

24/01423/CPL

WARD: EASTNEY & CRANESWATER

37 HENDERSON ROAD SOUTHSEA PO4 9JD

APPLICATION FOR A CERTIFICATE OF LAWFUL DEVELOPMENT FOR THE PROPOSED USE AS 7-BED/7-PERSON HOUSE OF MULTIPLE OCCUPATION (SUI GENERIS)

[23/01423/CPL | Application for a certificate of lawful development for the proposed use as 7-bed/7-person House of multiple occupation \(Sui Generis\) | 37 Henderson Road Southsea PO4 9JD \(PORTSMOUTH.GOV.UK\)](#)

Application Submitted By:

Mrs C Wells
Applecore PDM

On behalf of:

Mr J Walker

RDD: 22/11/2024

LDD: 17/01/2025

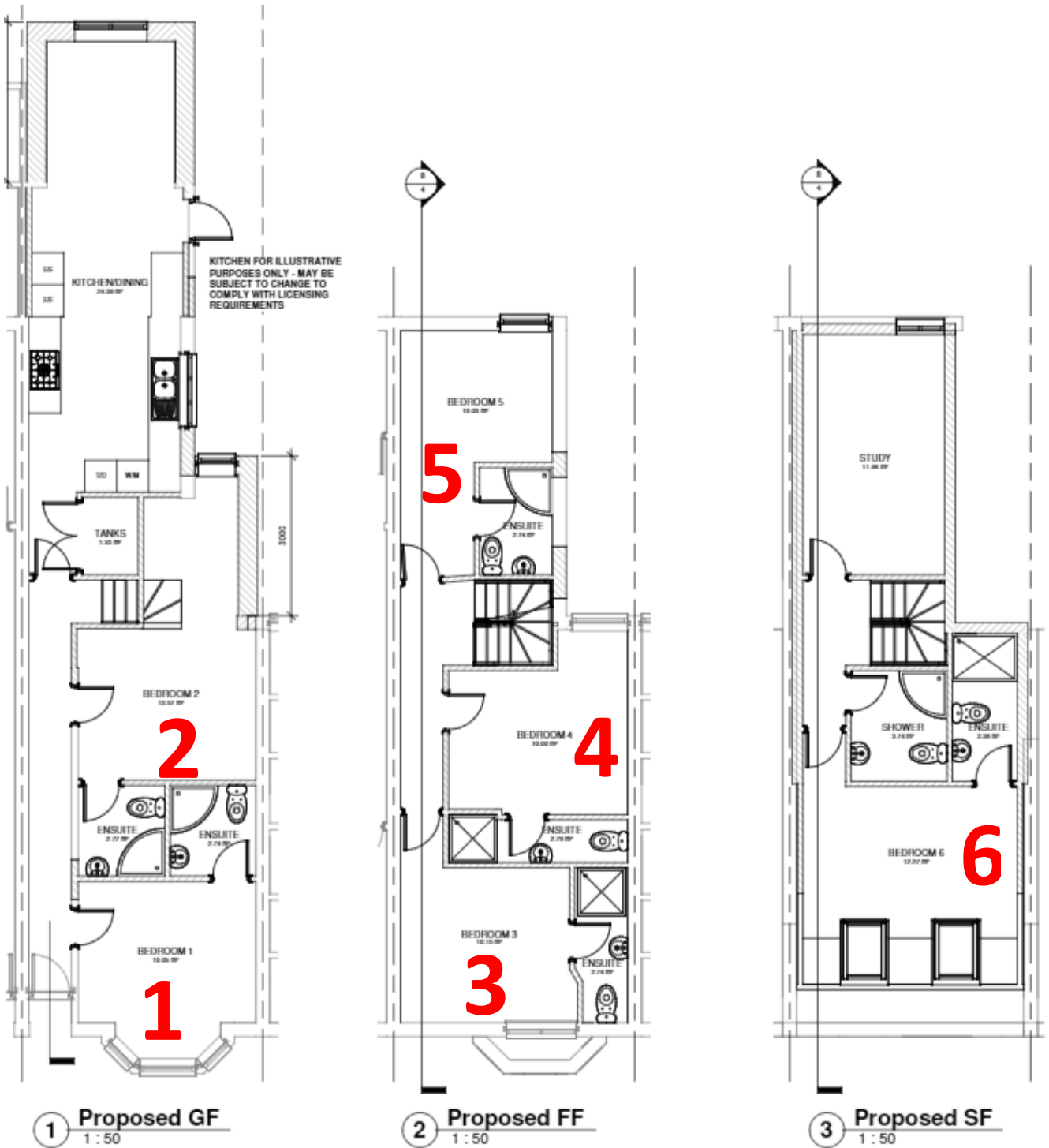
1.0 SUMMARY OF MAIN ISSUES

- 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 Lawful Development Certificate 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.

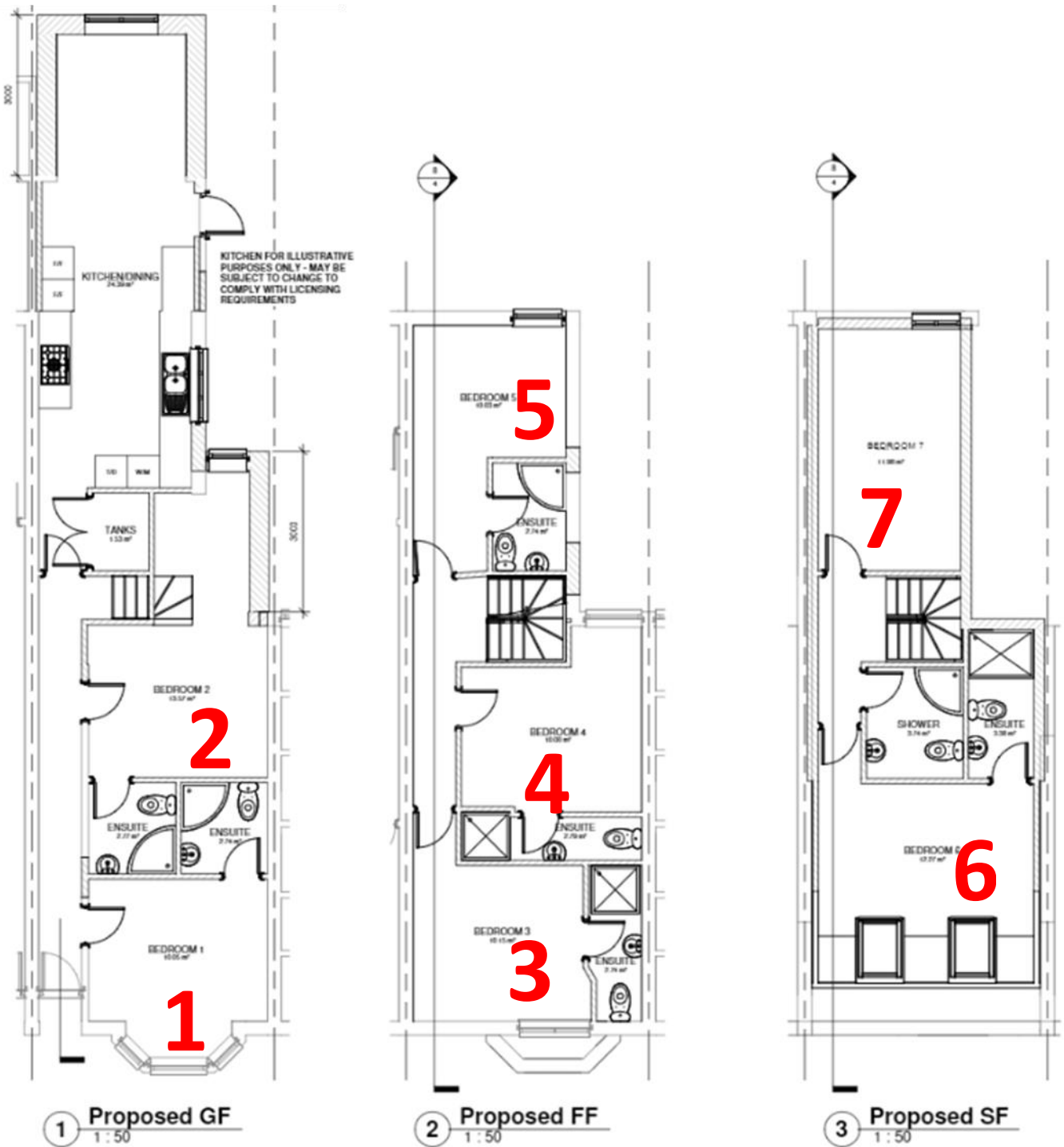
2.0 PROPOSAL

- 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. The increase in occupancy would be facilitated by the change of the room labelled as a study on the second floor to become the seventh bedroom (all bedrooms are stated by the Applicant to be single occupancy). No physical alterations, internal or external, are proposed, just the change in use of the room in question.

2.2 Plans - Existing and Proposed Floorplans.



Existing floor plans (no external alterations)



Proposed floor plans (second floor study to be converted to bedroom 7)

2.3 Relevant Planning History

23/01139/FUL
Conditional Permission
14.12.2023

Change of use from dwellinghouse (Class C3) to purposes falling within Class C4 (house of multiple occupation) or Class C3 (dwellinghouse)

3.0 **POLICY CONTEXT**

3.1 Not applicable.

4.0 **CONSULTATIONS**

4.1 Private Sector Housing - no objection, the property would require a license.

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.

5.2 Notwithstanding this, four objections with names and addresses have been received. Comments have raised various issues including:

- Loss of family dwelling and impact on the community
- Lack of car parking provision leading to an increase in traffic and exacerbation of existing on-street parking problems
- Undue strain on local services and infrastructure, including the sewage, drainage, waste management and Doctors/Dentists
- Disturbance involved with construction process including damage to neighbouring properties
- Negative impact on the character of the area
- HMO planning policy, density test should be 5% not 10% in the 50m radius

Planning Officer comment: No representation has provided evidence against the applicant's assertion that planning permission would not be required.

Three other objections were submitted, but without the objectors providing their addresses, these comments are not taken into account (in accordance with the Council's website advice).

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 applicant has provided six signed tenancy agreements to demonstrate that the C4 use, as permitted by consent 23/01139/FUL, has been implemented.

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 it is considered unlikely that the additional occupant would result in a material impact on parking. The required 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 a 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 rear roof space of the building. The use of the space as a bedroom 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 Whilst room sizes are not a material consideration for a certificate of lawfulness, it should be noted that even with the loss of the study room, a 24.4m² communal area is retained. No objection has been received from the council's Private Sector Housing team in regards to this arrangement.
- 6.8 It is therefore considered in officers' 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.
- 6.9 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.
- 6.10 In a further three appeal 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.
- 6.11 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 were allowed, with the Inspector noting the similarities to the above cases.
- 6.12 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.37 Henderson 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.37 Henderson 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.