

24/01161/PLAREG

WARD:NELSON

137A LONDON ROAD PORTSMOUTH PO2 9AA

RETROSPECTIVE APPLICATION FOR CHANGE OF USE OF UPPER FLOORS FROM HOUSE IN MULTIPLE OCCUPATION (CLASS C4) TO 5-BED/7-PERSON HOUSE OF MULTIPLE OCCUPATION (SUI GENERIS)

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Application Submitted By:

Mr James Bengree
JB Architectural Design Studio

On behalf of:

Mr Robert Johnson

RDD: 25th September 2024

LDD: 25th December 2024

1. SUMMARY OF MAIN ISSUES

- 1.1 This application is brought before Planning Committee due 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
 - Impacts on Amenity including parking
 - Other material considerations

2. SITE AND SURROUNDINGS

- 2.1 The application site is a three-storey mixed use planning unit, with a commercial usage to the frontage of the ground floor, with the communal area of the existing HMO to the rear. The first and second floors contain 5 bedrooms served by en-suites. Permission was granted for this layout (with the HMO aspect being a C4 usage for up to 6 unrelated occupiers). This existing use is explained in the Planning History section of this report.

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 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 App No - 17/01610/FUL

Raise height of 2-storey rear projection; construction of part 2-storey/part single-storey rear/side extension, and dormer extension to rear roofslope; and use of part of ground floor and upper floors as a HMO within Class C4 with associate cycle and refuse storage

Decision - Granted

Date of Decision - 13/12/17

4.2 **App No - 19/00595/FUL**

Change of use of part of ground floor commercial unit (Class A1/A2) and upper floors to five bedroom/seven person House of Multiple Occupation (Sui Generis); to include construction of part single/part two storey rear/side extension; dormer to rear roofslope and associated cycle and refuse stores.

Decision - Refuse

Date of Decision - 15/03/21

Reasons for Refusal:

- 1) *The size of the accommodation provided in bedroom 5 was insufficient to provide occupants with amenity in preference or in addition to the communal living space and therefore overall, the development is not considered to provide a good standard of living environment for those occupants, contrary to PCS23 of the Portsmouth Plan.*
- 2) *The development would have an unmitigated likely significant effect on the Solent SPA through recreational disturbance and increased eutrophication contrary to the Habitats Regulations.*

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. No adverse comments to be made around proposed layout.

5.2 **Highways** - No highways safety issues raised, but note that an increase in occupancy could result in more persons competing for a parking space, which is a matter of residential amenity for the Local Planning Authority to consider.

6. REPRESENTATIONS

6.1 Letters to adjoining properties were sent on 05.11.24. Site Notices were erected outside the site and on adjoining roads on 05.11.24.

6.2 No objections have been received to the application.

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

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 Pre-Submission Portsmouth Local Plan is due to be submitted for examination in 2025.

- 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

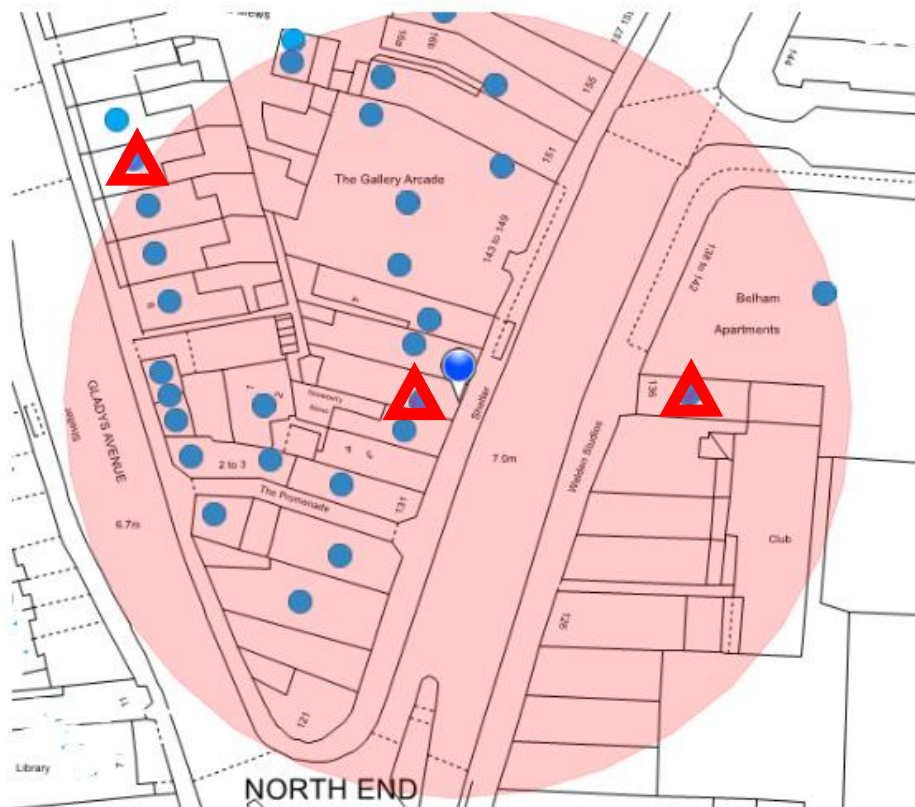
8.1 The main issues to consider in the determination of this application is whether the proposal is acceptable in principle.

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 with 5 bedrooms and the application has been made to regularise the increase in occupation by 2 occupants by double occupancy of two rooms. 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 3 HMOs out of 83 properties, a percentage of 3.6%. 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



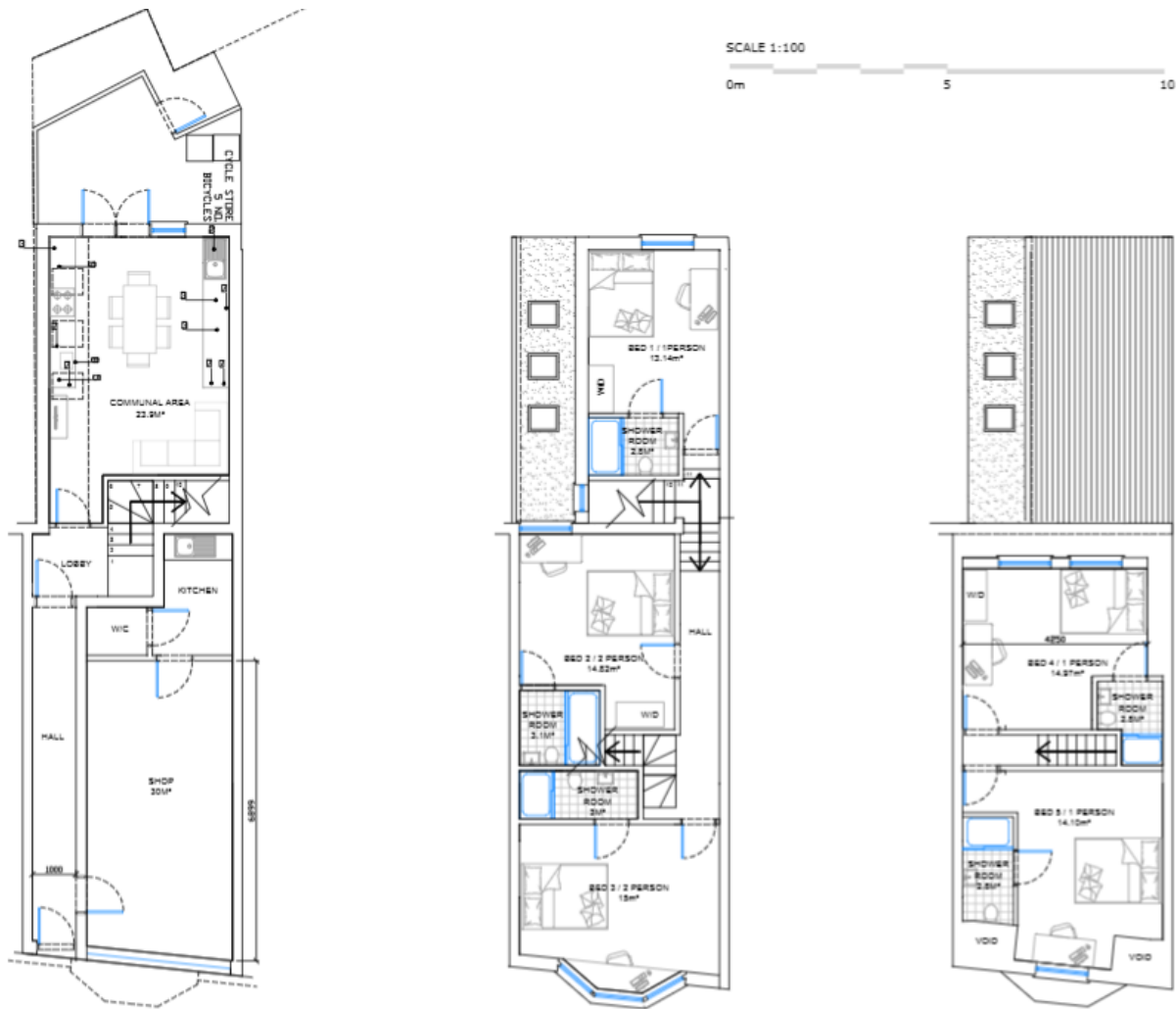
household dwellings between HMOs or create a number of HMOs next to each other. As this proposal does not involve the creation of a new HMO, these considerations are not brought into effect.

Figure 1: Residential properties and HMOs within the 50m radius of the application site.

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	13.14m ²	10m ²
Bedroom 2 (double occ)	14.82m ²	14m ²
Bedroom 3 (double occ)	15.00m ²	14m ²
Bedroom 4	14.97m ²	10m ²
Bedroom 5	14.10m ²	10m ²
En suite 1	2.8m ²	2.74m ²
En suite 2	3.1m ²	2.74m ²
En suite 3	3m ²	2.74m ²
En suite 4	2.8m ²	2.74m ²

En suite 5	2.8m ²	2.74m ²
Combined Living Space	23.9m ²	22.5m ²



8.7 As is shown in the table above, the proposal results in an internal layout that meets a straightforward appraisal against the Council's adopted space standards except for the communal shared living area. However, the HMO SPD, at para 2.6, advises that more detailed guidance, beyond these headline requirements should be referred to within the Council's standards for Houses in Multiple Occupation Guidance (September 2018). This more detailed guidance applies lower minimum requirements (of 22.5m²) for combined living accommodation in circumstances where all bedrooms are at least 10m² and the accommodation is otherwise acceptable as communal space. On the basis of the information supplied with the application, this detailed guidance is considered applicable and the resulting layout is considered to result in a satisfactory standard of living environment.

8.8 Amenity and Parking

8.9 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.

8.10 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 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.
- 8.18 In the event it is concluded that planning permission is required, it is considered that the previous reasons for refusal are overcome. The first reason for refusal is overcome by ensuring that the plans are clearly labelled to show that only rooms large enough to accommodate double occupancy are available for 2 persons to share. The second reason for refusal can be overcome through the completion of the relevant legal agreement if the proposal is considered to be development and otherwise considered to be acceptable by members.
- 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 year (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