

ITEM NO. 9**COMMITTEE DATE:** 20/03/2017

APPLICATION NO: 16/1560/03 FULL PLANNING PERMISSION
APPLICANT: Mr Smith
Four Smiths Ltd
PROPOSAL: Change of use to Sui Generis (7 Bed HMO) and
replacement of rear conservatory and store
LOCATION: 16 Mowbray Avenue, Exeter, EX4 4HB
REGISTRATION DATE: 02/12/2016
EXPIRY DATE: 27/01/2017

DESCRIPTION OF SITE/PROPOSAL

The application site relates to 16 Mowbray Avenue. The property is located within the Duryard and St James Ward but is specifically excluded from the Article 4 Direction restricting a change of use to C4 HMO. An application is required as the proposal is to change the use from C3 to Sui Generis in order to accommodate 7 residents. The property occupies a prominent position on the corner of Mowbray Avenue and Howell Road. The application site is located within the Longbrook Conservation Area. The present use of the property is a shared house for 4 residents with a separate bed sit on the top floor. The proposal also involves the redevelopment of the rear conservatory and store room to provide a dining area.

The proposed layout would provide one bedroom on the ground floor with separate lounge, kitchen, dining and WC. At first floor there would be 3 bedrooms and 2 shower rooms and at second floor there would be 3 bedrooms and a WC. Externally space is provided for a bike storage shed for 7 bikes and space for wheelie bins within the side garden area.

SUPPORTING INFORMATION SUPPLIED BY THE APPLICANT

The applicant has submitted a design and access statement to support the application.

REPRESENTATIONS

No representations received from neighbours.

CONSULTATIONS

The Exeter St James Forum: The Forum has objected to this proposed change of use. The Forum state that the application is contrary to Local Plan Policy H5b and the St James Neighbourhood Plan C1e, C1a, c and d for the following reasons:

- Altering the internal and external layout of the house would alter the character of the house and reduce the likelihood of the property returning to a family home;
- Lack of parking provision will put further pressure on the Residents' Parking Scheme and parking in the wider area;
- Concern about other C4 dwellings in exempt streets applying for Sui Generis and a subsequent increase in residents in the ward;
- Negative impacts of over-concentration of student residents on permanent residents of St James.

ECC Environmental Health: Recommend a condition restricting construction and demolition hours.

DCC Highways: Additional parking permits will not be issued for this development. There is no on site parking provision however a car free development is acceptable in this location. Recommends that a condition requiring secure cycle parking is included.

PLANNING POLICIES/POLICY GUIDANCE

Central Government Guidance:

- National Planning Policy Framework

Exeter Local Development Framework Core Strategy

Exeter Local Plan First Review 1995-2011:

- H5 - Diversity of Housing;

This policy states that the conversion of dwellings to HMOs will be permitted subject to the following:

(a) The scale and intensity of use will not harm the character of the building and locality and will not cause an unacceptable reduction in the amenity of neighbouring occupiers or result in on street parking problems. In accordance with this requirement it is considered that the intensity of use will not harm the character and locality of the building. The property is a large end property with space to accommodate 7 residents with a good level of shared amenity space. The adjoining properties and the properties which share a boundary in the street to the rear of 16 Mowbray Avenue are also registered as Council Tax Exempt properties for this reason it is considered that a further HMO in this location would not harm the amenity of neighbouring occupiers. The proposal will not result in on-street parking problems as residents will be encouraged to leave their cars at home and will be provided with a secure location to store cycles if they wish to bring one. The house is located within walking distance of both the University main campus and the City Centre facilities. Devon County Council's Highways Officer has confirmed that further on-street parking permits will not be issued to serve this development;

(b) The proposal will not create an over concentration of the use in any one area of the city which would change the character of the neighbourhood or create an imbalance in the community. Mowbray Avenue is one of the exempt streets from the Article 4 Direction. 11 of the 15 properties in this street are already listed as Council Tax Exempt. It is therefore considered that there is an existing imbalance in the community and as such this application for a change of use to sui generis would not alter the character of the area or imbalance the community.

- C1 - Conservation Areas;

In accordance with this policy the proposed change of use and redevelopment of the store and conservatory would not harm the character or appearance of the Conservation Area. Use of the property for 7 residents would not detract from the current appearance of the property. The house retains a single main entrance and provides storage for bikes and bins so as not to detract from the character or appearance of the dwelling.

Exeter City Council Supplementary Planning Document:

- Exeter City Council Supplementary Planning Document, Houses in Multiple Occupation (Including Class C4 Uses) - Adopted 2014;

The purpose of this SPD is to clarify the implementation of Policy H5(b) of the Exeter Local Plan. Within St James Ward it clarifies implementation of Policy C1(e) of the Exeter St James Neighbourhood Plan. The guidance applies to all planning applications for change of use

from homes (Class C3 of the Use Classes Order) to Class C4 or Sui Generis (houses in multiple occupation of seven or more occupants) within the areas shown on the plan. The SPD states that the guidance does not apply to the nine streets that are not subject to the Article 4 Direction. Mowbray Avenue is one of those excluded streets. The SPD also lists a number of exceptional circumstances where a change of use may be permissible. An example used in these exceptional circumstances is in cases where very localised communities are already so imbalanced that the policy objective of protecting a balance is unlikely to be achieved. Whilst this guidance does not directly apply to Mowbray Avenue as an exempt street the logic of the exception remains valid. Just 4 of the 15 properties on Mowbray Avenue are not listed as Council Tax Exempt. The adjoining property, as are the properties to the rear are also Council Tax Exempt.

Exeter St James Neighbourhood Plan (March 2013):

C1 - Houses in Multiple Occupation:

- a) The proposed development would not harm the character and appearance of the building, adjacent buildings or local landscape context. On the contrary it is considered that the application will enhance the appearance of the building. The conservatory to the rear is in poor condition and not of a good design. The application proposes to redevelop the conservatory and store room to form a dining area. Upgrading this structure is considered to improve the appearance of the rear of the property. No other external alterations are required to facilitate the proposed change of use;
- b) The proposed design, layout and intensity of use of the building would not have an unacceptable impact on neighbouring residential amenities. It is considered that the use of the property for 7 residents is not an over-intensification of use. The property provides a separate lounge, kitchen and dining room, two bathrooms and two separate wc's. Each of the bedrooms exceed the sizes required for letting rooms. The use would not have a detrimental impact on neighbouring residential amenities. Our records of Council Tax exempt properties show that the adjoining property and the property to the rear are also in HMO use;
- c) As already discussed internal space has been provided at an appropriate quantity. The property also provides external amenity space for residents. There is also dedicated space for bin storage and space to store 7 cycles. No car parking has been provided, however, given the location of Mowbray Avenue in close proximity to the City Centre and the University a car free development is considered the most appropriate. Devon County Council Highways concurs with this view.
- d) As a car free development residents would be encouraged not to bring their car. Cycle parking would be provided for each resident to provide sustainable travel options.
- e) Part E of policy C1 states that *'change of use to HMO will not be permitted unless the proposal would not result in an over concentration of HMOs in any one area of the ward, to the extent that it would change the character of the area or undermine the maintenance of a balanced and mixed local community'*. The important part of this policy in this case is the second part. It is accepted that an over concentration of HMOs already exists in this area. An analysis of Council Tax Exempt properties in Mowbray Avenue showed that 11 of the 15 properties are listed as Council Tax Exempt. The second part of this states that applications should be refused where it would change the character of the area or undermine the maintenance of a balanced community. Mowbray Avenue is excluded from the Article 4 Direction. Therefore a change of use from C3 to C4 is permitted development. The chances in this case are that this property will be used as a HMO for 6 residents, regardless of the outcome of this application. The key question therefore is whether use as a HMO for 7 residents would change the character of the area. It is considered that the character of Mowbray Avenue is as a street which is primarily occupied by students residing in HMO's. Therefore, the addition of 1 extra resident would not change the prevailing character of the area. While such proposals have a cumulative impact it does not in isolation cause significant harm to the balance of the community.

H1 - Heritage:

The proposed change of use and alterations to the rear of the property conserves the character and appearance of the Conservation Area. Use of the property for 7 residents is considered acceptable and would not result in harm to the character or appearance of the property and subsequently the Conservation Area.

APPEAL DECISIONS

The following are two appeal decisions which are material considerations to this application.

32 Danes Road (15/0346/18): This is an appeal against the Council's decision to issue a refusal of a certificate of lawfulness for a proposed change of use from C4 to Sui Generis to use the house as a HMO for 7 residents. The inspector noted Class C4 of the Town and Country Planning (Use Classes's) Order 1987, as amended, which is headed 'Houses in Multiple Occupation' indicates that the class applies to the use of a dwelling house for this purpose "*by not more than six residents*" In the light of this, it is perhaps self-evident that the use proposed, would fall outside of Class C4. Likewise, it is equally apparent that the additional occupancy would represent an intensification of the use of the property. The inspector then goes on to discuss the definition of development in section 55(1) of the 1990 Act. This includes "*the making of any material change in the use of any buildings or other land*". While the intensification of a use can amount to a material change of use, the Courts have held that the mere intensification does not in itself constitute a material change of use. The inspector concluded that the scale of the increase of residents and the additional degree of activity is unlikely to be so great that it would materially alter the fundamental character of the use of the appeal property as a HMO. The inspector found that as a matter of fact and degree, the proposed use would not amount to a material change of use. It would not therefore amount to development as defined by section 55 of the 1990 Act and so would be lawful.

8 Velwell Road (12/1673/03): This is an earlier appeal against the Council's decision to refuse planning permission for a change of use from C4 to Sui Generis for a HMO up to 7 residents. The inspector took a different view to that of Danes Road and concluded that the effect of increasing the occupation of a dwelling from six to seven persons, whilst small, would not be insignificant. It would increase the density of occupation of the dwelling to an extent that would be out of character in the residential street, and it would lead to an unbalancing of the locality.

OBSERVATIONS

It is accepted that the proposed development is contrary to the intentions of the aims of the Exeter St James Neighbourhood Plan which seeks to maintain a balanced community by preventing the increase in HMO's in the ward. However, a closer analysis of the policies and the specific circumstances of this property makes it difficult to provide a robust reason for refusal. The policy analysis above has demonstrated that the impact of this proposal on the St James Ward is negligible. Use of the property as a HMO for 3-6 residents is lawful and in fact likely due to the exclusion of this street from the Article 4 Direction which restricts permitted development to C4 dwellings. The property is considered to be an adequate size for 7 residents and would not be an over-intensive use of the property.

The two appeal decisions above offer conflicting guidance on the situation with one Inspector concluding that an additional person would have a material impact and the other concluding that it wouldn't. Perhaps more similarities could be drawn between the Danes Road appeal and this application as both streets are excluded from the Article 4 Direction where the objective of maintaining a community balance is unlikely to be achieved due to the existing concentration of student uses. This is a finely balanced proposal with strong arguments for

and against the proposed change. On balance it is considered that the impact of this proposal is acceptable and should be approved.

RECOMMENDATION

APPROVE subject to the following conditions:

- 1) C05 - Time Limit - Commencement
- 2) The development hereby permitted shall not be carried out otherwise than in strict accordance with the submitted details received by the Local Planning Authority on 2 December 2016 (*dwg. no(s). 82-P01, 82-P02, 82-P03, 82-P04, 82-P04 and 82-P05*), as modified by other conditions of this consent.
Reason: In order to ensure compliance with the approved drawings.
- 3) Prior to the occupation of the dwelling as a Sui Generis HMO secure cycle parking for 7 bicycles will be provided in accordance with the details provided on *dwg.no. 82-P04A* received by the Local Planning Authority on 09 January 2017.
Reason: To encourage sustainable travel.

Local Government (Access to Information) 1985 (as amended).
Background papers used in compiling the report:

Files of planning applications available for inspection from the Customer Service Centre, Civic Centre, Paris Street, Exeter: Telephone 01392 265223