

**Planning, Transport & Sustainability Division  
 Planning and Rights of Way Panel 30 September 2014  
 Planning Application Report of the Planning and Development Manager**

<b>Application address:</b> 13 Grosvenor Road, SO17 1RU			
<b>Proposed development:</b> Conversion of existing building into five flats (two x 3-bed, two x 2-bed and one x 1-bed) with associated parking and cycle/refuse storage.			
<b>Application number</b>	14/00999/FUL	<b>Application type</b>	FUL
<b>Case officer</b>	Anna Lee	<b>Public speaking time</b>	5 minutes
<b>Last date for determination:</b>	07.08.2014	<b>Ward</b>	Portswood
<b>Reason for Panel Referral:</b>	Five or more letters of objection have been received	<b>Ward Councillors</b>	Cllr Claisse Cllr Norris Cllr O'Neill

<b>Applicant:</b> Mr H Singh	<b>Agent:</b> Concept Design & Planning
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<b>Recommendation Summary</b>	<b>Delegate to Planning and Development Manager to grant planning permission subject to criteria listed in report</b>
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<b>Community Infrastructure Levy Liable</b>	Yes
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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 and the conclusions made in the Planning Inspectorate's Appeal Decision (Local Planning Authority reference (12/01449/FUL). Other material considerations including the character of the area comments from interested third parties and highway safety issues have been considered and are not judged to have sufficient weight to justify a refusal of the application. Where applicable conditions have been applied in order to satisfy these matters. Having regard to the Appeal Decision 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 186-187 of the National Planning Policy Framework (2012).

Policies - SDP1, SDP4, SDP5, SDP7, SDP10, SDP11, SDP13, SDP16, H1 and H7 of the City of Southampton Local Plan Review (March 2006) and CS4, CS5, CS13, CS16, CS19, CS20, CS25 of the Local Development Framework Core Strategy Development Plan Document (January 2010)

<b>Appendix attached</b>			
1	Development Plan Policies	2	Planning History
3	Inspectors Decision	4	Barrister Opinion

## **Recommendation in Full**

1. Delegate to the Planning and Development Manager to grant planning permission subject to the completion of a S.106 Legal Agreement to secure:
  - i. An obligation to preclude future residents being issued with car parking permits.
2. In the event that the legal agreement is not completed within two months of the Planning and Rights of Way Panel decision, that the Planning and Development Manager be authorised to refuse permission on the ground of failure to secure the provisions of the Section 106 Legal Agreement.
3. That the Planning and Development Manager be given delegated powers to add, vary and /or delete relevant parts of the Section 106 agreement and/or conditions as necessary.

### **1.0 Background**

- 1.1 The most recent application (LPA ref: 12/01449/FUL) for an identical development was refused under delegated powers in November 2012 due to the impact of the development on the amenity of neighbours and the character of the area. Officers felt that the creation of five flats would result in an unacceptable level and intensity of occupation and, together with the activity to and from the property, the proposal would likely harm the amenity of neighbours through noise and general disturbance, exacerbate on street parking difficulties and, in turn, the character of the area would be compromised. The application was refused on this basis.
- 1.2 The Refusal Notice was appealed and dismissed. In short, the Inspector disagreed with the Council but dismissed the appeal solely on the absence of an adequate parking survey as the applicant had failed to demonstrate that the surrounding roads could cater for the on street parking demand created by the five units. The Planning Inspector disagreed with the Council's reason for refusal relating to intensification of use, noise and character. Therefore, the consideration of this resubmission should focus upon whether or not the surrounding roads can cope with any potential on-street parking that could occur due to these additional units. As the application has not altered the Planning Inspector's decision is a significant material consideration in the determination of this current application. This decision was taken following the adoption of the Local Development Framework Core Strategy and is an up to date consideration.

## 2.0 The site and its context

- 2.1 The building is a substantial detached property on the west side of the street between the junctions of Welbeck Avenue, to the north, and Grosvenor Gardens to the south. Dwellings have off-street parking, but few have on-site turning. There is very large garden to the rear and to the front is a hard surfaced forecourt sloping down from the front door to the street. This is capable of accommodating three cars safely.
- 2.2 Either side of the site are single family detached houses. A great part of the street is comprised of detached character properties, in use as single family houses, but elsewhere in the street there are semi-detached properties and some purpose built flats, such as: Richmond Gardens, Grosvenor Court, Dawtrey Court, Richmond Hall and Grosvenor Lodge, all south of the application site.
- 2.3 The site lies within a residents' parking permit zone.

## 3.0 Proposal

- 3.1 The scheme seeks again to provide five Class C3 flats with an integral bicycle store at ground floor. No external changes are proposed. On the ground floor of the building, two three-bed units are proposed. Access to the front flats can be via the side elevation or the front. At first floor a further two flats are proposed which are both two-bed. Within the roof slope a two-bed unit is provided. All the units are accessed via the front door with direct access provided access to the rear garden area.
- 3.2 The rear-most flat on the ground floor would have three bedrooms and access to a dedicated area of garden with the remainder of the garden given over to serve the four other flats. The amenity space provided for all the units complies with policy.
- 3.3 Refuse storage is proposed to the rear and will be secured via a condition. Three car parking spaces are proposed within the existing driveway.

## 4.0 Relevant Planning Policy

- 4.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (March 2006) and the City of Southampton Core Strategy (January 2010). The most relevant policies to these proposals are set out at **Appendix 1**.
- 4.2 The National Planning Policy Framework (NPPF) came into force on 27<sup>th</sup> March 2012 and replaces the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy 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.

## 5.0 Relevant Planning History

- 5.1 The full planning history can be found in **Appendix 2** of this report including the reasons for refusal associated with refusal 12/01449/FUL. The most recent and relevant application is set out below;

The authorised use of the site is a single dwelling as approved under permission 02/00482/FUL. This allowed for No. 11 and No.13 to be separate single dwelling houses, having previously been operating as a residential care home.

12/01449/FUL  
15.08.2013. Appealed and dismissed

Conversion of existing building into 5 flats within Class C3 ( 2x3x- bed, 2x2 - bed, 1x1 - bed ), with associated cycle and refuse facilities and 3 car parking spaces. Inspector's Decision Notice can be found at **Appendix 3**.

## 6.0 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 (15.07.2014). At the time of writing the report **20** representations including one petition with 53 signatures have been received from surrounding residents. Highfield Residents Association have objected and have included an Opinion (attached in full at **Appendix 4**) from a Barrister agreeing with their objection. The following is a summary of the points raised:

- 6.1.2 **The layout of the flats are not ideal family units as the linkages internally with each room and with the external space is not convenient. Amenity space would be insufficient to cater for stated intensity of occupation**

### Response

The Planning Inspector assessed (Decision Notice paragraph 19) the connection between the flats and the amenity space and stated that *'though this access would be lengthy it is not unreasonably so and the proposed layout does not suggest that access problems would arise'* and that there is an *'adequate quantum of amenity space'*. Whilst Policy CS16 and its no loss of family housing is triggered by the application it is considered that this policy is satisfied by the proposed layout.

- 6.1.3 **The proposal would result in a mini-student hall and the proposal results in an HMO.**

### Response

The scheme is for five flats and use of the units as an HMO would require a further planning permission.

- 6.1.4 **Over intensive use of the site, contrary to Council policy and NPPF, likely to harm amenities of neighbours through noise and general disturbance (alleged from previous occupiers and other properties in the street) and harm character of this part of the street predominantly made up of single family dwellings.**

### Response

Due to the size of the property and that no external changes are proposed the Planning Inspector felt the proposal would not *'radically alter'* the character of the

area (Decision Notice paragraph 23). The Planning Inspector advised that no evidence had been submitted to indicate that more noise would be provided by these units than if it were a single family dwelling, so concluded the noise level and disturbance would be acceptable. As noise and disturbance can be controlled through other legislation it should not form a reason for refusal in this instance.

**6.1.5 The lack of a car parking survey carried out during term time.**

Response

The parking survey submitted was carried out during term time and indicates that parking spaces are available within the locality. Regardless of this the Applicant has agreed to enter into a S106 legal agreement to prevent the occupiers purchasing parking permits within neighbouring streets. See the Planning Considerations section of this report.

**6.1.6 Highway safety issues due to the number of proposed cars. Overspill parking likely from intensity of use which would inconvenience nearby residents.**

Response

The Applicant has agreed to enter into a S106 legal agreement to prevent the occupiers purchasing parking permits. Three parking spaces serve the five flats.

**6.1.7 Refuse storage would be unsightly.**

Response

A condition requiring refuse storage be enclosed is suggested and there is scope for an appropriate store as shown on the submitted plan. The condition would prevent unsightly storage.

**6.1.8 Precedent, which has been witnessed in nearby streets to have adversely eroded the family character of those streets and it is alleged affecting the viability of the Portswood primary school.**

Response

Every application is assessed on its own merits.

**6.1.9 The planning statements are misleading (rest home use having ended over 10 years ago) and that 15 bedrooms were created/ through sub-division by owner in property that formerly only had six bedrooms. It is considered that such sub-division works should be undone, which would then again make the property attractive to a large extended family/home working.**

Response

Officers can only assess applications that are before them.

**6.1.10 If to be consented, wish to see a condition restricting the use of the flat roof in order to prevent overlooking**

Response

A condition is suggested to prevent this.

**6.1.11 The forecourt is untidy and unsightly.**

Response

A condition requiring the three proposed car parking spaces be laid out prior to occupation will prevent the collection of large items within the driveway.

#### 6.1.12 **The flats are small.**

##### Response

The Council does not have room standards but in this case the Planning Inspector (Decision Notice paragraph 18) felt that the units were not small and commented that the flats were a *'good size and layout'*.

#### 6.2 **Consultation Responses**

#### 6.3 **Highways Development Management – No objection Raised**

The submitted parking survey is slightly substandard due to some of the photos being very dark and hard to work out where exactly they have been taken along the street or even which street it is. However, some of the photos do show unique road features meaning the locations can be confirmed as stated.

6.4 The development could generate between an additional four to eight permits but the survey suggests that there is capacity to accommodate that. With the confirmation of the survey being conducted within term time, the parking survey is acceptable as it shows enough empty on-street spaces for this development and therefore the proposal would not have a harmful impact on highway grounds.

6.5 A Section 106 agreement to restrict the development from being eligible for parking permits would eliminate any possibility of additional parking on Grosvenor Road. The applicant has agreed to this so no objection is raised.

#### 6.6 **Community Infrastructure Levy (CIL) –**

The development is CIL liable as there is a net gain of residential units.

6.7 **Sustainability** – No objection raised subject to a condition securing a 20% reduction in energy use.

#### 7.0 **Planning Consideration Key Issues**

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

- Principle of Development
- Highway Issues
- Intensification, Density and Amenity
- Development mitigation

#### 7.2 **Principle of Development**

The principle of converting the building and the formation of five flats is acceptable as agreed by the Planning Inspector. There is no net loss of a family dwelling unit as a three bed unit with a separate lounge, kitchen and private garden is re-provided. The proposal also provides the opportunity to increase the supply of much needed residential accommodation that will help the Council achieve the City's housing targets. Policy CS4 identifies the need for 16,300 new homes in the City between 2006 and 2026. The NPPF introduces a presumption in favour of sustainable housing development. The proposed residential density is 90 dwellings per hectare (dph) which accords with requirements of LDF Policy CS5.

- 7.2.1 The proposal provides two three-bedroom units at ground floor, one with direct access to private amenity space of at least 20 square metres and the other with access to shared amenity area. The scheme is therefore compliant with Policy CS16 (Housing mix and type).
- 7.3 Highway Issues  
In this location the maximum parking standard for this is nine spaces for the proposed five units. Three spaces have been provided on site which complies with current standards. As set out in the Council's Parking Standard's SPD some level of off-street parking is expected, and the applicant must demonstrate that the amount of parking provided would be sufficient for the locale. The applicant has submitted a parking survey undertaken within term time that demonstrates that on-street spaces are available within the evening. Therefore, the proposal addresses the Planning Inspector's reason for dismissing the scheme previously. Highway Officer's agree that the surrounding roads could cater for the number of cars that could be associated with this development. For the avoidance of doubt the parking survey was carried out on 1<sup>st</sup> October 2013 at 8.30 pm, 9<sup>th</sup> January 2014 at 10 am and 10<sup>th</sup> January at 00.15 am. All times were within the University of Southampton's term time (26<sup>th</sup> September 2013 to 14<sup>th</sup> December 2013 and 6<sup>th</sup> January 2014 to 29<sup>th</sup> March 2014).
- 7.3.1 As the site lies within a Resident's Parking Zone, up to two parking permits could be issued to each property although the Council's stance is not to issue permits to new development completed after 2001. The Applicant has agreed to enter into a legal agreement preventing the units claiming parking permits.
- 7.3.2 Therefore, on the basis that permits are not going to be issued to these new units and as a car parking survey has been provided the proposal addresses the Inspector's previous concerns. As no harmful additional on-street parking will occur (regardless of the fact there is space) the scheme is now deemed to be acceptable in planning terms. No Highways objection has been raised to the proposal.
- 7.4 Intensification, Density and Amenity  
In terms of the site's intensification, the Inspector disagreed with the Council's previous position that the proposal would be harmful in terms of noise and disturbance to the neighbouring properties. Comments from the residents, and the Barrister's Opinion, state that the assessment made by the Inspector in terms of the proposed intensification of the site was full of assumptions. However, the Inspector's thought process is clearly laid out in the Decision Notice and it would not be expedient to refuse a scheme once again on this basis. To do so without fresh evidence to support a reason for refusal could put the Council at risk of an award of costs should the applicant chose to appeal such a refusal.
- 7.4.1 The Inspector states that the layout of the all flats is suitable as the light and outlook received by all the units is acceptable. The connection to the amenity area, although a distance, was deemed fit and would suit families regardless of its remote nature. The character of the area is residential and the introduction of these new units would not detrimentally alter the general character of the area as the Inspector felt the size of the property could cater for the use. The same is true for the noise and disturbance as the Inspector felt no sufficient evidence was submitted to the contrary. In summary the Inspector assessed the application as being acceptable in these terms.

7.4.2 All other issues such as density and impact on neighbouring properties in terms of loss of privacy did not form a reason for refusal by the Council, was not considered harmful by the Planning Inspector and should not be introduced as a fresh reason for refusal in this case. The scale of development is appropriate and yields a density in line with current requirements at 90d.p.h (which accords with 50-100 dph guidance of CS5).

7.5 Development mitigation

In order for the proposed development to prevent parking issues within the vicinity a legal agreement, preventing future occupiers of the proposed flats from purchasing parking permits, is being entered into. This addresses the Planning Inspector's concern that the Applicant failed to demonstrate the proposal would not have a wider impact on the surrounding roads. This legal agreement now results in a development that is appropriate for this location. In addition to the above the scheme now triggers the Community Infrastructure Levy (CIL) which will be collected upon implementation of any consent.

8.0 Summary

8.1 In summary, this proposal provides needed additional housing which adds to the local housing stock. A parking survey has been provided showing sufficient car parking space within the local roads for parking. In addition, as a legal agreement preventing parking permits is being secured, the Planning Inspector's concerns have been addressed in full. Therefore, as planning policy and site conditions have not altered the Planning Inspectorate's decision is key. The application is considered to have addressed the previous concerns and can be recommended favourably.

9.0 Conclusion

Giving the clear conclusions reached by the Planning Inspector (having assessed each point of the Council's original reasons for refusal) and the securing of a legal agreement preventing the issuing of parking permit to further occupiers; it would be unreasonable to formulate any recommendation other than for approval subject to appropriate conditions.

**Local Government (Access to Information) Act 1985**

**Documents used in the preparation of this report Background Papers**

1(a), 1(b), 1(c), 1(d), 2(b), 2(d),4(f), 4(qq), 6(c), 7(a), 9(a), 9(b).

**ARL for 30/09/14 PROW Panel**

**PLANNING CONDITIONS**

01. APPROVAL CONDITION - Full Permission Timing Condition - Change of use

The use hereby permitted shall begin not 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).



02. APPROVAL CONDITION - Storage / Removal of Refuse Material [Pre-Occupation Condition]

Before the building is first occupied full details of facilities to be provided for the storage and removal of refuse from the premises together with the provision of suitable bins accessible with a level approach shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall include accommodation and the provision of separate bins for the separation of waste to enable recycling. The approved refuse and recycling storage shall be retained whilst the building is used for residential / commercial purposes.

Reason:

In the interests of visual amenity, the amenities of future occupiers of the development and the amenities of occupiers of nearby properties.

03. APPROVAL CONDITION - Cycle storage facilities [Pre-Commencement Condition]

Adequate cycle storage facilities to conform to the Local Planning Authorities standards shall be submitted to and be approved in writing by the Local Planning Authority and be provided within the site before the development hereby permitted commences and such storage shall be permanently maintained for that purpose.

Reason:

To prevent obstruction to traffic in neighbouring roads and to encourage cycling as an alternative form of transport.

04. APPROVAL CONDITION Parking and Access [pre-occupation condition]

Prior to the occupation of the development hereby approved the three parking spaces shown on the approved plan to a size of 5m by 2.4m for the development shall be clearly marked out and allocated on 1:1 basis. The parking spaces shall be retained in perpetuity for that purpose and not used for any commercial activity unless agreed otherwise in writing by the Local Planning Authority.

Reason:

To ensure a satisfactory form of development

05. APPROVAL CONDITION - Retention of three bed unit [Performance Condition]

Notwithstanding the approved plans, the ground floor rear flat with access to a private rear garden shall unless agreed in writing by the Local Planning Authority remain a three bed unit.

Reason:

To prevent the loss of a family dwelling as secured by policy CS16.

06. APPROVAL CONDITION - Restricted use of flat roof area [Performance Condition]

The roof area which incorporates a flat roof surface shall not be used as a balcony, terrace, roof garden or similar amenity area without the grant of further specific permission from the Local Planning authority.

Reason:

In order to protect the privacy of adjoining occupiers.

#### 07. APPROVAL CONDITION Energy (Pre-Occupation Condition)

Written documentary evidence demonstrating that the development will at minimum achieve a reduction in CO2 emissions of 20% over part L of the Building Regulations shall be submitted to the Local Planning Authority and verified in writing prior to the first occupation of the development hereby granted. Technologies that meet the agreed specifications must be installed and rendered fully operational prior to the first occupation of the development hereby granted consent and retained thereafter.

Reason:

To reduce the impact of the development on climate change and finite energy resources and to comply with adopted policy CS20 of the Local Development Framework Core Strategy Development Plan Document Adopted Version (January 2010).

#### 08. APPROVAL CONDITION - Amenity Space Access [Pre-Occupation Condition]

The external amenity space serving the development hereby approved, and pedestrian access to it, shall be made available as a communal area prior to the first occupation of the development hereby permitted and shall be retained with access to it at all times for the use of the flat units.

Reason:

To ensure the provision of adequate amenity space in association with the approved flats.

#### 09. APPROVAL CONDITION - Hours of work for Demolition / Clearance / Construction [Performance Condition]

All works relating to the demolition, clearance and construction of the development hereby granted shall only take place between the hours of;

Monday to Friday 08:00 hours to 18:00 hours (8.00am to 6.00pm)

Saturdays 09:00 hours to 13:00 hours (9.00am to 1.00pm)

And at no time on Sundays and recognised public holidays.

Any works outside the permitted hours shall be confined to the internal preparations of the buildings without audible noise from outside the building, unless otherwise agreed in writing by the Local Planning Authority.

Reason:

To protect the amenities of the occupiers of existing nearby residential properties.

#### 10. APPROVAL CONDITION - Public Sewer protection [Performance Condition]

The developer must advise the Local Planning Authority (in consultation with Southern Water) of the measures which will be undertaken to protect the public sewers, prior to the commencement of the development.

Reason:

In order to safeguard the public sewer.

## 11. APPROVAL CONDITION - Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason:

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

### Note to Applicant - Community Infrastructure Liability (Approval)

You are advised that the development appears liable to pay the Community Infrastructure Levy (CIL). Please ensure that you assume CIL liability prior to the commencement of the development (including any demolition works) otherwise a number of consequences could arise. For further information please refer to the CIL pages on the Council's website at: <http://www.southampton.gov.uk/s-environment/policy/community-infrastructure-levy-guidance.aspx> or contact the Council's CIL Officer.

### Note to Applicant - Pre-Commencement Conditions

Your attention is drawn to the pre-commencement conditions above which require the full terms of the condition to be satisfied before development commences. In order to discharge these conditions you are advised that a formal application for condition discharge is required. You should allow approximately 8 weeks, following validation, for a decision to be made on such an application. If the Decision Notice includes a contaminated land condition you should contact the Council's Environmental Health Department, and allow sufficient time in the process to resolve any issues prior to the commencement of development. It is important that you note that if development commences without the conditions having been formally discharged by the Council in writing, any development taking place will be unauthorised in planning terms and this may invalidate the Planning Permission issued. Furthermore this may result in the Council taking enforcement action against the unauthorised development. If you are in any doubt please contact the Council's Development Management Service.

### Note to Applicant - Performance Conditions

Your attention is drawn to the performance conditions above which relate to the development approved in perpetuity. Such conditions are designed to run for the whole life of the development and are therefore not suitable to be sought for discharge. If you are in any doubt please contact the Council's Development Control Service.

# 14/00999/FUL



Scale: 1:1,250



**Application** 14/00999/FUL

## **APPENDIX 1**

### **POLICY CONTEXT**

#### Core Strategy - (January 2010)

CS4	Housing Delivery
CS6	Housing Density
CS6	Economic Growth
CS8	Office Location
CS9	Port of Southampton
CS13	Fundamentals of Design
CS16	Housing Mix and Type
CS19	Car & Cycle Parking
CS20	Tackling and Adapting to Climate Change
CS25	The Delivery of Infrastructure and Developer Contributions

#### City of Southampton Local Plan Review – (March 2006)

SDP1	Quality of Development
SDP5	Parking
SDP7	Urban Design Context
SDP10	Safety & Security
SDP11	Accessibility & Movement
SDP13	Resource Conservation
SDP16	Noise
H1	Housing Supply
H7	The Residential Environment

#### Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)  
Planning Obligations (Adopted - September 2013)  
Parking Standards SPD (September 2011)

#### Other Relevant Guidance

The National Planning Policy Framework 2012  
The Southampton Community Infrastructure Levy Charging Schedule (September 2013)



**Application** 14/00999/FUL

**APPENDIX 2**  
**Relevant Planning History**

<b>1368/6</b> 25.3.1969 Extension to existing house at 13 Grosvenor Road.	Conditionally Approved
<b>1512/M2</b> 9.9.1976 Rooms in roof and dormer windows at 13 Grosvenor Road.	Conditionally Approved
<b>1601/M19</b> 16.6.1981 Use of premises as a rest home at No. 13 Grosvenor Road.	Conditionally Approved
<b>M27/1639</b> 20.12.83 Use of 11 Grosvenor Road as rest home and erection of a single storey link between 11 and 13 Grosvenor Road. (Implemented).	Conditionally Approved
<b>M03/1661</b> 14.05.1985 Erection of a single storey rear extension to provide 1 x 1 bed self-contained flat at 13 Grosvenor Road.	Conditionally Approved
<b>02/00482/FUL</b> 17.05.2002 11-13 Grosvenor Road - Change of use to form two dwellings (Implemented).	Conditionally Approved
<b>11/00038/ENUDEV</b> Investigation into unauthorised works at the property. Complaint received 24.1.2011. At site visit 25.1.11 owner (H Singh) stated refurbishment of property (which was not occupied) being carried out and construction of brick built outbuilding being undertaken as permitted development. Case closed at that time but owner advised that planning permission required to covert building into flats or occupy as sui generis house in multiple occupation.	
<b>11/00196/ENCOU</b> Investigation into unauthorised change of use into house in multiple occupation. Complaint received 13.6.2011. Rights of Entry used to access property. Established that two separate tenancy agreements had been drawn up to commence 1.7.2011; one for 7 persons, other for 8 persons. Officers seek to obtain prospective tenants' contact details to pre-warn them that council seeking to take out an injunction to prevent the unauthorised use commencing. Interim injunction allowed by High Court, but not confirmed at second Hearing on basis that harm to tenants being made homeless outweighed potential harm to neighbourhood, which could be remedied by planning enforcement notice.	
<b>11/01025/FUL</b> 13.09.2011 Change of use from Class C3 to a Sui Generis 15 bedroom student house.	Refused

#### Reason for Refusal - Harm to the character of the area

The local planning authority considers that the intensification of residential occupation of the property from either family occupation within class C3, or from a C4 occupation by up to 6 unrelated persons, to occupation as Sui Generis House in Multiple Occupation by 15 persons would cause serious harm, contrary to policies of the Development Plan for Southampton (SDP7 (v), H4 and SDP16) Local Plan Review (March 2006) and CS16 (3) Core Strategy (January 2010). The proposed use is also considered contrary to relevant advice set out in Planning Policy Statement 3 (Housing) and the consultation draft of the Draft National Planning Policy Framework. The harm from this over intensive use of the property would manifest itself in the following ways:-

- (i) Disturbance to neighbouring occupiers from comings and goings to and from the site by 15 separate students at various times of the day and night and their use of the garden at the property, potentially more likely to be at unsocial hours (being that the tenants are to be students with more active lifestyles), which would not be compatible with the surrounding family housing;
- (ii) Adversely affect the character and nature of occupation of this immediate part of the street, by causing the loss of a single family house, in a street predominantly comprised of family houses and making it more difficult for the local planning authority to resist similar proposals in this street in the future;
- (iii) Be likely to cause overspill parking difficulties in the street, prejudicial to highway safety with people having to park tight to others' driveways and access points, detrimentally interfering with driver visibility when emerging into the street, whilst also not demonstrating adequate secure cycle storage as an alternative to the private car;
- (iv) Not demonstrating adequate refuse storage facilities, where the visual impact of the quantum of such storage would be likely to be visually intrusive in the street scene, given that the open forecourt of the property is the only realistic place to store refuse; and,
- (v) Not demonstrating convenient access through the building by occupiers of the separate tenancy agreement for 8 persons in the front of the property, sought through 'saved' Policy H4 of the City of Southampton Local Plan Review (March 2006) as supported by Section 4.4 of the Residential Design Guide (September 2006).

**11/01026/FUL**

Refused

13.09.2011

Conversion of existing dwelling to 2 sui generis houses in multiple occupation (1 x 7 bedroom dwelling and 1 x 8 bedroom dwelling) with associated bin and cycle storage.

#### Reason for Refusal - Harm to the character of the area

The local planning authority considers that the intensification of residential occupation of the property from either family occupation within class C3, or from a C4 occupation by up to 6 unrelated persons, to occupation as Sui Generis House in Multiple Occupation by 15 persons would cause serious harm, contrary to policies of the Development Plan for Southampton (SDP7 (v), H4 and SDP16) Local Plan Review (March 2006) and CS16 (3) Core Strategy (January 2010). The proposed use is also considered contrary to relevant advice set out in Planning Policy Statement 3 (Housing) and the consultation draft of the Draft National Planning Policy Framework. The harm from this over intensive use of the property would manifest itself in the following ways:-

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- (ii) Adversely affect the character and nature of occupation of this immediate part of the street, by causing the loss of a single family house, in a street predominantly comprised of family houses and making it more difficult for the local planning authority to resist similar proposals in this street in the future;
- (iii) Be likely to cause overspill parking difficulties in the street, prejudicial to highway safety with people having to park tight to others' driveways and access points, detrimentally interfering with driver visibility when emerging into the street, whilst also not demonstrating adequate secure cycle storage as an alternative to the private car;
- (iv) Not demonstrating adequate refuse storage facilities, where the visual impact of the quantum of such storage would be likely to be visually intrusive in the street scene, given that the open forecourt of the property is the only realistic place to store refuse; and,
- (v) Not demonstrating convenient access through the building by occupiers of the separate tenancy agreement for 8 persons in the front of the property, sought through 'saved' Policy H4 of the City of Southampton Local Plan Review (March 2006) as supported by Section 4.4 of the Residential Design Guide (September 2006).

**11/02001/FUL**

Refused

27.03.2012

Conversion of existing dwelling to 2x 5 person dwellings in multiple occupation (Class C4) with associated bin and cycle storage.

Reason for Refusal - Harm to the character of the area

1. The local planning authority considers that the intensification of residential occupation of the property from either family occupation within class C3, or from a C4 occupation by up to 6 unrelated persons, to occupation as 2 No. Class C4 Houses in Multiple Occupation, by 5 persons in each dwelling, would be an overdevelopment of the site and cause serious environmental harm. This would be contrary to policies of the Development Plan for Southampton (SDP7 (v), H4 and SDP16 of the Local Plan Review (March 2006) and CS16 (3) Core Strategy (January 2010). If granted permission, the proposals would prove contrary to the emerging Supplementary Planning Document on Houses in Multiple Occupation, approved by cabinet on 12 March 2012. The proposed use is also considered contrary to relevant advice set out in Planning Policy Statement 3 (Housing) – particularly paragraphs 9,13 and 49. It is also though contrary to paragraphs 19 (final bullet point) and 116 (first and fourth bullet points) of the consultation draft of the Draft National Planning Policy Framework. The harm from this over intensive use of the property would manifest itself in the following ways:-

- (i) Disturbance to neighbouring occupiers from comings and goings to and from the site by 10 separate persons at various times of the day and night and their use of the garden at the property would not be compatible with the surrounding family housing; and,
- (ii) Adversely affect the character and nature of occupation of this immediate part of the street, by causing the loss of a single family house, in a street predominantly comprised of family houses and making it more difficult for the local planning authority to resist similar proposals in this street in the future.

**12/01449/FUL**

Appealed and dismissed

15.08.2013

Conversion of existing building into 5 flats within Class C3 ( 2x3- bed, 2x2- bed, 1x1- bed ), with associated cycle and refuse facilities and 3 car parking spaces.

Reason for refusal - Harm to the amenity of neighbours and character of the area

The proposed creation of five flats would result in a level and intensity of occupation, combined with a pattern of activity to and from the property that would be likely to harm the amenity of neighbours through noise and general disturbance and also be likely to exacerbate on street parking difficulties. This in turn would have an adverse impact on the character of this immediate part of the street, which is predominantly comprised of single family occupied dwellings, contrary to the government's objectives to create stable attractive communities under paragraphs 7 (2nd bullet point), 58 (1st bullet point) and 69 of the National Planning Policy Framework. As such, the proposed conversion of the property to one which would be multiply occupied by 5 dwellings with shared integral cycle store and common refuse facilities, with inconvenient access to a relatively remote common garden space for 3 flats would be contrary to the following policies of the Development Plan for Southampton:-

Local Plan Review (March 2006) - 'saved' policies SDP1 (i), SDP7 (v), SDP16 (i), H1 (iv), H2 (iii) and H4 (i)/(ii).

Local Development Framework Core Strategy (January 2010) - policies CS5 (1) and CS13 (11).



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# Appeal Decision

Site visit made on 16 July 2013

**by Sukie Tamplin Dip TP Pg Dip Arch Cons IHBC MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 15 August 2013**

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**Appeal Ref: APP/D1780/A/13/2190531**

**Grosvenor Rest Home, 13 Grosvenor Road, Southampton, SO17 1RU**

- 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 H Singh against the decision of Southampton City Council.
  - The application Ref 12/01449/FUL, dated 20 September 2012, was refused by notice dated 22 November 2012.
  - The development proposed is conversion of existing building into 5 flats with associated parking, cycle and refuse stores.
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## Decision

1. I dismiss the appeal.

## Main issues

2. The main issues in this appeal are:
  - noise and disturbance
  - parking effects
  - living conditions of future occupiers
  - the character of Grosvenor Road

## Reasons

### *Noise and disturbance*

3. The appeal site is located on the west side of Grosvenor Road, and is flanked by substantial detached and semi-detached houses. Nos 13 and 11 were previously linked in connection with their joint use as a nursing home, but in recent years the two properties have been separated and planning permission has been granted for their use as two houses. During the years as a nursing home a large single storey extension was added at the rear of no 13.
4. In recent years no 13 has been used as a House in Multiple Occupation (HMO) and it appears that many of the rooms may have been subdivided at that stage to facilitate that unauthorised use. At one point an interim injunction was granted to prevent occupation by up to 15 students but was not renewed. Following the issue of an enforcement notice, a subsequent appeal was dismissed on three grounds, including because the use of the property was over-intensive and resulted in harm and disturbance to neighbouring occupiers.

5. The development before me is for a different configuration of accommodation, namely 5 self-contained flats, 2 being 3 bed units, 2 of 2 bed size and one a 1 bed flat. But I do not consider it probable that these 11 bedrooms would result in the building being occupied by up to 22 people, as suggested by the Council and local residents. Firstly, the submitted plans show a total of 16 bed spaces and the size of several of the proposed single bedrooms is such that it would be almost impossible for them to accommodate a double bed and other furniture. Secondly, the Council's *Planning Obligations Supplementary Planning Document* (PO-SPD) indicative occupancy levels referred to by the appellant suggest that units of the size and mix proposed would be likely to result in only around 10 or 11 persons in the converted house. Therefore, despite its proximity to the University, which no doubt makes this road attractive to students seeking accommodation in the vicinity, it seems to me that the fears of this building being occupied by as many or more people than the 15 when it was in use as an HMO are unlikely to be realised.
6. Nevertheless, the proposed conversion would probably attract young professional couples such as first time buyers, and it maybe that some of the units would also contain one or two lodgers. But no evidence has been produced to indicate that occupiers of the 5 proposed flats would be likely to be especially noisy or be likely to cause more noise and disturbance than if the building were used for its authorised purpose as a single family dwelling. A building of the size of no 13, with some 18 rooms, could provide for occupation by an extended family with perhaps several teenage or grown-up children living at home, many with noisy sound systems or similar. The parental controls and pressures referred to by the Council in the case of single family use are in my view just as likely to be employed by couples to manage the behaviour of their lodgers in order to avoid trouble with neighbours, while on the other hand extended families may be as likely as young couples to hold large and noisy parties for friends and relations.
7. Therefore, whilst I accept that in the former HMO use with around 15 occupiers the building was the source of much noise and disturbance, that was a very different arrangement where each individual could be characterised as constituting a separate household with a differing lifestyle and subject to little or no overall restraint. By contrast, the arrangement now proposed is, as the Council acknowledge, spacious internally and externally, with a good layout and plenty of access to natural light. Hence it is likely, by reason of its larger unit size and better living conditions, to be able to command higher prices and be more attractive to those who seek to avoid the problems associated with the less favourable living arrangements of an HMO occupied by students.
8. It also seems to me that the layout of the proposed flats and their points of access are less likely to give rise to noise and disturbance to neighbours and to one another by comparison to that which I understand was the case when the building was in use as an HMO. Though the side entrance would remain facing no 11, it would be used solely by the occupiers of the proposed Flat G.02, and the occupiers of the other four flats would all use the front door as their only point of access to the building. Although access to the shared rear garden would result in the occupiers of those 4 flats passing close to the side of no 11, it seems to me this access would largely be used in the daytime. Hence it would be improbable that occupiers accessing the communal rear garden to put out washing, enjoy the space or carry out other garden activities would create any significant noise or disturbance to occupiers of no 11.

9. I thus, conclude on the first main issue that the proposals would not cause unacceptable noise and disturbance to adjacent occupiers and hence cannot be considered a noise-generating development within the terms of saved Policy SDP16(i) of the adopted *City of Southampton Local Plan Review 2006* (LPR). For similar reasons the development would not conflict with the aims of saved LPR Policy SDP 1(i) which seeks to ensure that development does not unacceptably affect the amenity of the city and its citizens. Neither do I find conflict with a core aim of the *National Planning Policy Framework* (the Framework) which seeks development providing a good standard of amenity for existing and future occupiers of the building<sup>1</sup>. Though referred to by the Council in the decision notice, I do not find saved LPR Policies H2 and H4, which deal with, on the one hand, vacant, derelict and underused land, and on the other hand with HMOs, to be material to my conclusions on this issue.

#### *Parking*

10. The Council's parking policy is contained in its Parking Standards Supplementary Planning Document PD (P-SPD) adopted in October 2011 and is part of the adopted Local Development Framework Core Strategy (LDF-CS); it thus attracts substantial weight. Although not referred to in the reason for refusal, I have been provided with this as part of the appeal documentation and because the appellant and the third parties are aware of its content no disadvantage would result if it is taken into account in my decision.
11. For residential development the P-SPD sets out maximum parking standards for Class C3 development which in this case seeks a maximum of 9 spaces for the proposed 5 units. The P-SPD says that this may be provided by both on- and off-street parking but that the latter should make up the majority of parking provision for larger developments. Whether the appeal proposals fall into this latter category is unclear but in any event two further considerations have to be taken into account.
12. Firstly, for schemes providing more than five bedrooms across all developments, some off-street parking is expected, and secondly, developers must demonstrate that the amount of parking provided will be sufficient, whether they provide the maximum or a lower figure. In this case the submitted plans show 3 parking spaces on the forecourt to the building, which would satisfy the first provision, but the appellant has produced no evidence to show that this would be sufficient to cater for the vehicular traffic likely to be generated by the 5 flats.
13. Therefore, although the Council may have made assumptions about the probable occupiers of the flats and the P-SPD may not provide typical traffic generation figures to be applied to planning proposals, the onus is plainly on the appellant to demonstrate adequacy of parking provision. This is supported by the response of the Highways Officer who, when consulted on the appeal proposals, would not give a formal reply until a parking survey had been undertaken to assess the situation in Grosvenor Road. The absence of such a survey thus weighs against the proposals.
14. Furthermore, in November 2012 a Residents Parking Zone (RPZ) was designated for Grosvenor Road and the surrounding area and, according to the Highfield Residents Association, this grants two on-street parking permits to

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<sup>1</sup> National Planning Policy Framework paragraph 17

each household in the Zone. This would result in the issue of 10 parking permits to the occupiers of the proposed conversion which means that, together with the on-site spaces, up to 13 vehicles could be lawfully parked on and around the appeal premises. By way of comparison, if the building were used for its lawful use as a single dwellinghouse, no more than 5 vehicles could be parked lawfully on- and off-site.

15. Whether or not either of these figures would be realised depends on the nature and wishes of the presently unknown occupiers and it would be difficult to forecast accurately, especially in the absence of a parking survey. The imposition of the RPZ thus reinforces the need for such a survey and adds weight to my conclusion on this matter in paragraph 13 above. I have also taken into account my observations of parking in Grosvenor Road at the time of the site inspection (around 1130 hrs) when there were many on-street parking spaces available. However, a single observation in the middle of the day does not seem to me a reliable basis on which to assess maximum or even typical parking stress in this road. That is supported by the observations of the Inspector who dealt with the enforcement appeal on this property in 2012 and also noted that spaces for on-street parking were readily available but added that this is likely to be subject to periods of fluctuating demand.
16. The best evidence on this issue is that of the Highfield Residents Association who say that on-street parking in the road is already greatly in demand due in part to its proximity to the University and the Portswood local centre. They report that cars are habitually parked close to dropped kerbs causing obstruction to vision for those drivers who, as I saw, are in many cases accessing properties with no turning facility and who must either reverse onto or from their forecourt parking spaces. Hence, by being unsighted due to on-street parking, reversing vehicles pose a potentially serious danger both to other vehicles travelling along the road and to pedestrians, and especially children, using the footway.
17. On this second main issue I therefore conclude that in the absence of a parking survey and contrary evidence, the greatly increased parking permit provision which would arise from permission for the proposed conversion would give rise to an unacceptable risk of serious inconvenience and danger arising from increased parking demand in Grosvenor Road. This adds further weight to my earlier conclusion and I find that the proposals conflict with the guidance in Section 4.2 of the P-SPD and thus with the aims of Policy CS19, "Car and Cycle Parking"<sup>2</sup> of the Southampton LDF-CS. Such guidance and policy is consistent with the Framework which supports locally appropriate parking standards and the minimisation of conflicts between traffic and pedestrians<sup>3</sup>. Accordingly, this issue weighs heavily against permission.

#### *Living conditions*

18. I have already noted that the Council concedes the proposed flats would be of a good size and layout with plenty of access to natural light and an adequate quantum of amenity space, and I have no reason to disagree with that analysis. Accordingly it appears to me that the proposed density of the development would not be excessive or inappropriate in this area and therefore not conflict with LDF-CS Policies CS 5 and CS 13. I have also concluded that

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<sup>2</sup> Parking Standards Supplementary Planning Document paragraph 2.1.1.1 refers

<sup>3</sup> National Planning Policy Framework paragraphs 35 and 39

the access to that part of the rear garden shared by 4 of the flats, though it would pass the bedrooms of the fifth flat, would not cause unacceptable noise and disturbance. Such an arrangement is not ideal, but in the case of conversions of existing property is often unavoidable due to the layout of the building.

19. In this case, the large rear extension, built when the property was in use as a nursing home, occupies most of the back of the original main building making access for any unit in the main building to the rear garden all but impossible without either passing through the flat in the rear extension or using the side access. To my mind the proposed arrangement using the side access is preferable to splitting the rear flat and would enable residents of the other 4 flats to share a separate access to a good-sized private garden. Though this access would be lengthy it is not unreasonably so and the proposed layout does not suggest that access problems would arise such that the conversion would be unacceptable.
20. Nor do I consider this arrangement would be unsafe for children playing in the shared rear garden. An occupier of any of the proposed flats who had young children would almost certainly be aware of the occupiers of the other flats and in a position to make a judgment as to the safety of his or her children in that context. Moreover, the close proximity of other occupiers in this and adjacent buildings makes it likely that there would be good natural surveillance so that any untoward event would be likely to be seen, with a high probability of intervention by an observer. In the case of very young children it is also not unreasonable to expect a close level of parental supervision, with one or both parents playing or being in the shared space at the same time, albeit engaged in other tasks.
21. Hence I conclude that the living conditions of future occupiers would not be seriously harmed by the appeal proposals, which comply with the aims of LPR Policy SDP 1(i) in that they would not unacceptably affect the health, safety and amenity of the city and its citizens. I also find that the quality of the development would comply with guidance in the Framework that seeks development that would function well in the long term<sup>4</sup>.

#### *Character of the area*

22. The appellant does not accept that Grosvenor Road is one of the few roads in this area which has managed to retain its family home character, and points to no 11 as an example of a nearby HMO, and he believes the area to be a mix of HMOs, flats and family houses. On the basis of what I saw during my site inspection, and in the absence of more precise evidence, it appears to me that the character of Grosvenor Road remains, as the Inspector in the 2012 enforcement appeal found, predominantly residential with a high proportion of family-occupied dwellings.
23. That being so, the changes which would be introduced by conversion to 5 flats would seem to be limited to some additional activity as a result of there being 5 separate households, plus the presence on the forecourt of a multiple bin store. The use of the left hand front room as a shared entrance and cycle store may also result in some change in appearance compared to use as for example, a lounge or dining room in family occupation. But though these

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<sup>4</sup> National Planning Policy Framework paragraph 58

changes would affect the character of no 13 as a building, they are not so substantial as to radically alter the character of the entire street. No 13 is only one of many dwellings in Grosvenor Road, and no cogent evidence has been produced to show why a change to the proposed use should significantly affect the character of the street as a whole.

24. Moreover, the considerable size of no 13 compared to other houses nearby suggests that any use, including as a single family dwelling, would create a character which would not necessarily reflect the levels of activity and appearance of the other houses. Thus an extended family occupying the house would be as likely to generate comings and goings throughout the day and late at night as 5 separate households in the 5 proposed flats. Similarly, in single family use many vehicles would probably occupy the forecourt and multiple refuse bins would be required, perhaps housed for convenience on the forecourt.
25. Accordingly, whilst I agree that the proposals would result in the character of no 13 being different to that of most of the other dwellings in Grosvenor Road, it seems to me that those differences would not be so substantial as to affect the character of the road as a whole, nor would they be significantly different to what the character of this building would otherwise be, even if it were in single family occupation. Hence I conclude that no serious harm would be caused to the character of Grosvenor Road and the proposals do not conflict with the aims of LDF Policy C5(1) or LPR Policy SDP7(5) which respectively seek to protect and enhance the character of existing neighbourhoods and prevent material harm to the character and appearance of an area. I also find that the development would encourage a strong, vibrant and mixed community as supported by the Framework<sup>5</sup>.

## Conclusions

26. In reaching my conclusions I have borne in mind that, despite assertions that the proposals amount to the formation of an HMO, what is before me is a proposal for conversion to 5 self-contained flats within Class C3, and that the change of use to an HMO in Class C4 within the Southampton City Council area constitutes development requiring planning permission. Given this context and the understandable close interest of local residents in this site, it would be highly improbable that any attempt to use the premises as an HMO, which in any case the appellant strongly denies, could succeed even in the short term. I also note that the Council say that the officers would be likely to recommend for approval the subdivision of this building into two Class C3 dwellings, so that at some point subdivision of no 13 may well occur.
27. Furthermore, as accepted by the Council, the provision of 4 additional units would contribute towards fulfilling housing needs in Southampton through the conversion of an existing building. It would thus be in accordance with LPR Policy H1 (iv).
28. I have found the proposals acceptable in terms of noise and disturbance, the living conditions of future occupiers and their effect on the character of the area. However, they pose an unacceptable risk of causing inconvenience and danger to drivers and pedestrians in Grosvenor Road due to the increased traffic which would be likely to be generated by the occupiers of the flats, given

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<sup>5</sup> National Planning Policy Framework paragraphs 7 and 69



the absence of evidence to the contrary in the form of a parking survey as required by the SPD in support of LDF-CS Policy CS19 and the recent designation of the RPZ in this area.

29. Therefore, for the reasons I have given and in the light of all other matters raised including the appeal decisions submitted as evidence, I dismiss the appeal.

*Sukie Tamplin*

INSPECTOR

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**IN A MATTER UNDER THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

**Land at Grosvenor Rest Home, 13 Grosvenor Road, Southampton**

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**OPINION**

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**Introduction**

1. I am asked to advise Highfields Residents Association (“**HRA**”) with regards to planning application reference 14/00999/FUL (“**the Application**”) that has been made to develop land at Grosvenor Rest Home, 13 Grosvenor Road, Southampton (“**the Land**”).
  
2. The Application proposal is for the “...*Conversion of existing building into 5 flats (2 x 3-bed and 1 x 1-bed) with associated parking and cycle/refuse storage...*”. The application is subsequent to an earlier refusal and dismissal of appeal against the refusal. In preparing this Opinion I have fully considered the appeal decision of Planning Inspector Sukie Tamplin dated 15<sup>th</sup> August 2013 (“**the Appeal Decision**”). I have considered a number of other documents all of which have informed my opinion.

**The Appeal Decision**

3. The appeal against the previous refusal of Southampton City Council (“**the Council**”) was dismissed by the Inspector. She identified four main issues and addressed them as follows;
  - i. *Noise and disturbance* – concludes that the development is not a noise-generating development within the terms of the saved policy. The Inspector arrives at this conclusion by way of what can only be described as a somewhat contrived and speculative approach [DL3-9];

- ii. *Parking effects* – the absence of a parking survey and contrary evidence, the greatly increased parking permit provision which would arise from permission for the proposed conversion would give rise to an unacceptable risk of serious inconvenience and danger arising from increased parking demand in Grosvenor Road [DL17];
  - iii. *Living conditions of future occupiers* – the living conditions of future occupiers would not be seriously harmed by the appeal proposals [DL21];
  - iv. *The character of Grosvenor Road* – the character of the area would not be substantially affected as a whole [DL25].
4. The Inspector found against the Development only on the issue of parking effects. In response to this finding the applicant has now included a “parking survey” with the Application.
5. It should be noted that the Appeal Decision is not binding on future decision makers in the same sense as a Court of Appeal judgement. In a planning context it is merely another material consideration which should be taken into account. If a decision maker, whether the Council or an Inspector does not agree with the previous Inspector he or she is perfectly entitled to arrive at a different conclusion. It is however advisable, to provide adequate reasons for any disagreement.

#### **The Application**

6. The application includes, presumably with the intention of addressing the concerns of the Inspector, a Parking Survey. It should be noted that the conclusions of the Inspector with regards to the impact of parking were not based solely on the lack of a parking survey and it does not therefore follow that the provision of a parking survey, assuming it is adequate will address the Inspector’s concerns.
7. The Inspector’s conclusions were as follows;

*“...the absence of a parking survey and contrary evidence, the greatly increased parking permit provision which would arise from permission*

*for the proposed conversion would give rise to an unacceptable risk of serious inconvenience and danger arising from increased parking demand in Grosvenor Road...” [DL17]*

8. The Inspector concludes that the **unacceptable** risk of serious inconvenience and **danger** arising from the increased parking demand was sufficient in its own right to refuse permission. Unless any parking survey relied upon demonstrated to a high degree of certainty that the unacceptable risk resulting in danger is not created then any decision maker on subsequent applications would be acting reasonably in refusing the application for that reason alone.
9. It would appear to me that the parking survey submitted by the application is inadequate. Given the impact in the wider area of students attending the University it is surprising that the parking survey has not taken account of the student population. The student use of the application locale can only increase the demand for parking, an issue identified by the Inspector and for a parking survey to be considered adequate it must incorporate the student element of parking.
10. However, even an adequate survey may not demonstrate that the concerns of the Inspector have been addressed and in this case it is clear that the survey relied upon is inadequate. In such circumstances the Council would be acted entirely reasonable in refusing the application. Indeed, I am of the opinion that the Council must, given the nature of the Inspector’s conclusions with regards to increased danger, refuse the application. The parking matter is not an issue of impact upon character and appearance but perhaps the more significant issue of increase in danger and risk to members of the public.
11. A further issue with which I have concerns is the approach of the Inspector to the issue of noise and disturbance. I consider her conclusions to be wholly unsustainable. I understand that the time for challenging the Inspector’s decision has passed but had I been instructed at an earlier date I would have advised that the Appeal Decision is materially flawed and any challenge commenced would have high prospects of success.

12. The Inspector speculates in a manner which is unlawful. An Inspector can only determine an appeal on the basis of the facts and arguments before her in the context of the prevailing law. In this case she has speculated as to the nature of the future use of the proposed building particularly with regards to the over-intensification of the use, as has been found to be an issue by Inspectors in previous appeals relating to the Land.
13. At **DL5** the Inspector concludes that the use of the building by 15 or more people is unlikely but she does not appear to have evidence to support such a finding. The simple fact is that the configuration of the proposed development will allow 15 or more people to occupy the Land and given that the Inspector accepts the unacceptable noise and disturbance that was caused when the building was previously occupied in such a manner the Inspector must provide adequate reasons (*South Buckinghamshire CC v Porter (No.2)*[2004] 1 WLR 1953) as to why that would not be the case now. I do not believe that she has provided reasons of the required adequacy, if at all.
14. Similarly, the findings at **DL6-7** are somewhat baffling. I understand that the Inspector had no evidence as to who would or might occupy any development on the Land. Further, it would appear that there is a valid argument that the 3 bed flats are unsuited to family occupation by virtue of either a lack of amenity space or an unsuitable layout, to which the Inspector gives no consideration. Her conclusions with regards to 5 households as opposed to one household and the disturbance and “parental controls” issue would appear to be pure speculation. They are conclusions not derived from evidence but from a speculative “*frolic*” of the Inspector. They are entirely unsustainable.
15. Finally, in the context of “*living conditions*” but not wholly unrelated to the noise and disturbance issue I consider the Inspector to have fallen into error in **DL20**. The Inspector is not entitled to place reliance on “...*good natural surveillance*...” when considering the adequacy and safety of amenity space. She has no knowledge of the occupiers of adjoining buildings, no evidence of the proposed occupiers of the proposed building. In any event all are subject to change and an Inspector would be

wrong in law to find that an amenity space is adequate and safe because unknown and unspecified neighbouring occupiers would probably provide an adequate level of informal surveillance. Such a consideration is entirely irrelevant and not founded in any evidence what so ever and contrary to the principles set down in *Seddon Properties v Secretary of State for the Environment* [1978] J.P.L. 835; 248 E.G. 950.

16. Given the identified failings of the Inspector I am firmly of the opinion that the Council, or indeed an Inspector on a further appeal would be entirely justified in taking a contrary position to the previous Inspector. Her conclusions are bordering on the irrational and wholly unsustainable. Additionally, the application has not satisfied the parking concerns.
17. I am of the opinion that the Council have no real option other than to refuse the Application.
18. I understand that the Council might be naturally concerned about the prospect of costs being awarded against them in any subsequent appeal but costs are only awarded where there is unreasonable behaviour resulting in unnecessary expenditure. The parking survey is inadequate and does not ameliorate the previous Inspector's concerns. A refusal is justified on that reason alone and it could not be asserted by the applicant that such a reason for refusal was unreasonable.
19. Given that a refusal is justified on that basis alone any subsequent appeal could not be said to be unnecessary. The applicant might assert that any refusal on reasons for which the previous Inspector had found there were no concerns was unreasonable but for the reasons set out above I do not believe that to be the case. Subsequent decision makers are entitled to arrive at different conclusions provided adequate and suitable reasons are provided. I consider that the Inspector has not addressed the issue of intensification in a lawful or adequate manner and I believe that any subsequent Inspector would find the reasoning of the previous Inspector to be somewhat surprising.

### **Conclusions**

20. I am of the firm opinion that the Council would be entirely justified in refusing the Application, for the reasons set out above. I do not believe such a refusal would be unreasonable and provided adequate reasons are provided I do not believe that the Council will be particularly exposed to an award of costs in any subsequent appeal.
  
21. I hope the above is of assistance and if there is anything further upon which I can advise or any questions arising from the above advice please do not hesitate to contact me.

**Michael Rudd**

**7<sup>th</sup> July 2014**

**Kings Chambers**

**Manchester-Birmingham-Leeds**