

Location: **The Lord Lister Hotel
1 Park Street
Hitchin
Hertfordshire
SG4 9AH**

Applicant: **Toni Nye**

Proposal: **Change of Use from Hotel (C1) to Sui Generis
(accommodation with support) and associated external
alterations (as amended by plans and additional
information received on 6 May 2022)**

Ref. No: 22/00170/FP

Officer: **Simon Ellis**

Date of Statutory Expiry Period: Agreed extension to 24.06.22

Reason for Delay

Further information received and an additional consultation exercise was undertaken as a result.

Reason for Referral to Committee

This planning application has been called into the Planning Control Committee for determination at the request of Cllrs Keith Hoskins and Claire Strong on the basis of the extent of public interest that the planning application has generated. They consider that the application needs to be determined by the Committee in the wider public interest.

Submitted Plan Nos to Determine:

22-04_PL01 – Location and Block Plans (received 22.01.22)

22-04_PL02 – Proposed Site and Ground Floor Plans (received 22.01.22)

22-04_PL02A – Front Elevation, CCTV and Security Gates Installation (received 06.05.22)

22-04_PL03 – Existing Floor Plans and Elevations (received 22.01.22)

22-04_PL04 – Proposed Floor Plans (received 22.01.22)

22-04_PL05 – Boundary Treatment, External Lighting and Bin Anchor Installations (received 06.05.22)

22-04_PL06 – CCTV and Security Gate Installations, ground floor plan (received 06.05.22)

22-04_PL07 – CCTV and Security Gate Installations, first floor plan (received 06.05.22)

22-04_PL08 – CCTV and Security Gate Installations, second floor plan (received 06.05.22)

Associated Documents:

Design, Access and Planning Statement (received 22.01.22)

Secure by Design Supporting Statement and appendices 1-11 (received 06.05.22)

1.0 Policies:

1.1 North Hertfordshire District Local Plan No. 2 – with Alterations (Saved Policies):

Policy 8 ‘Development in Towns’

Policy 55 ‘Car Parking Standards’

Policy 57 ‘Residential Guidelines and Standards’

1.2 National Planning Policy Framework (NPPF) (July 2021):

In total but in particular:

Section 2 ‘Achieving Sustainable Development’

Section 4 ‘Decision Making’

Section 5 ‘Delivering a Sufficient Supply of New Homes’

Section 8 ‘Promoting Healthy and Safe Communities’

Section 12 ‘Achieving Well Designed Places’

Section 16 ‘Conserving and Enhancing the Historic Environment’

1.3 National Planning Practice Guidance:

Healthy and Safe Communities (Last updated November 2019)

1.4 Supplementary Planning Documents:

Vehicle Parking Provision at New Development (SPD – 2011)

1.5 Submission Local Plan (2011-2031) (with Modifications):

Section 2 – Strategic Policies

SP1 - Sustainable development in North Hertfordshire;

SP9 - Design and Sustainability;

SP10 - Healthy Communities;

SP13 - Historic Environment

Section 3 – Development Management Policies

T2 - Parking;

HS4 – Supported, Sheltered and Older Persons Housing

HS5 - Accessible and Adaptable Housing

D1 - Sustainable design;

D3 - Protecting living conditions;

HE1- Designated Heritage Assets

HE4 -Archaeology

2.0 Site Planning History

2.1 Various extensions and alterations but most recent and significant schemes as follows:

04/00728/LB and 04/00727/1 – three storey extension to provide en-suite bathrooms.
Approved

17/04422/1 – Construction of managers flat over existing car parking bays. Approved

18/02301/S73 – variation of condition of above permission. Approved.

3.0 Representations:

3.1 Police Architectural Liaison Officer:

Originally raised concerns regarding Secure By Design principles then following discussion and submission of additional information and a full Secure By Design Supporting Statement and appendices (see above list of supporting documents) and speaking on behalf of the Police Crime Prevention Design Service now 'fully supports this application'.

3.2 Environmental Health (Noise):

No objection but suggested a condition requiring a noise assessment prior to first occupation. In response to additional information which includes measures for internal noise insulation, including secondary glazing and lighting, revised comments have been received requiring noise, lighting and details of any plant equipment within three months of the date of the decision notice, recognising this is a retrospective planning application (**see recommended conditions 4-6**).

3.3 Senior Conservation Officer:

No objections. See detailed comments attached as **appendix 1** to the next item on this agenda, the associated Listed Building Consent application (ref. 22/00171/LBC).

3.4 Public Comments:

Full details can be viewed on the Council's website. Members are strongly advised to read public comments set out on the website in order to fully consider all comments received. A brief summary of views is set out below:

- Inappropriate location for this use;
- Harm to listed building and surrounding conservation area;
- Creates anti social behaviour in the vicinity of the site;
- Schools close by, concerned over safety of children;
- Existing pub close by creates a mix of two uses that can generate anti-social behaviour;
- Surrounding area has secluded paths and alleyways which is already not a safe environment for local residents;
- This is a retrospective application and the use is already causing problems before planning permission is granted so is not being managed well in terms of residents and safety of neighbouring residents;
- Resultant pressure on community police and other public services;
- Concern over management of the facility, lack of over night security staff;
- Noise impacts of use on surrounding area;
- Gates are inappropriate to the front of a listed building;
- Hotel use should remain if it is viable;
- Residents need and support and this facility will provide that;
- Poor DDA access;
- Causing loss of business to the nearby Public House;

4.0 Planning Considerations

4.1 Site and Surroundings

4.1.1 The application site consists of a three-storey hotel building, consisting of 24 self-contained bedrooms. There are also 10 car parking spaces on site. It is a terrace building consisting of three blocks with access to the rear car park through a coach entrance off Park Street. The building is grade II listed and located within the Hitchin Town Centre Conservation Area. The site is at the edge of the town centre, and surrounding land uses are mainly residential with a Public House adjoining.

4.2 The Proposals

4.2.1 This is a retrospective planning application for the change of use of the premises from a Hotel (C1 Use) to *Sui Generis* use described by the applicant as residential accommodation with support. The proposal is distinct from C3 use residential or C2 residential with an element of care. A *Sui Generis* use is a use all of its own that does not fit with established use classes contained within the Town and Country Planning (Use Classes) Order.

4.2.2 The application seeks permission to retain 21 self-contained units of accommodation for residents within the complex. The managers accommodation and staff accommodation is within the apartment above the four car parking spaces.

4.2.3 The overall level of accommodation is the same as the former hotel use, with no increase in the number of rooms, and car parking space and vehicular access to the premises remain the same.

4.2.4 Physical alterations include installation of CCTV, new security features including locking systems on doors and windows, secondary glazing for noise insulation, and external lighting and security gates.

4.2.5 On site management of the use includes 24-hour staff coverage, secure access to staff and residents only. The use operates 24 hours a day and residents are not required to be in the accommodation at any particular times.

4.3 Key Issues

4.3.1 Taking account of the relevant development plan policies and other material considerations listed above, together with the representations also listed above I consider the main issues to be addressed in the determination of this planning application are as follows:

- The principle of development on the site and the overall policy basis for any decision;
- Whether the new use is acceptable in terms of living conditions and activity in and around the site;

- Whether planning permission should be refused for reasons of potential or actual anti-social behaviour, or whether these matters are regulated by other agencies, not for the planning system to control;
- Any conditions that may be necessary to ensure the appropriate management and control of the facility if Members were minded to grant planning permission;
- Heritage issues insofar as they relate to the change of use application.

The following paragraphs address these broad issues and related detailed matters in this order before reaching conclusions and setting out a recommendation.

4.3.2 The Principle of the use and Policy Basis for the Decision

This planning application is for the change of use of a former C1 Hotel Use to a new use described as supported accommodation as a *Sui Generis* use. There are no policies in the Saved Local Plan or emerging Local Plan which seek to prevent the loss of existing hotel accommodation in town centres. Indeed, Saved Policy 8 of the North Hertfordshire District Local Plan No. 2 – with Alterations, accepts most forms of development in towns in principle, including the change of use of Hotels to new forms of residential accommodation.

4.3.3 Living Conditions and Activity Levels

In terms of the frequency of activity in and around the site, volume of visitors and residents, deliveries and vehicular movements it is clear to me that the new use would be broadly similar to a fully occupied Hotel use on this site which is already authorised in planning terms. Given that the level of car parking, access and importantly extent of accommodation in the premises remains the same as the former use and no extensions to the facility are proposed as this is a change of use only, I am satisfied that the overall intensity of use here is broadly the same as already authorised.

4.3.4 In terms of noise issues, Members will note that the additional information submitted on 6 May 2022 by the applicant included details of secondary glazing to help insulate noise impacts of the building from a 24-hour operation. Members must also note that the current authorised Hotel use is not restricted in terms of hours of operation either and the site could be run now as a fully functioning Hotel with all the spill over noise and activity impacts this would have on the surrounding area.

4.3.5 Notwithstanding the submission of additional information on matters of noise and lighting, the Council's Environmental Health Officers whilst raising no objections to the grant of planning permission still require a noise and lighting survey associated with this development. The timeframe they propose to resolve these matters is within three months of the date of any decision notice, and this is set out in the recommended conditions below.

4.3.6 Anti Social Behaviour Concerns

The National Planning Policy Framework (NPPF) (July 2021) and the National Planning Practice Guidance (NPPG) (November 2019) together set out the government's position on planning for safe communities including design considerations.

4.3.7 Paragraph 92 of the NPPF states that planning policies and [development management] decisions should aim to achieve 'safe and inclusive places' which, *inter alia*, should ensure that places:

'are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of attractive, well-designed, clear and legible pedestrian and cycle routes, and high quality public space, which encourage the active and continual use of public areas;'

4.3.8 The emerging Local Plan (2011-2031) Policy D1 'Sustainable Design' includes a requirement to 'design out crime and anti-social behaviour'.

4.3.9 This planning application is for the change of use of an existing building, it does not and cannot include proposals for off-site infrastructure changes to alter the built environment outside the site. The policy guidance referenced above is more applicable to wider development schemes that include new road layouts and pedestrian facilities and spaces with the aim to ensure such developments create spaces that are safe for all members of the community as far as is possible through design and new development. This application only relates to the change of use of an existing building so on that basis the policy guidance is not wholly applicable. Nonetheless, the principles set out in the policy guidance include reference to anti-social behaviour and designing out crime which in my opinion is therefore a material consideration in the determination of this planning application insofar as it relates to design and physical alterations to the building.

4.3.10 On this basis how should concerns about anti-social behaviour apply to a change of use planning application? The planning system regulates land use, not land users, it is not in place to regulate all aspects of an applicant's operation. In this context the change of use is from a Hotel C1 to a non-specific *Sui Generis* use for residential accommodation with support. Any change of use planning permission would run with the land, would not be personal to the current operators of the facility and moreover would not discriminate between the profile of residents who may need care and support at this facility. On this basis in my view it would be very difficult to sustain an argument against the grant of planning permission based on an objection to the use of the building without personalising the refusal to the current operator rather than the maintaining an objective view of the planning use that is presented within the application. Such an argument would not succeed on appeal in my opinion.

4.3.11 To support my professional view on this important issue I attach as **appendix 1** an appeal decision which has very clear parallels with this application. And I particularly draw Members attention to paragraph 10 of the decision letter which reads as follows:

'I note the concerns of the Council and some local residents that the proposed use would result in a local concentration of anti-social behaviour. I have also noted the evidence before me of incidents of anti-social behaviour and disturbance at the appeal site and the concern of neighbours that the appeal site has been a source of noise, disturbance and anti-social behaviour in the past and has resulted in a fear of crime in the locality. However, such matters are influenced by considerations such as the management of the HMO and the behaviour of the occupants. Such matters are not controlled under the planning

regime. They are controlled by other legislation and I am making a decision on the planning merits of the appeal alone. The proposed development could, in principle, therefore, contribute towards promoting safe and accessible environments where crime and disorder, and the fear of crime do not undermine the quality of life or cohesion as set out in paragraph 69 of the Framework’.

4.3.12 The reference to these matters being controlled by other legislation is particularly pertinent in my opinion, and it’s a position I support. To conclude on the matter Members must also note that the planning application commands the support of the Police Crime Prevention Design Service as set out above in paragraph 3.1 above. Insofar as preventing anti-social behaviour it is relevant to ensure the building and site are as safe and secure as possible through the implementation of Secure By Design Measures in consultation with the Police as has happened here. The consideration of anti-social behaviour does not however extend to the principle of the change of use in this location or any form of discrimination over potential criminality from any residents of the facility, as the above referenced appeal decision makes clear, these matters are controlled by other agencies.

4.3.13 Conditions and Mitigation

On this basis it is in my view necessary to ensure the management measures, such as CCTV operation, lighting and security arrangements are maintained throughout the lifespan of the use. This can be controlled by suitably worded conditions which are recommended and set out below. It is also necessary in my view to prevent any further intensification of the use in planning terms by limiting the number of units of self-contained accommodation to that set out in the application as 21 units and staff accommodation. This would limit the change of use to a level of activity to be broadly similar to the hotel use authorised on site. It is also necessary to control noise for residents within the building to ensure acceptable living conditions for occupiers of the facility as well the conditions requested by the Environmental Health Team which are set out below.

4.3.14 Heritage Matters

A comprehensive analysis of the change of use and the associated listed building application is set out by the Council’s Senior Conservation Officer attached as appendix 1. Members will note his analysis of the application raising no objections in relation to the proposed change of use and associated alterations that relate to the planning application in relation to heritage aspects and particularly the listed building within which the use is operating.

4.3.15 Conclusions

Whether a planning application is retrospective or prospective the assessment of relevant material considerations must be the same. I set out above my professional assessment of the proposal. I recognise the concerns of local residents surrounding the nature of the use and some of the activity associated with the current operation. However, as the appeal Inspector makes clear in the highly relevant appeal decision attached as appendix 2 it is not the role of the planning system to regulate behaviour of organisations that provide services to residents who may need assistance. The planning system only controls the use of land not the land user and specific matters of anti-social behaviour that may relate to a particular organisation or residents thereof are matters for other agencies to regulate. On that basis and despite the strong feeling

of many objectors to this planning application I see no basis to refuse planning permission for this change of use.

4.3.16 Alternative Options Considered

See discussion of case merits above.

5.0 Legal Implications

5.1 In making decisions on applications submitted under the Town and Country Planning legislation, the Council is required to have regard to the provisions of the development plan and to any other material considerations. The decision must be in accordance with the plan unless the material considerations indicate otherwise. Where the decision is to refuse or restrictive conditions are attached, the applicant has a right of appeal against the decision.

6.0 Recommendation

6.1 That planning permission be **GRANTED** subject to the following conditions:

6.2 Recommended Conditions, Reasons and Informatives

Conditions and Reasons:

1. The development hereby permitted shall be carried out wholly in accordance with the details specified in the application and supporting approved documents and plans listed above.

Reason: To ensure the development is carried out in accordance with details which form the basis of this grant of permission.

2. The use of the building as assisted residential accommodation shall be limited to a maximum 21 self-contained units for residents and ancillary staff accommodation.

Reason: To accord with the terms of the submitted application to avoid any further intensification of the use without further planning permission.

3. All Secure By Design Measures set out the applicant's Secure By Design Statement (dated May 2022) and appendices including the operation of CCTV, appropriate locks and external lighting and boundary treatment shall be installed and fully operational within three months of the date of this decision notice and thereafter retained and maintained for the lifespan of the current use of the building to the satisfaction of the Local Planning Authority.

Reason: To accord with the terms of the submitted application and to ensure the facility is managed appropriately in the interests of amenity and security of the premises.

4. Within three months of the date of this decision notice the developer shall carry out a noise assessment in accordance with relevant guidance and standards and a scheme for sound insulation and noise control measures shall be submitted for the Local Planning Authority's written approval. Such measures shall thereafter be carried within an agreed timeframe with the Local Planning Authority and once implemented the scheme of measures shall be maintained in accordance with the approved details.

Reason: to protect the residential amenities of future residents.

5. Although no new plant is proposed for installation, if any new plant is to be installed, changed, or upgraded the developer shall carry out a noise survey following the guidelines set out by BS4142: 2014+A1:2019. This survey shall consider all proposed plant as part of the development and shall include noise control measures which should be submitted for written approval by the Local Planning Authority (LPA). No plant shall be installed and operated at the site until the noise survey has been approved by the LPA. Noise mitigation measures shall be such as to achieve existing background noise levels.

Reason: To protect the residential amenities of future residents

6. Details of any external lighting to be installed on the site, including the design of the lighting unit, any supporting structure, and the extent of the area to be illuminated, shall be submitted to and approved in writing by the Local Planning Authority within three months of the date of this decision notice. Only the details thereby approved shall be implemented in accordance with an agreed timeframe with the Local Planning Authority and once implemented the scheme of measures shall be maintained in accordance with the approved details.

Reason: to protect the residential amenities of future residents.

Informatives

During the construction phase the guidance in BS5228-1:2009 (Code of Practice for noise Control on construction and open sites) should be adhered to.

During the change of use phase no activities should take place outside the following hours: Monday to Friday 08:00-18:00hrs; Saturdays 08:00-13:00hrs and Sundays and Bank Holidays: no work at any time.

Pro-Active Statement

Planning permission has been granted for this proposal. The Council acted proactively through positive engagement with the applicant at the pre-application stage and during the determination process which led to improvements to the scheme. The Council has therefore acted proactively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

7.0 Appendices

7.1 Appendix 1 – Appeal Decision.