

**Planning and Rights of Way Panel 9<sup>th</sup> October 2018**  
**Planning Application Report of the Service Lead - Infrastructure, Planning & Development**

<b>Application address:</b> 350 Shirley Road, Southampton			
<b>Proposed development:</b> Change of use of part of the ground floor, first floor and second floor of the building to a 5 bedroom House in Multiple Occupation (HMO) (C4 Use) including internal works to facilitate this use (part retrospective) (submitted in conjunction with 18/01466/LBC)			
<b>Application number:</b>	18/01465/FUL 18/01466/LBC	<b>Application type:</b>	FUL
<b>Case officer:</b>	John Fanning	<b>Public speaking time:</b>	5 minutes
<b>Last date for determination:</b>	08.11.18	<b>Ward:</b>	Millbrook
<b>Reason for Panel Referral:</b>	Request by Ward Member and 5 letters of support	<b>Ward Councillors:</b>	Cllr Taggart Cllr Furnell Cllr Galton
<b>Referred to Panel by:</b>	Cllr Taggart	<b>Reason:</b>	Complexity of the case requires special consideration
<b>Applicant:</b> Mr Paul Finnegan		<b>Agent:</b> Pegasus Group	

<b>Recommendation Summary</b>	<b>Refuse</b>
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<b>Community Infrastructure Levy Liable</b>	<b>Yes</b>
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<b>Appendix attached</b>			
1	Development Plan Policies	2	Relevant Planning History
3	Enforcement notice	4	Enforcement appeal decision
5	Threshold assessment	6	Habitat Regulation Assessment

**Recommendation in Full - Reasons for Refusal**

**1.REASON FOR REFUSAL - Unsustainable mix and balance of households**

The proposed conversion of the property to a House in Multiple Occupation (HMO) will result in an excessive concentration of HMOs within the immediate area and will result in an adverse impact on the overall character and amenity of the area surrounding the application site in terms of the mix and balance of households in the local community. Furthermore, the proposed layout results in poor residential accommodation with limited external space and an outlook from ground floor habitable windows across parking associated with a separate planning use. Therefore, the proposal will be contrary to saved Policies SDP1(i) and H4(ii) of the Local Plan Review (Amended 2015), Policy CS16 of the Core Strategy (Amended 2015) as supported by the relevant sections of the Houses in Multiple Occupation Supplementary Planning Document (Approved May 2016).

## 2. REASON FOR REFUSAL - Impact on Protected Habitat

In the absence of either a scheme of works or a completed Section 106 legal agreement or unilateral undertaking to support the development the application fails to mitigate against its wider direct impact with regards to the additional pressure that further residential development will place upon the Special Protection Areas of the Solent Coastline. Failure to secure mitigation towards the 'Solent Disturbance Mitigation Project' in order to mitigate the adverse impact of new residential development (within 5.6km of the Solent coastline) on internationally protected birds and habitat is contrary to Policy CS22 of the Council's Amended Core Strategy (2015) as supported by the Habitats Regulations.

### **Background**

350 Shirley has a long and complicated recent planning history. This Grade II listed building was until recently in office use separated from the neighbouring car sales business. In 2017 the Council was made aware that the car sales business had extended its external sales area across the forecourt of the building, and that the building itself had been part-converted into residential use (6 studio flats). Both without the necessary planning (and listed building) permission(s). An Enforcement Notice was duly served requiring both unauthorised uses to cease and this Notice was appealed by the applicant. In dismissing the appeal the Inspector has given the applicant until 30<sup>th</sup> October to cease the use with a further month to remove the associated fixtures and fittings. At the time of writing the applicant continues to use the forecourt for car sales (albeit on a reduced area) and the building is in use as 5 studio flats. The applicant has also submitted a series of applications for consideration including 2 on this agenda for determination; one for a 5 bedroom HMO (18/01465/FUL refers) and the other for retained car sales on the building's forecourt (albeit on a reduced area - 18/01467/FUL refers). Both applications are on this agenda and the Panel will note that if the Council does not determine these applications within the 8 week target date (set out above) then the applicant would be entitled to appeal non-determination; meaning that any prosecution after 30<sup>th</sup> October would be held up in the Courts and may need to await the conclusion of the appeal for non-determination (the unauthorised use(s) could potentially remain during this process).

### **1. The site and its context**

- 1.1 The application site is situated in a primary location on Shirley Road. While the site does not form part of the designated centre, it does lie in immediate proximity to it. The surrounding area contains a mix of commercial and residential elements.
- 1.2 The site itself is occupied by a Grade II listed building (a two-storey brick built property) with a large forecourt to the front. The neighbouring site (on the corner with Beatrice Road) is in use as car sales.

### **2. Proposal**

- 2.1 The application was submitted along with a number of other applications in an effort to regularise unauthorised development on the property. This application relates solely to the use of the building for residential purposes as a house in multiple occupation and the associated physical alterations to the listed building to facilitate the use.
- 2.2 The application has been submitted on the basis of the residential use of the building as a house in multiple occupation, following the dismissal of an appeal

against the enforcement notice relating to the existing use of the building as 6 independent flats.

### **3. Relevant Planning Policy**

- 3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at **Appendix 1**. The Council’s HMO guidance is also a significant material consideration in the determination of this application.
- 3.2 The National Planning Policy Framework (NPPF) was revised in July 2018. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

### **4. Relevant Planning History**

- 4.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.
- 4.2 Until the unauthorised works took place the property was previously in use as offices, with the frontage of the site being in use as a car park associated with this office use of the building. In 2017 it came to the Council’s attention that a number of unauthorised changes had taken place within the site without the necessary consent(s).
- 4.3 These included a number of alterations to the forecourt designed to facilitate the extension of the adjacent car sales use onto this plot and the display of vehicles on this land. The main building had also been fitted out for residential accommodation without the necessary planning permission or listed building consent being sought. In addition, there is a number of more minor elements such as the addition of unauthorised advertisements to the site. The issue was referred to the Council’s enforcement team who initially requested that the use cease before subsequently serving an enforcement notice on 28<sup>th</sup> June 2017. The Notice required the cessation of the car sales and residential uses and removal of unauthorised signage. A copy of the enforcement notice is attached as **Appendix 3**.
- 4.4 The applicant appealed against this enforcement notice. The Planning Inspectorate dismissed this appeal on 30<sup>th</sup> April 2018. A copy of the appeal decision is attached as **Appendix 4**. As part of the appeal the applicant requested, and was granted, additional time to cease the use so as to ensure their business was not unduly impacted. With reference to the current proposal, they were granted a period of 6 months to cease residential use of the building and remove some of the associated fixtures and fittings. The Enforcement Notice requires the use of the building as 6 unauthorised flats to cease by 30<sup>th</sup> October, with the removal of kitchens by 30<sup>th</sup> November.

## **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, advertisement of the application (31.08.2018) and erecting a site notice (31.08.2018). At the time of writing the report **6 representations** have been received from surrounding residents (1 objection and 5 in support). The following is a summary of the points raised:

### **5.2 Support**

- General improvement to appearance of site, has helped reduced antisocial behaviour

### **5.3 Objection**

- Insufficient details of facilities (on-site parking, cycle/refuse stores)
- Impact on neighbouring access should be minimised

## **Consultation Responses**

5.4 **Historic Environment** – Insufficient information has been submitted with the application to establish what the impacts of the proposal have been in terms of the historically significant features of the building. Further details are required to establish and clarify the extent of the undertaken works.

5.5 *Note: These details have been sought under the linked application for listed building consent 18/01466/LBC*

5.6 **HMO Licensing** - The proposed development will require licensing as a Mandatory HMO by Southampton City Council and will be required to meet the HMO standards for safety, room sizes and amenities. Please see <http://www.southampton.gov.uk/housing/landlords/houses-multiple-occupation/licences.aspx> for further information.

5.7 **CIL** - The development is CIL liable as there is a net gain of residential units through the change of use. The charge will be levied at £70 per sq. m (to be indexed) on the Gross Internal Area of the development. If any existing floor area is to be used as deductible floor area the applicant will need to demonstrate that lawful use of the building has occurred for a continuous period of at least 6 months within the period of 3 years ending on the day that planning permission first permits the chargeable development.

## **6.0 Planning Consideration Key Issues**

6.1 The key issues for consideration of this application are the impacts and principle of introducing an HMO use and the quality of the residential environment provided.

6.2 The residential use of the building was considered previously at appeal of the currently extant enforcement notice on the property (see **Appendix 3** and **Appendix 4**). At the time, the applicant argued that the existing unauthorised use of the property as 6 flats was as an HMO use. Given that the rooms were outfitted

with small kitchen areas and bathrooms (all the necessary features for independent living) the Council was of the opinion that the use was as 6 independent flats. The Inspector agreed with this assessment and considered the appeal on this basis. As a result, as part of the appeal the Inspector did not formally consider the potential of an HMO use, but concluded that *'I find that the space available in each flat falls below a level that could reasonably be considered as adequate for permanent residential accommodation. The shortfalls in internal living space in this context, and also in the context of the national minimum standard, are substantial and result in significant harm to the living conditions of the occupiers'*.

- 6.3 The current application proposes a very similar layout to the existing unlawful residential layout of the site considered under the enforcement appeal with the exception for some proposed alterations to the internal layout, including the use of a room at ground floor level as a cycle store and the conversion of one of the existing flats to serve as a shared kitchen/living room for use by the remaining 5 tenants
- 6.4 Threshold
- 6.5 In terms of assessing the appropriateness of the principle of new HMO dwellings within the city, Southampton has introduced an HMO Supplementary Planning Documents which outlines a threshold assessment that the Council will undertake. This assessment looks at surrounding residential properties in the nearby area in order to undertake a review of the context and character of the nearby area and see if it would be appropriate to introduce the further particular residential intensity and impacts associated with HMO properties.
- 6.6 In this case the property is situated in a slightly unusual location, directly on the main Shirley Road frontage. While there are a large number of residential properties within the radius, they are primarily flatted units (either dedicated residential blocks or flatted premises above commercial uses). The HMO SPD outlines how flatted units will be incorporated into the threshold assessment by identifying the units but discounting those that are incapable of HMO occupancy by the size. The full details of the properties identified in the threshold assessment were considered and outlined during the enforcement appeal and are available under **Appendix 5**.
- 6.7 As a result, in accordance with the methodology outlined in the Council's HMO SPD, the proposal fails to adhere to the 10% threshold outlined in the HMO SPD. The 40m radius would include 1 HMO if this application were approved (25%). The proposal does represent an unusual set of circumstances, however in laying out the methodology for the threshold assessment the Council considered the potential for a preponderance of flatted units to have similar knock on impacts as HMO properties and specifically laid out the methodology to take account of this in terms of how flatted units would be considered. On balance it is felt that the proposal is triggered by the HMO SPD and therefore it is considered appropriate to refuse the application on this basis.
- 6.8 Listed building
- 6.9 One of the most fundamental considerations is the status of the property as a listed building. The applicant has undertaken a number of unauthorised alterations to the listed building without the necessary consent being sought. As such it is considered that a clear record of what alterations have been undertaken, how the work has

been undertaken and what steps will be taken in future to ensure that the special significance of the building has not and will not be compromised by the proposed development. While the applicant has submitted some details of the undertaken works they have not provided a full schedule of works clearly outlining the specifics of what works have specifically been undertaken. With reference to the Councils specialist consultation advice outlined in section 5.4, it is not considered that the submitted details are sufficient to demonstrate that the submitted works have not had a harmful impact on the special significance of the listed building and therefore the application should be refused. As such, officers have agreed to await further information before determining the associated listed building application (18/01466/LBC) and this application is not included on this agenda.

#### 6.10 Amenity

The property does not benefit from any private external amenity space and the residential facilities available to the occupiers will be somewhat compromised by the sharing of the premises with a commercial use at ground floor level. Notwithstanding the ostensibly low residential density proposed, it is considered that the living conditions for the proposed occupiers are under a significant amount of pressure as a result of these features of the site.

6.11 In determining the enforcement appeal the Planning Inspector found the living environment of the proposed units to be cramped. This will be somewhat improved in the proposed application as a result of the conversion to an HMO use reducing the bedrooms from 6 down to 5 and the provision of some communal living space for the occupiers. It is noted that in order to function as an HMO, rather than continue the flatted use, any scheme would need to ensure the removal of the existing internal outfitting of the units which includes kitchen facilities in each room.

6.12 Some of the side facing windows of the property do have a somewhat constrained outlook given the vegetation running along this side of the site however on balance it is not considered that the proposed outlook is inappropriate given the nature of the barrier, the set back and the location of the development in the Shirley centre. The expansion of the car sales business across the forecourt of the proposed residential use does, however, result in a poor residential environment for the proposed residents and this forms part of the above reason for refusal.

#### 6.13 Transport

6.14 The site lies in an area of identified high accessibility. In accordance with the Councils HMO SPD, a 5-bed HMO would have a maximum parking provision of 2 spaces. While there is potentially space to secure this on site, the application proposes no on-site parking for the HMO use, with the forecourt turned over to visitor/customer parking for the adjacent car sales use. An internal bike store is proposed to meet the transport needs of the occupants.

6.15 The site is positioned in a highly accessible location, with good access to public transport and other facilities and amenities associated with the Shirley centre. In considering the enforcement appeal the Inspector did not find the lack of on-site parking to be an issue of concern. Notwithstanding this, some concern is raised with the currently proposed cycle store which is accessed through multiple doors and down a short staircase, making it somewhat difficult to utilise. It is considered that further details are required to ensure that adequate provision is made for

appropriate cycle storage to meet the transport needs of the occupiers. Had the application been recommended for approval a planning condition and/or further negotiation would have been appropriate.

#### 6.16 Refuse

6.17 Notwithstanding the partially retrospective nature of the scheme, no details have been submitted outlining how the refuse needs of the occupiers will be addressed. Further clarification is required, particularly in the context of the shared commercial use and special importance of the appearance of the listed building, to clarify how the refuse needs of the occupiers will be met and ensure that bins are not left out on the frontage. Had the application been recommended for approval a planning condition and/or further negotiation would have been appropriate.

#### 6.18 Habitat Regulations

6.19 With reference to Habitat Regulation Assessment, attached as **Appendix 6**, the application relates to an increase in the number of residential dwellings within the city which have the potential to impact specially protected area within the wider south coast area. The application has failed to secure mitigation for these impacts and thereby proves contrary to the requirements of the Conservation of Habitats and Species Regulations 2010 (as amended).

### 7.0 Summary

7.1 With reference to the issues outlined above it is considered that the principle of the HMO use of the property is unacceptable, the application has failed to demonstrate that the special character and significance of the listed building will not be harmed and has not mitigated the wider impacts of additional residential development within the south coast area. On this basis the application is recommended for refusal.

### 8.0 Conclusion

8.1 It is recommended that the Council refuse this application for an HMO for the reasons set out above.

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

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

1. (a) (b) (c) (d) 2. (b) (c) (d) (f) 4.(f) (g) (qq) (vv) 6. (a) (b)

**JF for 09.10.18 PROW Panel**