

**Planning, Transport & Sustainability Division
 Planning and Rights of Way (West) Panel 22 March 2016
 Planning Application Report of the Planning and Development Manager**

Application address: 5 The Parkway			
Proposed development: Change of use from a 6 bedroom House in Multiple Occupation (Class C4) to a 7 bedroom House in Multiple Occupation (Class Sui Generis) no external alterations			
Application number	15/02017/FUL	Application type	FUL
Case officer	Stuart Brooks	Public speaking time	5 minutes
Last date for determination:	15.02.2016	Ward	Bassett
Reason for Panel Referral:	Request by Ward Member	Ward Councillors	Cllr Harris Cllr Harris Cllr Hannides
Referred by:	Cllr Beryl Harris	Reason:	Parking Out of Character Residential amenity
Applicant: (Redacted)		Agent: N/A	

Recommendation Summary	Conditionally approve
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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 186-187 of the National Planning Policy Framework (2012). Policies - SDP1, SDP7, SDP9, H4 of the City of Southampton Local Plan Review (Amended 2015) and CS13, CS16 of the Local Development Framework Core Strategy Development Plan Document (Amended 2015).

Appendix attached			
1	Relevant Policies	2	Parking Survey
3	PINS advice note	4	Appeal decision

Recommendation in Full

Conditionally approve

1.0 Introduction and update

1.1 The Panel agreed a motion to defer a decision on this application at the previous West panel meeting on 9th February. The reason was for the Highway Officer to clarify whether the occupants would be eligible for parking permits following the

grant of planning permission. Subsequently, the Highways team has confirmed that the occupants would still be eligible for maximum of 2 permits if permission was granted to change the use from a small to large HMO. This is given that the planning use of the property would remain as a HMO (classed as a dwellinghouse by planning guidance issued by the Secretary of State regardless that it is a large HMO), with the only physical changes being that the number of bedrooms will increase through reconfiguring the ground floor internal layout to make better use of the property.

- 1.2 Family Homes are defined by Policy CS16 of the adopted Core Strategy as 'dwellings of three or more bedrooms with direct access to useable private amenity space'. Whilst HMOs fall within separate Use Classes to family dwellings, they can still be considered as dwellinghouses in planning terms. The Planning Inspectorate issued a guidance note which confirms that C4 uses are dwellinghouses (albeit in a separate use class) and therefore benefit from permitted development rights (see attached to **Appendix 3**). Since this note was produced, decisions issued by the Planning Inspectorate have confirmed that the same holds true for Sui Generis HMOs (see attached **Appendix 4**).
- 1.3 As such, providing HMO's contain 3 or more bedrooms and have direct access to sufficient private amenity space, they meet the Council's adopted definition of a family dwelling and therefore the change of use between classes C3 (single-family dwellinghouse), C4 (small HMO) and sui generis HMO's does not result in a loss of a family dwelling.
- 1.4 It is also important to note that Policy CS16 and the HMO SPD confirm that the provision of HMOs meet an identified housing need.
- 1.5 The Council's Local Development Framework has changed since the application was previously considered. Firstly, the proposed changes to the HMO SPD are currently going through public consultation (until 29th March 2016), however, the proposed changes are not considered to have a material bearing on the determination of this application as the new policy guidance would not directly relate to this proposal. The threshold policy approach for HMOs would remain the same for Bassett.
- 1.6 Secondly, the Bassett Neighbourhood Plan (BNP) was passed at the referendum for the Plan held on 25th February 2016. This now holds significant weight in deciding planning applications within Bassett given its examination and public consultation status. As outlined by policies BAS1 and BAS 6 of the Plan, the proposal will comply with the overarching objectives to prevent the net loss of family housing and retain the characteristic type of family housing in Bassett (as outlined by Officer's policy advice above). The proposal would not undermine the maintenance of the balanced and mixed local community, as no new HMOs are being created that would change the current concentration of HMO dwellings within the Ward and the mix of households in the local area. Officers are satisfied that the applicant has demonstrated that the proposal would not further impact on the existing parking facilities within the local area in accordance with policy BAS 7.
- 1.7 Following questions raised by members at the previous panel meeting, about the relevance of the HMO licensing standards with regards to the room size standards and the requirements for safety and fire precaution measures for the

occupiers under separate regulations, this is further clarified in paragraph 6.7 of the report.

- 1.8 Following this update, the Officer's recommendation to conditionally approve the application remains the same as before.

2.0 The site and its context

- 2.1 This application site lies within the ward of Bassett. The surrounding area is predominantly characterised by residential properties in a mixed style within a suburban and verdant setting.
- 2.2 The existing property is a detached two-storey dwelling (6 bedrooms) with parking to the front. The property has been established as a HMO before March 2012 (prior to the introduction of the Article 4 direction to remove C3 to C4 permitted development rights). Existing communal facilities comprise kitchen/dining room to the ground floor and shared bathrooms to the first floor. The occupiers also have access to a large private garden at the rear.

3.0 Proposal

- 3.1 It is proposed to increase the number of bedrooms from 6 to 7 by reconfiguring the internal layout. Bedroom 2, on the ground floor, will be divided into two smaller rooms, and the communal space will be enlarged by reducing the size of bedroom 1 and providing a lounge. In effect, this will change the use from a C4 HMO (up to 6 occupiers) to a large HMO for up to 7 persons.

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 (as amended 2015) and the City of Southampton Core Strategy (as amended 2015). The most relevant policies to these proposals are set out in **Appendix 1**.
- 4.2 The National Planning Policy Framework (NPPF) came into force on 27th 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.
- 4.3 The Houses in Multiple Occupation SPD was adopted in March 2012. It provides supplementary planning guidance for policy H4 and policy CS16 in terms of assessing the impact of HMOs on the character and amenity, mix and balance of households of the local area. The SPD sets a maximum threshold of 10% for the total number of HMOs in the ward of Bassett (where it is not proposed to change the threshold level as part of the proposed changes under the draft HMO SPD currently being consulted on by the Council). It is important to be aware that as the property is already being occupied legitimately as a C4 HMO and was established as a small HMO before 23rd March 2012. The threshold does not apply in this case.

- 4.4 There will be no increase in the concentration of HMO dwellings within the assessment area (section 6.7 of the SPD refers). With particular regard to the increase in occupation of the existing C4 HMO by 1 person to a large HMO, the planning application is assessed against policy H4 and CS16 in terms of balancing the need for multiple occupancy housing against the impact on the amenity and character of the local area.
- 4.5 Also of relevance is the draft Bassett Neighbourhood Plan (passed by referendum 25th February 2016) which confirms that proposals should not result in an over-concentration of HMO dwellings in any one area of the Ward, to an extent that would change the character of the area or undermine the maintenance of a balanced and mixed community in terms of dwellings. The Officer's policy advice in section 1 of the report explains how the application would serve the objectives of the Plan (BNP).

5.0 Relevant Planning History

- 5.1 There is no relevant history.

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 (06.11.2015). At the time of writing the report **4** representations (including from 2 Ward Cllrs) have been received from surrounding residents (UPDATE – No further representations received since the previous panel meeting). The following is a summary of the points raised:
- 6.1.1 **Overcrowding of the property by increasing the occupiers to 7 persons. The size of the communal kitchen and lounge fall below the minimum room size standards set out in the HMO SPD and HMO licensing.**

Response

Currently the ground floor communal facilities comprise a kitchen/diner and small utility area (14 sq.m in area). The application will create a larger communal living space in addition to the existing kitchen/diner. The overall size of the communal space available for the occupiers would be 24sqm. The room space standards (set out in Appendix 1 of the HMO SPD) states that the dining/kitchen room should provide an area of 19.5sqm and 16.5sqm for the communal living room.

- 6.1.2 It is considered that an additional 1 person would not represent overcrowding of the property. The proposal represents better communal living space by reconfiguring the ground floor layout. The new layout would provide suitable access to outlook and light for the bedrooms and shared living space in terms of planning standards. The occupiers will benefit from the improved communal space.
- 6.1.3 Notwithstanding the shortfall of room size standards, this would be separately considered under the statutory legislative requirements of the HMO license. Following clarification from the Environmental Health team, it was advised that the room space standards are not always strictly applied, where Environmental Health Officers would normally apply a level of flexibility, where appropriate, in their assessment depending on the nature of each property. As such, the

applicant has amended the ground floor plans in accordance with the Environmental Health Officer's advice, so the floor area of bedroom 1 is reduced (overall 6.6sqm) to increase the size of the lounge (overall 13sqm) to better meet the room size standards. It should be noted that it is not the planning system's role to make judgements on the requirements of other legislation, especially where the Environmental Health Officer has advised accordingly.

6.1.4 As such, the concern of overcrowding from the shortfall in communal space against the room space standards for 7 persons would not hold sufficient weight on its own to warrant a reason to refuse this application.

6.1.5 **Increasing the number of HMO occupiers would nullify the intention of the HMO policy to limit the spread of HMO concentrations in this area.**

Response

The threshold policy in the HMO SPD is intended to maintain the mix and balance of transient and owner occupied households within the community by limiting the spread and concentration of new HMO dwellings. There would be no material change in the proportion of households through adding 1 person to an existing household. As such, the proposal would meet the policy objective of limiting the spread and concentration of HMOs within the local area.

6.1.6 **Increased late night disturbance.**

Response

The SCC Environmental Health team have powers to enforce against any disturbance considered to be a statutory nuisance. No noise complaints have been received regarding the existing HMO use and an immediate neighbour has stated that the landlord has ensured that their tenants are well behaved. It does not follow that occupiers of a HMO are always noisier than that of a family.

6.1.7 **Increase of pressure on on-street parking demand resulting in less parking available for local residents.**

Response

There is one car parking space to the front of the property. The HMO SPD permits a maximum of 3 car parking spaces for a 7-bedroom HMO and confirms, at paragraph 7.3, that the provision of less spaces is permissible subject to it being demonstrated that the level of car parking proposed is sufficient. The applicant has, therefore, carried out a detailed parking survey within a 200m radius of the site (using the Lambeth Model as recommended by the SCC Highways team) on Friday 15th (06:00 and 22:00 hours) and Saturday 16th January (06:00 and 22:00 hours) (see **Appendix 2**). The survey has demonstrated sufficient capacity for further on-street parking within close walking distance of the site. Furthermore, the property is within 800 metres of the main university campus which provides excellent bus links to the city centre. As such, it is not considered that the increase in occupancy by 1 person would have a significant effect on the on-street car parking availability in the area.

6.1.8 **The installation of the boiler flue does not comply with Gas safe regulations as there should be a 1m gap between the adjacent property**

Response

This is not a relevant planning consideration as it is covered under separate statutory legislation. The applicant will be made aware of this issue through an informative note.

- 6.1.9 **Notwithstanding the cultural orientation of the tenants, the Landlord has a good relationship with the neighbour and has successfully ensured that his tenants have not caused any noise disturbance**
- 6.1.10 **Cllr Beryl Harris** – Out of character with the area. Detrimental impact on the existing residents amenities.
- 6.1.11 **Cllr Hannides** – This is a completely inappropriate use for this dwelling in view of the character of the area. Making it larger will serve to exacerbate the problem and I, therefore, object.

Consultation Responses

- 6.2 **SCC Highways** - No objection

Comments

The site is situated within an area where there are no parking restrictions. Depending on the current demand for on-street parking, any overspill can create a harmful impact to the amenity of the local residents. It is always difficult to judge or predict the impact of such a small-scale development (in this case, one additional bedroom) but looking towards the worst-case scenario, there would be one additional vehicle on the road.

- 6.3 I can suggest a parking survey (in the form of the Lambeth model) to be conducted to see what the current level of demand is and whether on-street parking has reached capacity or not. As the development does not affect the highway in terms of access or layout, there are no highway safety concerns. I will however request a cycle parking space to be provided as HMO's are more akin to individual living and should be treated as separate living units.

- 6.4 Officer Response

A parking survey has been carried out and is provided as **Appendix 1** of this report.

- 6.5 **SCC Environmental Health (Pollution & Safety)** - No objection

Comments

This property will require a licence as an HMO. Room sizes must comply with SCC standard for HMOs and fire precautions to comply with Lacors fire safety guidance. With this fire safety guidance in mind the current proposed layout to the ground floor will not comply, as the ground floor front left bedroom will be classed as an inner room, and to overcome this the door to this room should be moved to open from the protected stair well, rather than from the kitchen.

- 6.6 Officer Response

Following clarification of the initial comments made, the Environmental Health Officer advised that the room space standards are not always strictly applied. In this case, they are satisfied to apply flexibility to the standards, suggesting that bedroom 1 should be reduced to increase the size of the lounge to better meet the room size standards.

6.7 The room sizes and fire precautions/safety measures are separately consented under the HMO licensing regime by the Environmental Health team. The amended plans have now addressed the Environmental Health Officer's concerns. It is not uncommon for planning permission to be granted by the Local Planning Authority where the applicant has to apply for approval under other separate consents for their development e.g. Building Regulations

7.0 Planning Consideration Key Issues

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

- Principle of Development;
- Impact on the Character and Amenities;
- Impact on Parking and Highway Safety and;
- Standard of Living Conditions.

7.2 Principle of Development

7.2.1 The property is occupied as a small HMO (class C4) under permitted development rights that existed prior to 23rd March 2012 and, therefore, HMO use did not originally require planning permission. To demonstrate that the property was occupied on 23rd March 2012 (effective date of Article 4 direction) the applicant has provided a copy of a signed tenancy agreement (11 month period) dated 15th October 2011 showing that 5 tenants occupied the property. Council Tax records corroborate this information.

7.2.2 The 10% HMO threshold applicable to the Bassett Ward is not applicable in this case, as the property is already established as a small HMO (on 23rd March 2012) and there will be no increase to the concentration of HMO dwellings (section 6.7 of the HMO SPD refers) within the local area. The provision of an additional bedroom would meet a need for this type of accommodation set out in Policy CS16 of the Core Strategy. The principle of development is, therefore, acceptable as a 6 person HMO use has already been established. This is subject to whether the intensification of use by 1 person would cause any material harm with respect to the key planning issues below.

7.3 Impact on the Character and Amenities

7.3.1 The proposal is considered to meet the policy objective of the HMO SPD by limiting the spread and concentration of HMOs within the area, as there would be no resulting change to the mix and balance of dwellings within the local community. Notwithstanding this, the records held by the Council's licensing team indicate that whilst there is a mix of HMO and single-family dwellings within the vicinity of the site, the locality is not over-saturated by HMO uses. As such, it is not considered that the proposed 1 additional occupant would have a significant or harmful effect on the intensity of HMO occupation within the area.

7.3.2 The large size of existing bedrooms 1 and 2 lend to the reconfiguration of the ground floor layout in a more efficient manner and provide better communal facilities for the occupiers as a result. The property itself is considered comfortably large enough to accommodate 7 persons and benefits from a private garden of over 170 sq.m, which exceeds the Council's amenity space standards

for detached properties (90 sq.m). The site is also large enough to comfortably accommodate the storage needs of the use. As such, the addition of one occupant is not considered to result in an over-intensive use of the site. Whilst the detached spacing from the neighbouring properties would ensure that the comings and goings of the additional person would not adversely harm the amenities of the neighbouring occupiers.

7.3.3 The local residents' concerns are noted with regards to the overcrowding of the site. The access to light and outlook serving the communal rooms is acceptable in planning terms of the living standards under the Residential Design Guide and, therefore, the overcrowding concern (shortfall of the SCC Housing Standards) could not provide sufficient weight alone to warrant refusal of the application. In addition, it is considered that the improved communal facilities would be a significant benefit to the occupiers and condition 5 would ensure the communal spaces are provided and retained for this purpose. Furthermore, the garden space provided for occupiers would be adequate in terms of its functional quality and quantity.

7.4 Impact on Parking and Highway Safety

7.4.1 The Highways Officer has not raised any concerns with regards to the impact on highway safety in terms of access and parking. They have commented that the local concerns with regards to on-street parking pressure is an issue of amenity rather than highway safety and therefore officers would have to independently assess this impact. There would be a requirement to provide secure and covered cycle parking storage (1 space per resident) within the rear garden and this can be secured by condition.

7.4.2 The Parking Standards SPD refers to research that shows 1 vehicle is typically owned per household in Southampton. It is acknowledged that occupiers of multiple occupancy dwellings are more likely to own vehicles for individual use, however, the close proximity of the site to the University would encourage student occupiers to use more sustainable and healthy methods of travel such as cycling and walking. Furthermore, the university campus also benefits from excellent bus links to the city centre.

7.4.3 The site lies within an area of standard accessibility to public transport under the Parking Standards SPD. The Parkway and part of Copperfield Road is covered by Residents Parking Permit Zones 9 (Glen Eyre - 1st October to 31st May on weekdays) and 10 (Flowers Estate - all year throughout on weekdays) which restricts street parking during the day to resident permit holders only. The parking standards for a 7 bedroom HMO (set out in the HMO SPD) requires the maximum of 3 spaces. The driveway of the property already provides 1 parking space. The Parking Standards SPD states that provision of less than the maximum parking standards is permissible however, it is required for developers to demonstrate that the capacity of street parking would be sufficient to make up this shortfall.

7.4.4 The applicant carried out a detailed parking survey within a 200m radius of the site (using the Lambeth Model as recommended by the SCC Highways team) on Friday 15th (06.00 and 22.00 hours) and Saturday 16th January (06.00 and 22.00 hours). The survey showed that there was sufficient capacity for additional on-street parking in the nearby streets. A copy of the survey has been attached to **Appendix 2**.

7.4.6 In summary, the following available capacity was (as illustrated on the survey map):

Friday 15th January

06.00 hours - 49/67 spaces (73% capacity)

22.00 hours - 42/67 spaces (63% capacity)

Saturday 16th January

06.00 hours - 49/67 spaces (73% capacity)

22.00 hours - 49/67 spaces (73% capacity)

7.4.7 As such, the increase in occupancy by 1 person is considered to be acceptable in terms of potential on-street car parking generation.

8.0 Summary

8.1 In summary, the impact from the intensification of the HMO by 1 person would not cause harm to the character and amenity of the area with respect to the balance of households and parking pressure, and highway safety of the local area. It should be noted that the Council's HMO licensing regime in this ward is intended to help address the negative amenity impacts associated with HMOs. The improvement of the existing HMO stock also contributes towards meeting an identified housing need in the city for low income and transient households.

9.0 Conclusion

9.1 In conclusion, the proposed development is considered to accord with the Council's guidance and policies and, therefore, is recommended for approval.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1(a), (b), (c), (d), 2(d), 3(a), 4(f), (qq), (vv), 6(a), (b), 7(a)

SB for 22/03/16 PROW Panel

PLANNING CONDITIONS

01. Full Permission Timing Condition

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

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

02. Number of occupiers

The number of occupiers at the property in connection with the change of use hereby permitted shall not exceed 7 persons.

Reason:

In the interests of protecting the residential amenity of local residents from intensification of use and define the consent for avoidance of doubt.

03. Refuse storage and collection

Unless otherwise agreed by the Local Planning Authority, except for collection days only, no refuse shall be stored to the front of the buildings hereby approved.

Reason:

In the interest of visual amenity and for the safety and convenience of the users of the adjacent footway.

04. Cycle storage

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

Reason:

To encourage cycling as an alternative form of transport.

05. Retention of communal spaces

Prior to the first occupation of bedroom 7 hereby approved, the improved ground floor communal facilities, namely the lounge area, shall be provided in accordance with the plans hereby approved. The communal rooms shall thereafter be retained for that purposes.

Reason:

In the interests of the living conditions of the occupiers.

07. 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.

Informative note: The applicant should be aware of their duties under the gas safe regulations in terms of venting the gas boiler.

POLICY CONTEXT

Core Strategy - (as amended 2015)

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

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

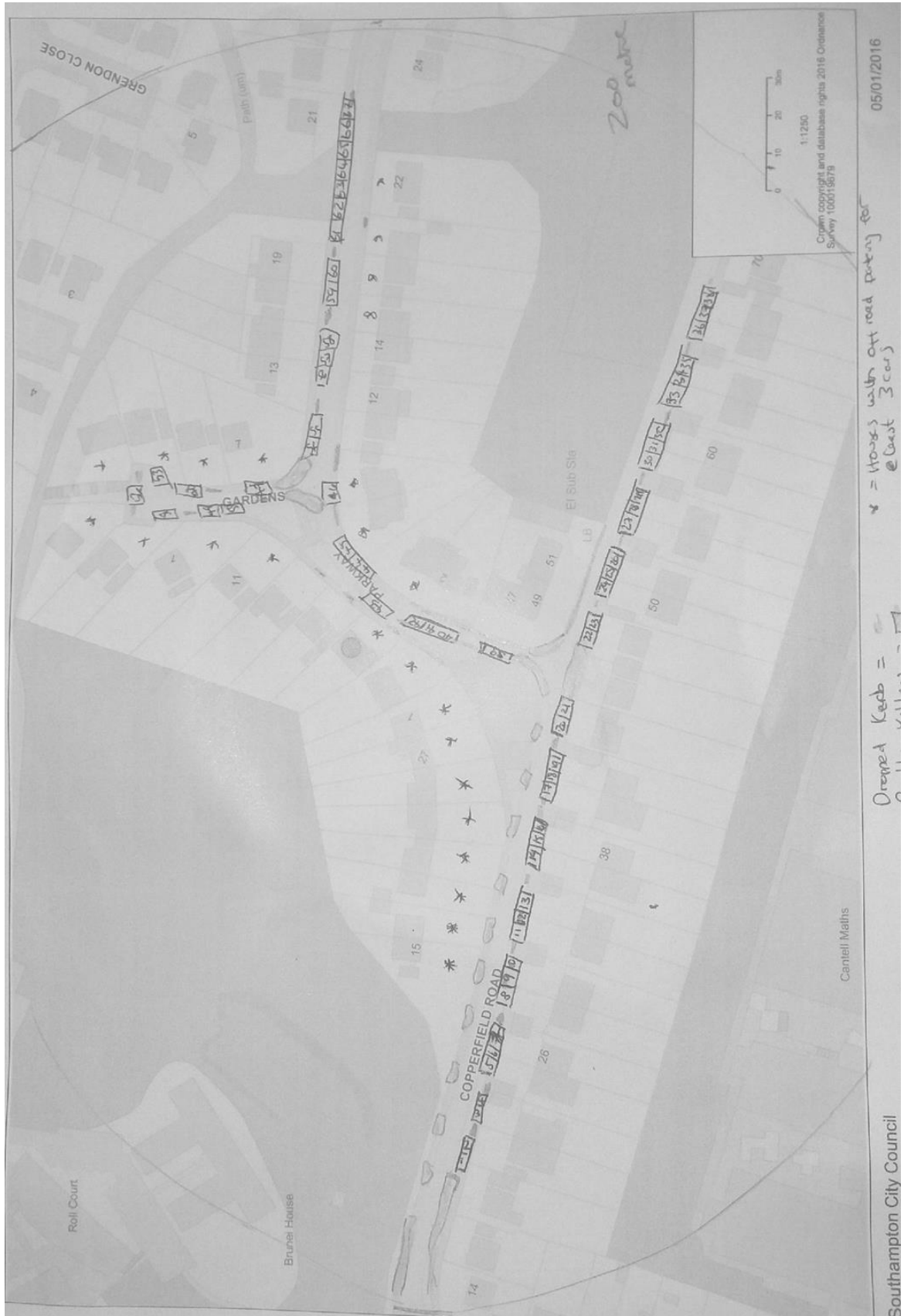
SDP1	Quality of Development
SDP5	Parking
SDP7	Urban Design Context
H4	Houses in Multiple Occupation

Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)
Parking Standards SPD (September 2011)
Houses in Multiple Occupation SPD (March 2012)
Emerging Bassett Neighbourhood Plan (Post Examination 2015)

Other Relevant Guidance

The National Planning Policy Framework (2012)





Advice produced by the Planning Inspectorate for use by its Inspectors – 15 January 2014

Houses in Multiple Occupation (HMOs) and Permitted Development Rights

1. The Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GDPO) Schedule 2 Part 1 Class A grants certain permitted development rights to dwellinghouses.
2. Houses in Multiple Occupation, including those which fall within Class C4 can benefit from the permitted development rights granted to dwellinghouses by the GDPO. Class C4 use is defined as use of a dwellinghouse by not more than six residents as a "house in multiple occupation".¹
3. The test for whether a property is eligible to use the permitted development right is whether it can be considered a "dwellinghouse" within the context of the GDPO. This will depend on the facts of the case.
4. Case law² has established that the distinctive characteristic of a "dwelling house" is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. Whether a building is or is not a dwelling-house is a question of fact.
5. For the purposes of the GDPO a "dwellinghouse" does not include a building containing one or more flats, or a flat contained within such a building.

¹ Town and Country Planning (Use Classes) Order 1987 (as amended)

² *Gravesham Borough Council v The Secretary of State for the Environment and Michael W O'Brien* (1982) 47 P&CR 142 [1983] JPL 307



Appeal Decision

Site visit made on 3 June 2015

by **Simon Hand MA**

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

Decision date: 8 June 2015

Appeal Ref: APP/F0114/X/15/3005007

36 Dafford Street, Bath, BA1 6SW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Johann Gulotti against the decision of Bath & North East Somerset Council.
 - The application Ref 14/05221/CLPU, dated 12 November 2014, was refused by notice dated 7 January 2015.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate of lawful use or development is sought is replacement of existing timber sash windows with double glazed windows to match.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing proposed operation which is considered to be lawful.

Main Issue

2. Whether a sui generis House in Multiple Occupation (HMO) is a dwelling?

Reasons

3. The proposal is to replace the existing windows in No 36 Dafford St with double glazed windows of a similar design but in uPVC. As the building is not listed such a change would usually be permitted development under Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995. However the Council consider that it is not a dwellinghouse and so no rights conferred by Class A apply.
4. The building is used as a HMO with 10 bedrooms. There is no dispute that it does not fall within Class C4 of the Use Classes Order (1987). This class refers to "*Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"*". The use is therefore sui generis, that is it does not fall within any specific class of the UCO.
5. However the UCO has an application that is limited to determining what material changes of use can be made without the need for planning permission. Thus a change can be made from C3 to C4 as that is allowed by the Town and Country Planning (General Permitted Development) (England) Order 2015. But

a change cannot be made from C4 to a 10 bed HMO as the latter is *sui generis*, and so such a change would require planning permission. That is not the same as saying that a 10 bed HMO cannot, by definition, be a dwelling. That is a matter of fact and degree in each case.

6. I have been referred to advice produced by the Planning Inspectorate which says that "Houses in Multiple Occupation, *including* those which fall within Class C4 *can* benefit from permitted development rights granted to dwellinghouses by the GPDO". I have italicised the key words in that sentence which agree with the situation I have outlined above. The advice goes on to say that case law has established the distinctive characteristic of a dwellinghouse is "its ability to afford those who use it the facilities required for day to day private domestic existence". The relevant case is *Gravesham BC v SSE and M W O'Brien (1982) 47 P&CR 142 [1983]*.
7. The appellant has provided a description of the use of the HMO, floor plans and a copy of a sample tenancy agreement. It seems the building is occupied by 10 people in private bedrooms, sharing a number of bathrooms and a large communal kitchen/dining/living room, with a separate utility for laundry purposes. They pay all the bills communally. In the absence of any evidence to the contrary it would seem this building is occupied as if it were a large house with 10 people living in it. In this case I consider it is a dwellinghouse and so does benefit from permitted development rights.
8. The Council say that DCLG have clarified the issue by saying, and they quote, "with regards to HMOs which are considered *sui generis* the position in respect of permitted development rights under Part 1 of the GPDO has not been affected by the recent legislation". I am unclear as to what this somewhat gnomic pronouncement means, but I am unaware of any advice issued by DCLG to this effect which I note is not found in the PPG or NPPF. In any event it does not affect the situation in law regarding the status of HMOs as dwellinghouses or not, which remains a matter of fact and degree in each case.

Simon Hand

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 12 November 2014 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: They are permitted development by virtue of Class A, of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 because the property is a dwellinghouse.

Signed

Simon Hand

Inspector

Date: 08.06.2015

Reference: **APP/F0114/X/15/3005007**

First Schedule

Replacement of existing timber sash windows with double glazed windows to match.

Second Schedule

Land at 36 Dafford Street, Bath, BA1 6SW

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Scale: 1:1,250

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