



County Hall
Cardiff
CF10 4UW
Tel: (029) 2087 2000

Neuadd y Sir
Caerdydd
CF10 4UW
Ffôn: (029) 2087 2000

LATE REPRESENTATIONS

Committee PLANNING COMMITTEE

Date and Time of Meeting WEDNESDAY, 10 AUGUST 2022, 1.30 PM

Please see attached Late Representation Schedule received in respect of applications to be determined at this Planning Committee

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LATE REPRESENTATIONS SCHEDULE
PLANNING COMMITTEE – 10th AUGUST 2022

AGENDA ITEM 5d	PAGE NO. 60
APPLICATION NO:	22/00885/MNR
LOCATION:	76 MAINDY ROAD, CATHAYS, CARDIFF, CF24 4HQ
PROPOSAL:	CHANGE OF USE FROM A C3 DWELLING HOUSE TO EIGHT PERSON HOUSE IN MULTIPLE OCCUPATION (SUI GENERIS), WITH GROUND AND FIRST FLOOR REAR EXTENSIONS, REAR DORMER ROOF EXTENSION, INSERTION OF ROOF LIGHT TO THE FRONT ROOF PLANE AND ASSOCIATED ALTERATIONS
FROM:	Head of Planning
SUMMARY:	<p>Paragraph 5.2 of the Officer Report makes reference to advice provided by Traffic and Transportation that future occupiers of the development would not be eligible to apply for resident parking permits.</p> <p>Notwithstanding the advice provided the use of the property as a HMO would be eligible for 2 resident parking permits as per the current arrangements for the property.</p>

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FROM:	G Powys Jones
SUMMARY:	<p><u>Representations to Planning Committee on application Ref 22/00885/MNR 76 Maindy Road, Cathays</u></p> <p>At the July Planning Committee, members considered this application for the change of use of the property from a dwelling to a HMO. They were minded to refuse permission but resolved to defer consideration for draft reasons, which are presented to Committee on 10th August. Accordingly, the application remains undetermined.</p> <p><u>Planning Committee members, however, were not made aware of significant material considerations at their July meeting which</u></p>

should properly be taken into account prior to a final decision being taken.

At the July Planning Committee, **Councillor Hunt** expressed the view that since the Council has adopted policies on HMOs and an SPG – we should stick to them irrespective of appeal decisions, and said that ***we should not entertain*** this application for an HMO,.

However, many recent applications for HMOs in Cathays have been **favourably entertained by the Council itself**, including one in Maindy Road. Councillor Hunt was clearly not aware that the Council had granted planning permission **for a change of use of a dwelling to a HMO at 26 Maindy Road** just a week or so before the July Committee - on **28 June 2022**.

No 26 is located just 150 yards or so from No 76. Its' change of use was deemed to be fully compliant with the Council's LDP policies and SPG. In the light of that decision, and the others referred to below, it is considered that the applicant would be **unfairly and unjustly treated** if the officer recommendation on his application was rejected.

Councillor Wong requested an explanation for the derivation of the 65% 'test' used in the officer report for justifying the recommendation for approval. It is, of course, a reflection of the outcome of the many HMO appeal decisions and costs awards. It is at the 65% density level, and above, that Welsh Government appointed Planning Inspectors have generally found that the character of an area is informed by HMOs in the context of LDP policy H5 on the issue of cumulative impact.

In response to Inspectors' decisions and costs awards, the 65% 'test' was first applied by the Council in **May 2021**. But since May 2021, it has become **common practice for the Council to grant planning permissions** for the change of use of dwellings to HMOs in the Cathays Ward where the incidence of HMOs in the area is 65% or above. These are listed below:

Reference	Address	Date
20/02582	10 Cranbrook Street	21 May 2021
20/02574	78 Richards Street	4 June 2021
21/01546	98 Coburn Street	24 Sept 2021
21/01206	5 Cyrian House, Month Rd.	20 Oct 2021
21/01897	16 Alexander Street	17 Nov 2021
21/02069	38 Wyeverne Road	19 Nov 2021
21/02409	49 Wyeverne Road	14 Dec 2021
21/02350	58 Coburn Street	17 Dec 2021
21/02586	10 Cranbrook Street	17 Dec 2021
21/01795	1 Bruce Street	4 Feb 2022

22/00144	186 Rhymney Street	6 May 2022
22/00391	24 Glynrhondda Street	6 May 2022
22/00119	50 Letty Street	6 May 2022
21/02720	28 Maindy Road	28 June 2022
22/00598	103 Rhymney Street	13 July 2022
22/00848	9 Wyeverne Road	2 Aug 2022

In all cases, bar one, **the 65% 'test' was used**. Notably, the two latest planning permission for HMOs were granted by the Council in the weeks between the July & August Planning Committees.

The exception to **recent common practice** arose when planning applications for the change of use of 2 properties to HMOs in Coburn Street were transferred from delegated to Planning Committee at the behest of the local Cathays ward councillors. The ward members **were critical of the introduction and use of the 65% 'test'**, and persuaded Committee to refuse permission for the same reasons as now proposed -- against officer advice.

The Council lost the subsequent appeals and a **costs award totalling £6,000** was made against them in January 2022, since the Inspector found that the Council had behaved **unreasonably**. (*Members should be aware that costs following appeals are rarely awarded in Wales and only when Councils have been found to have behaved **unreasonably***).

Just 6 months or so later, the local ward members repeat the request for Planning Committee to reject officer advice, and, in effect, to act unreasonably, **despite the previous costly impact on the public purse**.

Councillor Jackie Jones, given her legal background, raised the issue of precedent in the context of quasi-judicial appeal decisions, and suggested that we should not be bound by it. But the principal legal issue here is not precedent but **consistency**. The leading planning law cases on the topic are cited below.

Mann LJ in North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P. & C.R. 137 said:

*"... It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgment indisputable. One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is **consistency** in the appellate process. **Consistency** is self-evidently important to both developers and development*

control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system..."

Moreover, in *R (Midcounties Co-operative Limited) v Forest of Dean District Council [2013] EWHC 1908 (Admin)*

Stewart J held that the principle in the North Wiltshire (LJ Mann) case also applies to decisions of a local planning authority. At para. 16 he said:

"The principle (of consistency) is not limited to decisions of an Inspector/the Secretary of State. It requires an earlier material decision to be taken into account. A decision is material unless it is distinguishable. A decision maker in a subsequent matter therefore should (a) decide whether the earlier decision is distinguishable; (b) if not distinguishable, then any disagreement must weigh the earlier decision and give reasons for departure from it.

.....
"

Thus, members should not, as a matter of law, ignore or disregard Inspectors' decisions on appeals involving HMOs in similar policy circumstances, or **simply say that they disagree** with the decisions as justification for refusing permission.

Perhaps more significantly, members should not ignore or disregard the many recent planning permissions for HMOs in Cathays **granted by the Council itself in similar policy circumstances**. Members are legally obliged to act consistently, unless the case before them is clearly distinguishable, which this one is not. **It would be wholly unfair to the applicant if he were treated differently to the other successful applicants without good reason.**

That the permissions were granted under delegated powers is immaterial – they are properly made decisions of the Council, and almost in every case were signed off by the Chair of Planning Committee at the time.

Welsh Government guidance says that Local Planning Authorities are at risk of costs awards being made against them on appeal, when they, for example:

- do not determine similar cases in a consistent manner
- do not follow well-established case law

	<p>It is entirely a matter for members as to whether or not to accept officer advice, or take account of WG published guidance, but the applicant is concerned to avoid delay to himself, and the costs of an appeal to all parties, (including himself, the Council and the Inspectorate).</p> <p>Accordingly, in the light of this new additional information, members of the Planning Committee are respectfully requested to reconsider and to grant planning permission in accordance with the officer recommendation.</p> <p><i>G Powys Jones MSc FRTPI</i> <i>Chartered Town Planning Consultant</i></p> <p><i>For and on behalf of the Applicant</i></p>
REMARKS:	Noted