

Planning and Rights of Way Panel 22nd August 2023
Planning Application Report of the Head of Transport & Planning

Application address: 112 Upper Shaftesbury Avenue, Southampton			
Proposed development: Change of use from a house in multiple occupation (HMO, class C4) to either a dwelling house (class C3) or a house in multiple occupation (HMO, class C4)			
Application number:	23/00619/FUL	Application type:	FUL
Case officer:	Craig Morrison	Public speaking time:	5 minutes
Last date for determination:	04.08.2023	Ward:	Swaythling
Reason for Panel Referral:	Ward Cllr Referral	Ward Councillors:	Cllr Mrs Lorna Fielker Cllr Matthew Bunday Cllr Sharon Mintoff
Applicant: Mr Malcolm Daryl Hay		Agent: Applecore PDM Ltd	

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 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 –CS19 of the of the Local Development Framework Core Strategy Development Plan Document (Amended 2015). Policies – SDP1 and H4 of the City of Southampton Local Plan Review (Amended 2015).

Appendix attached			
1	Development Plan Policies	2	Electoral Roll Summary.

Recommendation in Full

Conditionally Approve

1. The site and its context

- 1.1 The application site is a 1930s style 2 storey HMO, with a 2 floor bay window to the front elevation, and an existing single storey rear extension. The ground floor of the property is constructed of red brick and the upper floor faced in pebbledash. Externally there is an area of hardstanding to the front capable of accommodating 1 car adjacent to an area laid to grass. Fences approximately 1 metre in height separate the front

garden from the neighbouring properties. To the rear is a modest rear garden which backs on to the Portswood Recreation Ground; there are mature trees at the end of the garden and an approximately 1.8 metre fence surrounds the rear garden.

- 1.2 The property the subject of this application has an accompanying planning application to extend the property both at first floor and via extensions to the property's roof. At present the property has 4 bedrooms in total; 1 at ground floor level where there is also a kitchen, dining and lounge area and 3 bedrooms at first floor level.

2. Proposal

- 2.1 This applicant has made the application on the basis that the property is currently in lawful use as a C4 House in Multiple Occupation which allows up to 6 unrelated people to reside in the property.
- 2.2 The Council's City-wide Article 4 direction restricts changes of use between use class C3 (single dwelling) to C4 Class L (b) of the General Permitted Development Order but allows for changes the other way from C4 to C3 under Class L (a). As a result if the property was to return to a C3 dwelling – rented to a family for instance - it could not then lawfully return to a C4 use.
- 2.3 The application seeks to allow for the use of the property flexibly in either C3 or C4 use thereby negating the above issue.

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 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.

4. Relevant Planning History

- 4.1 The property is an established HMO. There is a concurrently running planning application for consideration at this meeting as below:

23/00617/FUL

Erection of a first floor rear extension, hip to gable extension and rear dormer –
Recommendation: Conditionally Approve

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 on the 2nd June 2023. At the time of writing the report 1 representation has been received specifically in relation to this application from surrounding residents. The following is a summary of the points raised:

5.2 ***Property is in a poor state of repair and unsuitable for family use. Queries raised about room sizes.***

Response

This is not a material planning consideration. While the property would benefit from improvements the house is not in such a state of disrepair as to make it uninhabitable. The building is an established HMO so the queries around room sizes are also not relevant.

5.3 ***Errors on application form and plans***

Response

The matters relating to the applicant's surname difference between the plans and application form are not material to the planning considerations of this proposal. It is acknowledged that the application form suggests that there are no trees, however as there are no building works proposed in this application specifically it is not considered that this materially affects the decision.

5.4 ***The property has been in use as a HMO since before the Article 4 Direction. was adopted.***

Response

Agreed. The evidence submitted with this application appears to indicate that on the balance of probabilities that this is the case. As such the principle of an HMO is not for consideration as this use has already been established.

Consultation Responses

5.5	Consultee	Comments
	SCC Council Tax	There have been 3 or 4 unrelated tenants since at least 2012.

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;
- Design and effect on character
- Residential amenity;
- Parking highways and transport

6.2 **Principle of Development**

6.2.1 Saved Local Plan Review Policy H4 (HMOs) allows for the creation of new HMOs provided that the proposal does not result in an overconcentration of HMOs (over 10%) within a 40m radius. Proposals are then subject to consideration of factors relating to the amenity of neighbouring properties, the character of the area and adequate amenities and living conditions of the proposed occupiers.

6.2.2 The applicant has submitted a statutory declaration from the owners that the property has been in occupation as a HMO, being rented to between 3 and 6 individuals since 1998.

6.2.3 The above statements indicate that the property was already in use as a C4 HMO at the time of the Article 4 Direction, referred to in paragraph 2.2 above, and that being the case a HMO would continue to be lawful to the present day unless there was evidence that the property had reverted to a family dwelling (Class C3) in the intervening time period.

6.2.4 The Council Tax service has confirmed that their records show that the property has been used as a HMO for between 3 and 4 tenants since at least 2012 which lends further credibility to the applicant's statement.

6.2.5 The electoral roll has been checked and the summarised results are present in **Appendix 2**. These show that, with the exception of the 2017 entry and the most recent 2023 entry, there were between 3 and 5 occupants in the property.

6.2.6 The evidence presented is sufficient to demonstrate that on the balance of probabilities the property is lawfully in use as a C4 House in Multiple Occupation. The proposal would not therefore result in additional HMOs within the area. The principle of development is therefore acceptable subject to consideration of the other matters raised in paragraph 6.2.1 and considered in the remainder of this report. The use of the building by families is also acceptable and so the proposed flexibility can be supported.

6.3 Design and effect on character

6.3.1 The proposal requires no changes to the exterior of the building and, therefore, the proposal would not affect the visual character of the area. It is likely that the addition of family occupation (which could occur anyway under 'Permitted Development') would have limited impact on the character and could likely result in fewer comings and goings from the property.

6.4 Residential amenity

6.4.1 As stated above it is considered likely that family occupation of the dwelling may result in fewer comings and goings and would not result in an adverse impact on the nearby residents. A dual use is deemed appropriate

6.5 Parking highways and transport

6.5.1 The use of the property as a family dwelling, in addition to the established HMO, is not likely to result in an increase in the number of vehicles being parked at the property and therefore would not result in additional parking stress within the area.

7. Summary

7.1 With the Article 4 Direction in place the owner of this property cannot flip the use of the building between the established HMO and then to families living as a single household. This restricts the ability to find ongoing tenants as once the HMO use is lost a fresh planning application would be needed before it could be reinstated. This results in uncertainty that this application seeks to address. As the proposal has demonstrated, on the balance of probabilities that the property is already in use as a lawful C4 HMO, it is not considered that allowing a flexible use between C3 and C4

would result in harm to the character or amenity of the area. The proposal would have the benefit of increasing the likelihood of family use of the property as this would not prejudice the future ability to re-use the property as an HMO.

7.2 The proposal therefore complies with the relevant saved policies of the City of Southampton Local Plan Review and LDF Core Strategy.

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)

Craig Morrison for 22/08/23 PROW Panel

PLANNING CONDITIONS

1. Retention of communal spaces & number of occupiers

The room labelled kitchen/dining/lounge on the ground floor plan, together with the external amenity areas, shall be made available for use by all occupants of the property for the lifetime of the development and shall be retained and available for communal purposes when in use as a HMO. The number of occupiers within the property, when in HMO use, shall not exceed 6 persons unless otherwise agreed upon in writing by the Local Planning Authority.

Reason: To ensure that suitable communal facilities are provided for the residents, and in the interests of protecting the amenities of local residents.

2. Dwelling House and House in Multiple Occupation Dual Use (Performance)

The dual Use Class C3 (dwelling house) and/or Use Class C4 (House in Multiple Occupation) use hereby permitted shall be for a limited period of 10 years only from the date of this Decision Notice. The use that is in operation on the tenth anniversary of this Decision Notice shall thereafter remain as the permitted use of the property.

Reason: In order to provide greater flexibility to the development and to clarify the lawful use hereby permitted and the specific criteria relating to this use

Note: Before the building can be occupied as a single dwelling any HMO license may need to be revoked.

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
SDP4	Development Access
SDP5	Parking
SDP16	Noise
H4	Houses in Multiple Occupation

Supplementary Planning Guidance

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

Other Relevant Guidance

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

Application 23/00619/FUL
Appendix 2 Electoral Roll Summary (Initials Only)

2012 In Force 01/12/2011 - HR, JS, LW, HW

2013 In Force 16/10/2012 – HR, JS, LW, HW

2014 In Force 17/02/2014 – IB, SD, SW

2014/2015 In Force 01/12/2014 – IB, SD, SW

2016 In Force 01/12/2015 – IB, SD, SW

2017 In Force 01/12/2016 - SW

2017/2018 In Force 01/12/2017 – CM, JW, SW

2018/2019 In Force 01/12/18 – CM, JW, SW

2020 In Force 01/02/20 – BH, CM, GS, JW, SW

2021 In Force 01/03/21 – CM, GS, JW, SW

2022 In Force 01/12/2022 – CM, GS, JW, SW

2023 In Force 01/02/23 - None