Portsmouth CITY COUNCIL

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Title of meeting:	Cabinet Member for Planning Policy and City Development
Subject:	Houses of Multiple Occupation
Date of meeting:	29 May 2025
Report by:	Ian Maguire, Assistant Director of Planning and Economic Growth
Cabinet Member:	Councillor Hugh Mason, Cabinet Member for Planning Policy and City Development
Wards affected:	All

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1. **Requested by**

1.1 This report was requested by the Cabinet Member for Planning Policy and City Development in response to queries from Members.

2. **Purpose**

2.1 The purpose of this report is to provide members with the key background in respect of HMOs in Portsmouth, the relevant planning policy in respect of them and how it has been formed, and to provide an update on decision making in respect of HMO applications for planning permission.

3. **Information Requested**

3.1 Background

3.1.1 What is a House of Multiple Occupation ('HMO'). An HMO is defined in s254 of the Housing Act, and by reference to in the Town and Country Planning (Use Classes) Order) (the 'UCO'), applies to planning law. The definition has a number of separate tests but, relevant to planning at their core an HMO is defined as multiple people living together in a dwellinghouse as their only or main residence but forming separate households and sharing one or more basic amenity, such as a toilet, bathroom or kitchen.

3.1.2 In a planning context an HMO with six or fewer people is considered to fall within Use Class C4, and with more people it is considered to fall outside of any defined collective use class, what is often referred to as 'sui generis'.

3.1.3 It should be noted that not more than six people living together as an HMO is distinguished from not more than six people living together as a single household, which remains in Use Class C3, along with 'family' dwellings and single people occupying a whole home. An HMO can also be distinguished from a 'hostel' which, while have no definition in legislation is recognised as a different 'sui generis' use. Hostels are more similar to Hotels, but not in the use class that includes them either, and are usually identifiable by different characteristics to an HMO such as not being a permanent residence and often house people sharing rooms without any previous connection.

3.1.4 This new 'C4' definition of an HMO was introduced in 2010, though national legislation, the UCO, which was amended to introduce the new use class. Changes were made at the same time to the Town and Country Planning (General Permitted Development) Order (the 'GPDO') so that a material change of use from a Class C3 dwellinghouse to a Class C4 HMO required planning permission. Shortly after this however government made a further change to the GPDO so that changes of use from a C3 dwellinghouse to a C4 HMO become permitted development (i.e. planning permission is deemed to be granted). From that date Councils have however been able to use Article 4 Directions under the GPDO to remove the permitted development right to change from a C3 dwellinghouse to a C4 HMO, meaning such changes, where material, require an application for planning permission.

3.1.5 On 1st November 2011, following a period of 12 months' notice of its intention to make such a Direction, Portsmouth City Council made Article 4 Direction ART 4/HMO/01[1]. From this date, all changes of use in the city from Class C3 to Class C4 have required planning permission.

3.2 Policy

3.2.1 Portsmouth City Council Development Plan policy in respect of HMOs is provided in policy PCS20 of the Portsmouth Plan 2012. It states:

PCS20 houses in multiple occupation (HMOs): ensuring mixed and balanced communities

In order to support mixed and balanced communities, and to ensure that a range of household needs continue to be accommodated throughout the city, applications for changes of use to a House in Multiple Occupation (HMO) will only be permitted where the community is not already imbalanced by a concentration of such uses or where the development would not create an

[1] Portsmouth Article 4 Direction

imbalance. For the purposes of this policy, dwellings in use as Class C4, mixed C3/C4 use and HMOs in *sui generis* use will be considered to be HMOs.

3.2.2 In March 2012 research was carried out in a report of 'Shared housing in Portsmouth An assessment of demand, supply and community impacts'. This was for the purpose of informing a percentage threshold for use in determining planning applications for HMOs and subsequently to form part of a draft Supplementary Planning Document (SPD) on HMOs and ensuring a mixed and balanced community. SPDs do not create policy, but provide clarification as to how they are to be interpreted. In this case Policy PCS20 of the Local Plan and how the Council should assess the 'mix' and 'balance' of a community. The research paper noted that national lobbying at that time, associated with the changes made to legislation noted above, suggested that a 10% threshold was a 'tipping point' in respect of HMO concentrations and can provide a guide to communities who feel they were at risk of becoming 'unbalanced'. The council's research paper went on to consider likely demand and supply of HMOs in the City and concluded that a 10% threshold for Portsmouth would enable estimated demand for shared housing to be met. Consideration of an appropriate search area was also undertaken.

3.2.3 The Council's SPD on HMOs was reviewed after five years, in 2017. Overall the review identified that the SPD was operating well to meet the objectives of the Council's adopted policy. Updates to clarify that floor areas must meeting Nationally Described Space Standards were added and how to interpret the term 'area surrounding an application property' were added to ensure high quality amenity to future HMO residents and promote consistency of decision making.

3.2.4 Further revisions to the SPD were undertaken in 2018, addressing and illustrating issues of 'sandwiching' and '3 in a row' as constraints to new HMOs. The SPD was revised again in 2019 to include new guidance in respect of applications for larger HMOs or that sought to increase the number of bedrooms in an HMO in areas where concentrations of HMOs already exceed the 10% threshold.

3.2.5 The 2019 SPD represents the current guidance to assist decision makers in the interpretation of Policy PCS20 to ensure mixed and balanced communities are supported.

3.2.6 The Portsmouth Plan 2012 is currently being replaced with a new Local Plan, which will supersede all policies within it. The 2012 PCS20 is intended to be replaced with a new Strategic Policy PLP20. This policy takes elements that previously were separately defined in the SPD, such as the 10% threshold and the prohibition of 'sandwiching' and transposes them into the new Policy itself. This gives these matters greater weight in decision making. Additional wording has also been added to specifically deal with applications for planning permission seeking to enlarge HMOs. Where permission is needed for such works the new policy would presume that such applications would be refused only permitting it in exceptional circumstances.

3.2.7 Extensive consideration was given by the Council as to whether to vary the methodology of assessing an appropriate mix and balance for HMOs. As noted above the relevant area of assessment and threshold of 10% was evidenced and agreed in 2012 and has been successfully applied ever since. In advance of and during the final public consultation on this policy, the Regulation 19 consultation undertaken in Summer 2024, requests were made to amend the threshold, potentially to a 5% figure.

3.2.8 In considering these requests Officers undertook extensive review of all other local plans in the country and their approach to controlling HMOs. Most Council's do not seek to control HMOs through Planning Policy. Partly this will be because in rural and less densely urban areas there is unlikely to be significant demand for such housing that requires additional control, and partly because may key aspects of HMO management are dealt with outside of the Planning system under the Housing Act 2004. Just over 50 Councils have an adopted policy setting a threshold on new HMOs, and two thirds of them use a 10% figure. Nearly all the rest use a higher percentage, up to 50%.

3.2.9 This research identified two Councils with a threshold below 10%. One such Council with a threshold of less than 5% was West Lancashire. Their policy however was targeted specifically to the community of Ormskirk, a town which also house the Edge Hill University. It was a policy to ensure the provision of student accommodation was focussed to the correct part of the town rather than a policy to restrict HMOs generally across their area. The policy allowed a 10%, 15%, or higher threshold of HMOs in the centre of Ormskirk and key routes into the town. The threshold below 10% was therefore justified in other parts of this limited area.

3.2.10 Thanet district Council was the other Council and had operated a 5% threshold for some time, arising from local concerns focussed on the neighbourhood around a key University Campus. However as part of their plan review in 2020 it was acknowledged that the mix of HMOs is the relevant residential estates was estimated to be 2.4%. Consequently the policy requirement of a 5% threshold was removed by the Inspector at Examination and replaced with a requirement instead to avoid intensification and concentration relegating the threshold to the level of guidance that decision makers should have regard to. This change has resulted in new HMOs being granted in areas previously above the adopted Thanet threshold as the matter became a matter of judgement in each case. It can be noted for completeness that Thanet has a mortarium on new HMOs in one part of its area, the Cliftonville and Margate

Central Wards. These wards make up an area of extraordinary deprivation within that local area, and indeed England as a whole, with abnormally high levels of transience and crime. Those challenges have been directly associated with the fact that the area contains a substantial proportion of larger properties, many previously used as hotels or large dwellings reflecting the popularity of the resort in Victorian times. With the decline of the traditional seaside holiday the size and layout of many of these are too large for, or incompatible with, modern living requirements and they have become neglected and/or occupied by dependent and vulnerable people. (For example multiple occupation, DSS bed and breakfast, asylum seekers, people placed by outside authorities and homeless people in private rented accommodation). Due to the abnormal proliferation of one bed flats, bedsits and HMOs in this area, a policy was introduced to not permitted such developments in 2010 and retained in their new Local Plan.

3.2.11 Officers are of the view that West Lancashire example is significantly different to the issues seeking control in Portsmouth and the risks highlighted from the Thanet example are far more applicable.

3.2.12 The different thresholds that could be used in Portsmouth have also been tested through the Sustainability Appraisal (SA) for the emerging local plan as reasonable alternatives. The SA states that 'it is likely that the negative effects (of a lower limit) would be experienced more widely across the city' where HMO concentrations are currently lower. The SA notes that HMOs form an important element of housing supply, generally providing affordable housing options for those on lower incomes, those who do not wish to live independently and those who need short-term tenancies in an area such as contractors.

3.2.13 Using all this information Officers have facilitated discussion with Members throughout the formation of the current pre-submission plan. A report was prepared and discussed in an All Member briefing in May 2022 to review options to amend Council policy in respect of Houses in Multiple Occupation within current legislative restrictions and further to review options to seek additional powers through amendment to national legislation in respect of Houses in Multiple Occupation. Further dedicated workshops for all Members were then undertaken in March 2023, October 2023 and January 2024. Through these workshops it was clear that, while the Council has considered and discussed this policy area in great detail no clear majority view as to the correct percentage could be identified through the informal engagement carried out with Members. Officers therefore recommended to the Portfolio Holder that the 10% threshold, used by two thirds of other Councils that control HMO proliferation and used successfully in Portsmouth for over a decade was the most appropriate threshold to apply in the Emerging Plan.

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3.2.14 As part of ensuring the advice given to Members is as robust as possible a legal opinion was also secured from Kings Counsel to advise on the risks associated with replacing the 10% rule with a 5% rule. His advice was that "*In my view proceeding in this way would very seriously risk undermining the Council's current approach…*".
The full opinion is provided in Appendix A. This was considered to further validate the recommendation to Members as to the correct formation of Policy.

3.3 Role of Housing Services

3.3.1 The consideration and management of HMOs within the City is not solely the remit of Planning decisions and policy. Arguably of greater importance is the control exercisable under the Housing Act, through the Council's Private Sector Housing team.

3.3.2 Through the introduction of 'Additional Licensing' since September 2023 all HMOs, whatever their size have been required to apply for and get a Licence to be an HMO. This is a separate process to planning permission to change a property into an HMO. Planning permission only needs to be sought once and if permitted allows a property to be used as an HMO thereafter. A Licence has a time limit, usually one, two and a half, or five years, and needs to be renewed. As licencing is an ongoing relationship between a property and the Council it is a more robust mechanism to ensure the ongoing standards of HMO housing within the City.

3.3.3 HMOs are an important type of accommodation for Portsmouth residents and provide low cost housing for a diverse part of our community. While parts of the City have historically had a lot of HMOs which has had a particular impact on the mix and balance of these communities and the Council wishes to prevent new areas becoming over saturated with this type of housing, it is considered important that we continue to support the market to bring forward the type of housing that people want.

3.3.4 Helping people into HMO rooms has been key to the council reducing the number of households in homelessness temporary accommodation in recent months, and in minimising the associated spend. The national increase in homelessness and associated requirements for temporary accommodation is a very significant pressure on council finances - resulting in a £5.9m budget pressure in 2024-25. The council helped over 250 people who were homeless or threatened with homelessness into HMO rooms in 2024-25, including 95 people who were living in temporary accommodation - giving those people a permanent home to live in and typically avoiding several thousands of pounds of expenditure on each occasion.

3.4 Current decision making

3.4.1 The consideration of HMO applications is currently taking the majority of Planning Committee time. This is due to one of three factors: the number of objections received; a direct promotion/'call-in' to committee by a ward member; or the current blanket call-in on all applications that have been made to seek to increase the occupancy of an HMO by one or two occupants.

3.4.2 It has been noted by Officers that a small group of residents are habitually objecting to new HMOs as a matter of principle, almost wheresoever they are within the City. It can also be seen that some ward members are significantly more likely to ask for an HMO application to come to planning committee than others, at times irrespective of whether local objections have been made to it. These are both rights written into the Constitution of the Council, and arguably an essential element of democratic oversight of decision making. The uniformity of objection, often without reference to the adopted polices of the Council however is a matter of concern, which may benefit from additional Member training and community capacity building.

3.4.3 The third factor, that of the blanket call-in on all applications that have been made to seek to increase the occupancy of an HMO by one or two occupants, is probably however individually more responsible in total for cases coming before the Planning Committee. This issue arose as a product of appeal decisions, most notably the 'Campbell Properties' decision in April 2021. This appeal decision, concern with linked appeal over several properties, highlighted that insufficient consideration had been given to assessing whether a small addition to occupation, in those cases one or two occupants to an existing 6 occupant HMO, amounted to a Material Change of Use. Section 55 of the Town and County Planning Act provides a definition of development for which planning permission is required and confirms that is only making a <u>material</u> change of use of land or buildings that requires permission. Changes of use that are less than material do not require planning permission from the Council. The Campbell Properties case concluded, on their own merits that adding, as was the case either one or two occupants to an existing lawful HMO was not a material change to its use. The Inspector in that case found that the facts of the case did not give him '… *reason to find that the actual occupation of these properties has created specific problems or caused a significant change in activity or upon the character of the area, which might reflect some material change over the accepted lawful HMO use consisting of six residents.*'

This decision required Officers to review the advice they had been giving Members and decision makers. Counsel's opinion was sought on the matter and it was confirmed that these appeal decisions were a material consideration for such applications going forward. While the weight to be given to material considerations and the individual distinct circumstances are a matter of judgment in each case, meaning a blanket approach can never be used it was advised that counsel '…*would expect that in most, if not all, cases concerning the addition of one or two more residents there would be no such material change. I would therefore expect that in most, if not all, cases the Council would conclude that an increase in residents of such a small magnitude did not result in development.*'

3.4.4 Officers have been guided by this advise and, through individual assessment of applications, have concluded in nearly all cases planning permission, when sought, was not required. This fact was discussed with Members at the time and a blanket call-in was introduced to enable Members, where relevant to reach a judgement on each case individually.

3.4.5 At the time of writing, since May 2022 when this advice was finalised over 80 cases have been referred to the Planning Committee where, on the advice of Officers, the key consideration was that planning permission was not required due to the immaterial increase in occupation and impact. In only one case, that of an application for a certificate of lawfulness, did the Committee conclude that planning permission was not required. In all other cases the Committee, contrary to the recommendation of Officers, considered that planning permission was needed, and went on to assess the application in respect of its accordance with the published policy and guidance.

3.4.6 This situation is resulting is significant cost, in both time and resource, due to the number of cases being referred to the planning committee. It also has implications for wider work in this area as Officers have been accordingly instructed to not offer professional pre-application advice on this matter, nor conclude Planning Enforcement cases without reference to the Planning Committee.

3.4.7 It must be noted that in many cases where the planning committee has determined that planning permission is required it has gone on to then grant that permission. This is largely because most applications are clearly compliant with relevant policies. It is considered that this is usually because the expected internal standards applied by the Local Planning Authority are taken from those adopted by the Private Sector Housing Team for the purposes of licensing and therefore applicants are aware that irrespective of the consideration of the Planning Committee the Council's licensing team will require those standards are met within the property.

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3.4.8 In cases where the planning committee has gone on, however, to refuse the application this is nearly always appealed to the Planning Inspectorate (PINS). In the last report that reviewed such appeals, to the Planning Committee in April 2023 it was noted that 27 appeals had been made to the PINS on such cases since the 2021 Campbell Properties decision. In almost none of those appeals had an Inspector sought to engage the primary question of whether planning permission was needed. There appears to be no consistent approach in the method used by Inspectors who have avoided the primary question but many Inspectors simply failed to demonstrate any consideration of the matter within their decision letters at all and where they did, frequently Inspectors expressly avoided a conclusion with statements such as "*However, whether or not a material change of use has occurred is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990 (as amended)."* Officers advised the Planning Committee in the April report and continue to advise, that this approach can only be considered a dereliction in the duty of the Inspector as it is clearly a Material Consideration in the determination of an application as to whether planning permission is needed for the proposed works or use and consequently a failure to grapple with the question is a failure to take account of a Material Consideration leading the Decision Maker into potential and actual error.

3.4.9 In one appeal decision in that period, the conjoined 'Lane' appeals, and in three decisions since then, an Inspector has been willing to consider the 'fall back position' that the change of use was material. In each case where the matter was considered the Inspector has concluded that planning permission was not needed and, usually, awarded costs against the Council. Of particular note, arising from the 'Lane' appeal decisions is that the Inspector in that case was of the opinion that the way the Committee tackled their conclusion of those cases in the May 2022 Committee meeting demonstrated " *a disturbing lack of awareness of basic planning procedure and law*." Furthermore the Inspector, overall expressed his decision that the Council was guilty " *of using vague, generalised or inaccurate assertions about the proposals' impact*" in their reasoning. These concerns are of particular importance as a materially similar approach by the Planning Committee to constructing decisions on similar cases has been consistently used in almost every case since May 2022 and Officers' firm advice to Members remains that this approach should be reconsidered. Officers advise that if Members consider that a change in the number of occupants amounts to a Material Change of Use this judgement must be based and described on factors clearly relevant to the specific property in question and a 'standard' form of wording should never be used.

3.4.10 Overall Members may wish to note that since appeal performance in this area was last reported, in the April 2023 report to planning committee, decisions by the Planning Committee in respect of HMOs have been successfully defended in only two cases, and one of those was successfully only on a technical

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administrative ground rather than the substantive reason of the Committee. In that same period 11 appeals against committee decisions to refuse were lost. In general, looking at appeals against committee decisions involving HMOs and other forms of development, the Planning Committee's substantive reasons have been upheld in only 13% of cases in the past two years. This can be compared to an estimate that PINS upholds LPA's decisions in 70-80% of cases nationally, and in 83% of cases when delegated decisions by officers in Portsmouth are reviewed in the same period.

Signed by (Director) Ian Maguire

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document with hyperlinks
Shared housing in Portsmouth. An assessment of demand, supply and community impacts - March 2012
Portsmouth Article 4 Direction
Report to Planning Committee' Recent decisions regarding Houses of Multiple Occupation' 13 April 2023