

Planning and Rights of Way Panel

Tuesday, 11th July, 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 Beaurain
Councillor Mrs Blatchford
Councillor Cox
Councillor A Frampton
Councillor Powell-Vaughan
Councillor Windle

Contacts

Democratic Support Officer
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Head of Transport and Planning
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PUBLIC INFORMATION

ROLE OF THE PLANNING AND RIGHTS OF WAY PANEL

The Panel deals with various planning and rights of way functions. It determines planning applications and is consulted on proposals for the draft development plan.

PUBLIC REPRESENTATIONS

Procedure / Public Representations

At the discretion of the Chair, members of the public may address the meeting on any report included on the agenda in which they have a relevant interest. Any member of the public wishing to address the meeting should advise the Democratic Support Officer (DSO) whose contact details are on the front sheet of the agenda.

Southampton: Corporate Plan 2022-2030

sets out the four key outcomes:

- Communities, culture & homes - Celebrating the diversity of cultures within Southampton; enhancing our cultural and historical offer and using these to help transform our communities.
- Green City - Providing a sustainable, clean, healthy and safe environment for everyone. Nurturing green spaces and embracing our waterfront.
- Place shaping - Delivering a city for future generations. Using data, insight and vision to meet the current and future needs of the city.
- Wellbeing - Start well, live well, age well, die well; working with other partners and other services to make sure that customers get the right help at the right time.

SMOKING POLICY – The Council operates a no-smoking policy in all civic buildings

MOBILE TELEPHONES:- Please switch your mobile telephones or other IT to silent whilst in the meeting.

USE OF SOCIAL MEDIA:- The Council supports the video or audio recording of meetings open to the public, for either live or subsequent broadcast. However, if, in the Chair's opinion, a person filming or recording a meeting or taking photographs is interrupting proceedings or causing a disturbance, under the Council's Standing Orders the person can be ordered to stop their activity, or to leave the meeting.

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ACCESS – Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2022/2023

2023	
6 June	19 September
27 June	10 October
11 July	31 October
1 August	21 November
22 August	12 December

2024	
23 January	16 April
20 February	
12 March	

CONDUCT OF MEETING

TERMS OF REFERENCE

The terms of reference of the Planning and Rights of Way Panel are contained in Part 3 (Schedule 2) of the Council's Constitution

BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

RULES OF PROCEDURE

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

QUORUM

The minimum number of appointed Members required to be in attendance to hold the meeting is 3.

DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Pecuniary Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PECUNIARY INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:
Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (iii) Any contract which is made between you / your spouse etc (or a body in which you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.
- (iv) Any beneficial interest in land which is within the area of Southampton.
- (v) Any license (held alone or jointly with others) to occupy land in the area of

- Southampton for a month or longer.
- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council, and the tenant is a body in which you / your spouse etc has a beneficial interests.
- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:
- a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
 - b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

OTHER INTERESTS

A Member must regard himself or herself as having an 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

PRINCIPLES OF DECISION MAKING

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability, and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

1 APOLOGIES AND CHANGES IN PANEL MEMBERSHIP (IF ANY)

To note any changes in membership of the Panel made in accordance with Council Procedure Rule 4.3.

2 DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

3 STATEMENT FROM THE CHAIR

CONSIDERATION OF PLANNING APPLICATIONS

4 PLANNING APPLICATION - 23/00418/FUL - AZZERA HOUSE, CENTENARY QUAY (Pages 5 - 18)

Report of the Head of Transport and planning recommending that conditional approval be granted in respect of an application for a proposed development at the above address.

5 PLANNING APPLICATION - 23/00674/FUL - 24 WILTON AVENUE (Pages 19 - 58)

Report of the Head of Transport and planning recommending that the Panel delegate approval in respect of an application for a proposed development at the above address.

Monday, 3 July 2023

Director – Legal, Governance and HR

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INDEX OF PLANNING APPLICATIONS FOR DECISION

DATE: 11th July 2023

Main Agenda Item Number	Officer	Recommendation	PSA	Application Number / Site Address
Approximate start time 400pm				
4	AG	CAP	15	23/00418/FUL Azera House, Centenary Quay
Approximate start time 5:00 pm				
5	SB	DEL	5	23/00674/FUL 24 Wilton Avenue

PSA – Public Speaking Allowance (mins); CAP - Approve with Conditions: DEL - Delegate to Officers: PER - Approve without Conditions: REF – Refusal: TCON – Temporary Consent: NOBJ – No objection

Case Officers:

AG – Andy Gregory

SB – Stuart Brooks

Southampton City Council - Planning and Rights of Way Panel

Report of Head of Transport & Planning

Local Government (Access to Information) Act 1985

Index of Documents referred to in the preparation of reports on Planning Applications:

Background Papers

1. **Documents specifically related to the application**
 - (a) Application forms, plans, supporting documents, reports and covering letters
 - (b) Relevant planning history
 - (c) Response to consultation requests
 - (d) Representations made by interested parties

2. **Statutory Plans**
 - (a) Hampshire, Portsmouth, Southampton and New Forest National Park Minerals and Waste Plan (Adopted 2013)
 - (b) Amended City of Southampton Local Plan Review (Adopted March 2015)
 - (c) Connected Southampton 2040 Transport Strategy (LTP4) adopted 2019.
 - (d) Amended City of Southampton Local Development Framework – Core Strategy (inc. Partial Review) (adopted March 2015)
 - (e) Adopted City Centre Action Plan (2015)
 - (f) Community Infrastructure Levy Charging Schedule (2013)
 - (g) Bassett Neighbourhood Plan (Adopted 2016)

3. **Statutory Plans in Preparation**

4. **Policies and Briefs published and adopted by Southampton City Council**
 - (a) Old Town Development Strategy (2004)
 - (b) Public Art Strategy
 - (c) North South Spine Strategy (2004)
 - (d) Southampton City Centre Development Design Guide (2004)
 - (e) Streetscape Manual (2005)
 - (f) Residential Design Guide (2006)
 - (g) Developer Contributions SPD (September 2013)
 - (h) Greening the City - (Shoreburs; Lordsdale; Weston; Rollesbrook Valley; Bassett Wood and Lordswood Greenways) - 1985-1995.
 - (i) Women in the Planned Environment (1994)
 - (j) Advertisement Control Brief and Strategy (1991)
 - (k) Biodiversity Action Plan (2009)
 - (l) Economic Development Strategy (1996)
 - (m) Test Lane (1984)

- (n) Itchen Valley Strategy (1993)
- (o) Portswood Residents' Gardens Conservation Area Character Appraisal (1999)
- (p) Land between Aldermoor Road and Worston Road Development Brief Character Appraisal(1997)
- (q) The Bevois Corridor Urban Design Framework (1998)
- (r) Southampton City Centre Urban Design Strategy (2000)
- (s) St Mary's Place Development Brief (2001)
- (t) Ascupart Street Development Brief (2001)
- (u) Woolston Riverside Development Brief (2004)
- (v) West Quay Phase 3 Development Brief (2001)
- (w) Northern Above Bar Development Brief (2002)
- (x) Design Guidance for the Uplands Estate (Highfield) Conservation Area (1993)
- (y) Design Guidance for the Ethelburt Avenue (Bassett Green Estate) Conservation Area (1993)
- (z) Canute Road Conservation Area Character Appraisal (1996)
- (aa) The Avenue Conservation Area Character Appraisal (2013)
- (bb) St James Road Conservation Area Character Appraisal (1996)
- (cc) Banister Park Character Appraisal (1991)*
- (dd) Bassett Avenue Character Appraisal (1982)*
- (ee) Howard Road Character Appraisal (1991) *
- (ff) Lower Freemantle Character Appraisal (1981) *
- (gg) Mid Freemantle Character Appraisal (1982)*
- (hh) Westridge Road Character Appraisal (1989) *
- (ii) Westwood Park Character Appraisal (1981) *
- (jj) Cranbury Place Character Appraisal (1988) *
- (kk) Carlton Crescent Character Appraisal (1988) *
- (ll) Old Town Conservation Area Character Appraisal (1974) *
- (mm) Oxford Street Conservation Area Character Appraisal (1982) *
- (nn) Bassett Green Village Character Appraisal (1987)
- (oo) Old Woolston and St Annes Road Character Appraisal (1988)
- (pp) Northam Road Area Improvement Strategy (1987)*
- (qq) Houses in Multiple Occupation (revised 2016)
- (rr) Vyse Lane/ 58 French Street (1990)*
- (ss) Tauntons College Highfield Road Development Guidelines (1993)*
- (tt) Old Woolston Development Control Brief (1974)*
- (uu) City Centre Characterisation Appraisal (2009)
- (vv) Parking standards (2011)

* NB – Policies in these documents superseded by the Residential Design Guide (September 2006, page 10), albeit character appraisal sections still to be had regard to.

5. Documents relating to Highways and Traffic

- (a) Hampshire C.C. - Movement and Access in Residential Areas
- (b) Hampshire C.C. - Safety Audit Handbook
- (c) Cycling Strategy – Cycling Southampton 2017-2027
- (d) Southampton C.C. - Access for All (March 1995)

- (e) Institute of Highways and Transportation - Transport in the Urban Environment
- (f) I.H.T. - Traffic Impact Assessment Guidelines
- (g) Freight Transport Association - Design for deliveries
- (h) Department for Transport (DfT) and Highways England various technical notes
- (i) CIHT's Manual for Streets and Manual for Streets 2
- (j) Bus Service Improvement Plan (BSIP) 2021.

6. Government Policy Planning Advice

- (a) National Planning Policy Framework (February 2019)
- (b) National Planning Policy Guidance Suite

7. Other Published Documents

- (a) Planning for Daylight and Sunlight - DOE
- (b) Coast and Countryside Conservation Policy - HCC
- (c) The influence of trees on house foundations in clay soils - BREDK
- (d) Survey and Analysis - Landscape and Development HCC
- (e) Root Damage to Trees - siting of dwellings and special precautions – Practice Note 3 NHDC
- (f) Shopping Policies in South Hampshire - HCC
- (g) Buildings at Risk Register SCC (1998)
- (h) Southampton City Safety Audit (1998)
- (i) Urban Capacity Study 2005 – 2011 (March 2006)
- (j) Strategic Housing Land Availability Assessment (March 2013)

Agenda Item 4

Planning and Rights of Way Panel 11 July 2023 Planning Application Report of the Head of Transport & Planning

Application address: Unit 3, Azera, Capstan Road, Centenary Quay, Southampton			
Proposed development: Application for additional external seating not in accordance with details agreed under condition 31(External Seating & Umbrellas restriction) of planning permission ref: 08/00389/OUT to allow additional external tables (from 10 to 20) and seating (from 40 to 60), seasonal dependant.			
Application number:	23/00418/FUL	Application type:	FUL
Case officer:	Andrew Gregory	Public speaking time:	15 minutes
Last date for determination:	24.05.2023 ETA	Ward:	Woolston
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors:	Cllr Robert Stead Cllr Susan Blatchford Cllr Warwick Payne
Applicant: P&M Events Ltd		Agent: None	

Recommendation Summary	Conditionally approve
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Community Infrastructure Levy Liable	No
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Reason for granting Permission

The development is acceptable taking into account the requirements of condition 31(External Seating & Umbrellas restriction) of planning permission ref: 08/00389/OUT and the policies and proposals of the Development Plan as set out below. On the basis of the imposition of planning conditions to control the use and arrangement of the external area in conjunction with licensing controls, it is considered that a suitable balance has been achieved in retaining public access, supporting the viability of the business and vitality of the waterfront, whilst minimising noise and other disturbance to levels suitable for this area of mixed commercial and residential character. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 39-42 and 46 of the National Planning Policy Framework (2021).

Appendix attached			
1	Development Plan Policies	2	Relevant Planning History

Recommendation in Full

Conditionally Approve

Background

The Quayside wine bar is a mixed food/drink and bar use and occupies ground floor commercial unit 3 within Azera House at Centenary Quay. The premises has waterfront views and access onto a publicly accessible promontory which provides public waterfront access. The premises was consented under the original outline planning permission for Centenary Quay (08/00389/OUT) and subsequent reserved matter for phase 4 (15/01985/REM) which included block KL1 (Azera House).

Under condition 09 of the reserved matters approval there is a requirement that any bar use within Block K1L shall not operate outside of the following hours:

Monday to Thursday 11.00 to 23.30 (11.00am to 11.30pm)

Friday and Saturday 11.00 to 00.30 (11.00am to 00.30am)

Sundays and public holidays 12.00 to 23.00 (12.00pm to 11.00pm)

unless otherwise agreed in writing by the Local Planning Authority.

The demise for unit 3 is shown to be within the building under the reserved matters approval, and the promontory was identified as publicly accessible waterfront. However, the applicants advise that the extent of their leasehold area for unit 3 includes the external terrace around the building. Under condition 31 of the original outline planning permission the following condition was imposed in relation to external seating:

APPROVAL CONDITION – External Seating & Umbrellas Restriction

No external seating or umbrellas shall be erected in relation to a non-residential use without the prior written approval of the Local Planning Authority. Any external seating or umbrellas shall only be provided in accordance with the agreed specification and locations unless otherwise agreed in writing by the Local Planning Authority.

REASON:

In the interests of visual amenity and to protect the residential amenities of prospective residents of the scheme.

Condition 31 was discharged for this premises under discharge of condition reference 20/01080/DIS, which approved a maximum of 10 tables and 40 chairs (4 chairs per table).

There has been a breach of the details agreed under condition 31 with additional tables and chairs installed which is subject to a pending enforcement investigation. However, in line with the Council's Enforcement Policy, the applicants have been given the opportunity to seek permission for this arrangement and, therefore, the planning enforcement action is on hold pending the outcome of this application (and any appeal should that become necessary).

1. The site and its context

1.1 Azera (Block KL1) is a waterside development located within Centenary Quay, and comprises an 11-storey block, located to the west of the main plaza. The building comprises 3 no. ground floor commercial units (consented for flexible food & drink, bar and office uses) and 110 flats on the upper floors. This development was delivered as part of phase 4 of Centenary Quay and was constructed in 2017-2018

1.2 This application relates to unit 3, occupied as a waterside bar and restaurant, known as the 'Quayside'. The venue currently supports between 15-20 jobs. The

unit occupies the western end of the ground floor and is dual aspect with westerly views over the River Itchen. The other ground floor commercial units in the building are occupied as shared office space. The building is framed by an external terrace which provides publicly accessible waterfront which terminates on the northern side of the building, adjacent to land allocated as part of the Marine Employment Quarter. Unit 3 access onto the external terrace and occupies the space as an external terrace containing tables and chairs associated with the bar and restaurant.

2. Proposal

- 2.1 The premises has permission for 10 tables and 40 chairs on the outside terrace, as approved under details reserved by condition 31 of the original outline planning permission which regarding the location and specification of external seating (ref 20/01080/DIS).
- 2.2 The applicant seeks to vary the details previously agreed for condition 31 in order to increase the number of external tables and chairs from 10 tables/40 chairs to 20 tables/60 chairs. Please note the additional tables are smaller 2 person tables and are moveable and sought by the applicants to improve the viability of the business during the Summer season.
- 2.3 The application has been amended following the original submission and public consultation to reduce the number of tables by 5 (total reduced from 25 to 20) and the arrangement revised in order to provide a 2m width public access route adjacent to the waterfront (whereas on submission the entire external demise was included).

3. Relevant Planning Policy

- 3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The site forms part of the major allocation for Woolston Riverside under policy MSA18 of the Local Plan Review. The area is allocated for major mixed use development with land to the north of Azera identified for marine employment uses. Azera is located within Centenary Quay and this part of MSA18 is identified for a mix of residential, local leisure and community uses and a high quality publicly accessible waterfront.
- 3.3 The National Planning Policy Framework (NPPF) was revised in 2019. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

3.4 The NPPF indicates that the planning system has three overarching objectives (environmental, economic and social), which are interdependent and need to be pursued in mutually supportive ways in order to achieve sustainable development. Section 06 of the NPPF advises that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt and significant weight should be placed on the need to support economic growth and productivity.

3.5 Also of relevance to this application is Paragraph 185 of the NPPF which indicates that planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) on living conditions that could arise from the development. In doing so they should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.

4. Relevant Planning History

4.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.

5. Consultation Responses and Notification Representations

5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, and erecting a site notice 14.04.23. At the time of writing the report **52 representations** have been received with 19 in objection and 33 in support. It should be noted that 18 of the objections are from residents within the Azera block. Please also note that of the 33 the letters of support, 18 were from local residents of Woolston. The following is a summary of the points of OBJECTION raised:

5.2 **Impact of noise – late night disturbance associated with the premises and existing outdoor area, particularly to those living within the associated flats above.**

Response – See comments from the licensing team and also comments within the considerations section below.

5.3 Those in SUPPORT comment on the need to support the viability of the existing use and the attractiveness of the offer.

Consultation Responses

5.4 **SCC Licensing** – No objection

Having people seated does assist in managing their noise but does not completely resolve it. They describe people sat out there enjoying a drink and conversation looking at the sunset and view of the city, unfortunately the licensing team have received video evidence showing some patrons being quite loud. The premises really have to manage the people out there and keep them quiet, if they fail then we will look to restrict the licence. We are going to be monitoring them over the Summer. The licensing Act has a review process where conditions can be applied to licences and hours of use can be restricted. We can impose conditions limiting

the number of their customers and any other condition as long as it is reasonable, supports one of the licensing objectives and is enforceable.

5.5 **SCC Environmental Health – No objection**

The Environmental Health Team have not received a noise nuisance complaint since July 2022 (however please note that the licensing and planning enforcement team have received complaints). The complaint at that time was not substantiated and as no further reports/complaints were received the case was closed. The provision of seating rather than a standing area associated with a bar/restaurant (and restricting the number of people outside to those that can be seated) does tend to improve behaviour and hence levels of noise are reduced/controlled. Furthermore, a management plan is required through licensing as to minimise disturbance and potential nuisance to residents nearby. EH therefore have no objection, but would also support a temporary permission if that were possible and revert to current table provision (10) if expected/required standards of management are not met.

Officer Response

So whilst the Environmental Health team haven't received significant recent complaints about this premises, it is clear that other departments across the Council have. In terms of the suggestion of a temporary permission this is not what has been applied for and officers are supportive of a permanent solution in any event, with the comfort that SCC Licensing have additional controls and conditions are recommended under Planning. The Panel may decide a different approach, but would need to consider the application for a permanent change first.

5.6 **Cllr Warwick Payne – No objection**

I would like to support the application 23/00418/FUL to provide approval for additional outside seating at Azera Unit 3 at Centenary Quay. The seating has been used on a 'trial' basis during warmer weather and has proved popular with customers and I regard it as a good community asset. There are also precedents of external seating at other hospitality venues in Woolston including Mettrick's cafe bar, Olaf's Tun, and Piggy's Restaurant, so granting approval would strike me as entirely consistent in policy terms

6.0 Planning Consideration Key Issues

6.1 The key issues for consideration in the determination of this planning application are:

- The Principle of Development; and
- Noise Impacts & Residential Amenity

6.2 Principle of Development

6.2.1 Quayside bar and restaurant currently has planning permission for 10 tables/40chairs on part of the external waterside terrace. This revised application is seeking permission for a further 10 tables/20chairs and an extended boundary that retains public access to the water's edge

6.2.2 The policy allocation for Woolston Riverside under policy MSA18 of the Local Plan Review identifies this part of Centenary Quay for a mix of residential, local leisure and community uses and a high quality publicly accessible waterfront. The design vision for Centenary Quay as set out within the Deign Code supporting the original outline planning application envisaged the public realm around Azera (Block K11)

as Centenary Square Centenary Square as having a more open and active character than the main plaza and its proximity to the water's edge provides the setting for commercial uses including restaurants and bars. Furthermore, the Azera block was identified within location suitable for active frontages and the Design Code indicates that the maximum interaction within the public areas around the building will occur where bars and cafes spill out onto the streets and squares and occupy pavement space animating the public realm.

- 6.2.3 The planning permission for Centenary Quay phase 4 only defines the external terrace on the promontory as publicly accessible waterfront, but did not define the areas for external tables and chairs and general public access. However, there is a canopy strategy for the bars and restaurant within the Reserved Matters approval for phase 4, which identifies much of the external area around unit 3 as covered with a canopy to serve this unit (comparable to the area shown within this current application).
- 6.2.4 The applicant is seeking the additional tables and chairs to improve the viability of the business by capturing trade and demand for this waterfront location during the warmer months; and as such is seeking an additional 10 small tables/20 chairs during this seasonal period which would increase the capacity of the external area by 50% an increase from 40 to 60 seat capacity.
- 6.2.5 P&M EVENTS LTD (the applicants) have occupied the premises since mid 2022 and it understood they are the first occupiers of unit 3 since the construction of the Azera block in 2107-18. It should be noted that in 2019 planning permission was granted to increase the range of flexible uses within the vacant ground floor units within Azera to allow office use as well as the previously consented food and drink uses (ref 19/00347/FUL). As part of the 2019 application evidence was provided from Vail Williams dated 3 July 2019 (pre pandemic), which advised of little market interest for the commercial units with Azera following the commencement of marketing prior in 2018 citing difficulties in trading conditions within the area due to the lack of footfall and at that point no interest had been received from restaurant or bar occupiers. It is therefore understandable that the applicants are now seeking to maximise the use of the external terrace and create a destination within this waterfront location, and it benefits the development and the wider district centre that this unit is now occupied.
- 6.2.6 However, in seeking to maximise opportunities on the terrace to create a vibrant waterfront area, it is important that private interests do not compromise the wider public enjoyment of the waterfront and/or the amenity of residents. The provision of accessible and attractive waterfront is a key priority in the development plan as set out within policy CS12 of the Core Strategy, and the provision of high quality publicly accessible waterfront at Centenary Quay is also a priority within this major site allocation.
- 6.2.7 As such, a balance needs to be struck in taking opportunities to activate the waterfront and supporting the viability of this business by introducing additional tables and chairs, but ensuring that this is done in a manner which does not compromise general public access of the waterfront. Therefore, the scheme has been amended to revise the arrangement of external tables and chairs bringing them closer to the building in order to provide a retained 2m width public access route around the promontory. Planning conditions are recommended to secure and prevent infringement of this public route.

6.2.8 It should be noted that the applicants have indicated that the demise of their lease includes the whole external terrace, however private lease arrangements do not override existing planning controls which have secured public access within Centenary Quay through existing planning conditions and the original S106 planning obligations.

6.3 Noise Impacts & Residential Amenity

6.3.1 It is clear from the representations received from residents within the Azera Block, and from licensing and enforcement records that there have been instances of noise and anti-social behaviour associated with the Quayside Bar and Restaurant. The licensing team are monitoring the premises and are currently satisfied that management arrangements can be put in place to address issues. However, if there are ongoing issues licensing have powers to introduce controls or to revoke the premises license. It is recognised that the introduction of additional tables and chairs results in a higher concentration of people outside which could lead to greater impacts beyond the approved capacity of 10 tables/40 chairs.

6.3.2 However, whilst increased impacts are recognised it is considered that harmful noise levels can be controlled through better management arrangements as required through the licensing regime, and no objection has been raised to the proposal by the Council's Environmental Health and/or Licensing teams. Additional layers of control are recommended through the recommended list of conditions set out below

6.3.3 It is recognised that residents within the Azera building have legitimate concerns around noise and disturbance issues associated with this premises, and that management arrangements and mitigation needs to be in place to ensure residents are not subject to significant adverse disturbance on health and quality of life.

6.3.4 However, the noise environment within this area does need to be assessed in relation to the mixed character of the area and the Azera block was consented with ground floor bar and food and drink uses, with an external offer, and the original design vision for this area of Centenary Quay is to include outdoor tables and chairs supporting bars and restaurants. It should also be added that because of the time taken between the completion of the block in 2017/2018 and occupation of Unit 3 as a bar and restaurant in mid 2022, there was a period of approximately 3.5 years where early occupiers of Azera would have enjoyed a noise environment with no commercial uses at ground floor. It is recognised that this period also included a global pandemic.

6.3.5 The applicant has been working with SCC Licensing to address noise disturbance issues, and has agreed to clear the external terrace by 11pm. They are also in the process of installing barriers and signage to control the external area and are to install noise monitoring equipment too. It is recommended that, in addition to licensing monitoring and controls, planning conditions are introduced to define the area of tables and chairs and to limit their maximum number to that shown on the amended plans. Hours of use controls are also recommended to prevent the outdoor area being used for food and drink consumption beyond 11pm, because the current consented hours allows the external area to be used until 11.30pm Mon-Thurs and until 00.30am Friday and Saturday.

- 6.3.6 It is recognised that the enjoyment and use of this outdoor waterside area is weather dependant, and demand for use of this area is less likely out of season. It is also recommended that a condition be added to prevent the installation of additional external heaters within this area to encourage customers to go inside the building rather than stay outside later into the evenings.
- 6.3.7 With these measures in place, and the controls on offer through SCC Licensing, officers consider that a good balance has been found between supporting local business, providing wider public access to the waterfront, and offering suitable protection to the residents living above the application site. It should also be noted that external seating is already approved and so the applicants have this as a fall-back in the event that the Panel cannot support the additional changes.

7. Summary

- 7.1 On the basis of the imposition of planning conditions to control the use and arrangement of the external area in conjunction with licensing controls, it is considered that a suitable balance has been achieved in retaining public access, supporting the viability of the business and vitality of the waterfront, whilst minimising noise and other disturbance to levels which are not significantly adverse and suitable for this area of mixed commercial and residential character.

8. Conclusion

- 8.1 It is recommended that planning permission be granted subject to the conditions set out below.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1. (a) (b) (c) (d) 2. (b) (c) (d) (e) (f) (g) 4.(f) (g) (vv) 6. (a) (b) 7. (a)

Case Officer AG for 11/07/23 PROW Panel

PLANNING CONDITIONS to include:

01. Approved Plans (Performance)

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below. A maximum of 20 tables and 60 chairs shall be provide on the external terrace at any one time and a 2 metre wide public waterfront access as shown on the plans hereby approved shall be provided and kept clear at all times.

Reason: For the avoidance of doubt and in the interests of proper planning

02. External Noise Restrictions

No live or amplified equipment/music shall be used outside of the building.

Reason: In the interests of the amenities of neighbouring occupiers.

03. Public Access to the Waterfront

Within 2 months of the date of this permission details of a clear marker between the tables and the walkway, and also details of additional signage confirming public access to the water's edge shall have been agreed in writing with the Local Planning Authority and installed. These features shall be retained as agreed for the lifetime of the development.

Reason: To ensure public waterfront access is retained

04. **Hours of use (Outside)**

Notwithstanding the permitted hours of use for the premises under condition 09 of 15/01985/REM, no food and drink shall be consumed outside of the building beyond the following hours in accordance with the applicant's supporting Statement:

Monday to Saturday 11.00 to 23.00 (11.00am to 11.00pm)

Sundays and public holidays 12.00 to 23.00 (12.00pm to 11.00pm)

Reason: In the interests of the amenities of neighbouring residents.

05. **External Heaters**

No additional external heaters shall be installed.

Reason: To reduce the likelihood of the outdoor area being occupied late into the evening or outside the summer season in the interests of neighbouring residential amenities.

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS1	City Centre Approach
CS2	Major Development Quarter
CS6	Economic Growth
CS12	Accessible and Attractive Waterfront

City of Southampton Local Plan Review – (as amended 2015)

SDP1	Quality of Development
SDP16	Noise
REI7	Food and Drink Uses
MSA18	Woolston Riverside, Victoria Road

Other Relevant Guidance

The National Planning Policy Framework (2021)

Relevant Planning History

08/00389/OUT – Conditionally Approved 31.12.2009

Redevelopment of the site to provide a mixed use development comprising: 1,620 dwellings (including 405 affordable homes); retail (Class A1 - 5,525 square metres, including a food store); restaurants and cafes (Class A3 - 1,543 square metres); offices (Class B1 - 4,527 square metres); yacht manufacture (Class B2 - 21,237 square metres); Business, industrial, storage and distribution uses (Class B1/B2/B8 - 2,617 square metres); 100 bedroom hotel (Class C1- 4,633 square metres); 28 live/work units (2,408 square metres); community uses (Class D1- 2,230 square metres); two energy centres (1,080 square metres); with associated parking (including the laying out of temporary car parking); new public spaces; river edge and quays; new means of access and associated highway/ environmental improvements. (Environmental Impact Assessment Development- 'Hybrid' planning application: outline in part, full details of phase 1 and river edge submitted).

Description amended following submission following the removal of 33 residential units from the scheme and the introduction of a temporary car park.

15/01985/REM – Conditionally Approved 30.03.2016

Reserved Matters approval sought for External Appearance and Landscaping with variations to Scale and Layout as agreed under outline planning permission reference 08/00389/OUT for Phase 4 of the Centenary Quay Development, comprising 185 residential dwellings, 508 sqm of A3/A4 retail space and a multi storey car park within buildings ranging in height from 6-storeys to 11-storeys with associated works including a temporary car park (Environmental Impact Assessment Development) - Amendments to Condition 10 (Building Heights) and Condition 56 (Parking) incorporated - description amended following validation

19/00347/FUL – Conditionally Approved 16.07.2019

Change of use of ground floor units to flexible restaurant/cafe/drinking establishment/office (use classes A3/A4/B1(a))

20/01080/DIS – No objection 05.11.2020

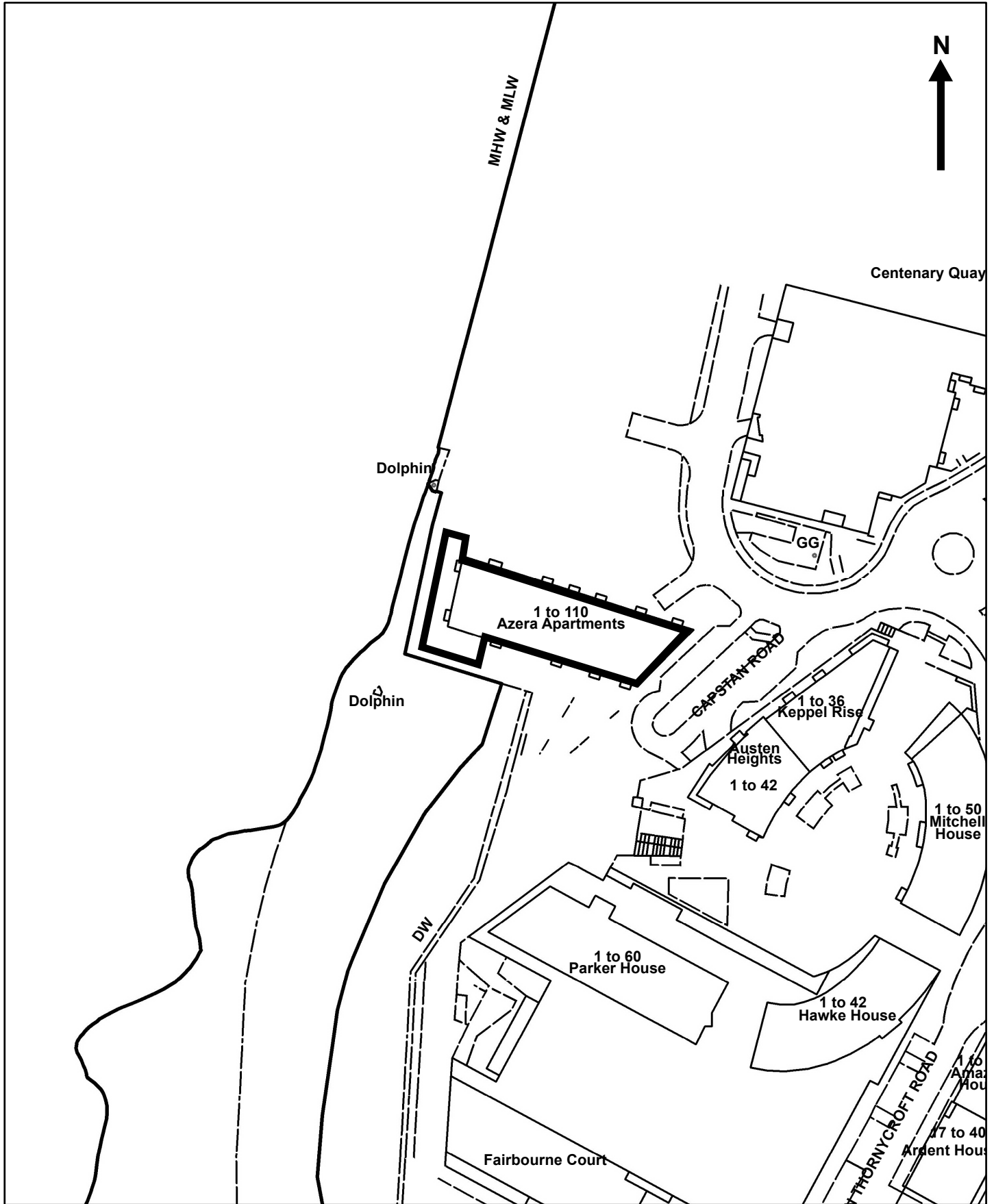
Application for approval of details reserved by condition 31 (External seating and umbrellas restriction) of planning permission ref 08/00389/OUT

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Agenda Item 4

23/00418/FUL

Appendix 1



Scale: 1:1,250

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Planning and Rights of Way Panel 11th July 2023
Planning Application Report of the Head of Transport and Planning

Application address: 24 Wilton Avenue, Southampton			
Proposed development: Change of use from a house in multiple occupation (HMO) (class C4) to a large HMO for 7 persons (sui generis) and installation of enlarged rear dormer (resubmission 21/00871/FUL)			
Application number:	23/00674/FUL	Application type:	FUL
Case officer:	Stuart Brooks	Public speaking time:	5 minutes
Last date for determination:	19.07.2023	Ward:	Banister and Polygon
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors:	Cllr Every Cllr Leggett Cllr Windle
Referred to Panel by:	n/a	Reason:	n/a
Applicant: Mr Durrant		Agent: Pure Town Planning	

Recommendation Summary	Delegate to the Head of Transport and Planning to grant planning permission subject to criteria listed in report
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Community Infrastructure Levy Liable	No
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Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 39-42 and 46 of the National Planning Policy Framework (2021). Policies – CS13, CS16, CS18, CS19 of the of the Local Development Framework Core Strategy Development Plan Document (Amended 2015). Policies – SDP1, SDP4, SDP5, SDP7, SDP10, SDP16, H4, H7 of the City of Southampton Local Plan Review (Amended 2015).

Appendix attached			
1	Habitats Regulation Assessment	2	Development Plan Policies
3	Appeal decision for 21/00871/FUL	4	Map of HMOs in 40m radius

Recommendation in Full

1. That the Panel confirm the Habitats Regulation Assessment in **Appendix 1** of this report.
2. Delegate to the Head of Transport and Planning to grant planning permission subject to the planning conditions recommended at the end of this report and the completion of a S.106 or S.111 Legal Agreement to secure either a scheme of measures or a financial contribution to mitigate against the pressure on European designated nature conservation sites in accordance with Policy CS22 of the Core Strategy and the Conservation of Habitats and Species Regulations 2010.
3. That the Head of Transport and Planning be given delegated powers to add, vary and /or delete conditions as necessary, and to refuse the application in the event that item 2 above is not completed within a reasonable timescale.

1. Background

- 1.1 In July 2021, a previous planning application (ref no. 21/00871/FUL) for an identical proposal was refused by officers on amenity grounds (full reason for refusal is set out in the decision notice in **Appendix 5**). The applicants subsequently appealed the decision and the Appeal Inspector did not uphold the Council's grounds for refusal, but dismissed the appeal nevertheless (**see Appendix 3**) solely on grounds of a lack of mitigation measures to address the significant affect upon European designated sites in relation to the additional overnight sleeping accommodation created by the 7th bedroom in the large HMO. In short, the appeal Inspector found it appropriate to have a 7 bed HMO at 24 Wilton Crescent but dismissed the appeal on a technical ground that required further work.

The applicants have resubmitted this application and seek to address the appeal decision by making a financial contribution towards the Solent Disturbance Mitigation Project (SMDP) to mitigate recreational disturbance to birds on Solent shorelines, and by signing up to the Eastleigh Nutrient offset scheme to mitigate increased levels of nitrogen emissions into protected waters.

2. The site and its context

- 2.1 This application site comprises a 2 storey terraced dwelling (with loft conversion) in a residential street. The site is located close to the edge of the city centre and in close walking distance to the Bedford Place shopping area and the city centre parks. Bedford Place car park lies nearby, and the backs of housing in Amoy Street are found to the rear of the site. The property is currently lawfully occupied as a C4 HMO (up to 6 unrelated persons) with access to communal space and small garden.
- 2.2 The surrounding area is characterised by a mainly close knit terraced residential properties of uniform style. The properties in the locality comprise of mixed housing types including flats, HMOs, and family homes. Within the typical 40m radius taken from the application site as shown by the map of licensed HMOs in **Appendix 4**, there are 33 properties split into 9 flat conversions, 18 HMOs, and 8 family dwellings.

3. Proposal

- 3.1 This application seeks permission for the change of use from an established 6-bed house of multiple occupation (HMO, class C4) to a larger HMO for 7 unrelated persons (class sui generis). This includes the installation of larger rear dormer to create the 7th bedroom in the roofspace. The rest of the internal layout will remain unchanged including the 35sqm communal living area already available to the occupants. The applicant also proposes to provide a cycle store in the rear garden to accommodate 7 spaces.

4. Relevant Planning Policy

- 4.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at **Appendix 2**.
- 4.2 The National Planning Policy Framework (NPPF) was revised in 2021. Paragraph 219 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

5. Relevant Planning History

- 5.1 The relevant planning history relates to the appeal decision and previous refused application (ref no. 21/00871/FUL) (**see Appendices 3 & 5**). The outcome of the Inspectors decision is taken into consideration in section 6 of the report. The Inspectors decision to not uphold the Council’s previous reason for refusal should be treated as a significant material consideration in determining this current application.
- 5.2 The only material change in circumstances since the Inspector’s decision that would override their decision is the Council’s new approach to include HMOs in the residential mitigation schemes for protected habitats.

6. Consultation Responses and Notification Representations

- 6.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners and erecting a site notice on 02.06.2023. At the time of writing the report **10 representations** (including ward councillor Evemy) have been received from surrounding residents. The following is a summary of the points raised:
- 6.2 ***Harmful to character and amenity. The over-intensive use of the property will result in additional comings and goings to the detriment of established residential amenity. There have been regular noise complaints against HMOs in***

Wilton Avenue so a larger HMO will exacerbate the problem.

Response

Although the Council previously refused the application on these amenity grounds, the Inspector's decision (**see Appendix 3**) found that the amenity impacts would be acceptable with regards to the intensification of use. The Inspector's decision forms a material consideration that should be afforded significant in deciding the present application for the same proposal.

- 6.3 ***The dormer is out of character and would result in loss of light and privacy to neighbouring occupiers.***

Response

The separation distances between neighbouring properties and the modest size of the dormer are considered not to result in an adverse loss of light and privacy. The modest size of the dormer at the rear will not be out of keeping with the character and appearance of the host property and local area. The appeal Inspector did not cite the dormer as 'harmful' and so it would be wrong of the Council to do so now.

- 6.4 ***Additional HMO population in an area over-saturated by HMOs which cause a negative impact on local environment from over-crowding, anti-social behaviour and noise disturbance, high parking demand, and poor refuse management. This will further erode the imbalance of family homes in the local community and transient population. The area should be returned back to family homes and longer term residents who will invest in the upkeep of the area. The changes prevent the future use of the property being adopted by diverse users such as families and young professional renters.***

Response

The Inspector's decision (**see Appendix 3**) found that the difference in occupation between 6 and 7 persons living independently of each other would not adversely affect the character of the area with regards to these social and environmental impacts. Whilst the property is being enlarged to 7 bedrooms, it remains as single property so would not prevent its reuse as a family home in the future.

- 6.5 ***Inadequate amenity space for the residents.***

Response

The usability and quality of the small garden space is considered adequate and fit for purpose for the occupiers to enjoy sitting out, whilst they benefit from a large communal living area on the ground floor. The smaller garden size is not uncharacteristic of the close knit nature of terraced housing in Wilton Avenue, whilst this is offset by the city centre parks being in walking distance to allow for recreational opportunities. The appeal Inspector did not cite the garden size as 'harmful' and so it would be wrong of the Council to do so now.

- 6.6 ***The Inspector's concerns should be addressed to mitigate the affects of creating additional overnight accommodation on the Special Protection Areas under Habitats Regulations.***

Response

Agreed. Officers are satisfied that the applicant can mitigate these impacts and that appropriate recreational disturbance and water quality mitigation will be secured. See section 7.7 of the report and the attached Habitats Regulations Assessment that confirms impacts on Protected Sites that can be mitigated.

Consultation Responses

6.7

Consultee	Comments
Environmental Health	No objection. No noise complaints have received regarding the property since 2014.
Cllr Every	<p>24 Wilton Avenue is a two storey, mid-terrace, residential property, which is sited on the south side of Wilton Avenue, within an established residential area of similar properties. This proposal increases it to a three storey property which could set a precedent for the conversion and intensification of use of other properties in the terrace. The existing amenity space for six adults is barely adequate.</p> <p>Also the bin provision and storage less than adequate. There is already a serious problem in the area of HMO's with inadequate bin provision leading to inappropriate use of recycling bins from which contaminated recycling is not collected, over-full standard waste bins that can be accessed by gulls etc and black bags as side waste which are torn open by foxes, rats etc. Currently this HMO of 6 adults only has two domestic bins one for general waste the other for recycling and no dedicated space for their storage, currently they are in front of the downstairs front window. Without adequate bin facilities increasing the size of this property would add further pressure on the already inadequate provision which is likely to lead to an increase in litter and vermin in the area.</p> <p><u>Officer Response</u> <i>The occupants will have access to a smaller than typical garden, however, the quality space is fit for purpose and compensated by the access to city centre parks.</i></p> <p><i>The bin storage arrangement on the frontage is not ideal, however, this is an existing circumstance for the property and elsewhere is Wilton Avenue due to the terraced nature of the properties. There are no other reasonable options to relocate the storage that will be convenient for the residents (75m carry distance from the rear garden on collection days). A condition can be applied to ensure adequate bin storage capacity is retained. As such, the impacts of the additional waste demand generated by the additional occupant will not warrant a reason for refusal and wasn't considered an issue by the appeal Inspector.</i></p>

7.0 Planning Consideration Key Issues

- 7.1 The key issues for consideration in the determination of this planning application are:
- The principle of development;

- Design and effect on character;
- Residential amenity;
- Parking highways and transport and;
- Likely effect on designated habitats.

7.2 Principle of Development

7.2.1 The principle of an HMO is established as a previous Inspector has found a 7th person also acceptable at this address. Policy H4 (HMOs) and CS16 (Housing Mix) supports the creation of a mixed and balanced community, whilst the policies require HMO proposals to be assessed against maintaining the character and amenity of the local area. Furthermore, these policies acknowledge there is a need to deliver a mix of housing for lower income households. In this instance the 10% threshold test (carried out over a 40m radius) as set out in the HMO SPD is not relevant as the local concentration of properties occupied as HMOs would remain unchanged as a result of the proposal.

7.2.2 Section 4.6 of the HMO SPD states that cases of intensifying the use from a small to a large HMO will be assessed on their own individual merits on a case by case basis against the council's relevant policies and guidance, including standard of living conditions and parking standards set out in section 5. Other impacts will be assessed as set out in the policy text. Section 4 of the HMO SPD sets out that notwithstanding the threshold limit and exceptional circumstances, other material considerations (such as intensification of use, highway safety, residential amenity of future and existing occupiers) arising from the impact of the proposal will be assessed in accordance with the council's relevant development management policies and guidance.

7.2.3 Following the previous decision by the Planning Inspector to dismiss the same scheme due to Habitat Regulation impacts only, the Planning Panel should be mindful that the applicant could be awarded costs in defending a second appeal as a result of the Council introducing new reasons for refusal or imposing reasons which were not endorsed by the previous Inspector.

7.3 Design and effect on character

7.3.1 As the property is already used as a C4 HMO (up to 6 persons), the creation of larger HMO will not significantly change the character of the area as the mix and balance of households will not change. The Council did not include any reasons for refusal relating to character impact under the previous application (**see Appendix 5**), and the Inspector's decision raised no concerns with regards to the impact on the character of the area including adequacy of refuse provision and management (see paragraphs 32 and 33 in **Appendix 3**).

7.3.2 Whilst incidences of unsightly refuse management by residents can be a visual amenity issue for HMOs it is acknowledged that there is limited influence the planning system can have to change the existing storage arrangement for these terraced properties. The additional waste demand generated by the additional occupant would not warrant a reason for refusal, or a change to the existing storage arrangement at the front of the property. A condition will be applied so that the adequacy of the current bin capacity can be checked with the Council's refuse team. It should be noted that other departments in the Council are working towards improving the poor management of bins linked to HMO properties.

7.3.3 The design of the proposed roof dormer would not be out of keeping with the character and appearance of the host building. The Council did not previously include any design reasons for refusal relating to the roof extension (**see Appendix 5**). The Inspector's decision did not explicitly comment on the roof extension's visual impact to the character of the area (see **Appendix 3**), but they are duty bound to consider the application as a whole and could have raised their own design concerns ahead of determining the previous appeal, but didn't.

7.3.4 As such, the proposed intensification to an established HMO would not adversely affect the character of the local area in accordance with policies SDP1, SDP7, H4 of the Local Plan Review and CS13 and CS16 of the Core Strategy as supported by the relevant guidance of the Residential Design Guide and Houses in Multiple Occupation SPD.

7.4 Residential amenity

7.4.1 Turning to the impact of the increased movements and activities associated with the change of use to a larger HMO, the Council refused the previous application on amenity grounds, given that the resultant noise and disturbance from the intensification in use by 1 person would adversely affect amenity of the neighbouring occupiers (**see Appendix 5**). This was due to the close-knit terraced nature of the neighbouring properties that would notice the cumulative increase of movements and activity associated with the HMO occupiers living independently of each other. Both properties living either side of the HMO are converted into flats which are in turn sandwiched by HMOs (**see Appendix 4**). This was not supported by the appeal Inspector (see paragraphs 33-41 of **Appendix 3**).

7.4.2 One additional resident is unlikely to result in a significantly discernible increase in noise and disturbance between neighbouring houses given the unchanged layout of communal areas of the property. The Inspector found that the use of the large HMO was compatible with the local prevailing context and nature of transient and high density back-to-back terraced housing and Wilton Avenue being a well-trafficked road, and both adjoining properties are occupied as two flats (paragraph 35 to 39 refers).

7.4.3 The Council is now duty bound to put significant material weight on the Inspector's decision. A condition has been applied to limit the occupancy to no more than 7 persons to prevent further intensification of use.

7.4.4 Paragraphs 2.2.1 and 2.2.4 of the Residential Design Guide expects extensions to maintain the outlook, privacy and light of neighbouring occupiers, and sets a minimum 28m back to back separation distance for privacy between 3 storey and 2 storey housing. The existing arrangement, and the introduction of a dormer, will not adversely affect the amenity of the neighbouring occupiers in terms of loss of privacy, light and outlook. Significant material weight should be given to the Inspector's decision that states that the proposed overlooking '*would not result in a materially greater amount of overlooking to neighbouring properties than currently exists*' (para.44).

7.4.5 As such, the proposed development will meet the aims of saved policies SDP1(i), SDP7 and H4 to safeguard the residential amenity of local residents as supported by the guidance in the Residential Design Guide and Houses in Multiple Occupation SPD.

7.5 Living conditions of future occupiers

7.5.1 The proposal will effectively provide a 7th bedroom (13.5sqm with additional en-suite shower) in the loftspace facilitated by the new roof dormer. All residents will benefit from the large existing ground floor communal living area (35sqm).

7.5.2 The subsequent roof section plan provided by the applicant demonstrates that there would be adequate headroom for the bedroom space within the extended roofspace. The expanded accommodation will therefore provide acceptable living conditions for the future occupiers. The floor area of the new bedroom space in the loft will comply with minimum HMO license standards, whilst the occupants would benefit from sufficient ventilation, headroom and outlook/light/privacy.

7.5.3 The HMO property has access to 25sqm of useable garden space (after discounting the new cycle store). Policy H4(iii) of the Local Plan Review requires adequate amenity space to be provided for the occupants which is fit for purpose and enables sitting out. Whilst the size of the garden is much smaller than the 50sqm required under the minimum space standards for a family dwelling as set out in the Residential Design Guide (para 2.3.14 refers), the standards can be applied flexibly in areas of higher density housing. Furthermore, the smaller size garden is offset by residents being within walking distance of the central parks and the common for recreational opportunities.

7.5.4 As such, the proposal is in compliance with policy SDP1(i) and H4 of the Local Plan Review as the internal and external layout of the large HMO would provide acceptable living conditions for the future and existing occupants.

7.6 Parking highways and transport

7.6.1 There is no off-road parking available for majority of houses in this part of the street, whilst the site is sustainably located near the city centre with high accessibility to public transport and shops/services, and surrounding streets are controlled by parking permit restrictions. The additional trips associated with the large HMO use would not arise in an adverse impact to the local road network.

7.6.2 The parking standards set out in the HMO SPD (section 5) expects the 7 bedroom HMO to provide a total maximum of 3 parking spaces within this non-high accessible location as defined by the accessibility map of the SPD. Nil parking is still policy compliant as the Council does not have minimum standards. The parking demand is no different to 6 bedroom HMO under the SPD standards. As such, it is considered that the overspill impact from one additional person will not significantly affect the availability of street parking for existing local residents. The Inspector found in paragraph 43 that the availability of local street parking and high accessibility near the city centre would absorb the minor difference in parking demand for the additional occupant.

7.6.3 Conditions can be used to secure details of the secure and covered cycle storage facility in the rear garden, and refuse storage. Whilst the existing arrangement of bin storage on the front forecourt is not ideal, as similar for other properties along Wilton Avenue, it is accepted that there is limited scope to reprovide a storage space elsewhere on the property for the residents.

7.6.4 As such, the parking and access impact associated with the large HMO will not adversely affect highways safety or residential amenity in accordance with policy SDP1(i) of the Local Plan Review.

7.7 Likely effect on designated habitats

7.7.1 **This is perhaps the key issue following the Inspector's decision.** Having regard to the appeal decision's paragraphs 6 to 22 (**see Appendix 3**) officers acknowledge that increased occupancy of larger HMOs triggers the requirement for a Habitats Regulation Assessment (HRA). The proposed development, as a residential scheme which increases overnight accommodation with the occupancy rate to be based upon 1 person per bedroom, has been screened (where mitigation measures must now be disregarded) as likely to have a significant effect upon European designated sites due to an increase in recreational disturbance along the coast. Accordingly, a HRA has been undertaken, in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 and is appended at **Appendix 1**.

7.7.2 A nitrates budget calculator has been submitted since the validation of the application, which sets out the nitrogen emissions to be mitigated. A Grampian condition will require the requisite number of credits from the Eastleigh Nutrient offset scheme to be secured prior to the occupation of the large HMO. The SDMP contribution will be secured by officers prior to releasing permission as per the delegation sought in the above recommendation. The HRA concludes that, providing the specified mitigation of a Solent Recreation Mitigation Strategy (SRMP) contribution and nitrates credits, are secured the development will not adversely affect the integrity of the European designated sites.

8. Summary

8.1 This application follows an appeal. The appeal Inspector concluded that the intensification in HMO bedrooms would have the potential to create new impacts on sensitive ecological habitats in terms of recreational disturbance and impact on water quality in the Solent catchment area. That was the only harm identified from these proposals.

8.2 Officers have reassessed their previous reason for refusal on amenity grounds against the same proposal for a large HMO (change from 6 to 7 unrelated persons). Officers have placed significant weight on the Inspector's assessment and that no material harm has been identified by this development. Furthermore, the additional accommodation will benefit housing delivery for lower income households without a loss of additional family homes in the local community. Having regard to s.38(6) of the Planning and Compulsory Purchase Act 2004, and the considerations set out in this report, the application is recommended for approval.

9. Conclusion

9.1 It is recommended that planning permission be granted subject to a securing contributions towards the Solent Disturbance Mitigation Project to mitigate against recreational disturbance to special protection areas, and a planning condition to secure nitrates mitigation alongside the other conditions set out below.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1. (a) (b) (c) (d) 2. (b) (c) (d) 4.(f) (qq) (vv) 6. (a) (b) 7. (a)

Stuart Brooks PROW Panel 11.07.23

PLANNING CONDITIONS

1. Full Permission Timing (Performance)

The development hereby permitted shall begin no later than three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

2. Occupation limit (Performance)

The HMO use hereby approved shall be occupied by no more than 7 persons.

Reason: In the interests of protecting the amenity of neighbouring occupiers.

3. Bin size capacity (Pre-occupation)

Prior to the occupation of development, details of adequate size of refuse and recycling bin capacity shall be submitted to and approved in writing by the Local Planning Authority. The refuse bins shall be provided in accordance with the agreed details before the development is first occupied and thereafter retained as approved.

Reason: In the interests of visual amenity.

Note to applicant: In accordance with para 9.2.3 of the Residential Design Guide (September 2006): if this development involves new dwellings, the applicant is liable for the supply of refuse bins, and should contact SCC refuse team at Waste.management@southampton.gov.uk at least 8 weeks prior to occupation of the development to discuss requirements.

4. Cycle storage facilities (Pre-Occupation Condition)

Before the development hereby approved first comes into occupation, secure and covered storage for 7 bicycles shall be provided in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The storage shall be thereafter retained as approved.

Reason: To encourage cycling as an alternative form of transport.

5. Eastleigh Nutrients offset scheme (Pre-occupation)

The development hereby permitted shall not be occupied unless a Nitrate Mitigation Vesting Certificate confirming the purchase of sufficient nitrates credits from Eastleigh Borough Council Nutrient Offset Scheme for the development has been submitted to the council.

Reason: To demonstrate that suitable mitigation has been secured in relation to the effect that nitrates from the development has on the Protected Sites around The Solent.

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Application 23/00674/FUL

Appendix 1

Habitats Regulations Assessment (HRA)

Application reference:	23/00674/FUL
Application address:	24 Wilton Avenue Southampton SO15 2HJ
Application description:	Change of use from a house in multiple occupation (HMO) (class C4) to 7-bed large HMO (sui generis) and installation of enlarged rear dormer (Resubmission 21/00871/FUL)
HRA completion date:	26 May 2023

HRA completed by:
Lindsay McCulloch & Stuart Brooks Planning Ecologist Southampton City Council Lindsay.mcculloch@southampton.gov.uk

Summary
<p>The project being assessed is as described above.</p> <p>The site is located close to the Solent and Dorset Coast Special Protection Area (SPA), the Solent and Southampton Water SPA/Ramsar site and the New Forest Special Area of Conservation (SAC)/SPA/Ramsar site.</p> <p>It is recognised that the proposed development for an additional HMO bedroom, in-combination with other developments across south Hampshire, could result in recreational disturbance to the features of interest of the New Forest SPA/Ramsar site and the Solent and Southampton Water SPA/Ramsar site.</p> <p>In addition, wastewater generated by the development could result in the release of nitrogen and phosphate into the Solent leading to adverse impacts on features of the Solent Maritime SAC and the Solent and Southampton Water SPA/Ramsar site.</p> <p>The findings of the initial assessment concluded that significant effects were possible. A detailed appropriate assessment was therefore conducted on the proposed development.</p> <p>Following consideration of a number of avoidance and mitigation measures designed to remove any risk of a significant effect on the identified European sites, it has been concluded that the significant effects, which are likely in association with the proposed development, can be adequately mitigated and that there will be no adverse effect on the integrity of protected sites.</p>

Section 1 - details of the plan or project

**European sites potentially impacted by plan or project:
European Site descriptions are available in Appendix I of the City Centre Action Plan's Habitats Regulations Assessment Baseline Evidence Review Report, which is on the city council's website**

- Solent and Dorset Coast Special Protection Area (SPA)
- Solent and Southampton Water SPA
- Solent and Southampton Water Ramsar Site
- Solent Maritime Special Area of Conservation (SAC)
- River Itchen SAC
- New Forest SAC
- New Forest SPA
- New Forest Ramsar site

Is the project or plan directly connected with or necessary to the management of the site (provide details)?

No – the development is not connected to, nor necessary for, the management of any European site.

Are there any other projects or plans that together with the project or plan being assessed could affect the site (provide details)?

- Southampton Core Strategy (amended 2015) (<http://www.southampton.gov.uk/policies/Amended-Core-Strategy-inc-CSPR-%20Final-13-03-2015.pdf>)
- City Centre Action Plan (<http://www.southampton.gov.uk/planning/planning-policy/adopted-plans/city-centre-action-plan.aspx>)
- South Hampshire Strategy (http://www.push.gov.uk/work/housing-and-planning/south_hampshire_strategy.htm)

The PUSH Spatial Position Statement plans for 104,350 net additional homes, 509,000 sq. m of office floorspace and 462,000 sq. m of mixed B class floorspace across South Hampshire and the Isle of Wight between 2011 and 2034.

Southampton aims to provide a total of 15,610 net additional dwellings across the city between 2016 and 2035 as set out in the Amended Core Strategy.

Whilst the dates of the two plans do not align, it is clear that the proposed development of this site is part of a far wider reaching development strategy for the South Hampshire sub-region which will result in a sizeable increase in population and economic activity.

Regulations 62 and 70 of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) are clear that the assessment provisions, ie. Regulations 63 and 64 of the same regulations, apply in relation to granting planning permission on an application under Part 3 of the TCPA 1990. The assessment below constitutes the city council's assessment of the implications of the

development described above on the identified European sites, as required under Regulation 63 of the Habitats Regulations.

Section 2 - Assessment of implications for European sites

Test 1: the likelihood of a significant effect

- **This test is to determine whether or not any possible effect could constitute a significant effect on a European site as set out in Regulation 63(1) (a) of the Habitats Regulations.**

The proposed development is located close to the Solent and Dorset Coast SPA, Solent and Southampton Water SPA and Ramsar site and the Solent Maritime SAC. As well as the River Itchen SAC, New Forest SAC, SPA and Ramsar site.

A full list of the qualifying features for each site is provided at the end of this report. The development could have implications for these sites which could be both temporary, arising from demolition and construction activity, or permanent arising from the on-going impact of the development when built.

The following effects are possible:

- Contamination and deterioration in surface water quality from mobilisation of contaminants;
- Disturbance (noise and vibration);
- Increased leisure activities and recreational pressure; and,
- Deterioration in water quality caused by nitrates from wastewater

Conclusions regarding the likelihood of a significant effect

This is to summarise whether or not there is a likelihood of a significant effect on a European site as set out in Regulation 63(1)(a) of the Habitats Regulations.

The project being assessed is as described above. The site is located close to the Solent and Dorset Coast Special Protection Area (SPA), the Solent and Southampton Water SPA/Ramsar site and the New Forest Special Area of Conservation (SAC)/ SPA/Ramsar site.

The site is located close to European sites and as such there is potential for construction stage impacts. Concern has also been raised that the proposed development, in-combination with other residential developments across south Hampshire, could result in recreational disturbance to the features of interest of the New Forest SPA/Ramsar site and the Solent and Southampton Water SPA/Ramsar site. In addition, wastewater generated by the development could result in the release of nitrogen into the Solent leading to adverse impacts on features of the Solent Maritime SAC and the Solent and Southampton Water SPA/Ramsar site.

Overall, there is the potential for permanent impacts which could be at a sufficient level to be considered significant. As such, a full appropriate assessment of the implications for the identified European sites is required before the scheme can be authorised.

Test 2: an appropriate assessment of the implications of the development for the identified European sites in view of those sites' conservation objectives

The analysis below constitutes the city council's assessment under Regulation 63(1) of the Habitats Regulations

The identified potential effects are examined below to determine the implications for the identified European sites in line with their conservation objectives and to assess whether the proposed avoidance and mitigation measures are sufficient to remove any potential impact.

In order to make a full and complete assessment it is necessary to consider the relevant conservation objectives. These are available on Natural England's web pages at <http://publications.naturalengland.org.uk/category/6528471664689152>.

The conservation objective for Special Areas of Conservation is to, *“Avoid the deterioration of the qualifying natural habitats and the habitats of qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving Favourable Conservation Status of each of the qualifying features.”*

The conservation objective for Special Protection Areas is to, *“Avoid the deterioration of the habitats of the qualifying features, and the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims of the Birds Directive.”*

Ramsar sites do not have a specific conservation objective however, under the National Planning Policy Framework (NPPF), they are considered to have the same status as European sites.

PERMANENT, OPERATIONAL EFFECTS

Recreational disturbance

Human disturbance of birds, which is any human activity which affects a bird's behaviour or survival, has been a key area of conservation concern for a number of years. Examples of such disturbance, identified by research studies, include birds taking flight, changing their feeding behaviour or avoiding otherwise suitable habitat. The effects of such disturbance range from a minor reduction in foraging time to mortality of individuals and lower levels of breeding success.

Nightjar

Higher levels of recreational activity, particularly dog walking, has been shown to lower nightjar breeding success rates. On the Dorset Heaths nests close to footpaths were found to be more likely to fail as a consequence of predation, probably due to adults being flushed from the nest by dogs allowing predators access to the eggs.

Woodlark

Density of woodlarks has been shown to be limited by disturbance with higher levels of disturbance leading to lower densities of woodlarks. Although breeding success rates were higher for the nest that were established, probably due to

lower levels of competition for food, the overall effect was approximately a third fewer chicks than would have been the case in the absence of disturbance.

Dartford warbler

Adverse impacts on Dartford warbler were only found to be significant in heather dominated territories where high levels of disturbance increased the likelihood of nests near the edge of the territory failing completely. High disturbance levels were also shown to stop pairs raising multiple broods.

Solent and Southampton Water SPA/Ramsar site

The Council has adopted the Solent Recreation Mitigation Partnership's Mitigation Strategy (December 2017), in collaboration with other Councils around the Solent, in order to mitigate the effects of new residential development on the Solent and Southampton Water SPA and Ramsar site. This strategy enables financial contributions to be made by developers to fund appropriate mitigation measures. The level of mitigation payment required is linked to the number of bedrooms within the properties.

The additional HMO bedroom would result in a net increase in the city's population and there is therefore the risk that the development, in-combination with other residential developments across south Hampshire, could lead to recreational impacts upon the Solent and Southampton Water SPA. A contribution to the Solent Recreation Mitigation Partnership's mitigation scheme will enable the recreational impacts to be addressed. The developer has committed to make a payment prior to the commencement of development in line with current Bird Aware requirements and these will be secured ahead of occupation – and most likely ahead of planning permission being implemented.

Water quality

Solent Maritime SAC and the Solent and Southampton Water SPA/Ramsar site

Natural England highlighted concerns regarding, *“high levels of nitrogen and phosphorus input to the water environment in the Solent with evidence that these nutrients are causing eutrophication at internationally designated sites.”*

Eutrophication is the process by which excess nutrients are added to a water body leading to rapid plant growth. In the case of the Solent Maritime SAC and the Solent and Southampton Water SPA/Ramsar site the problem is predominately excess nitrogen arising from farming activity, wastewater treatment works discharges and urban run-off.

Features of Solent Maritime SAC and Solent and Southampton Water SPA/Ramsar site that are vulnerable to increases in nitrogen levels are coastal grazing marsh, inter-tidal mud and seagrass.

Evidence of eutrophication impacting the Solent Maritime SAC and Solent and Southampton Water SPA/Ramsar site has come from the Environment Agency data covering estimates of river flow, river quality and also data on WwTW effluent

flow and quality.

An Integrated Water Management Study for South Hampshire, commissioned by the Partnership for Urban South Hampshire (PUSH) Authorities, examined the delivery of development growth in relation to legislative and government policy requirements for designated sites and wider biodiversity. This work has identified that there is uncertainty in some locations as to whether there will be enough capacity to accommodate new housing and population growth. There is uncertainty about the efficacy of catchment measures to deliver the required reductions in nitrogen levels, and/or whether the upgrades to wastewater treatment works will be enough to accommodate the quantity of new housing proposed. Considering this, Natural England have advised that a nitrogen budget is calculated for new residential development.

A methodology provided by Natural England has been used to calculate a nutrient budget and the calculations conclude that there is a predicted Total Nitrogen surplus arising from the development as set out in the applicant's submitted Calculator, included within the submitted Sustainability Checklist, that uses the most up to date calculators (provided by Natural England) and the Council's own bespoke occupancy predictions and can be found using Public Access:

<https://www.southampton.gov.uk/planning/planning-applications/>

This submitted calculation has been checked by the LPA and is a good indication of the scale of nitrogen that will be generated by the development. Further nitrogen budgets will be required as part of any future HRAs. These nitrogen budgets cover the specific mix and number of proposed overnight accommodation and will then inform the exact quantum of mitigation required.

SCC is satisfied that, at this point in the application process, the quantum of nitrogen likely to be generated from this additional HMO bedroom can be satisfactorily mitigated. This judgement is based on the following measures:

- SCC has adopted a Position Statement, 'Southampton Nitrogen Mitigation Position Statement' which is designed to ensure that new residential and hotel accommodation achieves 'nitrogen neutrality' with mitigation offered within the catchment where the development will be located;
- The approach set out within the Position Statement is based on calculating a nitrogen budget for the development and then mitigating the effects of this to achieve nitrogen neutrality. It is based on the latest advice and calculator issued by Natural England (March 2022);
- The key aspects of Southampton's specific approach, as set out in the Position Statement, have been discussed and agreed with Natural England ahead of approval by the Council's Cabinet in June 2022;
- The Position Statement sets out a number of potential mitigation approaches. The principle underpinning these measures is that they must be counted solely for a specific development, are implemented prior to occupation, are maintained for the duration of the impact of the development (generally taken to be 80 – 125 years) and are enforceable;
- SCC has signed a Section 33 Legal Agreement with Eastleigh Borough Council to enable the use of mitigation land outside Southampton's

administrative boundary, thereby ensuring the required ongoing cross-boundary monitoring and enforcement of the mitigation;

- The applicant has indicated that it will purchase the required number of credits from the Eastleigh BC mitigation scheme to offset the nutrient loading detailed within the nitrogen budget calculator (Appendix 2);
- The initial approach was to ensure an appropriate mitigation strategy was secured through a s.106 legal agreement but following further engagement with Natural England a Grampian condition, requiring implementation of specified mitigation measures prior to first occupation, will be attached to the planning permission. The proposed text of the Grampian condition is as follows:

The development hereby permitted shall not be occupied unless a Nitrate Mitigation Vesting Certificate confirming the purchase of sufficient nitrates credits from the Eastleigh Borough Council Nutrient Offset Scheme for the development has been submitted to the council.

Reason: To demonstrate that suitable mitigation has been secured in relation to the effect that nitrates from the development has on the Protected Sites around The Solent.

With these measures in place nitrate neutrality will be secured from this development and as a consequence there will be no adverse effect on the integrity of the protected sites.

Conclusions regarding the implications of the development for the identified European sites in view of those sites' conservation objectives

Conclusions

The following conclusions can be drawn from the evidence provided:

- Water quality within the Solent and Southampton Water SPA/Ramsar site could be affected by release of nitrates contained within wastewater.
- Increased levels of recreation activity could affect the Solent and Southampton Water SPA/Ramsar site and the New Forest/SAC/SPA/Ramsar site.

Operational

- Contribution towards the Solent Recreation Mitigation Partnership scheme. The precise contribution level will be determined based on the known mix of development;
- A Grampian condition, requiring evidence of purchase of credits from the Eastleigh BC mitigation scheme prior to first occupation, will be attached to the planning permission. The mitigation measures will be consistent with the requirements of the Southampton Nitrogen Mitigation Position Statement to ensure nitrate neutrality.
- All mitigation will be in place ahead of the first occupation of the development thereby ensuring that the direct impacts from this development will be properly addressed.

As a result of the mitigation measures detailed above, when secured through planning obligations and conditions, officers are able to conclude that there will be

no adverse impacts upon the integrity of European and other protected sites in the Solent and New Forest arising from this development.

References

Fearnley, H., Clarke, R. T. & Liley, D. (2011). The Solent Disturbance & Mitigation Project. Phase II – results of the Solent household survey. ©Solent Forum/Footprint Ecology.

Liley, D., Stillman, R. & Fearnley, H. (2010). The Solent Disturbance and Mitigation Project Phase 2: Results of Bird Disturbance Fieldwork 2009/10. Footprint Ecology/Solent Forum.

Liley, D., Panter, C., Caals, Z., & Saunders, P. (2019) Recreation use of the New Forest SAC/SPA/Ramsar: New Forest Visitor Survey 2018/19. Unpublished report by Footprint Ecology.

Liley, D. & Panter, C. (2020). Recreation use of the New Forest SAC/SPA/Ramsar: Results of a telephone survey with people living within 25km. Unpublished report by Footprint Ecology.

Protected Site Qualifying Features

The New Forest SAC

The New Forest SAC qualifies under Article 3 of the Habitats Directive by supporting the following Annex I habitats:

- Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) (primary reason for selection)
- Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or of the *Isoëto-Nanojuncetea* (primary reason for selection)
- Northern Atlantic wet heaths with *Erica tetralix* (primary reason for selection)
- European dry heaths (primary reason for selection)
- *Molinia* meadows on calcareous, peaty or clayey-silt laden soils (*Molinion caeruleae*) (primary reason for selection)
- Depressions on peat substrates of the *Rhynchosporion* (primary reason for selection)
- Atlantic acidophilous beech forests with *Ilex* and sometimes also *Taxus* in the shrub layer
- (*Quercion robori-petraeae* or *Ilici-Fagenion*) (primary reason for selection)
- *Asperulo-Fagetum* beech forests (primary reason for selection)
- Old acidophilous oak woods with *Quercus robur* on sandy plains (primary reason for selection)
- Bog woodland (primary reason for selection)
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*,
- *Salicion albae*) (primary reason for selection)
- Transition mires and quaking bogs
- Alkaline fens

The New Forest SAC qualifies under Article 3 of the Habitats Directive by supporting the following Annex II species:

- Southern Damselfly *Coenagrion mercurial* (primary reason for selection)
- Stag Beetle *Lucanus cervus* (primary reason for selection)
- Great Crested Newt *Triturus cristatus*

The New Forest SPA

The New Forest SPA qualifies under Article 4.1 of the Birds Directive by supporting breeding populations of European importance of the following Annex I species:

- Dartford Warbler *Sylvia undata*
- Honey Buzzard *Pernis apivorus*
- Nightjar *Caprimulgus europaeus*
- Woodlark *Lullula arborea*

The SPA qualifies under Article 4.2 of the Birds Directive by supporting overwintering populations of European importance of the following migratory species:

- Hen Harrier *Circus cyaneus*

New Forest Ramsar Site

The New Forest Ramsar site qualifies under the following Ramsar criteria:

- Ramsar criterion 1: Valley mires and wet heaths are found throughout the site and are of outstanding scientific interest. The mires and heaths are within catchments whose uncultivated and undeveloped state buffer the mires against adverse ecological change. This is the largest concentration of intact valley mires of their type in Britain.
- Ramsar criterion 2: The site supports a diverse assemblage of wetland plants and animals including several nationally rare species. Seven species of nationally rare plant are found on the site, as are at least 65 British Red Data Book species of invertebrate.
- Ramsar criterion 3: The mire habitats are of high ecological quality and diversity and have undisturbed transition zones. The invertebrate fauna of the site is important due to the concentration of rare and scarce wetland species. The whole site complex, with its examples of semi-natural habitats is essential to the genetic and ecological diversity of southern England.

Solent Maritime SAC

The Solent Maritime SAC qualifies under Article 3 of the Habitats Directive by supporting the following Annex I habitats:

- Estuaries (primary reason for selection)
- Spartina swards (*Spartinion maritimae*) (primary reason for selection)
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) (primary reason for selection)
- Sandbanks which are slightly covered by sea water all the time
- Mudflats and sandflats not covered by seawater at low tide
- Coastal lagoons
- Annual vegetation of drift lines
- Perennial vegetation of stony banks
- Salicornia and other annuals colonising mud and sand
- Shifting dunes along the shoreline with *Ammophila arenaria* (“white dunes”)

Solent Maritime SAC qualifies under Article 3 of the Habitats Directive by supporting the following Annex II species:

- Desmoulin's whorl snail *Vertigo moulinsiana*

Solent and Southampton Water SPA

Solent and Southampton Water SPA qualifies under Article 4.1 of the Birds Directive by supporting breeding populations of European importance of the following Annex I species:

- Common Tern *Sterna hirundo*
- Little Tern *Sterna albifrons*
- Mediterranean Gull *Larus melanocephalus*
- Roseate Tern *Sterna dougallii*
- Sandwich Tern *Sterna sandvicensis*

The SPA qualifies under Article 4.2 of the Birds Directive by supporting overwintering populations of European importance of the following migratory species:

- Black-tailed Godwit *Limosa limosa islandica*

- Dark-bellied Brent Goose *Branta bernicla bernicla*
- Ringed Plover *Charadrius hiaticula*
- Teal *Anas crecca*

The SPA also qualifies under Article 4.2 of the Birds Directive by regularly supporting at least 20,000 waterfowl, including the following species:

- Gadwall *Anas strepera*
- Teal *Anas crecca*
- Ringed Plover *Charadrius hiaticula*
- Black-tailed Godwit *Limosa limosa islandica*
- Little Grebe *Tachybaptus ruficollis*
- Great Crested Grebe *Podiceps cristatus*
- Cormorant *Phalacrocorax carbo*
- Dark-bellied Brent Goose *Branta bernicla bernicla*
- Wigeon *Anas penelope*
- Redshank *Tringa tetanus*
- Pintail *Anas acuta*
- Shoveler *Anas clypeata*
- Red-breasted Merganser *Mergus serrator*
- Grey Plover *Pluvialis squatarola*
- Lapwing *Vanellus vanellus*
- Dunlin *Calidris alpina alpina*
- Curlew *Numenius arquata*
- Shelduck *Tadorna tadorna*

Solent and Southampton Water Ramsar Site

The Solent and Southampton Water Ramsar site qualifies under the following Ramsar criteria:

- Ramsar criterion 1: The site is one of the few major sheltered channels between a substantial island and mainland in European waters, exhibiting an unusual strong double tidal flow and has long periods of slack water at high and low tide. It includes many wetland habitats characteristic of the biogeographic region: saline lagoons, saltmarshes, estuaries, intertidal flats, shallow coastal waters, grazing marshes, reedbeds, coastal woodland and rocky boulder reefs.
- Ramsar criterion 2: The site supports an important assemblage of rare plants and invertebrates. At least 33 British Red Data Book invertebrates and at least eight British Red Data Book plants are represented on site.
- Ramsar criterion 5: A mean peak count of waterfowl for the 5-year period of 1998/99 – 2002/2003 of 51,343
- Ramsar criterion 6: The site regularly supports more than 1% of the individuals in a population for the following species: Ringed Plover *Charadrius hiaticula*, Dark-bellied Brent Goose *Branta bernicla bernicla*, Eurasian Teal *Anas crecca* and Black-tailed Godwit *Limosa limosa islandica*.

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Application 23/00674/FUL

APPENDIX 2

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS13	Fundamentals of Design
CS16	Housing Mix and Type
CS18	Transport: Reduce-Manage-Invest
CS19	Car & Cycle Parking

City of Southampton Local Plan Review – (as amended 2015)

SDP1	Quality of Development
SDP7	Urban Design Context
SDP16	Noise
H4	Houses in Multiple Occupation
H7	The Residential Environment

Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)
Houses in Multiple Occupation SPD (May 2016)
Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework (2021)
The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

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Appeal Decision

Site visit made on 20 April 2022

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 July 2022

Appeal Ref: APP/D1780/W/21/3282523
24 Wilton Avenue, Southampton SO15 2HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Durrant against the decision of Southampton City Council.
 - The application Ref 21/00871/FUL, dated 2 June 2021, was refused by notice dated 30 July 2021.
 - The development proposed is change of use from 6-bed HMO to 7-bed HMO and erection of rear dormer.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The Council refused planning permission for a single reason relating to neighbour living conditions. The site lies within the 'Zones of Influence' of the Solent and New Forest European Sites (the EPS), where new residential development has the potential to harm the integrity of the EPS as a result of increased levels of nutrients from wastewater entering into the Solent water environment and increased recreational usage associated with new residential developments.
3. Whilst this matter does not constitute a reason for refusal, within the context of this appeal, the responsibility for assessing the effects of the proposal on the EPS falls to me as the competent authority. Having regard to my findings on the Council's main issue, which follow below, it is necessary for me to examine this matter further, and to undertake an Appropriate Assessment (AA), under the *Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations 2017), of the implications of the appeal scheme for the EPS.
4. I have therefore raised this matter to a main issue. In so doing, I have consulted Natural England, as the statutory nature conservation organisation (SNCO), and the main parties have had the opportunity to comment on their response. As such, there is no breach of natural justice.
5. Accordingly, the main issues are:
 - the effect of the proposal on the integrity of the EPS; and
 - the effect of the proposal on the living conditions of the occupiers of neighbouring properties, having regard to noise and disturbance impacts.

Reasons

EPS – recreational activity

6. The appeal site lies within the 5.6km 'Zone of Influence' of the Solent and Dorset Coast SPA and the Solent and Southampton Water SPA and Ramsar site (the EPS). These protected sites comprise a coastline that has a network of mudflats, shingle and saltmarshes which provide essential winter feeding and roosting grounds for birds that spend the winter here, including more than 90,000 waders and wildfowl including 10 per cent of the global population of brent geese. The SPAs were designated by the Government to protect these over-wintering birds.
7. It has been identified that current levels of recreational activity around the shorelines of the harbour are having a significant adverse effect on certain bird species for which the EPS are designated. The proposed one bedroom net increase in residential development, albeit small, has a potential impact upon the EPS arising from possible disturbance to the birds due to increased recreational activity, such as walking, dog walking, boating and other water sports, around the shorelines of the EPS.
8. As such, without mitigation, the appeal scheme presents a likely small, but significant, effect upon the integrity of the EPS, particularly when the impacts are considered in combination with other residential developments located within the 5.6km Buffer Zone to the EPS. Therefore, as the conservation objectives of the habitat sites may be undermined, as the decision maker, it is necessary for me to undertake an AA in relation to the effect of the development on the integrity of the EPS. I have undertaken this on a proportionate basis, with regard to the evidence submitted by the main parties and consultation responses from Natural England.
9. Natural England's view is that a financial contribution is required to contribute towards a package of mitigation measures to off-set the effects of increased population on the EPS, as part of the *Bird Aware Solent* scheme, delivered by the *Solent Recreation Mitigation Partnership* (SRMP).
10. Since this payment would contribute to agreed projects that would address the effects of the proposed development on the Solent EPS, in terms of recreational pressure, and is in accordance with a strategic solution that is supported by Natural England, I am satisfied that, subject to a S106 planning obligation to secure the payment, that this would enable the delivery of mitigation sufficient to address the level of harm likely to be caused by the proposed development and would be pursuant to the Council's adopted strategy.
11. The shared view of both main parties is that a financial contribution is not required, on the basis that the property is already an existing dwelling, and the SRMP relates to new dwellings, whereas none are proposed. Consequently, there is no completed S106 Agreement before me as part of this appeal.
12. However, I find that, whilst the SRMP references a scale of financial contributions according to the number of bedrooms in new dwellings, on the evidence before me, it does not specifically exclude HMO proposals from a need to provide EPS mitigation. Moreover, the SRMP recognises that mitigation for the recreational impact of other types of residential accommodation other than those specifically referred to the SRMP will be assessed on a case-by-case

basis, with the key test being the likelihood of generating additional recreational visits to the EPS.

13. I have no cogent evidence before me to suggest that the proposed additional bedroom would be occupied in a manner, for example by geographically or mobility restricted residents, that would preclude the potential for recreational impacts on the EPS.
14. In addition, the appeal site lies within the 13.8km Buffer Zone of the New Forest SAC, SPA and Ramsar site, where Natural England has advised that recreational impacts from new residential development, alone and/or in combination with other plans and projects, including disturbance, trampling and eutrophication, are likely to have a significant impact on the integrity of the EPS.
15. The Council's mitigation strategy in respect of these impacts on the New Forest EPS comprises a Community Infrastructure Levy (CIL) contribution. The Council has confirmed that the appeal scheme is not CIL liable. No alternative mitigation measures have been put to me.
16. The appellant has likened the proposal to a roof conversion to an existing house. However, whilst most householder planning applications can be screened out as not having a significant effect on the habitat sites, this has no bearing on the appeal scheme which is a change of use, rather than a householder, development.
17. As such, notwithstanding the views of the main parties on this matter, and having regard to the opinion of Natural England, since the proposal would result in a net increase in population, I find that appropriate mitigation is required to address the in-combination impacts of recreation effecting the Solent and New Forest EPS. As there is no detailed scheme of mitigation, and the necessary mechanisms for achieving it, before me, I am not satisfied that the proposal would not affect the integrity of the Solent and New Forest EPS.
18. As a result, the proposal would conflict with Paragraphs 174 and 180 of the *National Planning Policy Framework 2021* (the Framework), which indicate that development should protect sites of biodiversity value, minimise impacts and be adequately mitigated. The precautionary approach I have adopted is in line with the requirements of the Habitats Regulations.

EPS – nutrients

19. Natural England has advised that additional development that will result in a net increase in population served by a wastewater system within the Council area could harm the integrity of the Solent EPS due to the prospect of increased levels of nitrogen and phosphorus entering the water from wastewater from the residential development. Such 'in combination' effects result in eutrophication, whereby the resulting thick mats of algae can cause important habitat and bird feeding grounds to be unavailable for use, thereby affecting the status and distribution of key bird species against the stated conservation objectives of the EPS.
20. Achieving nutrient neutrality for the development has been identified by Natural England as a potential mitigation solution to enable new residential development to proceed. In respect of this appeal, Natural England has confirmed that nutrient neutrality is only required for applications that create

new dwellings, as mitigation is calculated on a per dwelling basis. On this basis, Natural England and the Council are satisfied that no detailed scheme of mitigation is required in respect of this matter.

21. Within the context of this appeal, the responsibility for assessing the effects of the proposal on the EPS falls to me as the competent authority. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine this matter further, and to undertake AA in respect of the implications of nutrient impacts arising from the appeal scheme for the EPS.
22. However, as the matter of recreational impacts provides clear reasons for dismissing the appeal, the outcome of any such AA would have no bearing on the overall outcome of this appeal. There is, therefore, no need for me to consider this matter any further as part of my decision, since any findings on this issue would not change the appeal outcome.

Living conditions

23. The appeal site is occupied by a two storey, mid-terrace, residential property, which is sited on the south side of Wilton Avenue, within an established residential area of similar properties.
24. I observed during my site visit that the building is used as a 6-bedroom House in Multiple Occupation (HMO) (Use Class C4), notwithstanding that the evidence before me is that there is no Certificate of Lawfulness for this use.
25. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) provides for the use of a dwelling house as a HMO by not more than 6 residents; that is, up to 6 unrelated individuals who share basic amenities.
26. The Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants planning permission, under Part 3 Class L, for a change of use from Use Class C3 (use as a dwelling house for up to 6 people living as a single household) to Use Class C4. However, the Council has, from 23 March 2012, put in force a city-wide Direction under Article 4 of the Town and Country Planning Act 1990 (as amended) (TCPA), that removes this permitted development right.
27. At the same time, the Council also adopted a Supplementary Planning Document titled '*Houses in Multiple Occupation*' (HMO SPD), which has since been updated in 2016. This was done to establish a tool which would assist the Council in addressing high concentrations of HMOs across the city. The SPD was adopted following detailed public consultation, and I therefore give it significant weight.
28. The information before me is that the property has been used as a HMO since July 1999, and that the Council informally accepts that it has been so used. This predates the introduction of the relevant Article 4 Direction and the HMO SPD. Moreover, the Council has not disputed the appellant's description of the proposed development, and has assessed the planning application on the basis that the proposal comprises a change of use from a 6-bedroom HMO to a large 7-bedroom HMO (Sui Generis Use). I have dealt with the appeal accordingly.

29. The proposal would be achieved by providing an additional bedroom, with ensuite facilities, within the roof space, replacing an existing store, bathroom and loft space. It would be served by front elevation roof lights and an enlarged dormer window on the rear elevation.
30. Saved Policy H4 of the *City of Southampton Local Plan Review (2015)* (LP) and the HMO SPD recognise that a large number of HMOs in one area have the potential to harm the physical character of a residential area and the balance of a local community, and can lead to conflict within the existing community, as a result of the intensification of use of a home by the greater number of comings and goings associated with the occupiers living independently of each other and increased pressure on parking provision.
31. Therefore, notwithstanding that the HMO SPD recognises that HMOs provide much-needed housing accommodation, it seeks to prevent excessive concentrations of HMOs, and encourages a more even distribution across the city. To do this, it provides a definitive threshold, stating that planning permission will not be granted for new HMOs where the proportion of HMOs would exceed 10% of the residential properties within a 40 metre radius of the site, measured from the front door of the application site, unless exceptional circumstances apply (where 80% of existing properties surrounding the site within the 40 metre radius are HMOs, and provided that, in addition, the applicant has demonstrated that there is no reasonable demand for the residential property as a continued Class C3 dwelling house). A revision to the HMO SPD also introduced a policy preventing the 'sandwiching' of Class C3 dwelling houses between two HMOs, having regard to the identified conflicts arising from a concentration of HMOs in an area.
32. In this instance, the Council has confirmed that the 10% threshold test as set out in the HMO SPD is not relevant, since the property is already in HMO use, so that the local concentration of properties occupied as HMOs would not be altered, and there would be no further imbalance of household mix within the community.
33. As such, the appeal property is already occupied in a manner that is materially different from the use of the building as a single household dwelling house, due to the fact that the 6 households typical of the existing HMO use of the site are highly likely to be unrelated. The number of individual households associated with the existing HMO use is very likely to cumulatively result in a much greater level of comings and goings, including visitors, social activities, vehicles and deliveries associated with each separate household, with associated noise and disturbance impacts, than would occur if the property were occupied as a C3 dwelling house by a single household.
34. This is the starting point for considering the impact of the appeal scheme upon the living conditions of neighbouring property occupiers. I find that the addition of one extra bedroom within the existing 6-bedroom property would reasonably be expected to result in an associated small proportionate increase in the aforementioned typical comings and goings connected with the existing occupants of the appeal property.
35. The existing communal kitchen/dining/lounge and rear outside garden would remain in the same positions within the appeal site, and, whilst these communal areas are positioned in close proximity to neighbouring properties, given the relatively high density back-to-back terraced nature of built

development within the locality of the appeal site, I find that the proposed occupation of the building by one additional resident would be unlikely to result in a significantly discernible increase in noise and disturbance emanating from these communal areas, such that it would materially harm the living conditions of neighbouring occupants.

36. In addition, I have taken account of the prevailing conditions within the site locality, having regard to the location of the appeal site near the eastern end of Wilton Avenue, which is a wide, straight, well-trafficked road, with on-street parking on both sides and providing access to the nearby local community facilities and services along Bedford Place and the adjacent public car park.
37. In addition to being a busy road, the evidence before me is that a large number of properties within the road, including close to the appeal site, are within HMO use, so that existing occupancy within the street is of a largely transient nature, as opposed to comprising family houses. The evidence from the appellant and third parties in this respect is supported by what I witnessed on my site visit, including a preponderance of refuse bins located within front gardens and multiple door bells on properties.
38. Moreover, I have also taken account that, whilst the appeal property is terraced, both adjoining properties are occupied as two flats, thereby reducing the difference between the number comings and goings associated with their occupation and that of the proposal compared to if these properties were in use as family houses.
39. Taking all the above factors into account, I find that any increase in noise and activity arising from the appeal scheme would not be greatly discernible within the existing context of people and vehicular comings and goings within this busy, multi-household part of the street.
40. For the above reasons, on the basis of the information before me, I therefore conclude that the proposed development would not result in material harm to the living conditions of the occupiers of neighbouring properties in respect of noise and disturbance impacts. As such, the development would accord with Saved Policies H4 and SDP1 of the *City of Southampton Local Plan Review* (2015) (the LPR), which require HMOs to protect the amenities of the residents of adjacent or nearby properties and ensure that new developments do not unacceptably affect the health, safety and amenity of the city and its citizens.
41. This is generally consistent with paragraph 130 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

Other Matters

42. I have had regard to third party concerns in respect of increased crime, anti-social behaviour, late-night disturbance, poor refuse management and a deterioration in property maintenance. However, I have no compelling evidence before me that such issues are likely to occur as a result of the appeal scheme.
43. I also acknowledge concerns raised in respect of inadequate parking. Whilst there is no on-site parking, there is parking available on the street and in a public car park within the locality of the appeal site. Moreover, I find that the parking requirements associated with the existing 6-bedroom C4 use would not differ significantly from those associated with the proposed 7-bedroom Sui

Generis Use. As such, and having regard to the availability of off-site parking within the site vicinity, and the accessible location of the site in relation to facilities and services and public transport connections, I am satisfied that this matter does not constitute a reason for dismissing the appeal.

44. I have noted the neighbour concerns regarding loss of privacy. In this respect I am satisfied that the proposed occupation of the second floor as an additional bedroom and the associated changes to the roof level fenestration would not result in a materially greater amount of overlooking to neighbouring properties than currently exists.

Conclusion

45. Whilst I have found the appeal scheme to be acceptable having regard to the second main issue, I cannot allow the appeal in the absence of a favourable Appropriate Assessment.
46. For the above reasons, I therefore conclude that the appeal should be dismissed.

S Leonard

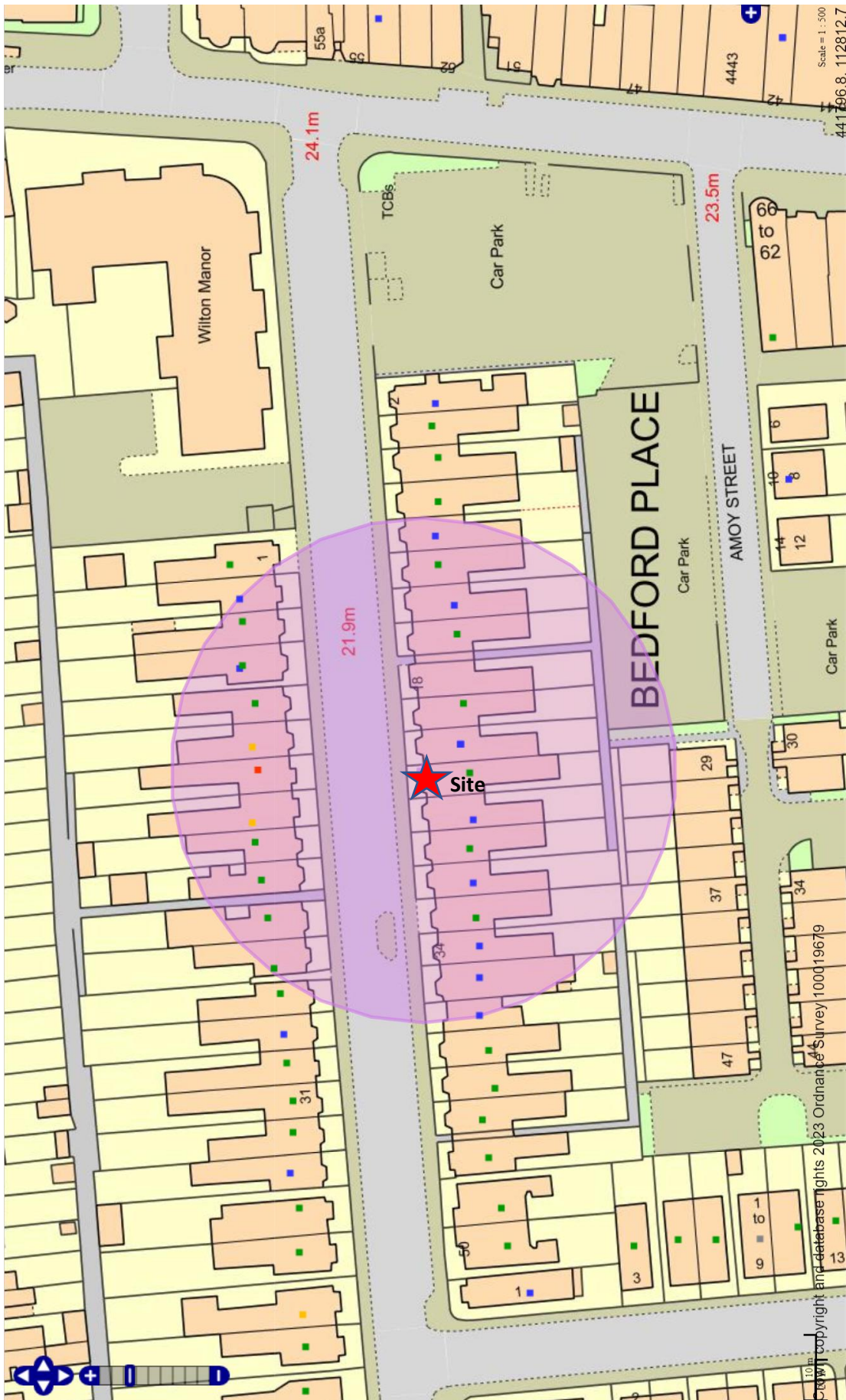
INSPECTOR

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Agenda Item 5

Appendix 4

Map of licensed HMOs (green, yellow, red dots) within 40m radius of site



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21/00871/FUL/24781



DETERMINATION OF APPLICATION

TOWN AND COUNTRY PLANNING ACT 1990

Town and Country Planning (Development Management Procedure) (England) Order 2015

Mr Ash Chana
Amico Design Limited
Farriers Barn, Station Farm
Denton Road, Horton
Northampton
NN7 2BG

In pursuance of its powers under the above Act and Order, Southampton City Council as the Local Planning Authority, hereby gives notice that the application described below has been determined. The decision is:

FULL APPLICATION - REFUSAL

Proposal: Change of use from a 6-bed house of multiple occupation (HMO, class C4) to a large 7-bed HMO (class sui generis) including installation of enlarged rear dormer

Site Address: 24 Wilton Avenue, Southampton, SO15 2HJ

Application No: 21/00871/FUL

For the following reason(s):

01. Impact on residential amenity

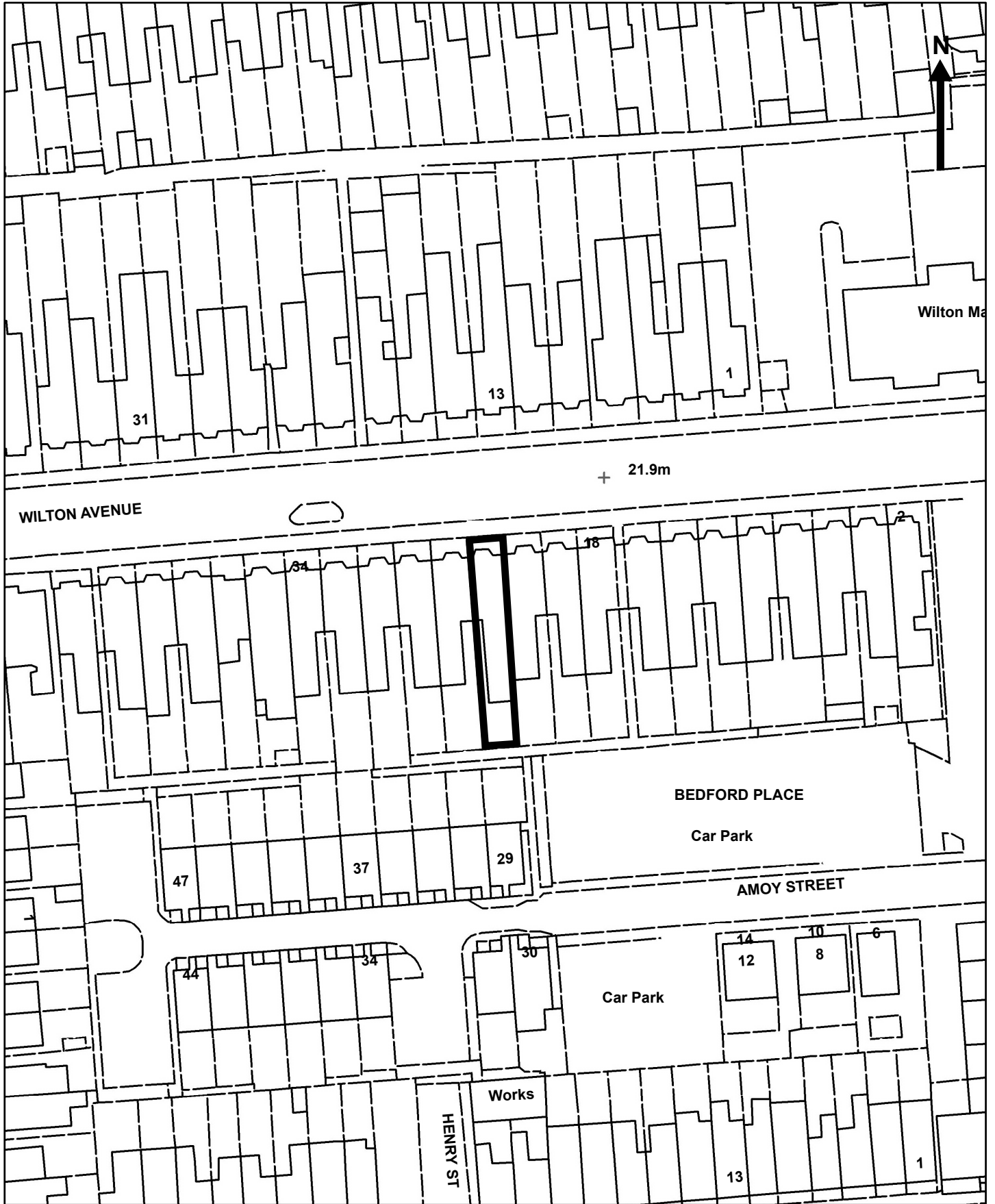
The intensification in occupation arising from the larger HMO use and the noise and disturbance from the comings and goings and associated activities of the overall number of unrelated occupants will adversely impact on the amenity of the neighbouring occupiers. Therefore, the proposal cannot be supported as it will be contrary to saved Policies SDP1(i) and H4(i) of the Local Plan Review (Amended 2015) as supported by the relevant sections of the Houses in Multiple Occupation Supplementary Planning Document (Approved May 2016).

Paul Barton
Interim Head of Planning & Economic Development

30 July 2021

For any further enquiries please contact:
Stuart Brooks

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