

Matter 8: Housing policies

Issue: Whether the Plan is positively prepared, justified, effective and consistent with national policy in relation to the housing policies in Chapter 6 of the Plan.

Inspector's Q's, relevant to my representation:

PLP20: Houses in Multiple Occupation -

9) Are the proposed criteria for development proposals for houses in multiple occupation justified and supported by the evidence?

10) Is the policy otherwise positively prepared, justified, effective and consistent with national policy?

LINDA VICKERMAN 60834 3 REDACTED and LINDA VICKERMAN 60834 4 REDACTED:
Representations relate to PLP 20 Houses in Multiple Occupation Pages 143-144 1a) 1b)
Paragraphs 6.104 to 6.109 of KD01

KD01, page 143 -

Homes in Multiple Occupation

Introduction:

"6.104 While the important contribution of HMOs to meeting the City's housing needs is recognised, this can be at the expense of family homes through the conversion and subdivision of larger dwellings. The potential for negative social, environmental and amenity impacts of high concentrations of HMOs on local communities has been widely discussed. It is therefore considered appropriate for the Local Plan, in conjunction with other tools available to the Council, to seek to minimise the potential negative impacts of HMO development. To date, this has included implementing changes to permitted development rights through an Article 4 Direction and providing additional guidance to help assess the suitability of proposals in view of maintaining mixed and balanced communities."

In addition to the above, alternatives to C3 to HMO conversions should be considered, such as converting old commercial properties into more spacious co-living apartments, offering much better facilities for single people, and even couples, with larger self-contained rooms, gyms, laundry facilities, communal spaces for socialising, etc. These properties will, by default, be near shops and transport links, and minimise the potential negative impacts of HMO developments in highly residential areas.

There are a lot of derelict commercial properties across Portsmouth that could be converted, e.g. the old Kwik Save site in Stubbington Avenue (closed for around 20 years, current planning application still live from 01/2026); United Footwear shop in Fratton Road (closed for around 10 years, planning permission granted in 2018 but not fulfilled), the old Sorting Office in Slindon Street (closed for around 11 years, various planning apps granted but yet to be fulfilled), Connect Centre in Kingston Crescent (closed in 2019, various planning apps granted but yet to be fulfilled), etc. Why have these buildings been allowed to sit and decay for so long when they could have been repurposed as much needed accommodation for singles and couples, thereby saving C3 properties for families?

KD01, page 144 –

Supporting Text

“6.106 The Council adopted an updated HMO Supplementary Planning Document (SPD) in November 2019. This sets out the Council’s approach to mitigating the known likely potential harm caused by concentrations of HMOs and ensuring that Portsmouth’s communities are mixed, balanced and sustainable. It includes a threshold of 10% of residential properties within a 50m radius of the application property guidance to help determine where a community will be considered 'imbalanced' and guidance on how any potential over concentrations of HMOs will be considered. This document is intended as a useful tool for developers and prospective landlords to gain understanding of how planning applications for new HMOs will be decided. The threshold set in the SPD has been used successfully in Portsmouth since its adoption, and its inclusion in PLP20 is a pragmatic transfer of guidance into policy.”

The HMO Database - what exactly does the online HMO Database/Register consist of? It is important to know precisely what residents can access, and what Planning are actually using, as a reference tool, yet no one seems to really know for sure. Whatever it is, we do know that the information offered about HMOs is inaccurate, on both the combined HMO Database and the Licensing Register – there is evidence of this if the Inspector would like to see it. Nevertheless, the Senior Planning Team remain adamant that the 10% in 50m rule can be reliably calculated and applied. How can this be allowed to go on?

Until the HMO Database is fully updated, a moratorium is clearly needed for HMO applications, both FUL and CLD. There are many HMOs in Portsmouth that began operating after Article 4 was introduced but failed to apply for planning permission, hence the glut of CLDs for existing use that have been coming through now. Where have

the Enforcement Team been over the last ten years? The Licensing Team are another problem. They do not appear to communicate with the Planning Team in any way shape or form, they function under a different legal process to Planning which does not help matters, it seems Planning and Licensing apply different standards when issuing licences and granting planning permission, inappropriate licences are being issued (there is proof of this) possibly because desktop survey are carried out rather than site visits, and even where licences are issued properly they are not added to the HMO database – sometimes for years. Why is this?

As stated above, a moratorium is needed in the first instance to allow the HMO Database to be fully updated, and then a ‘no more than 5% HMOs in a 50m radius rule’ should be applied across the whole of Portsmouth to ensure services and infrastructure are not depleted further still, affording much better control over the proliferation of HMOs in the city, whilst helping to preserve truly mixed and balanced local communities.

“6.107 Applications for HMOs should assess the likely impact of non-provision of on-site parking on highway safety, including visibility, potential for obstruction, increased congestion and, if relevant, economic impact on local business. These should be considered on a case-by-case basis, and any design and access statement should outline how these issues have been considered and, where necessary mitigated.”

Refusals for HMO applications by Planning Committee, on the grounds of parking and associated safety issues, are almost always overturned by the Planning Inspectorate on appeal. Why is this? Not only is parking a material consideration in Portsmouth, but it can also be proven that Portsmouth’s residential roads are seriously oversubscribed, simply by walking around them during evenings/weekends/bank holidays, to the point of them being dangerous with many people having no other option but to park their cars illegally during the above times. The only mitigation HMO developers put forward is bike sheds! If tenants are genuinely young professionals, or tradespeople, they will have cars and vans – that is seven or more cars/vans in one HMO, alone, without including visitors. The SPD desperately needs to be updated, requiring parking standards which fully differentiate between C4 and Sui Generis properties.

6.109 Due to the adverse implications to local amenity, the Council will only exceptionally grant planning permission to intensify the use of an existing HMO, namely change the use of a Class C4 or mixed C3/C4 use to an HMO in Sui Generis use or

increase the occupation of an existing HMO, if sought in areas where concentrations of HMOs exceed the 10% threshold.

This is all very well, but agents regularly rely on, and cite within their planning statements, a now-withdrawn Government Circular, to help successfully circumnavigate the 10% threshold when applying to increase occupancy from a C4 to Sui Generis HMO without requiring planning permission.

Below is one of my recent objections (with details of address/ref. no/agent/applicant removed) to hopefully explain the situation a little better:

Application for Certificate of Lawful Development for the proposed change of use from a six bedroom House in Multiple Occupation to a seven bedroom House in Multiple Occupation.

The agent has used the Government Circular 2010, within their Planning Statement, to help make a case for an increase in occupancy - thereby triggering a change of use from C4 to Sui Generis.

Moving a property from a Class C4 use (small HMO for 3 to 6 unrelated people) to a Sui Generis use (a large HMO for 7 or more people) means leaving the protection of the Use Classes Order, i.e. Sui Generis means "in a class of its own" and Section 55(2)(f) of the Town and Country Planning Act 1990 therefore no longer applies.

The Government Circular 2010 entitled "Changes To Planning Regulations For Dwellinghouses And Houses In Multiple Occupation" states within Annex A, paragraph 17:

"Although the control limit of six persons defines the scope of the C3 (b) and (c) dwellinghouses and C4 houses in multiple occupation classes, this does not imply that any excess of that number must constitute a breach of planning control. A material change of use will occur only where the total number of residents has increased to the point where it can be said that the use has intensified so as to become of a different character or the residents in relation to C3 no longer constitute a single household."

Within the "Pre-Submission Portsmouth Local Plan July 2024; Strategic Policy PLP20: Houses in Multiple Occupation - Paragraph 2, it states:

"In areas where concentrations of HMOs exceed the 10% threshold, development proposals that intensify the use of an existing HMO, namely change the use of a Class

C4 or mixed C3/C4 use to an HMO in Sui Generis use or increase the occupation of an existing HMO, will only be permitted in exceptional circumstances."

A HMO density map has not been submitted by Planning, presumably because this is an application for a CLD, but the area does appear to be saturated with HMOs and the agent would be aware of this fact. According to the HMO Database this property is currently licensed for a maximum of 4 occupants for a period of 5 years from 06/09/2024. This new application for an occupancy of 7 therefore demonstrates an increase of 75% - effectively another C4 within a C4. I am sure the agent will refer to the fallback position of a C4 hypothetically allowing occupancy of up to 6 people, but this does not reflect the current reality of a maximum of 4 people according to the licence held now. If more than 4 people are living there at the moment, then a breach of that licence is occurring.

The Government Circular 2010 would have circumnavigated the need for planning permission for the new application, and the CLD for proposed use would have swerved the 10% rule if it wasn't for the PLP20 - which now carries increasing weight. So, this is where it starts to get interesting.

The Government Circular 2010 was WITHDRAWN on 7th March 2014, see - <https://www.gov.uk/government/publications/changes-to-planning-regulations-for-dwellinghouses-and-houses-in-multiple-occupation-circular-08-2010>. So, why is the Government Circular 2010 still being cited by the agent here, 12 years after its withdrawal? Why is it also still being accepted, as law, by PCC Planning Dept and PINS?

The Circular was replaced in 2014 with "Planning Practice Guidance" <https://www.gov.uk/government/collections/planning-practice-guidance>. This contains a section entitled, "When is permission required?" <https://www.gov.uk/guidance/when-is-permission-required>, which states in Paragraph 001:

"What is development?

Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in section 55 of the Town and Country Planning Act 1990.

'Development' includes: material changes of use and buildings".

As far as I am aware, a change of Class is generally considered a material change of use, and the application form itself states it is an "Application for Certificate of Lawful Development for the proposed change of use from a six bedroom House in Multiple

Occupation to a seven bedroom House in Multiple Occupation."

Within "When is Permission Required", Paragraph 011 entitled "When does a change of use require planning permission?" states, "A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case." This suggests that LPAs are afforded discretion.

In the absence of the withdrawn Government Circular 2010, and in support of a refusal (and potential appeal to PINS), it may be said that in addition to a change of Class being considered a 'material change of use' it is no longer reasonable to look at each HMO application in isolation and simply say just one or two extra tenants will make no difference – significant cumulative effects need to be examined here. When an application for an increase in occupancy in an existing HMO is granted it not only adversely affects the immediate community but the rest of the city too, simply because Portsmouth is such a small, highly densely populated island city whose services and infrastructure are already beyond breaking point. It should also be noted here that owners of HMOs do not pay the Community Infrastructure Levy (CIL), and HMOs populated entirely by students are fully exempt from Council Tax charges. The resulting negative, cumulative effects on residents' lives and wellbeing, not to mention services and infrastructure, must now be properly, and independently, analysed and addressed.

To summarise:

The Government Circular 2010 essentially erased the distinction between Class C4 and Sui Generis properties, and allowed occupancy levels to become almost an irrelevance. This was clearly a serious error of judgement and, presumably, at least one of the reasons for the Circular's withdrawal, approx. 3.5 years later, on 7 March 2014.

The Government Circular 2010 was replaced with Planning Practice Guidance on 6 March 2014, and nowhere within the Planning Practice Guidance does it even remotely replicate the wording of Annex A Paragraph 17 of the Circular. The Planning Practice Guidance does however afford local judgement/discretion in deciding whether an increase in occupancy of an existing HMO requires planning permission which, given the evidence above, it clearly does if that increase triggers a change of Class. Hopefully, PCC Planning Team will now begin to employ that discretion, and the Planning Inspectorate will consider it, and give full weight to it, when appeals are made.

If successful, developers simply cram in as many single people into their HMO properties as Licensing allow - and the Licensing system here is far from perfect, often undertaking desktop surveys rather than actual site visits when issuing licences. This situation very effectively further imbalances an area's demographic by stealth.

With regard to paragraph 36 of the NPPF 2024, considering the above, I do not feel that this part of the plan is sound on the grounds that:

- a) It is not positively prepared – it is not consistent with achieving sustainable development. Services and infrastructure in Portsmouth are already broken, and further densifying already highly dense areas will turn Portsmouth into what resembles a modern-day slum;
- b) It is not justified – reasonable alternatives have not been considered, i.e. conversion of commercial properties into more spacious and appropriate, self-contained co-living arrangements for singles and couples;
- c) It is not effective – it is not deliverable over the plan period; no more family homes can be lost to HMO conversions;
- d) It is not consistent with national policy – it cannot possibly enable the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant (see point a).

With specific regard to the Inspector's questions:

PLP20: Houses in Multiple Occupation -

9) Are the proposed criteria for development proposals for houses in multiple occupation justified and supported by the evidence? No – see reasoning above.

10) Is the policy otherwise positively prepared, justified, effective and consistent with national policy? No – see reasoning above.