

**Planning, Transport & Sustainability Division  
 Planning and Rights of Way Panel (West) 25 August 2015  
 Planning Application Report of the Planning and Development Manager**

<b>Application address:</b> 78 Malmesbury Road			
<b>Proposed development:</b> Erection of a first floor rear extension (retrospective)			
<b>Application number</b>	15/01205/FUL	<b>Application type</b>	FUL
<b>Case officer</b>	Mathew Pidgeon	<b>Public speaking time</b>	5 minutes
<b>Last date for determination:</b>	07/08/2015	<b>Ward</b>	Freemantle
<b>Reason for Panel Referral:</b>	Five or more letters of objection have been received	<b>Ward Councillors</b>	Cllr Parnell Cllr Shields Cllr Moulton

<b>Applicant:</b> Mr Surjit Chhatwal	<b>Agent:</b> Luken Beck Ltd
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<b>Recommendation Summary</b>	<b>Conditionally approve</b>
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<b>Community Infrastructure Levy Liable</b>	<b>Not applicable</b>
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**Reason for granting Planning Permission**

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations including previous appeal decisions 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 the development plan as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 and 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, SDP7 and SDP9 of the City of Southampton Local Plan Review (as amended 2015) and CS13 of the Local Development Framework Core Strategy Development Plan Document (as amended 2015).

<b>Appendices attached:</b>	
1	Development Plan Policies
2	Appeal Decision, D1780/A/13/2204466
3	Appeal Decision, D1780/C/14/2216252

<b>Recommendation in Full</b>	<b>Conditionally Approve</b>
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## **1 The site and its context**

- 1.1 The application site contains a mid-terrace family dwelling house that has been converted to four flats without the benefit of planning permission. The property is located in a residential area characterised by dwelling houses. The property is situated on the Northern side of Malmesbury Road.

## **2 Proposal**

- 2.1 The proposal seeks permission for a first floor rear extension, the extension creates additional habitable accommodation within the building. The development has been completed.

## **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). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 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.

## **4 Relevant Planning History**

- 4.1 Following an enforcement enquiry a planning application (reference 13/00443/FUL) was submitted on 20<sup>th</sup> March 2013 for retrospective permission for a first floor rear extension to facilitate conversion of a three-bed dwelling to four flats (three x one-bed, one x studio flat). The application was refused on 16<sup>th</sup> May 2013.
- 4.2 Following the refusal of the application by the Council an appeal was submitted by the applicant (reference D1780/A/13/2204466); subsequently the appeal was dismissed (see **Appendix 2**). The decision was dated 16<sup>th</sup> January 2014.
- 4.3 The Appeal Inspector listed three main issues:
- (i) the acceptability of the loss of a family house from the local housing stock;
  - (ii) the effect of the development on the living conditions of the existing and future occupants of the flats within the appeal site, No 78

Malmesbury Road, with particular regard to the standard of internal living and external garden space; and

(iii) the living conditions of the occupants of No 76 Malmesbury Road with particular regard to outlook.

- 4.4 With respect to the first two points the Inspector agreed with the Council and for those reasons the appeal was dismissed. With regard to the third point the Inspector concluded that due to the limited projection of the proposed extension and the juxtaposition of the dwelling with the neighbouring property (76 Malmesbury Avenue), outlook from habitable room windows serving number 76 would not be significantly harmed. In addition a harmful impact on the character of the locality, as a consequence of the rear extension, was not judged to have taken place.
- 4.5 On 7th March 2014 formal enforcement action was initiated when the Council served an Enforcement Notice on the applicant (reference 13/00045/ENUDEV). The enforcement notice requires the applicant to revert the property back to a single dwelling. The Enforcement Notice was then appealed by the applicant. The Enforcement Notice was upheld on 21st May 2015 (**Appendix 3**). The Inspector did however alter the requirements of the notice by extending the period for compliance with the Notice from 6 months to 12 months. The use of the building as 4 flats is therefore not required by the Notice to cease until 21<sup>st</sup> May 2016.

## **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. At the time of writing the report **12** representations have been received from surrounding residents and one letter has been received from Cllr Moulton. The following is a summary of the points raised within the 12 letters of representation:

- 5.2 Comment  
**Over development.**

### Response

A development is considered to be an overdevelopment of the site when the site cannot physically accommodate the amount of development proposed. The Inspector did not consider that the extension caused an overdevelopment of the site.

- 5.3 Comment  
**Not in keeping with surroundings/poor design.**

### Response

The Inspector did not oppose the previous scheme on the basis of the design of the extension and did not consider that the extension would be detrimental to the surroundings.

- 5.4 Comment  
**Impact on noise.**

Response

The extension does not generate noise.

- 5.5 Comment  
**Impact on traffic.**

Response

The extension cannot be directly linked to additional traffic generation.

- 5.6 Comment  
**Late night disturbance.**

Response

There is no link between a rear extension and late night disturbance.

- 5.7 Comment  
**Loss of light.**

Response

The inspector did not previously oppose the development for this reason.

- 5.8 Comment  
**Overlooking.**

Response

The inspector did not previously oppose the development for this reason and a condition could be imposed restricting window openings.

- 5.9 Comment  
**Road Safety.**

Response

There is no link between a rear extension and road safety.

- 5.10 Comment  
**Shortage/loss of car parking spaces.**

Response

There is no direct planning link between a rear extension and impact on car parking pressure.

- 5.11 Comment  
**Retrospective nature of the development following a refused appeal.**

Response

The planning system does not prevent the submission of retrospective planning applications. If permission is refused the Council have enforcement power to seek to ensure that the building is returned to its original form.

5.12 Comment

**The application is identical to the previously refused application and therefore should also be refused. There are problems associated with the overcrowding including refuse generation and fire/safety.**

Response

The first set of plans submitted with the application were identical to the plans that were refused previously although it is clear that this was a mistake by the applicant as the description of the development (as set out on the planning application form) is for the retention of the rear extension. Revised plans have now been received to clearly illustrate that the application seeks permission for a rear extension only and does not show the conversion of the dwelling to four flats.

5.13 Comment

**Potential to change to an HMO.**

Response

Separate planning permission would be needed to convert the dwelling into an HMO.

5.14 Comment

**Enforcement against the previous appeal decision should be undertaken by the Councils Planning department.**

Response

The Planning Enforcement Team are undertaking enforcement action against the use of the property as four separate flats. The site has been checked and is under ongoing review with the aim of ensuring that once the current lease agreements for occupants of the accommodation expire the dwelling will revert to a single family dwelling house. In any event the use is required to cease by May 2016 in accordance with the enforcement notice.

## **6 Planning Consideration Key Issues.**

6.1 The key issue for consideration in the determination of this planning application is whether or not there have been any material changes in circumstance that would alter the Inspector's decision regarding the acceptability of the first floor rear extension.

6.2 The decision that has been made by the Planning Inspector clearly identifies that no significant harm is caused by the rear extension and as appeal decisions hold material weight in planning decisions the appeal decision must be taken into account by the Local Planning Authority when considering this application. The extension was fully assessed by the Inspector, the assessment including a visit to the neighbouring property, and it is considered that there have been no material changes in circumstances surrounding the development since the appeal decision was made that now justifies a decision contrary to the Inspectors decision. The Local Planning Authority therefore have no objection to the rear extension and accordingly the application is recommended for approval.

## **7 Conclusion**

7.1 The application is supported.

### **Local Government (Access to Information) Act 1985** **Documents used in the preparation of this report Background Papers**

1a, b, c, d, 2 b, d, 4f, 7a, b, 9a, b.

**MP3 for 25/08/2015 PROW Panel**

### **PLANNING CONDITIONS**

#### 01. 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.

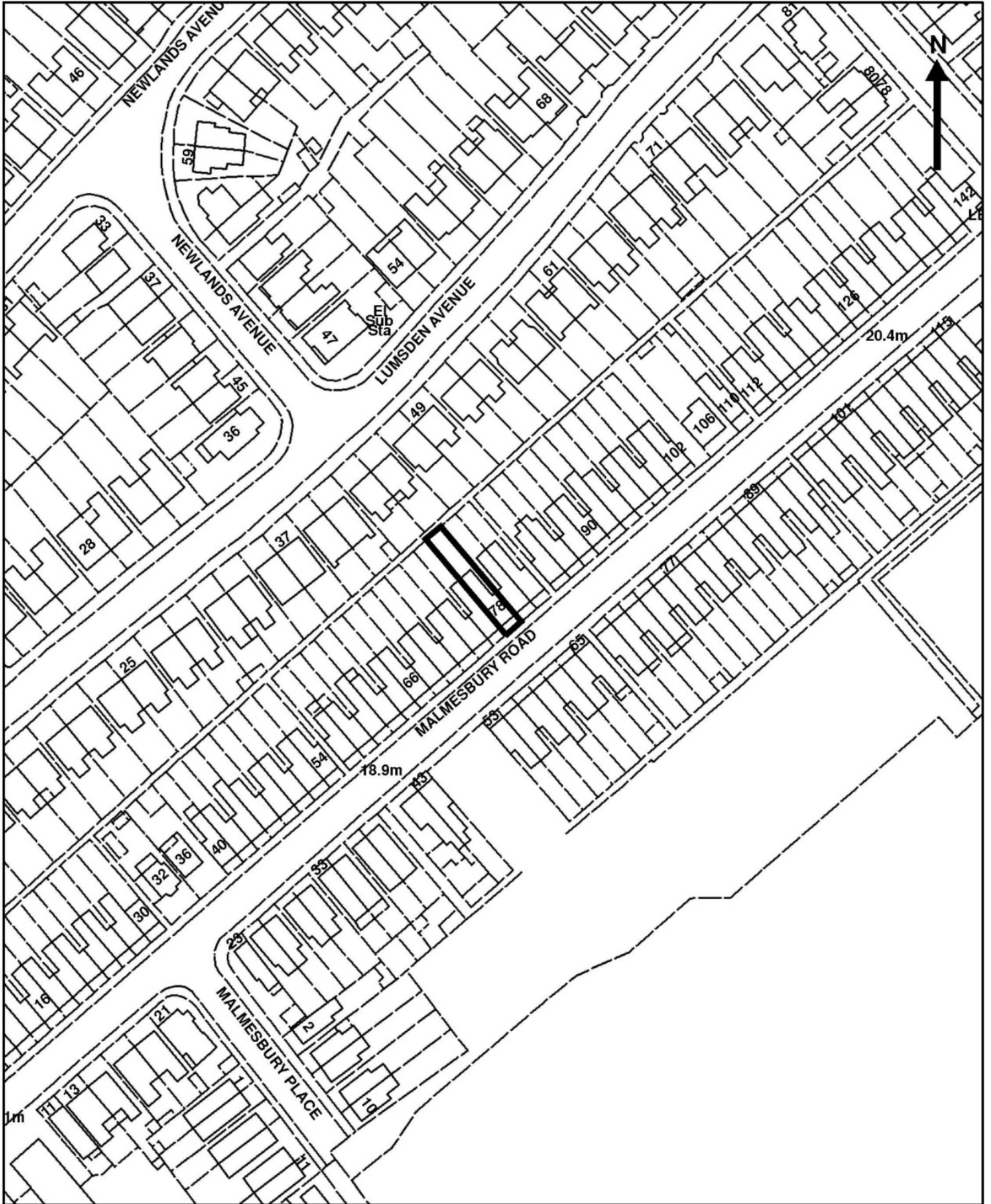
#### 02. APPROVAL CONDITION - No other windows other than approved [Performance Condition]

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any order amending, revoking or re-enacting that Order), no windows or other openings including roof windows or dormer windows other than those expressly authorised by this permission shall be inserted in the side elevations of the extension hereby permitted without the prior written consent of the Local Planning Authority.

Reason:

To protect the amenities of the adjoining residential properties

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Scale: 1:1,250

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