

Planning and Rights of Way Panel 29th March 2022
Planning Application Report of the Head of Planning & Economic Development

Application address: 39 Thornbury Avenue Southampton SO15 5BQ			
Proposed development: Change of use from care home to family dwelling (class C3) and 1-bed annexe with parking, cycle and refuse store <i>Description Amended following amended plans to change family home layout and use of flat as an annexe</i>			
Application number:	21/01649/FUL	Application type:	FUL
Case officer:	Stuart Brooks	Public speaking time:	5 minutes
Last date for determination:	14.01.2022	Ward:	Freemantle
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors:	Cllr Windle Cllr Shields Cllr Leggett
Referred to Panel by:	n/a	Reason:	n/a
Applicant: Mr Amirik Gill		Agent: Mr David Windsor	

Recommendation Summary	Delegate to the Head of Planning & Economic Development to grant planning permission subject to criteria listed in report
-------------------------------	--

Community Infrastructure Levy Liable	Yes
---	------------

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 – CS4, CS5, CS13, CS16, CS18, CS19, CS20, CS22, CS25 of the of the Local Development Framework Core Strategy Development Plan Document (Amended 2015). Policies – SDP1, SDP7, SDP9, SDP10, SDP12, SDP13, SDP16, H1, H2, H4, H7 of the City of Southampton Local Plan Review (Amended 2015).

Appendix attached

1	Habitats Regulation Assessment	2	Development Plan Policies
3	Relevant Planning History	4	Enforcement Notice
5	Previous Application 21/00473/FUL		

Recommendation in Full

1. That the Panel confirm the Habitats Regulation Assessment in **Appendix 1** of this report.
2. Delegate to the Head of Planning and Economic Development to grant planning permission subject to the planning conditions recommended at the end of this report and the completion of a S.106 Legal Agreement to secure:
 - Contribution towards the Solent Disturbance Mitigation Project to mitigate impact on European designated sites due to an increase in recreational disturbance.
3. That the Head of Planning and Economic Development be given delegated powers to add, vary and /or delete relevant parts of the Section 106 agreement and/or conditions as necessary. In the event that the legal agreement is not completed within a reasonable period following the Panel meeting, the Head of Planning & Economic Development be authorised to refuse permission on the ground of failure to secure the provisions of the Section 106 Legal Agreement.

1. Background

- 1.1 The authorised use of the property is a care home (permission ref no. 02/01178/FUL) for up to 6 disabled persons, albeit the care operation ceased last year. On 10th September 2021, an enforcement notice came into effect on this property to require the use of land to cease as a class C4 House in Multiple Occupation (HMO) (**Appendix 4**). This followed the refusal by officers for application ref no. 21/00473/FUL to regularise the property as a HMO (**Appendix 5**). Whilst the Enforcement team confirmed the HMO use had ceased when they inspected the site on 18th October 2021, the applicant had not removed the internal locks for each bedroom at the time. At the time of writing the report the Enforcement team had not yet carried out the follow up inspection which was due this month. A verbal update will be given at the meeting regarding this issue. That said, now the Enforcement Notice has come into effect, it would be an illegal and prosecutable offence for the property to be used as a HMO in the future. This notice runs with the ownership of the land. This planning application now seeks to establish a new use for the building as a residential dwelling with separate annexe.

2. The site and its context

- 2.1 This application site (500sqm) comprises a 2 storey semi detached residential property with rooms in the roof (previously a self-contained flat). Last year the property was unlawfully converted from a care home to a C4 House in Multiple Occupation (HMO). There is access from Darwin Road for off-road parking spaces (2 proposed with widening of access). The site is located on the corner of Darwin Road in a predominantly residential area with a mix of flats, family dwellings, guest

houses and HMOs. There is no permit parking scheme in the local area. There are double yellow line parking controls at the junction of Darwin Road.

3. Proposal

- 3.1 This application seeks permission to convert the former care home into a family home with no external alterations proposed. The bedrooms on the ground floor will be used for living accommodation – the plans have been revised since submission to reflect this use as a genuine family home. It is noted that the applicant had not initially requested their architect to amend the plans from the previous refused HMO application, however, it is not intended to use the property as a HMO given the legal requirements of the Enforcement Notice in place.
- 3.2 Permission is also sought to use the former care home owner's flat in the loftspace (consented 1994 – ref no. 940233/W) as an annexe linked to the occupation of the family home. The application has been amended with this regard as it was not possible to give this additional floorspace an independent access to support its use as a separate flat. The property has 70sqm of amenity space, and an internal floor area of family home – 192sqm and 1 bed annexe – 36sqm.

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 1**.
- 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 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.

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 03.12.2021. At the time of writing the report **9 representations** have been received from surrounding residents. The following is a summary of the points raised:
- 6.2 **This application is very similar to one previously refused. Too many HMOs and bedsits have imbalanced the local community and made parking much**

more difficult and a noticeable increase in crime.

Response

The application is now proposing a family home which will have a positive impact on the balance and mix of households in the community. There is a housing need for a range of housing in the city that suits the different size households from small to large families.

6.3 Inadequate parking on a busy/dangerous junction putting further kerbside pressure to on-street parking available for local residents.

Response

The Highways Officer is satisfied that the proposal would not adversely harm highways safety. The street parking overspill impact on the local area arising from the shortfall parking demand of 1 off-road space is not considered to adversely harm residential amenity. The parking demand for the previous use could be greater than that now proposed.

6.4 This application also doesn't address the previous concerns regarding the loss of special care home services which will only become a greater problem in years to come.

Response

The Council's planning policy for mixed and balanced communities equally treats the importance of housing need for family homes and care home specialist housing and, therefore, the loss of the care home housing would not be contrary to policy CS16 of the Core Strategy in this instance.

6.5 The number of bedrooms in this house is an overdevelopment and not likely to result in high quality residential accommodation, whereby more living space and less bedrooms should be provided. If this house were occupied by a family group, it is extremely likely that with 8 bedrooms in total, the occupancy of this house would result in an increase in noise and disturbance from the comings and goings and associated activities of the residents.

Response

Agreed and amended plans have been sought and received. It is noted that the applicant had not requested their architect to amend the plans from the previous refused HMO application, however, we are advised that there is no intention to use the property as a HMO given the legal requirements of the Enforcement Notice in place. The ground floor layout plans have been amended to ensure that the proposal will provide a genuine family home. The lifestyle of a family household will tend to live and come and go together from the property as a single unit and is, therefore, unlike the dynamics of the HMO in terms of the individual lifestyle of the unrelated HMO residents without a head of household. The noise and disturbance of the large family household should be less harmful than the refused HMO use assuming reasonable behaviour.

6.6 Consultation Responses

Consultee	Comments
Cllr David Shields	<p><u>Comments updated 14.12.21 following Cllr Shields formal withdrawal of objection:-</u></p> <p>I have raised local residents concerns with the Council's planning officers and the case officer for this particular application has now confirmed that the property must only be occupied by a family group should the application be approved. It will not be allowed to be used as HMO (unrelated persons living together) even though the layout has not changed from the refused application. If the property is occupied as an HMO then it would be in breach of the enforcement notice served so they the owner could be liable for prosecution for the breach of planning control.</p> <p>Residents who - like me - were worried about this latest planning application might like to be reminded that enforcement notice was served on the property against the HMO use earlier this year. So, hopefully, this should add further protection as if the owner/future owner uses it as a HMO then they would be liable for prosecution for being in breach of the notice.</p> <p>On the basis of these reassurances I have withdrawn my formal objection to the resubmitted planning application. I would hope, though, that the eternal vigilance of local active residents involve in TADRA (BCC'd) can help make sure that this property is returned to much-needed family use.</p>
Environmental Health	No objection
Sustainability	No objection
Southern Water	No objection
Highways	No objection

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;
- Likely effect on designated habitats.

7.2 Principle of Development

7.2.1 The site is not allocated for additional housing and the proposed dwelling would represent windfall housing development. The LDF Core Strategy identifies the

Council's current housing need, and this scheme would assist the Council in meeting its targets. The city has a housing need. As detailed in Policy CS4 an additional 16,300 homes need to be provided within the City between 2006 and 2026. Whilst the loss of the established specialist care home accommodation has not been justified to specifically address the previous refusal (**see Appendix 5**), the creation of family homes is an equally important objective in achieving a mixed and balanced community under policy CS16 and, therefore, the loss of the care home accommodation would not adversely harm housing need nor unbalance the mix of households in the community.

7.2.2 The proposal, when having regard to the development plan taken as whole, would point to approval, the Council cannot currently demonstrate a deliverable five year supply of housing. Accordingly, regard must be had to paragraph 11(d) of the NPPF which states

“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

(i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole”

7.2.3 There are no policies in the Framework protecting areas or assets of particular importance in this case such that there is no clear reason to refuse the development proposed under paragraph 11(d)(i).

7.2.4 It is acknowledged that the proposal would make a contribution to the Council's five year housing land supply. There would also be social and economic benefits resulting from the construction of the new dwelling (s) and its subsequent occupation.

7.2.5 Taking into account the benefits of the proposed development and the limited conflict with the policies in the development plan, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As such, consideration of the tilted balance would point to approval.

7.2.6 In terms of the level of development proposed, policy CS5 of the Core Strategy confirms that in medium accessibility locations such as this, density levels should generally accord with the range of 50-100 d.p.h, although caveats this in terms of the need to test the density in terms of the character of the area and the quality and quantity of open space provided. The proposal would achieve a residential density of 40 d.p.h which generally accords with the range set out above.

7.3 Design and effect on character

7.3.1 The former use of the property is authorised as a care home (6 persons) with separate staff accommodation. The most recent HMO use was unauthorised. It

should be noted that given the issuing of the Enforcement Notice the property can no longer legally be used as HMO without being a prosecutable offence and, therefore, the merits of the change of use from a care home should primarily focus on being a family home rather than a potential HMO. The applicant has updated the ground floor layout plans (used for previously refused application) to show it as a genuine family home by introducing further living space and reducing the number of bedrooms, and the flat in the roof space will be annexe accommodation linked to the occupation of the family home. The use of the property as a family home would not be out of character with the residential area. This would make a positive contribution to the mix and balance of the local community.

7.3.2 The historic use of the roof space as the former care home owners flat makes it difficult to integrate this space directly with the proposed family home use and, therefore, this would be an usual arrangement for the flat and house to share the same front door. As such, the applicant has agreed to change the flat to annexe accommodation linked to the occupation of the family home. The annexe could be used for extended family member or dependent, domestic helper, lodgers etc. and Condition 7 applies an occupancy restriction to the annexe use.

7.4 Residential amenity

7.4.1 There are no external alterations that would directly affect the amenity of the neighbouring occupiers. The noise and disturbance from the level of coming and goings associated with a large family household would not necessarily be any more significantly harmful to the neighbouring occupiers than the former care home, given the comings and goings of the carers, visitors and occupants. It should be noted that the a family household would tend to live as a single unit

7.4.2 The semi-detached property has sufficient private and useable amenity space (70sqm) to serve the family house. The single occupant of the flat would be able to share this space. The quality of the living environment for the future occupiers is acceptable with regards to access to outlook, light and privacy for the family home and flat. It should be noted that it has already served as self-contained residential accommodation since 1990s. As explained above, the occupants of the annexe will have a linked relationship between the future occupants of the family home.

7.5 Parking highways and transport

7.5.1 The Highways Officer has no safety concerns regarding the vehicle and pedestrian access to the site. The details of bin and cycle storage can be secured by condition. Furthermore, trip rate comparisons for small care home (C2 Class) and small residential developments (C3) shows an immaterial difference in overall arrivals and departures from a site.

7.5.2 The Highways Officer has no safety concerns with regards to overspill parking from the site as it will be managed by No Waiting at Any Time (Double Yellow Line) restrictions at the junctions of Thornbury Ave and Darwin Road. Whilst there may be existing pressures on on-street parking supply for residents, this is an amenity issue rather than a highways safety concern. The applicant will need to widen the access and partially demolish the boundary wall to create the 2 parking spaces shown. This

change is secured by condition 5.

7.5.3 The maximum parking standards for this non-high accessible area is a total of 4 spaces for 4+ bedroom house and 1 bed annexe (1 space). It should be noted that the existing parking demand with regards to re-use of the former care home owners flat would be unchanged. Whilst there will be an overspill impact from the 1 on-site space shortfall, the parking standards do allow less than the maximum standard. No parking survey has been submitted to show the kerbside capacity available in the local area, however, in this instance the displacement of street parking availability affecting local residents from the additional parking demand of the large family household (1 space) is not considered to significantly harm to residential amenity when assessed against the lawful use..

7.6 Likely effect on designated habitats

7.6.1 The proposed development, as a residential scheme, 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 and in the New Forest. Accordingly, a Habitat Regulations Assessment (HRA) has been undertaken, in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, see **Appendix 1**. The HRA concludes that, provided the specified mitigation of a Solent Recreation Mitigation Strategy (SRMP) contribution and a minimum of 5% of any CIL taken directed specifically towards Suitably Accessible Green Space (SANGS), the development will not adversely affect the integrity of the European designated sites. The requisite contribution would be secured subject to a legal agreement under delegated powers prior to issuing the decision.

8. Summary

8.1 In summary, the proposal would positively contribute to the mix and balance of the community by providing family housing suitable for larger households. The scale and nature of the proposed housing will not adversely impact on residential amenity, character, and highways safety of the local area.

9. Conclusion

9.1 It is recommended that planning permission be granted subject to a securing SDMP and 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) (f) 4.(f) (g) (vv) 6. (a) (b) 7. (a)

Stuart Brooks for 29.03.22 PROW Panel

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. Amenity Space Access (Pre-Occupation)

Before the development hereby approved first comes into occupation, the external amenity space and pedestrian access to it, shall be made available for use in accordance with the plans hereby approved. The amenity space and access to it shall be thereafter retained for the use of the dwellings.

Reason: To ensure the provision of adequate amenity space in association with the approved dwellings.

3. Refuse & Recycling (Pre-Occupation)

Prior to the occupation of development, details of storage for refuse and recycling, together with the access to it, shall be submitted to and approved in writing by the Local Planning Authority. The storage shall be provided in accordance with the agreed details before the development is first occupied and thereafter retained as approved. Unless otherwise agreed by the Local Planning Authority, except for collection days only, no refuse shall be stored outside the approved storage area.

Reason: In the interests of visual amenity, the amenities of future occupiers of the development and the occupiers of nearby properties and in the interests of highway safety.

Note: 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)

Before the development hereby approved first comes into occupation/use, secure and covered storage for 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 for the lifetime of the development.

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

5. Parking (Performance)

The parking and access shall be provided in accordance with the plans hereby

approved before the development first comes into occupation/use and thereafter retained as approved for the lifetime of the development.

Reason: To prevent obstruction to traffic in neighbouring roads and in the interests of highway safety and in the interests of residential amenity to minimise loss of street parking for local residents.

6. Residential Permitted Development Restriction (Performance)

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended or any Order amending, revoking or re-enacting that Order, no building or structures within Schedule 2, Part 1, Classes as listed below shall be erected or carried out to any dwelling house hereby permitted without the prior written consent of the Local Planning Authority:

Class A (enlargement of a dwelling house), including a garage or extensions,

Class B (roof alteration),

Class C (other alteration to the roof),

Class E (curtilage structures), including a garage, shed, greenhouse, etc.,

Class F (hard surface area)

Reason: To protect the living environment of the future occupiers given the limited amenity space available for the large household and in the interests of the residential and visual amenities of the surrounding area.

7. Annexe - Ancillary Use Only (Performance)

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any order revoking, re-enacting or modifying that Order) the annexe in the roof space hereby permitted shall be restricted to use as ancillary accommodation to the main dwelling from which it shall not be let, sold separately, or severed thereafter.

Reason: A separate flat dwelling would not normally be permitted given the harmful amenity impact for the residents of the main dwelling sharing the same entrance.

8. Approved Plans (Performance)

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below.

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