

Delegated Decision Report

Application No:	25/0985	Statutory Period Expires:	9th January 2026
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Site:	5 Eveswell Park Road Newport NP19 8GS		
Proposal:	S73 APPLICATION TO VARY CONDITION 3 (BEDROOM NUMBER) OF APPEAL DECISION APP/G6935/A/19/3219788 FOR CHANGE OF USE FROM 5NO. BEDROOM DWELLING TO 5NO. BED HOUSE IN MULTIPLE OCCUPATION (RESUBMISSION OF 17/1174). AMENDMENT INCLUDES INCREASE OF NUMBER OF BEDROOMS TO 6NO.		
Applicant:	M Zvala		
Type:	Renewals and Variation of Conditions	Ward:	Beechwood
Decision:	REFUSED		

1. BACKGROUND

- 1.1 Planning permission was refused in 2018 (17/1174) for the change of use of the property from a 5no bedroom dwelling to a 6no bedroom HMO. The application was refused for the following reason 'The proposal would result in a shortfall of four parking spaces and would increase the demand for on-street parking to the detriment of highway safety. Therefore, the proposed six bed House in Multiple Occupancy would be contrary to Policies GP2, GP4 and H8 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015) as well as Supplementary Planning Guidance Parking Standards (Adopted 2015).'

A further application was submitted (18/0283) for the change of use from a 5no bedroom dwelling to a 5no bedroom HMO. Planning permission was refused for the following reason 'The proposal would result in a shortfall of three parking spaces and would increase the demand for on-street parking to the detriment of highway safety. The development would result in an intensification of parking on the highway of Eveswell Park Road and the surrounding residential roads and as such compromise the free flow of traffic to the detriment of highway safety. Therefore, the proposed five bed House in Multiple Occupancy would be contrary to Policies GP2, GP4 and H8 of the Newport Local Development Plan 2011 - 2026 (Adopted January 2015) as well as Supplementary Planning Guidance Parking Standards (Adopted 2015).'

The decision was appealed and allowed with no change of description. The Inspector concluded in their decision that they were satisfied that 'parking demand from the development would be catered for adequately by on street parking without the detriment to pedestrian and highway safety. In addition, I am not convinced that the parking requirement for the development would be as high as that advocated by the Council given that there would be lower car ownership levels for this type of development and that the site is accessible to public transport and services by walking and provides facilities for cycle storage.' A condition was attached to the consent stating that 'the number of bedrooms the subject of this permission shall not exceed 5 at any one time.'

2. SITE LOCATION AND CONTEXT

- 2.1 The property is a large semi-detached property near the junction of St Johns Road and a short distance from Batchelor Road and its junction with St Johns Road. The site is situated to the east of the City Centre and north of Chepstow Road (B4237).

3. DESCRIPTION OF DEVELOPMENT

- 3.1 The proposal seeks to vary the wording of condition 3 to allow for the increase in the number of bedrooms in the HMO from 5no to 6no.

4. RELEVANT SITE HISTORY

App Number	Proposal	Decision	Decision Date
17/1164	CHANGE OF USE FROM FIVE BEDROOM DWELLING TO SIX BEDROOM HOUSE IN	REFUSED	14/02/2018

	MULTIPLE OCCUPATION (HMO)		
18/0283	CHANGE OF USE FROM 5NO. BEDROOM DWELLING TO 5NO. BED HOUSE IN MULTIPLE OCCUPATION (RESUBMISSION OF 17/1174)	REFUSED – ALLOWED AT APPEAL	05/07/2018

5. PLANNING POLICY

5.1 THE NATIONAL DEVELOPMENT FRAMEWORK: FUTURE WALES - THE NATIONAL PLAN 2040

Future Wales sets out the Welsh Government's land use priorities and provides a national land use framework for SDPs and LDPs. Future Wales concentrates on development and land use issues of national significance, indicating areas of major opportunities and change, highlighting areas that need protecting and enhancing and helping to co-ordinate the delivery of Welsh Government policies to maximise positive outcomes.

Policy 1 - Where Wales Will Grow

Policy 2 - Shaping Urban Growth and Regeneration - Strategic Placemaking

Policy 9 - Resilient Ecological Networks and Green Infrastructure

5.2 PLANNING POLICY WALES (EDITION 12) 2024

3.3 - Good design is fundamental to creating sustainable places where people want to live, work and socialise.

3.4 - Meeting the objectives of good design should be the aim of all those involved in the development process and should be applied to all development proposals at all scales.

5.3 NEWPORT LOCAL DEVELOPMENT PLAN (2011-2026)

- SP1 – Sustainability
- GP2 – General Amenity
- GP4 – Highways and Accessibility
- GP6 – Quality of Design
- GP7 – Environmental Protection and Public Health
- H8 – Self Contained Accommodation and Houses in Multiple Occupation
- T4 – Parking

5.4 SUPPLEMENTARY PLANNING GUIDANCE

- Parking Standards SPG
- House in Multiple Occupation SPG

6. CONSULTATION RESPONSES

6.1 Environmental Health: I confirm I have no objections to the proposal. However, we would wish to make the following comment: Please note that the minimum bedroom size required for a one-person accommodation in a Shared House is 6.51m², and for a two-person accommodation, it is 11m². To determine the appropriate number of occupants, consideration must also be given to the number, type, and quality of amenities available within the property. There is currently no information provided to demonstrate that the kitchen facilities are adequate for the proposed number of occupants. Please note that the requirements increase when occupancy rises from 5 persons to 6 or more. The applicant should ensure that the kitchen provision meets these requirements and is strongly advised to implement at least the minimum standards. In addition, the submitted plans do not specify the fixtures and fittings within the bathrooms. This information is essential, as bathroom and WC provision would also directly affects the maximum permitted occupancy. The applicant should refer to the same HMO Property Standards document, which details the exact requirements for bathroom and WC facilities based on the number of occupants. The owner of the property will have to ensure adequate fire protection. A Fire Risk Assessment should be complete by a competent person, so the owner/ landlord is aware of the fire safety requirements. I would advise that the owner reviews the LACORS Fire Safety Guidance and also reviews the HMO Licensing Standards. If it is intended for the dwelling

to be converted into a House in Multiple Occupation under the Housing Act 2004, Part 2, where it will be occupied by more than two households, the most appropriate person (usually the landlord/owner of the property) should apply to the Environmental Health Housing Team. In addition to HMO Licensing, private landlords are required by the Housing (Wales) Act 2014 to be registered. Also, private landlords who undertake letting and management activities or their managing agents, will need to obtain a licence from Rent Smart Wales and undergo training.

- 6.2 Local Highways Authority: Not supported. The application is for an additional room, which increases the parking requirement by one space. Whilst this is theoretical and marginal, it cannot be supported by Highways. We have already objected to the previous application on the basis that any increased parking demand could be detrimental to highway safety and the movement of vulnerable and disabled road users. We cannot therefore support any further increase.

7. PUBLIC REPRESENTATIONS

Neighbour and Ward member notification letters were sent on 20/11/2025.

7.1 NEIGHBOURS:

20 Eveswell Park Road

- The parking on Eveswell Park Road, and the surrounding area is terrible. Due to few houses having driveways, most parking is on the roadside. Cars are often parked on both sides of the road, making turning out of Eveswell Park Road onto St Johns Road difficult, and vice versa. Cars parked on St Johns Road, opposite the Eveswell Park Road junction are often damaged. It is difficult for a car to make the turn, let alone a larger vehicle such as a fire engine.
- This application would increase the number of people living in the house, which in turn would increase the amount of cars needing to be parked. Five bedrooms could potentially house up to 10 people, all with cars. There is no safe places for these cars to park, and this will only increase the risk of accidents, as well as preventing emergency vehicles from being able to access Eveswell Park Road safely.

20 Eveswell Park Road

- Please take the below as a formal objection to the above planning application appeal. My objections remain the same as when I objected to the original application in 2018. I note the appeal application seeks to add a further bedroom, which in my view will exacerbate the issues set out below:
- Parking - Very few houses in this area benefit from off road parking. Under normal circumstances, this may not be overly problematic. However, the geography of the area has to be factored in. The property is located at the base of a steep hill, which is approached from one side by an extremely sharp right hand hairpin bend (from St John's Road). Only a few hundred yards up the hill (Eveswell Park Road), there is another sharp bend. These two hazardous areas are often only passable by a single track, given the on road parking. This often results in cars either reversing back up a steep hill, just after a sharp bend, or reversing down a steep hill, with cars approaching at speed up the hill. This has clear risks. Unfortunately many drivers coming up and down this steep hill drive inappropriately, therefore increasing the risk of a serious accident, given the reduced visibility. If you add in yet more congestion, which will invariably happen, the situation will get worse. I believe a previous parking survey references the ability for HMO occupants to walk into the city centre, use local amenities or utilise public transport, however there is no guarantee that this will happen and with the transient nature of many HMO property occupants, what happens today may differ greatly next month. Therefore, there is the possibility of up to 12 vehicles being attached to the property and that can't be appropriate given the parking situation. The parking survey undertaken when the original planning application was made stated the times of the survey coincide with times when on street parking demand would be at its highest i.e. before the AM peak hour and after the PM Peak hour on a weekday. I believe this to be factually incorrect and I questioned the timings this survey was undertaken when I submitted my original objection- 5am on a weekday morning and 1am on a Saturday morning

does not paint a true picture of the situation. The timings of the survey would not factor in the following: parents picking up and dropping off children to the Welsh school on St John's Road, parishioners and visitors attending St John's church for weddings, funerals, services and christenings. Staff working a day shift in the medical centre on Eveswell Park Road. Lastly, the timings do not factor in the fact that residents have visitors during the day and evenings, who would like to park near to the relevant property.

- Noise - Given the hillside location of the property, it is likely that increased noise, which will invariably happen with an increased number of occupants, will be heard by many properties in the area.

4 Eveswell Park Road

- I would like to relay in the strongest possible terms my objection to this application. For the following reasons:
- Lack of parking space and subsequent impact on highways and access. -Highways Safety & Emergency Access (Highway Code 250) - Highways assessment required. The area surrounding 5 Eveswell Park Road is already plagued with an excess of vehicles, which brings with it dangers to residents, passers-by and vehicles. The current concentration of resident and vehicles already leads to illegal parking and subsequent dangers. Vehicles routinely park closer than 10 metres to the junction with St Johns Road. This leads to a near impossible turn for most vehicles, in particular larger vehicles such as ambulances and fire engines. This poses an obvious danger to residents who may require emergency services. Myself, and other elderly residents are left anxious and frightened that our safety, which is already compromised may be even further threatened by more vehicles. The property in question is a stones throw away from Eveswell primary school and Woodland Park, and is a thoroughfare for parents and children making the daily commute to St Joseph's Primary School. Elderly residents who wish to use the local bus routes available on Chepstow Road, also increase the footfall of vulnerable demographics. I frequently see young children, mothers pushing prams and vulnerable elderly locals, having to step foot into the road to check that the crossing is safe, putting themselves and loved ones in danger. This already dangerous situation only stands to worsen if the approval being requested is granted. Furthermore, the cars parking on the street are so cramped that they already park partially on pavements. I regularly see vulnerable demographics having to walk on the road because of this.
- Safety. Issues with: -HHSRS structural ground movement hazard- Structural assessment required. -HHSRS hazard 23- Category 1 risk.
- As previously mentioned, parking in the area greatly inhibits access of larger vehicles such as ambulances and fire engines. Furthermore people living in HMOs are about 4 times more likely to die in a fire as those from a single family dwelling (according to public health and government linked evidence often cited in UK housing policy). This issue makes building safety even more important.
- The front garden walls at both number 7 and 9 (which both perform a structural reinforcement role) have recently been renewed as they were at risk of collapsing onto the public pavement. A visual inspection of the wall at number 5 reveals clear evidence that it too, is also vulnerable to collapse (HHSRS structural ground movement hazard). What exacerbates this issue even further is the utility services running through the wall in question. Should this wall collapse, it wouldn't just pose a risk to the young children and elderly residents who frequently walk by, but also promises far more devastating results, as it will fracture the utilities causing the release of gas or the exposure to bare electrics (HHSRS hazard 23- Category 1 risk). The structural dangers, and subsequent potential impact on utilities, would be made greater by the increased imposed load of an additional resident.
- Impact on character of area - The area concerned is, as mentioned, close to local amenities that have for many years attracted young families. These families have taken advantage of the proximity to schools, parks, GP surgerys as well as local shops in Maindee. The increase in HMOs and flats in the area are threatening to destroy this vibrant, family centred, local community, with an increase of residents who do not require these amenities to the same degree as young families. This demographic change will lead to young families having to choose houses in more

suburban areas. In turn this will increase the degree of commuting in the Newport area, contradicting local and national efforts to decrease carbon emissions. We obviously can't turn the clock back on this HMO, but allowing further residents in an already cramped area is just another step down an unwanted path for locals who don't want to see the standard of the community degraded any further.

7.2 COUNCILLORS:

Councillor Matthew Pimm

- As a ward councillor I am opposed to unsuitable HMO applications in the ward but I will judge this proposed planning application on its merits and details when I am in a position to scrutinise it further when the case information is available to me. From my knowledge and experience of Eveswell Park Road it already experiences noticeable congestion throughout the day due to its proximity to Eveswell School and a HMO has the potential to increase the congestion with 6 people living in the property.

Councillor Deborah Davies

- Firstly, I note the commentary when Planning Inspectorate upheld the appeal and approved this property in 2018. The commentary was clear and the application was approved only on condition that the property did not increase in size beyond the proposed five bedrooms. As the bedrooms within this original application were stipulated as being for single use only, I therefore feel that this application is being disingenuous in proposing 6 people in 5 bedrooms, in an attempt not to contravene the PIW instruction.
- Secondly, I support the concerns laid out by our highways team. Eveswell Park Road is a difficult road to negotiate. Its narrow, on a hill, curves badly with notable blind spots. Additional cars parked on the road adds to a risk to pedestrian and driver safety.
- I note if officers are minded to accept this application I would like to see it called in to be considered by the planning committee.

8. ASSESSMENT

8.1 Principle of Development:

This application seeks to vary the wording of condition 03 'The number of bedrooms the subject of this permission shall not exceed 5 at any one time. Reason: To define the scope of the planning permission and in the interests of highway safety and residential amenity in accordance with Policies GP2 and GP4 of the Newport Local Development Plan.' to allow for the increase in the number of bedrooms from 5no to 6no. Section 73 of the Town and Country Planning Act allows the determination of applications to develop land without compliance with conditions previously attached.

The legislation set out within Section 73 of the Town and Country Planning Act 1990 (as amended) ('TCPA') is the starting point, with consideration also given to case law on the interpretation of S73.

The case of *Finney v Welsh Minsters [2019]* is relevant to this application whereby the Court of Appeal concluded that 'the planning authority cannot use section 73 to change the description of development.' The case made clear that the scope of section 73 is constrained by the description of the development.

In this regard, Section 73 of the TCPA allows planning applications for the **development of land without compliance with conditions previously attached**. The Development Management Manual (Welsh Government, Revision 3, May 2025) ('DMM') notes that "where a section 73 application is granted, its effect is to grant a new planning permission" (paragraph 13.3.1).

While section 73 applications are commonly referred to as applications to 'amend' the conditions attached to a planning permission, a decision under section 73 leaves the original planning permission intact and un-amended. That is so whether the decision is to

grant planning permission unconditionally or subject to different conditions or to refuse the application. The original planning permission comprises not merely the description of the development in the operative part of the planning permission but also the conditions subject to which the development was permitted to be carried out [London Borough of Lambeth (Appellant) v Secretary of State for Housing, Communities and Local Government and others (Respondents)(2019)].

The Fiske case (2024), being the most up to date and citing the 2no. previous decisions of Finney and Armstrong, considered the scope of the power in section 73 and whether conditions fall outside the scope of section 73 if they fall into either of the following categories:

- (1) They are inconsistent in a material way with the operative part of the original permission.
- (2) They make a fundamental alteration of the development permitted by the original permission.

The Court of Appeal dismissed the Appellant's case, holding that the restriction in (1) applies to section 73, but not (2). The rationale for this was as follows:

- The starting point for any consideration of the scope of section 73 is the legislation (i.e. section 73 itself), not other case law.
- Section 73 does not include any fundamental alteration limitation. This is in line with **Armstrong**.
- However, as per **Finney**, section 73 cannot be used to change the description of development or impose conditions which would be inconsistent with that. This is because section 73 is only a power to vary conditions on an existing permission, not the operative part of the permission.

The Fiske decision further explains from paragraph 120:

It is important to note the statement of Lewison LJ that "section 73" cannot be used to change the description of the development in an earlier permission. This means what it says. ...Accordingly, the appellant's contention that Finney only decided that the operative part of a s.73 permission cannot differ from that of an earlier permission is unsustainable. True enough, the operative part of the s.73 permission in that case omitted any reference to the permitted height in the original consent, which was in itself impermissible. But the Court of Appeal did not proceed on the basis that that was sufficient to decide the case. The main part of the reasoning, and of the ratio, explained why the court rejected the respondent's contention, repeated by the appellant in this appeal, that the Wheatcroft test forms part of the legal limits of the power to impose conditions under s.73. It does not. Restriction (1) is the correct test.[see paragraph 8.17 above]

Paragraph 130 of the decision states, *"Instead, the restrictions upon the power to impose conditions in a s.73 permission are those set out in s. 73 itself, the Newbury tests [1981 AC 578] and the requirement that those conditions must not be inconsistent with the operative part of the earlier planning permission."*

In this case, the proposed variation of condition to allow 6no bedrooms is inconsistent with the description that refers to 5no bedrooms. This is a fundamental alteration to, and is inconsistent with, the original permission. It is also more than De Minimis.

Whilst the most recent Fiske judgement has established that the scope of S73 applications can include potentially substantial alterations to the original permission, providing that the amendments sought are consistent with the operative part of the original permission, it is considered that this S73 application goes beyond the ambit of power of S73 applications. Conditions under section 73 cannot be inconsistent in a material way with the operative part of the original permission. The operative part includes the description. Whilst De Minimis or non material changes that potentially vary the operative part of the original and extant permission may be possible according to caselaw so far, conditions under section 73 cannot be materially inconsistent with the operative part.

Whilst this application is applying to vary a condition, the varying of this condition is inconsistent with the operative part of the permission, and therefore this section 73 application cannot be approved.

Aside from the above, the merits of the application are assessed below.

8.2 **Movement:**

The existing property and the proposed development provide no off-street parking and the parking demand would be accommodated on the street. In accordance with the Council's Parking Standards SPG, the existing 5no bed HMO property would generate a parking demand of 6no spaces. The proposed 6no bed HMO would generate a parking demand of 7no spaces (1 parking space per bedroom plus 1 visitor parking space). This is an increase of 1no space on the approved. The Council's Highways Officer does not support the proposal as they have already objected to the previous application on the basis that any increased parking demand could be detrimental to highway safety and the movement of vulnerable road users. The Officer advises that they cannot therefore support any further increase.

Whilst a parking survey was undertaken as part of the previous application, this was in 2018 and so cannot be given weight as part of this application. No updated parking survey has been provided. A parking survey should be provided to address the increase in parking demand in accordance with the Council's Parking Standards SPG but assessment of occupancy levels in this assessment are relevant and the proposal is unlikely to give rise to a material impact upon parking levels subject to occupancy levels being restricted to 6no. persons.

8.3 **Residential Amenity:**

The proposed bedroom would have an area of 6.51m² which is the minimum bedroom size required for a one-person accommodation in a shared house in accordance with HMO licensing standards. The bedroom is at first floor, contains a window and is of usable plan layout with access to a shared bathroom at first floor. Therefore, it is considered that the bedroom would provide adequate space, amenity and light and be sufficient for occupancy of a single person. In terms of the living space, the HMO licensing standards states that the kitchen of a HMO should be at least 10sqm and the living space at least 12sqm for up to 6no people. The kitchen is shown to be 17sqm and the living room is shown to be 14sqm. Therefore, the shared amenity spaces are considered to be adequate to accommodate 6no persons, and an additional bedroom. The property contains a WC at ground floor and a bathroom at first floor that would serve 5no of the 6no bedrooms as the bedroom in the loft has its own shower room. In order to allow for an adequately sized additional bedroom, some of the bathroom space has been lost, assumedly 0.21m². Whilst this is not ideal given the number of occupants it serves, this is only a minor reduction in size and there is a WC at ground floor so on balance it is considered to be acceptable given that the number of occupants isn't increasing.

8.4 **Visual Amenity/ Character and Appearance;**

The principle of a HMO is accepted as already has permission as a 5no bedroom HMO. It is not considered that the increase in the number of bedrooms to 6no would materially impact the character and appearance of the property and wider area.

8.5 **Other Matters**

Notwithstanding the above, whilst the planning permission for the HMO controlled the number of bedrooms via condition, the condition did not control the number of occupants. Therefore, within a C4 use and in line with the HMO License for the property, the property has the potential to already allow for up to 6no occupants. It is therefore considered that whilst an additional bedroom is proposed, the number of occupants allowed to reside within the HMO would not increase under Class C4.

8.6 **Neighbour Comments**

Comments were received from neighbours and local councillors whereby the main concerns raised were impacts on parking, noise and character of the area. It is considered that these matters have been outlined above however, in conclusion it is considered that as

the property can already accommodate 6no occupants in line with their permission and HMO license, adding an additional bedroom to the property would not increase the number of occupants.

9.2 Equality Act 2010

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

9.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

9.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

9.5 Planning (Wales) Act 2015 (Welsh language)

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

9.6 Newport's Well-Being Plan 2018-23

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

10. CONCLUSION

10.1 Amending the wording of the description to allow for an additional bedroom in the approved HMO falls outside the scope of section 73 of the Town and Country Planning Act 1990 (as amended).

11. DECISION

REFUSED

01 The proposal to increase the number of bedrooms from 5no to 6no falls outside the scope of section 73 of the Town and Country Planning Act 1990 (as amended). The amendment is inconsistent with the operative part of the original permission and is more than de minimis.

NOTE TO APPLICANT

01 This decision relates to plan Nos: Existing Floor Plans, Proposed Floor Plans, Location Plan, Waste Storage Areas and Cycle Storage.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). Policies SP1, GP2, GP4, GP6, GP7, H8 and T4 were relevant to the determination of this application.

03 Due to the minor nature of the proposed development (including any demolition) and the location of the proposed development, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.