

**Planning and Rights of Way Panel 21<sup>st</sup> August 2018**  
**Planning Application Report of the Service Lead – Infrastructure, Planning & Development**

<b>Application address:</b> 56 Wilton Avenue, Southampton			
<b>Proposed development:</b> Change of use from a dwelling house (Class C3) to a house in multiple occupation (HMO, Class C4) for up to 3 persons (no external changes) (retrospective) (Resubmission of 17/02464/FUL).			
<b>Application number</b>	18/00974/FUL	<b>Application type</b>	FUL
<b>Case officer</b>	Anna Coombes	<b>Public speaking time</b>	5 minutes
<b>Last date for determination:</b>	28/08/2018 (Extension of Time)	<b>Ward</b>	Bargate
<b>Reason for Panel Referral:</b>	Five or more letters of objection have been received	<b>Ward Councillors</b>	Cllr Bogle Cllr Noon Cllr Paffey
<b>Referred to Panel by:</b>	N/A	<b>Reason:</b>	N/A

<b>Applicant:</b> Dr E Fogg	<b>Agent:</b> Kingston Studio
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<b>Recommendation Summary</b>	Conditionally Approve
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<b>Community Infrastructure Levy Liable</b>	N/A
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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 the development plan as required by 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 39 – 42 and 46 of the National Planning Policy Framework (2018).

Policies - SDP1, SDP7, SDP9 and H4 of the City of Southampton Local Plan Review (as amended 2015) and CS13 and CS16 of the Local Development Framework Core Strategy Development Plan Document (as amended 2015) as supported by the revised HMO SPD (revised 2016).

<b>Appendix attached</b>			
1	Development Plan Policies	2	Planning History

## Recommendation in Full

### Conditionally approve

#### 1.0 The site and its context

- 1.1 The application site is a two-storey, semi-detached dwelling which has been subject to ongoing Enforcement investigation since June 2015 in relation to its use as an unauthorised 4 bed HMO since July 2014. The ground floor comprises a lounge at the front of the property, a bedroom in the middle, and a kitchen to the rear. At first floor there are 3 bedrooms and a communal bathroom. There is a small front garden, enclosed with a low wall, and a side access path leading to a modest rear garden.
- 1.2 The property is located on Wilton Avenue within a residential area characterised by a mix of semi-detached and terraced housing. There is a high concentration of HMOs in the locality, which is west of the Bedford Place/London Road commercial area. Wilton Avenue and the surrounding streets are covered by a residents' parking permit scheme (8am-6pm Monday to Friday) and, in some stretches of road, 2 hours maximum parking.

#### 2.0 Proposal

- 2.1 Planning permission is sought to return the ground floor middle bedroom back to a dining room and to regularise the use of the property as a Class C4 House of Multiple Occupation (HMO) for up to 3 people. As per the HMO Supplementary Planning Document (HMO SPD), revised in 2016, a condition can be applied to allow swapping between a C3 single family dwelling and a C4 HMO use for a period of 10 years without the need for planning permission, with the use at the end of the 10 year period becoming the lawful use from that point onwards. This 'flexible' type of permission enables the owner to rent to both families and sharers without the need for further permission.
- 2.2 There are no external or internal structural changes to the layout of the property proposed, merely the conversion of the ground floor middle bedroom into a dining room.

#### 3.0 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 then was recently revised on 24<sup>th</sup> July 2018, and replaces the previous set of national planning policy guidance notes and statements. The Council reviewed the Core Strategy when the NPPF first came in to force, 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.
- 3.3 Core Strategy CS16 and Saved Local Plan policy H4 are relevant to the

determination of planning applications relating to HMOs. Policy CS16 of the Core Strategy states that the contribution that the HMO makes to meeting housing need should be balanced against the impact on character and amenity of the area. Saved policy H4 of the Local Plan requires new HMOs to respect the amenities of neighbouring properties and the character of the area and to provide adequate private and useable amenity space.

- 3.4 The Houses in Multiple Occupation SPD (HMO SPD) was adopted in March 2012, and more recently revised in 2016, and provides supplementary planning guidance for policies H4 and CS16 in terms of assessing the impact of HMOs on the character and amenity and mix and balance of households of the local area. The revised SPD (2016) sets a city-wide maximum threshold of 10% for the total number of HMOs within a 40m radius from the front door of the application site, or the 10 nearest residential properties (section 6.5 of the HMO SPD refers). This SPD also details the approach to be taken in exceptional circumstances, where a significant level of HMO saturation has already occurred in a street, which in turn negatively impacts the market demand for C3 family housing in that location. The threshold set for assessing when exceptional circumstances can be considered is 80% (i.e. at least 80% of dwellings within the 40m radius are already in operation as HMO properties). The Panel will recall that before this change the Council's policy was that only the last 1 or 2 properties in an area defined exclusively as HMOs would be allowed to convert to an HMO. This was considered to be an unreasonable position for those owners of C3 dwellings living within areas dominated by HMOs who were unable to sell.

#### **4.0 Relevant Planning History**

- 4.1 A detailed planning history of the application site is set out at **Appendix 2**. The first planning application for this property was in 2012, under application reference 12/01859/FUL, where planning permission was refused for change of use of the property from a C3 dwelling to a 5 bed HMO, on the grounds that the threshold for HMO saturation (set at 20%) within a 40m radius of the application site had already been breached.
- 4.2 An investigation was then opened in June 2015 by the Planning Enforcement team, when the Council were made aware of the property operating as an unauthorised HMO, despite the planning refusal.
- 4.3 As a result of the investigation by the Planning Enforcement team, two applications for planning permission were then submitted simultaneously in July 2015; one for a change of use to a 4 bed HMO (15/01491/FUL) and one for a change of use to a 3 bed HMO (15/01492/FUL). Both were refused, again on the grounds that the threshold for HMO saturation (set at 20%) within a 40m radius of the application site had already been breached.
- 4.4 The application for a 3bed HMO (15/01492/FUL) was appealed and the appeal was subsequently dismissed in May 2016. The Council's HMO guidance has since changed in respect of the over-concentration and 'exceptional' circumstances position.
- 4.5 A new planning application was submitted for a change of use to a 3 bed HMO in November 2017 (ref: 17/02464/FUL). A new assessment of the 40m radius showed that the HMO concentration in the local area now met the threshold for

exceptional circumstances, as given in the revised HMO SPD (80%), however no marketing information was submitted to support a claim for exceptional circumstances and so the application was refused on this basis.

## **5.0 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, and placing a site notice on 15/06/2018. At the time of writing the report **6 representations** have been received from surrounding residents, 1 of which is from a resident of a neighbouring ward. This includes an objection from Ward Cllr Noon. The following is a summary of the points raised:

5.2 **There are already too many HMOs in the area, the 10% threshold has been exceeded, to allow more would further unbalance the community.**

*Response: It is acknowledged that there are a significant number of HMOs within this area of the city, and that the 10% threshold assessment detailed within the HMO SPD has already been exceeded in the 40m radius from the site. It is important to note, however, that the threshold for exceptional circumstances has now been reached (at least an 80% concentration of HMOs within the 40m radius area) and therefore exceptional circumstances can be considered for this site. This was not the case at the latest appeal for a similar development.*

5.3 **This site has previously been refused permission for an HMO use.**

*Response: At the time of previous refusals 12/01859/FUL, 15/01491/FUL and 15/01492/FUL, the exceptional circumstances threshold had not been met. At the time of the most recent refusal 17/02464/FUL, the exceptional circumstances threshold had been met, however no marketing evidence was submitted to support a claim for exceptional circumstances. Under the current application, the exceptional circumstances threshold has been met, and sufficient marketing evidence has now been submitted, in order to meet the requirements for exceptional circumstances.*

5.4 **The proposal will result in the sandwiching of No.58 Wilton Avenue, with HMO uses either side.**

*Response: HMO licencing records show that No.58 was also a licenced HMO on 30<sup>th</sup> June 2018. The available evidence therefore shows that sandwiching will not occur.*

## **5.5 Consultation Responses**

5.6 **Cllr Noon** – I wish to object to this application on the grounds that this application is similar to Application No: 17/02464/FUL, which was refused. Further HMOs in this part of the city is not in the best interest of the area.

5.7 **SCC Archaeology** – I do not require any archaeological conditions to be attached to the planning consent.

## **6.0 Planning Consideration Key Issues**

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

- a) whether the proposed change of use from a C3 family dwelling to a C4 HMO is acceptable in principle;
- b) whether the proposed development would have a harmful impact on the character of the property and local area, the residential amenities of surrounding neighbours, or parking in the local area;
- c) whether the proposal would have a harmful impact upon the amenities of the occupants of the host dwelling.

## 6.2 Principle of Development

- 6.2.1 The existing property could easily be returned to use as a family dwelling at any time by way of a change of tenants, as the building structure and internal layout would remain unchanged from the previous use as a C3 family dwelling. The change from a C4 HMO use to a C3 dwelling would not require planning permission. The proposal does not, therefore, result in the net loss of a family home and the proposal would be in accordance with policy CS16 of the Core Strategy. The proposed development is also in accordance with saved policies H1 and H2 of the Local Plan which support the conversion of existing dwellings for further housing and require the efficient use of previously developed land. As confirmed by Core Strategy Policy CS16, the proposed HMO use meets a recognised housing need for single households or for those with lower incomes and is therefore, acceptable in principle.
- 6.2.2 Although the threshold assessment shows that the initial 10% HMO concentration has been breached within a 40m radius of the front door of the application site, this concentration has now met the 80% threshold at which claims for exceptional circumstances can be made, if it can be demonstrated that the property has been marketed as a C3 family dwelling for at least 6 months with no market interest (Section 4.5 of the HMO SPD (amended 2016) refers). Exceptional circumstances is effective for situations where the HMO concentration is very high and the retention of remaining C3 dwellings “will have little effect on the balance and mix of households in a community which is already over dominated by the proportion of existing HMO households. Therefore, the conversion of the remaining buildings to a HMO would not further harm the character of the area” (para 4.5.2 HMO SPD 2016).
- 6.2.3 The existing concentration of HMOs within a 40m radius of the application site is 81% (21 out of 26 eligible dwellings). As a result of this proposal, this concentration will rise to 85% (22 of 26 eligible dwellings). The exception circumstances threshold has, therefore been met and sufficient marketing evidence has been submitted covering a period of at least 6 months from 4<sup>th</sup> September 2017 to 21<sup>st</sup> March 2018. The evidence from the lettings agent demonstrates that the property was marketed as a C3 dwelling at a reasonable market rent compared to similar nearby properties, and that there was negligible interest from tenants who would meet the definition of a C3 single household.

## 6.3 Impact in terms of Character, Amenity and Parking

- 6.3.1 There are no structural changes proposed to the building and no changes to the external appearance of the property, so any impact on character and amenity would be as a result of changes in the intensity of use of the property. In this case the proposal is for a C4 HMO with 3 bedrooms, which would be a reduction from

the existing unauthorised 4 bedroom HMO use, which has been operating since 2014. In addition, the HMO SPD (revised 2016) also recognises that, once the local concentration of HMO properties reaches 80% or more, the local area is already dominated by HMO uses and an additional HMO use is not considered to significantly alter the mix and balance of households locally. As such, whilst there will be an impact, the proposal is not considered to present significant harm to the character of the property or local area or to the amenity of local residents.

6.3.2 In terms of parking, although there is no off street parking provided, the surrounding streets are restricted to either residents' permit parking only, or 2 hours maximum without a permit. Paragraph 5.2 of the HMO SPD states that where a property is within a residents' parking permit zone, occupants are entitled to apply for permits, however the number of permits available will be restricted in accordance with the local parking policy, which would control the number of cars associated with the dwelling. Furthermore the site is very close to local amenities within Bedford Place and London Road, and to the City Centre itself. As such, given there will also be a reduction in the number of bedrooms within the property from 4 to 3 as a result of the proposal, it is not considered that there would be a harmful impact on the levels of parking available in the local area.

#### 6.4 Quality of the Residential Environment

6.4.1 Saved policy H4 of the City of Southampton Local Plan Review 2010 states that: 'Planning permission will only be granted for conversions to houses in multiple occupation where: (i) it would not be detrimental to the amenities of the residents of adjacent or nearby properties; and (iii) adequate amenity space is provided which (a) provides safe and convenient access from all units; (b) is not overshadowed or overlooked especially from public areas; and (c) enables sitting out, waste storage and clothes drying'.

6.4.2 The proposal would retain ample communal living space on the ground floor with separate lounge, dining room and kitchen areas provided. A condition is recommended to secure retention of the communal living space. All habitable rooms would have suitable outlook from existing windows. Occupants of the property have access to a private garden that, whilst small, is typical of the properties in the area. Although alterations would be made to the internal layout (without physical changes), the retained first floor bedrooms would be of suitable size, therefore, the amenity of the occupants of the host dwelling shall not be harmed. In addition, conditions are recommended to secure details of the proposed provision of refuse and cycle storage facilities.

#### 7.0 Summary

7.1 The proposal for the conversion of the property to a C4 HMO is considered to be acceptable in principle, as exceptional circumstances have been demonstrated in relation to the threshold test, and the proposal shall not cause unacceptable harm to neighbouring amenity or highway safety. In addition, the amenity of the occupants of the host dwelling would not be harmed.

#### 8.0 Conclusion

Subject to the imposition of the suggested conditions attached to this report, the proposal would be acceptable. The application is therefore recommended for approval.

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

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

**AC for 21/08/18 PROW Panel**

**PLANNING CONDITIONS**

**01. Full Permission Timing Condition (Performance 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. 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.

**03. Refuse & Recycling (Pre-Commencement)**

Prior to the first use of the building as an authorised C4 HMO for 3 people, details of storage for refuse and recycling, together with the access to it, shall be submitted to and approved in writing by the Local Planning Authority. The storage shall be provided in accordance with the agreed details before the development is first occupied and thereafter retained as approved. Unless otherwise agreed by the Local Planning Authority, except for collection days only, no refuse shall be stored to the front of the development hereby approved.

Reason: In the interests of visual amenity, the amenities of future occupiers of the development and the occupiers of nearby properties and in the interests of highway safety.

**04. Cycle storage facilities (Pre-Commencement Condition)**

Prior to the first use of the building as an authorised C4 HMO for 3 people, secure and covered storage for bicycles 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. C3/C4 dual use (Performance Condition)**

The application property, No.56 Wilton Avenue, shall be operated as either a C4 (House in multiple occupation) for 3 persons, in accordance with the change of use hereby permitted, or a C3 single family dwelling for a limited period of 10 years only from the date of this Decision Notice (under Class V, Part 3, Schedule 2 of the Town and County Planning (General Permitted Development) Order 2015). The use that is in operation on the tenth anniversary of this Decision Notice shall thereafter remain as the permitted use of the property.

Reason: In order to provide greater flexibility to the development and to clarify the lawful use hereby permitted and the specific criteria relating to this use.

06. Retention of communal spaces and number of occupiers (Performance Condition)

The rooms labelled kitchen, dining and lounge on the proposed ground floor plan shall be made available for use by all of the occupants prior to first occupation of the property as a C4 HMO use, as hereby approved, and thereafter shall be retained and available for communal purposes when in use as a HMO. The number of occupiers within the property, when in HMO use, shall not exceed 3 persons unless otherwise agreed upon in writing by the Local Planning Authority.

Reason: To ensure that suitable communal facilities are provided for the residents, and in the interests of protecting the amenities of local residents.

Note to Applicant

A HMO License is required in order to operate the property as a Class C4 HMO. The applicant is advised to contact the HMO licensing team for more information or to see the following link: [www.southampton.gov.uk/housing/landlords/houses-multiple-occupation/](http://www.southampton.gov.uk/housing/landlords/houses-multiple-occupation/)

**POLICY CONTEXT**

Core Strategy - (as amended 2015)

CS13	Fundamentals of Design
CS16	Housing Mix and Type
CS19	Car & Cycle Parking

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

SDP1	Quality of Development
SDP5	Parking
SDP7	Urban Design Context
SDP9	Scale, Massing & Appearance
H4	Houses in Multiple Occupation

Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)  
Parking Standards SPD (September 2011)  
Houses in Multiple Occupation (amended 2016)

Other Relevant Guidance

The National Planning Policy Framework (revised 2018)

**Planning History**

- 1 17/02464/FUL - Change of use from a dwelling house (Class C3) to a house in multiple occupation (HMO, Class C4) for up to 3 persons (no external changes) (Retrospective) – Refused 19.03.2018

*REASON FOR REFUSAL - Harm to character and amenity*

*The proposed change of use of the property to an HMO for up to 3 unrelated people would result in an intensification of the number HMOs in the immediate vicinity of the application site (40 metres of the front door), in excess of the standards set out in the Council's adopted Houses in Multiple Occupation Supplementary Planning Document (revised March 2016). Although there is a high concentration of HMOs in the local area, the applicant has not been able to demonstrate that there are exceptional circumstances for this property to justify the further increase in HMOs within the area. An intensification of HMO uses would lead to a cumulative change to the character of the area, eroding the mix and balance of the local community, and exacerbating the impact on the amenities of the occupiers of nearby residential properties. The proposal would thereby prove contrary to policy CS16 (3.) of the Southampton Local Development Framework Core Strategy Development Plan Document (as amended 2015) as supported by the National Planning Policy Framework (paragraph 50), saved policies SDP1 (i) SDP7 (v) and H4 (i) (ii) of the adopted City of Southampton Local Plan Review (as amended 2015) and the adopted Houses in Multiple Occupation Supplementary Planning Document (revised March 2016).*

- 2 15/01492/FUL – Change of use from a dwelling house (Class C3) to a house in multiple occupation (HMO, Class C4) for up to 3 persons (no external changes) – Refused 10.09.2015 and Appeal Dismissed 26.05.2016

*REASON FOR REFUSAL - Harm to character and amenity*

*In the absence of any evidence to the contrary it is understood that on 23rd March 2012 when the Council's relevant Article 4 Direction became effective 56 Wilton Avenue was not occupied as a shared C4 HMO (House in Multiple Occupation) but as a C3 dwelling. As such, the proposed change of use of the property to an HMO for up to 3 unrelated people would result in an intensification of the number HMOs in the immediate vicinity of the application site (40 metres of the front door) in excess of the standards set out in the Council's adopted Houses in Multiple Occupation Supplementary Planning Document (March 2012). Although there is a high concentration of HMOs in the local area, the applicant has not been able to demonstrate that there are exceptional circumstances for this property to justify the further increase in HMOs within the area. An intensification of HMO uses would lead to a cumulative change to the character of the area and exacerbate the impact on the amenities of the occupiers of nearby residential properties. The proposal would also erode the mixed and balanced community within the area and would thereby prove contrary to policy CS16 (3.) of the Southampton Local Development Framework Core Strategy Development Plan Document (as amended 2015) as supported by the National Planning Policy Framework (paragraph 50), saved policies SDP1 (i) SDP7 (v) and H4 (i) (ii) of the adopted City of Southampton Local Plan Review (as amended 2015) and the adopted Houses in Multiple Occupation Supplementary Planning Document (March 2012).*

- 3 15/01491/FUL - Change of use from a dwelling house (Class C3) to a house in multiple occupation (HMO, Class C4) for up to 4 persons (no external changes) – Refused 10.09.2015

*REASON FOR REFUSAL - Harm to character and amenity*

*In the absence of any evidence to the contrary, it is understood that on 23rd March 2012, when the Council's relevant Article 4 Direction became effective, 56 Wilton Avenue was not occupied as a shared C4 HMO (House in Multiple Occupation) but as a C3 dwelling. As such, the proposed change of use of the property to an HMO for up to 3 unrelated people would result in an intensification of the number HMOs in the immediate vicinity of the application site (40 metres of the front door) in excess of the standards set out in the Council's adopted Houses in Multiple Occupation Supplementary Planning Document (March 2012).*

*Although there is a high concentration of HMOs in the local area, the applicant has not been able to demonstrate that there are exceptional circumstances for this property that would justify the further increase of HMOs in the area. An intensification of HMO uses would lead to a cumulative change to the character of the area and exacerbate the impact on the amenities of the occupiers of nearby residential properties. The proposal would also erode the mixed and balanced community within the area and would thereby prove contrary to policy CS16 (3.) of the Southampton Local Development Framework Core Strategy Development Plan Document (as amended 2015) as supported by the National Planning Policy Framework (paragraph 50), saved policies SDP1 (i) SDP7 (v) and H4 (i) (ii) of the adopted City of Southampton Local Plan Review (as amended 2015) and the adopted Houses in Multiple Occupation Supplementary Planning Document (March 2012).*

- 4 12/01859/FUL - Change of use from a dwelling house (Class C3) to a house in multiple occupation (HMO, Class C4) for up to 5 persons (no external changes) - Refused 05.02.2013

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

*The proposed change of use to a Class C4 House in Multiple Occupation and the resulting concentration of HMO's in the immediate vicinity of the site (40 metre radius of the front door) would lead to the loss of a single dwelling and a cumulative change in the character of the area to the detriment of the amenities of the area whilst undermining the Council's approach of promoting 'mixed and balanced communities'. As such the proposal is contrary to Policies SDP1 (i), H4 (i) and (ii) of the saved City of Southampton Local Plan Review (March 2006) and Policy CS16 of the adopted Local Development Framework Core Strategy Development Plan Document (January 2010) as supported by the adopted Houses in Multiple Occupation Supplementary Planning Document (March 2012).*