

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

**1 TENNYSON ROAD
PORTSMOUTH
PO2 7RY**

[24/01051/FUL | Change of use from 6-bed/6-person House in Multiple Occupation to 7-bed/7-person House in Multiple Occupation | 1 Tennyson Road Portsmouth PO2 7RY](#)

Application Submitted By:

Mr Kercher

On behalf of:

Mrs Philips

RDD: 6.9.2024

LDD: 1.11.2024

1.0 SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee due to the blanket 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 surroundings

1.3 The application site is a two-storey terraced dwelling with rooms in the roof 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 use of as a HMO with up to six individuals living together to allow up to 7 individuals to live together as an HMO. This change in occupancy will involve the repurposing of internal rooms but no external operational development forms part of this application

1.6 Planning History

1.7 22/01051/FUL - Change of use from Dwellinghouse (Class C3) to purposes falling within Dwellinghouse (Class C3) or House in Multiple Occupation (Class C4). Granted 9 December 2022

2.0 POLICY CONTEXT

Portsmouth Plan (2012)

2.1 In addition to the aims and objectives of the National Planning Policy Framework (2023), due weight has been given to the relevant policies within the Portsmouth Plan (2012), which include:

- PCS17 (Transport)

- PCS19 (Housing mix, size and the provision of affordable homes)
- PCS20 (Houses in Multiple Occupation)
- PCS23 (Design and Conservation).

Pre-Submission Portsmouth Local Plan 2020-2040

2.2 The draft Pre-Submission Portsmouth Local Plan 2020-2040 was adopted at full council on 28 May 2024 and consultation on the Pre-Submission Local Plan closed in September 2024. The relevant policies would include:

- Core Policy PLP1: Design
- Strategic Policy PLP20: Houses in Multiple Occupation
- Strategic Policy PLP47: Movement and Transport
- Development Management Policy PLP48: Access and Parking

2.3 Having regard to the National Planning Policy Framework (NPPF) paragraph 48, limited weight is given to those policies at this time.

Other Guidance

2.4 Guidance relevant to the assessment of this application includes:

- National Planning Practice Guidance (updated in 2023)
- The Updated Interim Nutrient Neutral Mitigation Strategy (2022)
- The Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) ('the HMO SPD').
- The Solent Recreation Mitigation Strategy (2017)
- The Parking Standards and Transport Assessments Supplementary Planning Document (2014)

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.

4.0 REPRESENTATIONS

4.1 10 objections have been received to the application. Three of these letters were provided without the postal address of the objector. The concerns raised in the objections can be summarised as follows:

4.2 The following points have been raised in objection to the scheme:

- Impact on parking
- Impact on residential amenity
- Impact on sewerage
- Impact on noise
- Impact on refuse collection
- Too many HMO's in surrounding areas

5.0 COMMENT

5.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

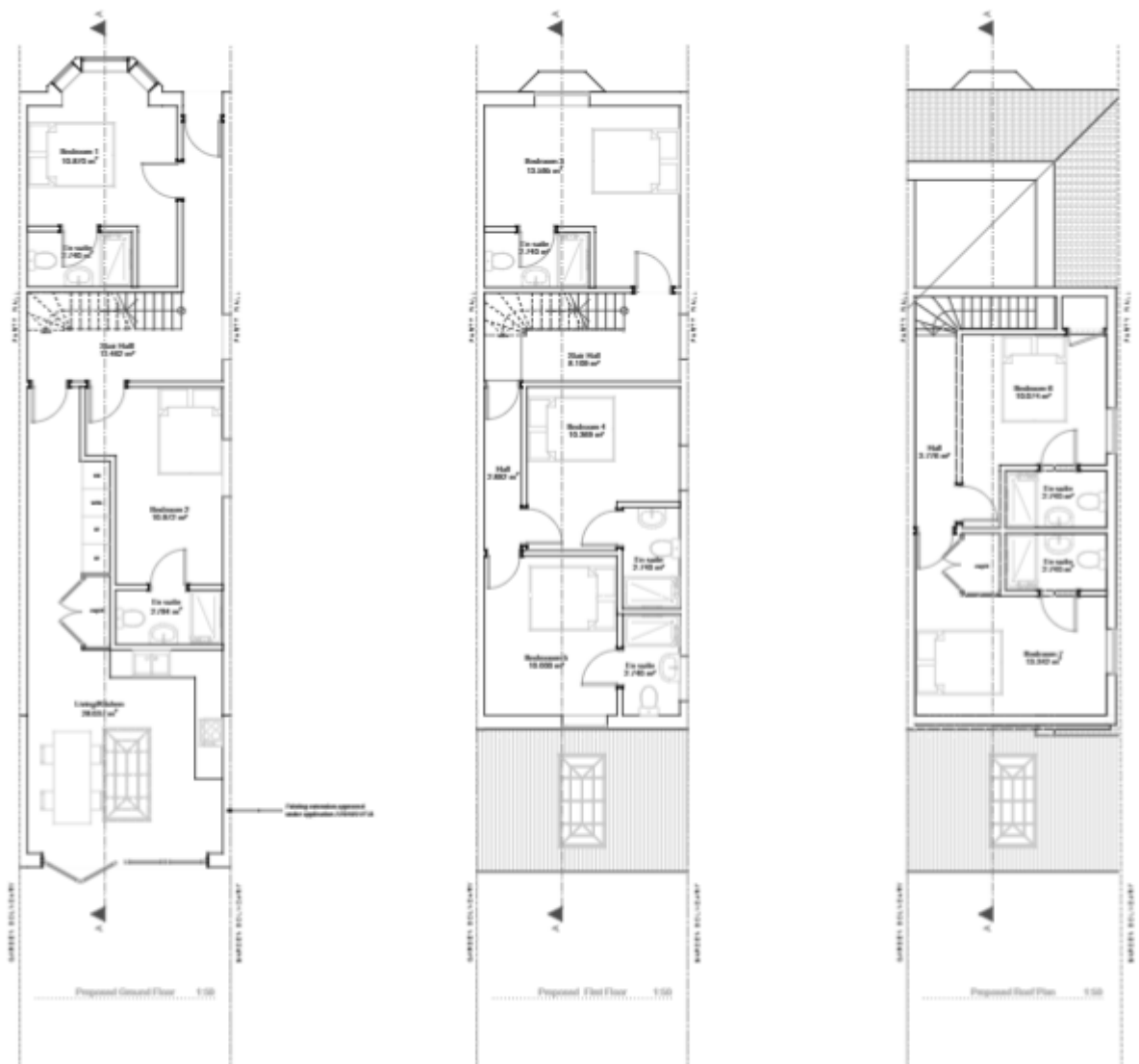
5.2 Principle of development

- 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 1 occupant. 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.
- 5.5 For reference, it can be noted however that the relevant 50m radius area is currently made up of 3 HMOs out of 54 properties, a percentage of 5.5%. This proposal 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 describes 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.



- 5.6 The repurposing of internal rooms to accommodate the additional occupant 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:	Size provided for in Guidance:
Bedroom 1	10.87m ²	10m ²
Bedroom 2	10.97m ²	10m ²
Bedroom 3	13.59m ²	10m ²
Bedroom 4	10.37m ²	10m ²
Bedroom 5	10.08m ²	10m ²
Bedroom 6	10.06m ²	10m ²
Bedroom 7	13.33m ²	10m ²
Combined Living Space	28.05m ²	22.5m ²
Ensuite 1	2.74m ²	2.74m ²
Ensuite 2	2.78m ²	2.74m ²
Ensuite 3	2.74m ²	2.74m ²
Ensuite 4	2.74m ²	2.74m ²
Ensuite 5	2.74m ²	2.74m ²
Ensuite 6	2.74m ²	2.74m ²
Ensuite 7	2.74m ²	2.74m ²



5.7 The minimum bedroom size is as a result of the proposal to utilise the current separate living space as an additional bedroom as per the SPD (Footnote #9 p.9). As shown in the table above, the proposals result in a layout that meets the Council's minimum requirements.

- 5.8 The proposal would increase the occupancy of the existing HMO by 1 occupant. 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.
- 5.9 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 does not create any additional parking requirement over the existing lawful use and the scheme complies with the Parking SPD and Policy PCS17 of the Local Plan.
- 5.10 Other Material Considerations
- 5.11 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 1 occupant to the existing lawful HMO is not considered to amount to a material change in the use of the dwelling. Under s57 of the 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.
- 5.12 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 planning judgement to be assessed on the facts of the particular proposal. Members will note the 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.
- 5.13 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 comparable applications. Members may also note the previous decisions of Portsmouth's Planning Committee which have - contrary to Officer recommendation - determined directly comparable changes in occupation amounted to a material change in use. This is primarily due to a conclusion that the increased intensity of the use of the accommodation and the consequent impact on parking, waste, neighbouring resident's amenity and the Solent Special Protection Area 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 set out above as a basis for that judgement.
- 5.14 In the circumstances of the current proposal, 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. The Applicant therefore has a fall-back position of being able to lawfully carry out the change in occupation without needing planning permission.

- 5.15 Notwithstanding the advice of Officers above, should it be considered necessary to assess the merits of the application, 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 1 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 3.31 year supply currently identifiable.
- 5.16 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 provided none of the exceptions in footnote #7 apply, including impacts to habitats sites. 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.
- 5.17 Impact on Special Protection Areas
- 5.18 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 fall-back position set out above allow the occupation of the site without further planning permission being required. As such it is considered that the proposal would not amount to development and therefore would 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. Notwithstanding the compliance or otherwise of the proposal with the polices 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 dwelling. As such planning permission is not required for the development 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 of 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 the following;
- Implementation of the additional occupancy within 3 year (a Time Limit condition);
 - Development be carried out in accordance with plans submitted (an Approved Plans condition) and;
 - 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

APPENDIX:

