

**WELWYN HATFIELD BOROUGH COUNCIL
ASSISTANT DIRECTOR (PLANNING)**

DELEGATED APPLICATION

Application No: 6/2023/1233/FULL
Location: 65 Tiger Moth Way Hatfield AL10 9LT
Proposal: Change of use from HMO to residential institutions (class C2)
Officer: Ms Ashley Ransome

Recommendation: Refused

6/2023/1233/FULL

Context	
Site and Application description	<p>The application site is located on the east side of Tiger Moth Way within a residential area of Hatfield. Opposite the site is an area of public open space and a playground. The application dwelling is a three storey, mid-terrace property with a small rear garden. A parking court lies to the rear of the property outside of the application site.</p> <p>The application dwelling was last occupied as a small House in Multiple Occupation (HMO) with five bedrooms which falls within Use Class C4.</p> <p>The development proposal involves a change of use from Class C4 (HMO) to Class C2 (residential institution). The drawings which accompanied the application show that three bedrooms are proposed.</p> <p>Two concurrent applications for similar development proposals at No.59 and No.61 Tiger Moth Way are under consideration as detailed below in the 'relevant planning history' section of the report.</p>
Constraints (as defined within WHDP 2005)	<p>SAG - 0 - Distance: 0 LCA - Landscape Character Area (De Havilland Plain) - Distance: 0 PAR - PARISH (HATFIELD) - Distance: 0 Wards - Hatfield Villages - Distance: 0 A4HD - Article 4 HMO Direction - Distance: 0 A4DAS - Hatfield Additional Storeys Article 4 Direction - Distance: 0 HAT - Hatfield Aerodrome - Distance: 0 HEN - No known habitats present (medium priority for habitat creation) - Distance: 0 SAGB - Sand and Gravel Belt - Distance: 0 HHAA - Hatfield Heritage Assessment Area (Hatfield Business Park) - Distance: 0</p>
Relevant planning history	<p>Application Number: 6/2023/1234/FULL Decision: Under consideration Decision Date: Proposal: Change of use from HMO to residential institutions (class C2)</p> <p>Application Number: 6/2023/1239/FULL Decision: Under consideration Decision Date: Proposal: Change of use from HMO to residential institutions (class C2)</p>

Consultations			
Neighbour representations	Support: 0	Object: 0	Other: 0
Publicity	Site Notice Display Date: 26 July 2023 Site Notice Expiry Date: 16 August 2023 Neighbour Letters		
Summary of neighbour responses	No neighbour representations received.		
Consultees and responses	<p>WHBC Public Health and Protection – There is potential for a noise disturbance to occur depending upon the specific use of the property (if there is the intention to use the property as care home) and how this is managed. A noise management plan should be created, which identifies the risk of noise disturbance, and the control measures that will be put in place to mitigate this risk. This should consider noise from staff arriving and leaving, activities within the house, management of residents, deliveries, waste disposal, vehicles arriving and the times at which these occur. It would be up to the applicant to create a document for review that includes any potential noise impact associated with the intended use of the property.</p> <p>Hertfordshire Constabulary – This is now one of three neighbouring properties, where my comment at the moment is identical. Thank you for sight of this application. Before I could comment, I would need to know who the intended occupants are to be. The security requirements for an elderly population, with alzheimer's would be entirely different for that of, say a children's home. The documents supplied do not supply this information. If I could be told who the intended occupants are, then I can comment further.</p> <p>WHBC Client Services – No additional impact on existing refuse/recycling services.</p> <p>Hatfield Town Council – No response received.</p> <p>Children's Services, Hertfordshire County Council – No response received.</p>		
Relevant Policies			
<input checked="" type="checkbox"/> NPPF <input checked="" type="checkbox"/> D1 <input checked="" type="checkbox"/> D2 <input type="checkbox"/> GBSP1 <input checked="" type="checkbox"/> GBSP2 <input checked="" type="checkbox"/> M14 <input checked="" type="checkbox"/> Supplementary Design Guidance <input checked="" type="checkbox"/> Supplementary Parking Guidance <input checked="" type="checkbox"/> Interim Policy for car parking and garage sizes Others: R19, D9, H3, H4, H9 <u>The Welwyn Hatfield Draft Local Plan Proposed Submission (August 2016) Incorporating The Proposed Main Modifications (January 2023) (Draft Local Plan):</u> SP1 Delivering Sustainable Development SP7 Type and Mix of Housing SADM9 Loss of Residential SP9 Place Making and High Quality Design SADM11 Amenity and Layout SADM12 Parking, Servicing and Refuse			

Main Issues	
Principle of Development	<p><u>Special Needs Housing:</u></p> <p>District Plan Policy H9 Special Needs Housing sets out that <i>“The Council will grant permission for schemes which provide special needs accommodation, particularly in town centres or in areas which are close to community facilities and services. Incorporation of special needs housing schemes in residential development in central areas will be encouraged”</i>. In particular, Policy H9 refers to young people at risk. Similarly, within the Council’s Emerging Local Plan 2016, Policy SP7 sets out the type and mix of housing to be delivered, which includes specialist housing. Specialist housing comprises a mix of people who require to live in an environment providing care, including vulnerable people.</p> <p>As such, it is considered that the proposal of a residential institution would provide vulnerable people a safe place to reside, which is considered to meet with Policy H9 of the Welwyn Hatfield District Plan 2005 and Policy SP7 of the Council’s Emerging Local Plan 2016.</p> <p><u>Loss of Residential:</u></p> <p>Policy H3 outlines that <i>“Planning permission will not be granted for the redevelopment or change of use of premises which would result in a net reduction in the number of dwellings in the district”</i>. Policy SADM9 of the Council’s Emerging Local Plan 2016 is similar.</p> <p>The courts have found that HMOs, including both small HMO (Use Class C4) and large HMOs (sui generis), are ‘dwellinghouses’. A residential institution is not a dwellinghouse. The change of use from a HMO to a residential institution would therefore result in the loss of a dwellinghouse.</p> <p>Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions on planning applications should be made in accordance with the development plan unless material considerations indicate otherwise. The proposed change of use would result in the a net reduction in the number of dwellings in the district in conflict with District Plan Policy H3. However, case law has established that a breach of a particular development plan policy does not necessarily equate to a failure to accord with the development plan as a whole. The Court of Appeal judgment <i>Corbett v Cornwall Council [2020]</i> provides relevant guidance. Referring to previous case law, it held that the section 38(6) duty can be met where the decision-maker establishes whether or not the proposal accords with the development plan as a whole, given that it is not at all unusual for development plan policies to <i>“pull in different directions”</i> and a judgement therefore has to be made.</p> <p>Whilst the conflict with Policy H3 and emerging Policy SADM9 is acknowledged, it is not considered that this conflict alone would amount to reasonable grounds to withhold planning permission. Other factors including the provision of special needs housing in accordance with the objectives of Policy H9 and emerging Policy SP7 are to be weighed in the balance.</p>
Design (form, size, scale, siting) and Character (appearance	<p>District Plan Policy D1 requires the standard of design in all new development to be of a high quality and Policy D2 requires all new development to respect and relate to the character and context of the area in which it is proposed. It notes that development proposals should as a minimum maintain, and where</p>

within the streetscene)

possible, should enhance or improve the character of the existing area. Policy GBSP2 requires that within specified settlements development will be limited to that which is compatible with the maintenance and enhancement of their character.

Emerging Policy SP9 deals specifically with place making and requires proposals to deliver high quality design that fosters a positive sense of place by responding to a set of principles which include a requirement for proposal to be informed by an analysis of the site's character and context so that they relate well to their surroundings and local distinctiveness.

Together the above policies require that new development is of the highest possible standards of design and layout, and that it can take place without material detriment to the existing character of the area, are sympathetic to local character. This is consistent with the NPPF which states at paragraph 130 that decisions should ensure developments will function well and add to the overall quality of the area, are sympathetic to local character and maintain a strong sense of place. Paragraph 134 is clear that Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design.

The proposal would not materially change the physical form of the application property, therefore, in terms of appearance, the proposal is not objectionable. However, consideration of the 'character and context' of the area is not limited to a purely visual assessment. In this regard, the recent Court of Appeal judgement in *Kazalbash v The Secretary of State for Levelling Up, Housing and Communities* is a material consideration. This judgement confirms that it is reasonable, when assessing a development's impact on the character and appearance of an area, to not simply consider the physical changes proposed.

In the case of *Kazalbash v The Secretary of State for Levelling Up, Housing and Communities*, the proposal involved the sub-division of a semi-detached house into two separate dwellings. The proposed conversion would result in no visible change to the property, save each of the new homes having its own parking space and the erection of a fence to divide the property's rear garden into two. The Council Officer's report concluded that the proposal would create two narrow plots and result in a "cramped form of development", "unbalancing the symmetry" between houses and neighbouring homes, which are also detached and semi-detached properties dating back to the inter-war period, harming the "very strong" character and appearance of the street scene. This position was backed up by the Inspector during the appeal, where it was concluded that the proposal would harm the character and appearance of the area. The case was taken to the High Court where it was allowed. This was however subsequently quashed by the Court of Appeal where it was found that the Deputy High Court Judge had erred in law. The Court of Appeal affirmed the position that character and appearance are distinct, going on to conclude that character does matter outside of conservation areas.

Turning to the proposal within this application. In light of the above judgement, whilst it is acknowledged that no physical external changes are proposed within this application, it is however considered that the character of the area would be significantly harmed as a result of the proposed change of use. Depending on the care needs of the occupants, the proposed use would generate a significant increase in the number of visitors to the site, for example: shift workers, various health visitors, family visitors, day care mini-

	<p>buses, emergency vehicles, caterers, clinical waste collections, cleaners, building & garden maintenance workers, etc. The resulting degree of activity associated with the site would result in a marked change in intensity and a significant departure from the established character and nature of the existing use of the property as a C4 HMO and the wider area which is characterised by C3 dwellinghouses.</p> <p>It is also material that two concurrent applications have been submitted at Nos. 61 and 65 Tiger Moth Way for similar proposals (change of use from C4 dwelling to C2 residential institution). Repetition of the type of development proposed is therefore more than theoretical and, under the circumstances, it is reasonable to consider the cumulative impact of several similar forms of development within close proximity. Although each proposal must be considered on its own merits, consistency in decision making is a material planning consideration and required as a broad principle of good administration. If planning permission were to be granted, it would be difficult to resist similar applications from numerous other properties within the wider estate where a similar circumstances exists.</p> <p>The cumulative effect of having three residential institutions in a row (No.59 is a mid-terrace, No.61 is an end of terrace and No.65 is a mid-terrace) would exacerbate the change in character and compound its detrimental impact upon the area.</p> <p>Accordingly, it is considered that the proposed development represents a poor standard of design which is contrary to Policies D1, D2 and GBSP2 of the Welwyn Hatfield District Plan 2005, Policies SP9 of the Welwyn Hatfield Draft Local Plan 2016, the Welwyn Hatfield Supplementary Design Guidance 2005 and the NPPF.</p>
<p>Future occupants living standards</p>	<p>In accordance with emerging Policy SADM11, The National Technical Housing Standard is used for considering the quality of accommodation provided for future occupants and sets out the National Described Space Standards for dwellings. In this instance, as the proposal is for a residential institution and not a dwelling (see above), the standards provide guidance only.</p> <p>The Nationally Described Space Standards sets out that the floor space of a double bedroom should measure 11.5m². From observing and measuring the submitted floor plans, two of the bedrooms (one on the first floor and one on the second floor) do not meet the Nationally Described Space Standards for a double bedroom. It is however acknowledged that these bedrooms remain as existing, along with the consideration that the proposal would not be for dwelling use and thus the standards are therefore only guidance. Moreover, the bedrooms would likely be for a single occupant due to the nature of the proposed use as a residential institution, and if planning permission were granted, the number of occupants could be controlled by condition such that the rooms would be single occupancy only. It is therefore considered that this would not be a reasonable reason to form the refusal of the application.</p> <p>Policies H4 and D1 of the District Plan and the Supplementary Design Guidance requires all residential development to incorporate private amenity space for the use of residents. The Council does not apply rigid standard sizes but space should be functional and usable in terms of its orientation, width, depth and shape.</p>

	<p>The property benefits from a garden to the rear. Whilst the garden is small, it would provide an adequate outdoor amenity space given the level of occupancy proposed and the large areas of public open space nearby.</p>
<p>Impact on neighbours</p>	<p>The NPPF is clear that planning should be a means of finding ways to enhance and improve the places in which people live their lives. This means that authorities should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.</p> <p>Policies D1 and R19 of the District Plan, as well as Policy SADM11 of the Draft Local Plan, seek to ensure that no new development would adversely affect the existing area either in terms of any built form or in terms of the operation of any uses from noise and vibration pollution.</p> <p>As there are no external alterations proposed to the application building, the change of use to a residential institution would not give rise to material adverse impacts on the amenity of occupiers of adjoining or surrounding properties by reason of loss of light, privacy, overshadowing, overlooking or overbearing impact.</p> <p>The operational impact of the proposed use is more nuanced. It is acknowledged that the number of occupants residing at the site would be no different to a large family and the proposed use as a residential institution is a form residential use. However, the way a care home is used could potentially give rise to a greater level of disturbance compared to either a C3 dwellinghouse or a C4 HMO.</p> <p>It is considered that the application lacks sufficient information to enable the Local Planning Authority to fully consider the effects of the proposed development on the amenity and living conditions of neighbouring residents. This is because further details are required in relation to how the residential institution would operate, how it would be managed, and in respect of the specific needs of the occupants that would reside at the residential institution. Nonetheless, it is considered that the proposed use is likely to generate significantly more activity compared to a family home or a C4 HMO, and the occupants themselves may be more likely to generate noise, for example, through shouting. Similar concerns have been expressed by Hertfordshire Constabulary in their representation. It is acknowledged that noise levels would vary depending on factors such as the number of occupants, their ages, care needs, supervision, and the management of the facility. Nevertheless, it is considered that a residential institution has a greater potential to be noisier when compared to a dwellinghouse or a C4 HMO, and the applicant has submitted insufficient information to overcome this concern.</p> <p>Depending on the care needs of the occupants, the proposed use would generate a significant increase in the number of visitors to the site (shift workers, various health visitors, family visitors, day care mini-buses, emergency vehicles, caterers, clinical waste collections, cleaners, building & garden maintenance workers, etc.) which would likely result in significant adverse amenity impacts for neighbouring residents. The increased traffic, noise and potential disturbances associated with a care home would result in a significant departure from the established character and nature of the existing use of the property as a C4 HMO and the wider area which is characterised by dwellinghouses.</p>

	<p>Moreover, consideration should also be given to the two concurrent applications which are currently under consideration by the Council at Nos. 59 and 61 Tiger Moth Way for similar proposals (change of use from C4 dwelling to C2 residential institution). The cumulative impact by way of having three residential institutions in a row (No.59 is a mid-terrace, No.61 is an end of terrace and No.65 is a mid-terrace) is considered to have a significant detrimental impact upon neighbouring amenity. This is because it is considered that the concerns raised above would be significantly exacerbated by way of having three properties in very close proximity to one another with a C2 residential institution use.</p> <p>Given the proximity of adjoining properties and the relative high density of the surrounding development, for the reason set out above, it is considered that the proposed use would result in significant detrimental impacts upon neighbouring amenity contrary to Policies D1 and R19 of the District Plan; Policy SADM11 of the Draft Local Plan; and the NPPF.</p>
<p>Access, car parking and highway considerations</p>	<p>In terms of parking, paragraph 105 of the NPPF states that in setting local parking standards, authorities should take into account the accessibility of the development, the type, mix and use of the development, availability of public transport, local car ownership levels and the overall need to reduce the use of high emission vehicles.</p> <p>Policy M14 of the District Plan 2005 and the Parking Standards Supplementary Planning Guidance (SPG) use maximum standards and are not consistent with the NPPF and are therefore afforded less weight. In light of the above, the Council have produced an interim Policy for Car Parking Standards that states that parking provision will be assessed on a case-by-case basis and the existing maximum parking standards within the SPG should be taken as guidance only. This means that higher or lower car parking standards than those set out in the SPG can be proposed and determined on a case-by-case basis taking into account the relevant circumstances of the proposal, its size context and its wider surroundings.</p> <p>For a C2 use with care staff on premises at all times, the SPG guidelines suggest that one space per five residents' bed spaces is provided, plus one space per two staff. Three bedrooms are proposed, thus one space would be sufficient to accommodate the residents. However, no information has been provided with respect to the number of care staff and other visitors to the site.</p> <p>No details have been provided with respect to the current parking arrangements for occupants or visitors to the site. The application form states that there is no off-street parking and the red line boundary on the location plan solely encompasses the site only, with no off-street parking being included within the red line. The application is therefore assessed on the basis that no off-street parking currently exists for the site.</p> <p>During a recent site visit, Officers witnessed a considerable number of vehicles parking on the street. No vehicles were parked on verges or footways as there are restrictions in place. A restriction between 8am-6pm Monday to Friday is also in place to allow only resident permit holders to park between these times. A discussion with the WHBC Parking Services Team surrounding parking permits established that permits would not be granted for managers/careers employed at the site as they do not fall into one of the parking permit holder categories. The application is not supported by any travel information to</p>

	<p>explain how the development would operate. There is no specified end user for the development, and it is important that adequate access and parking arrangements are provided for disabled persons. The nearest uncontrolled on-street space is approximately 1.4km away, thus it cannot be said that the development would be accessible for all who may wish or need to travel to it. The application does not address the accessibility needs of any disabled residents, visitors of employees, thus it is considered that the proposal provides inadequate access and parking arrangements for disabled persons.</p> <p>Tiger Moth Way and the surrounding area is built to a relatively high density and sees narrowing of roads and a tight highway geometry, and these features, together with parking controls, limit the ability to conveniently or safely park on the highway. The proposal would add to parking pressures within the vicinity, and this would be harmful to the convenience and safety of other road users.</p> <p>The absence of parking for the proposed use is neither safe nor suitable to safely cater for the traffic movements from the application property. In addition, any displaced parking and increase in parked vehicles along the narrow street road would add to the cluttered nature of the environment and as such would cause some, albeit limited, harm to the character and appearance of the area.</p> <p>It is acknowledged that the application site is within walking distance of local shops and facilities (approximately 800m to the Comet Square local centre) and to bus routes and so public and other non-car means of transport are viable travel options. However, given the particular circumstances of the proposed use discussed above, it is concluded that the development does not provide adequate off-street parking to the detriment of highway safety and character and appearance of the area. As such, the proposal conflicts with Policy M14 Welwyn Hatfield District Plan 2005; the guidance in the Council's Supplementary Planning Guidance Parking Standards 2004 and the Interim Policy for Car Parking Standards and Garage Sizes. Together, these policies and guidance aim to ensure that development achieves a sensible level of parking taking into account existing standards, national policy, and local circumstances. It also conflicts with Chapter 9 of the NPPF which, amongst other things, sets out that safe and suitable access should be achieved for all users and the needs of people with disabilities and reduced mobility should be addressed.</p>
<p>Any other considerations</p>	<p><u>Refuse and Recycling:</u></p> <p>With the site remaining in residential use, there would be no change to the existing waste storage and collection from that of the existing C3 residential use.</p>
<p>Planning Balance</p>	<p>Emerging Policy SP1 sets out principles which seek to bring about sustainable development in the Borough. Factors which are key to this proposal include: planning positively for growth in a way which increases the supply of housing and helps to reduce social and health inequalities whilst recognising environmental and infrastructure constraints. That new development should contribute to the creation of mixed and sustainable communities which, among other things, are well planned, environmentally sensitive, and built to high design standards reflecting local character. That the location of new development should deliver a sustainable pattern of development which minimises the need to travel.</p>

	<p>The provision of a residential institution in this location would provide a safe place for vulnerable people to reside, which in turn would help to reduce the social and health inequalities, thus acting as a benefit of the proposal in accordance with District Plan Policy H9 of and emerging Policies SP1 and SP7.</p> <p>Weighing against the proposal is the loss of a dwellinghouse in conflict with District Plan Policy H3 and emerging Policy SADM9. Other factors weighing against the proposal include the intensification of the use of the site which would be harm the character of the surrounding area and harm the amenity of neighbouring occupants, contrary to District Plan Policies D1, D2, GBSP2 and R19, as well as emerging Policies SP1, SP9 and SAM11.</p> <p>The development would fail to provide adequate access and parking arrangements for all residents, employees, service providers, and other visitors to the property contrary to Policy M14. The absence of parking for the proposed use is neither safe nor suitable to safely cater for the traffic movements from the application property contrary to the NPPF.</p> <p>The proposal does not recognise the environmental and infrastructure constraints of the site. It does not reflect the local character, and in this regard it is not environmentally sensitive. Overall, the proposal is not well-planned and is not of a high standard of development. On these issues, there is conflict with emerging Policy SP1.</p> <p>Moreover, the cumulative effect of having three residential institutions in a row (No.59 is a mid-terrace, No.61 is an end of terrace and No.65 is a mid-terrace) would exacerbate the change in character and detrimental impacts upon neighbouring amenity, along with the parking and highway safety issues, and compound its detrimental impact upon the area.</p> <p>In view of the above, the benefits of the proposal do not outweigh the significant and demonstrable harm which has been identified. As such, the proposed development is contrary to the Welwyn Hatfield District Plan 2005, the Emerging Local Plan and the National Planning Policy Framework.</p>
<p>Conclusion</p>	
<p>The proposal is contrary to the development plan. There are no material considerations which outweigh the conflict with the development plan. Accordingly, for the reasons given above, it is recommended that planning permission is refused.</p>	

Reasons for Refusal:

1. The proposed development would result in a significant increase in activity associated with site and a marked change in the intensity of use to the detriment of the character of the surrounding area. This would be exacerbated by way of the cumulative impact of having three residential institutions in close proximity. The proposal is therefore contrary to Policies GBSP2, D1, D2 and H4 of the Welwyn Hatfield District Plan 2005, the Supplementary Design Guidance, Policies SP1 and SP9 of the Emerging Local Plan and the National Planning Policy Framework.
2. The proposed development would result in significant disturbance and harm to the residential amenity of neighbouring occupiers in terms of noise and activity levels,

contrary to Policies D1 and R19 of the District Plan; Policies SP1 and SADM11 of the Draft Local Plan; and the National Planning Policy Framework.

3. The proposed development fails to provide adequate on-site parking and safe and suitable access for all users to the detriment of highway safety and contrary to Policy M14 of the Welwyn Hatfield District Plan 2005; the Council's Supplementary Planning Guidance Parking Standards 2004; the Interim Policy for Car Parking Standards and Garage Sizes; and the National Planning Policy Framework.

REFUSED DRAWING NUMBERS

4.

Plan Number	Revision Number	Details	Received Date
TIG1001		Existing Floor Plans	28 June 2023
TIG1004		Proposed Floor Plans	28 June 2023
TIG1007		Existing Site Plan	28 June 2023
TIG1008		Proposed Site Plan	28 June 2023
		LOCATION PLAN 2	17 July 2023
		SITE PLAN 1	17 July 2023

1. POSITIVE AND PROACTIVE STATEMENT

The decision has been made taking into account, where practicable and appropriate the requirements of paragraph 38 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be viewed on the Council's website or inspected at these offices).

Determined By:

Mr Mark Peacock
12 September 2023