

138 CARDIFF ROAD PORTSMOUTH PO2 8BL**APPLICATION TO VARY CONDITION 2 (APPROVED PLANS) AND CONDITION 7 (OCCUPANCY LIMIT), AND TO REMOVE CONDITION 6 (USE OF SNUG) OF PLANNING PERMISSION 24/01030/FUL**

[24/01407/VOC | APPLICATION TO VARY CONDITION 2 \(APPROVED PLANS\) AND CONDITION 7 \(OCCUPANCY LIMIT\), AND TO REMOVE CONDITION 6 \(USE OF SNUG\) OF PLANNING PERMISSION 24/01030/FUL | 138 CARDIFF ROAD PORTSMOUTH PO2 8BL](#)

Application Submitted By:

Miss Thea Travers-Ayre
Thorns Young

On behalf of:

Mr Oliver Gooch
Gooch Property Services

RDD: 19.11.2024

LDD: 14.01.2025

1. SUMMARY OF MAIN ISSUES

- 1.1 The application is brought to committee following a call-in by Cllr Swann.
- 1.2 App. No. 24/01030/FUL granted planning permission for "Change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwellinghouse) or Class C4 (House in Multiple Occupation)". The attached conditions limited the occupancy to five people and restricted the use of 'snug' and 'Bedroom 6' on the approved plans.
- 1.3 The current proposal is an application under Section 73 of the Town and Country Planning Act 1990 is to vary condition 2 (approved plans) and condition 7 (occupancy limit), and to remove condition 6 (use of snug) of planning permission 24/01030/FUL.
- 1.4 Section 73 can be used to make a material amendment by varying or removing conditions on a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to the conditions and not to the operative part of the permission. An approval under s73 cannot extend the time limit for implementing the consent or the submission of reserved matters, nor can it change the description of the development.
- 1.5 Permission granted under section 73 takes effect as a new, independent permission to carry out the development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.
- 1.6 A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.

2. SITE AND SURROUNDINGS

- 2.1 The application site is a two-storey terraced dwellinghouse on the eastern side of Cardiff Road towards its northern end. The dwellinghouse has a small front forecourt and an

enclosed garden at the rear. The existing layout comprises of a lounge, dining room, kitchen and bathroom at ground floor level; three bedrooms and a WC at first floor level.

- 2.2 The application site is within a predominantly residential area. The property is within the vicinity of the Spotted Cow - a former public house converted into eight flats (09/01225/OUT), which is next door to a church (True Jesus Church). The site lies opposite the side boundary of Stamshaw Infant School and backs on to a commercial large building (laundry services).

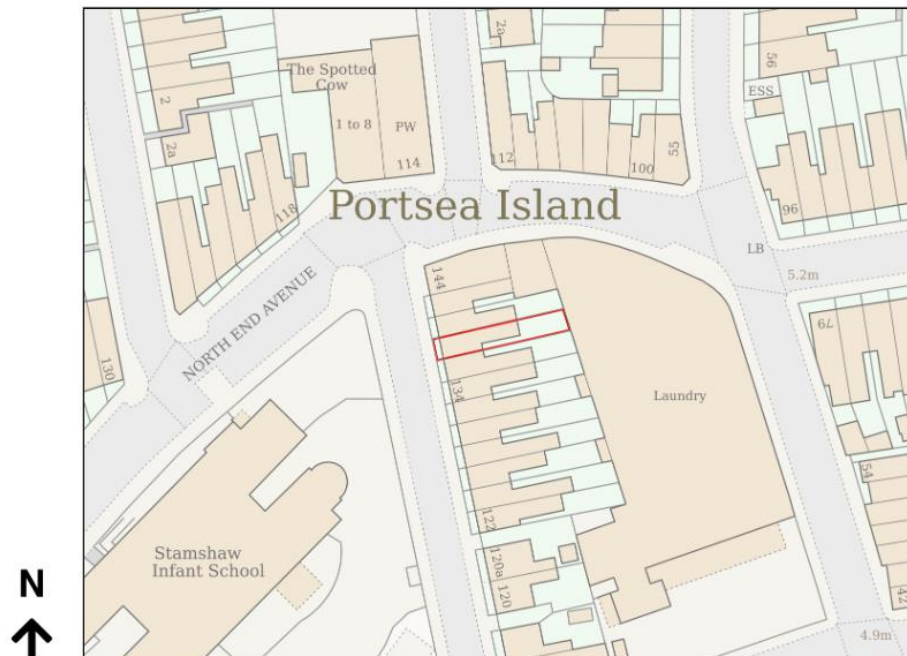


Figure 1 Location Plan

3. PROPOSALS

- 3.1 Planning permission was granted on 25th October 2024 for a five-bedroom HMO. During the debate, concern was expressed that bedroom 6 was too small for an adult and provided an inadequate living space (due to ceiling heights).
- 3.2 The Planning Committee resolved to grant conditional permission as set out in the officer report together with an additional condition concerning use of the 'snug' as recommended in the Supplementary Matters report, and an extra condition limiting occupancy to five persons because 'Bedroom 6' was not considered to provide adequate standard of accommodation.
- 3.3 The current application seeks to move the 'snug' to the room previously indicated as 'Bedroom 6'. The new proposed drawings also show the increased size of the newly created 'Bedroom 1' by reducing the size of the ground floor bathroom with a proposed shower room instead.

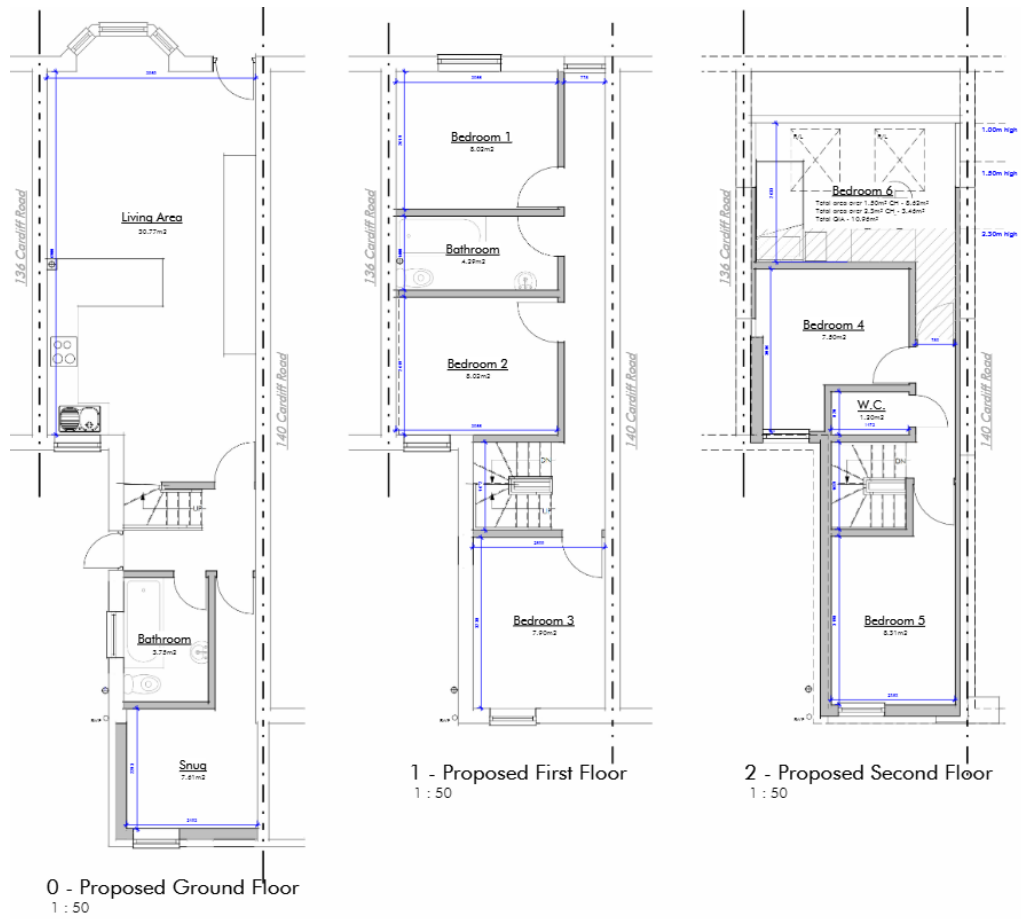


Figure 2 Approved floor plans

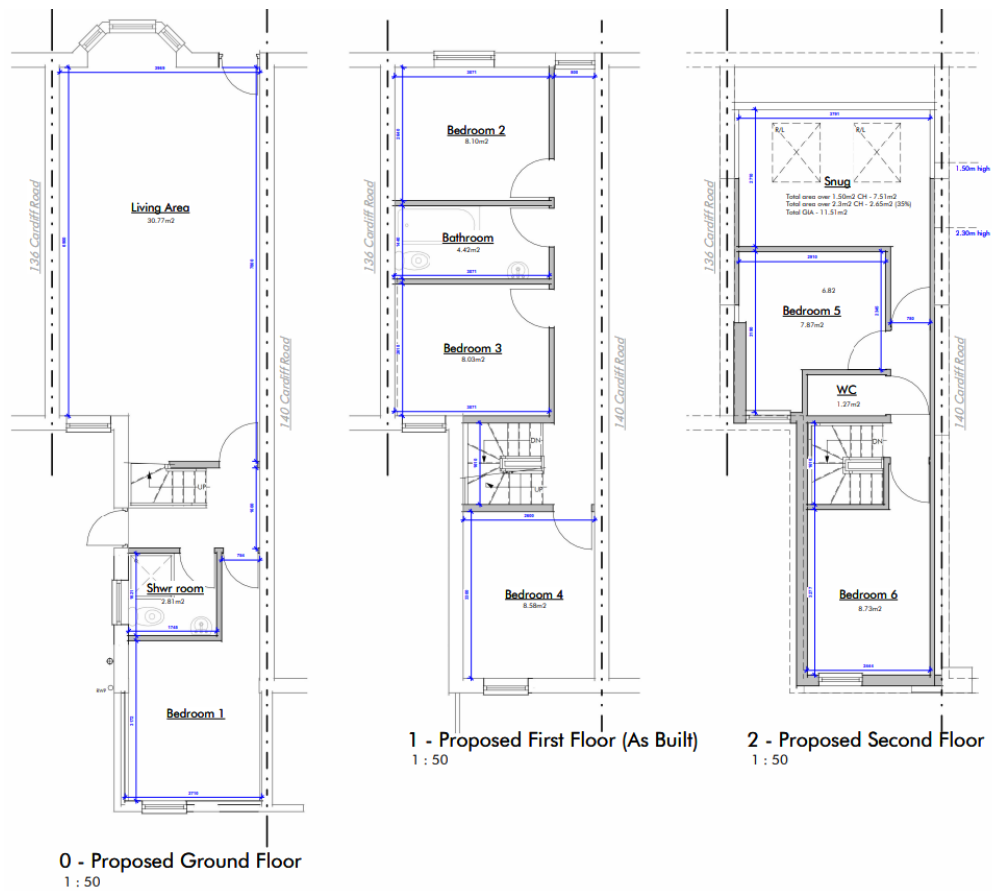


Figure 3 Proposed floor plans

4. PLANNING HISTORY

- 4.1 **24/01030/FUL** - Change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwellinghouse) or Class C4 (House in Multiple Occupation)

Decision - Granted

Date - 25/10/24

Condition 6 reads as follows:

The room labelled 'Snug' on the approved plans shall be retained for communal amenity use and shall not be used as a bedroom.

Reason: In order that sufficient communal amenity space is provided for the Class C3/C4 flexible use hereby granted planning consent, in accordance with Policy PCS23 of the Portsmouth Local Plan 2012 and with the HMO Supplementary Planning Document 2019.

Condition 7 reads as follows:

The room labelled as Bedroom 6 on the approved plans shall not be used as a bedroom, and the occupancy of the entire property while in Class C4 use shall be limited to no more than five persons.

Reason: In order to provide a satisfactory level of residential amenity, in accordance with Policy PCS23 of the Portsmouth Plan 2012, and with the HMO Supplementary Planning Document 2019.

5. CONSULTATIONS

- 5.1 **Private sector housing** - satisfied there is suitable living space for the proposed number of occupants.
- 5.2 **Highways** - I have reviewed the documents submitted in support of the applications, reviewed the planning history would make the following comments. I am satisfied that the proposal for a single bedroom would not have a material impact upon the function of local highway network or its safety. The proposal does not indicate secure cycle storage and therefore a condition would be attached to provide this facility if you're minded to approve the application.

6. REPRESENTATIONS

- 6.1 Letters to adjoining properties were sent on 02.12.24. A Site Notice was erected outside the site on 27.11.24.
- 6.2 Five representations have been received objecting to the proposal including from Cllr Swann. One of these letters was provided without the postal address of the objector.
- 6.3 The following objections were made to the scheme;
- An attempt to increase the occupancy and create a 'slum property'
 - Overdevelopment of the site
 - Impact to habitats sites
- 6.4 The following points were also made which are not considered to be material considerations in the determination of the application;
- Remarks about the nature of the prospective tenants
 - The applicant has sold the property
 - Application is to cram in as many people as possible to maximise profits

- The existing planning permission should be accepted
- Request to change the planning laws and HMO policy.

7. POLICY

7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications must be determined in accordance with the development plan for an area, except where material considerations indicate otherwise. The development plan in this case comprises the Portsmouth Plan (2012) and the saved policies of the Portsmouth City Local Plan (2006).

7.2 The following policies are of particular relevance in this case:

The Portsmouth Plan (2012)

- PCS23 - Design & Conservation
- PCS20 - Houses in Multiple Occupation
- PCS17 - Transport

Pre-Submission Portsmouth Local Plan 2020-2040

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.

- PLP1: Design
- PLP20: Housed in Multiple Occupation
- PLP47: Movement and Transport
- PLP48: Access and Parking

7.3 Having regard to the NPPF paragraph 49 and the stage the emerging plan has reached in its preparation, limited weight is given to the above policies at this precise time.

7.4 Supplementary Planning Documents and Guidance

7.5 The following have been adopted by the Council as Supplementary Planning Documents and are relevant to the proposal;

- Houses in Multiple Occupation (HMOs) (2019) - ('the HMO SPD')
- The Parking Standards and Transport Assessments Supplementary Planning Document (2014)

7.6 National Guidance

- National Planning Policy Framework (2024)
- National Planning Practice Guidance

8. OFFICER ASSESSMENT

8.1 The main issues for consideration in the determination of the applications include the following:

- Principle of development
- Housing Land Supply
- Impact on neighbouring living conditions
- Parking

8.2 Principle of Development

8.3 Permission is sought for the use of the property for purposes falling within Class C4 (house in multiple occupation) (HMO). The property currently has a permission to be used as a five-bed HMO or self-contained dwelling (Class C3). For reference, a Class C4 HMO is defined as 'a property occupied by between three and six unrelated people who share basic amenities such as a kitchen or bathroom'.

8.4 The proposed increase in occupancy of the property is within Class C4 use, and therefore the proposal is considered to comply with Policies PCS19 and PCS20 of the Portsmouth Plan (2012).

8.5 Housing Land Supply

8.6 The National Planning Policy Framework (NPPF) states that planning decisions should be based on a presumption in favour of sustainable development (paragraph 11). That presumption does not apply where the project is likely to have a significant effect on a 'habitats site' (including Special Protection Areas) unless an appropriate assessment has concluded otherwise (paragraph 195). Where a local planning authority cannot demonstrate a five-year housing land supply of deliverable sites, the NPPF deems the adopted policies to be out of date and states that permission should be granted for development unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or;
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

8.7 Currently, the Council can demonstrate 3.31 years supply of housing land. The starting point for determination of this application is therefore the fact that the authority cannot demonstrate a five-year supply of housing. This development would provide greater occupation of the building, so make a small, additional contribution towards the City's housing needs, at a sustainable location in the city, with good access to public transport, retail and services, employment, leisure, health facilities, etc. The application is therefore acceptable in principle, complies with Policies PCS19 & PCS20 and these factors weigh in favour of the proposed development. The further, specific impacts of the proposal will be considered below as to whether the development is appropriate in detail.

8.8 Impact on neighbouring living conditions

8.9 The officer report for 24/01030/FUL which granted planning permission for the use of the property as a HMO established that this would be the only HMO within a 50m radius of the site. Following further investigations, no additional HMOs have been uncovered by the Case Officer. Including the approved application property, the proposal would bring the percentage of HMOs within the area up to one or 2.44%. This would be lower than the 10% threshold set out in the Council's adopted Policy and SPD.



Figure 3 Existing HMOs within 50m radius of the application site

- 8.10 As the only HMO within the 50m radius it would also not result in three adjacent HMOs or the "sandwiching" of a C3 dwelling between two HMOs. The proposal therefore complies with the Council's adopted policies in respect of the location of HMOs.
- 8.11 The HMO SPD is supported by an assessment of the need for, and supply of, shared housing in Portsmouth and of the impacts of high concentrations of HMOs on local communities. Paragraphs 9.1-9.10 discuss the negative impacts of HMO concentrations on local communities and points to the cumulative environmental effects of HMO concentrations. However, given that there is not an over-concentration of HMOs within the surrounding area, it is considered that the impact of one additional bedroom within the approved HMO would not be significantly harmful.
- 8.12 In terms of the impact on the living conditions of the adjoining occupiers, it is considered that the no cogent evidence can be substantiated that the level of activity associated with the occupation of the property by up to six unrelated persons as an HMO would be significantly different or harmful compared to the use of the property as a dwellinghouse in Class C3 or as the approved five-bedroom HMO.
- 8.13 All alterations/extensions to facilitate additional living accommodation are to be undertaken using permitted development, which the property benefits from. Any objections in regard to overlooking or loss of light from the rear extension and dormer would not be material planning considerations as these works can be carried out without the need for planning permission.
- 8.14 Having regard to this material consideration, it is considered there would not be a significant impact on neighbouring living conditions from the current proposal. The scheme therefore complies with Policy PCS23 in this regard.
- 8.15 **Occupier's living conditions**
- 8.16 The Council's adopted HMO SPD sets out standards for internal space for occupiers of HMOs. Where a scheme can show it complies with the space standards which the Council has adopted, it should be supported in this respect. The previous consent sought to restrict the use of a snug in the approved layout as a bedroom and 'Bed 6' as a bedroom due to concerns over their size and living conditions within these spaces.

- 8.17 As noted above, the current proposal amends the proposed layout in order to provide an additional bedroom to the ground floor and use the room shown as 'Bed 6' on the approved scheme as a 'snug'.
- 8.18 As is shown in the table below, all bedrooms meet the Council's adopted space standards for single occupancy in accordance with your HMO SPD. For communal rooms, the SPD sets out sizes for either one combined living space, or for three individual rooms (kitchen, living room, dining room). This application provides two communal rooms, so does not fall straightforwardly into either category. The large communal room (containing but not limited to the kitchen) is 30.77 sqm, short of the 34 sqm required. However, that 3.23 sqm shortfall is more than compensated for by the snug, now proposed on the second floor, at 7.51 sqm (over 1.5m H) / 6.22 sqm excluding the corridor and space below 1.5m H. The HMO SPD requires two separate bathrooms and two WCs (one of which can be contained in one bathroom) for HMOs accommodating 6-10 people. The bathroom, shower room and separate WC meet and exceed the required space standards.

Room	Area Provided (sqm)	Required Standard (sqm)
Kitchen/living area	30.77	34
Snug	7.51	Please see text above.
Bedroom 1	9.3 / 8.24 without the corridor	6.51
Bedroom 2	8.10	6.51
Bedroom 3	8.03	6.51
Bedroom 4	8.58	6.51
Bedroom 5	7.87	6.51
Bedroom 6	8.73	6.51
GF shower room	2.81	2.74
1F bathroom	4.42	3.74
2F WC	1.27	1.17



Section A.A
1 : 50

Figure 4 Approved section



Section A.A

1 : 50

8.19 *Figure 5 Proposed section*

8.20 The proposed bed 1 to the rear ground floor faces east over the property's garden and is considered to have adequate light and outlook. The snug has an aspect over the street facing west and provides additional communal living space on an additional floor within the building. It is considered the combination of room sizes and layouts, and daylight, would provide an adequate amenity for occupiers under the standards set out in the Council's adopted documents. The scheme therefore complies with Policy PCS23 and the adopted HMO SPD in this regard.

8.21 **Parking**

8.22 The City Council's Parking Standards SPD sets the level of off-road parking facilities for new developments within the city and places a requirement of two spaces for HMOs with four or more bedrooms. It should be noted that the expected level of parking demand for a Class C3 dwellinghouse with three bedrooms is 1.5 off-road spaces, a difference of just 0.5 spaces. The proposal has no off-street parking, which is no change from the current use.

8.23 It is noted there are no objections from the Highways Authority in respect of the proposals. Cycle storage will be secured by condition as per the previous approval. Having regard to this material consideration, it is considered there would not be a significant impact on parking from the current proposal. The scheme therefore complies with Policy PCS17 in this regard.

8.24 **Response to matters raised by objectors, not already addressed above**

8.25 The request for changes to primary legislation are a matter for central government. Requests for changes to the Council's adopted policies and guidance on HMOs is matter for the Local Plan process and the Policy team. There are no proposals to amend the adopted HMO SPD and thereby the 10% proportion test in the emerging Local Plan. Policy PCS20 and the HMO SPD remains the Council's adopted position on how it will consider proposals for HMOs in the plan area.

- 8.26 Where the Council has set out the criteria under which it will find HMOs acceptable, applications which comply with that criteria should be supported.
- 8.27 Planning system does control who the occupants of the properties are. No evidence has been submitted to demonstrate that the occupiers of the property would automatically behave in a manner which would cause harm to neighbouring living conditions. Planning permission runs with the land and is not personal to the applicant. The profit the applicant may make is not a factor in the merits of the scheme.
- 8.28 Under the planning system there are a number of ways in which an existing planning permission can be amended, including the variation of conditions. An applicant is entitled to pursue such options if they see fit. The Council's role is not to sit in judgement on why an applicant may choose to do this and it has no powers to insist an applicant accept an earlier consent without modification.
- 8.29 The Council's role in a s73 application to determine such proposals on their planning merits, bearing in mind that permission already exists to convert the property to a HMO. In this case, the assessment is that the scheme complies with the Council's adopted guidance and policies.
- 8.30 **Human Rights**
- 8.31 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.
- 8.32 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.

9.0 CONCLUSIONS AND PLANNING BALANCE

- 9.1 Having regard to all material planning considerations and representations it is concluded that the proposed increase of one occupant is acceptable and would be in accordance with the relevant policies of the Portsmouth Plan (2012) and the objectives of the National Planning Policy Framework (NPPF) (2024).

RECOMMENDATION

Conditional Permission

Conditions

Time Limit:

- 1) The development hereby permitted shall be begun before the 25 October 2027.

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

Approved Plans:

- 2) 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, block plan, 8129 24 1 PL Rev. J (floor plans), 24 (metal bike store), 8129.24.2 (section).

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

Cycle Storage:

- 3) Prior to first occupation of the property as a House in Multiple Occupation within Use Class C4, secure and weatherproof bicycle storage facilities for 4 bicycles shall be provided at the site and shall thereafter be retained for the parking of bicycles at all times.

Reason: To ensure that adequate provision is made for cyclists using the premises in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.

Waste Storage:

- 4) Prior to the first occupation of the property as a House in Multiple Occupation; refuse and recyclable materials storage facilities shall be provided at the site and shall thereafter be retained for the continued use by the occupants.

Reason: To ensure that adequate provision is made for the storage of refuse and recyclable materials in accordance with policy PCS15 and PCS23 of the Portsmouth Plan.

External Alterations

- 5) Prior to the occupation of the property as a HMO, the extension works to be undertaken under permitted development shall be completed.

Reason: To ensure the property meets the required space standards to provide a good standard of living in accordance with Policy PCS23 of the Portsmouth Plan.

Room labelled 'Snug'

- 6) The room labelled 'Snug' on the approved plans shall be retained for communal amenity use and shall not be used as a bedroom.

Reason: In order that sufficient communal amenity space is provided for the Class C3/C4 flexible use hereby granted planning consent, in accordance with Policy PCS23 of the Portsmouth Local Plan 2012 and with the HMO Supplementary Planning Document 2019.

Informative:

- 1) Based on the layout and sizes provided with this application this property would require to be licenced under Part 2, Housing Act 2004. This is not a planning matter and would require a separate licensing application.