

**Southampton City Planning & Sustainability
 Planning and Rights of Way Panel meeting 25 October 2011
 Planning Application Report of the Planning and Development Manager**

Application address: Land at 43 to 45 Vespasian Road			
Proposed development: Application to waive the requirement to provide affordable housing (5x 2-bed flats) at 43-45 Vespasian Road under the relevant clauses and schedules of planning agreement dated 10th May 2002, signed in connection with the granting of planning permission reference 00/00320/FUL			
Application number	11/00959/FUL	Application type	FUL
Case officer	Steve Lawrence	Public speaking time	5 minutes
Last date for determination:	01.08.2011	Ward	Bitterne Park
Reason for Panel Referral:	Referred by the Planning & Development Manager due to wider public interest	Ward Councillors	Cllr White Cllr Baillie Cllr P Williams
Applicant: Swaythling Housing Society Limited		Agent: Capita Symonds	
Recommendation Summary	Approve variation of S.106 to require land to be used for community group use purposes		

Reason for decision

It is considered reasonable to remove the requirement to provide affordable housing at 43-45 Vespasian Road under the relevant clauses and schedules of planning agreement dated 10th May 2002, signed in connection with the granting of planning permission reference 00/00320/FUL. This is because the applicant has demonstrated that there are sequentially preferable sites to develop for housing, which are not located within a high category flood risk zone, as advised by Planning Policy Statement 25 (Flood Risk). The Local Planning Authority is also satisfied that even if habitable accommodation within a building were raised up above the relevant level, a satisfactory means of escape away from the site in times of flood could not be achieved successfully. This is in respect of adverse visual/amenity impact of some form of gantry oversailing the highway and the prohibitive cost of constructing and maintaining such a means of escape in terms of the overall viability of such a development. As such, the Local Planning Authority is satisfied that 43-45 Vespasian Road should no longer be developed residentially. By providing an alternative requirement to develop the land for community group use purposes, the agreement will continue to serve a useful purpose to the wider benefit of the local community.

Appendix attached			
1	Development Plan Policies	2	Legal agreement pertaining to decision 00/00320/FUL signed 10 May 2002

Recommendation in Full

Agree to vary the agreement dated 10 May 2002, signed in connection with the granting of planning permission reference 00/00320/FUL so as to remove

requirement to provide affordable housing at 43-45 Vespasian Road and instead impose a requirement to develop the land for community group use purposes.

1. The site and its context

- 1.1 The 432 sq.m site is located on the northern side of an unmade cul-de-sac spur of Vespasian Road. The site is currently overgrown. A steel container, some wheeled trailers, as stack of tyres and two dilapidated boats are situated on the western part of the site (No.43). The Sea Cadet Corps occupy the land abutting to the east. To the west are two plots previously used for the storage of scrap but now open and grassed. The site has a frontage to the River Itchen, where the rotting hulls of two boats and the remnants of an old jetty sit in the adjacent mudflats.
- 1.2 The site is unallocated on the Proposals Map of the City of Southampton Local Plan Review (March 2006), but abuts intertidal mudflats protected by Policy NE5 and is within a zone of importance for archaeology (Policy HE6).
- 1.3 The site is located within Flood Zone 3, which is land classified as having a 1 in 100 year or greater annual probability of river flooding or a 1 in 200 year tidal flooding (high probability). The design flood level for the site, during a 1 in 200 year tidal plus climate change event, is 4.2mAOD. The ground levels of the site vary between 2.5-2.9mAOD; this equates to 1.3-1.7m depth of flooding during the design flood event.

2. Proposal

- 2.1 The application is made under Section 106A (1)(a) of the Town and Country Planning Act 1990 (as amended) and seeks to remove the requirement under a valid planning agreement signed in connection with application 00/00320/FUL to provide affordable housing at 43-45 Vespasian Road. The applicant has submitted a Flood Risk Assessment and sequential test assessment, which demonstrates that the site is located in the highest risk flood zone identified by the Environment Agency and that there other sequentially preferable sites available for housing on land of less flood risk.
- 2.2 Analysis undertaken has demonstrated that there are sites within the geographical study area that are subject to lower flood risk than the application site and are of a comparable size, deliverable and without overriding development plan or other constraints. This includes sites less than 0.5ha and with capacity for less than 10 dwellings. In total there is likely to be 289 dwellings across 31 sites. In addition, planning permission has been granted for 249 dwellings on sites with a capacity between 5-10 dwellings (non subdivisions) which can be described as reasonably available. The likelihood of further sites coming forward is also extremely high given the Council's recorded experience of windfall sites. Some 'reasonably available' sites assessed in the Sequential Test Matrix fail in some way, when compared to the application site by reason of their size or capacity. In light of the above and assuming a five year time horizon to reflect current government guidance, set out within paragraph 71 of Planning Policy Statement 3 (2010), SCC can fulfil its commitment maintain a rolling five-year supply of deliverable land for housing. Even with a reduced rate of housing competitions, the past pattern of housing delivery and extent of supply does not necessitate reviewing the housing supply situation in the short-medium term, as more than 10-15 years supply is identified.

- 2.3 The site therefore fails the sequential test based upon the five year housing supply position and as there are other sites in lower areas of flood risk that could deliver a comparable development. Whilst there remains an overriding demand for housing and planned growth within the SCC boundary, this places a requirement and reliance upon sites in the flood zones 2 and 3 although delivery would most likely be beyond the 5-year time horizon. However, the combined magnitude of these additional sites, proposing approximately 2000 dwellings, offer wider sustainability and regeneration benefits too. Similar regeneration or sustainability benefits would not arise from such a small proposal of 5 dwellings on the site.
- 2.4 Due to the water depths predicted on the site during the design flood event, it is recommended any residential development incorporates:-
- Raising site levels to approximately 3.9mAOD to manage the effect of climate change and the uncertainty regarding the future construction of defences in the area;
 - The site to be set back a distance of 8m from the River Itchen provisionally to allow for the possible future construction of defences; and
 - Finished floor levels for habitable development at a minimum of 4.8mAOD (design flood level plus 600mm freeboard), as per Environment Agency guidance.

The site is small and it is likely to be difficult to accommodate 1-1.5m of landraising within the context of the surrounding land uses, as well as maintain access onto Vespasian Road.

- 2.5 If approved, it is understood that the adjoining land occupier – The Sea Cadet Corps – would be likely to request to lease the land after seeking to secure planning permission to use 43-45 Vespasian Road as an enclosed boat storage compound.

3. Relevant Planning Policy

- 3.1 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**.
- 3.2 The policies of the South East Plan, Southampton’s Core Strategy and Local Plan Review have been taken into account in the consideration of this application. The Core Strategy is in general conformity with the South East Plan, and it is not considered that the policies in the South East Plan either conflict with or add particular weight to the policies in the Core Strategy for this application. Consequently only the local statutory development plan policies (Core Strategy and Local Plan Review) have been cited in this report.

4. Relevant Planning History

- 4.1 Under application 99/01143/FUL, Beazer Homes sought planning permission for a redevelopment of 37 Vespasian Road to provide 3 storey block of 21 flats and rebuilding of quay wall and pontoons. That development has been built out and occupied

- 4.2 It was resolved to grant planning permission, subject to a planning agreement, one of the clauses of which required facilitating the provision of affordable housing off-site at 43-45 Vespasian Road by transferring the land to Swaythling Housing Association. The land was transferred.
- 4.3 Beazer homes separately sought planning permission under reference 00/00320/FUL to construct 5 x 2 bedroom flats.
- 4.4 It was also resolved to grant planning permission for 00/00320/FUL, subject to a separate planning agreement requiring that on the grant of planning permission, Clause 1.1 of the First Schedule of the agreement specifies:- "The site shall not be used other than for the provision of affordable housing", that a contribution be paid to enable the council to construct pedestrian walkway between the river frontage (the contribution was paid) and that public access be provided to the site's river frontage. (See **Appendix 2**)
- 4.5 Whereas there is no history pertaining to No. 45 on its own, No. 43's authorised use appears to be use for slipping & storage of boats, workshop & shed granted in 1963 under reference 1255/P26.

5. Consultation Responses and Notification Representations

- 5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was also undertaken which included notifying adjoining and nearby landowners, placing a press advertisement (23.6.2011) and erecting a site notice (20.6.2011). At the time of writing the report **1** representation has been received from surrounding residents.

1 Letter of support has been received from the Sea Cadets, who operate out of 41 Vespasian Road.

- 5.2 **SCC Housing** – No objections.
- 5.3 **Environment Agency** – No objections.

6. Planning Consideration Key Issues

- 6.1 The key issues for consideration in the determination of this application to alter an existing planning legal agreement are:
- 6.2 Principle of waiving the requirement to provide affordable housing on the site
- 6.2.1 Permission 00/320/FUL has expired but notwithstanding this expiry, the planning obligation to use 43-45 Vespasian "other than for the provision of AH" binds the land since it came into effect upon the grant of the permission and not upon implementation. Were a renewal application to be received then the Environment Agency have indicated that they would oppose the application/ comment that a safe means of egress and access would need to be provided. Under Section 106 A (1)(a) such an agreement can be varied or discharged if there is agreement between all the persons against whom the obligation is enforceable. The test for the LPA in deciding whether to discharge the obligation, rather than just modify it, is whether it considers that the obligation no longer serves any useful purpose (s106A (6)). If the obligation would serve a useful purpose equally well with the

modifications specified by the applicant, the local planning authority can decide to consent to the modifications sought. Circular advice states that the Secretary of State considers that the expression “no longer serves any useful purpose” should be understood in land-use planning terms”.

The question of “a useful purpose” is different from the question whether the obligation still serves its original purpose. It means that the planning merits of the current situation can be argued and that an application could be refused as the obligation serves a different useful purpose from that originally stated.

This site is no longer capable of accommodating residential development, owing to a greater level of flood risk subsisting than when the original legal agreement was drawn up. Planning permission 00/00320/FUL has lapsed and is no longer capable of implementation. To make the development acceptable, a safe means of escape away from the site to higher ground would need to be provided and that is not possible/impracticable in land use planning terms. In addition, the cost of constructing some form of high level gantry leading away from the site to higher ground could well make a residential development financially unviable.

- 6.2.2 Whilst the loss of 5 x 2 bed affordable flats to the city’s aspirations to provide affordable housing is regrettable, the original developer met their obligation by transferring the land to Swaythling Housing Association, beyond which there was no requirement to build out that housing. The current owner is now unlikely to obtain planning permission again for housing, owing to the higher flood risk. It is therefore possible to conclude that the obligation no longer serves its original purpose as there is no prospect that it will come forward for affordable housing thus meeting the community need for affordable housing. The obligation to could be used instead for a community group use. It is possible to conclude that the land can still serve a useful purpose in terms of providing a public benefit, albeit a different type of benefit. There is evidence of need for community group uses. As such it is reasonable to conclude that a useful purpose could still be met in land use planning terms by agreeing to a variation of the obligation. There is no prospect of the applicant being in a position to provide an alternative site for affordable housing in exchange for a total discharge of the obligation.
- 6.2.3 In terms of other original obligations referred to in Appendix 2 and paragraph 4.4 above, the agreement provides that there is no obligation to carry out any works or pay any monies if the permission is not implemented and therefore they cannot be enforced under this agreement as the consent was not implemented and is time expired. Issues of public access to the site’s river frontage would need to be addressed under any planning application to use the land for community group purposes.

7. Summary

- 7.1 The degree of flood risk and government advice on flood risk when determining planning applications has changed since the granting of permission 00/00320/FUL. The applicant has demonstrated that it is no longer practicable or safe to develop 43-45 Vespasian Road for housing purposes and as such it is no longer possible to provide affordable housing on this site.

8. Conclusion

- 8.1 Whilst it is regrettable that 5 affordable dwellings would be lost to the city’s stock

of housing, the original agreement was specific in terms of provision at 43-45 Vespasian Road. The applicant and landowner Swaythling Housing Association have identified an alternative user – The Sea Cadet Corps – who, subject to obtaining planning permission, could provide a socially beneficial community based use of the site, whilst also meeting the original aspirations for public access to the waterfront in the fullness of time.

Local Government (Access to Information) Act 1985

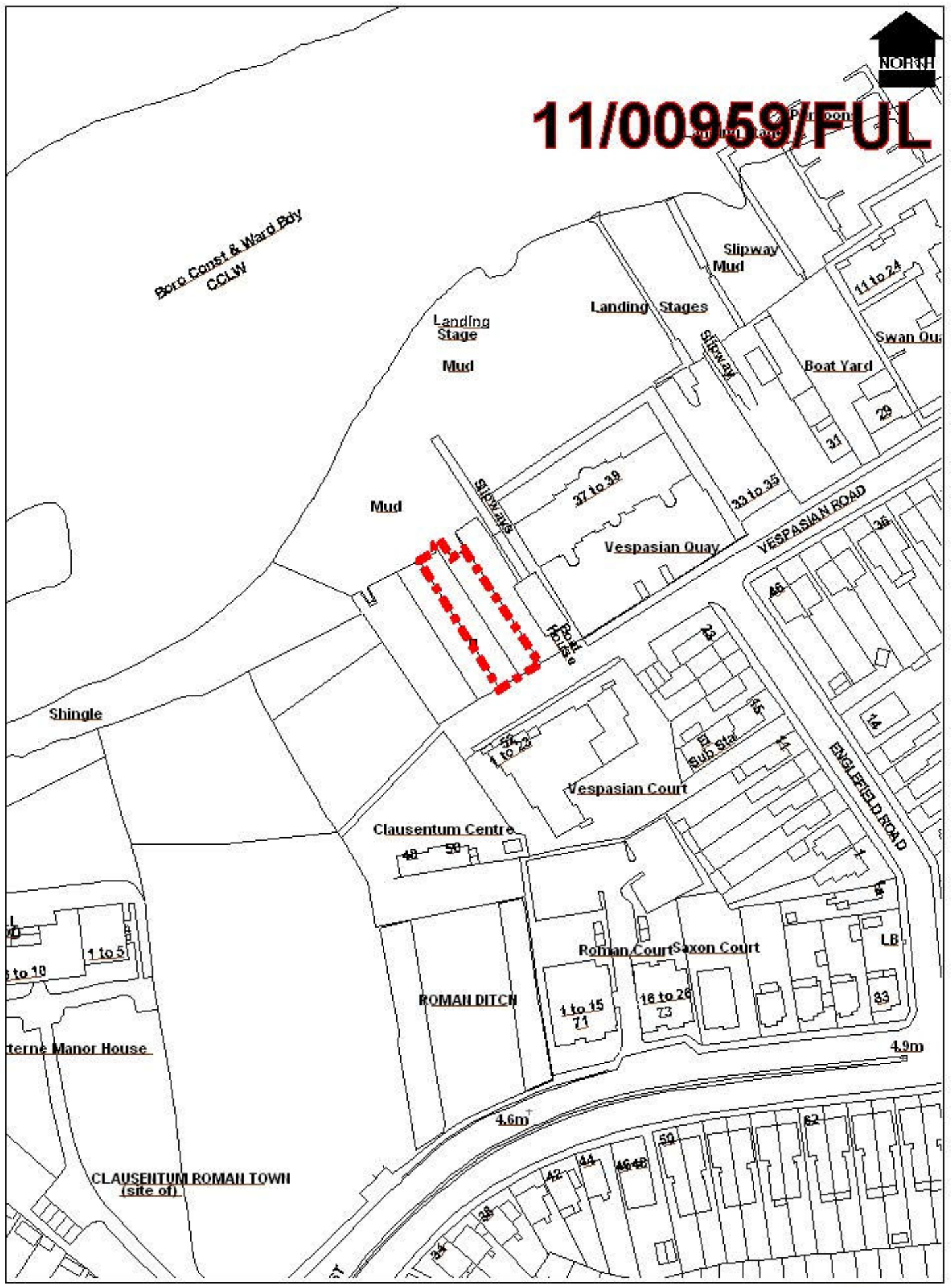
Documents used in the preparation of this report Background Papers

1 (a), (b), (c), (d), 2 (b), (d), 4 (g), 6 (a), 7 (a), (e), (w), 8 (b) and 10 (a) & (b)

SL2 for 25/10/11 PROW Panel



11/00959/FUL



Scale : 1:1250

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