

## 6<sup>th</sup> JUNE 2023 PLANNING COMMITTEE

**6C PLAN/2023/0152**

**WARD:** Canalside

**LOCATION:** No.103 - 105 Walton Road, Woking, Surrey, GU21 5DW

**PROPOSAL:** Retrospective application for the retention of a 9x bed, 15x person House of Multiple Occupation (HMO) (sui generis use).

**APPLICANT:** Mr Sajid Mahmood

**OFFICER:** David Raper

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### **REASON FOR REFERRAL TO COMMITTEE:**

The recommendation includes enforcement action and the decision on whether to issue an Enforcement Notice falls outside the Scheme of Delegation.

### **SUMMARY OF PROPOSED DEVELOPMENT**

The proposal is a retrospective application for the retention of a 9x bed, 15x person House of Multiple Occupation (HMO) (sui generis use).

### **PLANNING STATUS**

- Urban Area
- Priority Place
- Walton Road Neighbourhood Centre
- High Density Residential Area
- Surface Water Flood Risk Area
- Thames Basin Heaths Special Protection Area (TBH SPA) Zone B (400m-5km)

### **RECOMMENDATION**

REFUSE planning permission and authorise enforcement action.

### **SITE DESCRIPTION**

The proposal relates to a House of Multiple Occupation located at first floor level above a shop. The proposal site comprises a two storey building dating from early C20 which has been heavily altered and extended. The proposal site is on Walton Road which is characterised by a mixture of commercial and residential uses in predominately two storey buildings.

### **RELEVANT PLANNING HISTORY**

- PLAN/2017/0979 – Partial demolition of outbuilding and rear ground floor extension to existing shop with first floor rear extensions to residential accommodation – Permitted 06.12.2017 (not implemented)
- PLAN/2009/0976 – Erection of a single storey front extension within existing canopy and incorporation of shopfront and existing roller shutters – Permitted 22.12.2009
- PLAN/2005/1281 – Front extension to store comprising supported canopy and moveable gravity shutters – Permitted 21.12.2005

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- PLAN/1995/1042 – Erection of a part single, part two storey rear extension to provide retail floorspace (Amended description) – Permitted 26.03.1996
- PLAN/1999/0999 – Erection of single storey rear extension and detached store to the rear and an existing covered way to the side and rear of the property and erection of a cold store and store to the rear of the property – Permitted 03.01.2001
- 81/0877 – Single storey store building – Permitted 01.09.1981
- 81/0172 – Store room extension – Permitted 01.05.1981
- 29353 – Alterations – Permitted 01.06.1972
- 29596 – Alterations and new shop front – Permitted 01.07.1972
- 15582 – Two storey extension – Permitted 01.06.1962
- 13545 – Conversion of shop to garage and living room to shop – Permitted 01.11.1960
- 4227 – Extension – Permitted 01.05.1950

### **CONSULTATIONS**

- **Housing Standards:** We do not agree with the numbers of occupants proposed due to the insufficient amenities provided.
- **County Highway Authority:** No objection subject to condition requiring secure cycle storage for 15x cycles.
- **Environmental Health:** No objection.

### **REPRESENTATIONS**

None received.

### **RELEVANT PLANNING POLICIES**

#### National Planning Policy Framework (NPPF) (2021):

Section 9 – Promoting sustainable transport

Section 12 – Achieving well-designed places

Section 15 – Conserving and enhancing the natural environment

#### Woking Development Management Policies DPD (2016):

DM11 - Sub-divisions, Specialist Housing, Conversions and Loss of Housing

#### Woking Core Strategy (2012):

CS4 – Local and Neighbourhood Centres and Shopping Parades

CS5 – Priority Places

CS8 – Thames Basin Heaths Special Protection Areas

CS9 – Flooding and Water Management

CS18 – Transport and Accessibility

CS21 – Design

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CS24 – Woking's Landscape and Townscape

### Supplementary Planning Documents:

Design (2015)

Parking Standards (2018)

Outlook, Amenity, Privacy and Daylight (2022)

### Other documents and Legislation:

Woking Borough Council 'Private Sector Property - Amenity Standards Guide' document (2022).

The Housing Act (2004)

The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations (2018)

South East Plan (2009) (Saved Policy) NRM6 - Thames Basin Heaths Special Protection Area

Thames Basin Heaths Special Protection Area (TBH SPA) Avoidance Strategy 2022

## **PLANNING ISSUES**

### Background:

1. In planning terms, a House of Multiple Occupation (HMO) is a single unit of accommodation which is shared by unrelated individuals where communal facilities such as kitchens, living areas and bathrooms are shared. Planning permission is not normally required for the use of a dwelling as an HMO with no more than six individuals (Use Class C4). Planning permission is normally required for HMOs with more than six unrelated individuals where this results in a material change of use (Use Class 'sui generis').
2. The Housing Act (2004) requires most HMOs with over five people to have a licence issued by the Local Authority. This is a separate requirement to planning permission but both legislative requirements run concurrently. In this case the HMO would require both planning permission and an HMO licence from the Local Authority.
3. The Housing Act (2004) requires Local Authorities to keep a public register of HMOs in their area. The HMO in this case (No.103-105 Walton Road) was granted an HMO licence on 1<sup>st</sup> October 2022 however the licence limits the HMO to the following:
  - Maximum of six bedrooms
  - Maximum of six occupants
4. The proposal seeks planning permission for a 9x bedroom, 15x person HMO and the proposal is retrospective. The HMO is therefore currently operating in breach of the HMO licence and in breach of planning control.
5. The primary material planning considerations have been assessed as set out below.

### Impact on Living Conditions:

6. The NPPF (2021) states that planning decisions should ensure that a 'high standard of amenity' is achieved for existing and future residents.
7. Woking Development Management Policies DPD (2016) policy DM11 'Sub-divisions, Specialist Housing, Conversions and Loss of Housing' states that proposals for the conversion of existing dwellings to HMOs and the intensification of existing HMOs will be permitted where various criteria are met, including the following:

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- *the proposal does not harm the residential amenity or character of the area;*
  - *a good quality of accommodation is provided by meeting any relevant housing standards;*
  - *there is adequate enclosed storage space for recycling/refuse;*
  - *access is acceptable and parking (including for cycles) is provided on site in accordance with the Council's standards.*
8. The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations (2018) sets mandatory national minimum sleeping room size requirements for HMOs as follows:
- 6.51 m<sup>2</sup> for one person over 10 years of age
  - 10.22 m<sup>2</sup> for two persons over 10 years
  - 4.64 m<sup>2</sup> for one child under the age of 10 years
9. The HMO in question has 9x bedrooms and houses 15x people. 3x of the 9x bedrooms are large enough only to accommodate one person (Bedrooms 1, 4 and 5) in accordance with the above, meaning the remaining six bedrooms must be occupied by two people (giving a total of 15x people as proposed).
10. Woking Borough Council has published a 'Private Sector Property - Amenity Standards Guide' document (2022). Whilst this does not form part of the Development Plan, it is nonetheless a useful guide to what constitutes an acceptable quality of accommodation for HMOs. The standards set minimum room size standards for different levels of occupancy and minimum standards for communal areas such as kitchens.
11. For HMOs with no communal living areas, the Council's 'Private Sector Property Amenity Standards Guide' (2022) sets the following minimum room size standards.

*Figure 1 - WBC 'Private Sector Property Amenity Standards Guide' (2022) minimum room sizes*

	Room Size	
	One Person	Two People (living as a couple)
Bedroom (where a separate kitchen is provided elsewhere in the HMO).	10m <sup>2</sup>	14m <sup>2</sup>

12. For communal kitchens, the guide sets the following minimum standards:

*Figure 2 - WBC 'Private Sector Property Amenity Standards Guide' (2022) minimum kitchen facilities*

Facility	Up to and including 5 people	More than 5 people	Requirement for Proposal
<b>Sinks</b>	1x sink	1x extra sink per 4x occupants and part of there after	4x sinks
<b>Cookers</b>	1x cooker	1x extra cooker per 4x occupants and part of thereafter.	4x cookers
<b>Worktops</b>	1x 500mm length x 600m width per person up to 2.5m	Additional 500mm length per user above the maximum 2.5m length	7.5m of work tops
<b>Cupboard</b>	1x 500mm wide base	Additional 500mm	15m of wall units or

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<b>space</b>	unit or 1x 1000mm wall unit per room	wide base unit or one 1000mm wall unit per user	7.5m of base units
<b>Fridge and Freezer</b>	1x fridge shelf and one freezer drawer per room	Additional fridge shelf and one freezer drawer per user	9x fridge shelves and 9x freezer shelves (approximately 3x fridge freezers)

13. The submitted plans identify the following accommodation to serve 15x people:
- 9x bedrooms (ranging from 8.5m<sup>2</sup> to 15.9m<sup>2</sup>)
  - 2x kitchens (6.2m<sup>2</sup> and 9m<sup>2</sup>)
  - 2x bathrooms (5m<sup>2</sup> and 5.8m<sup>2</sup>)
  - No communal living areas or dining rooms are proposed
14. The proposed accommodation has been assessed against the requirements of the Council's 'Private Sector Property Amenity Standards Guide' (2022) in Figure 3 below.

<i>Figure 3 – Assessment against WBC's 'Private Sector Property Amenity Standards Guide' (2022)</i>			
<b>Room</b>	<b>Size</b>	<b>WBC 'Private Sector Property Amenity Standards Guide' (2022) Requirement</b>	<b>Meets WBC 'Private Sector Property Amenity Standards Guide' (2022) Requirement?</b>
Bedroom 1 (single)	8.5m <sup>2</sup>	10m <sup>2</sup>	No
Bedroom 2	13.5m <sup>2</sup>	14m <sup>2</sup>	No
Bedroom 3	14.3m <sup>2</sup>	14m <sup>2</sup>	Yes
Bedroom 4 (single)	10.2m <sup>2</sup>	10m <sup>2</sup>	Yes
Bedroom 5 (single)	9.3m <sup>2</sup>	10m <sup>2</sup>	No
Bedroom 6	12.3m <sup>2</sup>	14m <sup>2</sup>	No
Bedroom 7	12.9m <sup>2</sup>	14m <sup>2</sup>	No
Bedroom 8	15.9m <sup>2</sup>	14m <sup>2</sup>	Yes
Bedroom 9	11.4m <sup>2</sup>	14m <sup>2</sup>	No
Kitchens (2x)	6.2m <sup>2</sup> and 9m <sup>2</sup> (total 15.2m <sup>2</sup> )	See Figure 2	No
Bathrooms (2x)	5m <sup>2</sup> and 5.8m <sup>2</sup> (total 10.8m <sup>2</sup> )	At least 3x bathrooms and 3x toilets	No

15. Whilst the 'Private Sector Property Amenity Standards Guide' (2022) does not form part of the Development Plan, it nonetheless provides a useful guide to what constitutes appropriate facilities for shared accommodation. It is also considered highly relevant because any application for an HMO licence would be assessed against these standards. Most of the proposed bedrooms would be undersized in relation to the Council's 'Private Sector Property Amenity Standards Guide' (2022). The HMO only has two bathrooms where there is a requirement for at least three bathrooms and toilets. No details layout plans of the kitchens have been provided however the two kitchens of 9m<sup>2</sup> and 6.2m<sup>2</sup> are not considered sufficient in size to accommodate sufficient shared facilities for 15x people, including sinks, cookers, worktops, cupboard and fridge/freezer space. For example, on the Officer's site visit it was evident that there are only 2x kitchen sinks and 2x cookers where there is a requirement for 4x kitchen sinks and 4x cookers.
16. The proposed HMO is considered to provide entirely inadequate kitchen and bathroom facilities for the number of occupants and most of the bedrooms are undersized. Adequately sized bedrooms are considered vitally important for an HMO in this case considering there is no communal living space or outdoor amenity space.

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17. Externally, access to the HMO is via a narrow alleyway to the side of the shop which occupies the ground floor and is shared with the shop. This is considered an uninviting and oppressive external environment. Views from many of the bedrooms are across expanses of flat roofs and air moving plant which is considered to add to the overall poor and oppressive residential environment. The HMO is considered to constitute cramped, oppressive and overcrowded accommodation which offers a poor standard of amenity for residents.

### Transportation Impact:

#### *Car Parking:*

18. The Council's 'Parking Standards' SPD (2018) sets a minimum parking standard of 2x spaces for flats with five bedrooms or more but does not set a minimum standard for HMOs. An individual assessment would therefore be required. The introductory text for the SPD recognises the importance of adequate parking provision and acknowledges that "*The mismanagement of parking can contribute to congestion problems both directly through creating on-street obstacles and also through vehicles cruising for available parking spaces...*".
19. The proposal site is within the Walton Road Neighbourhood Centre and is within walking distance of Woking Town Centre. The proposal site is located in a relatively sustainable location and is close to local amenities. The HMO does not benefit from any off-street parking. On-street parking in the area is controlled by CPZ and Walton Road and surrounding streets are typically heavily parked.
20. The proposal comprises an HMO with 15x occupants. Due to the type of accommodation proposed and the sustainable location of the proposal site, the absence of dedicated parking provision is not considered to result in a significantly harmful impact on parking provision locally.

#### *Cycle Storage:*

21. The Council's 'Parking Standards' SPD (2018) sets minimum cycle storage standards of 2x spaces per dwelling but requires an individual assessment for 'sui generis' uses. It is considered that secure cycle storage of at least one cycle per room (i.e at least 9x) should be provided and cycle storage is considered all the more important given the absence of parking provision. The County Highway Authority raises no objection subject secure cycle storage for at least 15x cycles being provided. No cycle storage is identified on the submitted plans. The proposal site is almost entirely occupied by built development. Outside space is extremely limited and is limited to the alleyways to the side of the building. Adequate cycle storage has not therefore been demonstrated and it is considered that there is no realistic prospect of achieving adequate cycle storage.
22. It has not been demonstrated that the proposed development would be able to accommodate adequate secure cycle storage to meet the needs of the proposed development. The proposal is therefore contrary to Woking Core Strategy (2012) policy CS18 'Transport and Accessibility', Woking Development Management Policies DPD (2016) policy DM11 'Sub-divisions, Specialist Housing, Conversions and Loss of Housing' and the National Planning Policy Framework (2021).

#### *Waste Management:*

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23. Woking Development Management Policies DPD (2016) policy DM11 'Sub-divisions, Specialist Housing, Conversions and Loss of Housing' states that proposals for the conversion of existing dwellings to HMOs and the intensification of existing HMOs will be permitted where, amongst other criteria, there is adequate enclosed storage space for recycling and refuse. Woking Core Strategy (2012) policy CS21 'Design' requires development proposals to incorporate provision for the storage of waste and recycling.
24. The proposal site is almost entirely occupied by built development. Outside space is extremely limited and is limited to the alleyways to the side of the building. The submission does not include and details of the amount of bin storage provided or where bin storage is located. HMOs can generate significant bin storage requirements and inadequate and poorly managed bin storage can contribute towards a poor quality living environment detract from the visual amenities of the area.
25. It has not been demonstrated that the proposed development would be able to accommodate sufficient bin storage arrangements to meet the needs of the proposed development. The proposal is therefore contrary to Woking Core Strategy (2012) policy CS21 'Design' and Woking Development Management Policies DPD (2016) policy DM11 'Sub-divisions, specialist housing, conversions and loss of housing'.

### Loss of Family Housing:

26. Woking Core Strategy (2012) policy CS11 and Woking Development Management Policies DPD (2016) policy DM11 seek to avoid the loss of housing, in particular family homes. In this case however the lawful use of the property is a flat used as an HMO and has an HMO licence for six people which would effectively be the 'fallback' position in this case. The proposal is not therefore considered to result in the loss of family housing.

### Impact on Character:

27. The proposal does not involve any external alterations and the proposal is not considered to harm the character of the host dwelling or surrounding area.

### Impact on Neighbouring Amenity:

28. The building in question is not attached to neighbouring residential properties. Whilst the use of the property would intensify, the residential use of the first floor level is established and the proposal is not considered to result in an unduly harmful impact on neighbours.

### Impact on the Thames Basin Heaths Special Protection Area (SPA):

29. The Thames Basin Heaths Special Protection Area (TBH SPA) has been identified as an internationally important site of nature conservation and has been given the highest degree of protection. Policy CS8 of the Core Strategy states that any proposal with potential significant impacts (alone or in combination with other relevant developments) on the TBH SPA will be subject to Habitats Regulations Assessment to determine the need for Appropriate Assessment. Following recent European Court of Justice rulings, a full and precise analysis of the measures capable of avoiding or reducing any significant effects on European sites must be carried out at an 'Appropriate Assessment' stage rather than taken into consideration at screening stage, for the purposes of the Habitats Directive (as interpreted into English law by the Conservation of Habitats and Species Regulations 2017 (the "Habitat Regulations 2017")).

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30. Policy CS8 of Woking Core Strategy (2012) requires new residential development beyond a 400m threshold, but within 5 kilometres of the TBH SPA boundary to make an appropriate contribution towards the provision of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM), to avoid impacts of such development on the SPA. The SANG and Landowner Payment elements of the SPA tariff are encompassed within the Community Infrastructure Levy (CIL), however the SAMM element of the SPA tariff is required to be addressed outside of CIL.
31. The SAMM tariff ordinarily applies to net additional dwellings. However, Section 5.1 of the Council's Thames Basin Heaths SPA Avoidance Strategy (2022) states that some other forms of development, including HMOs are likely to result in similar recreational pressures on the SPA and should therefore contribute towards avoidance measures.
32. The Avoidance Strategy calculates occupancy rates for different sizes of dwelling. The existing dwelling is a 4+ bedroom flat which has an occupancy rate of 2.9 people. The proposed HMO is for 15x people, meaning there would be an increase of 12.1 people living at the property people which requires mitigation. 12.1 people is approximately equal to five times the occupancy rate of 3x bed dwellings (5x 2.5 people). The required SAMM contribution for 3x bed dwellings is £1,180. The required contribution would therefore be **£3,540** (3x £1,180).
33. The Appropriate Assessment concludes that there would be no adverse impact on the integrity of the TBH SPA providing the SAMM financial contribution is secured through a S106 Legal Agreement. CIL would be payable in the event of planning permission being granted. Nonetheless no Legal Agreement has been submitted to secure the SAMM financial contribution given the other objections to the proposal.
34. In view of the above, and in the absence of a Legal Agreement to secure contributions towards mitigation measures, the Local Planning Authority is unable to determine that the proposed development would not have an adverse effect on the integrity of the Thames Basin Heaths Special Protection Area, either alone or in combination with other plans and projects in relation to urbanisation and recreational pressure effects, contrary to the Conservation of Habitats and Species Regulations (2017) (SI No. 1012 - the "Habitats Regulations"), saved Policy NRM6 of the South East Plan (2009), Policy CS8 of the Woking Core Strategy (2012) and the Thames Basin Heaths Special Protection Area Avoidance Strategy (2022).

### **Conclusion and Planning Balance:**

35. The proposed House of Multiple Occupation, by reason of the cramped and contrived nature of the accommodation, the inadequate size and quality of bedrooms and communal facilities, the placement of habitable room windows and the waste storage arrangements, creates an unacceptably cramped and poor residential environment, to the detriment of the amenities of current and future occupants. The proposal is therefore contrary to Woking Core Strategy (2012) policy CS21 'Design', Woking Development Management Policies DPD (2016) policy DM11 'Sub-divisions, Specialist Housing, Conversions and Loss of Housing', Supplementary Planning Document 'Outlook, Amenity, Privacy and Daylight' (2022) and the National Planning Policy Framework (2021).
36. It has not been demonstrated that the proposed development would be able to accommodate sufficient bin storage arrangements to meet the needs of the proposed development. The proposal is therefore contrary to Woking Core Strategy (2012)



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policy CS21 'Design' and Woking Development Management Policies DPD (2016) policy DM11 'Sub-divisions, specialist housing, conversions and loss of housing'.

37. It has not been demonstrated that the proposed development would be able to accommodate adequate secure cycle storage to meet the needs of the proposed development. The proposal is therefore contrary to Woking Core Strategy (2012) policy CS18 'Transport and Accessibility', Woking Development Management Policies DPD (2016) policy DM11 'Sub-divisions, Specialist Housing, Conversions and Loss of Housing' and the National Planning Policy Framework (2021).
38. In the absence of a Legal Agreement or other appropriate mechanism to secure contributions towards mitigation measures, it cannot be determined that the proposed development would not have a significant impact on the Thames Basin Heaths Special Protection Area, contrary to Woking Core Strategy (2012) policy CS8 'Thames Basin Heaths Special Protection Areas', the Thames Basin Heaths Special Protection Area Avoidance Strategy (2022), saved policy NRM6 of the South East Plan (2009) and the Conservation of Habitats and Species Regulations 2017 (SI No. 490 - the "Habitats Regulations").
39. The proposal is therefore an unacceptable form of development and is recommended for refusal.

### *Enforcement Action:*

40. It is also considered expedient to serve an Enforcement Notice having regard to the provisions of the Development Plan and to other material considerations. As such, authority is sought to serve an Enforcement Notice. It is considered expedient to take enforcement action for the reasons outlined above. Furthermore, paragraph 59 of the National Planning Policy Framework (NPPF) (2021) states that "*Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control*".
41. The submission indicates that the change of use commenced in February 2021, meaning the use is not immune from enforcement action.

## **RECOMMENDATION**

REFUSE for the following reasons:

01. The proposed House of Multiple Occupation, by reason of the cramped and contrived nature of the accommodation, the inadequate size and quality of bedrooms and communal facilities, the placement of habitable room windows and the waste storage arrangements, creates an unacceptably cramped and poor residential environment, to the detriment of the amenities of current and future occupants. The proposal is therefore contrary to Woking Core Strategy (2012) policy CS21 'Design', Woking Development Management Policies DPD (2016) policy DM11 'Sub-divisions, Specialist Housing, Conversions and Loss of Housing', Supplementary Planning Document 'Outlook, Amenity, Privacy and Daylight' (2022) and the National Planning Policy Framework (2021).
02. It has not been demonstrated that the proposed development would be able to accommodate sufficient bin storage arrangements to meet the needs of the proposed development. The proposal is therefore contrary to Woking Core Strategy (2012)

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policy CS21 'Design' and Woking Development Management Policies DPD (2016) policy DM11 'Sub-divisions, specialist housing, conversions and loss of housing'.

03. It has not been demonstrated that the proposed development would be able to accommodate adequate secure cycle storage to meet the needs of the proposed development. The proposal is therefore contrary to Woking Core Strategy (2012) policy CS18 'Transport and Accessibility', Woking Development Management Policies DPD (2016) policy DM11 'Sub-divisions, Specialist Housing, Conversions and Loss of Housing' and the National Planning Policy Framework (2021).
04. In the absence of a Legal Agreement or other appropriate mechanism to secure contributions towards mitigation measures, it cannot be determined that the proposed development would not have a significant impact on the Thames Basin Heaths Special Protection Area, contrary to Woking Core Strategy (2012) policy CS8 'Thames Basin Heaths Special Protection Areas', the Thames Basin Heaths Special Protection Area Avoidance Strategy (2022), saved policy NRM6 of the South East Plan (2009) and the Conservation of Habitats and Species Regulations 2017 (SI No. 490 - the "Habitats Regulations").

It is further recommended that: -

The Director of Legal and Democratic Services be instructed to issue an Enforcement Notice under Section 172 of The Town and Country Planning Act 1990 (as amended) and Officers be authorised in the event of non-compliance with the Notice to prosecute under Section 179 of the Act, or appropriate power, and/or take direct action under Section 178 in the event of non-compliance with the Notice requiring the remedy of the breach of planning control to be achieved through the cessation of the use of the premises as an House of Multiple Occupation (HMO) with more than six bedrooms and six persons.

It is recommended that enforcement action be authorised to issue an Enforcement Notice in respect of the above land requiring the following within six (6) months of the Notice taking effect:

- i. cessation of the use of the premises as an House of Multiple Occupation (HMO) with more than six bedrooms and six persons.

### **Informatives**

1. The plans relating to the development hereby refused are listed below:

L.201 (Location Plan) received by the LPA on 20.02.2023  
B.201 (Block Plan) received by the LPA on 20.02.2023  
P.201 (Site Layout) received by the LPA on 20.02.2023  
P.202 (Proposed Floor Plans) received by the LPA on 20.02.2023  
P.203 (Proposed Elevations) received by the LPA on 20.02.2023  
Application Form dated 20.02.2023