

Planning and Rights of Way Panel

Tuesday, 22nd August, 2023
at 4.00 pm

PLEASE NOTE TIME OF MEETING

Conference Room 3 and 4 - Civic Centre

This meeting is open to the public

Members

Councillor Savage (Chair)
Councillor Windle (Vice-Chair)
Councillor J Baillie
Councillor Beaurain
Councillor Mrs Blatchford
Councillor Cox
Councillor A Frampton

Contacts

ed.grimshaw@southampton.gov.uk
Tel: 023 8083 2390/ 07385 416491

ADDITIONAL INFORMATION AND PRESENTATIONS

5 PLANNING APPLICATIONS - 23/00617/FUL & 23/00619/FUL - 112 UPPER SHAFTESBURY AVENUE (Pages 1 - 4)

Statements received for both applications

Director – Legal, Governance and HR

Agenda Item 5

The Officer's Report is clear in that the proposed development is acceptable, legal and with applicable conditions applied, in his professional opinion, would satisfy any material considerations. However, there are some confusing arguments to a layperson.

One of these is sound insulation of the loft space (Ref: 6.4.4). It is disappointing that this condition has not been applied to the whole party wall on all floors.

6.4.3 highlights that the proposal does not change the use class or the number of occupants that can occupy the property. The proposal does not change the Class (C4) or 'materially change the use within Class 4 (Ref: 6.2.2), but does actually change the number of occupants from 4 to 6. This is an increase of 33%. Thus, the impact on amenity, on-street (permit) parking, comings, goings and noise will all also be 33% increased.

6.4.3 States: 'As the proposal does not change the use class or the number of occupants that can occupy the property the impact on amenity of neighbouring occupiers, in terms of comings and goings, is not considered to be significant.' This is not accurate as it does increase the number of occupants. How is a 33% increase not considered significant? Is there a percentage threshold where insignificant becomes significant? These are important questions for the Planning Panel to consider.

The Argument that a Class 4 can cover between 4 to 6 occupants (Ref: 6.2.2) confusingly lays the Council open to continued breaches of its own policy approved in 2016 to limit HMO bed numbers in any particular area. Ref: SCC Supplementary Planning Document, Local Plan Review Policy, H4 (2016), 'Planning and Houses in Multiple Occupation', updated in 2016.

Upper Shaftesbury Avenue is already overdeveloped with HMO rooms, as can be confirmed from the Southampton Register of HMO Licensed properties in Upper Shaftesbury Avenue (04/07/2023), there were 20 listed properties with a total of 114 HMO-beds. Even one more HMO room would breach this policy.

HRA again asks the Planning Panel to look at the significance of its own policy in this consideration.

Paragraph 5.3 of the Officer's Report highlights that if the loft bedroom were to be divided or used for double occupancy it would be a breach of Planning Control. HRA asks the Panel if Planning actually has any control? There has been a pattern in the locality, and in particular in Upper Shaftesbury Avenue, for landlords to increase the size of their properties and HMO occupancy to 7 beds but without appropriate planning from C4 to Sui generis and being granted a larger HMO Licence, and nothing has been enforced.

It should be made a condition of this Planning Application that the occupancy of the property can be no more than 6 HMO spaces, if 6 beds becomes the 'fallback position' (Ref: 7.1). HRA asks the Panel to consider this limitation to 6-beds as an additional condition if planning approval is granted. Additional architect drawings / plans have already been sent to neighbours who are HRA members and subsequently shared with HRA, showing 7 bedrooms. What if HMO then licensed the 7 HMO occupancy because there were 7 suitable rooms? There would then be an overall 57% increase in occupancy. Would this be significant?

Finally, as the loft extension is likely to go ahead even if planning approval for the first floor extension is refused (Ref: 6.3.2) making an acknowledged, 'impact on the balance of the pair of semi-detached ... 114 Upper Shaftesbury Avenue and ... the wider character of the area'. HRA asks the panel to confirm that there would be no breach of permitted development area (sq. m) as there has been a previous ground floor extension built under permitted development rights.

HRA asks that the application be refused.

Barbara Claridge HRAHonSec

Application 23/00617/FUL 112 Upper Shaftesbury Ave

Unfortunately, being carers for an autistic adult son, attendance at meetings such as this is difficult for us, and having been away we were unable to arrange suitable care for him in time to allow us to attend and address the meeting in person. We are sorry not to be able to attend but would ask for this statement to be considered in our absence.

Use of 112 Upper Shaftesbury Avenue as an HMO predates the introduction of the C4 property class. Whilst it may have lawful use as an HMO, there is no evidence of a Lawful Development Certificate being issued and the planning application for C3/C4 use, has not yet been determined. Since commencing use as an HMO, the property has to date generally only been occupied by between 3 and 4 people. This has been confirmed by officers checks. Therefore, the lawful use of this property historically is as a 4 bedroom HMO and this is confirmed by its HMO Licence. We would therefore question whether this property, with its assumed C4 status, has the 'fallback position' of an entitlement to have up to 6 occupants.

It is possible that a planning application could set a limit of occupants lower than the C4 maximum 6, and there is precedent for this in Southampton, (Planning Application 23/00505/FUL 25 Northolt Gardens) so more weight should be given to residents concerns about intensification and a 50% increase in noise from the house due to additional residents if this extension and loft conversion is approved.

The street scene and the amenity of 114 Upper Shaftesbury Avenue will be compromised by this loft room which will create a 'lop-sided' appearance to the roof and set it apart from every other pair of semi-detached dwellings in the road.

In addition to extra occupants, the internal reconfiguration includes the addition of at least 3 en suite bathrooms against the party wall, and a kitchen being moved from one side of the house to the other and doubling up as an amenity space also against the party wall. The associated smells and noise from running water, extraction fans etc from these changes plus noise from the additional occupants is a real concern unless some extra noise insulation is provided to the whole of the party wall, not just the loft area currently suggested as a planning condition. If this application is approved, we would ask for the condition for improved noise insulation be reworded to cover the entire party wall from the ground floor up to and including the loft.

The officers report suggests at 6.3.3 that the use of red brick on the extension would be acceptable, when the rest of the first floor has a pebbledash finish. However, materials to match existing has been included as the first suggested condition. The plans show the front porch and side windows to the front door will be removed and this area will need to be made good, as will the area around the rear extension, and the gable raise, (already shown on the plans as pebbledash) so some degree of matching of both brick and pebbledash will have to occur. The outlook and residential amenity of 114 will be further adversely affected if the first floor extension already completed to the family home on one side, (116) has pebbledash finish, but a brick finish is deemed satisfactory for the attached house extension at 112. We would therefore ask that if approved there would definitely be a pebbledash finish to the first floor extension. This would also give a more uniform street view and protect the character of the area.

Number 112 already has a single storey extension. This application adds a first floor on top of part of it and a significant loft conversion which is shown as a single room. Should this application be approved, we would ask for a condition that restricts any further expansion of size, including future subdivision or occupancy of the large loft room that would move the property from the proposed 6 bedroom C4 use to Sui Generis for 7 or more occupants. There are already many HMOs in Upper Shaftesbury Avenue and the amenity of residents and character of the area needs to be protected. A condition like this would enable effective enforcement action to be taken quickly should a breach occur.

Application 23/00619/FUL 112 Upper Shaftesbury Ave

Unfortunately, being carers for an autistic adult son, attendance at meetings such as this is difficult, and having been away we were unable to arrange suitable care for him in time to allow us to attend and address the meeting in person. We are sorry not to be able to attend but would ask for this statement to be considered in our absence.

Although only one comment has been submitted in respect of this application neighbours made their views clear regarding intensification, noise nuisance etc from increasing the numbers of occupants in the associated application 23//00617/FUL. The cases were shown as linked on the planning website, so people have only made comments against one application, but we hope those comments will also be considered for this one.

The property at 112 Upper Shaftesbury Avenue was in use as an HMO prior to the introduction of the C4 use classification. It therefore currently benefits from presumed C4 use, and properties either side, 110 and 114, (the attached neighbour) are both C3 dwelling houses. A planning application for C4 use has not previously been submitted or approved and there is no Lawful Development Certificate, as such there has to date been no opportunity for the number of occupiers to be defined or approved by planning.

Item 4.7.2 of SPD May 2016 clearly states that a flexible planning condition only relates to new C4 applications. This application is for a flexible C3/C4 use, so it follows that although lawful use as an HMO has been established, and threshold levels and sandwiching restrictions may not apply, this should nonetheless be viewed and assessed as a new C4 application and occupancy levels can therefore be considered.

The existing use of the property as an HMO is recognised as lawful by virtue of its use prior to the introduction of the C4 class. Maximum occupation since becoming an HMO has been 4, as confirmed by electoral roll and council tax records and the HMO licence is also for 4 occupants. There are 3 bedrooms and a ground floor room used as a bedroom, making 4 in total. Historically therefore the lawful use has been for 4 occupants.

The Article 4 Directive and Supplementary Planning Document 2016 have been introduced to protect residential amenity for those living in and around an HMO. The level of concern among residents at the prospect of the property having increased occupancy to a 6 bed HMO is evident in the comments submitted with the associated application, 23/00617/FUL.

There are already a number of HMO properties in Upper Shaftesbury Avenue mainly semi-detached properties with very poor sound insulation. Opening and closing cupboards, switching on the light, sneezing etc can all be heard through the party wall. Our autistic adult son often has to wear ear defenders around our home at 114 Upper Shaftesbury Avenue to cope with the noise levels from 112, and this is just with 4 occupants. It would be much worse, particularly for him if permission is now given for up to 6 occupants.

Since the construction of purpose-built student accommodation nearby, HMO rooms in this area are increasingly being rented by young working people, many of whom, like the paramedics, nursing and hospital staff work shifts, and there is significant noise from deliveries, friends visiting etc throughout the day and night. These comings and goings at all hours add to the loss of residential amenity for all residents, including those living in the HMOs.

We would therefore ask for a condition limiting use of this property to 4 occupants. This would reflect its current and historic lawful HMO use whilst also protecting the character and amenity of the area. There is precedent for restricting numbers of residents within a C4 class property in the recent planning application 23/00505/FUL for 25 Northolt Gardens.

In recognition of the increased noise levels associated with general day to day living of separate households within an HMO and the poor insulation in these older houses, we would also ask for a condition that increased noise insulation be provided to the party wall from the ground floor up to and including the wall in the loft. Again, planning application 23/00505/FUL gives precedence for noise insulation as a condition of planning.