

275 LABURNUM GROVE PORTSMOUTH PO2 0EY**CHANGE OF USE FROM 6-BED/6-PERSON HOUSE IN MULTIPLE OCCUPATION TO 7-BED/7-PERSON HOUSE IN MULTIPLE OCCUPATION****[24/01175/FUL | CHANGE OF USE FROM 6-BED/6-PERSON HOUSE IN MULTIPLE OCCUPATION TO 7-BED/7-PERSON HOUSE IN MULTIPLE OCCUPATION | 275 LABURNUM GROVE PORTSMOUTH PO2 0EY](#)****Application Submitted By:**

Mr Kercher
Incollective Limited

On behalf of:

Walker

RDD: 27/09/2024

LDD: 09/12/2024

1. SUMMARY OF MAIN ISSUES

- 1.1 This application was deferred at the Planning Committee of 4 December 2024 for a site visit by the Planning Committee to take place. Following the site visit, the application will be determined by Members at the meeting on 5 February 2025. The original committee report with the supplementary matters added is set out below. There are no further updates.
- 1.2 The scheme is brought before Planning Committee due to 12 objections as well as the request of Councillor Vernon-Jackson
- 1.3 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

2. SITE AND SURROUNDINGS

- 2.1 The application site is a two-storey terraced dwelling with rooms in the roof in a predominately residential area.

3. THE PROPOSAL

- 3.1 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.

4. PLANNING HISTORY

- 4.1 **24/00598/FUL** - Change of use from 6-bed/6-person house in multiple occupation to 7-bed/7-person house in multiple occupation. Withdrawn. See room sizes for further comment.

- 4.2 **23/00320/FUL** - Change of use from dwellinghouse (Class C3) to purposes falling within Class C3 (dwellinghouse) or Class C4 (house in multiple occupation). Conditional Permission. 12.10.2023

5. POLICY CONTEXT

- 5.1 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).

- 5.2 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 approved for Regulation 19 consultation and submission for Examination at the meeting of 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

- 5.3 Having regard to the NPPF paragraph 48 and the stage the emerging plan has reached in its preparation, limited weight is given to the above policies at this precise time.

5.4 Supplementary Planning Documents

- 5.5 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)

5.6 National Guidance

- National Planning Policy Framework (2023)
- National Planning Practice Guidance
- The Technical Housing Standards - nationally described space standards (2015)

6. CONSULTATIONS

- 6.1 Private Sector Housing: Based in the updated measurements provided in the floor plan, there are no adverse comments to be made by Private Sector Housing. This property would require to be licenced under Part 2, Housing Act.
- 6.2 Natural England: No objection subject to securing mitigation in relation to nutrient neutrality and Bird Aware Solent.
- 6.3 Highways - Laburnum Grove is a predominately residential road with bus stops and local amenities in close proximity along Copnor Road and London Road. The proposed application again seeks to convert an existing 6 HMO residential unit to a 7-bedroom HMO. Given the addition of a single bedroom, it is not considered that size of development would lead to a material impact to the function of the highway. The proposal does indicate secure cycle storage spaces within the rear garden and therefore this storage should be implemented prior to occupation of the new residential units (if not already in place).

7. REPRESENTATIONS

- 7.1 13 objections have been received to the application. 3 of these letters were provided without the postal address of the objector.
- 7.2 The following points have been raised in objection to the scheme:
- 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
 - Impact of anti social behaviour
 - Unhappy with planning history and 'stacking' applications
 - Overdevelopment of the site including issues with room sizes and communal areas
 - Loss of family dwelling and impact on the community
 - Density of HMOs in surrounding area
 - Accuracy of the HMO data held by the council
 - Fire and associated health and safety risks
 - Issues with room sizes
 - Substandard living accommodation
 - Impact on drainage
 - Impact on neighbour amenity
 - Impact on character of area

The following matters were raised which are not material to this application:

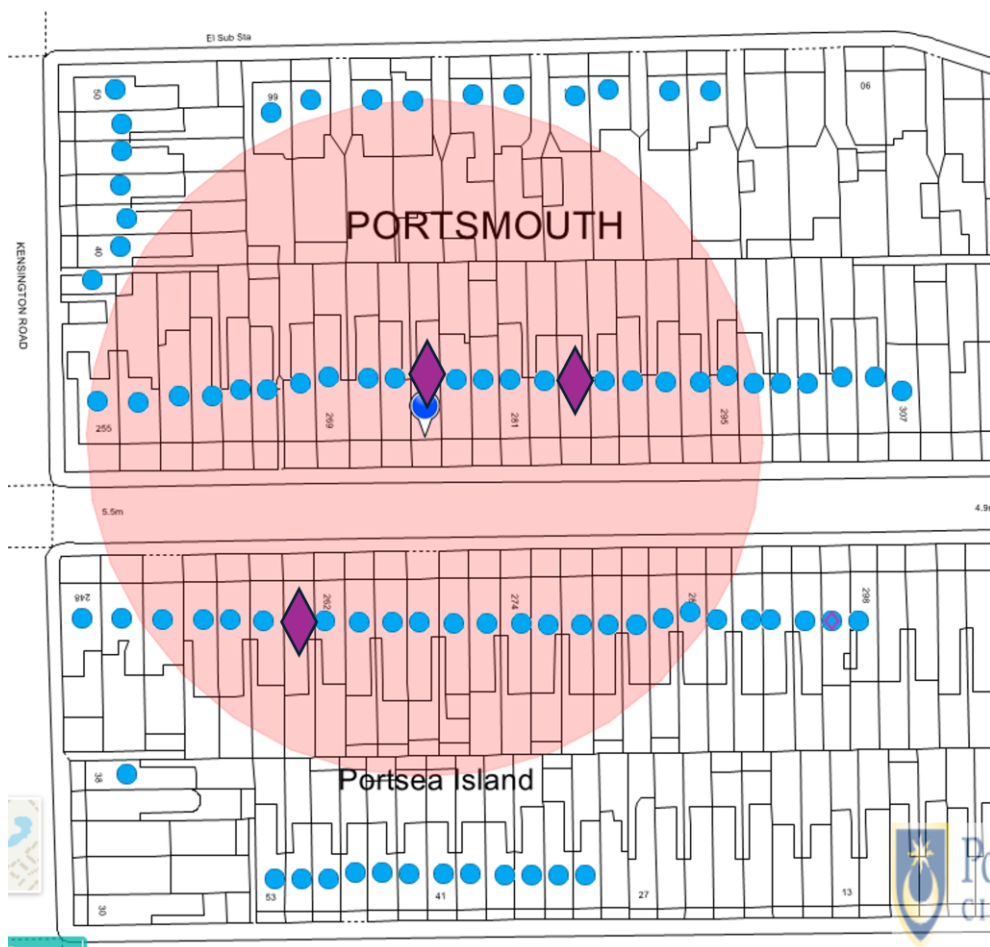
- Damage to property
- Biodiversity net gain
- 10% radius test should be lowered to 5%

Officer's note - the biodiversity net gain (BNG) legislation does not apply to changes of use with no external development.

8. ASSESSMENT

- 8.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.
- 8.2 Principle

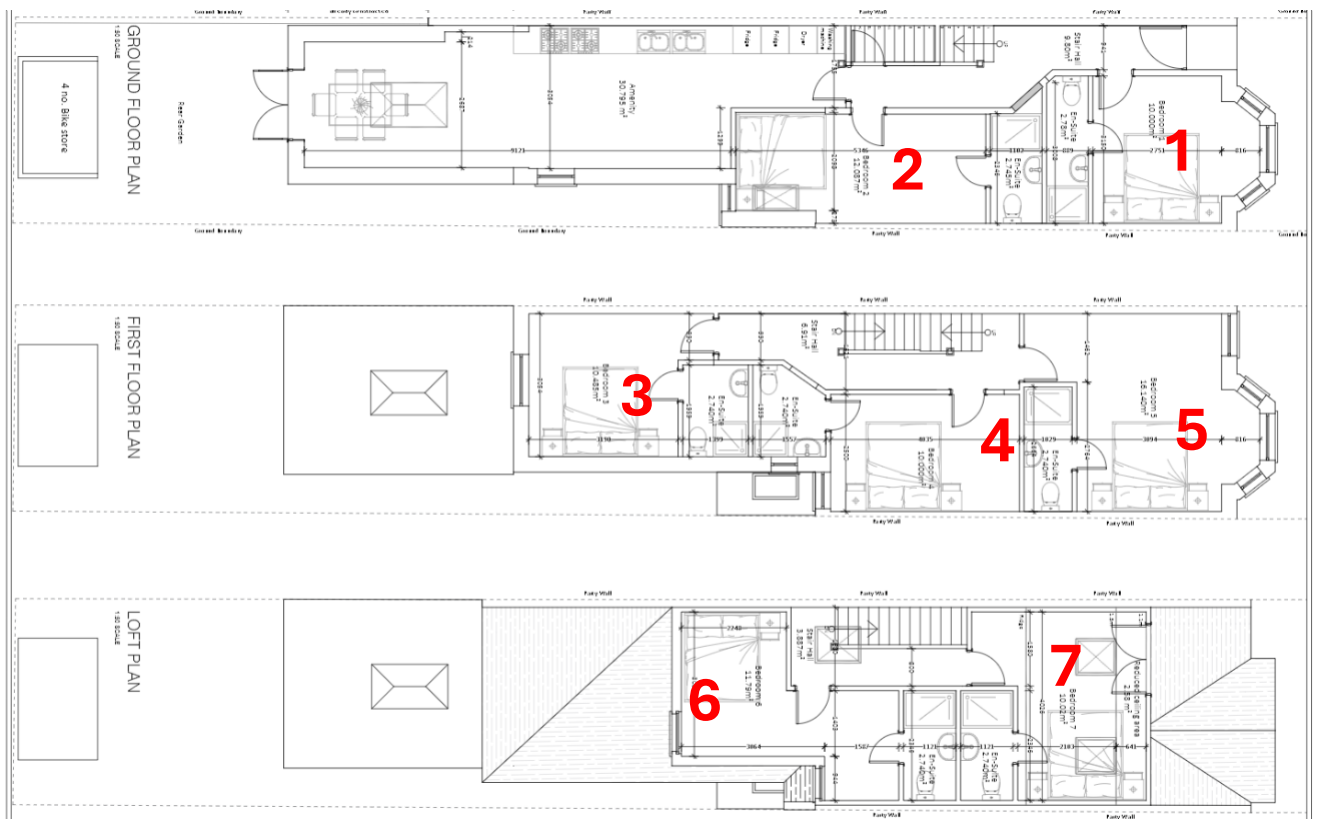
- 8.3 The HMO SPD has been published to provide a tool for addressing the recognised impacts that HMO's may have in Portsmouth, most notably in relation to the residential amenity, both for occupiers of HMO's and neighbouring properties and the housing mix of certain communities. Two of the key matters 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 regularise the increase in occupation by 1 occupant. 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 70 properties, a percentage of 5.7%. 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. Notwithstanding this, the proposal does not result in three adjacent HMOs within the 50m search area, nor the "sandwiching" of a dwelling between two HMOs.



- 8.6 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 provided for in Guidance:
Bedroom 1	10m ²	10m ²
Bedroom 2	12m ²	10m ²
Bedroom 3	10.4m ²	10m ²
Bedroom 4	10m ²	10m ²
Bedroom 5	16.1m ²	10m ²
Bedroom 6	11.75m ²	10m ²
Bedroom 7	10m ²	10m ²
Ensuite for Bedroom 1	2.78m ²	2.74m ²
Ensuite for Bedroom 2	2.74m ²	2.74m ²
Ensuite for Bedroom 3	2.74m ²	2.74m ²
Ensuite for Bedroom 4	2.74m ²	2.74m ²
Ensuite for Bedroom 5	2.74m ²	2.74m ²
Ensuite for Bedroom 6	2.74m ²	2.74m ²
Ensuite for Bedroom 7	2.74m ²	2.74m ²
Combined Living Space	30.6m ²	22.5m ² (where all rooms are 10m ² or more)



8.7 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. It should be noted that the previous application was voted to be refused due to the very slight shortfall in room size of bedroom 7. This has been attributed to an error in the drawing of the plans. Officers have measured the room and verified the measurements submitted on the revised plans. A random sample of other measurements was also taken within the property, with no further errors apparent.

8.8 Amenity and Parking

8.9 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.

8.10 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.

8.11 Other Material Considerations

8.12 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 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 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.

8.13 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.

8.14 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.

- 8.15 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. The Applicant therefore has a fallback position to lawfully carry out the change in occupation without needing planning permission.
- 8.16 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 in the development against any benefits arising. Principally, for this HMO application, the benefits are 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 demonstrate a 'five year supply' of housing, with only a 3.31 year supply currently identified.
- 8.17 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 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.
- 8.18 Some representations have raised issues with the density of HMOs allowed by local policy. This is not relevant to the determination of this application, and notwithstanding this these issues should have been addressed to the local plan consultation and not the determination of current planning applications.
- 8.19 Impact on Special Protection Areas
- 8.20 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 and the proposal can 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.

9.2 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 years (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