

Planning and Rights of Way Panel 11th July 2023
Planning Application Report of the Head of Transport and Planning

Application address: 24 Wilton Avenue, Southampton			
Proposed development: Change of use from a house in multiple occupation (HMO) (class C4) to a large HMO for 7 persons (sui generis) and installation of enlarged rear dormer (resubmission 21/00871/FUL)			
Application number:	23/00674/FUL	Application type:	FUL
Case officer:	Stuart Brooks	Public speaking time:	5 minutes
Last date for determination:	19.07.2023	Ward:	Banister and Polygon
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors:	Cllr Every Cllr Leggett Cllr Windle
Referred to Panel by:	n/a	Reason:	n/a
Applicant: Mr Durrant		Agent: Pure Town Planning	

Recommendation Summary	Delegate to the Head of Transport and Planning to grant planning permission subject to criteria listed in report
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Community Infrastructure Levy Liable	No
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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 39-42 and 46 of the National Planning Policy Framework (2021). Policies – CS13, CS16, CS18, CS19 of the of the Local Development Framework Core Strategy Development Plan Document (Amended 2015). Policies – SDP1, SDP4, SDP5, SDP7, SDP10, SDP16, H4, H7 of the City of Southampton Local Plan Review (Amended 2015).

Appendix attached			
1	Habitats Regulation Assessment	2	Development Plan Policies
3	Appeal decision for 21/00871/FUL	4	Map of HMOs in 40m radius

Recommendation in Full

1. That the Panel confirm the Habitats Regulation Assessment in **Appendix 1** of this report.
2. Delegate to the Head of Transport and Planning to grant planning permission subject to the planning conditions recommended at the end of this report and the completion of a S.106 or S.111 Legal Agreement to secure 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.
3. That the Head of Transport and Planning be given delegated powers to add, vary and /or delete conditions as necessary, and to refuse the application in the event that item 2 above is not completed within a reasonable timescale.

1. Background

- 1.1 In July 2021, a previous planning application (ref no. 21/00871/FUL) for an identical proposal was refused by officers on amenity grounds (full reason for refusal is set out in the decision notice in **Appendix 5**). The applicants subsequently appealed the decision and the Appeal Inspector did not uphold the Council's grounds for refusal, but dismissed the appeal nevertheless (**see Appendix 3**) solely on grounds of a lack of mitigation measures to address the significant affect upon European designated sites in relation to the additional overnight sleeping accommodation created by the 7th bedroom in the large HMO. In short, the appeal Inspector found it appropriate to have a 7 bed HMO at 24 Wilton Crescent but dismissed the appeal on a technical ground that required further work.

The applicants have resubmitted this application and seek to address the appeal decision by making a financial contribution towards the Solent Disturbance Mitigation Project (SMDP) to mitigate recreational disturbance to birds on Solent shorelines, and by signing up to the Eastleigh Nutrient offset scheme to mitigate increased levels of nitrogen emissions into protected waters.

2. The site and its context

- 2.1 This application site comprises a 2 storey terraced dwelling (with loft conversion) in a residential street. The site is located close to the edge of the city centre and in close walking distance to the Bedford Place shopping area and the city centre parks. Bedford Place car park lies nearby, and the backs of housing in Amoy Street are found to the rear of the site. The property is currently lawfully occupied as a C4 HMO (up to 6 unrelated persons) with access to communal space and small garden.
- 2.2 The surrounding area is characterised by a mainly close knit terraced residential properties of uniform style. The properties in the locality comprise of mixed housing types including flats, HMOs, and family homes. Within the typical 40m radius taken from the application site as shown by the map of licensed HMOs in **Appendix 4**, there are 33 properties split into 9 flat conversions, 18 HMOs, and 8 family dwellings.

3. Proposal

- 3.1 This application seeks permission for the change of use from an established 6-bed house of multiple occupation (HMO, class C4) to a larger HMO for 7 unrelated persons (class sui generis). This includes the installation of larger rear dormer to create the 7th bedroom in the roofspace. The rest of the internal layout will remain unchanged including the 35sqm communal living area already available to the occupants. The applicant also proposes to provide a cycle store in the rear garden to accommodate 7 spaces.

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 2**.
- 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.

5. Relevant Planning History

- 5.1 The relevant planning history relates to the appeal decision and previous refused application (ref no. 21/00871/FUL) (**see Appendices 3 & 5**). The outcome of the Inspectors decision is taken into consideration in section 6 of the report. The Inspectors decision to not uphold the Council’s previous reason for refusal should be treated as a significant material consideration in determining this current application.
- 5.2 The only material change in circumstances since the Inspector’s decision that would override their decision is the Council’s new approach to include HMOs in the residential mitigation schemes for protected habitats.

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 02.06.2023. At the time of writing the report **10 representations** (including ward councillor Evemy) have been received from surrounding residents. The following is a summary of the points raised:
- 6.2 ***Harmful to character and amenity. The over-intensive use of the property will result in additional comings and goings to the detriment of established residential amenity. There have been regular noise complaints against HMOs in***

Wilton Avenue so a larger HMO will exacerbate the problem.

Response

Although the Council previously refused the application on these amenity grounds, the Inspector's decision (**see Appendix 3**) found that the amenity impacts would be acceptable with regards to the intensification of use. The Inspector's decision forms a material consideration that should be afforded significant in deciding the present application for the same proposal.

- 6.3 ***The dormer is out of character and would result in loss of light and privacy to neighbouring occupiers.***

Response

The separation distances between neighbouring properties and the modest size of the dormer are considered not to result in an adverse loss of light and privacy. The modest size of the dormer at the rear will not be out of keeping with the character and appearance of the host property and local area. The appeal Inspector did not cite the dormer as 'harmful' and so it would be wrong of the Council to do so now.

- 6.4 ***Additional HMO population in an area over-saturated by HMOs which cause a negative impact on local environment from over-crowding, anti-social behaviour and noise disturbance, high parking demand, and poor refuse management. This will further erode the imbalance of family homes in the local community and transient population. The area should be returned back to family homes and longer term residents who will invest in the upkeep of the area. The changes prevent the future use of the property being adopted by diverse users such as families and young professional renters.***

Response

The Inspector's decision (**see Appendix 3**) found that the difference in occupation between 6 and 7 persons living independently of each other would not adversely affect the character of the area with regards to these social and environmental impacts. Whilst the property is being enlarged to 7 bedrooms, it remains as single property so would not prevent its reuse as a family home in the future.

- 6.5 ***Inadequate amenity space for the residents.***

Response

The usability and quality of the small garden space is considered adequate and fit for purpose for the occupiers to enjoy sitting out, whilst they benefit from a large communal living area on the ground floor. The smaller garden size is not uncharacteristic of the close knit nature of terraced housing in Wilton Avenue, whilst this is offset by the city centre parks being in walking distance to allow for recreational opportunities. The appeal Inspector did not cite the garden size as 'harmful' and so it would be wrong of the Council to do so now.

- 6.6 ***The Inspector's concerns should be addressed to mitigate the affects of creating additional overnight accommodation on the Special Protection Areas under Habitats Regulations.***

Response

Agreed. Officers are satisfied that the applicant can mitigate these impacts and that appropriate recreational disturbance and water quality mitigation will be secured. See section 7.7 of the report and the attached Habitats Regulations Assessment that confirms impacts on Protected Sites that can be mitigated.

Consultation Responses

6.7

Consultee	Comments
Environmental Health	No objection. No noise complaints have received regarding the property since 2014.
Cllr Evey	<p>24 Wilton Avenue is a two storey, mid-terrace, residential property, which is sited on the south side of Wilton Avenue, within an established residential area of similar properties. This proposal increases it to a three storey property which could set a precedent for the conversion and intensification of use of other properties in the terrace. The existing amenity space for six adults is barely adequate.</p> <p>Also the bin provision and storage less than adequate. There is already a serious problem in the area of HMO's with inadequate bin provision leading to inappropriate use of recycling bins from which contaminated recycling is not collected, over-full standard waste bins that can be accessed by gulls etc and black bags as side waste which are torn open by foxes, rats etc. Currently this HMO of 6 adults only has two domestic bins one for general waste the other for recycling and no dedicated space for their storage, currently they are in front of the downstairs front window. Without adequate bin facilities increasing the size of this property would add further pressure on the already inadequate provision which is likely to lead to an increase in litter and vermin in the area.</p> <p><u>Officer Response</u> <i>The occupants will have access to a smaller than typical garden, however, the quality space is fit for purpose and compensated by the access to city centre parks.</i></p> <p><i>The bin storage arrangement on the frontage is not ideal, however, this is an existing circumstance for the property and elsewhere is Wilton Avenue due to the terraced nature of the properties. There are no other reasonable options to relocate the storage that will be convenient for the residents (75m carry distance from the rear garden on collection days). A condition can be applied to ensure adequate bin storage capacity is retained. As such, the impacts of the additional waste demand generated by the additional occupant will not warrant a reason for refusal and wasn't considered an issue by the appeal Inspector.</i></p>

7.0 Planning Consideration Key Issues

- 7.1 The key issues for consideration in the determination of this planning application are:
- The principle of development;

- Design and effect on character;
- Residential amenity;
- Parking highways and transport and;
- Likely effect on designated habitats.

7.2 Principle of Development

7.2.1 The principle of an HMO is established as a previous Inspector has found a 7th person also acceptable at this address. Policy H4 (HMOs) and CS16 (Housing Mix) supports the creation of a mixed and balanced community, whilst the policies require HMO proposals to be assessed against maintaining the character and amenity of the local area. Furthermore, these policies acknowledge there is a need to deliver a mix of housing for lower income households. In this instance the 10% threshold test (carried out over a 40m radius) as set out in the HMO SPD is not relevant as the local concentration of properties occupied as HMOs would remain unchanged as a result of the proposal.

7.2.2 Section 4.6 of the HMO SPD states that cases of intensifying the use from a small to a large HMO will be assessed on their own individual merits on a case by case basis against the council's relevant policies and guidance, including standard of living conditions and parking standards set out in section 5. Other impacts will be assessed as set out in the policy text. Section 4 of the HMO SPD sets out that notwithstanding the threshold limit and exceptional circumstances, other material considerations (such as intensification of use, highway safety, residential amenity of future and existing occupiers) arising from the impact of the proposal will be assessed in accordance with the council's relevant development management policies and guidance.

7.2.3 Following the previous decision by the Planning Inspector to dismiss the same scheme due to Habitat Regulation impacts only, the Planning Panel should be mindful that the applicant could be awarded costs in defending a second appeal as a result of the Council introducing new reasons for refusal or imposing reasons which were not endorsed by the previous Inspector.

7.3 Design and effect on character

7.3.1 As the property is already used as a C4 HMO (up to 6 persons), the creation of larger HMO will not significantly change the character of the area as the mix and balance of households will not change. The Council did not include any reasons for refusal relating to character impact under the previous application (**see Appendix 5**), and the Inspector's decision raised no concerns with regards to the impact on the character of the area including adequacy of refuse provision and management (see paragraphs 32 and 33 in **Appendix 3**).

7.3.2 Whilst incidences of unsightly refuse management by residents can be a visual amenity issue for HMOs it is acknowledged that there is limited influence the planning system can have to change the existing storage arrangement for these terraced properties. The additional waste demand generated by the additional occupant would not warrant a reason for refusal, or a change to the existing storage arrangement at the front of the property. A condition will be applied so that the adequacy of the current bin capacity can be checked with the Council's refuse team. It should be noted that other departments in the Council are working towards improving the poor management of bins linked to HMO properties.

7.3.3 The design of the proposed roof dormer would not be out of keeping with the character and appearance of the host building. The Council did not previously include any design reasons for refusal relating to the roof extension (**see Appendix 5**). The Inspector's decision did not explicitly comment on the roof extension's visual impact to the character of the area (see **Appendix 3**), but they are duty bound to consider the application as a whole and could have raised their own design concerns ahead of determining the previous appeal, but didn't.

7.3.4 As such, the proposed intensification to an established HMO would not adversely affect the character of the local area in accordance with policies SDP1, SDP7, H4 of the Local Plan Review and CS13 and CS16 of the Core Strategy as supported by the relevant guidance of the Residential Design Guide and Houses in Multiple Occupation SPD.

7.4 Residential amenity

7.4.1 Turning to the impact of the increased movements and activities associated with the change of use to a larger HMO, the Council refused the previous application on amenity grounds, given that the resultant noise and disturbance from the intensification in use by 1 person would adversely affect amenity of the neighbouring occupiers (**see Appendix 5**). This was due to the close-knit terraced nature of the neighbouring properties that would notice the cumulative increase of movements and activity associated with the HMO occupiers living independently of each other. Both properties living either side of the HMO are converted into flats which are in turn sandwiched by HMOs (**see Appendix 4**). This was not supported by the appeal Inspector (see paragraphs 33-41 of **Appendix 3**).

7.4.2 One additional resident is unlikely to result in a significantly discernible increase in noise and disturbance between neighbouring houses given the unchanged layout of communal areas of the property. The Inspector found that the use of the large HMO was compatible with the local prevailing context and nature of transient and high density back-to-back terraced housing and Wilton Avenue being a well-trafficked road, and both adjoining properties are occupied as two flats (paragraph 35 to 39 refers).

7.4.3 The Council is now duty bound to put significant material weight on the Inspector's decision. A condition has been applied to limit the occupancy to no more than 7 persons to prevent further intensification of use.

7.4.4 Paragraphs 2.2.1 and 2.2.4 of the Residential Design Guide expects extensions to maintain the outlook, privacy and light of neighbouring occupiers, and sets a minimum 28m back to back separation distance for privacy between 3 storey and 2 storey housing. The existing arrangement, and the introduction of a dormer, will not adversely affect the amenity of the neighbouring occupiers in terms of loss of privacy, light and outlook. Significant material weight should be given to the Inspector's decision that states that the proposed overlooking '*would not result in a materially greater amount of overlooking to neighbouring properties than currently exists*' (para.44).

7.4.5 As such, the proposed development will meet the aims of saved policies SDP1(i), SDP7 and H4 to safeguard the residential amenity of local residents as supported by the guidance in the Residential Design Guide and Houses in Multiple Occupation SPD.

7.5 Living conditions of future occupiers

7.5.1 The proposal will effectively provide a 7th bedroom (13.5sqm with additional en-suite shower) in the loftspace facilitated by the new roof dormer. All residents will benefit from the large existing ground floor communal living area (35sqm).

7.5.2 The subsequent roof section plan provided by the applicant demonstrates that there would be adequate headroom for the bedroom space within the extended roofspace. The expanded accommodation will therefore provide acceptable living conditions for the future occupiers. The floor area of the new bedroom space in the loft will comply with minimum HMO license standards, whilst the occupants would benefit from sufficient ventilation, headroom and outlook/light/privacy.

7.5.3 The HMO property has access to 25sqm of useable garden space (after discounting the new cycle store). Policy H4(iii) of the Local Plan Review requires adequate amenity space to be provided for the occupants which is fit for purpose and enables sitting out. Whilst the size of the garden is much smaller than the 50sqm required under the minimum space standards for a family dwelling as set out in the Residential Design Guide (para 2.3.14 refers), the standards can be applied flexibly in areas of higher density housing. Furthermore, the smaller size garden is offset by residents being within walking distance of the central parks and the common for recreational opportunities.

7.5.4 As such, the proposal is in compliance with policy SDP1(i) and H4 of the Local Plan Review as the internal and external layout of the large HMO would provide acceptable living conditions for the future and existing occupants.

7.6 Parking highways and transport

7.6.1 There is no off-road parking available for majority of houses in this part of the street, whilst the site is sustainably located near the city centre with high accessibility to public transport and shops/services, and surrounding streets are controlled by parking permit restrictions. The additional trips associated with the large HMO use would not arise in an adverse impact to the local road network.

7.6.2 The parking standards set out in the HMO SPD (section 5) expects the 7 bedroom HMO to provide a total maximum of 3 parking spaces within this non-high accessible location as defined by the accessibility map of the SPD. Nil parking is still policy compliant as the Council does not have minimum standards. The parking demand is no different to 6 bedroom HMO under the SPD standards. As such, it is considered that the overspill impact from one additional person will not significantly affect the availability of street parking for existing local residents. The Inspector found in paragraph 43 that the availability of local street parking and high accessibility near the city centre would absorb the minor difference in parking demand for the additional occupant.

7.6.3 Conditions can be used to secure details of the secure and covered cycle storage facility in the rear garden, and refuse storage. Whilst the existing arrangement of bin storage on the front forecourt is not ideal, as similar for other properties along Wilton Avenue, it is accepted that there is limited scope to reprovide a storage space elsewhere on the property for the residents.

7.6.4 As such, the parking and access impact associated with the large HMO will not adversely affect highways safety or residential amenity in accordance with policy SDP1(i) of the Local Plan Review.

7.7 Likely effect on designated habitats

7.7.1 **This is perhaps the key issue following the Inspector's decision.** Having regard to the appeal decision's paragraphs 6 to 22 (**see Appendix 3**) officers acknowledge that increased occupancy of larger HMOs triggers the requirement for a Habitats Regulation Assessment (HRA). The proposed development, as a residential scheme which increases overnight accommodation with the occupancy rate to be based upon 1 person per bedroom, has been screened (where mitigation measures must now be disregarded) as likely to have a significant effect upon European designated sites due to an increase in recreational disturbance along the coast. Accordingly, a HRA has been undertaken, in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 and is appended at **Appendix 1**.

7.7.2 A nitrates budget calculator has been submitted since the validation of the application, which sets out the nitrogen emissions to be mitigated. A Grampian condition will require the requisite number of credits from the Eastleigh Nutrient offset scheme to be secured prior to the occupation of the large HMO. The SDMP contribution will be secured by officers prior to releasing permission as per the delegation sought in the above recommendation. The HRA concludes that, providing the specified mitigation of a Solent Recreation Mitigation Strategy (SRMP) contribution and nitrates credits, are secured the development will not adversely affect the integrity of the European designated sites.

8. Summary

8.1 This application follows an appeal. The appeal Inspector concluded that the intensification in HMO bedrooms would have the potential to create new impacts on sensitive ecological habitats in terms of recreational disturbance and impact on water quality in the Solent catchment area. That was the only harm identified from these proposals.

8.2 Officers have reassessed their previous reason for refusal on amenity grounds against the same proposal for a large HMO (change from 6 to 7 unrelated persons). Officers have placed significant weight on the Inspector's assessment and that no material harm has been identified by this development. Furthermore, the additional accommodation will benefit housing delivery for lower income households without a loss of additional family homes in the local community. 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 approval.

9. Conclusion

9.1 It is recommended that planning permission be granted subject to a securing contributions towards the Solent Disturbance Mitigation Project to mitigate against recreational disturbance to special protection areas, and a planning condition to secure nitrates mitigation alongside the other conditions set out below.

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) 4.(f) (qq) (vv) 6. (a) (b) 7. (a)

Stuart Brooks PROW Panel 11.07.23

PLANNING CONDITIONS

1. Full Permission Timing (Performance)

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).

2. Occupation limit (Performance)

The HMO use hereby approved shall be occupied by no more than 7 persons.

Reason: In the interests of protecting the amenity of neighbouring occupiers.

3. Bin size capacity (Pre-occupation)

Prior to the occupation of development, details of adequate size of refuse and recycling bin capacity shall be submitted to and approved in writing by the Local Planning Authority. The refuse bins shall be provided in accordance with the agreed details before the development is first occupied and thereafter retained as approved.

Reason: In the interests of visual amenity.

Note to applicant: In accordance with para 9.2.3 of the Residential Design Guide (September 2006): if this development involves new dwellings, the applicant is liable for the supply of refuse bins, and should contact SCC refuse team at Waste.management@southampton.gov.uk at least 8 weeks prior to occupation of the development to discuss requirements.

4. Cycle storage facilities (Pre-Occupation Condition)

Before the development hereby approved first comes into occupation, secure and covered storage for 7 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.

5. Eastleigh Nutrients offset scheme (Pre-occupation)

The development hereby permitted shall not be occupied unless a Nitrate Mitigation Vesting Certificate confirming the purchase of sufficient nitrates credits from Eastleigh Borough Council Nutrient Offset Scheme for the development has been submitted to the council.

Reason: To demonstrate that suitable mitigation has been secured in relation to the effect that nitrates from the development has on the Protected Sites around The Solent.