

81 Stubbington Avenue Portsmouth PO2 0JD

CHANGE OF USE FROM A 6-BED/6-PERSON HOUSE IN MULTIPLE OCCUPATION TO A 7-BED/8-PERSON HOUSE IN MULTIPLE OCCUPATION; EXTENSIONS TO ROOF TO INCLUDE GABLE END BUILD UP AND REAR DORMER TO REAR ROOFSLOPE; CHANGES TO FENESTRATION OF EXISTING GROUND FLOOR EXTENSION

[24/00596/FUL | CHANGE OF USE FROM A 6-BED/6-PERSON HOUSE IN MULTIPLE OCCUPATION TO A 7-BED/8-PERSON HOUSE IN MULTIPLE OCCUPATION; EXTENSIONS TO ROOF TO INCLUDE GABLE END BUILD UP AND REAR DORMER TO REAR ROOFSLOPE; CHANGES TO FENESTRATION OF EXISTING GROUND FLOOR EXTENSION | 81 STUBBINGTON AVENUE PORTSMOUTH PO2 0JD](#)

Application Submitted By:

Mrs Carianne Wells
Applecore PDM Ltd

On behalf of:

Parham

RDD: 17.05.2024

LDD: 05.08.2024

1. SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due to the number of objections as well as the request of Councillor Vernon-Jackson and Councillor Russell Simpson
- 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 terrace dwelling with rooms in the roof in a predominately residential area. The proposal is on a corner plot to Fearon Road with strong elements of architectural featuring on both elevations fronting the highways. The property has an existing ground floor, flat-roofed extension which sits on the back of pavement to Fearon Road. To the rear a dropped kerb which serves an off-road parking space in the former back garden. The side extension and access ramp were built for the former doctor's surgery.
- 2.2 The site is 400m from North End District Centre, which has a wide range of shops, services, buses and some employment. There are further shops at Ocean Retail Park, 1.25km to the east. There is significant employment at the industrial/commercial areas to the north-east. The site is 650m from College Park.

3. PROPOSALS

- 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 8 individuals to live together as an HMO. This change in occupancy would involve the re-configuring of Bedroom 6, and the formation of an extra bedroom in a new second storey, formed by a hip-to-gable roof extension to the Fearon Road elevation, and an

adjoining rear roof extension, both to be clad in tile hanging, with a matching brick for the gable end. The new bedroom would be for occupation by two persons. Changes to the ground floor fenestration are limited to a new window would be inserted into the kitchen, facing north across the retained parking bay. A fence would be erected adjacent to secure the bike store and access to the back door, while leaving the off-street parking bay open to the dropped kerb and street on Fearon Road. The Applicant has stated that the parking space would be for the use of one of the HMO's occupiers, as existing.

- 3.2 For completeness, the application was originally for an eight bedrooomed, eight-person HMO, achieved through a rear first floor extension (one new bedroom), and the two roof extensions (a second new bedroom). The first floor extension was removed from the application at the officer's request. The applicant wished to retain the number of occupants at eight, and so now proposes the new roof room to be double-occupancy. A number of other more minor alterations have been carried out during the course of the application.

4. PLANNING HISTORY

4.1 **20/00083/FUL**
Conditional Permission
28.07.2021

Change of use from Surgery (Class D1) to purposes falling within Class C3 (dwelling house) or Class C4 (house in multiple occupation)

- 4.2 A series of applications for the doctor's surgery, 1964 - 2012, including the ramp and extension.

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: No objection - Stubbington Avenue is a residential road with parking accommodated through unrestricted on street parking, amenities are available in close proximity. It is not considered the addition of two bedrooms would lead to a material impact to the function of the highway. There may be increase insistences of vehicles hunting for space in the vicinity, this is however an issue of residential amenity for your consideration of the application. Condition required for secure cycle storage

6. REPRESENTATIONS

- 6.1 Letters to adjoining properties were sent on 11.06.24. A Site Notice were erected outside the site on 13.06.24.
- 6.2 12 objections have been received to the application. 5 of these letters were provided without the postal address of the objector.
- 6.3 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
- Substandard living accommodation
- Impact on character of area
- Overshadowing, overlooking, loss of privacy and impact on neighbour amenity

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

- Biodiversity net gain
- 10% radius test should be lowered to 5% or otherwise changed
- Loss of property value
- Fire and associated health and safety risks

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 agreed at full council on 28 May 2024 and consultation on the Pre-Submission Local Plan closed in September 2024. The following policies are of relevance:

- 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 increase occupation by 2 occupants. 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 7 HMOs out of 53 properties, a percentage of 13.2%. 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.



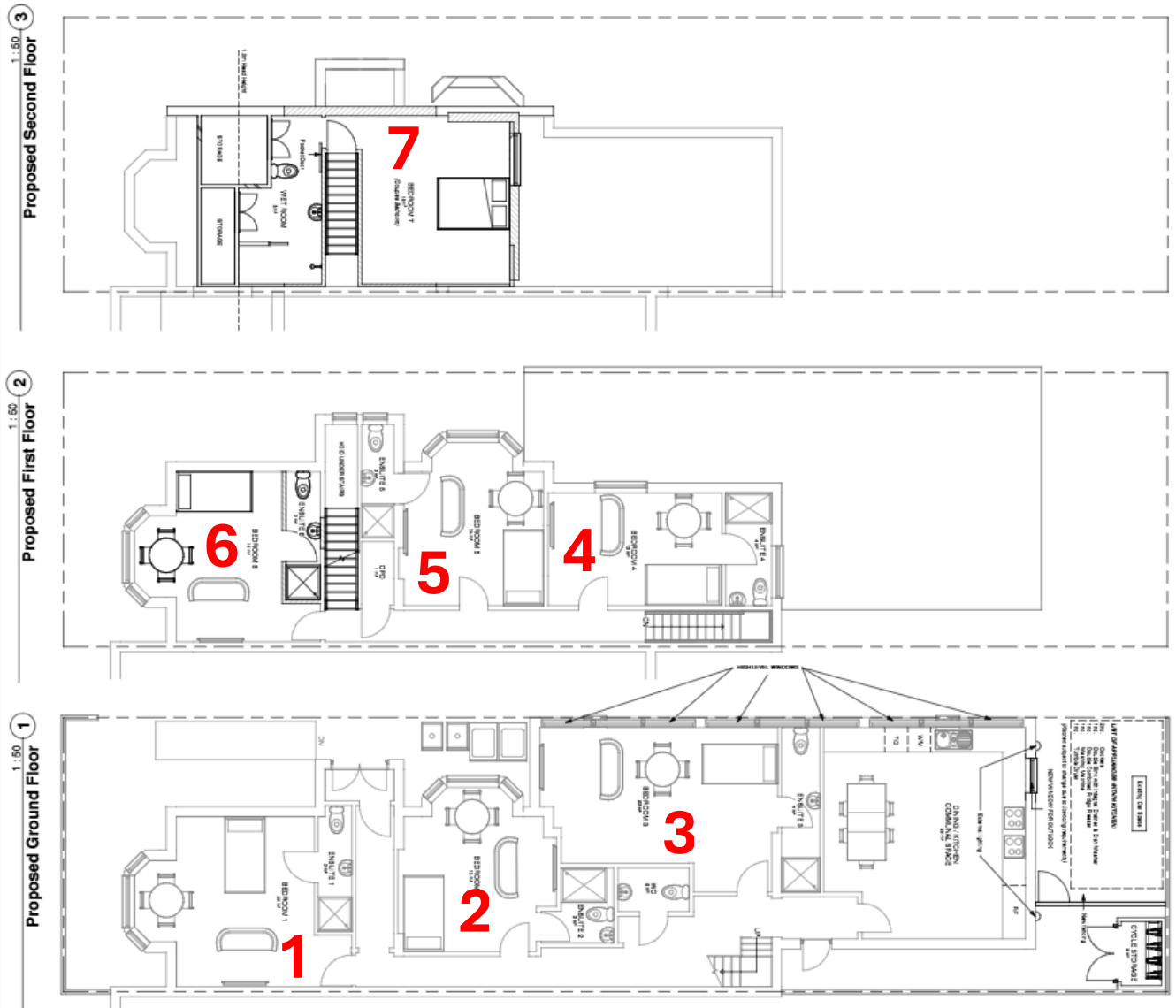
8.6 Design

- 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 extensions to the roof would be reasonably prominent given the end of terrace location of the application site, but they are not unduly large. The application site has also been subject to several alterations to the fenestration and has been extended and is considered to be capable of having the proposed roof extensions without materially harming the character of the area. This is dependant on materials: the Applicant has substituted the formerly-proposed cladding to the hip-to-gable, to now be matching brick, and the dormer extension would be finished in matching hung tile. The decorative corbels just below present eaves height would be removed, which is regrettable but not a matter that could justify withholding permission. The two castellated features to the Fearon Road elevation would not require removal for the hip-to-gable extension. A condition is attached to require details of the making good of the removed corbels.
- 8.9 Overall, the proposed external alterations are considered to be acceptable, on balance.

8.10 Standard of accommodation

8.11 The roof extensions 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 (ground floor, single occupancy)	19.5m ²	10m ²
Bedroom 2 (ground floor, single occupancy)	15m ²	10m ²
Bedroom 3 (ground floor, single occupancy)	22.8m ²	10m ²
Bedroom 4 (first floor, single occupancy)	13.4m ²	10m ²
Bedroom 5 (first floor, single occupancy)	14.1m ²	10m ²
Bedroom 6 (first floor, single occupancy)	15.3m ²	10m ²
Bedroom 7 (second floor, double occupancy)	17.5m ²	10m ²
Combined Living Space	27.9m ²	22.5m ²
Ensuite for bedroom 1	2.8m ²	2.74m ²
Ensuite for bedroom 2	3.1m ²	2.74m ²
Ensuite for bedroom 3	4.3m ²	2.74m ²
Ensuite for bedroom 4	3.5m ²	2.74m ²
Ensuite for bedroom 5	2.75m ²	2.74m ²
Ensuite for bedroom 6	3m ²	2.74m ²
Wet Room for bedroom 7	7.9m ²	3.74m ²
Shared WC (ground floor)	2.1m ²	N/A additional



Floor Plans

- 8.12 As is shown in the table above, the proposal results in an internal layout that meets the Council's adopted space standards, and provides apparent suitable layout and light, and is therefore considered to result in a satisfactory standard of living environment.
- 8.13 Externally, what was the last part of the original rear garden has been used for several years at least as an off-road parking bay. This is proposed for retention by the Applicant, in preference to the provision of a new garden/landscaped yard for the HMO occupiers
- 8.14 Amenity and Parking
- 8.15 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.
- 8.16 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. The application site has one parking space shown for retention. Consequently, the proposal remains in accordance with the Council's adopted guidance on parking provision and Policy PCS17 of the Local Plan.

- 8.17 The proposal has been amended from the originally submitted plans. Principally, the first floor rear extension has been removed at Officer request - it would have likely caused a harmful impact by means of overshadowing, loss of light, and an increased sense of dominance on the neighbouring property, no. 83. The external changes are now limited to the rear and side roof extensions, and as such it is not considered that there would be a harmful impact on neighbour amenity by means of overshadowing, loss of light or overlooking given the location of the dormer away from the eaves.
- 8.18 Other Material Considerations
- 8.19 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 for the increase in occupancy if this application is refused. The property's existing bedrooms are large and, at least two of them could accommodate the proposed two extra occupiers. 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 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.
- 8.20 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.
- 8.21 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.
- 8.22 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. **NB:** This application is distinct from the above examples, as it requires the construction of roof extensions in order to enable the increase in occupancy and distribution and number of rooms that the Applicant has proposed. It is therefore considered in Officers' view that while the increase in occupancy does not require Planning Permission, the extensions do. As

these extensions are part of the planning application, conditions are attached with respect to these elements.

- 8.23 Notwithstanding the advice of Officers above, should it be considered necessary to assess the merits of the application with respect to increase in 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 4.97 year supply currently identified.
- 8.24 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.
- 8.25 Impact on Special Protection Areas
- 8.26 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.
- 8.27 Other matters raised in representations
- 8.28 Biodiversity and Ecology concerns are not considered to be materially different from the existing C3 use. In any case, in terms of Biodiversity Net Gain the site is considered to have a 'de-minimis' exemption. This exemption applies to development that does not impact a priority habitat and impacts less than 25 square metres (e.g. 5m x 5m) of non-priority on-site habitat. Other legislative regimes cover any disturbances of bird nests or ecology concerns.
- 8.29 Comments regarding the HMO radius test and density should have been submitted during the public consultation for the draft local plan last summer. The 10% threshold remains as adopted guidance in the SPD.
- 8.30 Loss of property value is not a material planning consideration.
- 8.31 An objection point concerning drainage has been raised. It is not considered that a change of use from a Class C4 HMO to a Sui Generis HMO would result in a significant impact on the local sewer network, and this was confirmed with a dismissed Appeal Decision in 2024 for a proposed Sui Generis HMO at 61 St Chads Avenue (ref 23/00676/FUL) . 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".

8.32 Issues of fire safety and other health and safety related matters would be controlled by the licensing regime and by Building Regulations.

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 resulting from the extra occupancy of two further persons 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 increase in occupancy, but the extensions do require permission and are considered on their own merits to be acceptable subject to the submission of final details of the making good of the corbelled area below the gable end.

RECOMMENDATION Conditional Permission

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 PP-13063365v1; Proposed Floor Plans PG.9056.24.02 Rev F; Proposed Elevations 9056.24.03 Rev F; Proposed Roof Plan PG9056.24.08 Rev A

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

Corbel details:

- 3) Prior to the construction of the hip-to gable roof extension hereby permitted, details of the making good of the corbelled area (including the horizontal support line) below the gable end shall be submitted to and approved in writing by the Local Planning Authority. The area shall be made good in accordance with the approved plans prior to completion of this extension.

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