

24/01090/FUL

WARD: NELSON

41 DERBY ROAD PORTSMOUTH PO2 8HW

CHANGE OF USE FROM A 5-BED/5-PERSON HOUSE IN MULTIPLE OCCUPATION TO A 7-BED/7-PERSON HOUSE IN MULTIPLE OCCUPATION WITH ALTERATIONS TO INCLUDE REAR GABLE EXTENSION (WITH ROOFLIGHT)

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Application Submitted By:

Mr Oliver Farr
Applecore PDM

On behalf of:

Mr T Wallis

RDD: 5th September 2024

LDD: 5th November 2024

1. SUMMARY OF MAIN ISSUES

1.1 This application is brought before Planning Committee at the request of Councillor Vernon-Jackson.

1.2 The main issues for consideration in the determination of the application are as follows:

- Principle of Development including compliance with policy
- Acceptability of the external alterations in regard to design
- Standard of accommodation
- Impacts on Amenity including parking
- Other material considerations

2. SITE AND SURROUNDINGS

2.1 The application site is a two-storey end-of-terraced dwelling with rooms in the roof in a predominately residential area. It lies on the corner with Grange Road, so has its flank (east) wall fronting Grange Road. It is noted that the existing building is split between a 5-person/5-bedroom HMO at ground and first floor level and a one-bedroom flat at ground floor level (primarily the southern (rear) half of the site). The ground floor flat benefits from a small external space to the rear and has a small, detached outbuilding/garage adjacent.

2.2 The surrounding area is characterised by similar two-storey terrace properties, it is noted that the site is 200m east of London Road, an area designated as local shops and services under PCS18 of the Portsmouth Plan (2012).

3. PROPOSALS

3.1 The Applicant has sought planning permission for an increase in occupation of the HMO, from the existing five residents, to seven. This change in occupancy would involve the repurposing of internal rooms and external alterations, including a rear hip-to-gable roof extension, the sub-division of the front bay window on both floors and the addition of two windows to the front (ground and first floor) and two windows to the side (ground and first floor). Additionally three rooflights are proposed, one to the front of facing Derby Road and two along the side facing towards Grange Road.

- 3.2 The ground floor flat would be retained as per the existing, accessed from its retained rear outdoor yard/amenity space. The small detached outbuilding/garage would be demolished and a bike store for the HMO would be provided instead, as well as a small outdoor amenity space also for the HMO.
- 3.3 It is noted that the property does feature a basement, this area lack sufficient head height and light to be used for residential accommodation, the Applicant has set out that it would be locked and not for use by the proposed occupants.

4. PLANNING HISTORY

- 4.1 **24/00814/CPE** - Application for certificate of lawful development for existing use as House in multiple occupation (Class C4). **Granted. 30/08/2024.**

5. CONSULTATIONS

- 5.1 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.
- 5.2 Highways: Derby Road is a residential road with parking accommodated through restricted on street parking (within FD Zone). The latest data available outlines for the 976 spaces available, there were 862 permits issued and therefore there is approx. 12% capacity available within the zone.
- 5.3 Given the small sale of the development, I am satisfied that the proposal would not have a material impact upon the function of local highway network.
- 5.4 As the proposal would result in an additional two bedrooms and there is the potential for increased instances of residents driving around the area hunting for a parking space, however this an issue of residential amenity for you to consider in your determination of the application.
- 5.5 The proposal does indicate secure cycle storage within the rear garden and therefore this should be implemented prior to occupation of the new residential units.

6. REPRESENTATIONS

- 6.1 Letters to adjoining properties were sent on 19/09/2024. A Site Notice was displayed outside the site on 20/09/2024.
- 6.2 6 objections have been received to the application. 1 of these letters was provided without the postal address of the objector, 2 were from the same address and 1 was from Councillor Swann.
- 6.3 The following points have been raised in objection to the scheme:
- Impact on parking
 - Increase noise and disturbance
 - Impact on local services, including the sewage network
 - Loss of family housing
 - Number of existing HMOs in the area
 - Impact on the Solent SPAs
 - Impact on bio-diversity
 - Suitability of the rooms and standard of accommodation
 - Concerns over light and outlook for the bedrooms
 - Lack of external space for drying

7. POLICY CONTEXT

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)

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

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: Houses in Multiple Occupation
- PLP22: Space Standards
- 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

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

- Updated Interim Nutrient Neutral Mitigation Strategy for New Dwellings (2022)
- Houses in Multiple Occupation (HMOs) (2019) - ('the HMO SPD')
- Solent Recreation Mitigation Strategy (2017)
- The Parking Standards and Transport Assessments Supplementary Planning Document (2014)

7.6 National Guidance

- National Planning Policy Framework (2024)
- National Planning Practice Guidance
- The Technical Housing Standards - nationally described space standards (2015)

8. OFFICER ASSESSMENT

8.1 The main issues for consideration in the determination of the application are as follows:

- Principle of Development including compliance with policy
- Acceptability of the external alterations in regard to design
- Standard of accommodation
- Impacts on Amenity including parking
- Other material considerations

8.2 Principle

- 8.3 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 the housing mix of certain communities. Two of the key matters of principle 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.
- 8.4 In this case the application site is already in lawful use as an HMO and the application has been made to the increase in occupation by 2 persons. As such the application is not considered to have any material impact on the number of HMOs in the area and thereby the balance of the local community. 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 assessment.
- 8.5 For reference, it can be noted however that the relevant 50m radius area is currently made up of 4 HMOs out of 58 properties, a percentage of 6.89%. This proposal has no effect on these proportions. 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.

8.6 Design

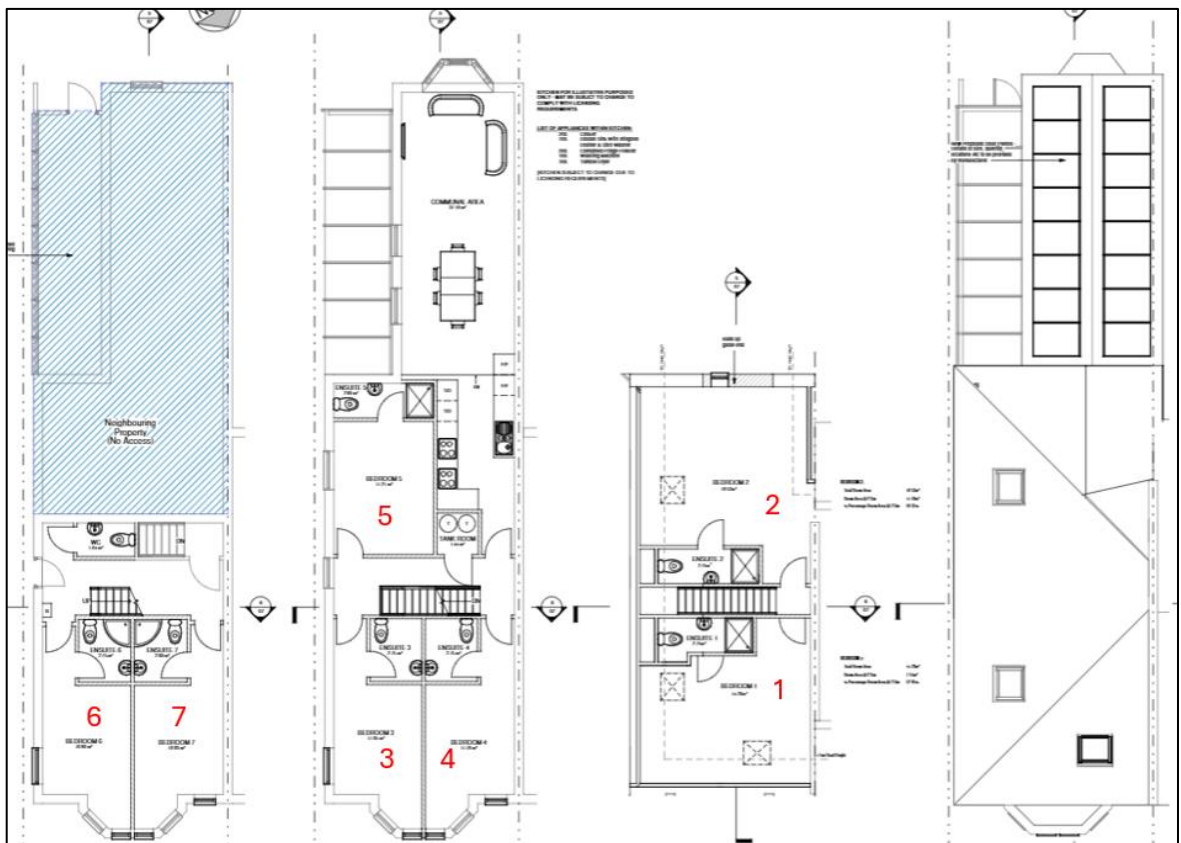
- 8.7 Policy PCS23 of the Portsmouth Plan echoes the principles of good design set out within the National Planning Policy Framework and requires all new development be well designed and respect the character of the city. The following will be sought in new development, appropriate scale, density, layout, appearance and materials in relation to the particular context.
- 8.8 The proposed extension to the roof is not large and would not be overtly noticeable. The change to the roof is considered to be a modest addition which would appear subservient to the main property.
- 8.9 The additional windows to the frontage and change to the bay windows would reduce the symmetry with the adjoining terrace, however subject to a good level of recess of the new windows and appropriate materials, the proposal is considered to be acceptable on balance. Final details to ensure their quality and suitable appearance would be secured through a condition for detailed plans to be approved by the LPA.
- 8.10 The windows on the side of the property would be considered minor and not appear out of character for the area.
- 8.11 Overall, the proposed external alterations are considered to be acceptable on balance, especially considering the benefit of the demolition of the dilapidated outbuilding to the rear of the site, which is viewable from Grange Road.

8.12 Standard of accommodation

- 8.13 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 compared to the minimum size prescribed in the Council's adopted guidance:

Room	Area Provided:	Size required in Guidance:
Bedroom 1	14.62m ²	6.51m ²
Bedroom 2	19.53m ²	6.51m ²
Bedroom 3	11.05m ²	6.51m ²
Bedroom 4	11.19m ²	6.51m ²
Bedroom 5	11.21m ²	6.51m ²
Bedroom 6	10.8m ²	6.51m ²
Bedroom 7	10.93m ²	6.51m ²
Combined Living Space	37.1m ²	34m ²
Ensuite B1	2.75m ²	2.74m ²
Ensuite B2	2.75m ²	2.74m ²
Ensuite B3	2.75m ²	2.74m ²
Ensuite B4	2.75m ²	2.74m ²
Ensuite B5	2.90m ²	2.74m ²
Ensuite B6	2.75m ²	2.74m ²
Ensuite B7	2.80m ²	2.74m ²
WC	1.64m ²	1.17m ²



- 8.14 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.
- 8.15 The proposal has been amended to introduce additional windows to serve bedrooms 2, 3, 4, 6 and 7, as well as a further rooflight to serve bedroom 1. On the basis of the revisions, all of the rooms are considered to have a sufficient level of light and outlook. It is noted that the external space is to the rear and not accessible without exiting the

dwelling. While this is considered to be a negative aspect of the scheme, it is noted the existing 5-bedroom HMO features no external amenity space at all, so the work would result in an improved layout over the existing arrangement. The ground floor flat, and its relationship with the HMO, would remain as per existing, apart from the replacement of the existing dilapidated outbuilding with a new bike store and external amenity space for the HMO.

8.16 Amenity and Parking

8.17 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.

8.18 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 and Policy PCS17 of the Local Plan.

8.19 Other Material Considerations

8.20 A key and overriding consideration in this case is the necessity to recognise the fallback position available to the applicant; that is the position they could take if this application is refused. In this case the addition of 2 occupants 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 to 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.

8.21 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 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.

8.22 While every application must be considered on its own individual merits, these examples provide clear guidance on the correct interpretation of s55 of the TCPA and these appeals decisions are considered to be a material consideration in the determination of similar applications. Members may also note the previous decisions of Portsmouth's Planning Committee - contrary to Officer recommendation - determined similar changes in occupation amounted to a material change in use. This is 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, 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.

- 8.23 In the circumstances of the current application, 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. **NB:** This application is distinct from the above examples, as it requires the completion of external alterations in order to enable the change of use, primarily the gable roof extension to the rear. It is therefore considered in Officers view that while the increase in occupancy does not require Planning Permission, the other external alterations do. As these alterations are part of the planning application, conditions are attached with respect to these elements.
- 8.24 Notwithstanding the advice of Officers above, should it be considered necessary to assess the merits of the application with respect to the increase of occupancy, 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 in the development against any benefits arising. Principally, for this HMO application, the benefits are the provision of housing through the provision of additional 2 bedspaces of occupation within the HMO. While this is a small contribution to the overall housing stock, the Council currently is unable to demonstrate a 'five year supply' of housing, with only a 3.31 year supply currently identified.
- 8.25 In this circumstance, the Council is directed that the policies which are most important to housing provision within the Local Plan are out of date provided none of the exceptions in NPPF Paragraph 11 footnote #7 apply, including impacts to habitats sites. The consequence of this is that decision makers 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 is considered to be insignificant and therefore falls short of significantly and demonstrably outweighing even the small benefit to the city's housing stock of the provision of bedspaces, should such assessment be considered necessary.
- 8.26 Other matters raised by objectors not yet addressed above
- 8.27 It is not considered that the increase in occupation would result in a significant impact on the local sewer network, and this has been demonstrated by a Dismissed Appeal Decision (APP/Z1775/W/23/3330214) from 2024 for a proposed HMO on 61 St Chads Avenue. The Planning Inspector noted that "*... the construction, operation and maintenance of an adopted sewerage system is the responsibility of the statutory sewerage undertaker, in this case, Southern Water, and the sewerage undertaker has a legal duty under S94 of the Water Industry Act 1991 to provide an effective system of sewers in its area. These sewers become public sewers to which the owners/occupiers of premises, and the owners of private sewers, have a right to connect and thereby drain foul water regardless of any capacity issues*".
- 8.28 The existing property is an HMO and therefore does not result in the loss of any family housing.
- 8.29 The proposal does not meet the test in order to require biodiversity net gain, and it is not considered that the proposal would have any impact on biodiversity given that there is not existing biodiversity on site.
- 8.30 The plans have been amended within the application in order to provide additional light into the bedrooms.

8.31 Impact on Special Protection Areas

8.32 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 fallback position set out above allows the occupation of the site without further planning permission being required. As such it is considered that the proposal would not amount to development requiring planning permission and therefore would not have a Likely Significant Effect on the Solent Special Protection Areas or result in an increased level of nitrate discharge.

9. CONCLUSION

9.1 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 result in a material change in the use of this property. As such planning permission is not required for the change of use, but the external alterations do require permission and are considered on their own merits to be acceptable subject to the submission of final details of the window form and detailing.

RECOMMENDATION

Condition Permission

Conditions:

Time Limit:

- 1) 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

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 - Location Plan - Location Plan - 1.1250 V2; Block Plan - 1:500 DATED 19.11; Proposed Floorplans - PG.9026.24.06 REV E; and Proposed Elevations - PG.9026.24.07 REV F.

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

Window detail:

- 3) Prior to the first occupation of the property as a House in Multiple Occupation; window details, plans and sectional drawings (at a 1:10/20 scale) of the proposed alteration towards the front bay and the other four new windows shall be submitted to and approved in writing by the Local Planning Authority. Once approved the windows shall be installed in accordance with the approved plans.

Reason: To ensure that the proposal results in a satisfactory visual appearance in accordance with Policy PCS23 and PCS23 of the Portsmouth Plan.