

**Planning and Rights of Way Panel 27<sup>th</sup> June 2023**  
**Planning Application Report of the Head of Transport and Planning**

<b>Application address:</b> Elmfield North Block, Millbrook Road East, Southampton			
<b>Proposed development:</b> Minor material amendment to planning permission reference 20/01413/FUL for approved scheme of 16 flats (1 bed) to change the roof design of fourth storey extension to the north and west residential blocks (amended description)			
<b>Application number:</b>	23/00357/MMA	<b>Application type:</b>	Minor Material Amendment (MMA) to a previously approved MAJOR planning application
<b>Case officer:</b>	Stuart Brooks	<b>Public speaking time:</b>	15 minutes
<b>Last date for determination:</b>	EOT 04.07.2023	<b>Ward:</b>	Freemantle
<b>Reason for Panel Referral:</b>	Request by Ward Member	<b>Ward Councillors:</b>	Cllr Kenny Cllr Lambert Cllr Shields
<b>Referred to Panel by:</b>	Cllr Shields	<b>Reason:</b>	Supports changes to design
<b>Applicant:</b> Clydesdale Properties Ltd		<b>Agent:</b> Atlas Planning Group	

<b>Recommendation Summary</b>	<b>Refuse</b>
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<b>Community Infrastructure Levy Liable</b>	<b>Yes – but paid under 20/01413/FUL</b>
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<b>Appendix attached</b>			
1	Development Plan Policies	2	Relevant Planning History
3	Previously approved plans	4	Comparison of amenity space
5	CGIs of proposed roof design	6	CGIs of approved roof design

**Recommendation in Full - REFUSE for the following reasons:**

**Reason 01. Design & Character**

The prominence and form of the roof design changes that now include flat roof box extensions above the parapet line of the original roof will be at odds with the profile of the pitched roof form of the host buildings. The proposed roof design would, therefore, be out of keeping with the character and appearance of the host building and its wider context. As such, the material nature of the proposed design changes cannot be accepted as a minor material amendment, and do not represent good design. It is considered that the proposal is contrary to saved policies SDP7 and SDP9 of the adopted Local Plan Review (2015) and saved Policy CS13(1) of the adopted Local Development Framework Core Strategy (2015), as supported by paragraph 2.5.2 of the Residential Design Guide Supplementary Planning Document (September 2006) and the relevant sections of the NPPF (2021) relating to good design,

particularly paragraphs 134 and 135, which suggest that '*local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme*'.

## **Reason 02. Failure to secure Section 106 agreement**

The application has failed to secure the completion of a section 106 Legal Agreement – Deed of Variation - to secure the following planning obligations as linked to planning permission no. 20/01413/FUL:

- i. Either the developer enters into an agreement with the Council under s.278 of the Highways Act and/or undertakes a scheme of works or provides a financial contribution towards site specific transport contributions for highway improvements in the vicinity of the site in line with Policy SDP4 of the City of Southampton Local Plan Review (as amended 2015), policies CS18 and CS25 of the adopted LDF Core Strategy (as amended 2015) and the adopted Developer Contributions SPD (April 2013);
- ii. Provision of affordable housing in accordance with Policies CS15, CS16 & CS25 of the Local Development Framework Core Strategy Development Plan Document - Adopted Version (as amended 2015) and the adopted SPD relating to Planning Obligations (September 2013) taking into account the submitted build programme and the findings of any independently assessed viability appraisal with a commitment to regular and ongoing review mechanisms throughout the build process.
- iii. Submission of a highway condition survey (both prior to and following completion of the development) to ensure any damage to the adjacent highway network attributable to the build process is repaired by the developer.
- iv. The submission, approval and implementation of a Carbon Management Plan setting out how the carbon neutrality will be achieved and/or how remaining carbon emissions from the development will be mitigated in accordance with policy CS20 of the Core Strategy and the Planning Obligations SPD (September 2013).
- v. Either a scheme of measures or a financial contribution to mitigate against the pressure on European designated nature conservation sites in accordance with Policy CS22 of the Core Strategy and the Conservation of Habitats and Species Regulations 2010.

### *Note to Applicant:*

*The second reason for refusal could be addressed following the submission of an acceptable scheme, and the completion of a s.106 Deed of Variation to ensure any fresh permission is supported by the correct s.106.*

## **1. Background**

- 1.1 *This application for a Minor Material Amendment (MMA) is related to planning permission no. 20/01413/FUL (Approved in May 2021) for an extension to both blocks to create 16 additional 1 bedroom flats (see **Appendix 3**, which show the approved*

scheme).

- 1.2 *The applicant has made significant progress with building out the roof extensions on both blocks but the flats are not yet occupied. However, the extensions have not been built in accordance with the approved plans.*
- 1.3 *A flat roofed box design was originally submitted for the original planning application 20/01413/FUL, but was not supported by officers on grounds of being out of keeping with the attractive appearance of the mansion-style buildings and pitched roof form of other buildings in the area.*
- 1.4 *During the course of determining the first application officers sought to negotiate rather than refuse the scheme. The applicant agreed to change the design to the roof extension to incorporate raised pitched corners to reflect the original pitched roof form of the building and screen the vertical box extension. Set-backs were used to create roof terrace areas and the planning application was approved on the basis of an amended roof design. Unfortunately the applicants have not built out this negotiated permission.*
- 1.5 *Instead, the applicants have reverted on site to their earlier scheme and this MMA seeks to regularise the flat roofed box design, and reverse the design changes agreed by officers, albeit keeping the tile hanging which officers agreed as an appropriate external finishing treatment for the previous approval.*
- 1.6 *Procedurally an MMA is an application to make a material change to a planning permission, and seeks to amend conditions on the previously approved scheme, namely condition 12 (approved plans). If an MMA is granted it takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. In effect an approval of this application 23/00357/MMA would result in 2 permissions for 16 flats on this site.*
- 1.7 *Ward councillor Shields has requested the case to be decided at Planning Panel.*

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

- 2.1 The site comprises a group of 2 residential mansion-style blocks joined by the link house building set within verdant landscaping and trees. The properties are known as Elmfield House accessed from southern side of Millbrook Road East, adjoining the mainline railway to south. The site lies in close walking distance to the city centre and bus links to Shirley Town Centre. The mock tudor style buildings pre-date 1947, although not listed for their historic character. The site is located between Hewitt's Road and Mounbatten Business Centre, with a single storey van hire compound on Millbrook Road East to the north.
- 2.2 The perimeter of the site along the south, east and west boundaries is mainly covered by mature tall trees which are protected under TPO ref no. T2-047. The existing 3 storey blocks (additional sub ground/basement level at base) with basement parking forming part of the development are known as 'north block' and 'west block'. The north block is highly visible from Millbrook Road East above the single storey van hire compound. The link house joining the blocks together has undergone residential prior

approval to 9 flats (ref no. 20/00519/PA56).

### **3. Proposal**

- 3.1 This application seeks permission to amend the roof design of the vertical extension approved under planning permission no. 20/01413/FUL (see **Appendix 3**). The amended roof design seeks to remove the extended corner pitches, which visually blend the rooftop extension into the original pitched roof.
- 3.2 Most aspects of the approved development will be unchanged (i.e. quantum of flats) with exception to increasing the size of the private terrace area for the roof extension flats. A side by side comparison is shown in **Appendix 4**. This shows that only 2 of the flats in each block will gain further useable space:-
- Flat 8: approved = 7sqm & amended = 21sqm (+14sqm);
  - Flat 1: approved = 12sqm to proposed = 32sqm (+20sqm).
- 3.3 The 16 flats approved benefit from access to the resident's communal gardens serving the Elmfield blocks, so the proposed additional private amenity space is not necessary to make the scheme acceptable according to the amenity space standards under the Council's Residential Design Guide (RDG paragraph 2.3.14). The merits of the proposed external amenity space is assessed below with regards to the 'planning balance'.

### **4. 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) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at **Appendix 1**.
- 4.2 The National Planning Policy Framework (NPPF) was revised in 2021. Paragraph 219 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.
- 4.3 Para 126 of the NPPF advises:
- "The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this."*
- 4.4 Ahead of the adoption of the emerging Local Plan (City Vision), the application must be considered against existing design policy CS13 of the Core Strategy which requires new development to incorporate architecture which:

1. Respond positively and integrate with its local surroundings, character and architectural vernacular without being a pastiche of the past;
2. Contribute positively to the unique image of Southampton and local distinctiveness via innovative and high quality design.....

4.5 Linked to policy CS13 in the Council's Residential Design Guide SPD (RDG). Para 2.5.1 of the RDG advises that there are a number of basic design principles that should be followed in the detailing of any extensions or modifications. Generally, the architectural detailing and materials used should be in keeping with the original building. Furthermore at 2.5.2 advises that roof form and pitch must relate to the original design of the building and existing roof and this usually means a pitched roof (hipped or gabled).

## 5. **Relevant Planning History**

5.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.

## 6. **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 on 31.03.2023. At the time of writing the report **no representations** have been received from surrounding residents. The application has been referred to Planning Panel by Ward Cllr Childs.

### **Consultation Responses**

<b>Consultee</b>	<b>Comments</b>
CIL Officer	The CIL has been paid in full for 20/01413/FUL, the proposed amendment does not change the CIL calculation and as such there is no additional CIL liability.
SCC Design Team	<b><u>Objection</u></b> The photographs clearly demonstrate that without the sloping corners in place then the extension looks like a box on top of the roof, because of the visually jarring relationship between sloped existing roof and the vertical edge of the extension, rather than looking like (as per the approved drawings) that the extension is an integrated part of the roof

## 6.0 **Planning Consideration Key Issues**

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

- Process
- The principle of development;
- Design and effect on character;
- Living conditions for future occupiers.

## 6.2 **Process**

6.2.1 An MMA application can be made under section 73 of the Town and Country Planning Act 1990. This application route is available to make the planning system more flexible in order to carry out minor changes to extant planning permissions. Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

6.2.2 A section 73 application involves a consideration of the revisions against the relevant development plan policies. There is no statutory definition of a 'minor material amendment', but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.

### 6.3 **Principle of Development**

6.3.1 The approved 16 flats should also be assessed against any material changes in the development plan since the original permission. The principle of additional housing on site has already been supported by the previous planning permission. There is no subsequent change to density or mix of the approved flats. Whilst a new permission for the 16 flats is effectively sought by the section 73 application, the main considerations for this application are the visual impact of the physical changes to the approved extension. The visual harm from the changes should be balanced against the benefits of the additional balcony space created for the flats. Since the original permission was granted in 2021, the Council has identified it has less than five years housing supply, so the 'titled balance' needs to be applied, as explained below, in context with a new permission for 16 flats.

6.3.2 The site is not allocated for additional housing, but the proposed dwellings would represent windfall housing development. The LDF Core Strategy identifies the Council's current housing need, and this scheme would assist the Council in meeting its targets. As detailed in Policy CS4 an additional 16,300 homes need to be provided within the City between 2006 and 2026. The NPPF and our saved policies, seeks to maximise previously developed land potential in accessible locations.

6.3.3 The NPPF requires LPAs to identify a five-year supply of specific deliverable sites to meet housing needs. Set against the latest Government housing need target for Southampton (using the standard method with the recent 35% uplift), the Council has less than five years of housing land supply. This means that the Panel will need to have regard to paragraph 11(d) of the NPPF, which states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, it should grant permission unless:

- the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

[the so-called "tilted balance"]

6.3.4 There are no policies in the Framework protecting areas or assets of particular importance in this case, such that there is no clear reason to refuse the development proposed under paragraph 11(d)(i). It is acknowledged that the proposal would make a contribution to the Council's five-year housing land supply, as would the approved scheme if it were built out correctly. There would also be social and economic benefits resulting from the construction of the new dwellings, and their subsequent occupation, including a revised scheme with more amenity space for the 16 flats, and these are set out in further detail below to enable the Panel to determine 'the Planning Balance' in this case.

#### 6.4 **Design and effect on character**

6.4.1 The design guidance set out in paragraph 2.5.2 of the Residential Design Guide states that *"reconfiguring of roofs and their supporting structure to create additional accommodation in the roof space will not be acceptable if the changes adversely impact on the local character of the area"*.

6.4.2 The visual impact of the proposed roof design change to the 'north block' will be clearly seen from public vantage points in Millbrook Road East adjacent to the site. Whilst the 'west block' is less visible from the public realm, the negative change in building design would be noticeable to the occupants of Elmfield House themselves. The proposed changes will significantly change the overall appearance of the approved roof extension. Although the tile hung clad walls of the roof box extension matches the roof tiling of the existing buildings, the prominence of the roof box extension above the parapet line will be at odds with the profile of the pitched roof of the existing buildings. As such, roof design changes will adversely harm the characterful and attractive appearance of the mansion-style buildings, and the wider character of the local area. The material nature of the proposed design changes can therefore not be accepted as minor material amendment and do not constitute good design.

6.4.3 The applicant has produced a series of CGI views to contextually show the change in roof design, and for comparison CGI views of the approved roof design are also appended to the report (**see Appendices 5 & 6**). The site photographs included within Appendix 5 shows the extension currently built out as the flat roofed box without the approved corner pitches. It is telling from the site photos that the boxed form and window units are much more prominent beyond the parapet of the roof than represented by the CGI views, which should only be taken indicatively in the Panel's deliberations.

#### 6.5 **Living conditions of future occupiers**

6.5.1 The positive benefits of the extra amenity space gained for the flats will not significantly benefit the residents when weighed against the adversely harmful impact of the roof design changes. To visualise the changes to the roof terrace amenity space, a side by side comparison of the proposed and approved roof areas (same layout for both west and north blocks) is shown in **Appendix 4**. The additional amenity space gained is shown by the red boxes (see paragraph 3.2 above for the sizes). The 16 flats are not deficient in amenity space as the occupiers already benefit from

access to the resident's communal gardens serving the Elmfield House blocks, whilst it was accepted that the amenity space standards could be applied flexibly for single occupancy 1 bed flats. The additional roof terrace space being provided is not necessary to make the living conditions of the 16 flats acceptable in terms of the amenity space standards under the Council's Residential Design Guide, and should be afforded less weight in the Planning balance than the harm caused by the retrograde design step taken.

## 6.6 **Mitigation of direct local impacts**

6.6.1 MMA applications do not always require a new s.106 legal agreement, but approving this application would result in a new planning permission for the 16 flats. In this instance, if the Panel were minded to disagree with the recommendation and support the application a s.106 would be needed to secure the site specific highway improvements, affordable housing obligation and highway condition survey. A Habitats Regulations Assessment would also be needed to secure mitigation, including nitrates credits, against the impacts of residential development on nearby Special Protection Areas. A delegation could resolve these issues should the Panel wish to approve this MMA.

## 7. **Summary**

7.1 The applicants have not built in accordance with their approved drawings and are now seeking to retrospectively remedy this breach in Planning control. Such an approach to development brings its own risks, and on this occasion the roof design of the building under construction is considered to represent poor design that cannot be supported by officers.

7.2 The principle of new residential development is again considered acceptable. It is acknowledged that the proposal would make a contribution to the Council's five-year housing land supply, and that currently there is a shortfall in Southampton meaning that the tilted balance is engaged. Whilst the delivery of housing, and the associated social and economic benefits resulting from the construction of the new dwellings, is material, the adverse impacts of the development when assessed against the policies in the Development Plan and the Framework taken as a whole, would significantly and demonstrably outweigh these benefits. The same benefits around housing delivery would be realised if the applicants had constructed in accordance with the approved plans.

7.3 The proposed gain from the additional amenity space for the 16 flats created would not significantly outweigh the adverse impact to the character and appearance of the area arising from the proposed incongruous roof form. It should be noted that the applicant can still build out the approved 16 flats (permission no. 20/01413/FUL), whilst the living conditions of the flats will not be deficient of amenity space against the Council's standards. The proposed changes to the roof form are not considered to have any adverse consequences for the housing delivery of 16 flats on this site. Having regard to s.38(6) of the Planning and Compulsory Purchase Act 2004, and the considerations set out in this report, the application is recommended for refusal.



**8. Conclusion**

- 8.1 It is recommended that planning permission be refused for the reasons set out in the officer's recommendation. This may result in an appeal and/or further planning enforcement action.

**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) (vv) 6. (a) (b) 7. (a)

**Stuart Brooks PROW Panel 27.06.23**

**POLICY CONTEXT**

Core Strategy - (as amended 2015)

CS4	Housing Delivery
CS5	Housing Density
CS13	Fundamentals of Design
CS15	Affordable Housing
CS16	Housing Mix and Type
CS18	Transport: Reduce-Manage-Invest
CS19	Car & Cycle Parking
CS20	Tackling and Adapting to Climate Change
CS22	Promoting Biodiversity and Protecting Habitats
CS25	The Delivery of Infrastructure and Developer Contributions

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

SDP1	Quality of Development
SDP4	Development Access
SDP5	Parking
SDP7	Urban Design Context
SDP9	Scale, Massing & Appearance
SDP10	Safety & Security
SDP11	Accessibility & Movement
SDP12	Landscape & Biodiversity
SDP13	Resource Conservation
SDP14	Renewable Energy
H1	Housing Supply
H2	Previously Developed Land
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 (2021)  
The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

**Relevant Planning History**

<b>Case Ref</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
20/01413/FUL	Erection of fourth storey extension at roof level to the north and west residential blocks to provide an additional 16x 1-bed flats with associated parking and cycle/refuse storage	Conditionally Approved	17.05.2021
22/00894/FUL	Conversion of part of the lower ground floors to create 5 x flats and the installation of dropped light wells to serve proposed units 1-5	Awaiting completion of section 106	
22/00951/DIS	Application for approval of details reserved by condition 2(materials), 4(Construction) and 6(Energy & Water) of permission 20/01413/FUL to 16x 1-bed flats	No Objection	27.09.2022