of 73 properties, a percentage of 17.8%. This proposal of course has no effect on that percentage. 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 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 measured by the Case Officer and as compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided	Required Standard
Bedroom 1 (Single use)	10.1m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 2 (Single use)	10.1m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 3 (Single use)	10.5m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 4 (Single use)	10m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 5 (Single use)	11.1m <sup>2</sup>	6.51m <sup>2</sup>

Bedroom 6 (Single use)	11.2m <sup>2</sup>	6.51m <sup>2</sup>
Bedroom 7 (Single use)	12.7m <sup>2</sup>	6.51m <sup>2</sup>
Communal Kitchen/Dining area (ground floor)	25m <sup>2</sup>	22.5m <sup>2</sup> (22.5m <sup>2</sup> if all bedrooms exceed 10m <sup>2</sup> )
Ensuite bathroom 1	2.88m <sup>2</sup>	2.74m <sup>2</sup>
Ensuite bathroom 2	2.77m <sup>2</sup>	2.74m <sup>2</sup>
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5.6 As is shown in the table above, the proposal results in an internal layout that meets the Council's adopted space standards and is therefore considered to result in a satisfactory standard of living environment. Aside from size alone, layout and light appears acceptable.

5.7 Amenity and Parking

5.9 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.

- 5.10 Amended plans were received during the application process to increase the level of outlook for bedroom 2, whilst retaining adequate amenity space in the kitchen/lounge room. A private courtyard area has been added. It should be acknowledged that the side extension to the kitchen/diner would benefit from permitted development rights, with a width of less than half the original dwellinghouse and not projecting beyond the original rear wall.
- 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 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 were 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
- 5.14 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 five 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 lawfully 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 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 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 harms 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 Impact on Special Protection Areas

- 5.17 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 applicants 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 a 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 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 property. As such planning permission is not required and the proposal could be carried out as a fallback 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 Permission**

**Conditions: None**