

**Planning, Transport & Sustainability Division
 Planning and Rights of Way Panel 30 September 2014
 Planning Application Report of the Planning and Development Manager**

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| Application address: Land to rear of 28 to 64 Winchester Road and rear of 204-218 Warren Avenue | | | |
| Proposed development: Redevelopment of the site to the rear of 28-64 Winchester Road and 204-218 Warren Avenue to include the construction of a new part two-storey and part three-storey building to provide 14 flats (nine x two bedroom, three x three bedroom, two x four bedroom) with access from Warren Avenue. | | | |
| Application number | 14/00676/FUL | Application type | FUL |
| Case officer | Anna Lee | Public speaking time | 15 minutes |
| Last date for determination: | 25.07.2014 | Ward | Shirley |
| Reason for Panel Referral: | Major planning application subject to 5 or more objections | Ward Councillors | Cllr Chaloner Cllr Coombs Cllr Kaur |

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| Applicant: Homelife Developments Mr Glen Sahota | Agent: Chris Edmond Associates |
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| Recommendation Summary | Delegate to Planning and Development Manager to grant planning permission subject to criteria listed in report |
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| Community Infrastructure Levy Liable | Yes |
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Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below and the Planning Inspectorate's Appeal Decision (Local Planning Authority reference 12/01923/OUT). Other material considerations including the character of the area and highway safety issues have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. Having regard to the Appeal Decision the scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 186-187 of the National Planning Policy Framework (2012).

Policies - SDP1, SDP4, SDP5, SDP6 SDP7, SDP9, SDP10, SDP13, SDP16, SDP22, SDP23, NE4 and H7 of the City of Southampton Local Plan Review (March 2006) and CS4, CS5, CS6, CS13, CS15, CS18, CS19, CS20, CS22, CS23 and CS25 of the Local Development Framework Core Strategy Development Plan Document (January 2010)

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| Appendix attached | | | |
| 1 | Development Plan Policies | 2 | Planning History |
| 3 | Inspectors Decision 12/01923/OUT | | |

Recommendation in Full

1. Delegate to the Planning and Development Manager to grant planning permission subject to the completion of a S.106 Legal Agreement to secure:
 - i. Financial contributions towards site specific transport contributions for highway improvements in the vicinity of the site in line with Policy SDP4 of the City of Southampton Local Plan Review (March 2006), policies CS18 and CS25 of the adopted LDF Core Strategy (2010) and the adopted SPD relating to Planning Obligations (September 2013);
 - ii. Provision of affordable housing in accordance with Policies CS15, CS16 and CS25 of the Local Development Framework Core Strategy Development Plan Document - Adopted Version (January 2010) and the adopted SPD relating to Planning Obligations (September 2013);
 - iii. Submission of a highway condition survey to ensure any damage to the adjacent highway network attributable to the build process is repaired by the developer;
 - vi. The submission, approval and implementation of a Carbon Management Plan setting out how the carbon neutrality will be achieved and/or how remaining carbon emissions from the development will be mitigated in accordance with Policy CS20 of the Core Strategy and the Planning Obligations SPD (September 2013);
 - v. A refuse management plan to ensure arrangements are in place for the removal of refuse and recycling from the property;
 - vi. The submission of a satisfactory slope stability report which demonstrates that with appropriate mitigation if necessary the development would not be subject to or cause land instability issues;
 - vii. An obligation to preclude future residents being issued with car parking permits.

2. In the event that the legal agreement is not completed within two months of the Planning and Rights of Way Panel decision, that the Planning and Development Manager be authorised to refuse permission on the ground of failure to secure the provisions of the Section 106 Legal Agreement.

3. That the Planning and Development Manager be given delegated powers to add, vary and /or delete relevant parts of the Section 106 agreement and/or conditions as necessary.

1.0 Background

- 1.1 The application was deferred by Panel on 2nd September 2014 as Members felt insufficient car parking was provided in order to meet the travel demands of the development. The original proposal showed eight car parking spaces and eleven have now been provided. Some 13sqm of useable amenity space has been lost and approximately 360sqm remains as two parking spaces lie within an area not included as amenity space. Neighbours have been notified of the changes.
- 1.2 The most recent application for a similar development was refused for failure to provide a sufficient width of access way of 3.1m (12/01923/OUT). The Refusal Notice was appealed and dismissed, albeit solely on failure to enter into a S106 legal agreement securing the matters set out in the above recommendation. The Inspector was satisfied with the proposed access. The Planning Inspector disagreed with the Council's reason for refusal relating to highway safety. Therefore, the revised application should only be assessed on the basis of the changes proposed to the scheme since the last application and the previous Inspector's decision is a significant material consideration in the determination of this current application.

2.0 The site and its context

- 2.1 The application site is a vacant piece of land of an irregular shape which is bounded by the rear gardens of residential properties on three sides. The part of the site to be developed is overgrown. Beyond the northern site boundary is Hollybrook Greenway and Shirley Pond which is a Site of Importance for Nature Conservation (SINC). This boundary benefits from mature tree screening. There is a notable change in levels across the site with the land dropping away towards the northern boundary.
- 2.2 The site is accessed from an existing track between 218-220 and 216 Warren Avenue and this un-metalled road also provides access to garages associated with the residential properties which neighbour the site. Currently the site is in a poor condition and has a low visual quality, despite its back land location. The application site is located within Public Transport Accessibility Level (PTAL) 3 meaning that it has reasonable access to local shops, services and public transport links.

3.0 Proposal

- 3.1 Full planning permission is sought for the construction of single residential block which would contain 14 flats at a density 87.5 dwellings/hectare. The block would front the access road with fenestration concentrated on the northern and southern elevations. The building would have a part two and part three-storey scale and would have a combination of flat and mono-pitched roof form. The front elevation is well articulated with a staggered building line and clear breaks in the massing. The overall design approach is relatively contemporary with a palette of materials including brick, render and timber boarding.

- 3.2 A total of 11 car parking spaces would be provided to the western end of the site. The building would have a staggered footprint which would front the vehicular access into the site. There are five units on the ground floor: three 3 bed-units, one 2-bed and one 4-bed unit. On the first floor there are five 2-bed units and one 4- bed unit. On the third floor are a further three 2-bed units. All units are accessed via the front, and cycle and refuse storage is located within the ground floor.
- 3.3 A total of approximately 360sqm (excluding areas under tree canopies) of amenity space would be provided in the form of communal grounds. This area equates to over 20sqm of useable space per flat (in line with current guidance) and two units have private garden areas. In addition to this, five of the flats would also benefit from private balconies. The development would utilise the existing point of access from Warren Avenue and it is proposed to surface the road in block paving and tarmac and introduce traffic calming measures including a speed table.
- 3.4 The scheme put forward is similar to the refused scheme bar some internal layout changes (which results in the repositioning of a balcony). The form, layout and number of units remain the same. The number of two and three bed units have been altered to provide nine 2-beds instead of 7seven and five 3-bed units instead of three. The number of car parking spaces has increased to address Members concerns from eight to 11. Therefore, on the basis that no major material changes to the either the layout or built form have been undertaken; the Inspector's decision is a material planning consideration in the determination of this application.

4.0 Relevant Planning Policy

- 4.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (March 2006) and the City of Southampton Core Strategy (January 2010). The most relevant policies to these proposals are set out at **Appendix 1**.
- 4.2 Major developments are expected to meet high sustainable construction standards in accordance with Core Strategy Policy CS20 and Local Plan "saved" Policy SDP13.
- 4.3 The National Planning Policy Framework (NPPF) came into force on 27th March 2012 and replaces the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

5.0 Relevant Planning History

- 5.1 The full planning history can be found in **Appendix 2** of this report including the reasons for refusal. The most recent and relevant application is set out below;

12/01923/OUT
19.08.2013

Refused and dismissed at Appeal

Redevelopment of the site. Erection of a new building to provide 14 flats (seven x 2- bedroom, five x 3-bedroom and two x 4-bedroom) with access from Warren Avenue (Outline application seeking approval for Access, Appearance and Layout).

- 5.2 This application was appealed and dismissed. The Inspector's decision is set out in **Appendix 3**.

6.0 Consultation Responses and Notification Representations

- 6.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, placing a press advertisement (02.05.2014) and erecting a site notice (13.05.2014). At the time of writing the report **12** representations have been received from surrounding residents. Neighbours were notified on 9th September (14 days given) of the increase in parking, any comments received related to this change will be updated at Panel. The following is a summary of the points previously raised:

6.1.1 **The proposal cannot achieve the required access width of 2.8m without utilising third party land**

Response

The applicant has served the correct notice and land ownership is not a planning issue. That said, following the receipt of land ownership details and a site visit undertaken by Officers, it is clear that the proposed access is deliverable.

6.1.2 **Disturbance from the additional traffic**

Response

There will be additional vehicle movements along the access road as a result of the development proposal, although this route is already used by vehicles and it is considered that the additional traffic will not give rise to any harm to residential amenity.

6.1.3 **Loss of light and privacy to the neighbouring properties**

Response

The Residential Design Guide suggests that a separation distance between a three storey side wall and a two storey rear wall of residential neighbours should be a minimum of 15 metres in order to protect the outlook and privacy of these properties and their access to natural light. It also suggests that a separation distance of 28 metres between the windows is sufficient to maintain privacy, access to natural light and outlook.

The proposed building would be approximately 22m from the rear elevations of properties on Warren Avenue and approximately 30m from the rear of properties located on Winchester Road. Due to the orientation of the plot and the distance between the properties and the proposed building, they would be unaffected by overshadowing for the majority of the day. The windows in the side elevation are

secondary and therefore a condition is suggested to fix shut and obscurely glaze these openings. The scheme is identical to that previously refused and the application was not refused for amenity concerns. In addition, the Planning Inspector in their decision at paragraph 23 agrees that amenity would not be detrimentally affected.

6.1.4 Insufficient width for access by emergency vehicles

Response

Emergency vehicles need 2.75m wide access and 2.8m is proposed.

6.1.5 Concerned about construction damage and construction access

Response

Any damage done to third party land is a civil matter, and with respect to the construction phase of the proposed development a construction management condition is recommended to prevent unnecessary disturbance to the wider vicinity.

6.1.6 Concerned about pedestrian safety

Response

Due to the straight access and the width provided the Planning Inspector deemed a 2.8m access width to be sufficient to prevent issues of highway safety.

6.1.7 Loss of parking for properties to the rear of 218-220 Warren Avenue

Response

These car parking spaces are to remain as shown on the site plan submitted.

6.2 Consultation Responses

6.3 Highways Development Management – No objection as the road width of 2.8m is achievable subject to conditions securing parking space sizes, lighting, refuse management, cycle storage, sight lines, road construction and construction management plan.

The application has been reviewed following the Appeal Decision, which removes the reason for refusal given by Highways Officers previously. Residents have commented on the route of the right of way/easement which exists to the rear of their properties, which is shown to be 8 feet wide, which is 2.4m. The applicant has documentation which concurs with this. However, the applicant has shown an access width of 2.8m, and therefore it is a legal issue which needs to be resolved outside of the planning process as to the different of 0.4m width to achieve the Inspector's agreed minimum width.

6.4 The proposal for 14 flats has 11 parking spaces shown to be provided, around a turning head. Providing parking increases traffic generation along this narrow access route. However, due to the nature of the access route, it is not well overlooked and therefore is not user friendly after dark; making the provision of some parking acceptable. Warren Avenue benefits from on street parking in the form of Controlled Permit Zones, allowing a maximum of two hours waiting during the day time. mAlthough residents of this new development will not be eligible for parking permits, they will be able to park in these areas during the uncontrolled times. There are bus stops in Warren Avenue very close to the site entrance, and the Shirley District centre is a short walk or cycle away, and the site does fall within an area of high accessibility. This means that there should be

less dependency on the car due to ease of access to local amenities and regular bus services. Southampton General Hospital, as a major local employer, is a short walk or cycle ride away.

- 6.5 **Southern Water** - No objection but suggests conditions relating to connection to sewerage system.
- 6.6 **Sustainability** - No objection. Suggests conditions to secure code level 4.
- 6.7 **Ecology** – No objection subject to conditions relating to a biodiversity mitigation plan and a lighting plan that ensures that light pollution along the woodland edge is minimised.
- 6.8 **Affordable Housing** - As the scheme comprises of 14 dwellings in total the affordable housing requirement from the proposed development is 20% (CS15-sites of 5-14 units = 20%). The affordable housing requirement is therefore three dwellings.
- 6.9 **Environmental Health (Contamination)** - There is reason to suspect ground contamination on the site and therefore conditions are suggested to investigate this and secure any remediation if necessary.
- 6.10 **Environmental Health (Pollution and Safety)** - No objection subject to conditions relating to hours of work, piling and no bonfires (the restriction of bonfires is not included as it can be dealt with under separate legislation)
- 6.11 **Environment Agency** - No objection
- 6.12 **Southern Water** - No objection but suggests conditions relating to protecting the existing sewer.
- 6.13 **Archaeology** - The western part of the application site lies within the Old Shirley Area of Archaeological Potential. There is the potential for archaeological remains to be disturbed as a result of the development, and therefore an archaeological watching brief condition is recommended.

7.0 Planning Consideration Key Issues

- 7.1 The key issues for consideration in the determination of this planning application are:
 - Principle of Development
 - Highway Issues
 - Design, Density and Amenity
 - Development mitigation

7.2 Principle of Development

The site is not previously developed land but is allocated for residential development by the saved policies of the Local Plan. The site itself does not provide useable recreational space nor does the site itself have particular ecological or landscape value. Furthermore, having regard to the planning history of the site, the principle of residential development is considered to be acceptable. The mix of accommodation accords with policy CS16 of the Core Strategy in that five genuine family flats are provided (this equates to 36%).

7.3 Highway Issues

The previous scheme was refused due to Highway Officer concerns that an adequate access width could not be provided that complied with policy. Highway Officer's required 3.1m as the minimum width, in line with best practice, at the pinch point where properties fronting Winchester Road have garages. This width was required to provide adequate width for vehicles and pedestrians /cyclists /wheelchairs /pushchairs to pass with care. However, as previously stated, the Planning Inspector disagreed with the required width as they felt a minimum 2.8m at the pinch point was adequate for the distance of 7.7m.

- 7.3.1 Land ownership issues are not a planning issue but due to the history of the site in terms of the applicant being unable to provide the previously required 3.1m, and conflicting information received, the applicants have submitted a digitalised survey to show that a 2.8m access can be provided. The plan shows that land the applicant either owns, has access over or has served notice on, is sufficient to provide the width required. Residents have commented on a right of way /easement for some of the properties along Warren Avenue and Winchester Road to access their garages exists but this access is only 2.4m wide. Therefore the required width agreed by the Planning Inspector can be provided.
- 7.3.2 In essence this means that the key issue for consideration for this virtually identical scheme is whether or not the applicant can complete the S106 legal agreement. Whilst there has been some confusion regarding landownership and the applicants ability to provide a 2.8m wide access this is now resolved and Officers are satisfied that this scheme is deliverable.
- 7.3.3 The revised proposal for 14 flats has eleven parking spaces proposed (this differs from the appealed scheme as requested). The Planning Inspector concluded that (in paragraph 11 of the Inspector's Decision) that the level of parking (with the provision of eight car parking spaces) in this location for the number of units was 'appropriate'. The number of spaces has been increased by three in order to address concerns raised by the Panel and other third parties over lack of parking. The number of spaces that are achievable on site is restricted by the amenity space requirements within policy CS16 and the need to provide spaces that are safe to access. It is felt that the revisions made represent the maximum number of spaces achievable without eroding the quality of the development.
- 7.3.4 The number of bedrooms proposed has been reduced from 37 in the appealed scheme to 35 for this scheme and therefore the maximum car parking spaces (applying current standard) possible for this development is 30. Therefore, on the basis that this scheme has less bedrooms and that the Inspector deemed the car parking level to be appropriate previously; the increased number of spaces proposed in this scheme is acceptable and complies with policy. Requiring the maximum level of on-site parking would result in a poor residential development to the detriment of prospective residents. The correct balance between housing delivery, on-site amenity space and associated parking is considered to have been found in this case.

7.4 Design, Density and Amenity

All other issues such as design, density and impact on neighbouring properties did not form a reason for refusal previously and the Planning Inspector did not feel they warranted a refusal. The scale of development is appropriate and yields a density in line with current requirements (between 50-100 dph). Therefore, in terms of assessing this application, the key issue to be considered is whether or not the proposal addresses the concerns set out in the Inspector's decision and whether any changes put forward in this proposal warrant a refusal. All other matters have been addressed previously.

7.5 Development mitigation

As identified by the Planning Inspector, the application needs to address and mitigate the additional pressure on the social and economic infrastructure of the City, in accordance with Development Plan policies and the Council's adopted Planning Obligations SPD (2013). Given the wide ranging impacts associated with a development of this scale, an extensive package of contributions and obligations is proposed as part of the application. In addition, the scheme now triggers the Community Infrastructure Levy (CIL) and it is likely that the scheme's viability will need to be independently tested. The recommended delegations deal with this and it should be noted that the scheme was not previously viable with an Affordable Housing contribution. This will be independently verified.

8.0 Summary

This site is allocated for housing within the City's adopted Local Plan and will assist the City in meeting its housing need. The scheme remains similar from that refused by officers under delegated powers with regard to scale, massing, car parking and cycle provision. As planning policy and site conditions have not altered, the Planning Inspectorate's decision is key. A 2.8m wide access is deliverable and the applicants are willing to enter into a S106 legal agreement. As such, the application is considered to have addressed the previous concerns and can be recommended favourably.

9.0 Conclusion

Given the clear conclusions reached by the Planning Inspector (having assessed each point of the Council's original reasons for refusal) it would be unreasonable to formulate any recommendation other than for approval subject to appropriate conditions.

Local Government (Access to Information) Act 1985 Documents used in the preparation of this report Background Papers

1(a), 1(b), 1(c), 1(d), 2(b), 2(d), 4(f), 4(qq), 6(c), 7(a), 9(a), 9(b).

ARL for 30/09/14 PROW Panel

PLANNING CONDITIONS to include:

01. APPROVAL CONDITION - Full Permission Timing Condition - Physical works
The development works hereby permitted shall begin not later than three years from the date on which this planning permission was granted.

Reason:

To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

02. APPROVAL CONDITION - Details and samples of building materials to be used [Pre-Commencement Condition]

No development works shall be carried out unless and until a detailed schedule of materials and finishes including samples (if required by the LPA) to be used for external walls, windows, doors and the roof of the proposed buildings has been submitted to and approved in writing by the Local Planning Authority. Details shall include all new glazing, panel tints, stained weatherboarding, drainage goods, and the ground surface treatments formed. Development shall be implemented only in accordance with the agreed details.

Reason:

To enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a building of visual quality.

03. APPROVAL CONDITION Access Road (Pre-Commencement Condition)

Prior to the commencement of the development full details of the construction of the access road to a minimum width of 2.8 metres shall be submitted to the Local Planning Authority for approval in writing. These details shall include the alterations to surface treatment including crossover arrangements to existing garages and parking spaces, traffic calming measures, finished contours, levels and lighting. The agreed scheme shall be implemented as approved prior to the flats first coming into occupation and shall thereafter be retained.

Reason:

To ensure a satisfactory means of access to the development.

04. APPROVAL CONDITION - Storage / Removal of Refuse Material [Pre-Occupation Condition]

Before the building is first occupied full details of facilities to be provided for the storage and removal of refuse from the premises together with the provision of suitable bins accessible with a level approach shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall include accommodation and the provision of separate bins for the separation of waste to enable recycling. The approved refuse and recycling storage shall be retained whilst the building is used for residential / commercial purposes.

Reason:

In the interests of visual amenity, the amenities of future occupiers of the development and the amenities of occupiers of nearby properties.

05. APPROVAL CONDITION - Cycle storage facilities [Pre-Commencement Condition]

Adequate cycle storage facilities to conform to the Local Planning Authorities standards shall be submitted to and be approved in writing by the Local Planning Authority and be

provided within the site before the development hereby permitted commences and such storage shall be permanently maintained for that purpose.

Reason:

To prevent obstruction to traffic in neighbouring roads and to encourage cycling as an alternative form of transport.

06. APPROVAL CONDITION - Sightlines specification [Pre-Commencement Condition]
Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 no fences walls or other means of enclosure including hedges shrubs or other vertical structures shall be erected above a height of 600m above carriageway level within the sight line splays.

Reason:

To provide safe access to the development and to prevent congestion on the highway.

07. APPROVAL CONDITION Parking and Access [pre-occupation condition]
Prior to the occupation of the development hereby approved both the access to the site as per the approved drawings to a width of 2.8m, and the 11 parking spaces to a size of 5m by 2.4m for the development shall be provided in accordance with the plans hereby approved. The parking spaces shall be retained for that purpose and not used for any commercial activity.

Reason:

To ensure a satisfactory form of development

08. APPROVAL CONDITION - Construction Environment Management Plan (Pre-Commencement Condition)
Prior to the commencement of any development a written construction environment management plan shall be submitted to and approved by the LPA. The plan shall contain method statements and site specific plans to prevent or minimise impacts from noise, vibration, dust and odour for all operations, as well as proposals to monitor these measures at the site boundary to ensure emissions are minimised beyond the site boundary. The management plan will include details of where site operatives will park, detailing how deliveries will be timed to ensure that vehicles are not waiting on Coxford Road. All specified measures shall be available and implemented during any processes for which those measures are required.

Reason:

To protect the amenities of the occupiers of existing nearby properties.

09. APPROVAL CONDITION - Code for Sustainable Homes [Pre-Commencement Condition]
Before the development commences, written documentary evidence demonstrating that the development will achieve at minimum Level 4 of the Code for Sustainable Homes in the form of a design stage assessment, shall be submitted to the Local Planning Authority for its approval, unless an otherwise agreed timeframe is agreed in writing by the LPA.

Reason:

To ensure the development minimises its overall demand for resources and to demonstrate compliance with policy CS20 of the Local Development Framework Core Strategy Development Plan Document Adopted Version (January 2010).

10. APPROVAL CONDITION - Code for Sustainable Homes [Performance Condition]
Within 6 months of any part of the development first becoming occupied, written documentary evidence proving that the development has achieved at minimum Level 4 of the Code for Sustainable Homes in the form of post construction assessment and certificate as issued by a legitimate Code for Sustainable Homes certification body, shall be submitted to the Local Planning Authority for its approval.

Reason:

To ensure the development has minimised its overall demand for resources and to demonstrate compliance with policy CS20 of the Local Development Framework Core Strategy Development Plan Document Adopted Version (January 2010).

11. APPROVAL CONDITION - Sustainable Drainage Systems (Pre-Occupation Condition)
Prior to the commencement of development a feasibility study demonstrating an assessment of the potential for the creation of a sustainable drainage system on site shall be carried out and submitted to the Local Planning Authority. Any measures shown to be feasible shall be verified in writing by the Local Planning Authority and implemented prior to first occupation of the development hereby granted consent. If the study demonstrates the site has the capacity for the implementation of a sustainable drainage system, a specification shall be agreed in writing with the Local Planning Authority. A sustainable drainage system to the approved specification must be installed and rendered fully operational prior to the first occupation of the development hereby granted consent and retained thereafter. In the development hereby granted consent, peak run-off rates and annual volumes of run-off shall be no greater than the previous conditions for the site.

Reason:

To conserve valuable water resources, in compliance with and to demonstrate compliance with policy CS20 of the Local Development Framework Core Strategy Development Plan Document Adopted Version (January 2010) and to prevent an increase in surface run-off and reduce flood risk.

12. APPROVAL CONDITION - Surface / foul water drainage [Pre-commencement Condition]

No development approved by this permission shall commence until a scheme for the disposal of foul water and surface water drainage have been submitted to and approved in writing by the Local Planning Authority and no building shall be occupied unless and until all drainage works have been carried out in accordance with such details as approved by the Local Planning Authority and subsequently implemented and maintained for use for the life of the development.

Reason:

To ensure satisfactory drainage provision for the area.

13. APPROVAL CONDITION - Public Sewer protection [Performance Condition]

The developer must advise the Local Planning Authority (in consultation with Southern Water) of the measures which will be undertaken to protect the public sewers, prior to the commencement of the development.

Reason:

In order to safeguard the public sewer.

14. APPROVAL CONDITION - Landscaping, lighting & means of enclosure detailed plan [Pre-Commencement Condition]

Notwithstanding the submitted details before the commencement of any site works a detailed landscaping scheme and implementation timetable shall be submitted, which includes:

- i. proposed finished ground levels or contours; means of enclosure; car parking layouts; other vehicle pedestrian access and circulations areas, hardsurfacing materials, structures and ancillary objects (refuse bins, lighting columns etc.);
- ii. planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/planting densities where appropriate;
- iii. an accurate plot of all trees to be retained and to be lost. Any trees to be lost shall be replaced on a favourable basis (a two-for one basis unless circumstances dictate otherwise);
- iv. details of any proposed boundary treatment, including retaining walls; and
- v. a landscape management scheme.

Any trees, shrubs, seeded or turfed areas which die, fail to establish, are removed or become damaged or diseased, within a period of 5 years from the date of planting shall be replaced by the Developer in the next planting season with others of a similar size and species unless the Local Planning Authority gives written consent to any variation. The Developer shall be responsible for any replacements for a period of 5 years from the date of planting.

The approved hard and soft landscaping scheme (including parking) for the whole site shall be carried out prior to occupation of the building or during the first planting season following the full completion of building works, whichever is sooner. The approved scheme implemented shall be maintained for a minimum period of 5 years following its complete provision.

Reason:

To improve the appearance of the site and enhance the character of the development in the interests of visual amenity, to ensure that the development makes a positive contribution to the local environment and, in accordance with the duty required of the Local Planning Authority by Section 197 of the Town and Country Planning Act 1990

15. APPROVAL CONDITION - Ecological Mitigation Statement [Pre-Commencement Condition]

Prior to development commencing, including site clearance, the developer shall submit a programme of habitat and species mitigation and enhancement measures which unless otherwise agreed in writing by the Local Planning Authority shall be implemented in accordance with the programme before any demolition work or site clearance takes place.

Reason

To safeguard protected species under the Wildlife and Countryside Act 1981 (as amended) in the interests of preserving and enhancing biodiversity.

16. APPROVAL CONDITION - Archaeological investigation [Pre-Commencement Condition]

No development shall take place within the site until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation which has been submitted to and approved by the Local planning Authority.

Reason:

To ensure that the archaeological investigation is initiated at an appropriate point in development procedure.

17. APPROVAL CONDITION - Archaeological work programme [Performance Condition]

The developer will secure the completion of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the Local planning Authority.

Reason:

To ensure that the archaeological investigation is completed.

18. APPROVAL CONDITION- Land Contamination investigation and remediation [Pre-Commencement & Occupation Condition]

Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), a scheme to deal with the risks associated with contamination of the site shall be submitted to and approved by the Local Planning Authority. That scheme shall include all of the following phases, unless identified as unnecessary by the preceding phase and approved in writing by the Local Planning Authority:

1. A desk top study including;
 - historical and current sources of land contamination
 - results of a walk-over survey identifying any evidence of land contamination
 - identification of the potential contaminants associated with the above
 - an initial conceptual site model of the site indicating sources, pathways and receptors
 - a qualitative assessment of the likely risks
 - any requirements for exploratory investigations.
2. A report of the findings of an exploratory site investigation, characterising the site and allowing for potential risks (as identified in phase 1) to be assessed.
3. A scheme of remediation detailing the remedial actions to be taken and how they will be implemented.

On completion of the works set out in (3) a verification report shall be submitted to the Local Planning Authority confirming the remediation actions that have been undertaken in accordance with the approved scene of remediation and setting out any measures for maintenance, further monitoring, reporting and arrangements for contingency action. The verification report shall be approved by the Local Planning Authority prior to the occupation or operational use of any stage of the development. Any changes to these agreed elements require the express consent of the local planning authority.

Reason:

To ensure land contamination risks associated with the site are appropriately investigated and assessed with respect to human health and the wider environment and where required remediation of the site is to an appropriate standard.

19. APPROVAL CONDITION - Use of uncontaminated soils and fill [Pre-Commencement Condition]

Clean, uncontaminated soil, subsoil, rock, aggregate, brick rubble, crushed concrete and ceramic shall only be permitted for infilling and landscaping on the site. Any such materials imported on to the site must be accompanied by documentation to validate their quality and be submitted to the Local Planning Authority for approval prior to the occupancy of the site.

Reason:

To ensure imported materials are suitable and do not introduce any land contamination risks onto the development.

20. APPROVAL CONDITION- Unsuspected Contamination [Performance Condition]

The site shall be monitored for evidence of unsuspected contamination throughout construction. If potential contamination is encountered that has not previously been identified no further development shall be carried out unless otherwise agreed in writing by the Local Planning Authority. Works shall not recommence until an assessment of the risks presented by the contamination has been undertaken and the details of the findings and any remedial actions has been submitted to and approved by the Local Planning Authority. Any changes to the agreed remediation actions will require the express written consent of the Local Planning Authority.

Reason:

To ensure any land contamination not previously identified is assessed and remediated so as not to present any significant risks to human health or, the wider environment.

21. APPROVAL CONDITION Obscure Glazing [performance condition]

The windows in the east side elevation of the development hereby approved, above ground floor level, shall be fixed shut and obscurely glazed and retained in this manner for the lifetime of the development.

Reason:

In the interests of residential amenity

22. APPROVAL CONDITION - Amenity Space Access [Pre-Occupation Condition]

The external amenity space serving the development hereby approved, and pedestrian access to it, shall be made available as a communal area prior to the first occupation of the development hereby permitted and shall be retained with access to it at all times for the use of the flat units.

Reason:

To ensure the provision of adequate amenity space in association with the approved flats.

23. APPROVAL CONDITION - Hours of work for Demolition / Clearance / Construction [Performance Condition]

All works relating to the demolition, clearance and construction of the development hereby granted shall only take place between the hours of;

Monday to Friday 08:00 hours to 18:00 hours (8.00am to 6.00pm)

Saturdays 09:00 hours to 13:00 hours (9.00am to 1.00pm)

And at no time on Sundays and recognised public holidays.

Any works outside the permitted hours shall be confined to the internal preparations of the buildings without audible noise from outside the building, unless otherwise agreed in writing by the Local Planning Authority.

Reason:

To protect the amenities of the occupiers of existing nearby residential properties.

24. APPROVAL CONDITION - Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason:

For the avoidance of doubt and in the interests of proper planning.

Note to Applicant - Pre-Commencement Conditions

Your attention is drawn to the pre-commencement conditions above which require the full terms of the condition to be satisfied before development commences. In order to discharge these conditions you are advised that a formal application for condition discharge is required. You should allow approximately 8 weeks, following validation, for a decision to be made on such an application. If the Decision Notice includes a contaminated land condition you should contact the Council's Environmental Health Department, and allow sufficient time in the process to resolve any issues prior to the commencement of development. It is important that you note that if development commences without the conditions having been formally discharged by the Council in writing, any development taking place will be unauthorised in planning terms and this may invalidate the Planning Permission issued. Furthermore this may result in the Council taking enforcement action against the unauthorised development. If you are in any doubt please contact the Council's Development Management Service.

[/community-infrastructure-levy-guidance.aspx](#) or contact the Council's CIL Officer.

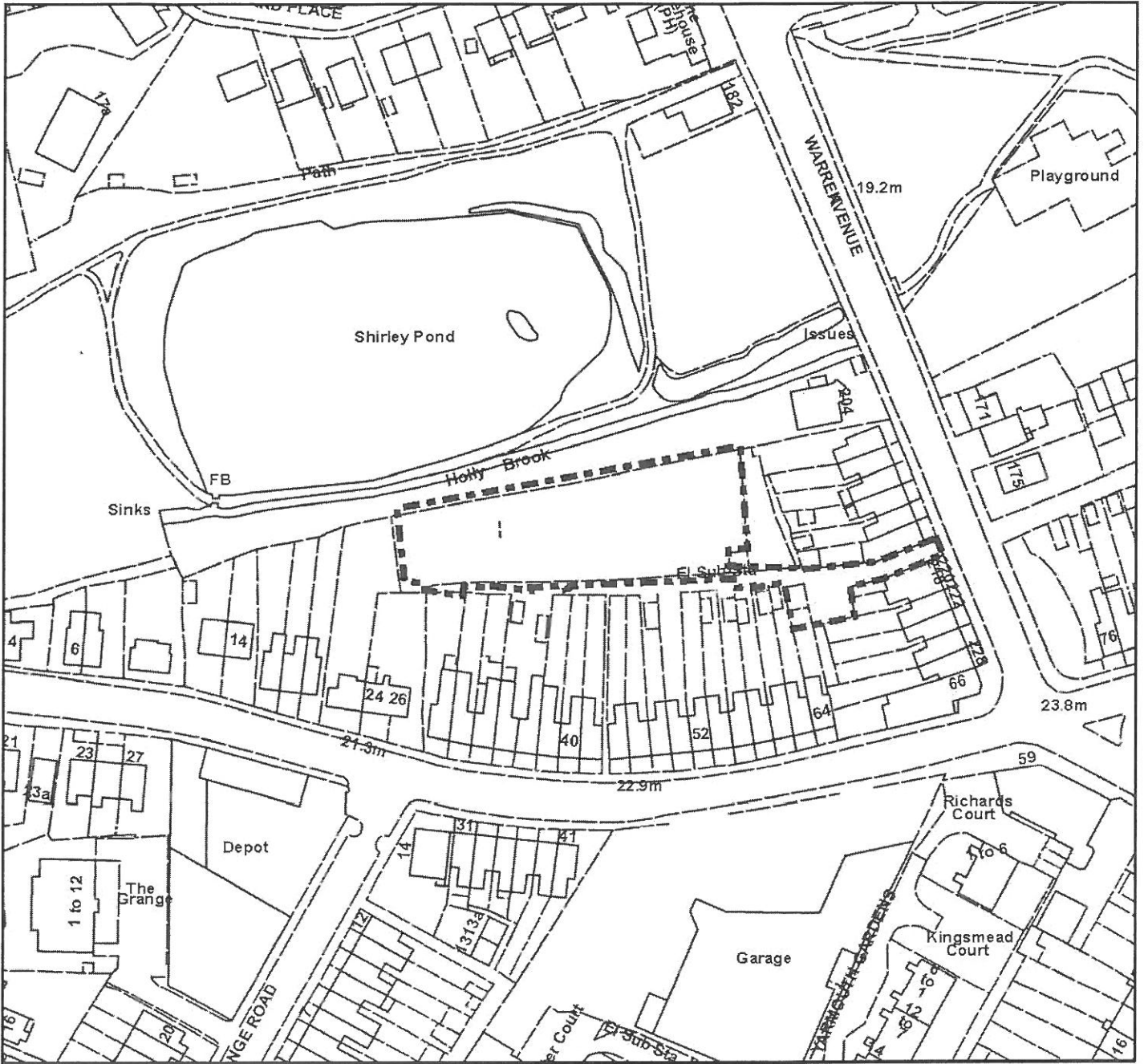
Note to Applicant - Performance Conditions

Your attention is drawn to the performance conditions above which relate to the development approved in perpetuity. Such conditions are designed to run for the whole life of the development and are therefore not suitable to be sought for discharge. If you are in any doubt please contact the Council's Development Control Service.

Note to Applicant - Community Infrastructure Liability (Approval)

You are advised that the development appears liable to pay the Community Infrastructure Levy (CIL). Please ensure that you assume CIL liability prior to the commencement of the development (including any demolition works) otherwise a number of consequences could arise. For further information please refer to the CIL pages on the Council's website at: <http://www.southampton.gov.uk/s-environment/policy>

14/00676/FUL



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Application 14/00676/FUL

APPENDIX 1

POLICY CONTEXT

Core Strategy - (January 2010)

| | |
|------|--|
| CS4 | Housing Delivery |
| CS5 | Housing Density |
| CS6 | Economic Growth |
| CS13 | Fundamentals of Design |
| CS15 | Affordable Housing |
| CS16 | Housing Mix and Type |
| CS18 | Transport: Reduce-Manage-Invest |
| CS19 | Car & Cycle Parking |
| CS20 | Tackling and Adapting to Climate Change |
| CS22 | Promoting Biodiversity and Protecting Habitats |
| CS23 | Flood Risk |
| CS25 | The Delivery of Infrastructure and Developer Contributions |

City of Southampton Local Plan Review – (March 2006)

| | |
|-------|-----------------------------|
| SDP1 | Quality of Development |
| SDP4 | Development Access |
| SDP5 | Parking |
| SDP6 | Urban Design Principles |
| SDP7 | Urban Design Context |
| SDP9 | Scale, Massing & Appearance |
| SDP10 | Safety & Security |
| SDP11 | Accessibility & Movement |
| SDP12 | Landscape & Biodiversity |
| SDP13 | Resource Conservation |
| SDP14 | Renewable Energy |
| SDP16 | Noise |
| SDP22 | Contaminated Land |
| SDP23 | Unstable Land |
| NE4 | Protected Species |
| H1 | Housing allocations |
| H7 | The Residential Environment |

Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)

Planning Obligations (Adopted - September 2013)

Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework 2012

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

Application 14/00676/FUL

APPENDIX 2

PLANNING HISTORY

05/00101/OUT

Withdrawn 26.04.2005

Erection of a two storey block comprising 15 flats (6 x 2 bed, 8 x 1 bed and 1 x studio) with associated car-parking (outline application for means of access, siting and external appearance)

218-220 Warren Avenue

01/01488/FUL

Conditionally Approved 18.07.2002

Demolition of 218 Warren Avenue and two storey extension to 220 Warren Avenue to erect two self-contained flats

08/00095/FUL

Conditionally Approved 27.11.2008

Redevelopment of the site. Erection of a part two-storey, part three-storey building to provide 14 flats (8 x 1 bedroom, 6 x 2 bedroom flats) with associated parking and vehicular access from Warren Avenue.

10/00253/FUL

Refused 04.05.2010

Redevelopment of the site to form 14 flats including a variation of planning permission 08/00095/FUL relating to access width to proposed development - Description of Development amended following validation.

REASON FOR REFUSAL

01.REFUSAL REASON – Highway Safety

The requirement for an access of no less than 3.1 metres in width to serve the development approved by application 08/00095/FUL is necessary to provide safe and convenient access to the residential development. An access width of less than 3.1 metres would not enable safe or convenient access for all, and in particular for wheelchair users, and would thereby fail to encourage use of alternative modes of transport to the private car. The proposal would thereby prove contrary to the provisions of policy CS13 of the Southampton Local Development Framework Core Strategy Development Plan Document and policies SDP1, SDP4 and SDP11 of the City of Southampton Local Plan (2006) and as supported by the Residential Design Guide Supplementary Planning Document (with specific reference to paragraphs 5.1.3 and 5.1.16 to 5.1.17).

02.REFUSAL REASON - Code for Sustainable Homes and Climate Change

In the absence of any commitment to the Code for Sustainable Homes, an improvement of energy and water efficiency, sustainable urban drainage and a low carbon development the application has failed to demonstrate that it can satisfy the requirements of the adopted LDF Core Strategy Policy CS20 as supported by Part 7 of the Council's approved Residential Design Guide SPD (2006) which seek to contribute towards tackling climate change as required by the Council's Climate Change Strategy (2004) and PPS1.

03.REFUSAL REASON - Family Housing

In the absence of either a development that includes any family housing (with 3 bedrooms and access to private amenity space) or further justification for a lack of such provision the scheme fails to assist the Council in meeting its current housing needs, particularly for families and, notwithstanding the permission for a mix of 1 and 2 bed flats, the current scheme has now been assessed as contrary to Policy CS16 of the Council's adopted Local Development Framework Core Strategy (January 2010).

04.REFUSAL REASON - Direct Impacts

In the absence of a completed S.106 Legal Agreement or Unilateral Undertaking the proposal fails to mitigate against its direct impacts and does not, therefore, satisfy the provisions of Policy CS25

(The Delivery of Infrastructure) of the Council's adopted LDF Core Strategy (January 2010) as supported by the Council's Supplementary Planning Guidance on Planning Obligations (August 2005 as amended) in the following ways:-

- (a) Measures to satisfy the public open space requirements (including play space, open space and sports pitches) of the development have not been secured. As such the development is also contrary to the adopted City of Southampton Local Plan Review (March 2006) Policy CLT5 as supported by Policy CS21 of the adopted LDF Core Strategy (2010);
- (b) Notwithstanding the previous permission the development now triggers the need for an affordable housing contribution and without such a commitment the scheme fails to assist the City with its current housing needs issues and, as such, is contrary to Policy CS15 of the Council's adopted LDF Core Strategy (January 2010);
- (c) Measures to support sustainable modes of transport, the strategic highway network, and site specific highway requirements (such as necessary improvements to public transport facilities, the offering of sustainable travel vouchers and alterations to pavements in the vicinity of the site) have not been secured contrary to the adopted City of Southampton Local Plan Review (March 2006 Policy SDP1 as supported by policies CS18 and CS25 of the Council's adopted LDF Core Strategy (January 2010);
- (d) In the absence of a commitment to undertaking an off-site highway condition survey (as previously secured) the development fails to explain how its impacts will be managed both during and after the construction phase.
- (e) In the absence of a slope stability report (as previously secured) the application fails to provide sufficient detail regarding its structural design to enable the safe development of this site.
- (f) In the absence of a refuse management plan (as previously secured) the scheme fails to explain how refuse will be collected from the site on collection day.
- (g) In the absence of an amended access width restriction the development fails to secure a safe access that is fit for its intended purpose (see also the first reason for refusal).

Note to Applicant:

This final reason for refusal could be overcome following the submission of an acceptable proposal and the completion of a S.106 legal agreement which address each of the above points.

12/01923/OUT

Refused and dismissed at Appeal 19.08.2013

Redevelopment of the site. Erection of a new building to provide 14 flats (7 x two- bedroom, 5 x three-bedroom and 2 x four-bedroom) with access from Warren Avenue (Outline application seeking approval for Access, Appearance and Layout).

REASON FOR REFUSAL

01.REFUSAL REASON - Highway Safety

The requirement for an access of no less than 3.1 metres in width to serve the development approved by application 08/00095/FUL is necessary to provide safe and convenient access to the residential development. An access width of less than 3.1 metres would not enable safe or convenient access for all, and in particular for wheelchair users, and would thereby fail to encourage use of alternative modes of transport to the private car. The proposal would thereby prove contrary to the provisions of policy CS13 of the Southampton Local Development Framework Core Strategy Development Plan Document and policies SDP1, SDP4 and SDP11 of the City of Southampton Local Plan (2006) and as supported by the Residential Design Guide Supplementary Planning Document (with specific reference to paragraphs 5.1.3 and 5.1.16 to 5.1.17).

02.REFUSAL REASON - Direct Impacts

In the absence of a completed S.106 Legal Agreement or Unilateral Undertaking the proposal fails

to mitigate against its direct impacts and does not, therefore, satisfy the provisions of Policy CS25 (The Delivery of Infrastructure) of the Council's adopted LDF Core Strategy (January 2010) as supported by the Council's Supplementary Planning Guidance on Planning Obligations (August 2005 as amended) in the following ways:-

- (a) Measures to satisfy the public open space requirements (including play space, open space and sports pitches) of the development have not been secured. As such the development is also contrary to the adopted City of Southampton Local Plan Review (March 2006) Policy CLT5 as supported by Policy CS21 of the adopted LDF Core Strategy (2010);
- (b) Notwithstanding the previous permission the development now triggers the need for an affordable housing contribution and without such a commitment the scheme fails to assist the City with its current housing needs issues and, as such, is contrary to Policy CS15 of the Council's adopted LDF Core Strategy (January 2010);
- (c) Measures to support sustainable modes of transport, the strategic highway network, and site specific highway requirements (such as necessary improvements to public transport facilities, the offering of sustainable travel vouchers and alterations to pavements in the vicinity of the site) have not been secured contrary to the adopted City of Southampton Local Plan Review (March 2006 Policy SDP1 as supported by policies CS18 and CS25 of the Council's adopted LDF Core Strategy (January 2010);
- (d) In the absence of a commitment to undertaking an off-site highway condition survey (as previously secured) the development fails to explain how its impacts will be managed both during and after the construction phase.
- (e) In the absence of a slope stability report (as previously secured) the application fails to provide sufficient detail regarding its structural design to enable the safe development of this site.
- (f) In the absence of a refuse management plan (as previously secured) the scheme fails to explain how refuse will be collected from the site on collection day.
- (g) In the absence of an amended access width restriction the development fails to secure a safe access that is fit for its intended purpose (see also the first reason for refusal).

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Appeal Decision

Site visit made on 14 January 2014

by **C J Leigh BSc(Hons) MPHIL MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 March 2014

Appeal Ref: APP/D1780/A/13/2207164

Land to the rear of 28-64 Winchester Road and rear of 204-218 Warren Avenue, Southampton, SO16 6UL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Glen Sahota against the decision of Southampton City Council.
 - The application Ref 12/01923/OUT, dated 18 December 2012, was refused by notice dated 19 August 2013.
 - The development proposed is to construct a development of 14 flats.
-

Application for Costs

1. An application for costs was made by Southampton City Council against Mr Glen Sahota. This application is the subject of a separate decision.

Preliminary matters

2. The application was made in outline with approval sought for access, appearance and layout.

Decision

3. The appeal is dismissed.

Main issues

4. The first main issue in this appeal is the effect of the proposed development on highway and pedestrian safety. The second main issue is whether contributions or other benefits are necessary to enable the proposed development to proceed consistent with the Council's strategy in respect of infrastructure and community facilities provision.

Reasons

Highway safety

5. The appeal site comprises an area of underused land that lies to the rear of the Winchester Road and Warren Avenue properties. Vehicular access to this land, and to the appeal site, is via a track that is taken from Warren Avenue. This track currently provides access to existing properties and runs adjoining the gardens, garages and parking areas for many of the Winchester Road properties.
6. I am informed planning permission for the development of 14 flats on the appeal site was granted in 2008 (ref. 08/00095/FUL), which would have

utilised this existing track for vehicular access and was subject to a condition and legal agreement that the access would be no narrower than 3.1m. The current proposal similarly proposes to use the existing track for vehicular and pedestrian access. An existing narrow footway running to Winchester Road would also be used for pedestrian access. The vehicular access would narrow to 2.8m for a length of 7.7m, due to land ownership restrictions. This width would allow vehicles to drive along the access, but the Council object to this narrowing since it would be less than the minimum width they seek, namely 3.1m.

7. The appellant states that the useable area of the access route might be wider in practice, due to the area of land outside the appellant's ownership being an open forecourt area. However, I do not accept that proposition since the owner of the adjoining land could choose to erect a physical boundary. Thus, I have treated the proposed development as not being able to provide an access road greater than the 2.8m width at its narrowest length.
8. The appellant draws my attention to the guidance in 'Manual for Streets' that states carriageway widths might be reduced to a minimum of 2.75m, but narrowing between 2.75m to 3.25m should be avoided in most cases. I concur with the appellant's observation that, in seeking a width of 3.1m as was the case with the 2008 permission, the Council do accept a narrowing of the access within this range can occur. The important matter to consider is whether the further narrowing proposed by the appellant over such a length of the access road would be harmful to highway safety.
9. The submitted drawings show the vehicular access would be upgraded to accept vehicular and pedestrian traffic, and signage would be provided along the access. A pedestrian refuge area would be provided within part of the narrowed area. I saw that visibility along the access road is good, due to the generally straight layout of the road. This will allow for vehicles to wait and pass at wider points on the road. I am mindful that the access road currently provides vehicular access for many properties at present and has the existing narrowing, and I have not been informed of any incidents along the access road whereby this narrowing has been hazardous to highway safety. Although there would be some increase in the number of vehicles using the access road as a result of the proposed development, this fact does indicate to me that users of the track can safely negotiate the dimensions and geometry of the track.
10. Furthermore, as noted above, the proposals show an improvement to the surfacing of the track and signage. I consider such measures would only lead to an enhancement in the ability of drivers to safely negotiate the track without leading to highway safety.
11. The access would be a shared route for vehicles, cyclists, pedestrians, and those with mobility problems. The Council's concern with the width of the access extends to potential conflict between these users along the narrowed stretch of the access. This is an important matter to consider, given that the flats would not have residents' parking, although visitor parking would be provided; the appeal site is located in a sustainable location with a range of facilities and public transport routes nearby, so I concur that the level of car parking proposed is appropriate. I thus agree that a safe route is needed to ensure future residents would feel secure in using the access by foot or cycle.

12. For similar reasons to the above, I consider the geometry and visibility of the access, combined with the proposed signage, refuge area and surfacing (which the appellant states would include surface delineation for users), would ensure a shared surface access would be safe for all users. The access route would also be lit. These matters would lead to an upgraded shared access route that provides a good standard for all existing users and for future occupants of the dwellings, and would ensure those occupants have a reasonable opportunity to walk and cycle from their homes.
13. On the main issue it is therefore concluded that the proposed development would not be harmful to highway safety and so be consistent with Policy CS13 of the Southampton Core Strategy 2010, Policies SDP1, SDP4 and SDP11 of the City of Southampton Local Plan Review 2006, and guidance contained in the Council's Residential Design Supplementary Planning Document 2006, which amongst other matters seek to ensure safe access for all and parking arrangements are provided in new developments.

Infrastructure provision

14. The Council's second reason for refusal related to the absence of a planning obligation to make provision for contributions towards the provision/enhancement of infrastructure, site-specific highways measures and affordable housing contribution. These objectives are supported by Policies CS15 and CS25 of the Core Strategy, with detail contained in the Council's adopted Developer Contributions Supplementary Planning Document (SPD) (April 2013).
15. The requirement for a contribution towards site-specific transport measures was not disputed by the appellant. A viability appraisal was submitted with the planning application that concluded the proposed development would not be viable with the required affordable housing contribution. The Council commissioned an independent review of this assessment at the appeal stage which concluded, in summary, that the proposed development would not be viable with a full contribution towards affordable housing but that a reduced contribution was appropriate. The appellant agreed with this conclusion and submitted a Unilateral Undertaking that included the required affordable housing contribution, in addition to the site-specific transport contribution.
16. The Council also sought in any planning obligation measures to secure an off-site highway condition survey, a slope stability report and a refuse management plan. The sole access road to the appeal site is relatively long and serves existing properties, and so it is reasonable for measures relating to a highway condition survey of roads in the vicinity and refuse management to be provided in these circumstances. The appeal site is also steeply sloping and so measures to address this are necessary. The submitted Undertaking includes wording to address these details. Finally, the Council's second reason for refusal also referred to any planning obligation setting out a requirement to provide an amended access. The appellant's Undertaking does not include this and, as I have concluded on the first issue that the proposed access would be acceptable, I concur there is no need for such wording.
17. The planning policy framework set out above provides a strong basis for demonstrating the need for new facilities and contributions arising from the proposed dwellings. The requirement for site-specific transport measures and an affordable housing contribution fairly related to the proposal has been

robustly addressed. The Council's request for contributions through a planning obligation as sought therefore satisfies the tests of paragraph 204 of the National Planning Policy Framework.

18. The proposed development is also liable for the Council's local charging schedule for the Community Infrastructure Levy (CIL), as set out in their adopted Community Infrastructure Levy Charging Schedule Development Plan Document (July 2013). The Council do not seek contributions within a planning obligation that are addressed through the CIL, and the submitted Undertaking accordingly does not include such matters.
19. The Council's request for a planning obligation is therefore necessary, directly related to the development and fairly and reasonably related in scale and kind. The request therefore passes the statutory tests.
20. The Council, though, raise concerns on a number of details in the Unilateral Undertaking submitted by the appellant and consider these would lead to difficulties of its enforceability. The Council's comments include matters regarding the ownership of the land and the signatories, enforcing the provisions for the waste management plan and any actions necessary in relation to the stability of slopes, and the date upon which the obligation would take effect. I share the Council's concerns that the drafting of the Undertaking in a number of respects are of sufficient substance to make it uncertain that the payments and measures contained in the obligation would be made or would be enforceable.
21. Therefore, as it stands, the proposed development would undermine the Council's strategy in respect of infrastructure and affordable housing provision, and the delivery of measures to mitigate any impact of the proposal. This would be contrary to the Policies and the SPD referred to earlier.

Other considerations

22. The area upon which it is proposed to erect the new flats is an underused parcel of land, which slopes steeply to the north and Shirley Pond Park. The proposed development shows a layout and appearance which would be appropriate in scale and design for the site and landform. A reasonable degree of spaciousness would be retained around the new buildings and they would assimilate well into the area. This includes in views from Shirley Pond Park and the wider area.
23. The distance retained between the proposed dwellings and existing properties would ensure no loss of privacy or overbearing impact upon adjoining residents. The increase in the use of the vehicular access would not lead to a material change in the level of disturbance for existing residents.

Conclusions

24. Although I have found in favour of the proposed development on a number of issues, the conflict that arises from the second main issue is sufficient to outweigh all other findings. Therefore, for the reasons given and having regard to all other matters raised, it is concluded that the appeal should be dismissed.

C J Leigh

INSPECTOR