

<u>Location:</u>	<b>The Lord Lister Hotel 1 Park Street Hitchin Hertfordshire SG4 9AH</b>
<u>Applicant:</u>	<b>Toni Nye</b>
<u>Proposal:</u>	<b>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)</b>
<u>Ref. No:</u>	22/00170/FP
<u>Officer:</u>	<b>Simon Ellis</b>

**Date of Statutory Expiry Period:** Agreed extension to 30.09.22

**Reason for Delay**

Further information received and an additional consultation exercise was undertaken as a result. This matter was also deferred at the meeting of the Planning Control Committee held on 23 June 2022 for further information. Members requested specifically a response to the planning application from Hertfordshire County Council (Highways) and any additional information the Police were prepared to provide on any effects this development may have had on levels of anti-social behaviour in and around the application site.

**Reason for Referral to Committee**

Deferred from the 23 June Planning Control Committee.

**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 For all original consultation responses please see the 23 June Planning Control Committee report attached as **appendix 1**.

3.2 Additional requested comments received since deferral of the item as follows:

#### **3.3 Hertfordshire County Council (Highways):**

See comments set out as **appendix 2**.

#### **3.4 Refuse Collection and Recycling (Joint Service):**

See comments in full as new informative 2 in recommendation below and applicant's response set out as **appendix 3**.

#### **3.5 Police Architectural Liaison Officer:**

Comments set out in two documents as **appendix 4**.

#### **3.6 Strategic Housing Manager:**

Comments set out as **appendix 5**.

#### **3.7 Planning Policy Team:**

See comments set out in **appendix 6**.

### **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 within 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 and staff accommodation is within the building.

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 For key issues please see report attached as **appendix 1** as presented to the meeting of the Planning Control Committee held on 23 June 2022.

4.3.2 For comments on updates since the meeting on 23 June the following paragraphs adds some additional comment and analysis.

#### **4.3.3 Highway Matters**

The full comments of the Highway Authority are set out as **appendix 2**. Members will note there are no highway authority objections to this application subject to the imposition of an additional condition which I set out below in the revised recommendation as recommended condition no. 7. The barrier as set out in the application drawings would be located more than 4.8m from the back of the footway.

#### **4.3.4 Refuse Collection**

I have set out the list of advisory points that the Waste Collection and Recycling Service have provided as an additional informative to the recommendation set out below. This will advise the applicant of the detailed specification that is required for refuse collection associated with this development. Moreover, in response to this advice the applicant has provided an additional statement to explain their position which I attach as **appendix 3**.

#### **4.3.5 Police Response/ Anti-social behaviour**

The response from the Police is set out as appendix 4. They will not provide any interpretation of these figures or explanation around the period of time recorded. The figures are as follows: From 1 January 2021 to 31 May 2022 there were 86 incidents of anti-social behaviour in the locality chosen (the 18 month period of this monitoring has been confirmed by the Police). Of which 14% were attributable to the Lord Lister Hotel site. During a period of between 30 June and 31 December 2020 (i.e. 6 months preceding) in the same area there were 25 incidents of anti-social behaviour none of which were attributable to the Lord Lister.

4.3.6 My advice to Members on the matter of assessing this application for a material change of use of the premises and how this interacts with the issue of anti-social behaviour is set out in paragraphs 4.3.6 to 4.3.12 of the original Committee report attached as appendix 1. Given the level of scrutiny this clear advice and analysis was placed under at the meeting I have subsequently sought independent Counsel's opinion on my professional judgement. This advice concludes that my opinion is a perfectly reasonable professional judgement and recommendation to make taking account of all relevant planning policy and case law. My opinion and recommendation on the matter

remains as set out in the original Committee report and recommendation of 23 June 2022.

- 4.3.7 I also re-emphasise this advice from the appeal decision appended to the original Committee report as follows: **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.**
- 4.3.8 Addressing the information from the Police which has been submitted in two letters on 21 July 2022; The data confirms that, between 1<sup>st</sup> January 2021 and 31<sup>st</sup> May 2022 (i.e. a period of almost 18 months) there were 17 incidents of anti social behaviour reported by the Police at the application site. By way of comparison, there were 67 incidents of anti-social behaviour in the same period in the wider locality (an area bounded by Hollow Lane, Market Square, Sun Street, Bridge Street, Park Street, and Park Gate). For the preceding 6 month period between June 2020 and December 2020 there were 25 recorded anti social behaviour incidents in the same locality with none attributable to the Hotel. There is no data on the occupancy level of the Hotel during this period so any level of activity/occupancy of the premises cannot be confirmed.
- 4.3.9 It is important to bear in mind that the purpose of the planning system is to regulate the use of land and not specific land users (i.e. particular organisations or businesses). Land uses are categorised into use classes and the planning system regulates changes between use classes, not between different businesses or organisations within those use classes. Moreover, in determining planning applications, it is to be assumed that other regulatory frameworks and agencies (such as the police) will operate effectively in respect of such issues as crime and anti social behaviour for which they are responsible.
- 4.3.10 However, insofar as there is a risk of anti social behaviour from the use, the planning permission would be subject to a condition to ensure that the site operates in accordance with a number of measures agreed with the police including the operation of CCTV, appropriate locks and external lighting and boundary treatment which will reduce the risk of anti social behaviour occurring and mitigate the impact of it on surrounding areas. So far as the guidance in paragraph 92 of the NPPF is concerned and the requirement to ensure that development should be safe, the application is for a change in use of an existing building and so the examples given in paragraph 92 of the NPPF relating to pedestrian and cycle routes and public space are not explicitly relevant. Nonetheless, the principles set out in the policy guidance include reference to ant-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. In this case, as noted above, it is proposed to impose conditions on the use, such as in relation to CCTV, lighting and so on as set out below which will ensure that the application complies with this policy guidance.
- 4.3.11 Significant weight must also be given to the position of the Police Crime Prevention Design Service who do not object to the planning application subject to the imposition of a condition requiring the measures referred to above to be implemented and maintained. Such a condition is set out in the recommendation below.

4.3.12 Whilst the concerns that have been raised relating to anti social behaviour have been acknowledged, the evidence available from the police does not suggest that the change in use the subject of the application would give rise to any particular issues of anti social behaviour that would be significantly above and beyond that experienced in the wider locality. However, and in any event, a number of measures have been proposed to reduce the risk of anti social behaviour occurring and to mitigate any impacts from such behaviour on surrounding residents.

4.3.13 If Members were minded to support my recommendation below the change of use planning permission from Hotel (Class C1) to assisted living (sui generis) would be a permission that runs with the land and would not be restricted to the current operators. As I explain above, land use planning regulates the use of land, not particular organisations. However, if Members are minded to place a greater emphasis on the issue of anti social behaviour and therefore seek to try and assess the nature of the particular operator of the building and its cliental it must mean that the benefits of the current occupier and the services they provide would also need to be weighed in such a planning balance. Put simply, if Members are minded to place more weight on the potential negative externalities of the current operation in terms of potential anti social behaviour than I recommend, they must by logical extension balance this against the positive benefits the operator provides to the community and the Council in the service that it provides. On that basis and to provide this balance I have sought comments from the Council's Strategic Housing Manager in relation to this planning application which are discussed below.

#### 4.3.14 Strategic Housing Managers Comments

The comments of the Council's Strategic Housing Manager are set out at appendix 5. It explains how the applicant provides accommodation for homeless people and that this provision meets an important objective and identified housing need in the Council's Strategic Housing Market Assessment and the Rough Sleepers Strategy 2019-2024. These strategies reflect a priority set by Central government to find accommodation for rough sleepers in the District.

4.3.15 There is no doubt that the applicant provides an important service to assist the Council in meetings its objective of securing accommodation for homeless people as the advice from the Strategic Housing Manager illustrates. A change of use planning permission at this site is required for this important service to continue. Any refusal of planning permission for this use at this would clearly prevent this service from continuing in this location by this current occupier. The flip side to my argument over any increase in anti social behaviour that this may have caused at the site and in the locality is that the current occupiers provide a valuable service to help meet homeless strategy objective also. Similar to my view on the anti social behaviour issue which I consider is controlled by other agencies not the planning system, as the assisted living use (in its broadest non specific sense, i.e. not particular to the current applicant) is acceptable in planning terms in my view a personal permission to the applicant would not be justified (conditions can only be imposed which make otherwise unacceptable development acceptable in planning terms). This therefore means that whilst Members can weigh these benefits of securing accommodation for homeless people in the planning balance there is no mechanism available to ensure that current occupiers continue to operate from the site and provide this service in the building. Any planning permission for assisted living accommodation would run with the land and could at any time be

used by a different organisation who may not provide accommodation for those on the housing waiting list with the Council.

4.3.16 However, if Members are minded to place more emphasis on the issue of anti social behaviour which may have been aggravated by the current operation at the premises (not as a result of an assisted living use in its broadest sense and non specific to the applicant) it would seem logical that more weight should be given to the important and valuable service the current occupiers provide as both considerations require a degree of assessment of the current land user of the premises.

#### 4.3.17 Comments of the Planning Policy Team

Set out as appendix 6 are the comments of the Council's Planning Policy team relating to this planning application. During the 20 minutes of oral presentation by objectors and Member advocates at the meeting of the Planning Control Committee held on 23 June 2022 a long list of policy issues were presented by the speakers. These included issues around the viability of the current hotel use, the potential loss of a community facility and other policy consideration. The advice and table set out in appendix 6 sets out the position of the Council's Planning Policy team in relation to these matters. Members will note that whilst going into more detail than was contained in my original report attached as appendix 1 the advice fully supports the oral responses I was able to provide in response to the objectors and Member advocates at the meeting and my overall conclusion that the change of use is not contrary to any specific national or local planning policy requirements in their professional view.

#### 4.3.18 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.



7. The entrance gates to the site shall be set back at least 4.8m from the back edge of the footway and shall open inwards into the site, in perpetuity.

Reason: To ensure the free, safe and sustainable flow of public highway users is not compromised.

### **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.

### **Informatives**

1. 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.

2. Doors to bin stores should be sufficient in width to allow the movement of bins at their widest and prevent entrapment of limbs. This is likely to be a minimum of 20cm in addition to the widest bin contained in the bin store.

Walls and doors should have protection strips to prevent damage and a mechanism for holding doors open should be available.

Doors should ideally be keypad entry or standard fire brigade keys. We do not support the use of electronic key fobs.

Roller shutters on bin stores can be considered to save space however the additional noise impacts should be considered.

Dropped kerbs should be provided to allow for ease of movement of bins to the collection vehicle and the pathway should be 1.5m in width taking the most direct route avoiding passing parked cars.

We do not advise the use of bin compactors, as they often cause excessive damage to bins or cause waste to get stuck inside bins. If bin compactors are used on site you should advise your waste collection contractor.

Bins in communal bin stores should be manoeuvrable to the refuse collection vehicle without the need to move other bins.

For flats, bins should be ordered direct from the Council's contractor 10 weeks in advance of first occupation to ensure they arrive in time for the first residents moving in.

Pull distances to the collection vehicle should not exceed 15m in accordance with BS5906:2005.

Separate internal storage provision for waste should be provided in kitchen areas to support the recycling of different waste streams to support the National Planning Policy for Waste's requirements to support driving waste up the waste hierarchy.

Storage areas should be conveniently located with easy access for residents - residents should not have to take their waste and recycling more than 30metres to a bin storage area, or take their waste receptacles more than 25metres to a collection point, (usually kerbside) in accordance with Building Regulations Approved Document H Guidance.

Consideration should be given to parking arrangements alongside or opposite the access to individual streets. If car parking is likely in the vicinity of junctions then parking restrictions may be required to ensure access is not inhibited.

For infill applications consideration should be given to parking arrangements alongside or opposite the access to the site. If car parking is currently permitted the consideration of parking restrictions may be required to ensure access is not inhibited.

For houses, bins should be ordered direct from the Council's contractor 2 weeks in advance of first occupation to ensure they arrive in time for the first residents moving in.

Pull distances from the storage point to the collection point should not be within close proximity to parked cars.

The gravel drive makes pulling bins difficult and consideration should be given to whether this surface is the most suitable or whether bins stored closer to the collection point would be more preferable.

The applicant should note that collections occur from the kerbside and residents will be required to present their bins in this location on collection day.

Further general advice on waste provision for developments is available on our website: <http://www.north-herts.gov.uk/home/planning/waste-and-recycling-provision> The bin requirements stated there are specific to North Herts, but the rest of the advice is general.

## **7.0 Appendices**

**7.1 Appendix 1** – 23 June Planning Control Committee report and recommendation and appendix.

**Appendix 2** – Comments of Hertfordshire County Council (Highways)

**Appendix 3** – Applicant's response to advice from Refuse Collection and Recycling Service

**Appendix 4** – Additional Comments from the Police (two letters).

**Appendix 5** – Comments of Strategic Housing Manager

**Appendix 6** – Comments of Planning Policy Team