

# Planning and Rights of Way Panel

Tuesday, 9th October, 2018  
at 6.00 pm

## **PLEASE NOTE TIME OF MEETING**

Conference Rooms 3 & 4 - Civic  
Centre

This meeting is open to the public

### **Members**

Councillor Savage (Chair)  
Councillor Coombs (Vice-Chair)  
Councillor Claisse  
Councillor L Harris  
Councillor Mitchell  
Councillor Murphy  
Councillor Wilkinson

### **Contacts**

Democratic Support Officer  
Ed Grimshaw  
Tel: 023 8083 2390  
Email: [ed.grimshaw@southampton.gov.uk](mailto:ed.grimshaw@southampton.gov.uk)

Service Lead - Planning Infrastructure and  
Development  
Samuel Fox  
Tel: 023 8083 2044  
Email: [samuel.fox@southampton.gov.uk](mailto:samuel.fox@southampton.gov.uk)

## **PUBLIC INFORMATION**

### **ROLE OF THE PLANNING AND RIGHTS OF WAY PANEL**

The Panel deals with various planning and rights of way functions. It determines planning applications and is consulted on proposals for the draft development plan.

### **PUBLIC REPRESENTATIONS**

Procedure / Public Representations

At the discretion of the Chair, members of the public may address the meeting on any report included on the agenda in which they have a relevant interest. Any member of the public wishing to address the meeting should advise the Democratic Support Officer (DSO) whose contact details are on the front sheet of the agenda.

The Southampton City Council Strategy (2016-2020) is a key document and sets out the four key outcomes that make up our vision.

- Southampton has strong and sustainable economic growth
- Children and young people get a good start in life
- People in Southampton live safe, healthy, independent lives
- Southampton is an attractive modern City, where people are proud to live and work

**SMOKING POLICY** – The Council operates a no-smoking policy in all civic buildings

**MOBILE TELEPHONES:-** Please switch your mobile telephones to silent whilst in the meeting

**USE OF SOCIAL MEDIA:-** The Council supports the video or audio recording of meetings open to the public, for either live or subsequent broadcast. However, if, in the Chair's opinion, a person filming or recording a meeting or taking photographs is interrupting proceedings or causing a disturbance, under the Council's Standing Orders the person can be ordered to stop their activity, or to leave the meeting.

By entering the meeting room you are consenting to being recorded and to the use of those images and recordings for broadcasting and or/training purposes. The meeting may be recorded by the press or members of the public.

Any person or organisation filming, recording or broadcasting any meeting of the Council is responsible for any claims or other liability resulting from them doing so.

Details of the Council's Guidance on the recording of meetings is available on the Council's website.

**FIRE PROCEDURE** – In the event of a fire or other emergency a continuous alarm will sound and you will be advised by Council officers what action to take.

**ACCESS** – Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

### **Dates of Meetings: Municipal Year 2017/18**

| <b>2018</b> |              |
|-------------|--------------|
| 29 May      | 11 September |
| 19 June     | 9 October    |
| 10 July     | 13 November  |
| 31 July     | 11 December  |
| 21 August   |              |

| <b>2019</b> |          |
|-------------|----------|
| 8 January   | 12 March |
| 29 January  | 2 April  |
| 26 February | 23 April |

## CONDUCT OF MEETING

### TERMS OF REFERENCE

The terms of reference of the Planning and Rights of Way Panel are contained in Part 3 (Schedule 2) of the Council's Constitution

### BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

### RULES OF PROCEDURE

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

### QUORUM

The minimum number of appointed Members required to be in attendance to hold the meeting is 3.

## DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Pecuniary Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

### DISCLOSABLE PECUNIARY INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:  
Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.
- (iv) Any beneficial interest in land which is within the area of Southampton.
- (v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.
- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.
- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:
  - a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
  - b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

## **OTHER INTERESTS**

A Member must regard himself or herself as having an, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

## **PRINCIPLES OF DECISION MAKING**

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

## **AGENDA**

### **1 APOLOGIES AND CHANGES IN PANEL MEMBERSHIP (IF ANY)**

To note any changes in membership of the Panel made in accordance with Council Procedure Rule 4.3.

### **2 DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS**

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

### **3 STATEMENT FROM THE CHAIR**

### **4 MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

(Pages 1 - 10)

To approve and sign as a correct record the Minutes of the meetings held on 21 August 2018 and 11 September 2019 and to deal with any matters arising.

### **5 TO CONFIRM THE SOUTHAMPTON (192 OAKLEY ROAD) TREE PRESERVATION ORDER 2018 (APPENDIX 1)**

(Pages 11 - 34)

Report of Head of Transactions and Universal Services detailing an objection to a Tree Preservation Order at 192 Oakley Road for consideration.

## **CONSIDERATION OF PLANNING APPLICATIONS**

### **6 PLANNING APPLICATION - 17/02592/OUT - 111-113 PAYNES ROAD** (Pages 39 - 84)

Report of the Service Lead, Planning, Infrastructure and Development recommending that the Panel delegate approval in respect of an application for a proposed development at the above address.

### **7 PLANNING APPLICATION - 18/01332/FUL - 32 CLIFTON ROAD**

(Pages 85 - 110)

Report of the Service Lead, Planning, Infrastructure and Development recommending that conditional approval be granted in respect of an application for a proposed development at the above address.

**8 PLANNING APPLICATION - 17/02443/OUT - 2 VICTOR STREET**

(Pages 111 - 144)

Report of the Service Lead, Planning, Infrastructure and Development recommending that the Panel delegate approval in respect of an application for a proposed development at the above address.

**9 PLANNING APPLICATION - 18/01467/FUL - 350 SHIRLEY ROAD**

(Pages 145 - 168)

Report of the Service Lead, Planning, Infrastructure and Development recommending that the Panel decline to determine the application for a proposed development at the above address.

**10 PLANNING APPLICATION - 18/01465/FUL - 350 SHIRLEY ROAD**

(Pages 169 - 204)

Report of the Service Lead, Planning, Infrastructure and Development recommending that the Panel refuse to grant approval in respect of an application for a proposed development at the above address.

**11 PLANNING APPLICATION - 18/01561/FUL - 35-36 OXFORD STREET**

(Pages 205 - 214)

Report of the Service Lead, Planning, Infrastructure and Development recommending that conditional approval be granted in respect of an application for a proposed development at the above address.

Monday, 1 October 2018

Director of Legal and Governance

# Agenda Item 4

To approve and sign as a correct record of events the minutes of the meetings held on:

- 21 August 2018; and
- 11 September 2018

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PLANNING AND RIGHTS OF WAY PANEL  
MINUTES OF THE MEETING HELD ON 21 AUGUST 2018

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Present: Councillors Savage (Chair), Coombs (Vice-Chair), Claisse, L Harris, Mitchell, Murphy and Wilkinson

20. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

**RESOLVED:** that the minutes for the Panel meeting on 31 July 2018 be approved and signed as a correct record.

21. **PLANNING APPLICATION 18/01044/FUL 408 PORTSMOUTH ROAD**

The Panel considered the report of the Service Lead – Infrastructure, Planning and Development recommending that conditional planning permission be granted in respect of an application for a proposed development at the above address.

Change of use to a hot food takeaway (Class A5) and installation of an extraction flue (resubmission of planning permission reference 18/00065/FUL).

Ms Lam, Mr Lam (local residents objecting) and Ms Toz (Agent) were present and with the consent of the Chair, addressed the meeting.

During the course of discussions, it was noted that the Police had not been consulted. Consequently, officers changed their recommendation to the panel to delegate the decision back to officers to grant planning permission subject to no objection being raised to a consultation with the Police, required as a result of concerns relating to anti-social behaviour associated with the proposed use as a hot food take-away. If an objection was raised, officers would liaise with the Chair for resolution prior to issuing.

RECORDED VOTE to delegate to officers to grant conditional planning permission subject to there being no objection from the Police:

FOR: Councillors Claisse, Coombs, Harris, Mitchell, Murphy and Savage

ABSTAINED: Councillor Wilkinson

**RESOLVED** that delegated authority be given to officers to grant conditional planning permission subject to the conditions within the report and subject to there being no objection from the Police.

22. **PLANNING APPLICATION - 18/01085/FUL 14 THE BROADWAY**

The Panel considered the report of the Service Lead – Infrastructure, Planning and Development recommending that conditional planning permission be granted in respect of an application for a proposed development at the above address.

Application for variation of Condition 4 (Hours of Operation) of planning permission reference 18/00035/FUL to extend opening hours to 07:00 – 23:00 on any day.

Mrs Jameson (local resident on behalf of Portswood Residents Gardens, objecting), Mr Davis (Applicant), Mr O'Keefe (Business Partner) and Councillor Claisse (Ward Councillor, objecting) were present and with the consent of the Chair, addressed the meeting.

A motion was proposed by Councillor Savage and seconded by Councillor Mitchell to open Monday to Saturday – 07.00-23.00 (7AM-11PM) and Sunday and recognised public holidays – 09.00-23.00 (9AM-11PM).

RECORDED VOTE to amend the opening hours of the premises  
FOR: Councillors Coombs, Harris, Mitchell, Murphy and Savage  
AGAINST: Councillor Wilkinson

**RESOLVED** that conditional planning permission be approved subject to the conditions within the report and the amended condition set out below.

#### Amended Condition

#### 4. APPROVAL CONDITION - Hours of Operation [Performance Condition]

The A4 'drinking establishment' to which this permission relates shall only operate in accordance with the following hours:

Monday to Saturday – 07.00-23.00 (7AM-11PM)  
Sunday and recognised public holidays – 09.00-23.00 (9AM-11PM)

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

NOTE: that Councillor Claisse withdrew from the Panel to represent his Ward in this matter.

#### 23. **PLANNING APPLICATION - 18/00974/FUL 56 WILTON AVENUE**

The Panel considered the report of the Service Lead – Infrastructure, Planning and Development recommending that conditional planning permission be granted in respect of an application for a proposed development at the above address.

Change of use from a dwelling house (Class C3) to a house in multiple occupation (HMO, Class C4) for up to 3 persons (no external changes) (retrospective) (Resubmission of 17/02464/FUL).

Mr Bradford (Agent) and Councillor Noon (Ward Councillor) were present and with the consent of the Chair, addressed the meeting.

RECORDED VOTE to grant planning permission  
FOR: Councillor Coombs, Mitchell, Murphy and Savage  
AGAINST: Councillor Claisse, Harris and Wilkinson

**RESOLVED** that conditional planning permission be approved subject to the conditions in the report.

24. **PLANNING APPLICATION - 18/00760/FUL 17 BASSETT GREEN CLOSE**

The Panel considered the report of the Service Lead – Infrastructure, Planning and Development recommending that conditional planning permission be granted in respect of an application for a proposed development at the above address.

Erection of front porch, side extension and roof alterations including hip to gable and rear dormer to facilitate loft conversion.

Mr Ghinn was present and with the consent of the Chair, addressed the meeting.

**RESOLVED** that conditional planning permission be approved subject to the conditions within the report.

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PLANNING AND RIGHTS OF WAY PANEL  
MINUTES OF THE MEETING HELD ON 11 SEPTEMBER 2018

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Present: Councillors Savage (Chair), Claisse, L Harris, Mitchell, Murphy, Wilkinson and Fielker

Apologies: Councillors Coombs

25. **APOLOGIES AND CHANGES IN PANEL MEMBERSHIP (IF ANY)**

It was noted that following receipt of the temporary resignation of Councillor Coombs from the Panel, the Director of Legal and Governance acting under delegated powers, had appointed Councillor Fielker to replace them for the purposes of this meeting.

26. **PLANNING APPLICATION - 18/00520/FUL - ITCHEN COLLEGE, MIDDLE ROAD**

The Panel considered the report of the Service Lead, Planning, Infrastructure and Development recommending that conditional planning permission be granted in respect of an application for a proposed development at the above address.

Proposed installation of a 3G football turf pitch with associated fencing, 6 x flood lights and 2 x storage containers.

Emily Bridges, Jane Kehoe, Adam Dietrich, Martin McQuay, Nigel Hecks and Brian Burge (local residents objecting), Mark Hatley (agent), Alex Scott (applicant), Victor Valeron (supporter) and Councillors J Baillie and Guthrie (ward councillors objecting) were present and with the consent of the Chair, addressed the meeting.

The presenting officer reported to the Panel that assurance had been received by the authority regarding: any potential health impacts of surface material used for the pitches; the security arrangements for the pitches; the pitch size; and the parking demand and assessment. The officer explained that additional conditions for a tree survey, landscaping floodlighting, the use of amplified sound and an estate and Parking management plan would be required following consultation. In addition the reporting officer clarified an error within the report in relation to the numbers of students that would benefit from the installation of the 3G pitches.

The Panel then considered the officer recommendation to grant conditional planning permission. Upon being put to the vote the officer recommendation was lost.

RECORDED VOTE to support the officer recommendation

FOR: Councillors Murphy and Mitchell

AGAINST: Councillors Savage, Fielker, Claisse, L Harris and Wilkinson

A further motion to grant conditional planning permission, subject to the amended hours condition set out below, was proposed by Councillor Savage and seconded by Councillor Fielker and was carried.

RECORDED VOTE to grant planning permission subject to amendment.  
FOR: Councillors Savage, Fielker, Murphy and Mitchell  
AGAINST: Councillors Claisse, L Harris and Wilkinson

**RESOLVED** that planning permission be approved subject to the conditions set out within the report and any additional or amended conditions set out below:

Amended and additional Conditions

03 Hours of Use (Performance)

The sport pitch and flood lighting approved shall not operate outside the following hours:

Monday to Thursday - 9am to 6pm

Friday to Sunday - 10am to 6pm

Recognised public holidays - Closed

The sports pitch shall not be used for community use during daytime College hours within term times. The flood lighting shall be switched off when there are no evening bookings during the above operating hours

REASON: To protect the amenities of the occupiers of existing nearby residential properties. Hours of use beyond 6pm in the evening would result in noise disturbance to neighbouring residential properties, contrary to policies SDP1(i) and SDP16(i) of the City of Southampton Local Plan Review (2015).

The submitted Transport Assessment has failed to properly assess the parking impact when the sports pitch is operating at capacity for community use during the evening (after 6pm) and therefore the application has failed to demonstrate that there will not be harmful parking overspill into surrounding residential streets outside of recognised daytime College hours as required by the provisions of Policies SDP1 and SDP4 of the City of Southampton Local Plan Review (2015), Policy CS19 of the Southampton Core Strategy Development Plan Document (2015) and the adopted Parking Standards Supplementary Planning Document (2011).

09. Community Use Agreement (Pre-commencement)

Use of the development shall not commence until a community use agreement prepared in consultation with Sport England has been submitted to and approved in writing by the Local Planning Authority, and a copy of the completed approved agreement has been provided to the Local Planning Authority. The agreement shall apply to the 3G pitch facility and changing accommodation and include details of pricing policy, hours of use, access by non-educational establishment users, management responsibilities and a mechanism for review. The development shall not be used otherwise than in strict compliance with the approved agreement. At no time shall sound amplifying equipment be used or installed which would generate noise audible from the boundary of the nearest residential property to the building during the approved hours for community use.

REASON: To secure well managed safe community access to the sports facility/facilities, to ensure sufficient benefit to the development of sport and to accord with Development Plan Policy CS11 of the Core Strategy. To protect the amenities of the occupiers of nearby residential properties.

#### 11. Flood Lighting (Performance)

The development shall be carried out in accordance with floodlighting drawing no. SJB-18-106-01 Rev A comprising LED lighting with a colour temperature of 4000 degree K.

REASON: In the interest of residential amenity/to minimise the impact on protected species.

#### 17. Estate and Parking Management Plan (Pre-commencement of use)

Prior to the commencement of use of the sports pitch hereby approved an Estate and Parking Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include measures to ensure that adequate parking spaces are made available to meet the needs of all activities/events taking place on site at any given time and shall provide a minimum of 83 on-site parking spaces. The Plan shall also detail how uses will be managed to ensure that peak times for different activities are avoided. The development shall be carried out and managed thereafter in accordance with the agreed Estate and Parking Management Plan.

REASON: To prevent harmful parking overspill into surrounding residential streets and traffic congestion at the accesses in the interests of wider road safety.

#### 18. Landscaping to Middle Road boundary (Pre-Commencement)

Prior to the commencement of use of the sports pitch a scheme of landscaping enhancement to the boundary with Middle Road to assist in filtering views of the sports pitch hereby approved shall be submitted to the Local Planning Authority and agreed in writing.

The approved hard and soft landscaping scheme for the whole site shall be carried out prior to the commencement of use of the sports pitch 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.

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.

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

#### 19. Tree survey plan (Pre-Commencement)

No operation in connection with the development hereby permitted shall commence on site until an accurate plan showing the position of all trees and root protection areas on site has been submitted and agreed in writing with the Local Planning Authority. Notwithstanding the approved plans condition, the disabled access design shall be amended if necessary to ensure the tree roots of adjacent trees are not compromised

with any revised design details to submitted and agreed in writing with the Local Planning Authority.

REASON: To ensure easy identification of all trees to be retained pursuant to any other condition of this decision notice.

# Agenda Item 5

|                          |  |                                  |                           |
|--------------------------|--|----------------------------------|---------------------------|
| <b>DECISION-MAKER:</b>   | PLANNING RIGHTS OF WAY PANEL                             |                                  |                           |
| <b>SUBJECT:</b>          | OBJECTION TO TREE PRESERVATION ORDER AT 192 OAKLEY ROAD. |                                  |                           |
| <b>DATE OF DECISION:</b> | 9 OCTOBER 2018   |                                  |                           |
| <b>REPORT OF:</b>        | HEAD OF TRANSACTIONS AND UNIVERSAL SERVICES              |                                  |                           |
| <u>CONTACT DETAILS</u>   |  |                                  |                           |
| <b>AUTHOR:</b>           | <b>Name:</b>   | Will Taylor                      | Tel: <b>023 8083 4028</b> |
|                          | <b>E-mail:</b>   | Will.taylor@southampton.gov.uk   |                           |
| <b>Director</b>          | <b>Name:</b>   | Mitch Sanders                    | Tel: <b>023 8083 3005</b> |
|                          | <b>E-mail:</b>   | Mitch.sanders@southampton.gov.uk |                           |

|  |   |
|--|---|
| <b>STATEMENT OF CONFIDENTIALITY</b>  |   |
| None   |   |
| <b>BRIEF SUMMARY</b>   |   |
| <p>A Tree Preservation Order was placed on the tree in response to the resident of 192 Oakley Road informing the council of their intention to remove it.</p> <p>The Oak tree is prominent in the street scene and valuable in a number of ways to the area.</p> |   |
| <b>RECOMMENDATIONS:</b>  |   |
|  | (i) To confirm The Southampton (192 Oakley Road) Tree Preservation Order 2018 without modifications.  |
| <b>REASONS FOR REPORT RECOMMENDATIONS</b>  |   |
| 1.   | The tree is prominent on the road and provides valuable visual amenity to the local area as well as helping to mitigate against harmful pollutants associated with the docks and main roads in the vicinity of this City Ward.  |
| 2.   | This part of the City does not have a very dense canopy cover and mature trees, particularly Oaks and other native species, are vitally important to the ecological and bio-diversity of the area.  |
| <b>ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</b>   |   |
| 3.   | To not confirm this Order. This would not offer the legal protection which is considered prudent for the future reasonable management of the trees.   |
| <b>DETAIL (Including consultation carried out)</b>   |   |
| 4.   | 23.04.18 – Council received a request to check whether the tree to the front of 192 Oakley Road was covered by a Tree Preservation Order. The property is an ex-council house and has a Deed of Covenant stipulating that the council is notified of intended tree works. |
| 5.   | 25.04.18 – A series of emails (appendix 3), were sent and received between Council representative and the residents of 192 Oakley Rd attempting to ascertain the level of works intended. An online application was submitted but   |

|   |   |
|---|---|
|   | did not detail the works. Further correspondence were sent to clarify and on 30.04.18 the notice of intention to remove the tree was submitted.   |
| 6.  | 11.05.18 – I spoke with the residents of 192 Oakley Road via telephone and subsequently visited the property to inspect the tree and discuss with them the intended work. The inspection of the tree shows it to have good vitality and be in a satisfactory condition to retain long term and thus be worthy of protection. I discussed with them, at length, the benefits of retaining the tree and pruning if necessary whilst removing dead wood to alleviate the dead material dropping from crown. They were convinced the tree needed to be removed. |
| 7.  | 11.05.18 – Tree Preservation Order Placed on the Tree.  |
| 8.  | 29.05.18 – A notice of objection to The Southampton (192 Oakley Road) Tree Preservation Order 2018 is received.   |
| 9.  | 30.05.18 - 05.07.18 – A series of emails (appendix 4) between the Council and the residents attempting to work through the objection. The final email, dated 05.07.18 is left un-answered by the resident.  |
| <b>RESOURCE IMPLICATIONS</b>  |   |
| <b><u>Capital/Revenue</u></b>                                       |   |
| 10.   | Cost will be those associated with the administration of confirming the Order and administration of any subsequent applications made under the Order.   |
| <b><u>Property/Other</u></b>  |   |
| 11.   | If the order is confirmed, compensation may be sought in respect of loss or damage caused or incurred in consequence of the refusal of any consent required under the TPO or of the grant of such consent which is subject to condition. However, no compensation will be payable for any loss of development or other value of the land, neither will it be payable for any loss or damage which was not reasonably foreseeable.   |
| <b>LEGAL IMPLICATIONS</b>   |   |
| <b><u>Statutory power to undertake proposals in the report:</u></b> |   |
| 12.   | In accordance with the Constitution, the officer has delegated power to make, modify or vary, revoke and not confirm Tree Preservation Orders under Sections 198 and 201 of the Town and Country Planning Act 1990; and to confirm such orders except where valid objections are received. If objections are received then the Planning and Rights of Way Panel are the appropriate decision making panel to decide whether to confirm the order or not.  |
| <b><u>Other Legal Implications:</u></b>                             |   |
| 13.   | The making or confirmation of a Tree Preservation Order could interfere with the right of the property owner peacefully to enjoy their possessions but it can be justified under Article 1 of the First Protocol as being in the public interest (the amenity value of the trees, tree groups and woodlands) and subject to the conditions provided for by law (the Town and Country Planning Act 1990) and by the general principles of international law  |
| <b>RISK MANAGEMENT IMPLICATIONS</b>                                 |   |
| 14.   | NONE  |

|                                      |      |
|--------------------------------------|------|
| <b>POLICY FRAMEWORK IMPLICATIONS</b> |      |
| 15.                                  | NONE |

|                                    |           |
|------------------------------------|-----------|
| <b>KEY DECISION?</b>               | <b>No</b> |
| <b>WARDS/COMMUNITIES AFFECTED:</b> | N/A       |

SUPPORTING DOCUMENTATION

**Appendices**

|    |   |
|----|---|
| 1. | The Order: The Southampton (192 Oakley Road) Tree Preservation Order 2018 |
| 2. | Photos of the tree.   |
| 3. | Email correspondences to ascertain the level of intended works.           |
| 4. | Email correspondences detailing the objection and the Councils response.  |
| 5. | TEMPO Form  |

**Documents In Members' Rooms**

|    |      |
|----|------|
| 1. | None |
|----|------|

**Equality Impact Assessment**

|   |           |
|---|-----------|
| <b>Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.</b> | <b>No</b> |
|---|-----------|

**Data Protection Impact Assessment**

|  |           |
|--|-----------|
| <b>Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.</b> | <b>No</b> |
|--|-----------|

**Other Background Documents**

**Other Background documents available for inspection at:**

| <b>Title of Background Paper(s)</b> | <b>Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)</b> |
|-------------------------------------|---|
| 1.                                  | None  |

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### Form of Tree Preservation Order

#### Town and Country Planning Act 1990

#### The Southampton (192 Oakley Road) Tree Preservation Order 2018

Southampton City Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

#### Citation

1. This Order may be cited as The Southampton (192 Oakley Road) Tree Preservation Order 2018

#### Interpretation

2.— (1) In this Order “the authority” means the Southampton City Council.

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

#### Effect

3.— (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or

(b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

**Application to trees to be planted pursuant to a condition**

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 11th May 2018

Signed on behalf of the SOUTHAMPTON CITY COUNCIL

A handwritten signature in black ink, appearing to read 'MJS' followed by a large, stylized flourish.

Authorised by the Council to sign in that behalf

**SCHEDULE 1**

**The Southampton (192 Oakley Road) Tree Preservation  
Order 2018**

**Individual Trees  
(encircled black on the map)**

| <b>No on Map</b> | <b>Description</b> | <b>Situation</b>                |
|------------------|--------------------|---------------------------------|
| T1               | Oak                | Front garden of 192 Oakley Road |

**Groups of trees  
(within a broken black line on the map)**

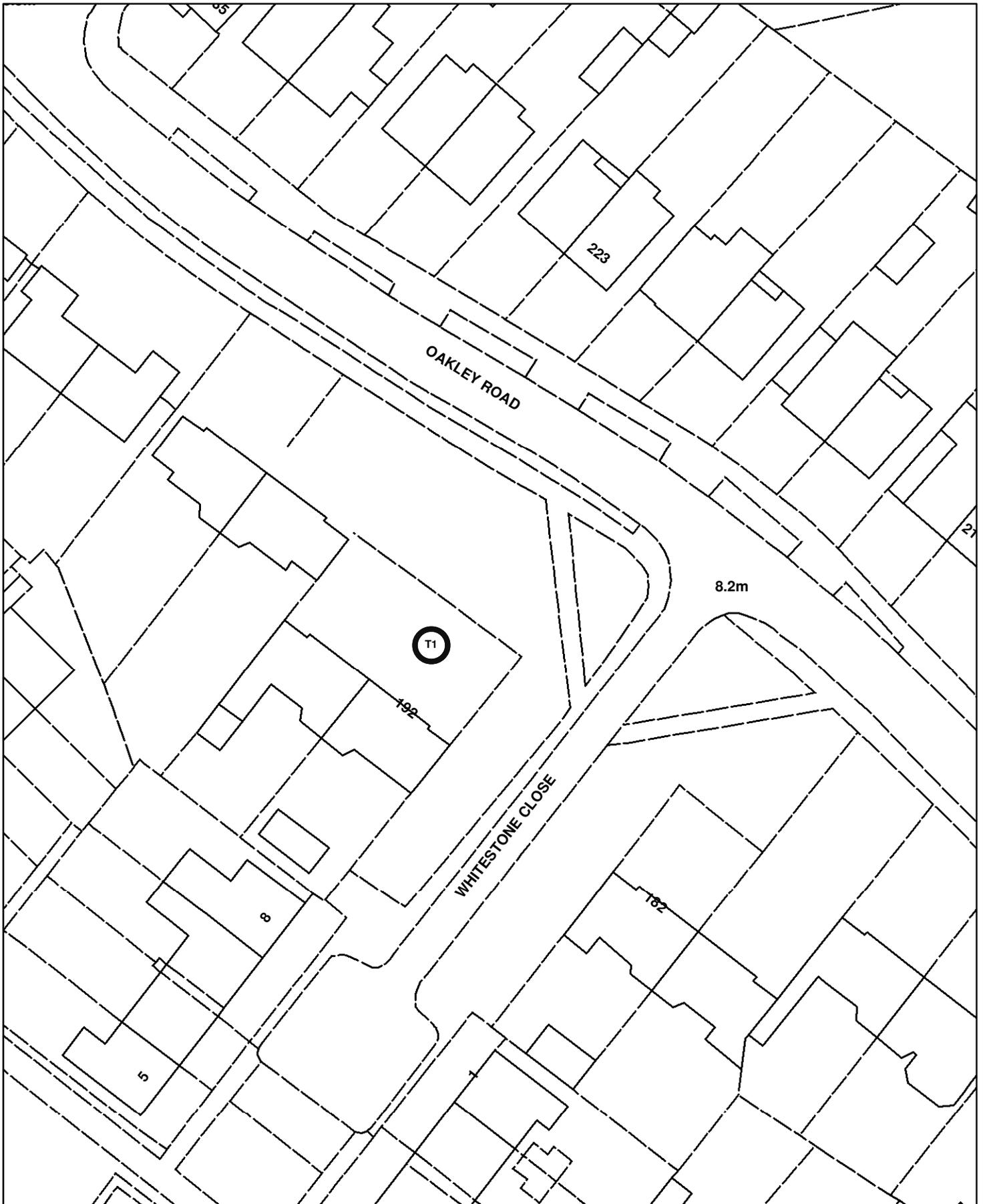
| <b>No on Map</b> | <b>Description</b> | <b>Situation</b> |
|------------------|--------------------|------------------|
|                  | NONE               |                  |

**Woodlands  
(within a continuous black line on the map)**

| <b>No on Map</b> | <b>Description</b> | <b>Situation</b> |
|------------------|--------------------|------------------|
|                  | NONE               |                  |

**Trees Specified by Reference to an Area  
(within a dotted black line on the map)**

| <b>No on Map</b> | <b>Description</b> | <b>Situation</b> |
|------------------|--------------------|------------------|
|                  | NONE               |                  |



© Crown copyright and database rights 2014 Ordnance Survey 100019679  
 This copy has been produced specifically for the map return scheme purposes only. No further copies may be made.

- Key
-  Individual Trees
  -  Group
  -  Woodland
  -  Area
  -  Not TPO'd

|  |                        |
|--|------------------------|
| The Southampton (192 Oakley Road) Tree Preservation Order 2018 |                        |
| TPO Ref: T2-694  | Department: Trees team |
| Drawn: WT  | Page 13                |
| Scale: 1:500   |                        |



Mitch Sanders  
 Service Director  
 Transactions and Universal Services  
 Southampton City Council  
 Southampton SO14 7LY

# Agenda Item 5

Appendix 2







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**25.04.18**

Good Afternoon,

Further to our telephone conversation you can submit an application to carry out work to trees covered by a deed of covenant. This can be completed on the following link;

<https://www.southampton.gov.uk/people-places/parks-open-spaces/trees/protected/trees-excouncil-properties.aspx>

If you require any further assistance please do not hesitate to come back to me.

Kind Regards

**26.04.18**

hai ,

Thank you very much for the email,

I am attaching the copy of photos I take to show the condition of the tree, this tree is standing in my front garden and it is in front of my main entrance door, some of the branches of the tree is dead and they are falling, my kids are playing in this small garden and it is dangerous, the drainage system got problems because of this tree , we are scared to stay inside our house when it is raining and windy, few times the branches fall on top of our house, this is a big tree and branches falling and this is a health and safety issue.

some of the branches of the tree is lying to my neighbour's property and few years before they get the permission from the council to cut the branches of the tree, we are facing problems with the tree, we informed to the home insurance company regarding the tree and they told us to contact the tree surgeon, they told us to contact the council . please help us we don't know what to do

many thanks,



**27.04.18**

**Site Address:** Same as applicant address

**Are you the owner of the land where the tree(s) are situated?** Yes

**Tree work requested:** I am attaching the copy of photos I take to show the condition of the tree,

this tree is standing in my front garden and it is in front of my main entrance door, some of the branches of the tree is dead and they are falling, my kids are playing in this small garden and it is dangerous, the drainage system got problems because of this tree , we are scared to

stay inside our house when it is raining and windy, few times the branches fall on top of our house, this is a big tree and branches falling and this is a health and safety issue.

some of the branches of the tree is lying to my neighbour's property and few years before they get the permission from the council to cut the branches of the tree, we are facing problems with the tree, we informed to the home insurance company regarding the tree and they told us to contact the tree surgeon, they told us to contact the council . please help us we don't know what to do

many thanks,

[REDACTED]

**30.04.18**

Good morning

Confirm ref: 50019059

Please can you provide details of what work you intend to carry out. The screen shot below gives a guide on work that can be carried out. If you can give as much detail as possible when applying this will help the officer dealing with this application understand the work to be carried out.

Kind regards,

[REDACTED]

Assistant Tree Officer

**30.04.18**

hai

thank you very much for the email, As I mentioned in the photo, the bottom part of the tree ( the trunk ) got dead portion in the main stem, we are really scared of this tree if it is falling on top of the house will be a problem and we spoke to the tree surgeons, they told us to cut this tree and reduce the height of the tree to ground level . this is Expensive but we need to do this . As I mentioned the bottom part of the trunk is dead and the tree surgeon doesn't know how far affect the tree. got several health and safety issues with this tree, please grant as permission to cut this tree and bring it to ground level

please do the needful

Many thanks,

[REDACTED]



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### **29.05.18**

Hai,

I am sending this email regarding the TPO Issued recently when we buy this property my solicitor done all the checks ( any tree protection ) on the tree which is in front of the property ( front garden ),

We got some concerns about health and safety of the residence in this property, the recently received letter saying if we got any objection on the TPO issued on 11th of may need to inform the tree department.

My Objections are:

- 1) The making of a TPO is not justified when there was not a previous one in place at the time of purchase
- 2) Danger to the safety of family, in particular, young children by large overgrown branches that aren't trimmed/pruned; and overgrown roots.
- 3) danger to the safety of
  - a) Visitors
  - b) Passers-by
  - c) My kidsby overgrown branches and dead woods
- 4) Drainage blockages caused by the thick roots
- 5) Damage to the property ( building)
- 6) hazard to the neighbouring property
- 7) Reduction in value of the property, as more people are unlikely to purchase a property with a tree in the garden got TPO.
- 8) Amenity/enjoyment of the property affected by restrictions
- 9) visibility is likely to be reduced, and That could cause a hazard,
- 10) The debris falling from the tree on windy /stormy days will create the hazard to family and third parties
- 11) individual and hide impacts
  - a) post persons,
  - b) utility attendants
- 12) please find the attached copy of the condition of the tree ( PHOTO of the tree)
- 13) According to me, this tree is a real danger for my family especially to kids playing in the garden, it is a tall tree, Falling branch and the dead woods will create big health and safety issues. as per the recently issued TPO for the tree, totally ignoring the rights of a family and putting them in trouble. if anything happens to myself, my family and my property because of this tree Southampton city council will be responsible. And we need to get a written confirmation from city council

please do the needful we invest all our money to buy this house and we worked hard for that

Many Thanks,

Santhimol k Thomas

### **30.05.18**

Dear Mr Thomas,

With regards to your email, dated 29.05.18, in which you expressed concerns over the recent Tree Preservation Order (TPO) being placed on the Oak tree to the front of your property. I would like to take this opportunity to explain about the TPO and also hope to answer the concerns you have raised.

. The TPO does not prevent urgent work being undertaken as this can be done under the exemptions of the legislation and these are as follows.

- **Deadwood.** The removal of any deadwood from a protected tree is exempt work and does not require an application. Only living parts of the tree are protected. Although not compulsory, we would recommend that the tree team

be informed of deadwood removal so we are aware in case it is reported to us from the public.

- Dead trees. If a tree is regarded as dead, there is no requirement for an application to be submitted and this work can be carried out. As above, it would be prudent to inform the tree team in case a member of the public reports the felling of a tree. It should be noted that the tree is to be dead and not dying. If a tree is considered to be dying, then an application should be submitted for the work.
- Dangerous trees. If a tree is considered to be dangerous, there are two ways in which the work can be completed and these will be detailed below, but in both cases, only enough work to remove the danger is permitted under this exemption and any further work will require an application.
  - 1) A tree that is considered to be **imminently** dangerous can be worked on without notification or an application and as mentioned above, only enough work is permitted to remove the danger. In this case, it is advisable to have photographs taken so it can be easily demonstrated why the work was completed. Some of the times that this could be expected to be used is a partially up-rooted tree that is likely to fall or a broken hanging branch over a public area, but your tree surgeon can always advise on the best way ahead.
  - 2) A tree that is not considered to be imminently dangerous but will not be suitable to be left whilst a formal application is processed can be worked on under a 5 Day Notice exemption. This is where the City Council tree team are notified of the work that will be completed after the expiry of the 5 day notice. This exemption may be used whereby a branch has partially snapped but is well secured within the canopy of the tree. It is not imminent that it will fall but it is advisable to have it removed within a week.

The tree preservation order has been placed to protect this tree which provides benefits to the local community as a whole and has not been put in place to make it difficult for you to maintain the tree safely.

During my site visit with yourself on 11.05.18 we discussed the safety of the tree and the potential works you may consider undertaking to help with debris coming from the tree during windy conditions, removing deadwood is exempt as detailed above. I inspected the tree for defects and in my professional opinion the tree was within the acceptable safety margins and I found no evidence that the tree was dangerous or causing damage, either directly or in-directly to the property itself or the drainage system. I noted on my site visit that you had installed a rope swing into the tree, even though you are suggesting you feel it is too dangerous for your children to play under.

I have also completed a Tree Evaluation Method for Preservation Orders (TEMPO) form, attached above, which is an industry recognised method to ascertain if a tree is suitable for protection and takes in to account the condition, longevity and public

visibility of the tree as well as the any threat to the tree. The form indicated that the tree was suitable for protection and the TPO was subsequently placed on the tree.

I hope that my explanation is clear and has alleviated some of your concerns over the protection status but if you are not happy with my response and still wish to uphold your objection, I will have to escalate your objection and have this matter presented to a Planning & Rights of Way Panel to be voted on by the elected members.

At this meeting, you will be invited to attend and given time to put forward your reasons for the objection. Then the panel, in conjunction to my report, will vote whether to confirm the order. As the City Councillors are appreciative of green infrastructure, I am confident that they would agree with the order and vote to have it confirmed. I fully appreciate that this is not a given and you are fully entitled to uphold your objection.

Please let me know your intentions by completing that attached form and returning it to the office.

If you have any questions about this, please contact me and I will do my best to answer them.

Kind Regards,

*Will Taylor*

Will Taylor  
City Tree Officer

### **08.06.18**

hai,

We received your email and we are attaching the copy of the tree preservation order -objection response. we haven't got money to deal this with solicitors at this stage, we spend all our savings to buy this house and when we buy this house there is no preservation order on this tree in our front garden, we know there is a tree in the garden the time we purchased the property, we did all the checks before buying this house and we make sure with concil that there is no preservation order on this tree, now you putting a preservation order on the tree giving more pressure to us, we are even trying to sell this property, only because of this Tree. All these years we work hard to buy a property, and we haven't got any freedom to do things on the property and it's frustrating and giving more pressure on us, we cant concentrate on our work and we are not happy, with this. The making of a TPO is not justified when there was not a previous one in place at the time of purchase of this property,

Many thanks,

santhmol kunnumpurathu Thomas

**21.06.18**

Dear Mr Thomas,

Apologies for the delay in responding to you regarding your objection to the TPO placed on your tree and thank you for returning the Objection response letter.

I will now look to bring this forward to The Planning Rights of Way Panel where the decision to confirm the order or not will be made by a selection of appointed members. You will be invited, closer to the time to attend the meeting and will have time, usually around 5 minutes, to address the panel should you wish. If you wish to have someone represent you that is your decision but this is not really a matter for solicitors and it is usual for people to either represent themselves or employ a suitable arboricultural consultant to represent them.

I will create a report on the decision to place the TPO and will present it to the panel and then you will be offered a time slot to respond, then the panel votes and their decision is carried forward. The whole affair usually only takes 10-15 mins.

I cannot give you the dates for the panel yet and we have six months from the date the TPO was made to seek its confirmation, however I would hope to present this to the panel towards the end of July or in August.

I am sorry this has caused you worry and my original offer of help with the TPO applications is still open, there is no reason why some pruning to the tree would not be allowed and I am happy to advise.

If you decide you would like discuss the Order, the application process or you would like to withdraw your objection and not have it go to Panel, please get in contact via the email above,

Kind regards,

*Will Taylor*

Will Taylor  
City Tree Officer

**04.07.18**

hai

my Objections is that The making of a TPO is not justified when there was not a previous one in place at the time of purchase of this property, we haven't got the problem to keep the tree in the garden, we got concerns about the tree

- 1) The size of the tree, ( Damaged parts of the tree ) need to bring the tree to
- 2) The oversized branches
- 3) The branches lying on the top of the house or towards the side of the house need to take off ( the previous landlords took some of those branches towards the side of the house )
- 4) Dead woods falling from the tree is a real health and safety issue also the tree is

standing right in front of the main entrance door, dead wood falling sometime creating problems for anyone including the kids ( sometimes kids playing in the garden)

5) The branches lying to the neighbour's property need to be taken off they are a real problem for them ( before we bought this property they take permission to cut those branches lying to there property )

6) the main trunk part is the tree is damaged we discuss about that last time when you came home .we are not specialist in the tree and we don't know anything about the tree, if you want to keep the TPO, AS a tree officer you need to give us a proper detailed report about the trees and give the proof that it is not going to make any harm to the property and the reason why you need to keep the TPO on this tree. also because of this tree, when we buying this property there was no TPO on this tree, we request t you to do some work on the tree and you issue a TPO on this tree. If anything happens to anyone or any harm to my property you and council need to take responsibility and that we need to get in writing. we do not have any problems with you or council if anything happens we need some proof

7) As you mentioned earlier

If you decide you would like to discuss the Order, the application process or you would like to withdraw your objection and not have it go to Panel, please get in contact via the email above, you can always reach me in 07402834573 or can reach me via email

many thanks,

santhimol k thomas

## **05.07.18**

Dear Mr Thomas,

Thank you for your email. I feel perhaps the best thing would be to have another meeting with you and I would be happy to visit you again to discuss your concerns if you wanted.

If you are available one morning next week please tell me what day and time is convenient for you and I will confirm. If this is not good for you, please let me know when would be and I will see if I am available.

I am hopeful that we can resolve the issue

Kind Regards

*Will Taylor*

Will Taylor  
City Tree Officer

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## TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO): SURVEY DATA SHEET & DECISION GUIDE

|  |                     |
|--|---------------------|
| Date: 11/05/18   | Surveyor: W. TAYLOR |
| <b>Tree details</b><br>TPO Ref: T2- 694                      Tree/Group No:                      Species: OAK<br>Location: 192 OAKLEY Rd - FRONT GARDEN<br>The Southampton ( ) Tree Preservation Order 201 |                     |

### Part 1: Amenity assessment

#### a) Condition & suitability for TPO:

Refer to Guidance Note for definitions

- |                     |                         |
|---------------------|-------------------------|
| 5) Good             | Highly suitable         |
| 3) Fair             | Suitable                |
| 1) Poor             | Unlikely to be suitable |
| 0) Dead             | Unsuitable              |
| 0) Dying/dangerous* | Unsuitable              |

\* Relates to existing condition and is intended to apply to severe irremediable effects only.

|  |  |
|--|--|
| <b>Score &amp; Notes</b><br><div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin: 0 auto;">3</div> | - Some old branch wounds with heartwood decay, but occluding well. |
|--|--|

#### b) Remaining longevity (in years) & suitability for TPO:

- |           |                 |
|-----------|-----------------|
| 5) 100+   | Highly suitable |
| 4) 40-100 | Very suitable   |
| 2) 20-40  | Suitable        |
| 1) 10-20  | Just suitable   |
| 0) <10*   | Unsuitable      |

\* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality.

|  |  |
|--|--|
| <b>Score &amp; Notes</b><br><div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin: 0 auto;">2</div> |  |
|--|--|

#### c) Relative public visibility & suitability for TPO:

Consider realistic potential for future visibility with changed land use.

- |   |                     |
|---|---------------------|
| 5) Very large trees with some visibility, or prominent large trees. | Highly suitable     |
| 4) Large trees, or medium trees clearly visible to the public       | Suitable            |
| 3) Medium trees, or large trees with limited view only              | Just suitable       |
| 2) Young, small, or medium/large trees visible only with difficulty | Barely suitable     |
| 1) Trees not visible to the public, regardless of size              | Probably unsuitable |

- Highly suitable  
Suitable  
Just suitable  
Barely suitable  
Probably unsuitable

|  |  |
|--|--|
| <b>Score &amp; Notes</b><br><div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin: 0 auto;">4</div> |  |
|--|--|

#### d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- |  |   |  |  |
|--|---|--|--|
| 5) Principal components of arboricultural features, or veteran trees   | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> <b>Score &amp; Notes</b><br/> <div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin: 0 auto;">1</div> </td> <td style="width: 50%;"></td> </tr> </table> | <b>Score &amp; Notes</b><br><div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin: 0 auto;">1</div> |  |
| <b>Score &amp; Notes</b><br><div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin: 0 auto;">1</div> |   |  |  |
| 4) Tree groups, or members of groups important for their cohesion  |   |  |  |
| 3) Trees with identifiable historic, commemorative or habit importance   |   |  |  |
| 2) Trees of particularly good form, especially if rare or unusual  |   |  |  |
| 1) Trees with none of the above additional redeeming features  |   |  |  |

= 9

### Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify.

- |  |   |  |   |
|--|---|--|---|
| 5) Immediate threat to tree  | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> <b>Score &amp; Notes</b><br/> <div style="display: flex; align-items: center; justify-content: center;"> <div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin-right: 10px;"><del>5</del></div> <div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin-right: 10px;">4</div> </div> </td> <td style="width: 50%; vertical-align: top;">         - OWNER has expressed desire to fell tree       </td> </tr> </table> | <b>Score &amp; Notes</b><br><div style="display: flex; align-items: center; justify-content: center;"> <div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin-right: 10px;"><del>5</del></div> <div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin-right: 10px;">4</div> </div> | - OWNER has expressed desire to fell tree |
| <b>Score &amp; Notes</b><br><div style="display: flex; align-items: center; justify-content: center;"> <div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin-right: 10px;"><del>5</del></div> <div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; margin-right: 10px;">4</div> </div> |   | - OWNER has expressed desire to fell tree  |   |
| 3) Foreseeable threat to tree  |   |  |   |
| 2) Perceived threat to tree  |   |  |   |
| 1) Precautionary only.   |   |  |   |

= 10

### Part 3: Decision guide

- |       |                       |
|-------|-----------------------|
| Any 0 | Do not apply TPO      |
| 1-6   | TPO indefensible      |
| 7-10  | Does not merit TPO    |
| 11-14 | TPO defensible        |
| 15+   | Definitely merits TPO |

|   |  |
|---|--|
| <b>Add Scores for Total:</b><br><div style="text-align: center; font-size: 2em; margin: 0 auto;">14</div> | <b>Decision:</b><br><div style="text-align: center; font-size: 2em; border: 1px solid black; border-radius: 50%; width: 60px; margin: 0 auto;">TPO</div> |
|---|--|

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## INDEX OF PLANNING APPLICATIONS FOR DECISION

DATE: 9<sup>th</sup> October 2018 - 6pm Conference Rooms 3 and 4, 1st Floor, Civic Centre

| Main Agenda Item Number | Officer | Recommendation | PSA | Application Number / Site Address   |
|-------------------------|---------|----------------|-----|-------------------------------------|
| 6                       | AL      | DEL            | 15  | 17/02592/OUT<br>111-113 Paynes Road |
| 7                       | AG      | CAP            | 5   | 18/01332/FUL<br>32 Clifton Road     |
| 8                       | MP/SM   | DEL            | 15  | 17/02443/OUT<br>2 Victor Street     |
| 9                       | JF      | DECLINE        | 5   | 18/01467/FUL<br>350 Shirley Road    |
| 10                      | JF      | REF            | 5   | 18/01465/FUL<br>350 Shirley Road    |
| 11                      | AA/MR   | CAP            | 5   | 18/01561/FUL<br>35-36 Oxford Street |

PSA – Public Speaking Allowance (mins); CAP - Approve with Conditions: DEL - Delegate to Officers: PER - Approve without Conditions: REF – Refusal: TCON – Temporary Consent: NOBJ – No objection – DECLINE – Decline to Determine

Case Officers:

AL – Anna Lee  
 AG – Andy Gregory  
 MP – Mat Pidgeon  
 SM – Simon Mackie  
 JF – John Fanning  
 AA – Andy Amery  
 MR – Melanie Robertson

## Southampton City Council - Planning and Rights of Way Panel

### Report of Planning & Development Manager

#### Local Government (Access to Information) Act 1985

#### Index of Documents referred to in the preparation of reports on Planning

##### Applications:

##### Background Papers

1. Documents specifically related to the application
  - (a) Application forms, plans, supporting documents, reports and covering letters
  - (b) Relevant planning history
  - (c) Response to consultation requests
  - (d) Representations made by interested parties
  
2. Statutory Plans
  - (a) Hampshire, Portsmouth, Southampton and New Forest National Park Minerals and Waste Plan (Adopted 2013)
  - (b) Amended City of Southampton Local Plan Review (Adopted March 2015)
  - (c) Local Transport Plan 2006 – 2011 (June 2006)
  - (d) Amended City of Southampton Local Development Framework – Core Strategy (inc. Partial Review) (adopted March 2015)
  - (e) Adopted City Centre Action Plan (2015)
  - (f) Community Infrastructure Levy Charging Schedule (2013)
  - (g) Bassett Neighbourhood Plan (Adopted 2016)
  
3. Statutory Plans in Preparation
  
4. Policies and Briefs published and adopted by Southampton City Council
  - (a) Old Town Development Strategy (2004)
  - (b) Public Art Strategy
  - (c) North South Spine Strategy (2004)
  - (d) Southampton City Centre Development Design Guide (2004)
  - (e) Streetscape Manual (2005)
  - (f) Residential Design Guide (2006)
  - (g) Developer Contributions SPD (September 2013)
  - (h) Greening the City - (Shoreburs; Lordsdale; Weston; Rollesbrook Valley; Bassett Wood and Lordswood Greenways) - 1985-1995.
  - (i) Women in the Planned Environment (1994)
  - (j) Advertisement Control Brief and Strategy (1991)
  - (k) Biodiversity Action Plan (2009)
  - (l) Economic Development Strategy (1996)
  - (m) Test Lane (1984)
  - (n) Itchen Valley Strategy (1993)

- (o) Portswood Residents' Gardens Conservation Area Character Appraisal (1999)
- (p) Land between Aldermoor Road and Worston Road Development Brief Character Appraisal(1997)
- (q) The Bevois Corridor Urban Design Framework (1998)
- (r) Southampton City Centre Urban Design Strategy (2000)
- (s) St Mary's Place Development Brief (2001)
- (t) Ascupart Street Development Brief (2001)
- (u) Woolston Riverside Development Brief (2004)
- (v) West Quay Phase 3 Development Brief (2001)
- (w) Northern Above Bar Development Brief (2002)
- (x) Design Guidance for the Uplands Estate (Highfield) Conservation Area (1993)
- (y) Design Guidance for the Ethelburt Avenue (Bassett Green Estate) Conservation Area (1993)
- (z) Canute Road Conservation Area Character Appraisal (1996)
- (aa) The Avenue Conservation Area Character Appraisal (1997)
- (bb) St James Road Conservation Area Character Appraisal (1996)
- (cc) Banister Park Character Appraisal (1991)\*
- (dd) Bassett Avenue Character Appraisal (1982)\*
- (ee) Howard Road Character Appraisal (1991) \*
- (ff) Lower Freemantle Character Appraisal (1981) \*
- (gg) Mid Freemantle Character Appraisal (1982)\*
- (hh) Westridge Road Character Appraisal (1989) \*
- (ii) Westwood Park Character Appraisal (1981) \*
- (jj) Cranbury Place Character Appraisal (1988) \*
- (kk) Carlton Crescent Character Appraisal (1988) \*
- (ll) Old Town Conservation Area Character Appraisal (1974) \*
- (mm) Oxford Street Conservation Area Character Appraisal (1982) \*
- (nn) Bassett Green Village Character Appraisal (1987)
- (oo) Old Woolston and St Annes Road Character Appraisal (1988)
- (pp) Northam Road Area Improvement Strategy (1987)\*
- (qq) Houses in Multiple Occupation (2012)
- (rr) Vyse Lane/ 58 French Street (1990)\*
- (ss) Tauntons College Highfield Road Development Guidelines (1993)\*
- (tt) Old Woolston Development Control Brief (1974)\*
- (uu) City Centre Characterisation Appraisal (2009)
- (vv) Parking standards (2011)

\* NB – Policies in these documents superseded by the Residential Design Guide (September 2006, page 10), albeit character appraisal sections still to be had regard to.

## 5. Documents relating to Highways and Traffic

- (a) Hampshire C.C. - Movement and Access in Residential Areas
- (b) Hampshire C.C. - Safety Audit Handbook
- (c) Southampton C.C. - Cycling Plan (June 2000)
- (d) Southampton C.C. - Access for All (March 1995)

- (e) Institute of Highways and Transportation - Transport in the Urban Environment
- (f) I.H.T. - Traffic Impact Assessment Guidelines
- (g) Freight Transport Association - Design for deliveries
- (h) DETR Traffic Advisory Leaflets (various)

6. Government Policy Planning Advice

- (a) National Planning Policy Framework (July 2018)
- (b) National Planning Policy Guidance Suite

7. Other Published Documents

- (a) Planning for Daylight and Sunlight - DOE
- (b) Coast and Countryside Conservation Policy - HCC
- (c) The influence of trees on house foundations in clay soils - BREDK
- (d) Survey and Analysis - Landscape and Development HCC
- (e) Root Damage to Trees - siting of dwellings and special precautions – Practice Note 3 NHDC
- (f) Shopping Policies in South Hampshire - HCC
- (g) Buildings at Risk Register SCC (1998)
- (h) Southampton City Safety Audit (1998)
- (i) Urban Capacity Study 2005 – 2011 (March 2006)
- (j) Strategic Housing Land Availability Assessment (March 2013)

**Planning and Rights of Way Panel 9<sup>th</sup> October 2018**  
**Planning Application Report of the Service Lead- Infrastructure, Planning & Development**

|   |  |  |  |
|---|--|--|--|
| <b>Application address:</b><br>111 - 113 Paynes Road and Richmond Works, Pitt Road, Southampton, SO15 3BX   |  |  |  |
| <b>Proposed development:</b><br>Re-development of the site. Erection of 40 dwellings (3x 3-bed, 20x 2-bed, 8x 1-bed flats) and 9x 3-bed houses and a commercial building (class B1(b) or C) (Outline application seeking approval for Layout, Access and Scale) (departure from development plan) |  |  |  |
| <b>Application number</b>   | 17/02592/OUT   | <b>Application type</b>                      | OUT  |
| <b>Case officer</b>   | Anna Lee   | <b>Public speaking time</b>                  | 15 minutes                                   |
| <b>Last date for determination:</b>   | 09.04.2018<br>(Extension of Time Agreement)            | <b>Ward</b>                                  | Freemantle                                   |
| <b>Reason for Panel Referral:</b>   | More than five letters of objection have been received | <b>Ward Councillors</b>                      | Cllr Leggett<br>Cllr Parnell<br>Cllr Shields |
| <b>Applicant:</b> Mr D Waldron - Mursell Ltd & Rockstone Investments Ltd  |  | <b>Agent:</b> Mr R Reay - Luken Beck MDP Ltd |  |

|                               |   |
|-------------------------------|---|
| <b>Recommendation Summary</b> | <b>Delegate to Delegate to Service Lead – Infrastructure Planning &amp; Development to grant planning permission subject to criteria listed in report</b> |
|-------------------------------|---|

|   |            |
|---|------------|
| <b>Community Infrastructure Levy Liable</b> | <b>Yes</b> |
|---|------------|

**Reason for granting Planning Permission**

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations including the policy allocation of the site, highway safety, residential amenity and the impact on the street scene 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 as set out in the report to the Planning & Rights of Way Panel on 9<sup>th</sup> October 2018. 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 39 – 42 and 46 of the National Planning Policy Framework (2018). Policies SDP1, SDP4, SDP5, SDP6, SDP7, SDP8, SDP9, SDP10, SDP11, SDP12, SDP13, SDP14, SDP15, SDP16, SDP17, SDP22, HE6, CLT1, H, H2, H7 and REI11 of the City of Southampton Local Plan Review - Amended 2015 policies CS4, CS5, CS6, CS7, CS13, CS15, CS16, CS18, CS19, CS20, CS21, CS22, CS23, CS24 and CS25 of the Local Development Framework Core Strategy (2015) and National Planning Guidance contained within the National Planning Policy Framework.

| Appendix attached |                                |   |                                     |
|-------------------|--------------------------------|---|-------------------------------------|
| 1                 | Habitats Regulation Assessment | 2 | Development Plan Policies           |
| 3                 | Highway comments               | 4 | Viability Assessment – DVS Findings |

## Recommendation in Full

1. That the Panel confirm the Habitats Regulation Assessment in **Appendix 1** of this report.
2. Delegate to the Service Lead – Infrastructure, Planning & Development to grant planning permission subject to the planning conditions recommended at the end of this report and the completion of a S.106 Legal Agreement to secure:
  - i. Financial contributions towards site specific transport improvements in the vicinity of the site in line with Policy SDP4 of the City of Southampton Local Plan Review (as amended 2015), Policies CS18 and CS25 of the adopted LDF Core Strategy (as amended 2015) and the adopted SPD relating to Planning Obligations (September 2013).
  - ii. Either the provision of 35% affordable housing in accordance with LDF Core Strategy Policy CS15 or a mechanism for ensuring that development is completed in accordance with the agreed viability assessment (without any affordable housing) and that a review is undertaken should circumstances change and the development stall;
  - 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.
  - iv. Submission of a Training & Employment Management Plan committing to adopting local labour and employment initiatives, in accordance with Policies CS24 & CS25 of the Local Development Framework Core Strategy Development Plan Document - Adopted Version (as amended 2015) and the adopted SPD relating to Planning Obligations (September 2013).
  - v. The submission, approval and implementation of a Carbon Management Plan setting out how 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).
  - vi. Submission and implementation of details to be approved providing a permanent, publicly accessible pedestrian link with Freemantle Lake Park.
  - vii. Financial contributions or other measures towards the Solent Disturbance Mitigation Project (SDMP) in accordance with the Conservation of Habitats and Species Regulations 2010 (as amended), saved Policy SDP 12 of the City of Southampton Local Plan Review (as amended 2015), CS22 of the Core Strategy (as amended 2015) and the Planning Obligations SPD (September 2013).
  - viii. Restrictions to prevent future occupiers benefitting from parking permits in surrounding streets (Controlled Parking Zones).

3. That the Service Lead – Infrastructure, Planning & Development be given delegated powers to add, vary and /or delete relevant parts of the Section 106 agreement and/or conditions as necessary. In the event that the legal agreement is not completed within a reasonable period following the Panel meeting, the Service Lead-Infrastructure, Planning & Development be authorised to refuse permission on the ground of failure to secure the provisions of the Section 106 Legal Agreement.

1. The site and its context

- 1.1 The application site, currently solely in commercial use, is 0.67 hectares and although is defined as being outside Shirley Town Centre, is within walking distance of the centre and, therefore, lies within a very sustainable location. The site is split in two by the buildings. The majority of the site, which is the front part facing Paynes Road, is used for car sales, MOT garage and car repairs with the rear of the site, accessed via Pitt Road, being occupied mainly for storage in association with small companies.
- 1.2 The area is mixed in nature comprising mainly residential, but opposite the site is Freemantle Church of England Community Academy. The two properties either side fronting Paynes Road are residential accommodation in the form of a dwelling at 109 Paynes Road and sheltered housing at Shaftsbury House (113a - 115 Paynes Road). To the rear, the site is bordered by Richmond Road, which is at a higher level, to the east, the commercial premises at Pitt Road and to the west, Freemantle Lake Park, which is at a lower level than the site.
- 1.3 There are level changes on the site with the rear part being much lower than the front. Adjacent to Paynes Road the land level is 13 metres above ordnance datum (AOD) lowering to 11.50 metres at the rear of the existing gardens Paynes Road, to the lowest level, ranging between approximately 9.5 to 10.5 metres, adjacent to the park and then stepping up to approximately 11.5 metres adjacent to the boundary with Richmond Road. The land slopes up again to the properties at Richmond Road.

2. Proposal

- 2.1 Outline planning permission is sought. The proposal is for a mixed use scheme for 40 dwellings (3x 3-bed, 20x 2-bed, 8x 1-bed flats) and 9x 3-bed houses together with a commercial building providing 464 square metres floorspace. It is an outline application with the Access, Layout and Scale being identified for consideration. Appearance and Landscaping are reserved from this application and will form part of a reserved matters application at a later stage.
- 2.2 The application provides a pedestrian link from the site to Freemantle Lake Park which will be secured as a public accessible footpath via the S106 legal agreement and condition 2. Vehicular access will be formed via Paynes Road for the residential element and Pitt Road for the commercial element. In total, 61 parking spaces are to be provided, 9 of which would serve the commercial unit.
- 2.3 The residential element of the development takes the form of 2 blocks of 2-storey, 3-bed houses, one fronting Paynes Road and the other is located along the access road, adjacent to the rear of 107 -109 Paynes Road. To the rear of the site there are two larger blocks mainly comprising apartments. The block positioned adjacent to the commercial unit, steps up from 2-storey in height, adjacent to the boundary with Richmond Road, to 4 stories in the middle of the site (albeit with rooms in the roof). The second block, located adjacent to Freemantle Lake Park, comprises 4,

3-bedroom houses with integral garages. This steps up from 3 storeys in height to 4 storeys in the middle of the site (albeit with rooms in the roof).

2.4 The commercial building would be used for light industrial purposes (Use Class B1 (c)) and is 5.5 metres to eaves height and is 2-storeys in design. The lowest part of the site, adjacent to the entrance to Freemantle Lake Park, is utilised for car parking and areas of shared amenity space.

### 3. Relevant Planning Policy

3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at Appendix 2.

3.2 The application is a departure from the Local Plan as part of the site to north (rear) is safeguarded for employment uses under policy RE111 (xiii) for light industry, which specifies the uses B1 b and B1c. The definition of these uses are B1(b): Research and development of products and processes and B1(c): Light industry appropriate in a residential area. Also of particular relevance to this proposal are policies CS6 and CS7 of the Core Strategy which supports the economic growth of the city by safeguarding existing employment sites. Criterion 1 notes that there may be an exception to the safeguarding if there is clear evidence that a site is not, and is not likely to become viable for employment use. However, it is more appropriate to consider criterion 2 in this instance due to the mix of employment and residential use proposed.

3.3 It is particularly worth noting paragraph 4.6.8 of the Core Strategy whereby it is stated that a site may remain commercially viable for some employment use if redeveloped for a mix of employment and other higher value uses. It is further stated that a higher density development could retain the same or significant number of jobs and / or provide a higher quality floorspace. It is also worth noting the constrained nature of the site which is largely surrounded by residential uses. Therefore, the proposal from a planning policy perspective should be considered on this basis.

3.4 It should also be noted that the Local Plan Issues and Options (July 2015) cannot be afforded sufficient weight at this stage particularly in relation to the identification of Pitt Road Industrial Estate as one of the sites which could be deemed surplus to requirements. However, as noted above, Core Strategy Policy CS 7 does allow exceptions to safeguarding if the criteria within the policy are considered to be satisfactorily met.

3.5 Major developments in the city are also expected to meet high sustainable construction standards in accordance with Core Strategy Policy CS20 and Local Plan “saved” Policy SDP13.

3.6 The National Planning Policy Framework (NPPF) was revised in July 2018. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan 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.

#### 4. Relevant Planning History

4.1 There is a long planning history associated with the trading estate's expansion however, the most relevant planning is application 99/01286/FUL for 2x3-storey blocks of 16 no. 1-bed and 8 no.2-bed flats. This application was withdrawn in 2005.

#### 5. Consultation Responses and Notification Representations

5.1 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 (12.01.18) and erecting a site notice (16.01.18). At the time of writing the report, 23 representations have been received from third parties, one of which is letter of support. The following is a summary of the points raised:

#### 5.2 Overdevelopment

##### Response

The proposal results in a density of 59 dph and, therefore, is in line with Policy CS5 of the Core Strategy which indicates that densities of between 50 – 100 dph are appropriate for this area. It is also important to note that, in terms of building and hardsurfacing, the site is currently 100% developed whereas the proposal will introduce areas of soft landscaping together with a reduced amount of building footprint. Therefore, the development does not lead to an overdevelopment of the site.

#### 5.3 Impact on neighbours

##### Response

The development is located between 25 and 28.5 metres away from the nearest properties at Richmond Road and 26 and 27 metres away from 107 and 109 Paynes Road. The siting of the proposed buildings exceeds the separation distances set out in the adopted Residential Design Guide (21m for 2 storey development).

5.4 Concern regarding access, parking and transport problems that will arise from the increase in dwellings. In particular, with respect to the parking.

##### Response

SCC Highways have considered the concerns raised by residents and do not consider the proposed development to be detrimental to highway safety. A highway safety improvement package will be secured as part of the S106 legal agreement (see recommendation 1(i)) to mitigate any potential highway issues). Parking has been proposed to provide at least one space for each dwelling (with 2 spaces for the larger units) and in this accessible location this is acceptable. Condition 26 is recommended to provide sufficient sight lines to improve highway safety. The full Highway response is set out in Appendix 3 of this report.

5.5 Pitt Road is too narrow.

##### Response

The application proposes a reduction in reliance on Pitt Road for access when compared with the existing situation. The existing commercial building to the rear of the site provides approximately 1500 sq.m of floor space with over 1000sq.m of an area for parking and servicing. The application proposes that only the commercial unit would be accessed from Pitt Road and this provides 464 sq.m floorspace with an associated service yard of approximately 500 sq.m. As such, the proposal represents a betterment in this respect.

5.6 Concern that development will result in increased flood risk to the adjoining land  
Response  
Detailed information has been submitted to address the Council's Flood officers' concerns with respect to the climate change and proposed drainage mechanism. Subject to the inclusion of conditions 23 and 24, set out below, the previous objection has been addressed.

5.7 Concerned about boundary treatment to the shared boundary with Richmond Road  
Response  
A boundary treatment condition (see condition 6, below) is secured to request these details prior to development.

5.8 Key sections are missing and the full impact of the proposed 3.5 metre flatted development is not shown  
Response  
An existing site survey and proposed ridge heights are provided so officers are able to assess the proposed height difference between the existing neighbouring properties and the proposed development.

5.9 The development should be reduced in height as the 3.5 storeys are out of keeping with the other residential properties within the area.  
Response  
The local area differs in types of development and land levels. This site forms a bowl making it possible to accommodate taller development without harming established character. The assessment of the proposed height is set out in section 6.3 of the report.

5.10 No mention is made in the planning application to the policy designation  
Response  
The submitted Planning, Design and Access statement sets out the relevant policy constraints for the site. This is also discussed in more detail below.

Consultation Responses

5.11 SCC Highways – No objection subject to conditions (See conditions 25-31 and 33). Details of the vehicular access onto Paynes Road, road construction, refuse storage and collection points including details of the arrangements on collection day. In addition, parking restrictions to restrict all kerbs which are not serving as a formal parking space should be marked with parking restrictions to deter any informal parking. Finally, details of cycle parking and the submission of a construction management plan. The full comments from the Highway Engineer are included as Appendix 3.

5.12 SCC Policy - No objection received at pre-application stage – see comments above.

5.13 SCC City Design – The principal concern with this scheme is that it is effectively making a large cul-de-sac when the opportunity exists to create a pedestrian/cycle link to Pitt Road thereby improving permeability, which will become even more important if/when at some future date the industrial site to the east becomes available for redevelopment. The link to the park is shown as only 'potential'. This must be delivered by this application as otherwise there is no prospect of it being delivered at a future date.

Response:

It is noted that a pedestrian link from Pitt road through the site to Freemantle Lake Park would be beneficial (see s.106 recommendation). However, the current state of Pitt Road means that pedestrian access is unsafe and there are no works proposed within the immediate future to improve this. The Panel may decide that a pedestrian link from the development into Pitt Road is required to make this development acceptable, and further details could then be secured through a condition or the Reserved Matters stage.

- 5.14 SCC Housing – As the scheme comprises of 40 dwellings in total the affordable housing requirement from the proposed development is 35% (CS15- sites of 15+ units = 35%). The affordable housing requirement is therefore 14 dwellings.

Response

The scheme's viability, with this level of affordable housing provision, has been questioned and tested by an independent expert. Further details are provided later in this report with the DVS findings attached at Appendix 4.

- 5.15 SCC Sustainability Team – No objection

As the commercial element of the scheme is under 500m<sup>2</sup>, no BREEAM assessment is required. With respect to the residential elements conditions securing energy and water targets are to be secured. See conditions 16 and 17.

- 5.16 SCC Environmental Health (Pollution & Safety) –

No objection subject to conditions securing dust suppression during demolition, a construction environment management plan, no bonfires (not secured as can be dealt with under separate legislation) and working hours. See conditions 32 -34.

- 5.17 SCC Environmental Health (Contaminated Land): No objection

No objection subject to conditions to secure a contaminated land assessment and any required remediation measures. See conditions 13 -15.

- 5.18 SCC Ecology – No objection subject to conditions to secure the appropriate mitigation measures provided in section 6.2 Mitigation/Compensation of the submitted ecology report as well as a conditions securing an ecological mitigation statement, protection of nesting birds and details of lighting. See conditions 18 – 20. Adjacent to the application site lies Fremantle Lake Park which consists of an area of amenity grassland with mature trees around its boundaries. An ecological appraisal supporting the planning application established that the habitats present on the site were of low ecological value. It also found that the buildings and trees had negligible potential for bat roosts but that the block of trees and scrub along the western boundary was likely to provide suitable foraging and commuting habitat for bats. The trees, scrub and buildings were also considered to be suitable habitat for nesting birds, whilst the park is likely to be of value to foraging bats and nesting birds. Whilst the removal of the buildings will alter the habitat this can be mitigated through the provision of replacement habitat. This can be achieved by using native and ornamental species with established wildlife value in the landscaping scheme. In addition, a range of bird and bat boxes should be incorporated into the buildings to provide replacement / additional nesting and roosting sites for birds and bats. External lighting will need to be carefully positioned to avoid illumination of surrounding vegetation and be hooded to prevent upward light spill.

- 5.19 SCC Trees – No objection

The arboricultural assessment and method statement provided give a detailed methodology for work within the root protection areas of four trees requiring special protection and the intended removal of three trees. One of these being a category U tree. The site plan indicates that thirteen new trees are being planted

which will help to increase the canopy cover of the area. Conditions to be secured are tree retention and safeguarding, no storage under tree canopy and the submission of a detailed landscaping plan (see conditions 21 and 22).

5.20 SCC Flood Risk Officer – No objection

It appears that there is to be sufficient attenuation to accommodate the 1 in 100 year rainfall event plus 40% climate change. This coupled with a reduction in impermeable areas to the site through the addition of soft landscaping provides a significant betterment from the current discharge rate and volume. The information provided is suitable for removing objection to outline design planning, with additional information to be supplied at full planning including as secured by condition 23.

5.21 SCC Archaeology: No objection

There is potential for archaeology to exist on the site and conditions are suggested to address this including archaeological damage assessment and an archaeological investigation. See conditions 10 -12.

5.22 Southern Water – No objection.

Suggests a condition (number 24) to secure measures to protect the public sewer during development and to secure details of the means of foul and surface water disposal.

5.23 Southampton Common and Parks Protection Society (SCAPPS) - Objection

The proposed development is adjacent to Freemantle Lake Park. The application site overlooks the Park -- the eastern end of the Park is at lower level than the adjacent property, the application site. The ground slopes steeply down/there is a sharp difference in level between Park & the development site. SCAPPS' first concern is that the tallest building in the application is sited at this point & will be very visible from the Park. SCAPPS questions why this building is proposed to be 3.5 storeys? Why can it not be lower in height to reduce visual impact from within the Park? Landscaping & planting will be a reserved matter; SCAPPS expects to see strong landscape planting on the boundary with the Park to 'soften' the appearance from within the Park. SCAPPS notes proposals for surface water drainage; SCAPPS has insufficient knowledge to be certain that, because of the drop in levels, surface water will be adequately intercepted to prevent run-off into the Park.

5.23.1 SCAPPS notes that the plans submitted with the application are tentative about a pedestrian link from the development site into the Park. SCAPPS would support provision of a clear, attractive pedestrian link from Paynes Road through the proposed development into the Park. There is an existing path from the Park to Paynes Road but it is narrow, somewhat unattractive & not readily seen. SCAPPS would support taking this opportunity to create a more attractive & visible route for public access to the Park from Paynes Road. SCAPPS asks that further consideration be given to layout of the access road from Paynes Road so there is a clear, safe pedestrian route through to the new Park entrance.

5.23.2 Response

The impact of the height will be assessed in section 6 of the report. The drainage aspect has been assessed by the Council's Flooding Team see section 5.20 and Southern Water see section 5.22. The link to the park will be secured via the Section 106 legal agreement and condition 2.

## 6. Planning Consideration Key Issues

6.1 The key issues for consideration in the determination of this planning application are:

- The principle of development;
- The effect on character;
- Residential amenity;
- Parking, highways and transport;
- Affordable housing and viability;
- Development mitigation and;
- Likely effect on designated habitats.

### 6.2 Principle of Development

6.2.1 As set out in paragraph 3.2 above, the application site is partly safeguarded for light industrial use. The proposal includes 464 sq.m of commercial floorspace to provide a mixed use development, although results in a reduction in light industrial floorspace and, therefore, represents a departure from the adopted Development Plan policies.

6.2.2 In allocating the site for light industrial purposes, the Local Plan Inspector's report (paragraph 8.16.12-8.16.13) noted the following:

"...in terms of location and access, which I observed to be very narrow. ... I fear that the effect of the safeguarding will be to perpetuate unsuitable uses within a primarily residential area. I also note that the safeguarding of adjoining land facing onto Paynes Road (also owned by Mursell Ltd and currently used for car repairs) was removed at Revised Deposit stage. It seems to me that if the general industrial use were to continue on the Richmond Works site, this would be likely to blight any future use of this land for residential purposes, for example. I have already concluded that the supply of industrial land is not as poor as the Council believe. I do not therefore consider that the loss of this site would be critical and I recommend that this part of the safeguarded site should be removed from Policy REI 12."

The Richmond Works is in a poor state of repair and redevelopment would undoubtedly have the potential for considerable visual improvement to benefit the local area. The Objector considers that the site would be most suitable for housing. I agree that it is in a highly sustainable location close to Shirley District Centre and adjacent to Richmond Park. However, there is no overriding need for further housing allocations and this is not suggested by the Objector. In the absence of the safeguarding the site would fall to be considered under Policy H3, which relates to housing development on previously developed land. One consideration would be the existence of the remaining industrial land on the adjoining Liners Industrial Estate."

6.2.3 Policy CS7 of the Core Strategy safeguards existing employment sites unless certain criteria are met. In this case, having regard to the Inspector's comments above, criteria 2 (a & b) of the policy are pertinent. The policy confirms that, where there is strong justification to release the safeguarding in terms of planning and regeneration benefits or the impact of the use on residential amenity, mixed use development can be considered. Given the nature of the surrounding area, which is mainly residential; the poor condition of the majority of the existing buildings and; the unsuitability of Pitt Road for serving largescale employment use, it is considered that Policy CS7 is satisfied and the redevelopment of the site for alternative uses is appropriate.

6.2.4 The proposal provides a light industrial element at the rear of the site, albeit at a scale that is more appropriate to the nature of Pitt Road, and is designed to prevent the remainder of the development from utilising the Pitt Road access. The proposal, therefore, provides a better situation when compared with the existing. Furthermore, the Use Classes Order confirms that Light Industrial uses are those which are appropriate within a residential area and so the proposed commercial element would integrate better into the residential context when compared with the existing noise-generating uses (which includes general industrial).

6.2.5 As detailed in Policy CS4 of the Core Strategy, an additional 16,300 homes need to be provided within the City between 2006 and 2026. The proposal would make efficient use of previously developed land to provide further homes, including 30% family housing in accordance with policy CS16 (12/40 are 3 beds including 9 houses). The development also does achieve a good mix of one and two bedroom accommodation ensuring a balanced community would be achieved. A residential density of 59 dwellings per hectare would be achieved, in accordance with policy CS5 of the Core Strategy, which requires densities in line with 50 - 100 dwellings per hectare in sustainable locations. Furthermore, the introduction of residential on this site would be more sympathetic to the residential context.

6.2.6 The redevelopment of this safeguarded employment site for mixed use commercial and residential development is, therefore, considered to be justified by Policy CS7 of the Core Strategy. However, after assessing the policy allocation the proposal has to be weighed against the other key issues set out below:

### 6.3 Effect on character

6.3.1 The external appearance/architecture of the development is reserved from consideration and, therefore, the scale and layout, together with the amount of development can only be assessed in terms of character. The two-storey scale of the development proposed adjacent to the existing properties along Paynes Road is in keeping with the height of the majority of the dwellings. The layout of this part of the site mimics the existing street frontage and then provides further units to the rear of Paynes Road properties along the access way. These provide an active frontage when entering the development. Between these units and the rest of the proposed units to the rear of the site is amenity area with parking. This is provided due to the drainage issues at the site and also provides a low-level and open feel to the new link to the adjacent park. The layout clearly shows a pedestrian footpath linking the site to the park, this secured via condition 2 and recommendation vi.

6.3.2 At the lowest part of the site, 4 storey flats are proposed (albeit with rooms in the roof). It is noted that this will be a height that is only approximately 0.2 metres lower than the properties at Richmond Road which are set at a higher level. However, there are other examples of similar scale development within the vicinity (the development at 117-123 Paynes Road). The highest two blocks at 4 storeys within the centre of the development would not appear dominant due to the land level changes and set back from the site boundaries. It is clear from the section provided that, although the development will be high, it will not tower over the existing properties in the area due to the site level changes and the alignment of the buildings in the middle of the site. The distance between the tallest flats and existing surround units aids this transition. In terms of the relationship with the adjacent park it is important to note that Freemantle Lake Park is an urban park surrounded by development which includes 3 and 4 storey development at the eastern end of Paynes Road. Existing tree screening in the park will filter

views of the development and a setback of more than 11 metres from the boundary with the park will also lessen the visual impact of the development. On this basis no objection has been received from the Council's City Design Officer.

- 6.3.3 The layout provides the natural surveillance of the parking and access within the development with units fronting the car parking area and access. The development has been well designed to provide a great deal of space around the development which not only provides setting but also amenity space. The amenity provided for the houses is in line with guidance as at least 10 metre deep gardens are provided. Having assessed the resulting amenity space there is sufficient amenity space to meet the required 20 sq.m per unit. This is notwithstanding the location adjacent to the park.
- 6.3.4 With respect to the commercial unit, it is accessed separately and is set a distance away from all proposed and existing residential neighbours. The height of the development is in line with the existing buildings on site and the neighbouring industrial uses and provides a sufficient height buffer.
- 6.3.5 Landscaping is to be a reserved matter. However, the layout plan does show the provision of trees and areas of amenity space for the flats and the houses. Currently, the whole site is laid out with hardstanding. The site is located adjacent to Freemantle Lake Park where there are both protected trees secured either under a Tree Preservation Order (TPO) and group orders. Conditions 21 and 22 seek to protect these trees from damage during construction. Further details of the landscaping and amenity space provision will be provided at the reserved matters stage.
- 6.3.6 In summary, the scale of the development albeit 4 storeys high as its highest is in keeping with the character of the area. The layout has been well designed by providing a development which provides adequate spacing between the buildings and respect the low density of the area.
- 6.4 Residential Amenity
- 6.4.1 Overall, the layout of the development provides good spacing between buildings and achieves an orientation of residential blocks which provides good outlook and access to daylight and sunlight. The privacy distances are met throughout the site both with respect to the proposed and existing properties. The privacy distances with regard to the existing neighbouring properties exceed the guidance and are set out in paragraph 5.3. The road and pedestrian routes within the development benefit from natural surveillance and provide safe and convenient routes for residents.
- 6.4.2 The existing commercial units that neighbour the site are historic and, therefore, unfettered by planning controls. However, the scheme is designed with commercial floorspace located immediately adjacent to the existing commercial uses, with residential uses set away. The Council's Environmental Health raises no objection to siting residential development in this location as the existing commercial uses are already surrounded by residential uses. However, development can be protected from external noise sources with an adequate specification of glazing. This can be secured by condition 34.
- 6.4.3 Conditions 8 and 9 are also suggested to ensure that the new commercial uses do not generate noise and disturbance to new residents. In particular, the hours of operation will be controlled, soundproofing measures secured and details of plant, equipment and machinery also secured by condition to avoid undue disturbance to residents within the development. Overall, it is considered that the development is designed to provide a high-quality environment for future residents.

## 6.5 Highway Safety and Parking

- 6.5.1 The parking for the development comprises 61 spaces with 9 spaces for the commercial element leaving 52 spaces for the residential development. Each house would be served by 2 spaces (including garage spaces) and 34 for the flats, providing at least one space per flat. This provision is acceptable in this location which is well served by public transport and is within walking distance of shops and services. The site is located within an area that is subject to traffic regulation orders and a residents parking zone which means parking overspill is unlikely to occur as residents will not be eligible for parking permits, as secured by recommendation xiii of this report. The parking provided complies with the maximum standards set out in the adopted Parking Standards Supplementary Planning Document.
- 6.5.2 The main vehicular access into the site will be via Paynes Road for the residential properties. The second access via Pitt Road serves only the industrial unit. Concern has been raised that highway safety could be compromised, however, a sight line condition (no 26) has been included to ensure highway safety is secured for both pedestrians and vehicles. A detailed Transport Assessment has been submitted and assessed with the application and adequately demonstrates that the proposal will have an acceptable impact on the highway network. As such, the Council's Highways and Transport Team have raised no objection to the application and the proposal is considered to be acceptable in this respect.

## 6.6 Affordable Housing and Viability

- 6.6.1 Policy CS15 sets out that 'the proportion of affordable housing to be provided by a particular site will take into account the costs relating to the development; in particular the financial viability of developing the site (using an approved viability model).' The application is accompanied by a viability assessment which sets out that the development would not be viable and able to commence should the usual package of financial contributions and affordable housing be sought. In particular, the assessment sets out that the development would not be able to meet the requirement to provide Affordable Housing on the site. The viability appraisal has been assessed and verified by an independent adviser to the Council; in this case the District Valuation Service (DVS). A copy of their report is appended to this report at Appendix 4.
- 6.6.2 The DVS report concludes that 'our appraisal indicates that the proposed scheme will achieve a profit level of just 2.75% of gross development value which is significantly below the levels generally required for the purposes of debt finance (typically a 15% on GDV minimum for residential), which brings into question the sustainability of the proposed scheme.'
- 6.6.3 In response to this point the applicants have stated that 'It is the position of the applicant, Mursell Ltd, that the viability findings don't preclude the implementation of the planning application. We have had approaches and expressions of interest from more than 5 different companies /representatives and this suggests that there is a healthy level of market interest in bringing this site forward for development'.

'...The other advantage of the outline consent is that it would achieve clarification of density, the level of developer contribution, car parking & access to Paynes Road and Pitt Road, plus the location of the noise buffer. We are encouraged by the level of market interest and are confident that the granting of planning consent will then lead to the

scheme being delivered. The delivery of the scheme also accords with Paragraph 68 of the revised NPPF which indicates that, small and medium sized sites can make an important contribution to meeting housing requirements.'

- 6.6.4 In conclusion, the DVS states that 'it is assumed that the provision of the office/industrial accommodation is a requirement of the Local Authority to demonstrate some continuation of employment use and it should be noted that the cost of creating this accommodation is greater than the revenue achievable from it. It is therefore onerous to the scheme and this has a direct impact on the viability of the proposed scheme. On the basis that the Council is prepared to consider granting consent with a reduced level of affordable housing and since we are assessing this scheme in the current market, we would recommend that if the scheme is not delivered within an agreed timescale that an automatic viability review be triggered.'
- 6.6.5 These comments are noted and the applicant is aware of the above but the site is safeguarded for light industrial use and the provision of the industrial element acts as a buffer between the existing adjacent industrial use and the proposed residential units. The balance between providing a mixed use development which provides a use suitable for the area as well as providing units to meet the housing need has to be weighed against the provision of affordable housing. The benefits of redeveloping the site in this manner and the need to comply with the policy constraints outweigh the requirement for affordable housing in this case. The Panel may attach greater weight to the need for affordable housing in this part of the City but in doing so – and thereby rejecting this application – the Council would then need to defend an appeal where an independent Inspector is likely to attach significant weight to the DVS report (also independent).
- 6.7 Development Mitigation
- 6.7.1 As with all major development 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 would be required as part of the application if the application were to be approved. The main area of contribution for this development, in order to mitigate against its wider impact, is for highway works and these works are to be secured via a Section 106 legal agreement with the applicant. These works will be improvements to the shared footway on Paynes Road (including footway construction, markings/lining and signage where necessary) and improvements to Paynes Road to include buildouts to improve sight lines. In addition the scheme triggers the Community Infrastructure Levy (CIL).

6.8 Likely effect on designated habitats

- 6.8.1 The proposed development, as a residential scheme, has been screened (where mitigation measures must now be disregarded) as likely to have a significant effect upon European designated sites due to an increase in recreational disturbance along the coast and in the New Forest. Accordingly, a Habitat Regulations Assessment (HRA) has been undertaken, in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, see Appendix 1. The HRA concludes that, provided the specified mitigation of a Solent Recreation Mitigation Strategy (SRMP) contribution and a minimum of 5% of any CIL taken directed specifically towards Suitably Accessible Green Space (SANGS), the development will not adversely affect the integrity of the European designated sites.

7. Summary

- 7.1 This proposal would bring the application site back into effective use, introducing an additional residential use as well providing industrial use, within what is a predominantly residential area. The principle of development can be justified in light of policy CS7 of the Core Strategy and highway safety, transport, design and residential amenity have been adequately addressed. The scheme does not deliver any affordable housing but remains policy compliant in this regard given the flexibility of Policy CS15 in respect of allowing a shortfall when evidenced through a tested viability appraisal. As such, the scheme fulfils the requirements of the NPPF.

8. Conclusion

- 8.1 It is recommended that planning permission is granted subject to a Section 106 agreement, reserved matters and the attached 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(c), 2(d), 2(f), 4(b), 4(f), 4(g), 4(vv), 6(b), 7(a), 8(a), 8(j), 9(a) and 9(b),

**AL for 09/10/2018 PROW Panel**

## **PLANNING CONDITIONS**

### **1. Outline Permission Timing Condition (Performance)**

Outline Planning Permission for the principle of the development proposed and the following matters sought for consideration, namely the principle of development, layout of buildings and other external ancillary areas, the means of access (vehicular and pedestrian) into the site and the buildings, the scale, massing and bulk of the structures is approved subject to the following:

- (i) Written approval of the details of the following awaited reserved matters shall be obtained from the Local Planning Authority prior to any works taking place on the site:
  - the appearance and architectural design specifying the external materials to be used;
  - the landscaping of the site specifying both the hard, soft treatments and means of enclosures.
- (ii) An application for the approval of the outstanding reserved matters shall be made in writing to the Local Planning Authority before the expiration of three years from the date of this Outline Permission
- (iii) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last application of the reserved matters to be approved.

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 91 and Section 92 of the Town and Country Planning Act 1990 (as amended).

### **2. Pedestrian link to Freemantle Lake Park (Pre-Commencement Condition)**

Prior to commencement of any development detailed plans showing a pedestrian link providing a footpath to an adoptable standard shall be submitted to and be agreed in writing by the Local Planning Authority. The approved plans of the footpath shall be implemented and be available for pedestrian use prior to the occupation of any of the units hereby approved. The approved pedestrian link shall remain open and accessible at all times.

Reason: In the interests of legibility through the site and to allow access to the park for future residents.

### **3. Residential - Permitted Development Restriction (Performance Condition)**

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), or any Order amending, revoking or re-enacting that Order, no building or structures within Schedule 2, Part 1 & 2, Classes as listed below shall be erected or carried out to any dwelling house hereby permitted without the prior written consent of the Local Planning Authority:

#### Part 1

- Class A (enlargement of a dwelling house), including a garage or extensions,
- Class B (roof alteration),
- Class C (other alteration to the roof),
- Class D (porch),
- Class E (curtilage structures), including a garage, shed, greenhouse, etc.,
- Class F (hard surface area)

#### Part 2

- Class A (Means of enclosure)

Reason: In order that the Local Planning Authority may exercise further control in this locality given the small private garden and amenity areas provided as part of this development in the interests of the comprehensive development and visual amenities of the area.

#### **4. Use of garages (Performance Condition)**

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 the garages hereby approved shall be made available and used at all times for the parking of domestic vehicles related to the residential use of the dwelling house and associated ancillary storage relating and incidental to the enjoyment of the occupation of the dwelling house. At no time shall the garage be used for the parking of commercial vehicles or used for any trade, business, manufacturing or industrial purposes whatsoever and shall not be incorporated into the house as part of the domestic living accommodation.

Reason: To ensure that sufficient off-street car parking is available in the interests of highway safety and to protect residential amenity.

#### **5. 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.

#### **6. Boundary Treatment (Pre-Occupation Condition)**

Before occupation of the development hereby approved, details boundary treatment of the site shall be submitted to and approved in writing by the Local Planning Authority. The agreed boundary enclosure details shall be subsequently erected before the development is first occupied and shall thereafter be retained as approved.

Reason: In the interests of the visual amenities of the area and to protect the amenities and privacy of the occupiers of adjoining property.

#### **7. Phasing condition (Performance Condition)**

The industrial unit (464 sq.m) hereby approved shall be completed and made ready for occupation prior to the occupation of any of the residential units unless agreed in writing by the Local Planning Authority.

Reason: To safeguard future residential amenities against existing adjacent industrial uses.

#### **8. B1(b) and B1(c) Hours of Use and Delivery Restriction (Performance Condition)**

The commercial uses hereby permitted shall not operate outside the following hours:

|                             |                      |
|-----------------------------|----------------------|
| Monday to Saturdays         | 08:00 am to 21.00 pm |
| Sundays and public holidays | 08.00 am to 21.00 pm |

No deliveries shall take place outside of the times specified above.

Reason: In order to control the use in the interests of amenity

### **9. Plant and Machinery and Soundproofing (Pre-occupation Condition)**

Before individual commercial units come into use, details of plant and machinery to be used within the use, together with measures to minimise noise from them and soundproofing measures to mitigate any external and internal noise transfer to residential units within the development, shall be submitted to and agreed in writing by the Local Planning Authority. The measures shall be installed in accordance with the agreed details within the unit to which they relate, before that unit is occupied and thereafter retained as approved.

Reason: To ensure residents of the development are not adversely affected by noise from the commercial uses.

### **10. Archaeological damage-assessment (Pre-Commencement Condition)**

No development shall take place within the site until the type and dimensions of all proposed groundworks have been submitted to and agreed by the Local planning Authority. The developer will restrict groundworks accordingly unless a variation is agreed in writing by the Local Planning Authority.

Reason: To inform and update the assessment of the threat to the archaeological deposits.

### **11. 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.

### **12. 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.

### **13. 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.

#### **14. Use of uncontaminated soils and fill (Performance 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.

#### **15. 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

#### **16. Energy & Water (Pre-Commencement Condition)**

Before the development commences, written documentary evidence demonstrating that the development will achieve at minimum 19% improvement over 2013 Dwelling Emission Rate (DER)/ Target Emission Rate (TER) (Equivalent of Code for Sustainable Homes Level 4 for Energy) and 105 Litres/Person/Day internal water use (Equivalent of Code for Sustainable Homes Level 3/4) in the form of a design stage SAP calculations and a water efficiency calculator 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 Adopted Core Strategy (Amended 2015).

**17. Energy & Water (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 19% improvement over 2013 Dwelling Emission Rate (DER)/ Target Emission Rate (TER) (Equivalent of Code for Sustainable Homes Level 4 for Energy) and 105 Litres/Person/Day internal water use (Equivalent of Code for Sustainable Homes Level 3/4) in the form of final SAP calculations and water efficiency calculator and detailed documentary evidence confirming that the water appliances/fittings have been installed as specified 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 Adopted Core Strategy (Amended 2015).

**18. 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, as set out in section 6.2 Mitigation/Compensation of the submitted ecology report (Land At Paynes Road And Liners Industrial Estate, Southampton Preliminary Ecological Appraisal, ECOSA Ltd, Final Document (Rev. 1) 6th December 2017) which unless otherwise agreed in writing by the Local Planning Authority shall be implemented in accordance with the programme before construction works commence.

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

**19. External Lighting Scheme (Pre-Commencement Condition )**

Prior to the development hereby approved first coming into occupation, external lighting shall be implemented in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be thereafter retained as approved.

Reason: In the interest of residential amenity/to minimise the impact on protected species.

**20. Protection of nesting birds (Performance Condition)**

No clearance of vegetation likely to support nesting birds shall take place between 1 March and 31 August unless a method statement has been agreed in writing by the Local Planning Authority and works implemented in accordance with the agreed details.

Reason: For the safeguarding of species protected by The Wildlife & Countryside Act 1981 (as amended) and the conservation of biodiversity

**21. Tree Retention and Safeguarding (Pre-Commencement Condition)**

All trees to be retained pursuant to any other condition of this decision notice shall be fully safeguarded during the course of all site works including preparation, demolition, excavation, construction and building operations. No operation in connection with the development hereby permitted shall commence on site until the tree protection as agreed by the Local Planning Authority has been erected. Details of the specification and position of all protective fencing shall be indicated on a site plan and agreed with the Local Planning Authority in writing before any site works commence. The fencing shall be

maintained in the agreed position until the building works are completed, or until such other time that may be agreed in writing by the Local Planning Authority following which it shall be removed from the site.

Reason: To ensure that trees to be retained will be adequately protected from damage throughout the construction period.

### **22. No storage under tree canopy (Performance)**

No storage of goods including building materials, machinery and soil, shall take place within the root protection areas of the trees to be retained on the site. There will be no change in soil levels or routing of services through root protection zones. There will be no fires on site within any distance that may affect retained trees. There will be no discharge of chemical substances including petrol, diesel and cement mixings within or near the root protection areas.

Reason: To preserve the said trees in the interests of the visual amenities and character of the locality

### **23. Sustainable Drainage (Pre-Commencement Condition)**

No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the non-statutory technical standards for SuDS published by Defra (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii. include a timetable for its implementation; and
- iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason: To seek suitable information on Sustainable urban Drainage Systems as required by government policy and Policy CS20 of the Southampton Core Strategy (Amended 2015).

### **24. Drainage details (Pre-Commencement Condition)**

The development shall not commence until details of the proposed means of foul sewerage and surface water disposal have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority in consultation with Southern Water.

Reason: To ensure the provision of adequate drainage arrangements and to minimise flood risk.

### **25. Road Construction (Pre-Commencement Condition)**

No development hereby permitted shall be commenced until the Local Planning Authority have approved in writing:-

- A specification of the type of construction proposed for the roads, cycleways and footpaths including all relevant horizontal cross-sections and longitudinal sections showing existing and proposed levels together with details of street lighting, signing, white lining and the method of disposing of surface water.
- A programme for the making up of the roads and footpaths to a standard suitable for adoption by the Highway Authority.

Reason: To ensure that the roads and footpaths are constructed in accordance with standards required by the Highway Authority.

### **26. Sightlines specification (Performance condition)**

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 no fences walls or other means of enclosure shall be erected above a height of 0.6m above ground level unless agreed otherwise in writing by the Local Planning Authority.

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

### **27. Refuse management plan (Pre-Commencement Condition)**

Prior to commencement a refuse management plan shall be submitted to and be agreed in writing by the Local Planning Authority which sets out refuse strategy for the movement of the euro refuse bins from the units to a collection point and back to the internal storage areas. The collection point should be within 10m of either the public highway or the route of the refuse vehicle. The approved refuse management plan shall be implemented and retain unless agreed otherwise by the Local Planning Authority.

Reason: In the interests of highway safety.

### **28. Refuse & Recycling (Pre-Commencement Condition)**

Prior to the commencement of development, details of storage for refuse and recycling, together with the access to it, shall be submitted to and approved in writing by the Local Planning Authority. The storage shall be provided in accordance with the agreed details before the development is first occupied and thereafter retained as approved. Unless otherwise agreed by the Local Planning Authority, except for collection days only, no refuse shall be stored to the front of the development hereby approved.

Reason: In the interests of visual amenity, the amenities of future occupiers of the development and the occupiers of nearby properties and in the interests of highway safety.

Note to applicant: In accordance with para 9.2.3 of the Residential Design Guide (September 2006): if this development involves new dwellings, the applicant is liable for the supply of refuse bins, and should contact SCC refuse team at [Waste.management@southampton.gov.uk](mailto:Waste.management@southampton.gov.uk) at least 8 weeks prior to occupation of the development to discuss requirements.

### **29. Euro Bin Storage (Performance)**

The bin store shall be constructed of masonry under a suitable weatherproof roof, with adequate ventilation. The collection doors are to be of sturdy construction and hinged to open outwards with a minimum opening of 1.4m wide, to have level access avoiding thresholds, and a lock system to comply with SCC standard lock requirements operated by a coded key pad. It must be possible to secure the doors open whilst moving the bins.

Internal lighting to operate when doors are open, and a tap and wash down gulley to be provided, with suitable falls to the floor. Internal doors/walls/pipework/tap/conduits to be suitably protected to avoid damage cause by bin movements. The access path to the bin store shall be constructed to footpath standards and to be a minimum width of 1.5m. Any gates on the pathway are not to be lockable, unless they comply with SCC standard coded keypad detail. The gradient of the access path to the bin store shall not exceed 1:12 unless suitable anti-slip surfacing is used, and still shall not exceed 1:10.

A single dropped kerb to the adjacent highway will be required to access the refuse vehicle with the Euro bin. The site management must contact SCC refuse team 8 weeks prior to occupation of the development to inspect the new stores and discuss bin requirements, which are supplied at the developer's expense. E mail [waste.management@southampton.gov.uk](mailto:waste.management@southampton.gov.uk)

Reason: In the interests of visual amenity, the amenities of future occupiers of the development and the occupiers of nearby properties and in the interests of highway safety.

### **30. Cycle storage (Pre-commencement Condition)**

Notwithstanding the information already submitted no development shall commence until plans and elevational details of the secure, covered cycle storage for the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. The cycle storage shall be provided prior to the first occupation of the dwellings hereby approved and thereafter retained for that purpose at all times.

Reason: To ensure an appropriate provision of cycle storage is made for future occupants of the site in accordance with saved policy SDP5 of the adopted Local Plan.

### **31. Parking area (Pre occupation Condition)**

The parking areas shown on the approved shall be laid out and ready for use prior to the occupation of development unless agreed otherwise in writing by the Local Planning Authority. These parking spaces shall be retained during the lifetime of the development for use by residents and their visitors only.

Reason: To prevent off site highway safety issues.

### **32. Construction Management Plan (Pre-Commencement)**

Before any development or demolition works are commenced details shall be submitted to and approved in writing by the Local Planning Authority making provision for a Demolition and Construction Method Plan for the development. The Plan shall include details of:

- (a) parking of vehicles of site personnel, operatives and visitors;
- (b) loading and unloading of plant and materials;
- (c) storage of plant and materials, including cement mixing and washings, used in constructing the development;
- (d) treatment of all relevant pedestrian routes and highways within and around the site throughout the course of construction and their reinstatement where necessary;

(e) measures to be used for the suppression of dust and dirt throughout the course of demolition and construction;

(f) details of construction vehicles wheel cleaning; and,

(g) details of how noise emanating from the site during construction will be mitigated. The approved Construction Management Plan shall be adhered to throughout the development process unless agreed otherwise in writing by the local planning authority.

Reason: In the interest of health and safety, protecting the amenity of local land uses, neighbouring residents, the character of the area and highway safety.

### **33. 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.

### **34. Glazing- Soundproofing from external noise (Performance Condition)**

Unless otherwise agreed in writing by the Local Planning Authority, the glazing for the residential accommodation shall be either:

Outer pane of glass - 10mm

Air gap between panes - 12mm

Inner pane of glass - 6 mm

or, with secondary glazing with a -

Outer pane of glass - 6mm

Air gap between panes - 100mm

Inner pane of glass - 6.4 mm

Any trickle vents must be acoustically rated. The above specified glazing shall be installed before any of the flats are first occupied and thereafter retained at all times.

Reason: In order to protect occupiers of the flats from traffic noise.

### **35. 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.

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## Habitat Regulation Assessment (HRA) Screening Matrix and Appropriate Assessment Statement

**PLEASE NOTE: Undertaking the HRA process is the responsibility of the decision maker as the Competent Authority for the purpose of the Habitats Regulations. However, it is the responsibility of the applicant to provide the Competent Authority with the information that they require for this purpose.**

|  |   |
|--|---|
| HRA completion date:   | 20 <sup>th</sup> September 2018   |
| Application reference:   | 17/02592/OUT  |
| Application address:   | 111 - 113 Paynes Road and Richmond Works, Pitt Road   |
| Application description:   | Re-development of the site. Erection of 40 dwellings (3x 3-bed, 20x 2-bed, 8x 1-bed flats) and 9x 3-bed houses and a commercial building (class B1(b) or C) (Outline application seeking approval for Layout, Access and Scale) (departure from development plan) |
| Lead Planning Officer:   | Anna Lee  |
| Please note that all references in this assessment to the 'Habitats Regulations' refer to The Conservation of Habitats and Species Regulations 2017. |   |

### Stage 1 - details of the plan or project

|  |  |
|--|--|
| European site potentially impacted by planning application, plan or project:       | Solent and Southampton Special Protection Area (SPA) and Ramsar site. Solent Maritime Special Area of Conservation (SAC). Collectively known as the Solent SPAs.<br>New Forest SAC, SPA and Ramsar site. |
| Is the planning application directly connected with or necessary to the management | No. The development consists of an increase in residential dwellings, which is neither connected to nor necessary to the management of any European site.  |

|   |   |
|---|---|
| of the site (if yes, Applicant should have provided details)?   |   |
| Are there any other projects or plans that together with the planning application being assessed could affect the site (Applicant to provide details to allow an 'in combination' effect to be assessed)? | <p>Yes. All new housing development within 5.6km of the Solent SPAs is considered to contribute towards an impact on site integrity as a result of increased recreational disturbance in combination with other development in the Solent area.</p> <p>Concerns have been raised by Natural England that residential development within Southampton, in combination with other development in the Solent area, could lead to an increase in recreational disturbance within the New Forest. This has the potential to adversely impact site integrity of the New Forest SPA, SAC and Ramsar site.</p> <p>The PUSH Spatial Position Statement (<a href="https://www.push.gov.uk/work/planning-and-infrastructure/push-position-statement/">https://www.push.gov.uk/work/planning-and-infrastructure/push-position-statement/</a>) sets out the scale and distribution of housebuilding which is being planned for across South Hampshire up to 2034.</p> |

## Stage 2 - HRA screening assessment

Screening under Regulation 63(1)(a) of the Habitats Regulations – The Applicant to provide evidence so that a judgement can be made as to whether there could be any potential significant impacts of the development on the integrity of the SPA/SAC/Ramsar.

### Solent SPAs

The proposed development is within 5.6km of the collectively known European designated areas Solent SPAs/Ramsar sites. In accordance with advice from Natural England and as detailed in the Solent Recreation Mitigation Strategy, a net increase in housing development within 5.6km of the Solent SPAs is likely to result in impacts to the integrity of those sites through a consequent increase in recreational disturbance.

Development within the 5.6km zone will increase the human population at the coast and thus increase the level of recreation and disturbance of bird species. The impacts of recreational disturbance (both at the site-scale and in combination with other development in the Solent area) are analogous to impacts from direct habitat loss as recreation can cause important habitat to be unavailable for use (the habitat is functionally lost, either permanently or for a defined period). Birds can be displaced by human recreational activities (terrestrial and water-based) and use valuable resources in finding suitable areas in which to rest and feed undisturbed. Ultimately, the impacts of recreational disturbance can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites.

### The New Forest

The New Forest National Park attracts a high number of visitors (13.3 million annually), and is notable in terms of its catchment, attracting a far higher proportion of tourists and non-local visitors than similar areas such as the Thames Basin and Dorset Heaths. Research undertaken by Footprint Ecology, Sharp, J., Lowen, J. and Liley, D. (2008) Changing patterns

of visitor numbers within the New Forest National Park, with particular reference to the New Forest SPA. (Footprint Ecology.), indicates that 40% of visitors to the area are staying tourists, whilst 25% of visitors come from more than 5 miles (8km) away. The remaining 35% of visitors are local day visitors originating from within 5 miles (8km) of the boundary.

The report states that the estimated number of current annual visits to the New Forest is predicted to increase by 1.05 million annual visits by 2026 based on projections of housing development within 50km of the Forest, with around three quarters (764,000) of this total increase originating from within 10km of the boundary (which includes Southampton).

Residential development has the potential to indirectly alter the structure and function of the habitats of the New Forest SAC, SPA and Ramsar site breeding populations of nightjar, woodlark and Dartford warbler through disturbance from increased human and/or dog activity. The precise scale of the potential impact is currently uncertain however, the impacts of recreational disturbance can be such that they affect the breeding success of the designated bird species and therefore act against the stated conservation objectives of the European sites.

### Stage 3 - Appropriate Assessment

Appropriate Assessment under Regulation 63(1) - if there are any potential significant impacts, the applicant must provide evidence showing avoidance and/or mitigation measures to allow an Assessment to be made. The Applicant must also provide details which demonstrate any long term management, maintenance and funding of any solution.

#### Solent SPAs

The project being assessed would result in a net increase of dwellings within 5.6km of the Solent SPAs and in accordance with the findings of the Solent Recreation Mitigation Strategy, a permanent significant effect on the Solent SPAs due to increase in recreational disturbance as a result of the new development, is likely. This is contrary to policy CS 22 - Promoting Biodiversity and Protecting Habitats, of the Southampton Core Strategy Partial Review, which states that,

*Within Southampton the Council will promote biodiversity through:*

*1. Ensuring development does not adversely affect the integrity of international designations, and the necessary mitigation measures are provided; or the development otherwise meets the Habitats Directive;*

In line with Policy CS22, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

Southampton City Council formally adopted the Solent Recreation Mitigation Strategy (SRMP) in March 2018. The SRMP provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development. This strategy represents a partnership approach to the issue which has been endorsed by Natural England.

| Size of Unit | Scale of Mitigation per Unit |
|--------------|------------------------------|
| 1 Bedroom    | £337.00                      |
| 2 Bedroom    | £487.00                      |
| 3 Bedroom    | £637.00                      |
| 4 Bedroom    | £749.00                      |
| 5 Bedroom    | £880.00                      |

As set out in the Solent Recreation Mitigation Strategy, an appropriate scale of mitigation for this scheme would be:

Therefore, in order to deliver the an adequate level of mitigation the proposed development will need to provide a financial contribution, in accordance with the table above, to mitigate the likely impacts.

A legal agreement, agreed prior to the granting of planning permission, will be necessary to secure the mitigation package. Without the security of the mitigation being provided through a legal agreement, a significant effect would remain likely. Providing such a legal agreement is secured through the planning process, the proposed development will not affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites.

### **New Forest**

The project being assessed would result in a net increase in dwellings within easy travelling distance of the New Forest and a permanent significant effect on the New Forest SAC, SPA and Ramsar, due to an increase in recreational disturbance as a result of the new development, is likely. This is contrary to policy CS 22 - Promoting Biodiversity and Protecting Habitats, of the Southampton Core Strategy Partial Review, which states that,

*Within Southampton the Council will promote biodiversity through:*

*1. Ensuring development does not adversely affect the integrity of international designations, and the necessary mitigation measures are provided; or the development otherwise meets the Habitats Directive;*

In line with Policy CS22, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

At present, there is no scheme of mitigation addressing impacts on the New Forest designated sites, although, work is underway to develop one. In the absence of an agreed scheme of mitigation, the City Council has undertaken to ring fence 5% of CIL contributions to fund footpath improvement works within suitable semi-natural sites within Southampton. These improved facilities will provide alternative dog walking areas for new residents.

The proposed development will generate a CIL contribution and the City Council will ring fence 5% of the overall sum, to fund improvements to footpaths within the greenways and other semi-natural greenspaces.

### **Stage 4 – Summary of the Appropriate Assessment (To be carried out by the Competent Authority (the local planning authority) in liaison with Natural England**

In conclusion, the application will have a likely significant effect in the absence of avoidance and mitigation measures on the above European and Internationally protected sites. The authority has concluded that the adverse effects arising from the proposal are wholly consistent with, and inclusive of the effects detailed in the Solent Recreation Mitigation Strategy.

The authority's assessment is that the application coupled with the contribution towards the SRMS secured by way of legal agreement complies with this strategy and that it can therefore be concluded that there will be no adverse effect on the integrity of the designated sites identified above.

In the absence of an agreed mitigation scheme for impacts on the New Forest designated sites Southampton City Council has adopted a precautionary approach and ring fenced 5% of CIL contributions to provide alternative recreation routes within the city.

This represents the authority's Appropriate Assessment as Competent Authority in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Article 6 (3) of the Habitats Directive and having due regard to its duties under Section 40(1) of the NERC Act 2006 to the purpose of conserving biodiversity. Consideration of the Ramsar site/s is a matter of government policy set out in the National Planning Policy Framework 2012.

Natural England Officer: Becky Aziz (email 20/08/2018)

Summary of Natural England's comments:

Where the necessary avoidance and mitigation measures are limited to collecting a funding contribution that is in line with an agreed strategic approach for the mitigation of impacts on European Sites then, provided no other adverse impacts are identified by your authority's appropriate assessment, your authority may be assured that Natural England agrees that the Appropriate Assessment can conclude that there will be no adverse effect on the integrity of the European Sites. In such cases Natural England will not require a Regulation 63 appropriate assessment consultation.

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**Application** 17/02592/OUT

## **POLICY CONTEXT**

### Core Strategy - (as amended 2015)

CS4- Housing Delivery  
CS5- Housing Density  
CS6- Economic Growth  
CS7- Safeguarding Employment Sites  
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  
CS21- Protecting and Enhancing Open Space  
CS22- Promoting Biodiversity and Protecting Habitats  
CS23- Flood Risk  
CS24- Access to Jobs  
CS25- The Delivery of Infrastructure and Developer Contributions

### City of Southampton Local Plan Review – (as amended 2015)

SDP1- Quality of Development  
SDP4- Development Access  
SDP5- Parking  
SDP6- Urban Design Principles  
SDP7- Urban Design Context  
SDP8- Urban Form and Public Space  
SDP9- Scale, Massing & Appearance  
SDP10- Safety & Security  
SDP11- Accessibility & Movement  
SDP12- Landscape & Biodiversity  
SDP13- Resource Conservation  
SDP14- Renewable Energy  
SDP15- Air Quality  
SDP16- Noise  
SDP17- Lighting  
SDP22- Contaminated Land  
HE6- Archaeological Remains  
CLT1- Location of Development  
H1- Housing Supply  
H2- Previously Developed Land  
H7- The Residential Environment  
REI11- Light Industry

### 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 (2018)

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

### Highway Development Management Team's response

1. i) Traffic

The Site currently has a mix of uses mainly around industrial and a car sales and repair. The existing site benefits from accesses onto Pitt Road and Paynes Road and also benefits from onsite parking (with the level of parking being an increase of 2 overall)

In terms of trip generation, as a whole, the proposed development will generate less but the nature of the trips will change. The result of the development will change the times of trips whereby Paynes Road will likely see an increase of trips during AM peak (TA suggests an increase of 5 increase trips during AM peak with one less during PM peak). Although the access fronts onto Paynes road which is a popular classified highway, the level of difference in trips during the peak is considered acceptable and will not generate a severe impact on the highway. There is however a change in the nature and environment whereby there will be less industrial/commercial trips and will result in more residential trips which should be encouraged to travel sustainably especially considering the location (edge of city centre and close proximity to Shirley centre/High Street). The existing uses would also generate more HGV movements whereby the proposed would mainly be domestic-sized vehicles.

2. ii) Access

The access onto Paynes Road will be altered slightly but the added buildout will provide for better sightlines. Detailed designs can be addressed at the Section 278(or relevant Section 106) stage but in principle, the buildout is acceptable and is considered an improvement. Trips on Pitt Road will decrease significantly as a result of development.

It is assumed that the refuse vehicle will enter the site but there does not appear to be a tracking diagram provided and therefore would be required. Furthermore, due to other similar sites, there are concerns with informal parking taking place in long small roads such as this which could obstruct the refuse vehicle. Therefore, a condition would be required to prevent informal parking as much as possible and should include measures such as double yellow lines etc.

3. iii) Summary

In summary, the overall impact on the highway will be less. There is a slight increase of vehicular movements during the AM peak but is considered to be acceptable and not severe, furthermore, on balance, it is considered to be an overall improvement.

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Application 17/02592/OUT

**APPENDIX 4**

**District Valuer Services findings**

Private and Confidential

Simon Mackie  
Planning Agreements Officer  
Planning & Sustainability  
Southampton City Council  
Civic Centre  
Southampton  
SO14 7LY

**DVS** Property Specialists  
for the Public Sector

Southampton Valuation Office  
2<sup>nd</sup> Floor, Overline House,  
Blechynden Terrace,  
Southampton  
Hants. SO15 1GW

Our Reference:  
Your Reference: 17/02592/OUT

Please ask for :  
Tel :  
E Mail :

Date : 28<sup>th</sup> August 2018

Dear Simon,

**DESKTOP REVIEW OF DEVELOPMENT VIABILITY ASSESSMENT PROPOSED  
SCHEME: 111-113 Paynes Road, Southampton**

I refer to our fee quote dated 18<sup>th</sup> January 2018 and your email dated 03<sup>rd</sup> April 2018 confirming your formal instructions to carry out a desk top viability assessment in respect of the above proposed development. We have now undertaken our own research and assessment and would report as follows:

This report is not a formal valuation.

The date of assessment is 28<sup>th</sup> August 2018.

We have reviewed the assessment provided by \_\_\_\_\_ on behalf of the applicant.

The assessment has been made by comparing the residual value of the proposed scheme with an appropriate benchmark figure having regard to the National Planning Policy Framework and the published RICS Guidance Note into Financial Viability in Planning.

The principal objective of our Brief and the subject of this report are to establish whether there is financial justification for any affordable housing and section 106 contributions.

**General Information**

It is confirmed that the viability assessment has been carried out by Gavin Tremeer, a RICS Registered Valuer, acting in the capacity of an external valuer, who has the appropriate knowledge and skills and understanding necessary to undertake the valuation competently, and is in a position to provide an objective and unbiased valuation.

Checks have been undertaken in accordance with the requirements of the RICS standards and have revealed no conflict of interest. DVS has had no other previous material involvement with the property.

The client will neither make available to any third party or reproduce the whole or any part of the report, nor make reference to it, in any publication without our prior written approval of the form and context in which such disclosure may be made.

You may wish to consider whether this report contains Exempt Information within the terms of paragraph 9 of Schedule 12A to the Local Government Act 1972 (section 1 and Part 1 of Schedule 1 to the Local Government (Access to Information Act 1985) as amended by the Local Government (access to Information) (Variation) Order 2006.

Our assessment is provided for your benefit alone and solely for the purposes of the instruction to which it relates. Our assessment may not, without our specific written consent, be used or relied upon by any third party, even if that third party pays all or part of our fees, directly or indirectly, or is permitted to see a copy of our valuation report. If we do provide written consent to a third party relying on our valuation, any such third party is deemed to have accepted the terms of our engagement.

None of our employees individually has a contract with you or owes you a duty of care or personal responsibility. You agree that you will not bring any claim against any such individuals personally in connection with our services.

This report remains valid for 3 (three) months from its date unless market circumstances change or further or better information comes to light, which would cause me to revise my opinion.

Following the referendum held on 23 June 2016 concerning the UK's membership of the EU, the impact to date on the many factors that historically have acted as drivers of the property investment and letting markets has generally been muted in most sectors and localities. The outlook nevertheless remains cautious for market activity over the coming months as work proceeds on negotiating detailed arrangements for EU exit and sudden fluctuations in value remaining possible. We would therefore recommend that any valuation is kept under regular review.

### **Background:**

We understand that this assessment is required to examine the viability of the proposed scheme as the applicant is suggesting that the development cannot support the required level of affordable housing and Section 106 contributions.

The proposed scheme will provide 40 residential dwellings (9 x 3 bed houses and a block of 31 flats) plus 2 commercial units (both 2 storey), following the demolition of the existing commercial buildings at 111-113 Paynes Road.

We are advised that the policy level of contributions are as follows:

|                                       |         |
|---------------------------------------|---------|
| Affordable Housing                    | 35%     |
| Highways/Transport                    | £TBC    |
| Solent Disturbance Mitigation Project | £7,240  |
| CIL                                   | £TBC    |
| Employment & Skills Plan              | £12,174 |
| Carbon Management Plan                | £TBC    |

The applicant is stating that following their assessment the policy level of affordable housing provision and Section 106 Contributions results in an unviable scheme.

### The Scheme:

We have been provided with the assessment undertaken on behalf of the applicant. For the purpose of this desk top assessment we assume the areas provided in the applicant's viability report are correct.

The scheme as proposed by the applicant is as follows:

| Block                      | Type            | Number    | Average Floor Area (GIA M <sup>2</sup> ) |
|----------------------------|-----------------|-----------|--|
| <b><u>Residential:</u></b> |                 |           |  |
| Block 1                    | 1 Bed Flats     | 10        | 51.09                                    |
| Block 1                    | 2 Bed Flats     | 18        | 69.86                                    |
| Block 1                    | 3 Bed Flats     | 3         | 78.96                                    |
| Houses                     | 3 Bed           | 5         | 85                                       |
| Houses                     | 3 Bed           | 4         | 90.57                                    |
| <b>Total</b>               |                 | <b>40</b> | <b>2,792.54</b>                          |
| <b><u>Commercial:</u></b>  |                 |           |  |
| Unit A                     | Workshop/Office | 1         | 214.60                                   |
| Unit B                     | Workshop/Office | 1         | 214.60                                   |
| <b>Total</b>               |                 | <b>2</b>  | <b>429.20</b>                            |

### Viability Assessment:

This report deals with each major input into the viability assessment of the scheme. This desk top assessment has been undertaken following our own research into both current sales values and current costs. We have used figures put forward by the applicant if we believe them to be reasonable.

We have used a bespoke excel based toolkit with cash flow to assess the scheme which is attached as Appendix 1.

We would summarise our assessment of the Scheme as follows:

## 1) Development Value -

### a) Private Residential:

The applicant has adopted the following values compared to ours:

| Type              | Developer<br>(Average Value<br>per unit) | DVS<br>(Average Value<br>per unit) |
|-------------------|--|------------------------------------|
| 1 bed apartment   | £145,000                                 | £145,000                           |
| 2 bed apartment   | £175,000                                 | £175,000                           |
| 3 bed apartment   | £185,000                                 | £185,000                           |
| 3 bed house       | £275,000                                 | £275,000                           |
| 3 bed house       | £285,000                                 | £285,000                           |
|                   |  |                                    |
| Workshop / Office | £266,710                                 | £266,710                           |

The applicant has commissioned local estate agent Connells to provide anticipated sales values for the residential units but has not provided any comparable sales evidence to substantiate these figures.

However, we have undertaken research using land registry details and sales from local estate agents and consider the values put forward by the applicant to be within the range we would expect to see taking account of the location of the site and floor area of the proposed units.

The proposed commercial units will comprise two identical units each with workshop accommodation on the ground floor and office accommodation on the first floor.

The applicant has provided a report undertaken by Keystone Chartered Surveyors who have estimated the value of the completed units at £266,710 per unit.

They have arrived at this figure based on the prevailing market rental value of between £8.50 per sqft (£91.50 per m<sup>2</sup>), which equates to a rental income of £19,635 per annum per unit. This has been capitalised on the basis of an investment yield of 7% to produce a gross capital value of £280,513. Sales costs of 5.75% have then been deducted to produce a total net capital value of £266,710 per unit. No void period has been allowed for within the applicant's appraisal.

We have undertaken research of modern existing workshop and office units within the locality and consider the applicant's submitted figures to be a reasonable estimate of the value of the proposed commercial units.

### b) Affordable Housing:

There are no Affordable Residential properties proposed by the applicant.

**c) Ground Rents:**

The applicant has included ground rents averaging £350 per unit per annum and capitalised this using a yield of 5.5% to produce a total freehold value of £197,273 which is deemed acceptable for this scheme.

It should be noted that the Government are currently proposing legislation to limit ground rental income. If this were to happen then it may cause us to revise our revenue figures to potentially reflect the ground rent income in the capital values.

**d) Gross Development Value (GDV):**

Our total GDV on an all-private basis is £8,400,693 in line with the applicant's submitted figure.

**2) Development Costs -**

**a) Build Cost**

Residential:

The applicant has not provided a detailed breakdown of costs or cost estimate for the proposed scheme but has instead relied on the BCIS guide figures. They have cited the Median rate figures for this proposed scheme and on this basis have adopted the following base build costs:

Houses - £1,244 per m2  
Flats - £1,450 per m2

In addition, a 10% allowance has been added to cover all external works costs to arrive at a total construction cost of £4,761,782.

The submitted base build rates are broadly in line with current BCIS Median rates and are deemed acceptable for this scheme. We have therefore adopted the same rates in our appraisal. The applicant has adopted a net – gross ratio of 92% for the flats which again is within the range we would expect to see for a block of low rise new-build flats.

The external works allowance equates to approximately £450,000 and is intended to cover the following items:

- Site preparation costs
- Roads, paths, paving and surfacing
- Soft landscaping, planting and irrigation costs
- Fencing, railings and walls
- External fixtures; and
- External drainage and services.

Taking account of the overall size and condition of the site, and the proposed site layout and number of parking spaces to be provided, we consider a 10% external works allowance to be reasonable for this scheme and in line with similar schemes we have assessed.

Commercial:

The applicant has not included any explanation within their written report with regard to the commercial construction costs. Within their appraisal they have included a total cost of £632,095 for the two office units which is based on a base rate in line with the residential element plus allowances for external works cost, professional work and contingency again in line with the residential cost assumption.

Taking account of the current BCIS Guide figures for this type of property adjusted to this location, the submitted costs do not appear to be overstated and we have therefore included the same in our appraisal.

**b) Build Contingency**

The applicant has included a contingency of 5% which we do not disagree with.

**c) Professional Fees**

The applicant has included professional fees of 10% of base build costs which, whilst towards the higher end of the scale we usually see, we do not feel is unreasonable.

**d) Abnormal and other costs**

At this stage the applicant has not allowed for any abnormal costs within their appraisal. However, within their written report they have listed a number of likely additional abnormal works but have not provided specific figures for likely costs. The items identified within their report are as follows:

- Piled Foundations (for most blocks up to 9m in depth)
- Demolition Costs
- Contamination
- Private Pumping Station
- Retaining Wall (length 45m, height 0.75 m to divide existing industrial and new residential).

At this stage it is not known whether these works will be required with the exception of the demolition costs as site will clearly need to be cleared prior to construction.

However, for the purposes of our report we have not included any of these costs in line with the applicant but should such costs become apparent in the course of time then this may require us to reflect them in our appraisal and this will affect our assessment.

**e) Overall Build Costs**

Overall, for the purpose of viability testing we have adopted construction costs in line with those submitted by the applicant.

**f) Section 106 Costs**

Within their appraisal, the applicant has not included anything for CIL or Section 106 contributions.

However, we are advised by you that the policy level of contributions are as follows:

|                                       |         |
|---------------------------------------|---------|
| Affordable Housing                    | 35%     |
| Highways/Transport                    | £TBC    |
| Solent Disturbance Mitigation Project | £7,240  |
| CIL                                   | £TBC    |
| Employment & Skills Plan              | £12,174 |
| Carbon Management Plan                | £TBC    |

For the purpose of our assessment, we have included the known costs above which total £19,414 **but if this differs once the full costs are known then it will affect our assessment.**

**g) Sales and Marketing Fees**

The applicant has adopted 3% for sales and marketing plus £500 per unit for legal fees. On the basis that a show home / sales suite will be required we have accepted these costs and included the same within our appraisal as they are broadly in line with other similar schemes we have assessed.

**h) Finance costs**

The applicant has adopted a finance rate of 6.75% to include all fees which is within the range we would expect to see and have therefore adopted the same rate within our appraisal.

**i) Developers Profit**

In their report the applicant has indicated a profit level of **20%** for both the residential and commercial elements. However, within their appraisal the profit appears to have been calculated on the net residential income only and not on the commercial and ground rent figures. The figure shown in their appraisal summary is therefore £1,534,000.

On the basis of an all private scheme we have adopted a more standard profit level of **17.5%** for both elements on the assumption that there is no pre-let agreement in place for the commercial units. This produces a total profit figure of £1,470,121 which is quite close to the figure shown in the applicant's appraisal.

**j) Development Programme**

The applicant has not included a detailed development programme within their written report but based on previous similar scheme we have assessed, we have adopted the following programme:

- Construction Period of 18 months (following a 6 month lead in period)
- Sale period of 12 months beginning directly after the construction period of 18 months

**k) Land Value**

Following various appeal cases it is well established that viability assessments are carried out in order to calculate the residual land value that the scheme can afford which is then compared to the existing use value, or alternative use value of the site.

For the purpose of their assessment, the applicant has provided a separate report with comparable evidence undertaken by Keystone Chartered Surveyors Ltd who have indicated an existing use value totalling £1,159,000 based on the existing commercial units in-situ.

We understand from the Keystone report that the whole site is held freehold and owner-occupied, and that there are no formal leases for individual units in place. It is therefore assumed that vacant possession can be achieved within a short timeframe and that no tenant compensation or relocation costs will be incurred.

We have undertaken our own research of values for this type of property and considered this alongside the Keystone report and overall we concur with their conclusion of value based on potential letting of the individual units at the site.

The applicant has carried out their appraisal on a residual basis which they have used to compare with the EUV - Within their report the applicant has indicated that a seller incentive should be applied but have not done this at this stage.

In line with national guidance from the RICS and contained within the NPPF we would concur that a seller incentive should apply to the EUV but would anticipate this to be no more than 15%.

However, for the purpose of this report we have included a benchmark land value of £1,159,000 in line with the applicant.

In addition both stamp duty and agent/legal fees need to be allowed.

**Overall assessment:**

Following our desktop assessment we are of the opinion that the proposed scheme, with no affordable housing but with S.106 contributions of £19,414 and a developer profit of 17.5% on GDV is not viable and that no surplus would be available for an affordable housing contribution. Our appraisal shows a deficit figure of -£1,230,744 (Appendix 1).

We are in broad agreement with the applicant's submitted figures with the only difference being the developer profit level, although our actual figures for this only differ by approximately £64,000.

However, our appraisal indicates that the proposed scheme will achieve a profit level of just 2.75% of gross development value which is significantly below the levels generally required for the purposes of debt finance (typically a 15% on GDV minimum for residential), which brings into question the sustainability of the proposed scheme.

The main reasons affecting the viability of the proposed scheme are the low value nature of the immediate vicinity of the site, and the relatively high existing use value of the existing B2 units on the site. Also the irregular shape of the site and narrow access (from Paynes Road) means that it is more difficult to maximise density of dwellings.

At this stage no abnormal costs have been included within our appraisal as these are unknown. However, there will need to be demolition costs which, taking account of the extent and likely asbestos content of the existing buildings, this cost could be significant.

We understand that there is an existing watercourse which runs underneath the site which could mean the need for piling to all but one of the proposed blocks as indicated by the applicant. These additional costs will only serve to worsen the viability position which again reinforces our statement above of whether the proposed scheme is sustainable, and could potentially equate to an overall loss on the proposed scheme.

Finally, it is assumed that the provision of the office/industrial accommodation is a requirement of the Local Authority to demonstrate some continuation of employment use and it should be noted that the cost of creating this accommodation is greater than the revenue achievable from it. It is therefore onerous to the scheme and this has a direct impact on the viability of the proposed scheme.

On the basis that the Council is prepared to consider granting consent with a reduced level of affordable housing and since we are assessing this scheme in the current market, we would recommend that if the scheme is not delivered within an agreed timescale that an automatic viability review be triggered.

I trust this report deals with the issues as required but please do not hesitate to contact me if you have any queries and I would welcome the opportunity of discussing this with you in greater detail.

Yours sincerely

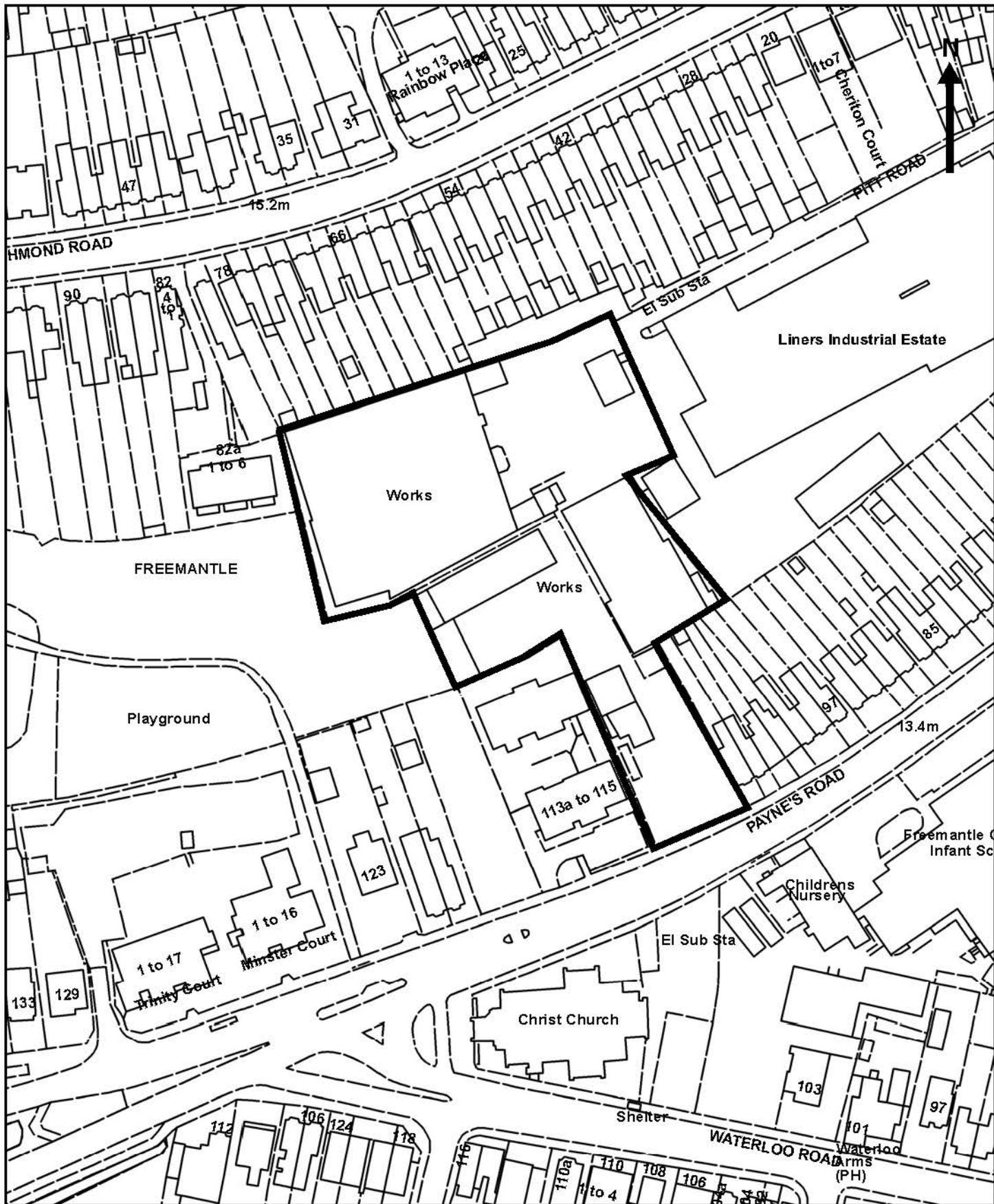
Reviewed by:

Appendix 1 - All Private Appraisal

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# Agenda Item 6 17/02592/OUT

Appendix 5



Scale: 1:1,250

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# Agenda Item 7

**Planning and Rights of Way Panel 9<sup>th</sup> October 2018**  
**Planning Application Report of the Service Lead – Infrastructure, Planning and Development.**

|  |   |                             |  |
|--|---|-----------------------------|--|
| <b>Application address:</b><br>32 Clifton Road, Southampton, SO15 4GX  |   |                             |  |
| <b>Proposed development:</b><br>Conversion of existing building from 5 flats to 10 flats (7x studio flats and 3x 1-bed flats) and increase on site car parking from 11 to 16 spaces (part-retrospective) (resubmission 18/00590/FUL) |   |                             |  |
| <b>Application number</b>  | 18/01332/FUL  | <b>Application type</b>     | Minor Dwellings  |
| <b>Case officer</b>  | Andrew Gregory  | <b>Public speaking time</b> | 5 minutes  |
| <b>Last date for determination:</b>  | 03.10.2018  | <b>Ward</b>                 | Millbrook  |
| <b>Reason for Panel Referral:</b>  | Request by Ward Member and more than 5 objections received. | <b>Ward Councillors</b>     | Cllr Sarah Taggart<br>Cllr David Furnell<br>Cllr Steven Galton |
| <b>Referred to panel by:</b>   | Cllr Furnell  | <b>Reason</b>               | Increase in housing and condition of site.                     |

|                              |   |
|------------------------------|---|
| <b>Applicant:</b> Mr I Bajar | <b>Agent:</b> Concept Design & Planning |
|------------------------------|---|

|                               |   |
|-------------------------------|---|
| <b>Recommendation Summary</b> | Delegate to service lead – Infrastructure, Planning and Development to grant planning permission subject to content listed in the report. |
|-------------------------------|---|

|   |     |
|---|-----|
| <b>Community Infrastructure Levy Liable</b> | Yes |
|---|-----|

**Reason for granting Planning Permission**

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Overall the scheme is acceptable and the level of development proposed will not result in an adverse impact on the amenities enjoyed by surrounding occupiers or to the character and appearance of the area. The resultant studio units are in keeping with the size of other studio units within the building as approved in 2012 (ref 12/01600/FUL). Furthermore the proposal addresses the previous reason for refusal (ref 18/00590/FUL) by providing additional car parking spaces to meet the parking demands of the additional flat proposed. Other material considerations 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. 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 39 – 42 and 46 of the National Planning Policy Framework (2018).

Policies - SDP1, SDP4, SDP5 and H1 of the City of Southampton Local Plan Review (Amended 2015) and CS3, CS4, CS5, CS13, CS16, CS19 and CS20 of the Local Development Framework Core Strategy Development Plan Document (Amended 2015).

| <b>Appendix attached</b> |  |
|--------------------------|--|
| 1                        | Development Plan Policies                    |
| 2                        | HRA assessment                               |
| 3                        | 18/00590/FUL - Reasons for refusal and plans |

## **Recommendation in Full**

1. That the Panel confirm the Habitats Regulation Assessment in Appendix 1 of this report.
2. Delegate to Service Lead – Planning, Infrastructure & Development to grant conditional planning permission subject to receipt of a Solent Disturbance Mitigation Project payment. In the event that this issue is not resolved within 1 week from the date of the Planning Panel delegation also given to refuse the application for failure to accord with the Development Plan.

### **1 The site and its context**

- 1.1 The application site is located on the northern side of Clifton Road and has seen incremental development over the years. The site comprises a main villa which has been extended and two flatted blocks at the rear. There are currently 21 flats on the site. Planning permission has been granted to convert the villa from 5 into 9 flats however the building is currently occupied as 8 flats.
- 1.2 A frontage parking area provides 11 car parking spaces with access from Clifton Road. A communal amenity area is located to the rear of the villa. The site frontage is enclosed by a boundary wall with tree planting and bin storage behind. A communal amenity area is located to the rear of the main villa.
- 1.3 The surrounding area is predominantly residential in character comprising flatted blocks and housing. Cedar Lodge Park is located to the West of the site. There are no on-street parking restrictions within Clifton Road.

### **2 Proposal**

- 2.1 Planning permission was granted in 2012 for conversion of the villa building from 5 to 9 flats (Ref 12/01600/FUL). This planning permission was partially implemented at first floor level however the works undertaken were not carried out in accordance with the approved plans because a 1-bed flat (flat I) was split into 2 no. studio flats resulting in an overall net gain of one additional self-contained unit. Therefore this planning application looks to regularise the unauthorised works and seeks approval for conversion of the villa building from 5 to 10 flats comprising 7x studio flats and 3x 1-bed flats. This would result in a total of 23 flats on site with an overall mix of 7 x studio flats, 11 x 1-bed flats and 5 x 2-bed flats.
- 2.2 The proposed 2 no. studio flats (identified as F16 and F17 on the proposed floor plans) are both self-contained and have all the facilities for day to day living (bathroom and lounge/bedroom with kitchenette). Flat F16 has an area of

19sqm with side facing first-floor windows. Flat F17 has an area of 29sqm with front facing first floor windows.

- 2.3 The proposal also seeks to reconfigure the car parking layout to achieve an additional 5 car parking spaces (increase from 11 to 16 spaces). The additional spaces are achieved by re-orientating the parking bays east west with a reduced aisle width (min 6m aisle width distance still achieved). The revision to the parking layout requires alterations to the front boundary wall in order to move the site access to a central position. The revised access design provides necessary 2m x 2m driver sightlines. Additional landscaping and tree planting is proposed behind the front boundary wall, either side of the new site access.

### **3 Relevant Planning Policy**

- 3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The updated National Planning Policy Framework (NPPF) came into force on 24th July 2018 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.

### **4. Relevant Planning History**

- 4.1 18/00590/FUL - Planning permission was refused on 03.07.2018 for conversion of existing building from 5 flats to 10 flats (7x studio flats and 3x 1-bed flats) (part-retrospective) for the following reasons:

*01. REFUSAL REASON - Car Parking*

*Based on the information submitted, it has not been adequately demonstrated that the development would not have a harmful impact on the amenities of nearby residential occupiers through increased competition for on-street car parking. As such, it is not clear the level of car parking proposed is sufficient to meet the travel demands of the development, particularly since less spaces would be provided than the Council's maximum adopted standards. Furthermore the proposed site plan is considered to be inaccurate because there is currently insufficient space available to achieve an additional parking space (2.4m width) plus a minimum 900mm pedestrian access width without compromising the existing landscaping arrangements. The development would, therefore, be contrary to the provisions of Policies SDP1 and SDP4 of the City of Southampton Local Plan Review (2015), Policy CS19 of the Southampton Core Strategy Development Plan Document (2015) and the adopted Parking Standards Supplementary Planning Document (2011).*

*02. REASON FOR REFUSAL - Lack of Section 106 or unilateral undertaking to secure planning obligations.*

*In the absence of either a scheme of works or a completed Section 106 legal agreement or unilateral undertaking to support the development the application fails to mitigate against its wider direct impact with regards to the additional pressure that further residential development will place upon the Special Protection Areas of the Solent Coastline. Failure to*

*secure mitigation towards the 'Solent Disturbance Mitigation Project' in order to mitigate the adverse impact of new residential development (within 5.6km of the Solent coastline) on internationally protected birds and habitat is contrary to Policy CS22 of the Council's adopted LDF Core Strategy as supported by the Habitats Regulations.*

- 4.1 12/01600/FUL – Approved 21.12.2012  
Internal alterations to allow conversion of existing building from 5 flats to 9 flats (5 x studio flats and 4 x one bedroom flats) with associated landscaping, parking and cycle/refuse stores.
- 4.3 12/00122/OUT - Refused 21.03.12 - appeal dismissed  
Erection of a two storey building at the front of 32 Clifton Road to provide 4 x 1 bed flats with associated parking and cycle/refuse storage (Outline application seeking approval for access, appearance, layout and scale).
- 4.4 11/01034/OUT - Refused 23.08.11 - No appeal lodged  
Erection of a two storey building at the front of 32 Clifton Road to provide 4 flats (3x 1-bed and 1x studio) with associated parking and refuse/cycle stores (Outline application seeking approval for access, appearance, layout and scale)
- 4.5 08/01740/FUL - Approved - 02.02.2009  
Erection of a two storey building rear of 32 Clifton Road to provide 4x1-bed flats with associated parking and bin/cycle storage following demolition of existing garage
- 4.6 05/01569/FUL - Approved - 28.12.2005  
Erection of a three-storey building (including accommodation in the roofspace) to comprise 5 x 2-bedroomed flats with associated car parking
- 4.7 04/01079/FUL – Approved - 23.08.2004  
Conversion of the existing dwelling house (34 Clifton Road) into 4 x 1 bedroom flats.

## **5 Consultation Responses and Notification Representations**

- 5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners and erecting a site notice (17/08/2018). At the time of writing the report **29 objections** have been received from surrounding residents. The following is a summary of the relevant points raised:

5.2 **Intensification of flats represents an overdevelopment of the site which is out of keeping with the area.**

RESPONSE: This proposal essentially seeks to convert a previously approved 1-bed flats into 2 studios resulting in a net gain of one self-contained unit with a single bed space. The proposal would provide a total of 23 flats rather than the approved 22 flats (achieved incrementally through a number of planning approvals). The proposal does not seek to create any additional residential floor space. An additional 5 car parking spaces are being provided as part of this proposal and a sufficient communal amenity spaces is available to meet the needs of 23 flats (in accordance with Residential Design Guide standards). Therefore this proposal is not considered to represent a site overdevelopment and the conversion of a 1-bed flat into 2 studio units is not considered out of keeping with the area having regard to policy requirements to achieve mixed and balanced communities

**5.3 The proposed intensification of flats would create overcrowded accommodation.**

RESPONSE: The proposal seeks to convert the approved 1-bed unit with an area of 49.5sqm into 2 no. studio units with an area of 19sqm and 29sqm. It is accepted that the proposal does result in smaller more cramped units which fall below the nationally prescribed space standards (March 2015) of 37sqm. However the Council does not currently have an adopted planning policy requiring min space standards. Furthermore the proposed studio units are comparable in size to the units consented in 2012 (ranging from 19sqm to 26sqm – albeit ahead of the national space standards coming into force). Therefore the officer recommendation is, again, to support the proposed flat sizes and the Panel will note that the previous scheme was not refused on this basis. However, members of the Planning and Rights of Way Panel may wish to give greater weight to the nationally prescribed space standards, and should note that Appeal Inspectors are now having regard to the national space standard even in circumstances where there are no local plan policy requiring minimum room sizes.

**5.4 Insufficient car parking. There are currently spaces for 11 cars but often 14 cars parked in the parking area**

RESPONSE: The schemes would provide a total of 16 car parking spaces which represents an increase of 5 parking spaces. The proposed development seeks to change a 1-bed unit into 2 no. studio and therefore the provision of 5 spaces would exceed the Councils maximum car parking standards for this proposal (maximum permissible 2 spaces). However it is considered that an increase above the maximum standards is acceptable having regard to the total number of flats that would be authorised on site (23 flats).

**5.5 Parking layout may restrict access to the rear of the site for emergency vehicles**

RESPONSE: No objection raised by Highways Development Management. The proposal does not result in significant change to the current rear access arrangements.

**5.6 Visitors parking in neighbouring Clifton Court**

RESPONSE: This is a private civil matter. The proposal exceeds the Council's maximum car parking standards in relation to the amount of new development proposed.

**5.7 The landlord does not maintain the bin area with insufficient bin storage provision**

RESPONSE: It is considered reasonable and necessary to impose a condition requiring bin storage capacity to meet the needs of all 23 flats in accordance with Council standards. This would require the 3 no. euro bins shown being increased to 4 no. euro bins to meet the general waste and recycling requirements for this site. A 240ltr wheeled bin is also required for glass collection.

**5.8 Grounds and gardens poorly maintained**

RESPONSE: Such concerns regarding an absentee landlord are not grounds to refuse planning permission.

- 5.9 **Anti-social behaviour from existing tenants**  
RESPONSE: Anti-social behaviour is controlled by the Police and through Environmental Health legislation.
- 5.10 **No provision to repair any damage to existing landscaping or to replace any trees that need to be removed.**  
RESPONSE: A landscape plan has now been received showing landscaping and tree planting on the site frontage.

### **Consultation Responses**

- 5.11 **Highways Development Management** - No objection subject to conditions to ensure the turning area is kept clear at all times and to secure the retain the pedestrian visibility splays (2m x 2m) as shown on the site plan.
- 5.12 **CIL** – The development is CIL liable as there is a net gain of residential units. The charge will be levied at £70 per sq. m (to be indexed) on the Gross Internal Area of the development. If any existing floor area is to be used as deductible floor area the applicant will need to demonstrate that lawful use of the building has occurred for a continuous period of at least 6 months within the period of 3 years ending on the day that planning permission first permits the chargeable development..
- 5.13 **Sustainability** – No objection. Each of the proposed dwellings will make either a total or substantial use of the existing building. Therefore, no sustainability conditions are requested.
- 5.14 **Urban Design Manager** – The front boundary wall is too high and should be lowered to be in keeping with other properties in the street. The planting bed to the east of the entrance looks as though it's too narrow to accommodate trees as the bed needs to be 1.5m in width to successfully plant trees. The proposed Laurel is more commonly planted as a hedge as it's not a tree, it's a large shrub and I think this probably makes more sense in this location. In hedge form they would more normally be planted a 3 per sq.m. I am unclear as to what is being planted as undercover for the plant bed to the west of the entrance beneath the proposed evergreen oaks. This species is slow growing and ultimately very large so planting two trees in close proximity is a mistake as there is only sufficient space for one tree to fully develop in this location. However critical to any plant established is that as this area is being made from an area of previously tarmacked car park that an adequate depth of clean new topsoil will be needed for the plant beds to ensure establishment of any planting. The evergreen oak will need at least 1.5 cubic metres of topsoil and shrub areas will need a minimum 600mm depth of topsoil
- 5.14.1 *OFFICER RESPONSE: The height of the front boundary wall is established and therefore it would be unreasonable to require a lower height wall. Furthermore a lower height boundary wall would expose the large car parking area which may have an adverse visual impact on the street scene. The requested landscaping amendments have been put to the applicants and an update with the provided at the Panel meeting.*

## **6. Planning Consideration Key Issues**

6.1 The key issues for consideration during the determination of this planning application are:

- the principle of the development;
- residential environment ;
- whether the previous parking reason for refusal has been addressed.
- Impact on the appearance of the area; and
- Habits regulations

### Principle of Development.

6.2 Planning permission was granted in 2012 for conversion of the property from 5 to 9 flats which included studio flats similar in size to those proposed. This planning application seeks retrospective consent to change an approved 1-bed unit into 2 no. studio flats. There have been no significant change in national and local planning policies which would presume against conversion of the building into smaller flat units. Policy CS16 of the Core Strategy promotes a mix of housing types in order to provide sustainable and balanced communities. No loss of family housing is proposed. It should also be noted that a planning application for the same proposal earlier this year was refused for car parking and SDMP reasons only. Therefore the principle of conversion of the building from 5 to 10 flats is supported.

### Residential environment and impact on residential amenities

6.3.1 The proposal seeks to convert the approved 1-bed unit with an area of 49.5sqm into 2 no. studio units with an area of 19sqm and 29sqm. It is accepted that the proposal does result in smaller more cramped units which fall below the nationally prescribed space standards of 37sqm per 1-bed flat. The Council does not currently have an adopted planning policy requiring min space standards. Furthermore the proposed studio units are comparable in size to the units consented in 2012 (ranging from 19sqm to 26sqm). Therefore the officer recommendation is to support the proposed flat sizes.

6.3.2 However, members of the Planning and Rights of Way Panel may wish to give greater weight to the nationally prescribed space standards and should note that Appeal Inspectors are increasingly using nationally prescribed standards as the measure in terms of quality of living environment.

6.3.3 The layout result in a studio flat (F16) with single aspect to the side however this flat will not directly overlook any neighbouring habitable room window or amenity space (faces a driveway and blank wall) and therefore will not result in any harmful overlooking. Furthermore there is an 8m gap between the buildings and therefore the single aspect flat will receive reasonable daylight, sunlight and outlook (east facing).

6.3.4 The site currently provides circa 600sqm of communal amenity spaces which satisfies the minimum requirements of 20sqm for a total of 23 flats.

### Parking and Highway Safety

6.4.1 The proposal is considered to address the previous reason for refusal by providing 5 additional car parking spaces on site which exceeds the Council's maximum car parking standards of 1 space for the additional studio unit. However the additional parking is considered acceptable having regard to the parking demands of the site as a whole and will reduce the risk of overspill

parking into Clifton Road and surrounding streets. This is a betterment of the scheme.

- 6.4.2 The current parking layout has an excessive aisle turning width of 12m. The proposed re-orientation of the parking bays east-west and reducing the aisle width to 6m achieves the additional spaces with a total of 16 parking bays provided. The revised car parking layout provides adequate space behind the front boundary wall for bin storage, landscaping and tree planting. The proposed layout maintains pedestrian access to the rear. Therefore the proposal is considered to address the previous car parking reason for refusal and no objection has been raised by Highways Development Management.

#### Impact on the appearance of the area

- 6.5.1 The proposal seeks no changes to the external appearance of the building. The revisions to the front boundary will not be harmful to the street scene and new landscaping and tree planting have been secured.

#### Habitat Regulations

- 6.6.1 The proposed development, as a residential scheme, has been screened (where mitigation measures must now be disregarded) as likely to have a significant effect upon European designated sites due to an increase in recreational disturbance along the coast and in the New Forest. Accordingly, a Habitat Regulations Assessment (HRA) has been undertaken, in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, see Appendix 1. The HRA concludes that, provided the specified mitigation of a Solent Recreation Mitigation Strategy (SRMP) contribution and a minimum of 5% of any CIL taken directed specifically towards Suitably Accessible Green Space (SANGS), the development will not adversely affect the integrity of the European designated sites.

## **7 Summary**

- 7.1 The scheme is acceptable and the level of development proposed will not result in an adverse impact on the amenities enjoyed by surrounding occupiers or to the character and appearance of the area. The proposal addresses the previous reason for refusal (ref 18/00590/FUL) by providing additional car parking spaces to meet the parking demands of the additional flat proposed. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application.

## **8 Conclusion**

- 8.1 Subject to the imposition of the suggested conditions attached to this report, the proposal would be acceptable once the SDMP payment has been secured. The application is therefore recommended for approval.

### **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 (f) (g) (vv), 6 (a) (b), 7 (a).

**AG for 09/10/2018 PROW Panel**

## **PLANNING CONDITIONS to include:**

### **01.Full Permission Timing Condition (Performance)**

The development hereby permitted shall begin no 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 - Landscaping and Parking**

The parking layout, access and associated hard and soft landscaping scheme to the site's frontage as shown on plan C18/022.02 Rev A (or as subsequently amended in agreement with the Local Planning Authority) shall be completed within 2 months of the date of this decision.

Once these works have been completed they shall be maintained thereafter in accordance with the agreed maintenance schedule. 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 minimum period of 5 years from the date of planting.

The parking and access shall be retained as approved.

#### **REASON:**

To ensure a landscaping scheme is provided and to ensure that safe and adequate parking is provided to meet the needs of the site prior to the intensification of use.

### **03. Refuse & Recycling**

Within 2 months of the date of this decision 4 no. euro bins for refuse & recycling and a glass pod shall be provided and thereafter retained to serve this site. The refuse bins shall be stored in the location on shown on plan C18/022.02 Rev A (or as subsequently amended in agreement with the Local Planning Authority).

#### **REASON:**

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

### **03. Refuse & Recycling**

Within 2 months of the date of this decision 4 no. euro bins for refuse & recycling and a 240ltr wheeled bin for glass collection shall be provided and thereafter retained to serve this site. The refuse bins shall be stored in the location on shown on plan C18/022.02 Rev A (or as subsequently amended in agreement with the Local Planning Authority).

Reason: In the interests of visual amenity, the amenities of future occupiers of the development and the occupiers of nearby properties and in the interests of highway safety.

#### **04.APPROVAL CONDITION - Amenity Space Access**

The existing external amenity space to the rear of the development, and pedestrian access to it, shall be made available as a communal area at all times for the use of residents of the flat units.

REASON:

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

#### **05.APPROVAL CONDITION - Hours of work for [Performance Condition]**

All works relating to the conversion of the building 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.

#### **06.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.

**Application 18/01332/FUL**

### Habitat Regulation Assessment (HRA) Screening Matrix and Appropriate Assessment Statement

**PLEASE NOTE: Undertaking the HRA process is the responsibility of the decision maker as the Competent Authority for the purpose of the Habitats Regulations. However, it is the responsibility of the applicant to provide the Competent Authority with the information that they require for this purpose.**

|  |  |
|--|--|
| HRA completion date:   | 27 <sup>th</sup> September 2018  |
| Application reference:   | 18/01332/FUL   |
| Application address:   | 32 Clifton Rd, Southampton   |
| Application description:   | Conversion of existing building from 5 flats to 10 flats (7x studio flats and 3x 1-bed flats) and increase on site car parking from 11 to 16 spaces (part-retrospective) (resubmission 18/00590/FUL) |
| Lead Planning Officer:   | Andy Gregory   |
| Please note that all references in this assessment to the 'Habitats Regulations' refer to The Conservation of Habitats and Species Regulations 2017. |  |

#### Stage 1 - details of the plan or project

|  |  |
|--|--|
| European site potentially impacted by planning application, plan or project:                       | Solent and Southampton Special Protection Area (SPA) and Ramsar site. Solent Maritime Special Area of Conservation (SAC). Collectively known as the Solent SPAs.<br>New Forest SAC, SPA and Ramsar site. |
| Is the planning application directly connected with or necessary to the management of the site (if | No. The development consists of an increase in residential dwellings, which is neither connected to nor necessary to the management of any European site.  |

|   |   |
|---|---|
| yes, Applicant should have provided details)?   |   |
| Are there any other projects or plans that together with the planning application being assessed could affect the site (Applicant to provide details to allow an 'in combination' effect to be assessed)? | <p>Yes. All new housing development within 5.6km of the Solent SPAs is considered to contribute towards an impact on site integrity as a result of increased recreational disturbance in combination with other development in the Solent area.</p> <p>Concerns have been raised by Natural England that residential development within Southampton, in combination with other development in the Solent area, could lead to an increase in recreational disturbance within the New Forest. This has the potential to adversely impact site integrity of the New Forest SPA, SAC and Ramsar site.</p> <p>The PUSH Spatial Position Statement (<a href="https://www.push.gov.uk/work/planning-and-infrastructure/push-position-statement/">https://www.push.gov.uk/work/planning-and-infrastructure/push-position-statement/</a>) sets out the scale and distribution of housebuilding which is being planned for across South Hampshire up to 2034.</p> |

## Stage 2 - HRA screening assessment

Screening under Regulation 63(1)(a) of the Habitats Regulations – The Applicant to provide evidence so that a judgement can be made as to whether there could be any potential significant impacts of the development on the integrity of the SPA/SAC/Ramsar.

### Solent SPAs

The proposed development is within 5.6km of the collectively known European designated areas Solent SPAs/Ramsar sites. In accordance with advice from Natural England and as detailed in the Solent Recreation Mitigation Strategy, a net increase in housing development within 5.6km of the Solent SPAs is likely to result in impacts to the integrity of those sites through a consequent increase in recreational disturbance.

Development within the 5.6km zone will increase the human population at the coast and thus increase the level of recreation and disturbance of bird species. The impacts of recreational disturbance (both at the site-scale and in combination with other development in the Solent area) are analogous to impacts from direct habitat loss as recreation can cause important habitat to be unavailable for use (the habitat is functionally lost, either permanently or for a defined period). Birds can be displaced by human recreational activities (terrestrial and water-based) and use valuable resources in finding suitable areas in which to rest and feed undisturbed. Ultimately, the impacts of recreational disturbance can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites.

### The New Forest

The New Forest National Park attracts a high number of visitors (13.3 million annually), and is notable in terms of its catchment, attracting a far higher proportion of tourists and non-local visitors than similar areas such as the Thames Basin and Dorset Heaths. Research undertaken by Footprint Ecology, Sharp, J., Lowen, J. and Liley, D. (2008) Changing patterns of visitor numbers within the New Forest National Park, with particular reference to the New

Forest SPA. (Footprint Ecology.), indicates that 40% of visitors to the area are staying tourists, whilst 25% of visitors come from more than 5 miles (8km) away. The remaining 35% of visitors are local day visitors originating from within 5 miles (8km) of the boundary.

The report states that the estimated number of current annual visits to the New Forest is predicted to increase by 1.05 million annual visits by 2026 based on projections of housing development within 50km of the Forest, with around three quarters (764,000) of this total increase originating from within 10km of the boundary (which includes Southampton).

Residential development has the potential to indirectly alter the structure and function of the habitats of the New Forest SAC, SPA and Ramsar site breeding populations of nightjar, woodlark and Dartford warbler through disturbance from increased human and/or dog activity. The precise scale of the potential impact is currently uncertain however, the impacts of recreational disturbance can be such that they affect the breeding success of the designated bird species and therefore act against the stated conservation objectives of the European sites.

### Stage 3 - Appropriate Assessment

Appropriate Assessment under Regulation 63(1) - if there are any potential significant impacts, the applicant must provide evidence showing avoidance and/or mitigation measures to allow an Assessment to be made. The Applicant must also provide details which demonstrate any long term management, maintenance and funding of any solution.

#### Solent SPAs

The project being assessed would result in a net increase of dwellings within 5.6km of the Solent SPAs and in accordance with the findings of the Solent Recreation Mitigation Strategy, a permanent significant effect on the Solent SPAs due to increase in recreational disturbance as a result of the new development, is likely. This is contrary to policy CS 22 - Promoting Biodiversity and Protecting Habitats, of the Southampton Core Strategy Partial Review, which states that,

*Within Southampton the Council will promote biodiversity through:*

*1. Ensuring development does not adversely affect the integrity of international designations, and the necessary mitigation measures are provided; or the development otherwise meets the Habitats Directive;*

In line with Policy CS22, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

Southampton City Council formally adopted the Solent Recreation Mitigation Strategy (SRMP) in March 2018. The SRMP provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development. This strategy represents a partnership approach to the issue which has been endorsed by Natural England.

| Size of Unit | Scale of Mitigation per Unit |
|--------------|------------------------------|
| 1 Bedroom    | £337.00                      |
| 2 Bedroom    | £487.00                      |
| 3 Bedroom    | £637.00                      |
| 4 Bedroom    | £749.00                      |
| 5 Bedroom    | £880.00                      |

As set out in the Solent Recreation Mitigation Strategy, an appropriate scale of mitigation for this scheme would be:

Therefore, in order to deliver the an adequate level of mitigation the proposed development will need to provide a financial contribution, in accordance with the table above, to mitigate the likely impacts.

A legal agreement, agreed prior to the granting of planning permission, will be necessary to secure the mitigation package. Without the security of the mitigation being provided through a legal agreement, a significant effect would remain likely. Providing such a legal agreement is secured through the planning process, the proposed development will not affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites.

### **New Forest**

The project being assessed would result in a net increase in dwellings within easy travelling distance of the New Forest and a permanent significant effect on the New Forest SAC, SPA and Ramsar, due to an increase in recreational disturbance as a result of the new development, is likely. This is contrary to policy CS 22 - Promoting Biodiversity and Protecting Habitats, of the Southampton Core Strategy Partial Review, which states that,

*Within Southampton the Council will promote biodiversity through:*

*1. Ensuring development does not adversely affect the integrity of international designations, and the necessary mitigation measures are provided; or the development otherwise meets the Habitats Directive;*

In line with Policy CS22, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

At present, there is no scheme of mitigation addressing impacts on the New Forest designated sites, although, work is underway to develop one. In the absence of an agreed scheme of mitigation, the City Council has undertaken to ring fence 5% of CIL contributions to fund footpath improvement works within suitable semi-natural sites within Southampton. These improved facilities will provide alternative dog walking areas for new residents.

The proposed development will generate a CIL contribution and the City Council will ring fence 5% of the overall sum, to fund improvements to footpaths within the greenways and other semi-natural greenspaces.

### **Stage 4 – Summary of the Appropriate Assessment (To be carried out by the Competent Authority (the local planning authority) in liaison with Natural England**

In conclusion, the application will have a likely significant effect in the absence of avoidance and mitigation measures on the above European and Internationally protected sites. The authority has concluded that the adverse effects arising from the proposal are wholly consistent with, and inclusive of the effects detailed in the Solent Recreation Mitigation Strategy.

The authority's assessment is that the application coupled with the contribution towards the SRMS secured by way of legal agreement complies with this strategy and that it can therefore be concluded that there will be no adverse effect on the integrity of the designated sites identified above.

In the absence of an agreed mitigation scheme for impacts on the New Forest designated sites Southampton City Council has adopted a precautionary approach and ring fenced 5% of CIL contributions to provide alternative recreation routes within the city.

This represents the authority's Appropriate Assessment as Competent Authority in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Article 6 (3) of the Habitats Directive and having due regard to its duties under Section 40(1) of the NERC Act 2006 to the purpose of conserving biodiversity. Consideration of the Ramsar site/s is a matter of government policy set out in the National Planning Policy Framework 2012.

Natural England Officer: Becky Aziz (email 20/08/2018)

Summary of Natural England's comments:

Where the necessary avoidance and mitigation measures are limited to collecting a funding contribution that is in line with an agreed strategic approach for the mitigation of impacts on European Sites then, provided no other adverse impacts are identified by your authority's appropriate assessment, your authority may be assured that Natural England agrees that the Appropriate Assessment can conclude that there will be no adverse effect on the integrity of the European Sites. In such cases Natural England will not require a Regulation 63 appropriate assessment consultation.

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**Application** 18/00385/FUL

### **POLICY CONTEXT**

#### Core Strategy - (as amended 2015)

|      |  |
|------|--|
| CS4  | Housing Delivery   |
| CS5  | Housing Density  |
| CS13 | Fundamentals of Design                                     |
| CS16 | Housing Mix and Type                                       |
| CS19 | Car & Cycle Parking  |
| CS25 | The Delivery of Infrastructure and Developer Contributions |

#### City of Southampton Local Plan Review – (as amended 2015)

|      |                        |
|------|------------------------|
| SDP1 | Quality of Development |
| SDP4 | Development Access     |
| SDP5 | Parking                |
| H1   | Housing Delivery       |

#### Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)

Parking Standards SPD (September 2011)

#### Other Relevant Guidance

The National Planning Policy Framework (2018)

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

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## DETERMINATION OF APPLICATION

### TOWN AND COUNTRY PLANNING ACT 1990

#### Town and Country Planning (Development Management Procedure) (England) Order 2015

Concept Design & Planning  
Mr Rob Wiles  
Morgans Yard  
Shepherds Road  
Bartley  
Southampton SO402LH

In pursuance of its powers under the above Act and Order, Southampton City Council as the Local Planning Authority, hereby gives notice that the application described below has been determined. The decision is:

#### FULL APPLICATION - REFUSAL

**Proposal:** Conversion of existing building from 5 flats to 10 flats (7x studio flats and 3x 1-bed flats) (part-retrospective)

**Site Address:** 32 Clifton Road, Southampton, SO15 4GX

**Application No:** 18/00590/FUL

For the following reason(s):

##### 01.REFUSAL REASON - Car Parking

Based on the information submitted, it has not been adequately demonstrated that the development would not have a harmful impact on the amenities of nearby residential occupiers through increased competition for on-street car parking. As such, it is not clear the level of car parking proposed is sufficient to meet the travel demands of the development, particularly since less spaces would be provided than the Council's maximum adopted standards. Furthermore the proposed site plan is considered to be inaccurate because there is currently insufficient space available to achieve an additional parking space (2.4m width) plus a minimum 900mm pedestrian access width without compromising the existing landscaping arrangements. The development would, therefore, be contrary to the provisions of Policies SDP1 and SDP4 of the City of Southampton Local Plan Review (2015), Policy CS19 of the Southampton Core Strategy Development Plan Document (2015) and the adopted Parking Standards Supplementary Planning Document (2011).

##### 02.REASON FOR REFUSAL - Lack of Section 106 or unilateral undertaking to secure planning obligations.

In the absence of either a scheme of works or a completed Section 106 legal agreement or unilateral undertaking to support the development the application fails to mitigate against its wider direct impact with regards to the additional pressure that further residential development will place upon the Special Protection Areas of the Solent Coastline. Failure to secure mitigation towards the 'Solent Disturbance Mitigation Project' in order to mitigate the adverse impact of new residential development (within 5.6km of the Solent coastline) on internationally protected birds and habitat is contrary to Policy CS22 of the Council's adopted LDF Core Strategy as supported by the Habitats Regulations.

Note to Applicant - Community Infrastructure Liability (Refusal)

You are advised that, had the development been acceptable, it could be liable to pay the Community Infrastructure Levy (CIL). Please ensure that, should you chose to reapply or appeal, 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/planning/community-infrastructure-levy/default.aspx> or contact the Council's CIL Officer

Note to Applicant: Enforcement

Due to the retrospective nature of the application this matter has now been passed to SCC Planning Enforcement



**Samuel Fox**  
**Planning & Development Manager**

6 July 2018

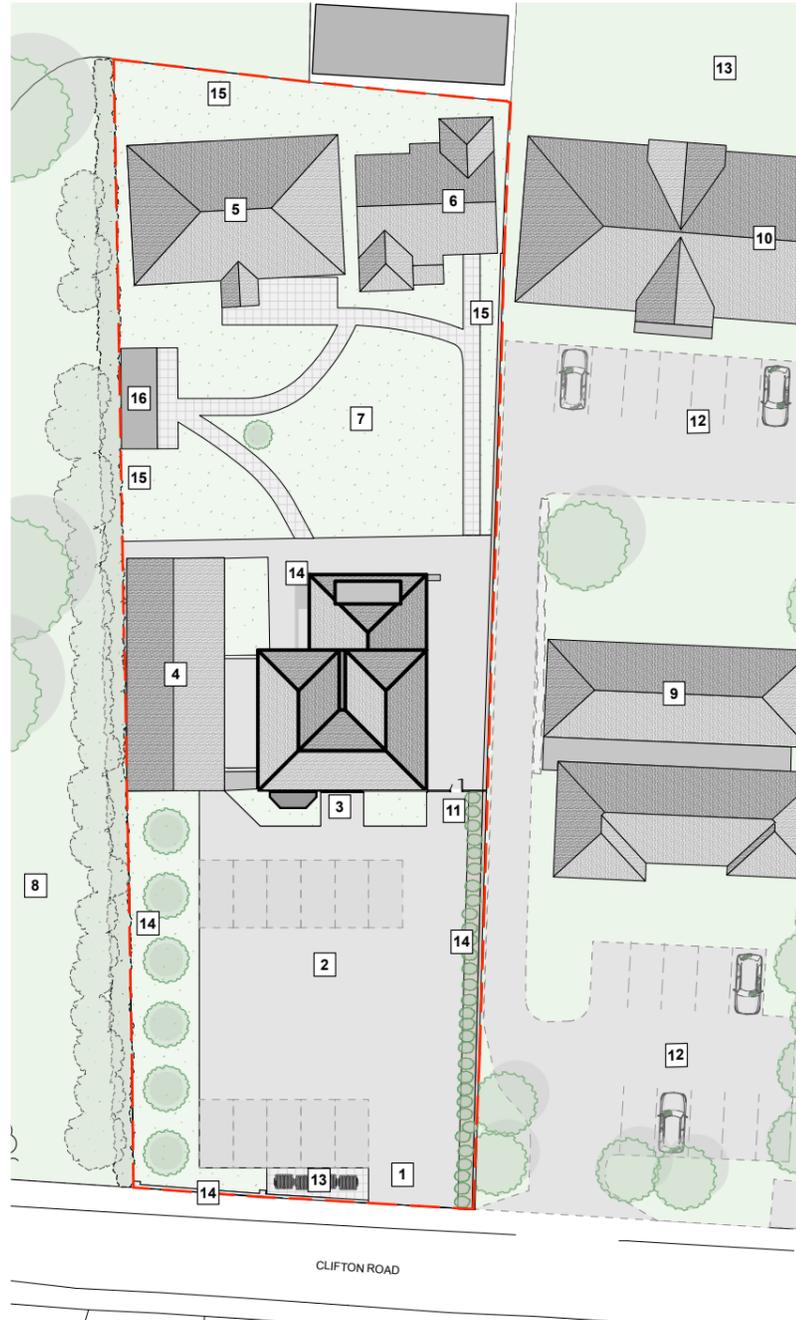
For any further enquiries please contact:

**Andrew Gregory**

**IMPORTANT NOTE TO APPLICANT**

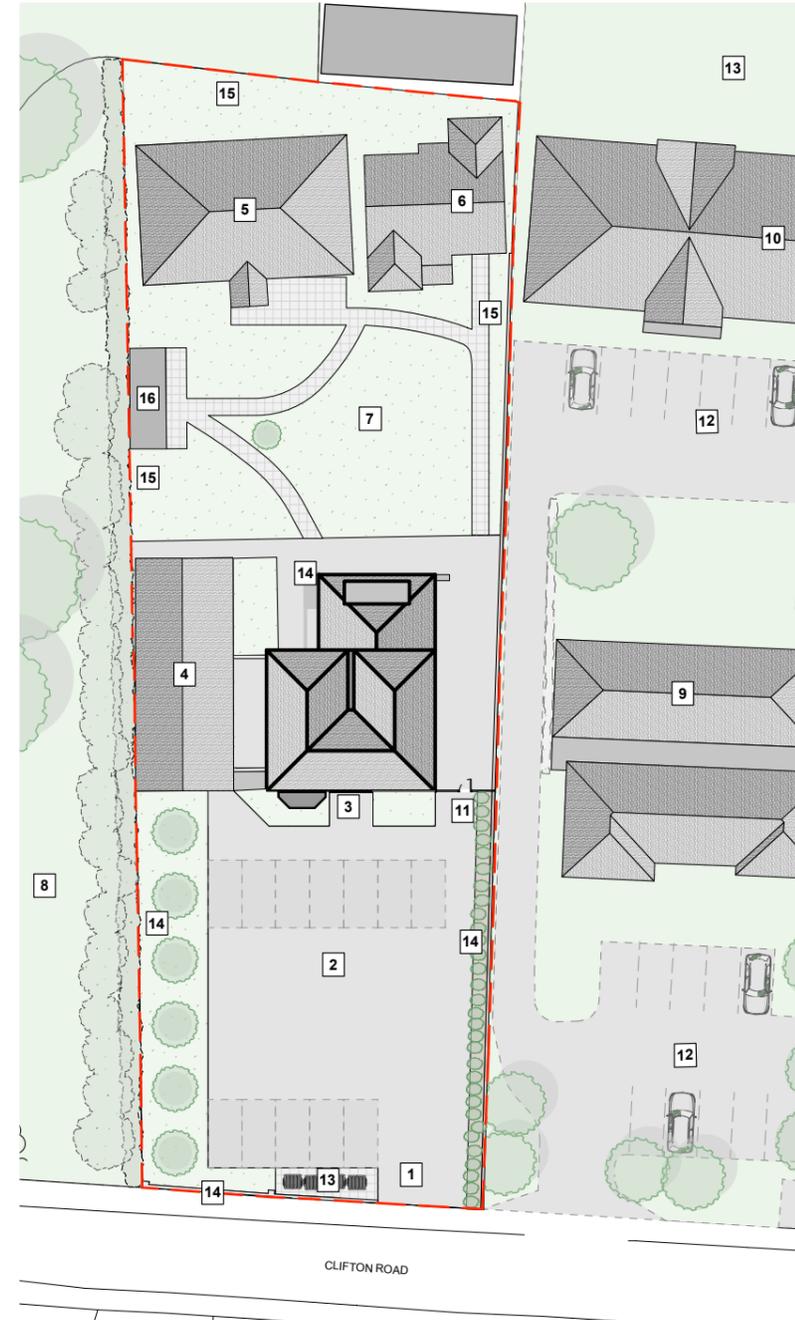
This decision has been made in accordance with the submitted application details and supporting documents and in respect of the following plans and drawings:

| <b>Drawing No:</b> | <b>Version:</b> | <b>Description:</b> | <b>Date Received:</b> | <b>Status:</b> |
|--------------------|-----------------|---------------------|-----------------------|----------------|
| C182/022.01        |                 | Location Plan       | 14.05.2018            | Refused        |
| C18/022.02         |                 | Site Plan           | 14.05.2018            | Refused        |
| C18/022.09         |                 | Floor Plan          | 14.05.2018            | Refused        |
| C18/022.10         |                 | Floor Plan          | 14.05.2018            | Approved       |
| C18/022.11         |                 | Elevational Plan    | 14.05.2018            | Refused        |
| C18/022.12         |                 | Elevational Plan    | 14.05.2018            | Refused        |



existing site plan

- Key to existing site plan:
- 1 access from Clifton Road
  - 2 parking and turning
  - 3 entrance to existing 5 flats
  - 4 existing block
  - 5 existing block
  - 6 existing block
  - 7 amenity
  - 8 park
  - 9 neighbouring block
  - 10 neighbouring block
  - 11 access to rear
  - 12 parking to neighbouring development
  - 13 refuse area
  - 14 brick wall to boundary
  - 15 fence to boundary
  - 16 cycle store
  - grass
  - paving
  - tarmac / hardstanding
  - tree / planter



proposed site plan

- Key to proposed site plan:
- 1 access from Clifton Road
  - 2 parking and turning (additional 1 space)
  - 3 entrance utilised
  - 4 existing block
  - 5 existing block
  - 6 existing block
  - 7 amenity
  - 8 park
  - 9 neighbouring block
  - 10 neighbouring block
  - 11 access to rear
  - 12 parking to neighbouring development
  - 13 refuse area
  - 14 brick wall to boundary
  - 15 fence to boundary
  - 16 cycle store
  - grass
  - paving
  - tarmac / hardstanding
  - tree / planter

| Rev: | Note: | Date: |
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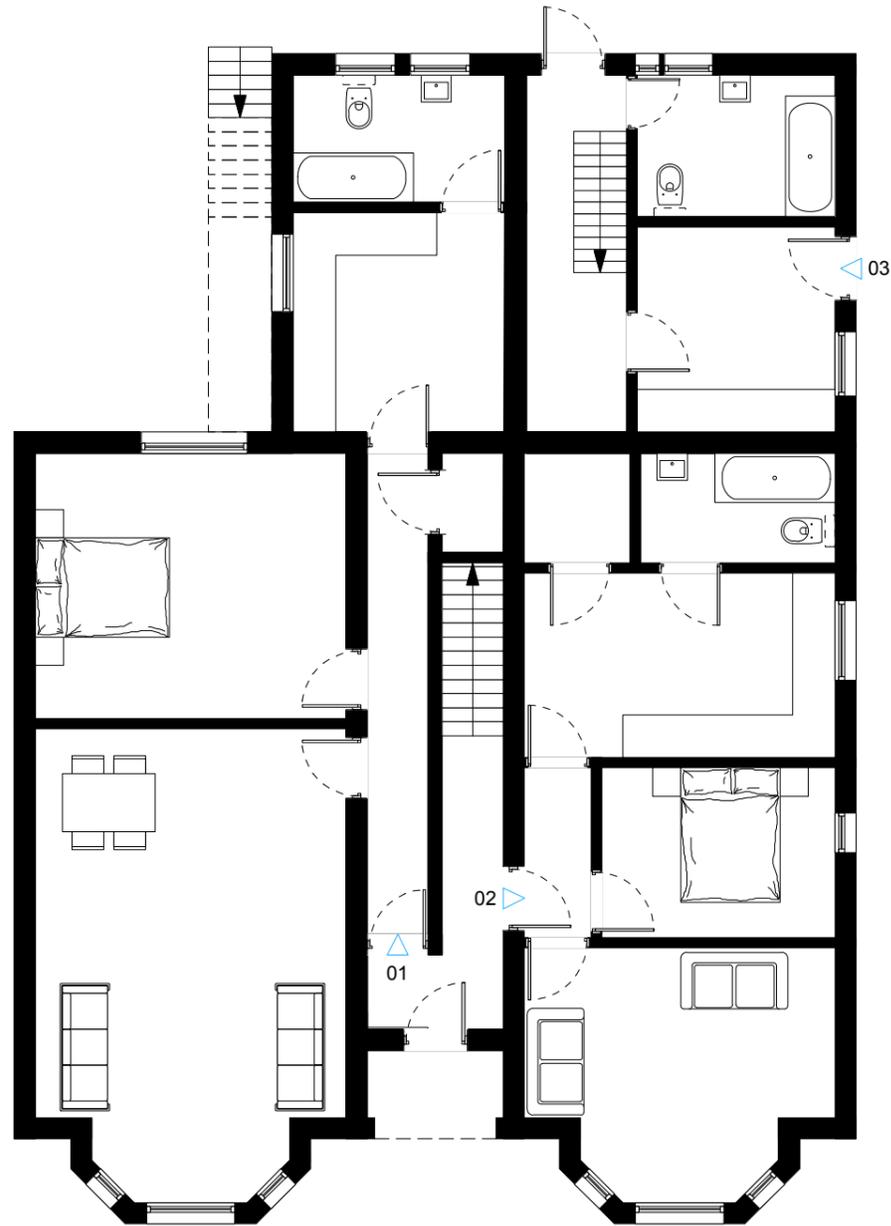
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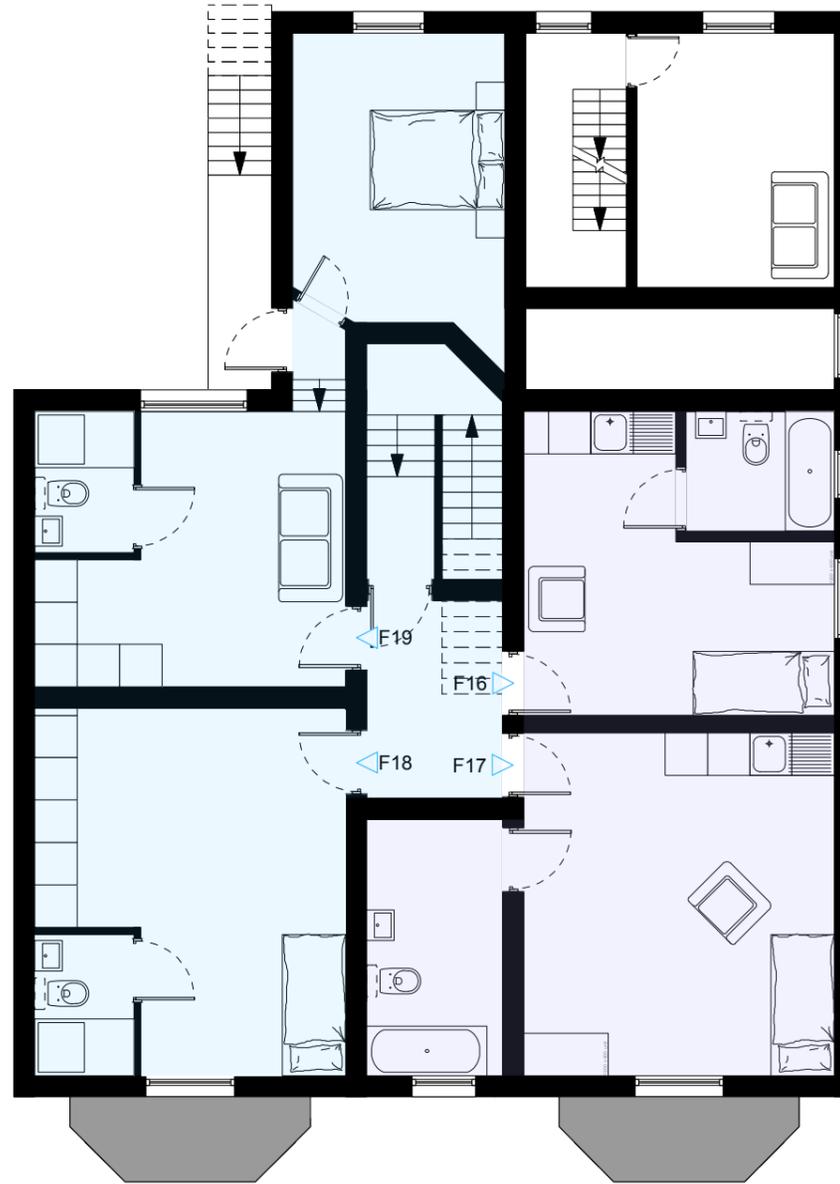
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| Drawing:    | Site Plans      | Checked by: | RW       |
| Drawing No: | C18/022.02      | Revision:   | *        |
| Scale:      | 1:500 @ A3      | Date:       | Mar 2018 |

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t. 023 8033 1010  
e. studio@conceptdp.co.uk  
www.conceptdp.co.uk



existing ground floor plan



existing first floor plan

**accommodation schedule**

**previous**

- 01 1 bedroom flat @ 70sq/m
- 02 1 bedroom flat @ 45sq/m
- 03 1 bedroom flat @ 60sq/m
- 04 1 bedroom flat @ 56sq/m
- 05 2 bedroom flat @ 56sq/m

**existing**

ground floor

- 01 1 bedroom flat @ 70sq/m
- 02 1 bedroom flat @ 45sq/m
- 03 2 bedroom flat @ 56sq/m

first floor

- F16 studio flat @ 19sq/m
- F17 studio flat @ 29sq/m
- F18 studio flat @ 22sq/m
- F19 1 bedroom flat @ 31sq/m

7 flats on site

[5 flats existing, 2 flats retrospective]

**proposed**

ground floor

- F10 1 bedroom flat @ 33sq/m
- F11 studio flat @ 19sq/m
- F12 studio flat @ 24sq/m
- F13 studio flat @ 26sq/m
- F14 studio flat @ 28sq/m

first floor

- F15 1 bedroom flat @ 40sq/m
- F16 studio flat @ 19sq/m
- F17 studio flat @ 29sq/m
- F18 studio flat @ 22sq/m
- F19 1 bedroom flat @ 31sq/m

7 x studio flats

3 x 1 bedroom flats

increase of 5 units to 10 units

layout as per consented 12/01600/FUL application

single unit as per consented 12/01600/FUL application split to form 2 separate units

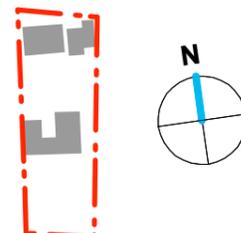
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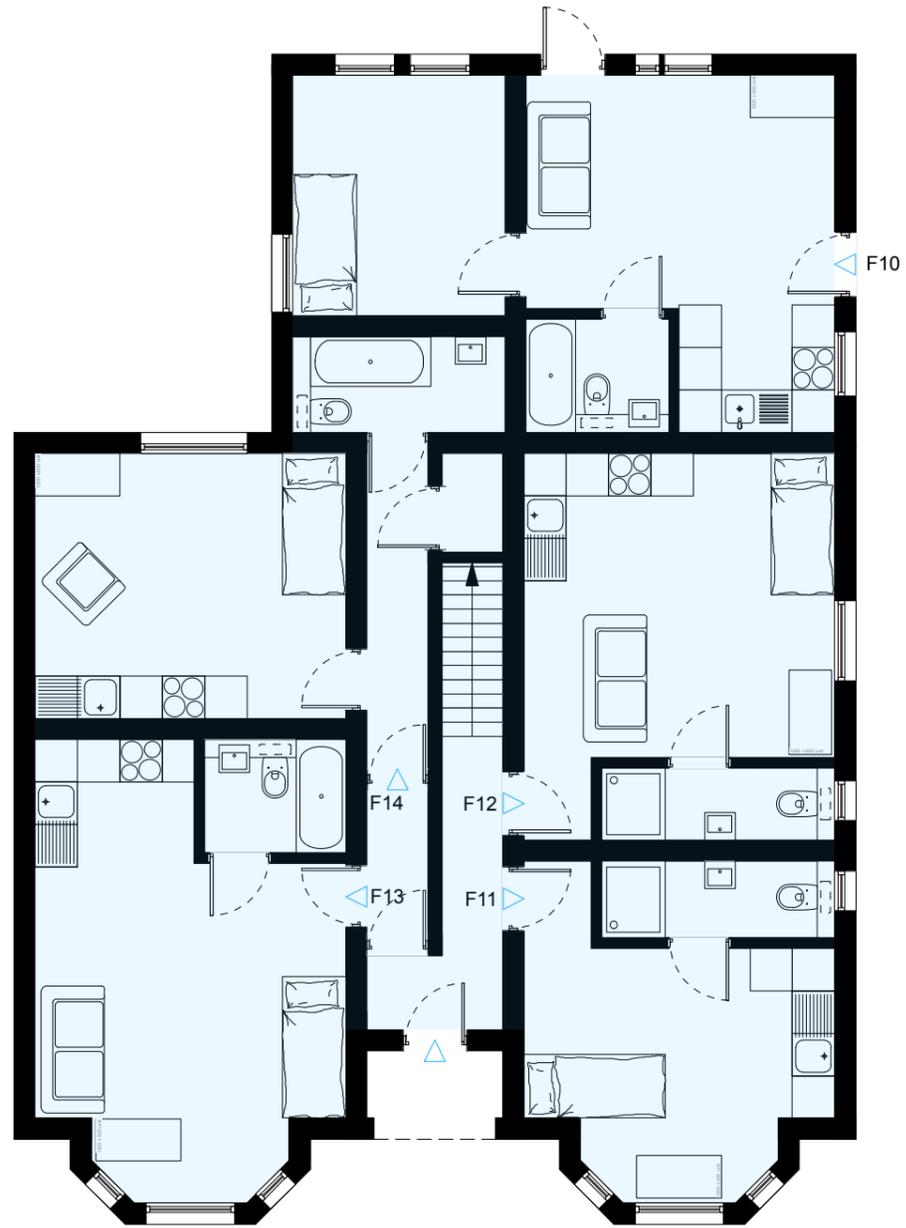


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|-------------|------------------------|-------------|----------|
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| Drawing:    | Existing Floor Plans 1 | Checked by: | RW       |
| Drawing No: | C18/022.05             | Revision:   | *        |
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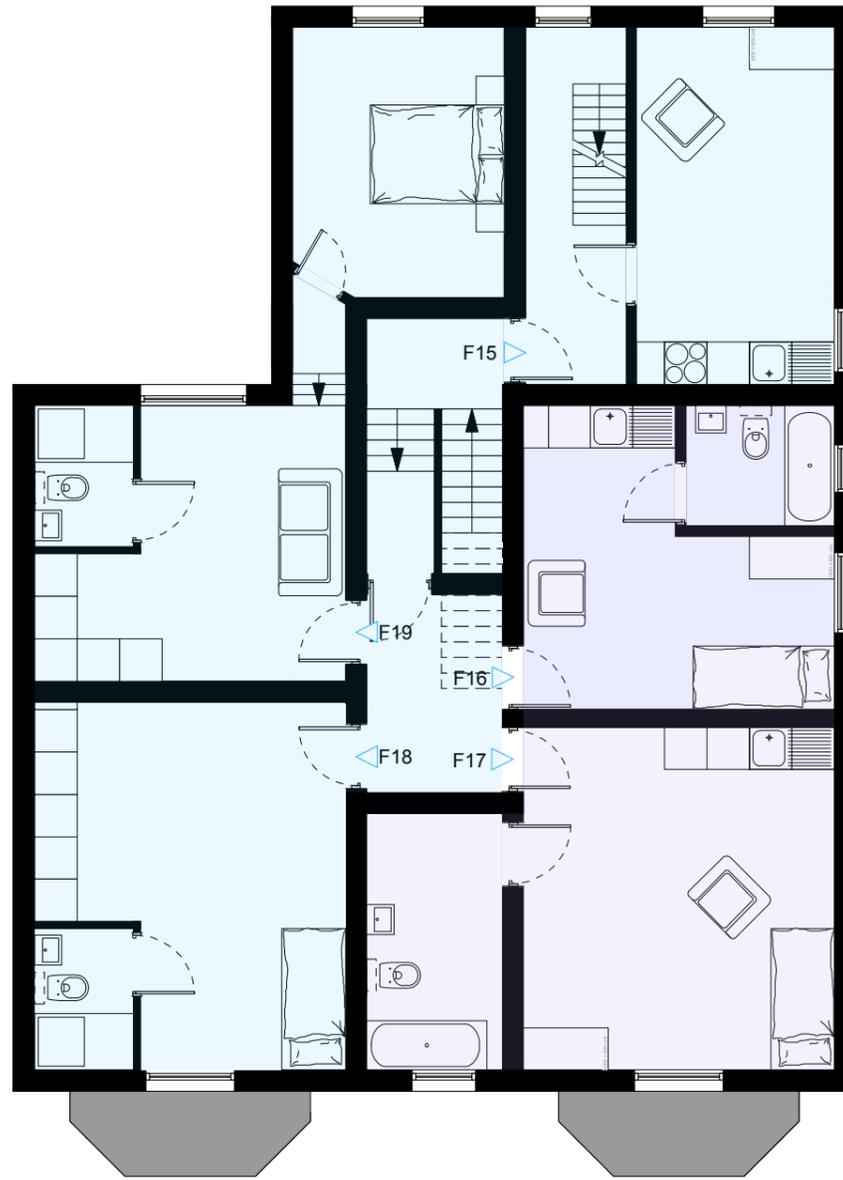
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 www.conceptdp.co.uk



proposed ground floor plan

[internal layout as consented 12/01600/FUL application]



proposed first floor plan

[internal layout as consented 12/01600/FUL application]

**accommodation schedule**

**previous**

- 01 1 bedroom flat @ 70sq/m
- 02 1 bedroom flat @ 45sq/m
- 03 1 bedroom flat @ 60sq/m
- 04 1 bedroom flat @ 56sq/m
- 05 2 bedroom flat @ 56sq/m

**existing**

ground floor

- 01 1 bedroom flat @ 70sq/m
- 02 1 bedroom flat @ 45sq/m
- 03 2 bedroom flat @ 56sq/m

first floor

- F16 studio flat @ 19sq/m
- F17 studio flat @ 29sq/m
- F18 studio flat @ 22sq/m
- F19 1 bedroom flat @ 31sq/m

7 flats on site

[5 flats existing, 2 flats retrospective]

**proposed**

ground floor

- F10 1 bedroom flat @ 33sq/m
- F11 studio flat @ 19sq/m
- F12 studio flat @ 24sq/m
- F13 studio flat @ 26sq/m
- F14 studio flat @ 28sq/m

first floor

- F15 1 bedroom flat @ 40sq/m
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- F17 studio flat @ 29sq/m
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- F19 1 bedroom flat @ 31sq/m

7 x studio flats

3 x 1 bedroom flats

increase of 5 units to 10 units

layout as per consented 12/01600/FUL application

single unit as per consented 12/01600/FUL application split to form 2 separate units

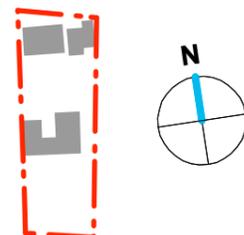
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|-------------|------------------------|-------------|----------|
| Project:    | 32 Clifton Road        | Drawn by:   | RW       |
| Drawing:    | Proposed Floor Plans 1 | Checked by: | RW       |
| Drawing No: | C18/022.09             | Revision:   | *        |
| Scale:      | 1:100 @ A3             | Date:       | Mar 2018 |

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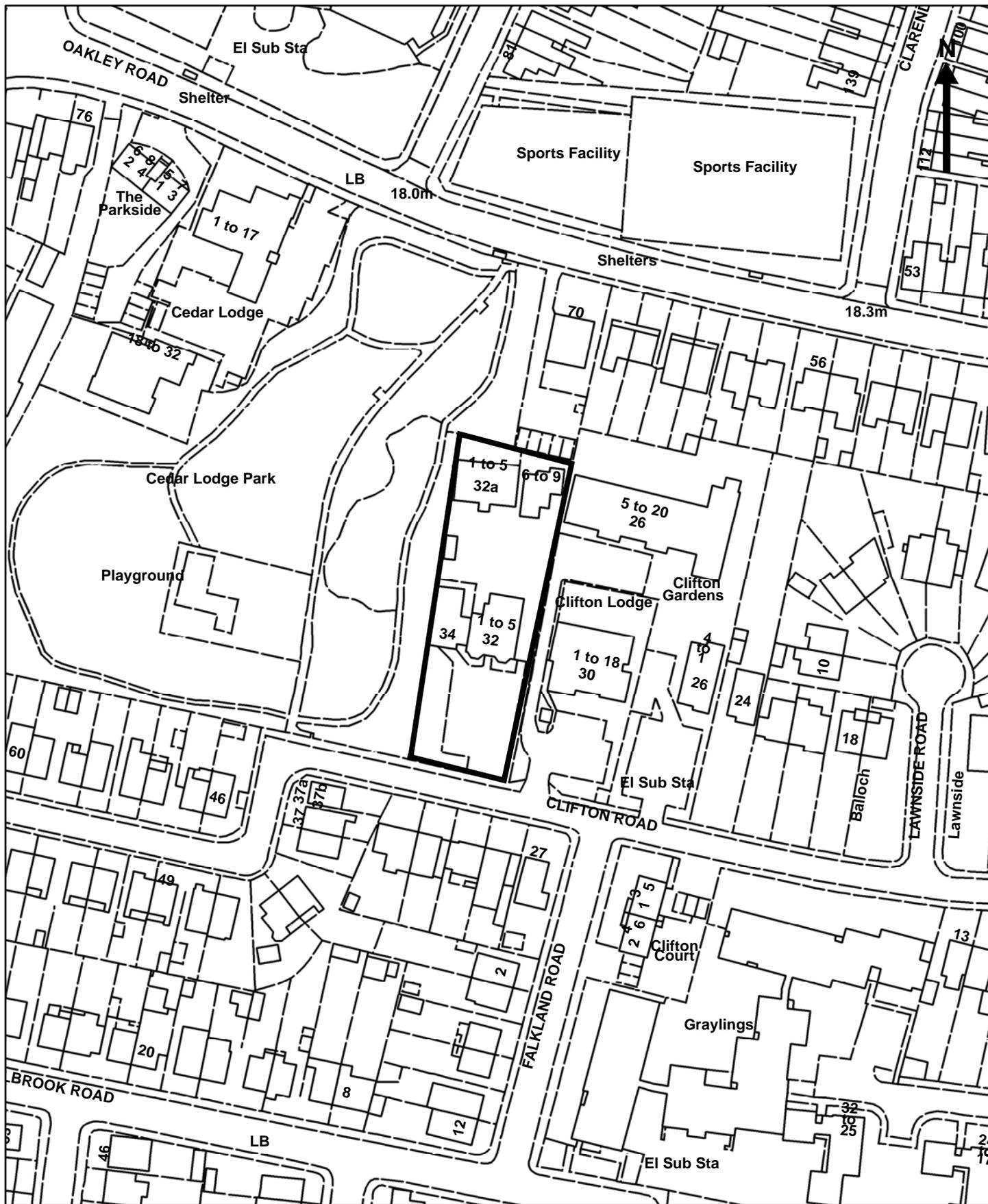
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# Agenda Item 7

# 18/01332/FUL

Appendix 4



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# Agenda Item 8

## Planning and Rights of Way Panel 9<sup>th</sup> October 2018 Planning Application Report of the Service Lead – Infrastructure, Planning & Development

|   |  |                             |   |
|---|--|-----------------------------|---|
| <b>Application address:</b><br>2 Victor Street, Southampton   |  |                             |   |
| <b>Proposed development:</b><br>Erection of a part 6-storey, part 5-storey building containing 45 flats (5x 3-bed, 6x 2-bed, 34x 1-bed) with associated parking and cycle/refuse storage, following demolition of existing building (Outline application seeking approval for Access, Appearance, Layout and Scale) (amended description) |  |                             |   |
| <b>Application number</b>   | 17/02443/OUT   | <b>Application type</b>     | FUL                                       |
| <b>Case officer</b>   | Simon Mackie   | <b>Public speaking time</b> | 15 minutes                                |
| <b>Last date for determination:</b>   | N/A  | <b>Ward</b>                 | Shirley                                   |
| <b>Reason for Panel Referral:</b>   | Vary original Planning & Rights of Way Panel resolution in relation to the Affordable Housing obligation | <b>Ward Councillors</b>     | Cllr Coombs<br>Cllr Chaloner<br>Cllr Kaur |
| <b>Referred by:</b>   | N/A  | <b>Reason:</b>              | Viability Issues                          |

|                               |   |
|-------------------------------|---|
| <b>Applicant:</b> Mr S Reeves | <b>Agent:</b> Rob Wiles - Concept Design & Planning |
|-------------------------------|---|

|                               |  |
|-------------------------------|--|
| <b>Recommendation Summary</b> | <b>Delegate to the Service Lead - Infrastructure, Planning and Development to amend the recommendation from the original Planning and Rights of Way Panel Report (13.3.18) as appended, in relation to recommendation (ii) the Affordable Housing Head of Term, to waive the provision, based on the recommendation of the DVS viability appraisal report, subject to the inclusion within the Section 106 Agreement of the relevant economic viability wording and review clauses</b> |
|-------------------------------|--|

|   |            |
|---|------------|
| <b>Community Infrastructure Levy Liable</b> | <b>Yes</b> |
|---|------------|

|                          |  |
|--------------------------|--|
| <b>Appendix attached</b> |  |
| 1                        | Original Planning and Rights of Way Panel Report (13 <sup>th</sup> March 2018) |
| 2                        | 13 March 2018 – Panel Minutes  |
| 3                        | DVS Viability Appraisal Report (14.9.18)                                       |

## **1.0 Recommendation in Full**

Delegate to the Service Lead – Infrastructure, Planning and Development to conditionally approve in line with the recommendation supported by the Planning Panel in March 2018 including a variation in relation to (ii) (Affordable Housing), to waive the Affordable Housing provision, on viability grounds, and introduce the relevant viability wording and review mechanism clauses, which will require the development to come forward in the short term and complete within a defined timeframe from the date of the DVS Viability Appraisal Report.

## **2.0 Proposal & Background**

- 2.1 Further to the previous Panel Report taken to the 13<sup>th</sup> March 2018 Planning & Rights of Way Panel, where the resolution was to approve the scheme with a positive Affordable Housing requirement or the submission of an independently assessed viability appraisal, the applicant has now confirmed that nil affordable housing is viable from this scheme
- 2.2 Subsequent to the previous Planning & Rights of Way Panel recommendation a viability assessment has been submitted and has been the subject of an independent appraisal by the District Valuers (DVS), whose appraisal report is attached at Appendix 3, which has found the proposed development to have viability issues to the point that the scheme cannot support an Affordable Housing provision even on a reduced basis.
- 2.3 A variation is therefore sought, to the original Planning & Rights of Way Panel resolution from the 13<sup>th</sup> March 2018, to waive the Affordable Housing provision subject to the inclusion of the council's standard viability review and completion clauses, to ensure that if the development does not come forward for development in the short term, the council has the ability to review the viability position at a fixed point in the future.

## **3.0 Relevant Planning Policy**

- 3.1 The planning application returns to the Planning Panel for further scrutiny as planning permission has not yet been granted. The Panel are free to consider the scheme afresh and apply the development plan and associated issues as set out in the main report from March 2018. The Panel will, however, note that the Development Plan for Southampton currently allows viability to be taken into account as set out within the "saved" policies of the City of Southampton Local Plan Review (as amended 2015), the City of Southampton Core Strategy (as amended 2015) at Policy CS15 – Affordable Housing. This policy confirms that a scheme's viability is a material consideration and where an independent assessment confirms that a scheme is struggling with its delivery, it may still be policy compliant despite a shortfall to the 35% Affordable Housing requirement.

## **4.0 Relevant Planning History**

- 4.1 The Planning and Rights of Way Panel resolved to grant this scheme on the 13<sup>th</sup> March 2018, but at that time the report was silent on the scheme's overall viability and a decision was made on the assumption of 35% affordable housing. Since that decision the scheme's viability has been questioned and the applicants have amended their scheme and provided their open book appraisal.

## **5.0 Planning Consideration Key Issues**

- 5.1 Whilst the key issues as set out in the attached report remain valid, and open for debate, the key issue now for consideration is whether or not the Planning & Rights of Way Panel are willing to vary the terms of the original Planning & Rights of Way

Panel resolution by way of waiving the provision of the Affordable Housing obligation, based on the recommendation of the DVS viability appraisal report on viability grounds, with the aim of encouraging the development proposal to be built out in the short term, whilst still providing the proposed development with planning consent

5.2 The DVS assessment concludes that:

*‘Our appraisal shows that the proposed scheme will achieve a profit level of approximately 8.4% on GDV which, in the current economic climate, would mean that debt finance may not be able to be secured and brings into question the deliverability of the proposed scheme. It should be noted that the applicant anticipates a profit level of just 7% on GDV.*

*In order for the scheme to be deliverable we consider that a minimum profit level of 15% on GDV should be achieved which, in this case would mean increasing the anticipated revenue by at least an additional £400,000. From our research on sales evidence, there are no recent sales and nothing currently on the market which would suggest this is achievable at the present time.’*

5.3 Officers consider that the benefits of redeveloping the site in this manner and the need to comply with the policy constraints outweigh the requirement for affordable housing in this case. If the proposal is rejected the proposed scheme may not be implemented in the short term and a revised planning proposal may be required. That said, the Panel may attach greater weight to the need for affordable housing in this part of the City but in doing so – and thereby rejecting this application – the Council would then need to defend an appeal where an independent Inspector is likely to attach significant weight to the DVS report (also independent)

5.4 Officers recommend that the scheme should again be supported for the reasons set out in the attached report as updated by the DVS conclusions.

## **6.0 Conclusion**

6.1 As such, the proposal is recommended for approval subject to securing the matters set out in the recommendations section of this report and the report set out at Appendix 3.

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**Planning and Rights of Way Panel 13<sup>th</sup> March 2018**  
**Planning Application Report of the Service Lead - Infrastructure, Planning and Development**

|   |
|---|
| <b>Application address:</b><br>2 Victor Street, Southampton |
|---|

|   |
|---|
| <b>Proposed development:</b><br>Erection of a part 6-storey, part 5-storey building containing 45 flats (5x 3-bed, 6x 2-bed, 34x 1-bed) with associated parking and cycle/refuse storage, following demolition of existing building (Outline application seeking approval for Access, Appearance, Layout and Scale) (amended description) |
|---|

|                                     |              |                             |            |
|-------------------------------------|--------------|-----------------------------|------------|
| <b>Application number</b>           | 17/02443/OUT | <b>Application type</b>     | FUL        |
| <b>Case officer</b>                 | Mat Pidgeon  | <b>Public speaking time</b> | 15 minutes |
| <b>Last date for determination:</b> | 16.03.2018   | <b>Ward</b>                 | Shirley    |

|                                   |   |                         |   |
|-----------------------------------|---|-------------------------|---|
| <b>Reason for Panel Referral:</b> | Major Development with 5 or more objections | <b>Ward Councillors</b> | Cllr Chaloner<br>Cllr Coombs and<br>Cllr Kaur |
|-----------------------------------|---|-------------------------|---|

|                |   |
|----------------|---|
| <b>Reason:</b> | Insufficient parking, poor design and out of character with the area. |
|----------------|---|

|                               |   |
|-------------------------------|---|
| <b>Applicant:</b> Mr S Reeves | <b>Agent:</b> Concept Design & Planning |
|-------------------------------|---|

|                               |  |
|-------------------------------|--|
| <b>Recommendation Summary</b> | <b>Delegate to Service Lead - Infrastructure, Planning and Development to grant planning permission subject to criteria listed in report</b> |
|-------------------------------|--|

|   |     |
|---|-----|
| <b>Community Infrastructure Levy Liable</b> | Yes |
|---|-----|

**Reason for granting Permission**

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations including the demolition of the existing building, neighbouring amenity, design, character, parking and highway safety 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 as set out in the report to the Planning & Rights of Way Panel on 13<sup>th</sup> March 2018. The scheme is judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended and 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).

“Saved” Policies – SDP1, SDP4, SDP5, SDP6, SDP7, SDP8, SDP9, SDP10, SDP11, SDP12, SDP13, SDP14, SDP16, SDP17, SDP22, HE6, H1, H2 and H7 of the Local Development Framework Core Strategy Development Plan Document (March 2015).

Policies – CS3, CS4, CS5, CS13, CS14, CS15, CS16, CS18, CS19, CS20, CS22 and CS25 of the City of Southampton Local Plan Review (March 2015) and as supported by the adopted Residential Design Guide SPD (2006).

| <b>Appendix attached</b> |                           |
|--------------------------|---------------------------|
| 1                        | Development Plan Policies |

### **Recommendation in Full**

1. Delegate to the Service Lead - Infrastructure, Planning and Development to grant planning permission, subject to the planning conditions recommended at the end of this report and 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, including the bus stop relocation, service bay, and any necessary Traffic Regulation Orders to facilitate any changes, in line with Policy SDP4 of the City of Southampton Local Plan Review (as amended 2015), policies CS18 and CS25 of the adopted LDF Core Strategy (as amended 2015) and the adopted SPD relating to Planning Obligations (September 2013);
  - ii. Provision of affordable housing in accordance with Policies CS15, CS16 & CS25 of the Local Development Framework Core Strategy Development Plan Document - Adopted Version (amended 2015) and the adopted SPD relating to Planning Obligations (September 2013) or details of an independently assessed viability of the project with appropriate triggers for reappraisal;
  - iii. Submission of a Training & Employment Management Plan committing to adopting local labour and employment initiatives, both during and post construction, in accordance with Policies CS24 and CS25 of the Local Development Framework Core Strategy Development Plan Document - Adopted Version (as amended 2015) and the adopted SPD relating to Planning Obligations (September 2013);
  - iv. Submission of a highway condition survey to ensure that any damage to the adjacent highway network attributable to the construction process is repaired by the developer;
  - v. Restrictions to prevent future occupiers benefitting from parking permits in surrounding streets;
  - vi. Financial contributions towards Solent Disturbance Mitigation in accordance with policy CS22 (as amended 2015) of the Core Strategy and the Conservation of Habitats and Species Regulations 2010; and
  - vii. 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).

2. In the event that the legal agreement is not completed within three months of the decision of the Planning and Rights of Way Panel, the Service Lead - Infrastructure, Planning and Development be authorised to refuse permission on the ground of failure to secure the provisions of the Section 106 Legal Agreement. Should the scheme be viability tested the application will be brought back to Panel for determination.
3. That the Service Lead - Infrastructure, Planning and Development be given delegated powers to add, vary and /or delete relevant parts of the Section 106 agreement and/or conditions as necessary.

## **1 The site and its context**

- 1.1 The site is included within the boundary of Shirley Town Centre on the south side of Victor Street, and on a shared corner with Crown Street. The site is currently occupied by a part one, part two and part three storey building currently used as a privately operated children's play centre. Vehicular access into the site is achieved from Crown Street on the southern side of the site. The site is almost entirely hard surfaced at present with only a small patch of amenity area laid to grass at the northern end where the current building on site is generously set back from the northern corner, at the junction of Victor Street and Crown Street.
- 1.2 The immediate character of the local area is formed of a range of building types including residential properties (mostly flats on the opposite side of Victor Street), a doctor's surgery, a primary school, purpose built retail units within the Town Centre precinct and the neighbouring Salvation Army hall. Building materials used locally vary considerably and there is no consistency in terms of overall design or scale in the neighbourhood. The wider neighbourhood also includes some taller buildings including Shirley Towers.

## **2 Proposal**

- 2.1 Outline planning permission is sought with all matters except landscaping submitted for consideration. The proposal seeks to redevelop the site to provide a purpose built residential scheme for a part 6-storey, part 5-storey building containing 45 flats (5x 3-bed, 6x 2-bed, 34x 1-bed) with associated parking and cycle/refuse storage. An amenity area is provided at first floor level with seven car parking spaces below. Pedestrian access to the site would be on the western side of the building with the vehicular access on the southern side. A contemporary design is proposed and would include inset balconies for each flat.

## **3 Relevant Planning Policy**

- 3.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015). The most relevant policies to these proposals are set out at **Appendix 1**.

- 3.2 The National Planning Policy Framework (NPPF) came into force on 27<sup>th</sup> 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.
- 3.3 Major developments are expected to meet high sustainable construction standards in accordance with Core Strategy Policy CS20 and Local Plan “saved” Policy SDP13.

#### **4 Relevant Planning History**

- 4.1 The planning history for the site suggests that the use of the site as a social club dates from the mid 1960’s. The site is currently used as a soft play centre ‘The Factory of Fun’.

#### **5 Consultation Responses and Notification Representations**

- 5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, erecting a site notice (23/01/2018) and by posting an advertisement in the local press (05/01/2018 and 26/01/2018). A re-notification took place as the scheme is for 45 flats and not 44 (as suggested by the planning application form). At the time of writing the report **18 representations** have been received, including representations from the City of Southampton Society and all 3 ward Councillors. The following is a summary of the points raised:
- 5.2 **Overdevelopment of the site.** RESPONSE: The site is located within Shirley Town Centre where higher density residential development can be supported. The density of the development is 346 dwellings per hectare (dph) based on a site area of 1260 square metres. As the site lies within an area of high accessibility the principle of a development that has a density of over 100 dph is supported.
- 5.3 **Noise from construction.** RESPONSE: Construction hours will be restricted by a condition to ensure that disturbance is not at unreasonable hours of the day at the same time as allowing the construction to take place in an efficient manner.
- 5.4 **Noise from residents.** RESPONSE: Environmental Health have been notified of this application and no objection has been received on these grounds. There is no evidence to suggest that this residential scheme will exhibit unusually harmful noise levels, and if it did there are other enforcement powers that can be called upon to deal with this unreasonable behaviour.
- 5.5 **Drainage.** RESPONSE: Objections have not been received from the Council’s Flood Risk Officer or Southern Water.
- 5.6 **Impact of demolition and construction on neighbouring use and nearby amenity.** RESPONSE: A construction management plan condition will be added. The condition will restrict construction on Sundays and control dust and

noise generated. A highways licence will be needed if the highway is be needed to aid construction.

- 5.7 **Impact of construction and proposed residential use on highway safety and congestion.** RESPONSE: It is acknowledged that locally there is a doctor's surgery, Sainsbury's super market and a primary school. Where appropriate financial contributions will be sought to mitigate the highways impact of the development through the Section 106 agreement. Highways Development Management Officers have assessed the application and have not raised an objection.
- 5.8 **Insufficient onsite car parking provided.** RESPONSE: The proposal has seven parking spaces but is located in a Town Centre location with excellent links to services, jobs and public transport. The city centre is a short bus ride away. There are numerous traffic restrictions in the streets near to the site to prevent long stay parking. There are also controlled parking zones (CPZ) nearby that restrict overspill parking from this development. Whilst it is acknowledged that there may be some overspill parking this number is likely to be small and as parking on site is available for only seven cars the accommodation is not likely to be an attractive option for car owners who are not allocated one of the seven spaces. In addition future occupants of the development would be restricted from obtaining parking permits (a condition of the Section 106 agreement is recommended) in nearby (and future) controlled roads. As such, the development is unlikely to result in significant overspill car parking on the surrounding streets.
- 5.9 **Design and scale not in keeping with the surroundings.** RESPONSE: The site is located on a corner and separated by roads from nearby buildings other than the adjacent Salvation Army building. Design, scale and appearance of buildings locally vary considerably. Without a defined character to conform to there is scope to provide an architecturally independent building. It is also noted that Shirley Towers is close by, which is significantly taller and more imposing. Accordingly the proposed building is judged to be an acceptable height for this part of the city, offers scope for regeneration of a tired site and has not received an objection from the Council's design advisor.
- 5.10 **Overshadowing nearby school, nursery and doctors surgery.** RESPONSE: The shadow created by the building would not be significantly harmful. Our guidance does not seek to protect the amenity of such uses.
- 5.11 **Overlooking the school playground.** RESPONSE: Not a material planning consideration but the school building itself separates the Wordsworth playing field from the development and the nursery school is screened from the street in any event.
- 5.12 **Overlooking properties in Ridding Close.** RESPONSE: The residential amenity enjoyed by occupants of Ridding Close will not be significantly harmed as a consequence. The separation distances are suitable to prevent harm. Note that at its closest the building containing flats 1 – 36, as accessed from Ridding Close, is 38m from the application site.
- 5.13 **Fails to address housing need (excessive number of one bed flats) and insufficient family dwellings.** RESPONSE: To comply with policy CS16 30%

of the units should be family units (defined as three bedroom units with direct access to private gardens). There are mitigating circumstances which allow Officers to support the proposal in light of the fact that only five three bedroom dwellings are proposed; they are discussed below but do not meet our description of family dwellings as they have limited external private space.

- 5.14 **Air quality during demolition and construction.** RESPONSE: Not objected to by Environmental Health. Building regulations will determine the safe method of demolition and construction and all development will have impacts during the construction phase. This in itself is not a sufficient reason to oppose new development.
- 5.15 **Loss of community area for families and children.** RESPONSE: There are no planning policy restrictions which prevent the change of use/redevelopment of the site, which is currently used as a privately operated soft play centre (i.e. not a designated community use protected by Policy CS3).
- 5.16 **Impact on education provided at the nearby school (noise).** RESPONSE: Construction/demolition will be managed through relevant conditions and building regulations. It is unreasonable to prevent the development on the basis of the proximity to a school. The school itself continued to function when it was recently redeveloped and provided.
- 5.17 **Poor residential environment (noise from adjacent roads, no usable outside space, small bedrooms within the 2 bed units.** RESPONSE: The site is located within walking distance of St. James Park and has direct links with the City Centre and the associated public parks. Each flat will have some private outside space in the form of a balcony. The Council does not have minimum room size standards but officers acknowledge that the scheme does not satisfy the external space standards for gardens of 20sq.m per flat.
- 5.18 **Poor environment for families in the three bed units.** RESPONSE: The quality of the three bed units and their ability to accommodate families will be discussed in section three below.

### **Consultation Responses**

- 5.19 **SCC Design:** No objection. The timber fence proposed to define the podium is a poor solution and therefore needs to be amended to ensure that the boundary is more in keeping with the rest of the architectural aesthetic of the building.
- 5.20 **SCC Highways:** The site is situated within a district centre location and is within walking distance of many public facilities as well as a busy bus corridor. Due to the accessibility of the site, the level of parking is considered to be acceptable. In addition, within 200m of the site, there is little scope for overspill parking due to parking restrictions.
- 5.21 The main concerns regarding the highway in this area is the problem with congestion during school peak hours. Due to the high demand of pedestrian movements there is a conflict between pedestrians and vehicular movements which is quite high during peak hours also. Although it is an existing situation, the addition of 45 residential units could exacerbate this problem. Therefore

any possible improvements should be considered to help mitigate any additional impact.

- 5.22 There is a lack of pedestrian dropped crossing linking this site to the south-western section of the car park which can be dealt via the Section 106.
- 5.23 The existing site does contain a vehicular access but only for one small vehicle. The proposal will increase the vehicular activity along Crown Street but the level of impact is considered to be acceptable subject to sufficient sightline being secured, mainly ensuring visibility can be achieved looking pass the proposed landscaping looking right when exiting the site.
- 5.24 The refuse store should have its doors fronting Crown Street so access to them is easy and practical with a secured door.
- 5.25 No objection subject to relevant conditions and a Section 106 agreement that includes site specific highway contributions to mitigate the impact of the development in highway terms.
- 5.26 **SCC Employ:** An Employment and Skills Plan obligation will be required via the S106 Agreement.
- 5.27 **SCC Flooding:** Major development is expected to utilise sustainable drainage systems to manage runoff, unless demonstrated to be inappropriate. No objection subject to recommended condition.
- 5.28 **SCC Sustainability Team:** No objection subject to the imposition of relevant conditions seeking energy and water efficiency improvements (equivalent to code for sustainable home level 4). As such the scheme enables the sustainability of the site, through water and energy efficiency, to be improved.
- 5.29 **Southern Water:** No objection subject to the imposition of relevant conditions and informatives.
- 5.30 **SCC Archaeology:** There is the potential for archaeological deposits to be discovered during construction. The existing building on site is not of any historical merit. No objection is raised subject to the imposition of relevant conditions.
- 5.31 **SCC Ecology:** The application site consists of a building and small area of hard standing which have negligible biodiversity value. The probability of a bat roost being present in the building is negligible due to the high levels of night time illumination, with street lights adjacent to two sides of the building and low levels of vegetation. If a biodiverse green roof is included in the design of the development this would be of benefit from an ecological perspective and will also help to create optimum ambient air temperatures for the operation of solar panels. It will also assist in the management of surface water runoff.

## **6 Planning Consideration Key Issues**

- 6.1 The key issues for consideration in the determination of this planning application are:
- Principle of development;

- Design;
- Neighbouring residential amenity;
- Quality of the living environment;
- Highway safety and parking;
- Landscaping; and
- Development Mitigation.

#### Principle of development

- 6.2 This site is identified in the Local Plan Review as being within the boundary of Shirley Town Centre. Policy CS3 therefore relates. Policy CS3 does not support proposals that result in the loss of a community facility if it is viable for the commercial, public or community sector to operate it. It is understood that currently the building is occupied by a commercial business associated with a children's play centre and, as such, the scheme proposed does not represent the loss of a community facility.
- 6.3 The site is white land on the adopted proposals map for Southampton. As such the site is not allocated for housing. Whilst the primary role of town, district and local centres is to provide shopping and community centres as the site is not within the main retail frontage area and currently provides a soft play facility the principle of residential development is not opposed. This view is formed having considered the NPPF which encourages release of previously developed land for housing in sustainable locations. The Council acknowledge that there are residential properties nearby as the site is within the Town Centre and there are advantages to siting residential flats close to a Town Centre.
- 6.4 Policy H2 of the Local Plan encourages the maximum use of derelict, vacant and underused land for residential development. Policy CS5 of the Core Strategy sets a minimum density of 100 dwellings per hectare for new residential development in high accessibility areas. As the site is located within Shirley Town Centre and the proposed density is 346 dwellings per hectare the scheme is compliant with policy CS5. Furthermore the City has a housing need; as detailed in Policy CS4 an additional 16,300 homes need to be provided within the City between 2006 and 2026.
- 6.5 Policy CS16 seeks a target of 30% family housing on sites where 10 or more residential properties are proposed. Family units are defined as three bedroom units with direct access to private amenity space. The amenity space should be fit for its intended purpose and should measure (in the case of flatted schemes) 20 sq.m per flat. To comply with policy CS16 the scheme should therefore provide at least 13 (rounded down) family units. The proposal however fails to provide any three bed flats with direct access to suitable garden space. That said there are five three bed flats proposed on site and two of which will have direct access to the first floor roof terrace with private spaces being provided for them. In addition the other three three bedroom units will have access to balconies. Whilst this is not deemed to achieve the requirements for family housing given the constraints of the site; namely the use of this previously developed land, the position of the site adjacent to a potentially busy junction

and limited available space on the site to form garden space and the location within Shirley Town Centre it is considered that the site is not conducive to family housing. Officers are of the opinion that this site should be optimised for housing delivery and a scheme of family housing would not achieve this.

- 6.6 In principle the scheme is considered to be acceptable in this location as it would result in making efficient and effective use of previously developed land in a sustainable location as recommended in NPPF and local planning policies. A lower density could be secured with family units however this isn't deemed to be the best use for the site. The NPPF introduces a presumption in favour of sustainable housing development and the use of previously developed land. Therefore the principle of a high density development is generally supported if the Panel agree that it meets design and environmental policies as discussed further in this report.

### Design

- 6.7 The proposal is to be a simple contemporary design with the main element being brickwork. Recesses in the facade provide each flat with amenity areas whilst breaking up the mass and providing interest from the street scene. A small element of cladding would also be used. The recesses in each of the facades will also provide each flat with amenity areas in the form of inset balconies. The smaller fifth floor is set back which minimises the impact of the upper floor.
- 6.8 There is no uniform character to the buildings within the vicinity and therefore the materials and design chosen are acceptable. Building sizes also vary significantly in the neighbourhood including 2 storey Doctors Surgery, 2 storey Salvation Army building, 3 storey school building, 3 storey buildings fronting Church Street, 4 storey flats fronting Ridding Close and the 16 storey Shirley Towers building and as such the proposed building is deemed acceptable.

### Neighbouring residential amenity

- 6.9 The development is unlikely to cause direct significant harm in terms of overshadowing, privacy or visual impact to neighbouring amenity due to the distance between the site and the closest residential properties (38m). The scheme also safeguards the future development potential of the neighbouring site to the east by not adding windows within the eastern flank elevation.
- 6.10 To ensure that the amenity of nearby residents is not significantly harmed during construction a Demolition and Construction Management Plan is recommended by planning condition. If piling for foundations is needed the timing that the piling works takes place will also be controlled by the construction hours condition. A standard condition restricting construction hours to Monday to Friday 08:00 to 18:00 hours, Saturdays 09:00 to 13:00 hours and at no time on Sundays and recognised public holidays will also be applied.

As such the proposal is considered to be acceptable in terms of its impact on nearby residential amenity and accordingly is deemed compliant with policy SDP1(i).

#### Quality of the living environment

- 6.11 All habitable rooms within the proposed building would have access to natural light, outlook and would benefit from sufficient levels of privacy. Ground floor units would have windows positioned fairly close to the pavement edge however defensible space has been formed by the use of boundary treatment (a low level brick wall with painted railings over) and landscaping, the details of which will be provided at the Reserved Matters stage. All flats receive good daylight and outlook however 12 of the flats are solely north facing with outlook across Victor Street.
- 6.12 In Southampton, a minimum of 20 sq.m of amenity space is required for new flats. With flatted development the amenity space can be provided in the form of a communal garden. Any amenity space should be usable and fit for purpose. In the case of the proposed scheme, all flats would have access to the south facing communal garden space measuring 110sq.m. In addition inset balconies of 5sq.m are provided for the majority of the flats (typically nine per floor with two having Juliette balconies). Inset balconies are preferred to 'bolt on' balconies given that privacy is improved as is shelter from the weather. Where inset balconies are not provided Juliette balconies are provided instead. It is also noted that Juliette balconies are used instead of inset balconies in response to the architectural form of the proposed building.
- 6.13 The amount of amenity space provided does not accord with the space requirements recommended in the residential design guide i.e. 900sq.m. This deficiency must be set against the advantages of living in a central location within easy walking distance of local shops and services. Planning Inspectors have supported this view in the recent past where similar situations have been proposed at other sites in the city.
- 6.14 The pedestrian entrance to the block of flats (from Crown Street) will benefit from natural surveillance. The car parking area, positioned below the shared amenity space, will be controlled by a barrier to ensure that site is secured appropriately and rough sleeping is not encouraged within the undercroft area.
- 6.15 Overall, having balanced the positive and negative elements of the scheme the quality of the residential environment is considered to be acceptable.

#### Highway Safety and Parking

- 6.16 The Highways Development Management Team is satisfied that the proposal will not directly lead to a decrease in highway safety. However it is clear that the area is highly trafficked as many objectors have raised congestion and associated highways problems within the local area (particularly at peak hours including school start and finish times) as an issue. Along with congestion existing on street parking pressure and the associated potential impact caused

by the proposal have been raised. Congestion and parking pressure are however not deemed to be sufficient reasons to justify opposing the application on planning grounds because car ownership is not necessary for potential occupants in order to gain access to facilities necessary for day to day living. In addition provided that vehicle drivers behave responsibly and drive in accordance with the highway law the safety of other highway users should not be impacted upon by the proposal.

- 6.17 A large cycle store is proposed within the ground floor of the building and spaces would be provided at a ratio of 1:1. The storage area will also be accessed internally. The storage system will be a 'Josta' 2-tier racking system. Additionally, secure hoops will also be provided within the undercroft area for visitors to use.
- 6.18 Sufficient bin storage can also be provided. To improve access to the bins on collection day doors will need to be added within the southern elevation of the building, this can be achieved by adding a condition.
- 6.19 In coming to the conclusion not to oppose the scheme in highway terms officers have taken into account the location of the development which is within a town centre and, thus, is within walking distance of many public facilities as well as a busy bus corridor. Within 200m of the site there is little scope for overspill parking also due to parking restrictions. With only seven car parking spaces proposed (to be allocated to specific occupants) and given that the site is within the Town Centre where on street parking is not convenient to access nearby it is anticipated that car ownership within a development of this nature will not be proportionally high. The level of parking is considered to be acceptable. In addition it is important to take into account saved policy SDP5 of the Local Plan which confirms that the provision of car parking is a key determinant in the mode of travel and the adopted Development Plan seeks to reduce the reliance on the private car for travel and instead promotes more sustainable modes of travel such as public transport, walking and cycling.
- 6.20 Where appropriate the Council will seek site specific highways contributions to facilitate the direct impact of the development through the Section 106 process.

#### Landscaping

- 6.21 Outline permission has been applied for with landscaping being the reserved matter for consideration at a later date. The indicative landscaping layout does however demonstrate that there is the opportunity to add soft landscaping on the boundary of the site adjacent to Victor Street and Crown Street. Officers consider that there will also be scope to add at least one tree adjacent to the corner junction of Victor and Crown Street. The scheme will also enable the Council to seek drainage improvements on the site.

#### Development Mitigation

- 6.22 As with all major development 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. The scheme triggers the Community Infrastructure Levy (CIL), affordable housing and the need for site specific highways works.

- 6.23 Policy CS15 seeks 35% affordable housing for development of 15 or more dwellings and the application is recommended on this basis. Should the applicant however seek to have the affordable housing provision viability tested the application will need to be brought back to Panel.
- 6.24 The Conservation of Habitats and Species Regulations 2010 (as amended) provides statutory protection for designated sites, known collectively as Natura 2000, including Special Areas of Conservation (SAC) and Special Protection Areas (SPA). This legislation requires competent authorities, in this case the Local Planning Authority, to ensure that plans or projects, either on their own or in combination with other plans or projects, do not result in adverse effects on these designated sites. The Solent coastline supports a number of Natura 2000 sites including the Solent and Southampton Water SPA, designated principally for birds, and the Solent Maritime SAC, designated principally for habitats. Research undertaken across south Hampshire has indicated that current levels of recreational activity are having significant adverse effects on certain bird species for which the sites are designated. A mitigation scheme, known as the Solent Disturbance Mitigation Project (SDMP), requiring a financial contribution of £181 per unit has been adopted. The money collected from this project will be used to fund measures designed to reduce the impacts of recreational activity. When the legal agreement is signed and actioned this application will have complied with the requirements of the SDMP and met the requirements of the Conservation of Habitats and Species Regulations 2010 (as amended).

## **7 Summary**

- 7.1 Overall the scheme is acceptable and the level of development proposed will not result in significant material impact on the amenities enjoyed by surrounding occupiers or the character and appearance of the area. The proposed layout and density provides an acceptable residential environment for future occupiers. The proposal is consistent with adopted local planning policies and the National Planning Policy Framework.
- 7.2 A suitable balance has been achieved between securing residential accommodation in a sustainable location and increasing the efficiency of this brownfield site whilst not detrimentally harming local amenity or highway safety.

## **8 Conclusion**

- 8.1 As such, the application is recommended for approval, subject to securing the matters set out in the recommendations section of this report and the conditions set out below.

### **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).

**PLANNING CONDITIONS**

**1. Outline Permission Timing Condition (Performance)**

Outline Planning Permission for the principle of the development proposed and the following matters sought for consideration, namely the layout of buildings and other external ancillary areas, the means of access (vehicular and pedestrian) into the site and the buildings, the appearance and design of the structure, the scale, massing and bulk of the structure, and the landscaping (both hard, soft and including enclosure details) of the site is approved subject to the following:

- (i) Written approval of the details of the following awaited reserved matters shall be obtained from the Local Planning Authority prior to any works taking place on the site:
  - the landscaping of the site specifying both the hard, soft treatments and means of enclosures and maintenance schedule.
- (ii) An application for the approval of the outstanding reserved matters shall be made in writing to the Local Planning Authority before the expiration of three years from the date of this Outline Permission
- (iii) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last application of the reserved matters to be approved.

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 91 and Section 92 of the Town and Country Planning Act 1990 (as amended).

**2. Approved Plans [Performance Condition]**

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.

**3. Details of building materials to be used [Pre-Commencement Condition]**

Notwithstanding the information shown on the approved drawings and application form, with the exception of site clearance, demolition and preparation works, no development works shall be carried out until a written schedule of external materials and finishes, including samples and sample panels where necessary, has been submitted to and approved in writing by the Local Planning Authority. These shall include full details of the manufacturer's composition, types and colours of the external materials to be used for external walls, windows, doors, rainwater goods, balcony balustrading, balcony underside, the roof of the proposed buildings and the boundary treatment to the first floor amenity space. It is the Local Planning Authority's practice to review all such materials on site. The developer should have regard to the context of the site in terms of surrounding building materials and should be able to demonstrate why such materials have been chosen and why alternatives were discounted. If necessary this should include presenting alternatives on site. Development shall be implemented only in accordance with the agreed details. Notwithstanding the approved plans detailing timber cladding

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.

Note to applicant. Use of close boarded timber fencing will not be acceptable to define the amenity space at first floor level. The boundary treatment defining the amenity space, visible from the public realm will need to be in keeping with the rest of the architectural

aesthetic of the building. The most appropriate way to achieve this will be to use brick which matches one of the bricks used for the building.

#### **4. Window reveal details [Performance Condition]**

The reveals for the windows hereby approved shall be at least 100mm deep.

Reason: To ensure the quality of all window reveals.

#### **5. Archaeological watching brief with provision for excavation 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.

#### **6. Archaeological watching brief with provision for excavation 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.

#### **7. Cycle storage facilities [Performance Condition]**

Before the development hereby approved first comes into occupation, secure and covered storage for bicycles shall be provided in accordance with the plans hereby approved and thereafter retained as approved.

Reason: To encourage cycling as an alternative form of transport.

#### **8. Refuse & Recycling [Performance Condition]**

Before the development hereby approved first comes into occupation, the storage of refuse and recycling shall be provided in accordance with the hereby approved plans (as amended by condition 9) and the details listed below, and thereafter retained as approved.

- The collection doors are to be of sturdy construction and hinged to open outwards with a minimum opening of 1.4m wide, to have level access avoiding thresholds, and a lock system to comply with SCC standard lock requirements operated by a coded key pad. It must be possible to secure the doors open whilst moving the bins.
- Internal lighting must operate when doors are open.
- Tap and wash down gulley must be provided with suitable falls to the floor.
- Internal doors/walls/pipework/tap/conduits must be suitably protected to avoid damage caused by bin movements.
- The access path to the bin store shall be constructed to footpath standards and to be a minimum width of 1.5m.
- The gradient of the access path to the bin store shall not exceed 1:12 unless suitable anti-slip surfacing is used, and still shall not exceed 1:10.
- A single dropped kerb to the adjacent highway will be required to access the refuse vehicle with the Euro bin.
- The developer must contact the City Council's refuse team eight weeks prior to occupation of the development to inspect the new stores and discuss bin requirements, which are supplied at the developer's expense. Email [waste.management@southampton.gov.uk](mailto:waste.management@southampton.gov.uk).

Reason: In the interests of visual amenity, the amenities of future occupiers of the development and the occupiers of nearby properties and in the interests of highway safety.

### **9. Bin Store Door [Pre-Occupation Condition]**

Notwithstanding the approved plans there will need to be doors to the bin store added into the southern/Crown Street elevation; accordingly a revised southern elevation, and ground floor plan showing bin store doors, shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. Once approved the development shall be carried out in accordance with the approved plans and the bin store doors shall remain in place in perpetuity. The doors to the bin store shall be closed and securely locked during times of the day when they are not in use by refuse collectors or residents of the hereby approved development.

Reason: To assist refuse collection and in the interests of safety and security.

### **10. Security gate [Pre-Commencement Condition]**

Prior to the occupation of the development the car park must be secured by an electric gate, the details of which (including its design how it will be operated) will be submitted to and approved in writing by the Local Planning Authority. Once approved the development shall be carried out in accordance with the approved details and the approved security gate shall be maintained in perpetuity.

The gates to the vehicular access shall be closed and securely locked during times of the day when they are not in use by residents of the hereby approved development.

Reason: To avoid loitering, rough sleeping, to improve security and in the interests of residential amenity.

### **11. Sightlines [Performance Condition]**

As indicated on the approved plans the sightlines from the vehicular parking area out to Crown Street shall remain unobstructed by solid boundary treatment or landscaping features in perpetuity once the development hereby approved is occupied. The sightlines shall be measured two metres either side of the entrance to the undercroft parking area and shall terminate at the boundary of the site with Crown Street. The sightlines shall be provided before the occupation of the building and maintained in perpetuity.

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

### **12. On site vehicular parking [Pre-Occupation Condition]**

The approved vehicular parking spaces (measuring at least 5m x 2.4m) and adjacent vehicular manoeuvring space (measuring at least 6m wide) shall be constructed and laid out in accordance with the approved plans prior to the first occupation of the hereby approved development. Throughout the occupation the development hereby approved the parking spaces and manoeuvring space adjacent shall not be used for any other purpose. The hereby approved car parking spaces shall not be free to use by any occupant without restriction. Car parking spaces must be allocated to and used by specific occupants/residents of the approved flats only; on no more than one space per dwelling.

Reason: To avoid congestion of the adjoining highway which might otherwise occur because the parking provision on site has been reduced or cannot be conveniently accessed; and to remove confusion of occupants in the interests of discouraging car ownership by a large proportion of residents by not providing car parking spaces free for any occupant to use.

### **13. Construction Management Plan [Pre-Commencement]**



105 Litres/Person/Day internal water use (Equivalent of Code for Sustainable Homes Level 3/4) in the form of final SAP calculations and water efficiency calculator and detailed documentary evidence confirming that the water appliances/fittings have been installed as specified 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 Adopted Core Strategy (Amended 2015).

#### **18. Sustainable Drainage [Pre-Commencement Condition].**

No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the non-statutory technical standards for SuDS published by Defra (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii. include a timetable for its implementation; and
- iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason: To seek suitable information on Sustainable urban Drainage Systems as required by government policy and Policy CS20 of the Southampton Core Strategy (Amended 2015).

#### **19. Land Contamination investigation and remediation [Pre-Commencement & Occupation]**

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.

#### **20. Use of uncontaminated soils and fill [Performance Condition]**

Any 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.

#### **21. 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. The development shall proceed in accordance with the agreed details unless otherwise agreed in writing by 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.

#### **22. 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. The development shall proceed in accordance with the agreed details and be retained as approved.

Reason: To ensure satisfactory drainage provision for the area.

#### **23. Green roof feasibility study [Pre-Commencement]**

A detailed feasibility study for a green roof must be submitted and agreed in writing with the Local Planning Authority prior to the commencement of the development hereby granted consent. If the study demonstrates the site has the capacity for the green roof, a specification shall be agreed in writing with the Local Planning Authority. The green roof to the approved specification must be installed and rendered fully operational prior to the first occupation of the development hereby granted consent and retained and maintained thereafter.

Reason: To reduce flood risk and manage surface water run off in accordance with core strategy policy CS20 (Tackling and Adapting to Climate Change) and CS23 (Flood risk), combat the effects of climate change through mitigating the heat island effect in accordance with policy CS20, enhance energy efficiency through improved insulation in accordance with core strategy policy CS20, promote biodiversity in accordance with core strategy policy CS22 (Promoting Biodiversity and Protecting Habitats), contribute to a high quality environment and 'greening the city' in accordance with core strategy policy CS13 (Design Fundamentals), and improve air quality in accordance with saved Local Plan policy SDP13.

**POLICY CONTEXT**

Core Strategy - (as amended 2015)

|      |  |
|------|--|
| CS3  | Promoting Successful Places                                |
| CS4  | Housing Delivery   |
| CS5  | Housing Density  |
| CS13 | Fundamentals of Design                                     |
| CS14 | Historic Environment                                       |
| 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             |
| CS25 | The Delivery of Infrastructure and Developer Contributions |

City of Southampton Local Plan Review – (as amended 2015)

|       |                             |
|-------|-----------------------------|
| SDP1  | Quality of Development      |
| SDP4  | Development Access          |
| SDP5  | Parking                     |
| SDP6  | Urban Design Principles     |
| SDP7  | Urban Design Context        |
| SDP8  | Urban Form and Public Space |
| SDP9  | Scale, Massing & Appearance |
| SDP10 | Safety & Security           |
| SDP11 | Accessibility and Movement  |
| SDP12 | Landscape & Biodiversity    |
| SDP13 | Resource Conservation       |
| SDP14 | Renewable Energy            |
| SDP16 | Noise                       |
| SDP17 | Lighting                    |
| SDP22 | Contaminated Land           |
| HE6   | Archaeological Remains      |
| H1    | Housing Supply              |
| H2    | Previously Developed Land   |
| H7    | The Residential Environment |

Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)

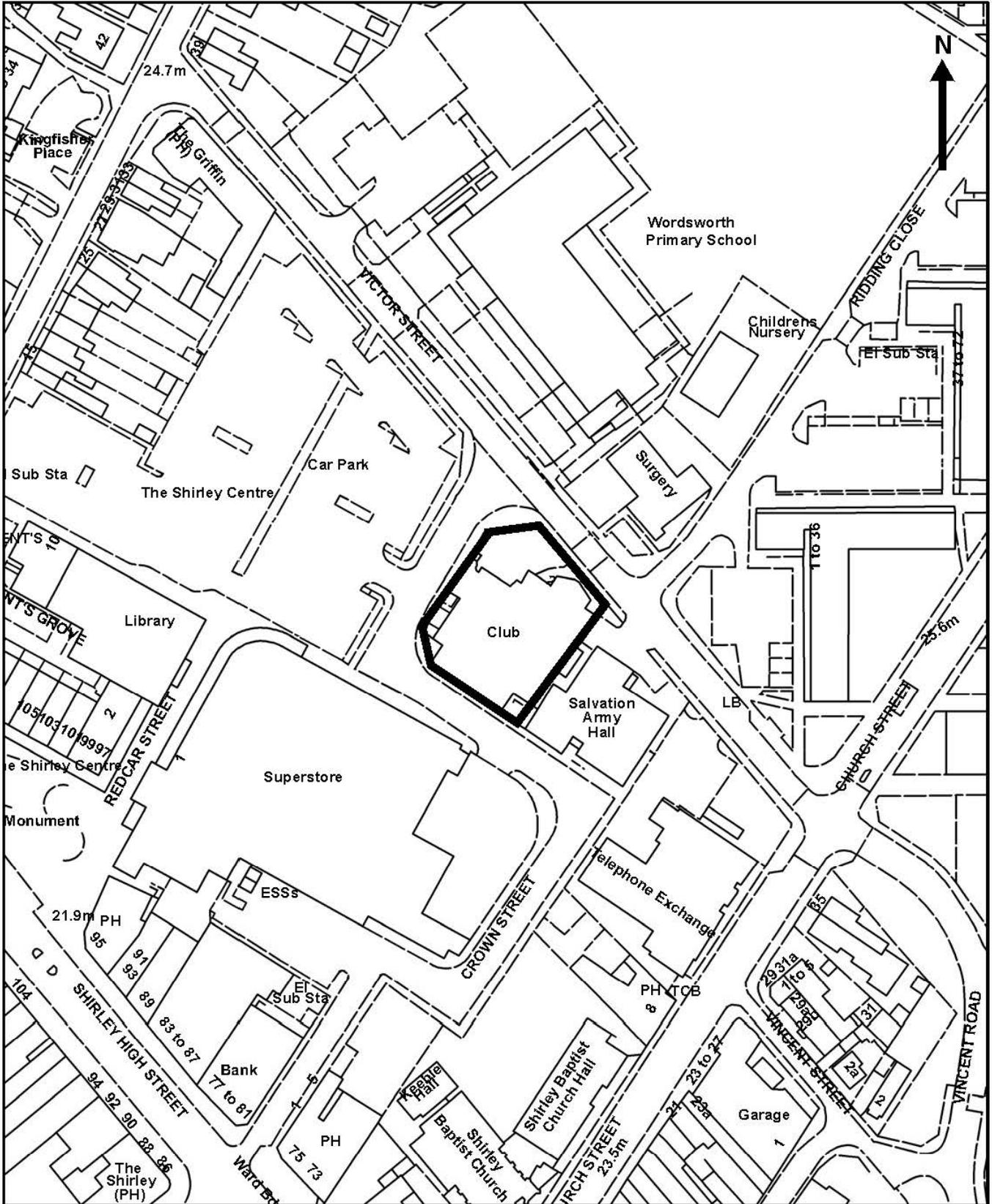
Planning Obligations (Adopted - September 2013)

Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework (2012)

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)



Scale: 1:1,250

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## **Minute extract from the Planning and Rights of Way Panel**



**13 March 2018**

Present: Councillors Denness (except Minute Number 62) (Chair), Savage (Vice-Chair), Barnes-Andrews, Claisse, Hecks, Murphy and Wilkinson

63. **PLANNING APPLICATION - 17/02443/OUT - 2 VICTOR STREET**

The Panel considered the report of the Service Lead, Planning, Infrastructure and Development recommending delegated authority be granted in respect of an application for a proposed development at the above address.

Erection of a part 6-storey, part 5-storey building containing 45 flats (5x 3-bed, 6x 2-bed, 34x 1-bed) with associated parking and cycle/refuse storage, following demolition of existing building (Outline application seeking approval for Access, Appearance, Layout and Scale) (amended description)

David Wicks and Corinne Finlay (local residents/ objecting), Rob Wiles (agent) and Councillor Coombs (ward councillor/objecting) were present and with the consent of the Chair, addressed the meeting.

The Panel then considered the recommendation to delegate authority to the Service Lead: Planning, Infrastructure and Development to grant planning permission. Upon being put to the vote the recommendation was carried.

RECORDED VOTE to grant planning permission

FOR: Councillors Denness, Hecks, Murphy, Savage and Wilkinson

AGAINST: Councillors Barnes-Andrews and Claisse

**RESOLVED** that the Panel:

- (i) Delegate to the Service Lead - Infrastructure, Planning and Development to grant planning permission, subject to the planning conditions recommended at the end of this report and to the completion of a S.106 Legal Agreement to secure:
  - a. Financial contributions towards site specific transport contributions for highway improvements in the vicinity of the site, including the bus stop relocation, service bay, and any necessary Traffic Regulation Orders to facilitate any changes, in line with Policy SDP4 of the City of Southampton Local Plan Review (as amended 2015), policies CS18 and CS25 of the adopted LDF Core Strategy (as amended 2015) and the adopted SPD relating to Planning Obligations (September 2013);

- b. Provision of affordable housing in accordance with Policies CS15, CS16 & CS25 of the Local Development Framework Core Strategy Development Plan Document - Adopted Version (amended 2015) and the adopted SPD relating to Planning Obligations (September 2013) or details of an independently assessed viability of the project with appropriate triggers for reappraisal;
  - c. Submission of a Training and Employment Management Plan committing to adopting local labour and employment initiatives, both during and post construction, in accordance with Policies CS24 and CS25 of the Local Development Framework Core Strategy Development Plan Document - Adopted Version (as amended 2015) and the adopted SPD relating to Planning Obligations (September 2013);
  - d. Submission of a highway condition survey to ensure that any damage to the adjacent highway network attributable to the construction process is repaired by the developer;
  - e. Restrictions to prevent future occupiers benefitting from parking permits in surrounding streets;
  - f. Financial contributions towards Solent Disturbance Mitigation in accordance with policy CS22 (as amended 2015) of the Core Strategy and the Conservation of Habitats and Species Regulations 2010; and
  - g. 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).
- (ii) In the event that the legal agreement is not completed within three months of the decision of the Planning and Rights of Way Panel, the Service Lead - Infrastructure, Planning and Development be authorised to refuse permission on the ground of failure to secure the provisions of the Section 106 Legal Agreement. Should the scheme be viability tested the application will be brought back to Panel for determination.
- (iii) That the Service Lead - Infrastructure, Planning and Development be given delegated powers to add, vary and /or delete relevant parts of the Section 106 agreement and/or conditions as necessary.

Private and Confidential

Simon Mackie  
Planning Agreements Officer  
Planning & Sustainability  
Southampton City Council  
Civic Centre  
Southampton  
SO14 7LY

Southampton Valuation Office  
2<sup>nd</sup> Floor Overline House  
Blechynden Terrace  
Southampton  
Hampshire. SO15 1GW

Our Reference: [REDACTED]  
Your Reference: 17/02443/OUT

[REDACTED]

Date : 14<sup>th</sup> September 2018

Dear Simon,

**DESK TOP REVIEW OF DEVELOPMENT VIABILITY ASSESSMENT  
PROPOSED SCHEME: 2 Victor Street, Southampton. SO15 5LH**

I refer to our fee quote dated 13<sup>th</sup> December 2017 and your email dated 30<sup>th</sup> July 2018 confirming your formal instructions to carry out a desk top viability assessment in respect of the above proposed development.

This report is not a formal valuation.

The date of assessment is 14<sup>th</sup> September 2018.

We have reviewed the assessment provided by Max Holmes on behalf of the applicant Mr S Reeves.

The assessment has been made by comparing the residual value of the proposed scheme with an appropriate benchmark figure having regard to the National Planning Policy Framework and the published RICS Guidance Note into Financial Viability in Planning.

The principal objective of our Brief and the subject of this report are to establish whether there is financial justification for any affordable housing and section 106 contributions.

**General Information**

It is confirmed that the viability assessment has been carried out by [REDACTED], acting in the capacity of an external valuer, who has the appropriate knowledge and skills and understanding necessary to undertake the valuation competently, and is in a position to provide an objective and unbiased valuation.

Checks have been undertaken in accordance with the requirements of the RICS standards and have revealed no conflict of interest. DVS has had no other previous material involvement with the property.

The client will neither make available to any third party or reproduce the whole or any part of the report, nor make reference to it, in any publication without our prior written approval of the form and context in which such disclosure may be made.

You may wish to consider whether this report contains Exempt Information within the terms of paragraph 9 of Schedule 12A to the Local Government Act 1972 (section 1 and Part 1 of Schedule 1 to the Local Government (Access to Information Act 1985) as amended by the Local Government (access to Information) (Variation) Order 2006.

Our assessment is provided for your benefit alone and solely for the purposes of the instruction to which it relates. Our assessment may not, without our specific written consent, be used or relied upon by any third party, even if that third party pays all or part of our fees, directly or indirectly, or is permitted to see a copy of our valuation report. If we do provide written consent to a third party relying on our valuation, any such third party is deemed to have accepted the terms of our engagement.

None of our employees individually has a contract with you or owes you a duty of care or personal responsibility. You agree that you will not bring any claim against any such individuals personally in connection with our services.

This report remains valid for 3 (three) months from its date unless market circumstances change or further or better information comes to light, which would cause me to revise my opinion.

Following the referendum held on 23 June 2016 concerning the UK's membership of the EU, the impact to date on the many factors that historically have acted as drivers of the property investment and letting markets has generally been muted in most sectors and localities. The outlook nevertheless remains cautious for market activity over the coming months as work proceeds on negotiating detailed arrangements for EU exit and sudden fluctuations in value remaining possible. We would therefore recommend that any valuation is kept under regular review.

### **Background:**

The subject site extends to approximately 0.15 Ha (0.37 Ac) and comprises a single detached building, formerly used as a working men's club but is now fitted out and occupied as a children's soft play centre with bar area. There is also an existing 3 bedroom residential flat here and the total combined floor area of the existing building has an estimated gross internal area (GIA) of 1,290m<sup>2</sup>.

The site sits on the corner junction of Victor Street and Crown Street with a large Sainsbury's supermarket directly to the south-west, and a primary school to the north. The site adjoins the site of an historic church on the south-east side which is currently occupied by the Salvation Army.

The current planning application for the site is as follows:

*'Erection of part 5, part 6 storey building to contain 45 flats with associated car parking, stores and external works'*

The applicant is stating that following their assessment the scheme with no affordable housing and £117,261 of CIL contributions and £21,000 of S.106 contributions shows a profit of 7% on gross development value and therefore no affordable units are viable.

## The Scheme:

We have been provided with the assessment undertaken on behalf of the applicant.

For the purpose of this desk top assessment we assume the areas provided by the applicant are correct and have assumed that 16 units as affordable would be policy compliant.

The scheme as proposed by the applicant is as follows:

| Type                       | Number of Units | Average Unit Size Sq m | Total Net Sq m |
|----------------------------|-----------------|------------------------|----------------|
| <b>Private Residential</b> |                 |                        |                |
| One bedroom apartment      | 34              | 49.97                  | 1,699          |
| Two bedroom apartment      | 6               | 67.83                  | 407            |
| Three bedroom apartment    | 5               | 87.0                   | 435            |
|                            |                 |                        |                |
| <b>Total</b>               | <b>45</b>       |                        | <b>2,541</b>   |

In addition, the scheme will provide;

- 7 car parking spaces in total.
- Cycle and refuse storage facilities.

The gross internal area (GIA) for the proposed block is indicated at 3,429m<sup>2</sup> which equates to a net – gross ratio of approximately 74.1% which is towards the lower end of the range we would expect for this type of development.

However, the total area includes cycle and refuse stores which account for approximately 80m<sup>2</sup> – 100m<sup>2</sup>, and the building also has a lift so overall the net-gross ratio is deemed to be within an acceptable range.

## Viability Assessment:

This report deals with each major input into the viability assessment of the scheme. This desk top assessment has been undertaken following our own research into both current sales values and current costs. We have used figures put forward by the applicant if we believe them to be reasonable.

We have used a bespoke excel based toolkit with cash flow to assess the scheme which is attached as Appendix 1.

We would summarise our assessment of the Scheme as follows:

### 1) Development Value -

#### a) Private Residential / Commercial:

The applicant has adopted the following open market sales values compared to ours:

| Type            | Applicant (Average Value) | DVS (Average Value) |
|-----------------|---------------------------|---------------------|
| 1 bed apartment | £130,000                  | £140,000            |
| 2 bed apartment | £150,000                  | £160,000            |
| 3 bed apartment | £180,000                  | £180,000            |

At this stage no comparable sales evidence has been provided to us by the applicant's representative to substantiate their submitted figures.

Within their written report they have commented that similar existing properties in this location are currently achieving re-sale values of £130,000, £150,000 and £180,000 respectively.

They then comment that they would hope a premium could be achieved for the subject units, but have not uplifted the values to reflect this.

From our own research we agree that a new-build premium could be achieved here and as a result consider that the 1 and 2 bedroom units could achieve slightly higher values as set out in the table above. The 3 bedroom values at £180,000 are in line with our revised values for the 1 and 2 bedroom units.

The values here are restricted to an extent by the lack of car parking and our revised figures take into account the fact that an additional £10,000 would need to be added to reflect a parking space.

**b) Ground rents:**

For a development of this type we would expect the residential units to be sold on a long leasehold basis with both a ground rent and service charge payable. The ground rents would have a value.

The developer has indicated a freehold value of £120,000 which equates to an average of approximately to £133.33 per unit per annum capitalised using a 5% yield.

This may be considered to be on the low side when comparing to general ground rental incomes, but from our research, ground rental incomes in this location appear to be lower than average. Therefore we have accepted the submitted freeholds value as reasonable and included the same in our appraisal.

It should be noted that the Government are currently proposing legislation to limit ground rental income. If this were to happen then it may cause us to revise our revenue figures to potentially reflect the ground rent income in the capital values.

**c) Car Parking:**

The applicant has included an additional £70,000 to account for the 7 car parking spaces. We have not been informed whether these spaces will be allocated to any particular units, and they may be available to be purchased in conjunction with the individual flats.

£10,000 per space is deemed an acceptable level of value for this taking account of the density of development in this location, close proximity to local shops (including large Sainsbury's supermarket), and close proximity to a main bus route.

**d) Gross Development Value (GDV):**

On the basis of the proposed scheme, with no affordable housing, we assess the gross development value to be in the region of **£6,810,000** whilst the applicant has adopted a total of **£6,410,000** - some £400,000 lower.

## 2) Development Costs -

### a) **Build Cost:**

The applicant has assessed the overall base build costs at £4,600,000 on the basis of approximately £1,341 per m<sup>2</sup> which is assumed to include a build contingency. We have taken account of the BCIS rates for building these types of properties and have adjusted for location.

On this basis we consider the base build costs to be reasonable as the construction rate sits between current Lower Quartile and Median figures for a 3-5 storey block which is what we would expect to see in this lower value location.

The proposed block will be part 6 storey and it is worth noting that the BCIS guide figures increase dramatically for a 6 storey+ block.

In addition, £50,000 has been included for a landscaped decking area for car parking and amenity which is also deemed reasonable for this scheme and will essentially cover the costs of all landscaping and external works required. Whilst this will be minimal due to the site coverage of the new building, there will still be associated costs to be accounted for.

b) **Build Contingency** – The applicant has not included a separate contingency for the proposed scheme but we assume that this is reflected in the overall base build costs of £4,600,000 as detailed above. We would usually expect to see 3 - 5% of base build costs allocated for build contingency.

c) **Professional Fees** – The applicant has included £200,000 for professional fees plus up to £40,790 for planning costs. This equates to approximately 5.18% of base construction costs in total. Whilst this is lower than we would usually expect to see, we have accepted it as reasonable for this scheme and included the same in our appraisal for the purposes of viability testing.

d) **Abnormal costs** – The applicant has included the following abnormal costs:

- Service connections - £138,000 (£3,000 per unit plus 1 additional for the freehold supply)
- NHBC warranties - £31,500 (£700 per unit)
- Pavement closures - £3,000
- PV Panels - £25,000 (£555.55 per unit)
- Demolition costs - £25,000

These costs are considered to be reasonable, if slightly conservative with regard to the NHBC warranties and PV panels, but we have included the same within our appraisal for the purposes of our assessment.

e) **Section 106/CIL Costs** – The applicant has included £117,261 for CIL contributions taking account of the existing building's floor space. They have also included a total of £21,000 for S.106 contributions which are believed to be estimated figures.

However, you have informed us that the total required CIL will be £214,241 and S.106 will be £69,102 and we have therefore included these figures in our appraisal instead but if this differs then it will affect our assessment.

- f) **Sales and Marketing Fees** – The applicant has included a sales and marketing fee of 1.25% of the GDV which is also intended to cover all legal sales costs and the cost of creating a show flat for each type.

This allowance is lower than we would expect when compared with other similar schemes we have assessed and therefore do not consider it to be overstated and have included the same within our appraisal for the purposes of viability testing.

- g) **Finance costs** - The applicant has adopted a finance rate of 7% which is in line with similar schemes that we have previously assessed. However, it should be noted that the applicant has based their borrowing on 50% of GDV over 30 months but for the purposes of viability testing our appraisals are constructed on the assumption of 100% debt finance.

Our total finance costs are therefore **£364,797** which is significantly higher than those estimated by the applicant at **£59,000**.

- h) **Developers Profit** – The applicant has indicated that the scheme will produce a profit level of approximately 7% on GDV but has not stated what they would usually expect from such a scheme.

For residential schemes of this type we would normally adopt a profit level of between 15% - 20% and have therefore carried out an assessment based on a 17.5% profit level.

- i) **Development Programme** – The applicant has not provided a detailed timeframe for the scheme but has indicated a total scheme length of 30 months which does not appear unreasonable. We have assumed the following programme:

- Build Period of 12 months following a 6 month lead-in period.
- Pre-sales of 15 units after practical completion followed by a sales period of 9 months for the remaining units beginning directly after the build period of 12 months.

**Land Value** – Following various appeal cases, NPPF, and RICS guidance it is well established that viability assessments are carried out in order to calculate the residual land value that the scheme can afford which is then compared to the benchmark value of the site.

The revised NPPF suggests that the Benchmark Land Value should be established on the basis of Existing Use Value (EUV), plus a premium for the landowner. However, Alternative Use Values can be taken into account where there is an existing implementable permission for that use. In these cases a premium is not added.

The applicant has assessed the EUV of the site at **£600,000** based on a current rent passing of £70,000. A capital value of £600,000 equates to a capitalisation yield of approximately 11.4%.

We have not been provided with any details of any current lease or agreement in place and have no record of this rent on our office records.

Due to the nature of the current use (children's soft play centre), the general age and condition of the building, and the fact that it is earmarked for redevelopment, it is assumed that any lease that is in place will be on a short term, or that there is a different sort of agreement in place which provides greater flexibility for both landlord and tenant.

We do however hold records from August 2013 which show that the applicant acquired the property/site on the open market for £300,000 at that time. Whilst there may have been some movement in the general market for this type of property it is not considered to be significant due to the age and nature of the existing building and therefore the acquisition price is deemed to be a more accurate reflection of the current EUV in light of lack of rental detail and current evidence.

The NPPF guidance refers to a seller incentive of between 15% and 20% on top of the EUV. It is not known whether the property has been internally refurbished or improved at all since it was acquired but if this is the case then this may have enhanced the value slightly. In light of this uncertainty and the time delay since the acquisition we consider a 20% seller incentive to be justified in this instance.

Therefore we have included a benchmark land value of **£360,000** in our appraisal for the purpose of viability testing.

In addition we have allowed for stamp duty at the current rate and agent/legal fees in our appraisal.

### **Overall assessment:**

Following our desktop assessment we are of the opinion that the proposed scheme, with no affordable housing but with £214,241 of CIL contributions, £69,102 of S.106 contributions and a developer profit of 17.5% is not viable and that no surplus would be available towards an affordable housing contribution. Our appraisal shows a deficit figure of -£619,130 (see Appendix 1.)

Whilst we have agreed with a lot of the applicant's submitted figures, some of their costs are below industry standard levels for this type of development.

The differences between ours and the applicant's figures are as follows:

- GDV (1 and 2 bedroom units only)
- Finance costs (we are higher due to the reasons detailed in section 2.g above)
- Benchmark land value

It should be noted that the applicant's viability submission is of poor quality and does not contain any reasoned evidence to substantiate their adopted figures. In addition, they have not used a development appraisal toolkit to present their results.

In order to provide the Council with an idea of the viability of the proposed scheme, we have carried out our own research of market values in this location, and of current construction costs adjusted for this location. We have accepted the applicant's submitted costs where they do not appear to be overstated for the proposed scheme.

Our appraisal shows that the proposed scheme will achieve a profit level of approximately 8.4% on GDV which, in the current economic climate, would mean that debt finance may not be able to be secured and brings into question the deliverability of the proposed scheme. It should be noted that the applicant anticipates a profit level of just 7% on GDV.

In order for the scheme to be deliverable we consider that a minimum profit level of 15% on GDV should be achieved which, in this case would mean increasing the anticipated revenue by at least an additional £400,000. From our research on sales evidence, there are no recent sales and nothing currently on the market which would suggest this is achievable at the present time.

I trust this report deals with the issues as required but please do not hesitate to contact me if you have any queries and I would welcome the opportunity of discussing this with you in greater detail.

Yours sincerely

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Reviewed by:

A large black rectangular redaction box covering the name of the reviewer.

Appendix 1 – 100% Open Market Viability Appraisal

**Appendix 1**  
**Viability Appraisal**

# Agenda Item 9

## Planning and Rights of Way Panel 9<sup>th</sup> October 2018 Planning Application Report of the Service Lead - Infrastructure, Planning & Development

|  |   |                              |   |
|--|---|------------------------------|---|
| <b>Application address:</b> 350 Shirley Road, Southampton  |   |                              |   |
| <b>Proposed development:</b> Use of part of the curtilage of 350 Shirley Road for the display and storage of motor vehicles for sale |   |                              |   |
| <b>Application number:</b>   | 18/01467/FUL                                    | <b>Application type:</b>     | FUL   |
| <b>Case officer:</b>   | John Fanning                                    | <b>Public speaking time:</b> | 5 minutes   |
| <b>Last date for determination:</b>  | 08.11.18  | <b>Ward:</b>                 | Millbrook   |
| <b>Reason for Panel Referral:</b>  | Request by Ward Member and 5 letters of support | <b>Ward Councillors:</b>     | Cllr Taggart<br>Cllr Furnell<br>Cllr Galton           |
| <b>Referred to Panel by:</b>   | Cllr Taggart                                    | <b>Reason:</b>               | Complexity of the case requires special consideration |
| <b>Applicant:</b> Mr Paul Finnegan   |   | <b>Agent:</b> Pegasus Group  |   |

|                               |                             |
|-------------------------------|-----------------------------|
| <b>Recommendation Summary</b> | <b>Decline to Determine</b> |
|-------------------------------|-----------------------------|

|   |                       |
|---|-----------------------|
| <b>Community Infrastructure Levy Liable</b> | <b>Not applicable</b> |
|---|-----------------------|

|                          |                           |   |                             |
|--------------------------|---------------------------|---|-----------------------------|
| <b>Appendix attached</b> |                           |   |                             |
| 1                        | Development Plan Policies | 2 | Relevant Planning History   |
| 3                        | Enforcement notice        | 4 | Enforcement appeal decision |

### Recommendation in Full

That the Council '**Declines to Determine**' this retrospective planning application in accordance with s70C of the Localism Act (2011) as the proposed development affects land to which a pre-existing enforcement notice relates.

### **Background**

350 Shirley Road has a long and complicated recent planning history. This Grade II listed building was until recently in office use separated from the neighbouring car sales business. In 2017 the Council was made aware that the car sales business had extended its external sales area across the forecourt of the building, and that the building itself had been part-converted into residential use (6 studio flats). Both without the necessary planning (and listed building) permission(s). An Enforcement Notice was duly served requiring both unauthorised uses to cease and this Notice was appealed by the applicant. In dismissing the appeal the Inspector has given the applicant until 30<sup>th</sup> October to cease the use with a further month to remove the associated fixtures and fittings. At the time of writing the applicant continues to use the forecourt for car sales (albeit on a reduced area) and the building is in use as 5 studio flats. The applicant has also submitted a series of

applications for consideration including 2 on this agenda for determination; one for a 5 bedroom HMO (18/01465/FUL refers) and the other for retained car sales on the building's forecourt (albeit on a reduced area - 18/01467/FUL refers). Both applications are on this agenda and the Panel will note that if the Council does not determine these applications within the 8 week target date (set out above) then the applicant would be entitled to appeal non-determination; meaning that any prosecution after 30th October would be held up in the Courts and may need to await the conclusion of the appeal for non-determination (the unauthorised use(s) could potentially remain during this process).

## **1. The site and its context**

- 1.1 The application site is situated in a primary location on Shirley Road. While the site does not form part of the designated centre, it does lie in immediate proximity to it. The surrounding area contains a mix of commercial and residential elements.
- 1.2 The site itself is occupied by a Grade II listed building (a two-storey brick built property) with a large forecourt to the front. The neighbouring site (on the corner with Beatrice Road) is in use as car sales.

## **2. Proposal**

- 2.1 The application was submitted along with a number of other applications in an effort to regularise unauthorised development on the property. This application relates solely to the part change of use of the forecourt of the premises for the use as car sales.
- 2.2 The application has been submitted on the basis of part of the forecourt being used for car sales, following the dismissal of an appeal against the enforcement notice relating to the full frontage.

## **3. Relevant Planning Policy**

- 3.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The National Planning Policy Framework (NPPF) was revised in July 2018. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan 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.

## **4. Relevant Planning History**

- 4.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.
- 4.2 The property was previously in use as offices, with the frontage of the site being in use as a car park associated with this office use of the building. In 2017 it came to

the Council's attention that a number of unauthorised changes had taken place within the site without the necessary consent.

4.3 These included a number of alterations to the forecourt designed to facilitate the extension of the adjacent car sales use onto this plot and the display of vehicles on this land. The main building had also been fitted out for residential accommodation without the necessary planning permission or listed building consent being sought. In addition, there is a number of more minor elements such as the addition of unauthorised advertisements to the site. The issue was referred to the Council's enforcement team who initially requested that the use cease before subsequently serving an enforcement notice on 28<sup>th</sup> June 2017 which required the cessation of the car sales and residential uses and removal of unauthorised signage. A copy of the enforcement notice is attached as **Appendix 3**.

4.4 The applicant appealed against this enforcement notice. The Planning Inspectorate dismissed this appeal on 30<sup>th</sup> April 2018. A copy of the appeal decision is attached as **Appendix 4**. As part of the appeal the applicant requested, and was granted, additional time to cease the use so as to ensure their business was not unduly impacted. With reference to the current proposal, they were granted a period of 6 months to cease the use of the forecourt for car sales (meaning the compliance period ends on 30<sup>th</sup> October 2018).

## **5. Consultation Responses and Notification Representations**

5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners and erecting a site notice (**31.08.2018**). At the time of writing the report **7 representations** have been received from surrounding residents (2 objections and 5 in support). The following is a summary of the points raised:

### **5.2 Support**

- General improvement to appearance of site, has helped reduced antisocial behaviour

### **5.3 Objection**

- Exacerbate existing issues associated with car sales use (comings and goings, parking, delivery of vehicles)

*Officer's Response:*

*The applicant has stated that vehicles currently arrive on site individually and are not delivered by vehicle.*

## **Consultation Responses**

5.4 **Historic Environment** - There is considerable harm to the setting of the listed building because of the visual intrusiveness of the parked vehicles. The listed building is visually and physically swamped by vehicles and the impact on the street frontage is equally intrusive. The loss of the curtilage wall damages the status and historic understanding that this was a residential plot. The proposals to regularise the use of the site for the display and storage of motor vehicles within the curtilage of 350 is harmful to the setting and significance of the listed building. This harm would be considered as "less than substantial harm" in terms

of impact on the listed building. The NPPF requires that “less than substantial harm” is “*weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*”. I would therefore raise objection to application 18/01467/FUL.

- 5.5 The proposal suggests that customer parking, instead of sales parking across part of the site would off-set the harm perceived by the city council and indeed, the Planning Inspector. This is not likely to be the case since the separate curtilage is not restored as part of the scheme, and part of the frontage is still required for sales.

## **6.0 Planning Consideration Key Issues**

- 6.1 The key issue in the determination of this application is the effect of the car sales on the setting of the Grade II listed building at 350 Shirley Road (as required by s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, whilst noting that the existing business is expanding, employing staff and contributing positively to the local economy.
- 6.2 An application has been submitted retrospectively for the use of part of the forecourt of the premises for car sales. The Council has previously found this use of the land to be harmful in the context of the listed status of the building (see enforcement notice attached as **Appendix 3**). This issue was previously considered by the Inspector when he was asked to consider the acceptability of the whole forecourt for sales (again, retrospectively). The attached appeal decision concludes that:
- 6.3 *‘37. The size of the former parking area, relative to the internal office space that would have been available, indicates to me that the physical appearance of vehicles on the site would have been relatively low key. There is no convincing evidence before me that it was not so. Moreover, the ancillary parking of vehicles and related movements in association with the former primary office use would not have been a permanently blocking feature in the way that vans are currently stored on site.*
- 6.4 *38. Taking account of these factors, and on the balance of all other evidence before me, I find that the current use of the land is permanently intrusive, blocking views and appreciation of the listed building from Shirley Road. It is thereby harmful to the setting of the listed building, eroding its significance in conflict with LP Policies SDP 7 and HE3, and CS Policies 13 and 14.*
- 6.5 *39. The suggested condition to segregate small vans to one part of the site, and larger vans to the other, would not overcome this harm given that the smaller vans, as seen during my visit to the appeal site, result in the harm I have identified. The harm would be less than substantial in terms of paragraph 134 of the Framework.’*
- 6.6 The applicant has removed vehicles from part of the frontage to 350 Shirley Road and reapplied for a lesser extent of sales. In submitting the current application the applicant has argued that a reduction in the site coverage addresses this harm identified by the Inspector. With reference to the comments of the Council’s specialist heritage consultant (outlined above) it is not considered that this is the case and the other circumstances of the case are not sufficient to overcome this harm. It is further noted that in considering the appeal the Inspector explicitly considered whether potential conditions restricting the site could mitigate the harm identified caused to the setting of the listed building. On this basis it is considered

that the issue of car sales to the frontage of 350 Shirley Road has already been considered by an independent Inspector and dismissed as being harmful. The Enforcement Notice requires the removal of the vehicles and the cessation of this unauthorised use by 30<sup>th</sup> October 2018.

6.7 The Council has a duty to resolve harmful breaches of the planning regulations in an expedient fashion. On this basis, section 70C of Part III of the Town and Country Planning Act 1990 (as amended) empowers the Council to decline to determine an application where it involves 'granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control'.

6.8 Where the Council chooses to exercise this power it would mean the applicant does not have a further right to appeal, which may otherwise further delay the appropriate enforcement of the extant enforcement notice. This provision is not recommended lightly by officers as it is good practice to seek acceptable compromise where possible. However, in this case further negotiation has not been possible and the applicant has requested a decision is made on this application.

#### 6.9 Alternative options

6.10 The Planning Panel are, of course, free to reach an alternative decision. For instance the Panel may decide to:

- Conditionally approve the car sales proposed on part of the site's frontage, noting the reduced area proposed and, consequently, the reduced impacts on the listed building setting. Officers would advise against this option for the reasons given above taking account of the advice from the heritage adviser.
- Refuse the application allowing the applicant a right of appeal. Officers would advise against this option as, whilst giving the applicant a second opportunity to persuade an Inspector that their scheme is acceptable, this could frustrate any prosecution after 30<sup>th</sup> October (as set out above) which is the date that the enforcement notice currently requires all car sales on the land to cease; or
- Defer for further negotiation. Officers would also recommend against this option as the applicant could appeal non-determination after 8<sup>th</sup> November 2018 - before the next programmed Planning Panel on 13<sup>th</sup> November – which could also frustrate any prosecution after 30<sup>th</sup> October as set out above.

## 7. Conclusion

7.1 It is recommended that the Council decline to determine the application and seek compliance with the requirements of the extant enforcement notice by 30<sup>th</sup> October 2018.

### Local Government (Access to Information) Act 1985

#### Documents used in the preparation of this report Background Papers

1. (a) (b) (c) (d) 2. (b) (c) (d) (f) 4.(f) (g) (qq) (vv) 6. (a) (b)

**JF for 09.10.18 PROW Panel**

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**Application 18/01467/FUL**

**APPENDIX 1**

## **POLICY CONTEXT**

### Core Strategy - (as amended 2015)

|      |  |
|------|--|
| CS4  | Housing Delivery   |
| CS6  | Housing Density  |
| CS13 | Fundamentals of Design                                     |
| CS14 | Historic Environment                                       |
| CS16 | Housing Mix and Type                                       |
| CS19 | Car & Cycle Parking  |
| CS20 | Tackling and Adapting to Climate Change                    |
| CS22 | Promoting Biodiversity and Protecting Habitats             |
| CS25 | The Delivery of Infrastructure and Developer Contributions |

### City of Southampton Local Plan Review – (as amended 2015)

|       |                               |
|-------|-------------------------------|
| SDP1  | Quality of Development        |
| SDP4  | Development Access            |
| SDP5  | Parking                       |
| SDP10 | Safety & Security             |
| SDP11 | Accessibility & Movement      |
| SDP12 | Landscape & Biodiversity      |
| SDP24 | Advertisements                |
| HE3   | Listed Buildings              |
| H1    | Housing Supply                |
| H2    | Previously Developed Land     |
| H4    | Houses in Multiple Occupation |
| H5    | Conversion to residential Use |
| H7    | The Residential Environment   |
| REI5  | District Centres              |
| REI6  | Local Centres                 |

### Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)

Planning Obligations (Adopted - September 2013)

Parking Standards SPD (September 2011)

Houses in Multiple Occupation SPD (2016)

### Other Relevant Guidance

The National Planning Policy Framework (2018)

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

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## Application 18/01467/FUL

### Relevant Planning History

18/01468/LBC, Listed building consent sought for the display and storage of motor vehicles within the curtilage of 350 Shirley Road (submitted in conjunction with 18/01467/FUL)

Pending

18/01467/FUL, Use of part of the curtilage of 350 Shirley Road for the display and storage of motor vehicles for sale (submitted in conjunction with 18/01468/LBC)

Pending

18/01466/LBC, Listed building consent sought for internal alterations to facilitate the change of use of the property to a house in multiple occupation (part retrospective) (submitted in conjunction with 18/01465/FUL)

Pending

18/01465/FUL, Change of use of part of the ground floor, first floor and second floor of the building to a 5 bedroom House in Multiple Occupation (HMO) (C4 Use) including internal works to facilitate this use (part retrospective) (submitted in conjunction with 18/01466/LBC)

Pending

18/00230/LBC, Listed building consent sought for internal alterations to the property  
Withdrawn, 29.08.2018

17/01863/LBC, Listed building consent sought for installation of 2 x externally illuminated fascia signs (submitted in conjunction with 17/01862/ADV) (retrospective)

Refused, 22.08.2018

*The siting, colouring, materials and size of the proposed signage are considered to be an unsympathetic and unduly dominant feature to the appearance and character of the existing building which is Grade II listed. The proposal would therefore adversely affect the character and setting of a Grade II listed building. As such the proposal would have an unacceptable on visual amenity and therefore be contrary to saved policies SDP24 and HE3 of the adopted City of Southampton Local Plan Review (March 2006) and policies CS13 and CS14 of the adopted Local Development Framework Core Strategy Development Plan Document (Amended 2015).*

17/01862/ADV, 2 x externally illuminated fascia boards and 1 x externally illuminated hoarding sign (submitted in conjunction with 17/01863/LBC) (retrospective)

Refused, 22.08.2018

*With regard to the advert proposed on land at 348 Shirley Road the proposed externally illuminated advertisement hoarding sign would, due to its scale, position and orientation introduce a feature that would be overly dominant in relation to the adjacent building, result in a visually detrimental impact to the character of the area with residential properties in close proximity and is harmful to the setting of the adjacent Listed Building. The proposal proves contrary to policy SDP1, SDP24 and HE3 of the adopted City of Southampton Local Plan Review (March 2006), CS13 of the Southampton Core Strategy Development Plan Document (Amended 2015)*

*With regards to the adverts proposed at 350 Shirley Road, the siting, colouring, materials and size of the proposed signage are considered to be an unsympathetic and unduly dominant feature to the appearance and character of the existing building which is Grade II listed. The proposal would therefore adversely affect the character and setting of a Grade II listed building. As such the proposal would have an unacceptable on visual amenity and therefore be contrary to saved policies SDP24 and HE3 of the adopted City of Southampton Local Plan Review (March 2006) and policies CS13 and CS14 of the adopted Local Development Framework Core Strategy Development Plan Document (Amended 2015).*



**IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**TOWN AND COUNTRY PLANNING ACT 1990  
(as Amended by the Planning and Compensation Act 1991)**

**ENFORCEMENT NOTICE**

**ISSUED BY: SOUTHAMPTON CITY COUNCIL**

**1 THIS NOTICE** is issued by the Council, because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the development plan and other material planning considerations.

**2 THE LAND TO WHICH THE NOTICE RELATES**

Land at 350 Shirley Road, Southampton, SO15 3HY, shown edged red on the attached plan ("the Land").

**3 THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, change of use of the Land to a mixed use of storage, display and sale of motor vehicles and residential use.

**4 REASONS FOR ISSUING THIS NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last four years.

The positioning and intensity of display vehicles, in close proximity to the Grade II Listed Building neither preserves nor enhances the setting of the building. The frontage of the building appears cluttered and dominated by the vehicle display which detracts from the character and appearance of the building.

In addition to this, the first floor residential accommodation is designed without adequate storage for cycles and in the absence of a mechanism (such as a planning condition) to secure cycle storage for the lifetime of the development, the conversion fails to promote cycling as a sustainable alternative to the private car.

**350 Shirley Road**  
**Enforcement Notice**



|   |
|---|
| <b>Legend</b>   |
|  |

|                     |  |
|---------------------|--|
| <b>Organisation</b> |  |
| <b>Department</b>   |  |
| <b>Comments</b>     |  |
| <b>Date</b>         |  |

Furthermore, in the absence of either a scheme of works or a completed Section 106 legal agreement or unilateral undertaking to support the residential development, the application fails to mitigate against its wider direct impact with regards to the additional pressure that further residential development will place upon the Special Protection Areas of the Solent Coastline. Failure to secure mitigation towards the 'Solent Disturbance Mitigation Project' in order to mitigate the adverse impact of new residential development (within 5.6km of the Solent coastline) on internationally protected birds and habitat.

The unauthorised use is therefore contrary to saved Policies SDP1, SPD5, SPD7, HE3 (i) and H7 of the City of Southampton Local Plan Review (March 2015), CS13, CS14, CS19 and CS22 of the Local Development Framework Core Strategy (March 2015) and The Habitat Regulations as supported by The Residential Design Guide Supplementary Planning Document (2006).

The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections

## 5 WHAT YOU ARE REQUIRED TO DO

- Cease the use of the Land for the storage, display and sale of motor vehicles;
- Remove from the Land all vehicles from the land for the purpose of storage, display and sales;
- Remove all signage in relation to the vehicles sales;
- Cease the residential use of the land;
- Remove all fixtures and fittings facilitating the residential use.

## 6 THE TIME FOR COMPLIANCE

28 days after this Notice takes effect.

## 7 WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 28<sup>th</sup> July 2017, unless an Appeal is made against it beforehand.

Dated: 28<sup>th</sup> June 2017

Signed .....



**SERVICE DIRECTOR: LEGAL & GOVERNANCE**

**RICHARD IVORY, Solicitor**

Southampton & Fareham Legal Services Partnership

Southampton City Council

Civic Centre

Southampton SO14 7LY

## **ANNEX**

### **YOUR RIGHT OF APPEAL**

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the date specified in paragraph 7 of the notice. The enclosed information sheet from The Planning Inspectorate sets out how to do this. Read it carefully.

### **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in paragraph 6 of the notice. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and/or remedial action by the Council.

**TOWN AND COUNTRY PLANNING ACT 1990  
(as amended by the Planning and  
Compensation Act 1991)**

**ENFORCEMENT NOTICE**

**LAND AT 350 SHIRLEY ROAD,  
SOUTHAMPTON  
SO15 3HY**

CST Room 3/13  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Direct Line      0303-444 5000  
Fax No        0117-372 8782

## THIS IS IMPORTANT

If you want to appeal against this enforcement notice you can do it:-

- on-line at the Planning Casework Service area of the Planning Portal ([www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs)); or
- by getting enforcement appeal forms by phoning us on 0303 444 5000 or by emailing us at [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**You MUST make sure that we receive your appeal before the effective date on the enforcement notice.**

In exceptional circumstances you may give notice of appeal by fax or letter. You should include:-

- the name of the local planning authority;
- the site address;
- your address; and
- the effective date of the enforcement notice.

We MUST receive this before the effective date on the enforcement notice. This should **immediately** be followed by your completed appeal forms.

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## Appeal Decision

Site visit made on 12 February 2018

**by Thomas Shields MA DURP MRTPI**

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

**Decision date: 30 April 2018**

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**Appeal Ref: APP/D1780/C/17/3180925**  
**350 Shirley Road, Southampton, SO15 3HY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
  - The appeal is made by Mr Paul Finnegan against an enforcement notice issued by Southampton City Council.
  - The enforcement notice was issued on 28 June 2017.
  - The breach of planning control as alleged in the notice is without planning permission, change of use of the land to a mixed use of storage, display and sale of motor vehicles and residential use.
  - The requirements of the notice are:
    1. Cease the use of the land for the storage, display and sale of motor vehicles;
    2. Remove from the land [sic] all vehicles from the land for the purposes of storage, display and sales;
    3. Remove all signage in relation to the vehicle sales;
    4. Cease the residential use of the land;
    5. Remove all fixtures and fittings facilitating the residential use;
  - The period for compliance with the requirements is 28 days.
  - The appeal proceeds on the grounds set out in section 174(2)(a) (f) and (g) of the Act.
- 

### Decision

1. It is directed that the enforcement notice be corrected by:
  - (i) in Section 3 deleting the words "residential use" and substituting instead the words "six flats";
  - (ii) in Section 5.2 between the words "Remove" and "all", deleting the words "from the land";
2. It is directed that the enforcement notice be varied by:
  - (i) in Section 5.5 deleting all of the words after the word "Remove" and substituting instead the words "from each of the six flats the fridges, microwave ovens and the kitchenette, to include the kitchen cupboard storage units, worktops and sinks";
  - (ii) in Section 6, deleting 28 days and substituting instead the following time limits. For requirements 5.1 to 5.4 a period of 6 months. For requirement 5.5 a period of 7 months.
3. Subject to the corrections and variations **the appeal is dismissed**, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

## Procedural Matters

4. For the sake of clarity, and ease of reference, I have substituted the five bullet points in Section 6 of the enforcement notice for numerals 1 to 5 as set out in the banner heading of this decision.
5. The phrase “from the land” is erroneously repeated in Section 5.2 of the notice. I have therefore corrected the notice by deleting one of the phrases.
6. A ground (a) appeal and deemed planning application can only seek planning permission for the development constituting the alleged breach of planning control. In this regard the land is used in part for residential purposes. However, the parties dispute whether the residential use is as six individual flats or as a house in multiple occupation (HMO).
7. These two uses have different planning consequences and considerations when considering whether planning permission should be granted. It is therefore necessary to define the alleged breach of planning control (the development for which planning permission is sought) more precisely. Both parties made representations on this matter and to which I have had full regard. In these circumstances I am satisfied I can correct the without injustice to either party.
8. Consequently, for reasons set out in more detail below, I have corrected the notice to refer to six flats using powers available to me in section 176(1) of the Act.

## The alleged breach of planning control

9. Section 254(1) of the Housing Act 2004 sets out in law the primary definition of a HMO, and to which the Council’s SPD<sup>1</sup> refers. It sets out that a building, or part of a building, is a HMO provided that it meets specific conditions. The conditions include that two or more of the households occupying the living accommodation must share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities. “Basic amenities” are defined in the Housing Act as a toilet, personal washing facilities, or cooking facilities.
10. However, another condition at section 254(2)(a) is that the building, or part of a building, must *consist of one or more units of living accommodation **not*** (my emphasis) *consisting of a self-contained flat or flats*. Section 254(8) of the Housing Act 2004 defines a self-contained flat as a separate set of premises (whether or not on the same floor) which forms part of a building; either the whole or a material part of which lies above or below some other part of the building; and in which *all three basic amenities are available for the **exclusive*** (my emphasis) *use of its occupants*.
11. There are no shared showers/bathrooms or toilet facilities in the residential part of the appeal building. Hence, the key issue in this matter relates to the provision of cooking facilities.
12. In this regard a very small first floor room contained a sink, worktop with cupboard under, and a free standing cooker. This is the only shared means of cooking I saw during my visit to the appeal property. It seems to me, in comparison to the kitchenette facilities in each separate unit, to be a very

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<sup>1</sup> Houses in Multiple Occupation Supplementary Planning Document (2016), Appendix 2

- restricted and limited kitchen provision for sharing between six units of accommodation.
13. The Council's Appendix 1 includes copies of an estate agency's website advertising material for the accommodation which I note it describes as "flats", rather than as shared accommodation. It goes on to list the facilities in each unit to include *a kitchenette* and *a microwave and grill oven*.
  14. Additionally, the Council's Appendix 3 provides an undisputed summary of officers' inspections of the property following the issue of the notice. During the unannounced inspection of 22 September 2017 the officer recorded a microwave oven and a two ring electric hob in one of the accommodation units. In a subsequent inspection on 27 September 2017 the officer recorded a microwave oven in the kitchenette areas of all six units and additionally a toaster in units 2 and 4. During a third inspection on 3 October 2017 the officer recorded a two ring hob in one of the flats. All of these observations are consistent with my own observations during my visit to the appeal property.
  15. The Council's evidence also refers to email correspondence dated 4 October 2017 with one of the occupiers, stating that all six units had two ring hobs which were removed prior to the officer's inspection on 27 September 2017 and returned afterwards. I have not been provided with a copy of the relevant correspondence. However, the Council's evidence on this point is not disputed.
  16. Even without two ring hobs, and irrespective of the limited single cooker facility on the first floor, each accommodation unit clearly has its own facilities for the cooking of food. Consequently, each unit has all three of the "basic amenities" available for the exclusive use of its occupants; consistent with the definition of a self-contained flat within section 254(8) of the Housing Act 2004.
  17. Taking account of all the evidence before me, I conclude as a matter of fact and degree that the six units of accommodation are self-contained flats. Furthermore, my view that each unit is occupied as a separate dwelling house (self-contained flat) is reinforced by the Court's judgment in *Gravesham*<sup>2</sup> where it was held that the distinctive characteristic of a dwelling house was its ability to afford to those who used it the facilities required for day to day private domestic existence. I consider that to be the case here.

### **Appeal on ground (a)/deemed application for planning permission**

18. The ground of appeal is that planning permission should be granted for the breach of planning control in the (corrected) notice. That is a mixed use of storage, display and sale of motor vehicles and six flats.

#### Main Issues

19. The main issues are:
  - (i) the effect on the living conditions of the occupiers of the flats with particular regard to whether there is adequate internal living space, external amenity space, and refuse storage facilities;
  - (ii) whether there would be adequate provision for vehicle parking and cycle storage facilities; and

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<sup>2</sup> *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

(iii) whether the setting of the listed building would be preserved or enhanced.

### Reasons

#### *(i) Living conditions*

20. The Council has no adopted local policy or guidance for internal living space standards for flats. They refer instead to those set out in *Technical Housing Standards – Nationally Described Space Standard* (DCLG 2015) (“the Standards”).
21. With reference to the submitted drawings the gross internal floor area (GIA) for Flats 3 and 6 are approximately 20m<sup>2</sup>, and for Flats 1, 2, 4, and 5 approximately 25m<sup>2</sup>. These GIAs fall well short of the 37m<sup>2</sup> minimum requirement for a one bedroom/one person unit set out in the Standards by 46% and 32.5% respectively.
22. However, given that the proposal relates to a conversion of an existing building within a built up area with good links to shops, public transport and services, together with a need to take account of the local population’s range of varied economic needs, I agree with the appellant that the Standards should not be strictly applied. Nonetheless, they do provide an established benchmark against which to assess proposals, and I have therefore taken a more flexible approach in assessing whether the internal living space provided in the flats provides adequate living conditions for occupiers.
23. From my observations during my visit to the appeal site I found that all the flats had noticeably restricted movement and circulation space allowing for only a limited range of furniture and storage space for personal belongings. Overall, they felt distinctly cramped.
24. Given that there is no additional private or shared internal or external amenity space available to occupiers, I find that the space available in each flat falls below a level that could reasonably be considered as adequate for permanent residential occupation. The shortfalls in internal living space in this context, and also within the context of the national minimum standard, are substantial and result in significant harm to the living conditions of the occupiers.
25. I accept that the internal fixtures and fittings and refurbishment of the property are relatively recent and of overall good quality, but that does not mitigate the harm to living conditions resulting from inadequate internal living space. As such, the development conflicts with Policies SDP1 and H7 of the City of Southampton Local Plan Review (2015) (LP).
26. In the context of this busy urban area I accept that provision of external amenity space for flatted developments should be considered flexibly, taking account of each site’s constraints. However, given that in this particular case I have found the flats to have poor levels of internal living space, the absence of any external amenity space for occupiers further conflicts with LP Policies SDP1 and H7, adding further weight against allowing the appeal.
27. There is sufficient space within the site to provide a suitable refuse storage facility. Such provision could be secured by a planning condition on the grant of planning permission. Consequently, this matter does not weigh against allowing the appeal.

*(ii) Parking and cycle storage facilities*

28. A room for cycle storage is indicated on the submitted drawings. I am satisfied that this and/or alternative cycle storage could be provided within the site and secured by a planning condition. Consequently, I find no policy conflict with regard to this matter and it does not weigh against allowing the appeal.
29. The Council contest the methodology, and hence reliability, of the appellant's submitted parking stress survey which indicates that no on-site parking provision would be appropriate.
30. However, there is no contrary evidence before me. While it may have some limitations, I find the appellant's survey does provide some useful information in respect of local parking conditions and I attach due weight to it accordingly. That notwithstanding, the site is located in a busy urban district centre having a level 4 PTAL rating, with shops, services and public transport links within close walking and cycling distance. In such a tight knit urban area I consider that the provision of cycle storage provision, with reduced car parking spaces, would make the flats far more attractive to non-car owning occupiers, thereby encouraging walking, cycling and public transport as more sustainable forms of transport.
31. I find on balance therefore that that no on-site provision of car parking spaces would be a sustainable form of development, consistent with the objectives of LP Policy SDP 5, Policy CS 19 of the Local Development Framework Core Strategy (2015) (CS) and the core planning principles of the National Planning Policy Framework (2012)<sup>3</sup> (the Framework).

*(iii) Whether the setting of the listed building would be preserved or enhanced*

32. 350 Shirley Road is identified as a Grade II listed building (Ref: 1340002) constructed early to mid-19<sup>th</sup> century. As set out in the listing description it was constructed in yellow brick with three windows on each floor. The centre breaks forward slightly with a shallow gable. There are ornamental barge boards to the gable and eaves, windows are sashes with Gothic style glazing and with drip moulds to the side windows. There is a four centred head to the centre and the central closed porch has a four centred outer opening. Overall, it is an attractive Gothic style villa in terms of its architecture and detailing and evidences the historic residential expansion of Shirley Road in the 19<sup>th</sup> century. All of these factors without doubt contribute to the building's special architectural and historic interest (its significance).
33. Also part of the building's significance is its setting; that being the surroundings in which the building may be seen and experienced.
34. The appellant's assessment of the significance of the listed building and its setting is comprehensive, detailing changes and alterations to the building and its surroundings over a long period of time. Some of these changes have not always been sensitive or sympathetic to the building or its setting, and I agree that the surroundings, in particular the open land subject of the enforcement notice, have changed in more recent years to a more modern and commercial character. Noting that it has evolved over time, I consider that the setting of the listed building has also evolved and includes views and appreciation of it from Shirley Road.

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<sup>3</sup> Paragraph 17, 11<sup>th</sup> bullet point

35. There is no dispute that the last lawful use of the building was for offices, with the open hard-surfaced land within the site being used for car parking associated with the office use. It is against this last lawful use that the effect of the appeal development on the setting of the listed building must be assessed.
36. During my visit to the appeal site I saw that vans were stored and displayed for sale by being positioned very tightly together, covering the Shirley Road forecourt area, and abutting the whole of the eastern elevation of the appeal building. As such, the lower part of this elevation of the building, including the lower parts of the ground floor windows, were obscured from view from along Shirley Road. Also, given the nature of the business, the blocking of views of the lower part of the building's eastern elevation would be a permanent feature, since any vans, once sold, would be replaced with others.
37. The size of the former parking area, relative to the internal office space that would have been available, indicates to me that the physical appearance of vehicles on the site would have been relatively low key. There is no convincing evidence before me that it was not so. Moreover, the ancillary parking of vehicles and related movements in association with the former primary office use would not have been a permanently blocking feature in the way that vans are currently stored on site.
38. Taking account of these factors, and on the balance of all other evidence before me, I find that the current use of the land is permanently intrusive, blocking views and appreciation of the listed building from Shirley Road. It is thereby harmful to the setting of the listed building, eroding its significance in conflict with LP Policies SDP 7 and HE3, and CS Policies 13 and 14.
39. The suggested condition to segregate small vans to one part of the site, and larger vans to the other, would not overcome this harm given that the smaller vans, as seen during my visit to the appeal site, result in the harm I have identified. The harm would be less than substantial in terms of paragraph 134 of the Framework.
40. The appellant refers to employment and supply chain opportunities. However, these have not been quantified or explained in any detail and hence there is no convincing evidence before me that the use has directly resulted in such benefits. That said, I acknowledge that the expansion of the business would contribute towards its economic success and hence the general vitality and viability of the district centre as a whole, thereby comprising a public benefit.
41. On balance, I conclude that the public benefits advanced by the appellant do not outweigh the harm I have identified. In such circumstances paragraph 133 of the Framework indicates that proposed developments should be refused consent.

#### *Other Matters*

42. One of the Council's reasons for issuing the enforcement notice relates to the absence of a mechanism to secure mitigation for wider direct impacts on protected birds and habitats resulting from residential pressure upon the Special Protection Areas of the Solent Coastline.
43. During the appeal process a section 106 Obligation in the form of a Unilateral Undertaking (UU) was submitted by the appellant in order to secure such mitigation. However, the outcome of any assessment of the UU I might make

would make no difference to my decision on the appeal on ground (a) which I dismiss in any event for other reasons.

*Conclusion on ground (a)*

44. While I have found in support of the appeal with regard to parking provision and refuse and cycle storage facilities, these matters are outweighed by the significant harm I have found to the living conditions of occupiers with regard to inadequate internal living space and external amenity space. Added to this harm is the resulting harm to the setting (and significance) of the listed building.

45. For all the above reasons the appeal on ground (a) fails.

**Appeal on ground (f)**

46. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The appellant argues that requirements 5.3 and 5.5 are excessive.

47. The purposes of an enforcement notice are set out in section 173 of the Act. They are either to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the mixed use of the land to completely cease and all vehicles, signage, and fixtures and fittings associated with the residential use to be removed, the purpose is clearly to remedy the breach.

48. Long established case law sets out that an enforcement notice directed at a material change of use may require the removal of works which were integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development within section 55 of the Act, or might be permitted development, or might be immune from enforcement, so that the land is restored to its condition before the change of use took place.

49. The signage referred to in Section 5.3 does not form part of the alleged breach of planning control at Section 3, which relates only to a material change of use. Thus, the notice was not issued for the purpose of seeking to control a breach of the Advertisement Regulations. Since the signage installed on the site was integral to and solely for the purpose of facilitating the unauthorised use, the requirement to remove it is not excessive.

50. Similarly, notwithstanding that internal "fixtures and fittings" are not development within section 55 of the Act, they were integral to and facilitated the unauthorised residential use. Hence, it is not an excessive requirement to require the removal of such internal works.

51. However, I consider the phrase "fixtures and fittings" in Section 5.5 of the notice is somewhat imprecise. If particular elements are required to be removed it would have been clearer and more reasonable to the appellant if the notice had specified them more precisely. I am also concerned what effect the generality of such a requirement might have on the listed building. However, at the same time, I cannot vary the notice in such a way as to impose more onerous requirements on the appellant.

52. I will therefore vary requirement 5.5 so that it requires within each flat only the removal of the fridges, microwave ovens and the kitchenette, to include the kitchen cupboard storage units, worktops and sinks. That would be more precise. Also, in conjunction with the requirement at Section 5.4, I am satisfied that the breach would be remedied.
53. Therefore the appeal succeeds to the limited extent I have set out above with regard to requirements, and I have varied the notice accordingly.

**Appeal on ground (g)**

54. The ground of appeal is that the period of time for compliance with the notice falls short of what should reasonably be allowed.
55. The Council seeks compliance with all of the notice requirements within 28 days. The appellant seeks a period of 7 months for the residential use of the building but does not specify a different period for the storage, display and sale of vehicles.
56. I have not been provided with copies of tenancy agreements and so cannot be sure what periods of tenancy are still left to run for existing occupiers. However, I consider that six months is a more reasonable period of time for tenants to find and secure alternative accommodation. One month in which to carry out the (as varied) requirement 5.5 is also reasonable. Such works, and any necessary contractors for their completion, can be arranged in advance of tenants leaving the property.
57. I agree that the notice should not unduly affect the viability of the business. A reasonable period of time should therefore be allowed in order to secure alternative arrangements. In this regard one month is too short a period of time. I consider that six months would be more reasonable in all the circumstances.
58. Therefore, the appeal on ground (g) succeeds to the extent set out above and I have varied the notice accordingly.

*Thomas Shields*

INSPECTOR

**Planning and Rights of Way Panel 9<sup>th</sup> October 2018**  
**Planning Application Report of the Service Lead - Infrastructure, Planning & Development**

|  |   |                              |   |
|--|---|------------------------------|---|
| <b>Application address:</b> 350 Shirley Road, Southampton  |   |                              |   |
| <b>Proposed development:</b><br>Change of use of part of the ground floor, first floor and second floor of the building to a 5 bedroom House in Multiple Occupation (HMO) (C4 Use) including internal works to facilitate this use (part retrospective) (submitted in conjunction with 18/01466/LBC) |   |                              |   |
| <b>Application number:</b>   | 18/01465/FUL<br>18/01466/LBC                    | <b>Application type:</b>     | FUL   |
| <b>Case officer:</b>   | John Fanning                                    | <b>Public speaking time:</b> | 5 minutes   |
| <b>Last date for determination:</b>  | 08.11.18  | <b>Ward:</b>                 | Millbrook   |
| <b>Reason for Panel Referral:</b>  | Request by Ward Member and 5 letters of support | <b>Ward Councillors:</b>     | Cllr Taggart<br>Cllr Furnell<br>Cllr Galton           |
| <b>Referred to Panel by:</b>   | Cllr Taggart                                    | <b>Reason:</b>               | Complexity of the case requires special consideration |
| <b>Applicant:</b> Mr Paul Finnegan   |   | <b>Agent:</b> Pegasus Group  |   |

|                               |               |
|-------------------------------|---------------|
| <b>Recommendation Summary</b> | <b>Refuse</b> |
|-------------------------------|---------------|

|   |            |
|---|------------|
| <b>Community Infrastructure Levy Liable</b> | <b>Yes</b> |
|---|------------|

|                          |                           |   |                               |
|--------------------------|---------------------------|---|-------------------------------|
| <b>Appendix attached</b> |                           |   |                               |
| 1                        | Development Plan Policies | 2 | Relevant Planning History     |
| 3                        | Enforcement notice        | 4 | Enforcement appeal decision   |
| 5                        | Threshold assessment      | 6 | Habitat Regulation Assessment |

**Recommendation in Full - Reasons for Refusal**

1.REASON FOR REFUSAL - Unsustainable mix and balance of households  
The proposed conversion of the property to a House in Multiple Occupation (HMO) will result in an excessive concentration of HMOs within the immediate area and will result in an adverse impact on the overall character and amenity of the area surrounding the application site in terms of the mix and balance of households in the local community. Furthermore, the proposed layout results in poor residential accommodation with limited external space and an outlook from ground floor habitable windows across parking associated with a separate planning use. Therefore, the proposal will be contrary to saved Policies SDP1(i) and H4(ii) of the Local Plan Review (Amended 2015), Policy CS16 of the Core Strategy (Amended 2015) as supported by the relevant sections of the Houses in Multiple Occupation Supplementary Planning Document (Approved May 2016).

## 2. REASON FOR REFUSAL - Impact on Protected Habitat

In the absence of either a scheme of works or a completed Section 106 legal agreement or unilateral undertaking to support the development the application fails to mitigate against its wider direct impact with regards to the additional pressure that further residential development will place upon the Special Protection Areas of the Solent Coastline. Failure to secure mitigation towards the 'Solent Disturbance Mitigation Project' in order to mitigate the adverse impact of new residential development (within 5.6km of the Solent coastline) on internationally protected birds and habitat is contrary to Policy CS22 of the Council's Amended Core Strategy (2015) as supported by the Habitats Regulations.

### **Background**

350 Shirley has a long and complicated recent planning history. This Grade II listed building was until recently in office use separated from the neighbouring car sales business. In 2017 the Council was made aware that the car sales business had extended its external sales area across the forecourt of the building, and that the building itself had been part-converted into residential use (6 studio flats). Both without the necessary planning (and listed building) permission(s). An Enforcement Notice was duly served requiring both unauthorised uses to cease and this Notice was appealed by the applicant. In dismissing the appeal the Inspector has given the applicant until 30<sup>th</sup> October to cease the use with a further month to remove the associated fixtures and fittings. At the time of writing the applicant continues to use the forecourt for car sales (albeit on a reduced area) and the building is in use as 5 studio flats. The applicant has also submitted a series of applications for consideration including 2 on this agenda for determination; one for a 5 bedroom HMO (18/01465/FUL refers) and the other for retained car sales on the building's forecourt (albeit on a reduced area - 18/01467/FUL refers). Both applications are on this agenda and the Panel will note that if the Council does not determine these applications within the 8 week target date (set out above) then the applicant would be entitled to appeal non-determination; meaning that any prosecution after 30<sup>th</sup> October would be held up in the Courts and may need to await the conclusion of the appeal for non-determination (the unauthorised use(s) could potentially remain during this process).

### **1. The site and its context**

- 1.1 The application site is situated in a primary location on Shirley Road. While the site does not form part of the designated centre, it does lie in immediate proximity to it. The surrounding area contains a mix of commercial and residential elements.
- 1.2 The site itself is occupied by a Grade II listed building (a two-storey brick built property) with a large forecourt to the front. The neighbouring site (on the corner with Beatrice Road) is in use as car sales.

### **2. Proposal**

- 2.1 The application was submitted along with a number of other applications in an effort to regularise unauthorised development on the property. This application relates solely to the use of the building for residential purposes as a house in multiple occupation and the associated physical alterations to the listed building to facilitate the use.
- 2.2 The application has been submitted on the basis of the residential use of the building as a house in multiple occupation, following the dismissal of an appeal

against the enforcement notice relating to the existing use of the building as 6 independent flats.

### **3. Relevant Planning Policy**

- 3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at **Appendix 1**. The Council’s HMO guidance is also a significant material consideration in the determination of this application.
- 3.2 The National Planning Policy Framework (NPPF) was revised in July 2018. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan 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.

### **4. Relevant Planning History**

- 4.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.
- 4.2 Until the unauthorised works took place the property was previously in use as offices, with the frontage of the site being in use as a car park associated with this office use of the building. In 2017 it came to the Council’s attention that a number of unauthorised changes had taken place within the site without the necessary consent(s).
- 4.3 These included a number of alterations to the forecourt designed to facilitate the extension of the adjacent car sales use onto this plot and the display of vehicles on this land. The main building had also been fitted out for residential accommodation without the necessary planning permission or listed building consent being sought. In addition, there is a number of more minor elements such as the addition of unauthorised advertisements to the site. The issue was referred to the Council’s enforcement team who initially requested that the use cease before subsequently serving an enforcement notice on 28<sup>th</sup> June 2017. The Notice required the cessation of the car sales and residential uses and removal of unauthorised signage. A copy of the enforcement notice is attached as **Appendix 3**.
- 4.4 The applicant appealed against this enforcement notice. The Planning Inspectorate dismissed this appeal on 30<sup>th</sup> April 2018. A copy of the appeal decision is attached as **Appendix 4**. As part of the appeal the applicant requested, and was granted, additional time to cease the use so as to ensure their business was not unduly impacted. With reference to the current proposal, they were granted a period of 6 months to cease residential use of the building and remove some of the associated fixtures and fittings. The Enforcement Notice requires the use of the building as 6 unauthorised flats to cease by 30<sup>th</sup> October, with the removal of kitchens by 30<sup>th</sup> November.

## **5. Consultation Responses and Notification Representations**

5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, advertisement of the application (31.08.2018) and erecting a site notice (31.08.2018). At the time of writing the report **6 representations** have been received from surrounding residents (1 objection and 5 in support). The following is a summary of the points raised:

### **5.2 Support**

- General improvement to appearance of site, has helped reduced antisocial behaviour

### **5.3 Objection**

- Insufficient details of facilities (on-site parking, cycle/refuse stores)
- Impact on neighbouring access should be minimised

## **Consultation Responses**

5.4 **Historic Environment** – Insufficient information has been submitted with the application to establish what the impacts of the proposal have been in terms of the historically significant features of the building. Further details are required to establish and clarify the extent of the undertaken works.

5.5 *Note: These details have been sought under the linked application for listed building consent 18/01466/LBC*

5.6 **HMO Licensing** - The proposed development will require licensing as a Mandatory HMO by Southampton City Council and will be required to meet the HMO standards for safety, room sizes and amenities. Please see <http://www.southampton.gov.uk/housing/landlords/houses-multiple-occupation/licences.aspx> for further information.

5.7 **CIL** - The development is CIL liable as there is a net gain of residential units through the change of use. The charge will be levied at £70 per sq. m (to be indexed) on the Gross Internal Area of the development. If any existing floor area is to be used as deductible floor area the applicant will need to demonstrate that lawful use of the building has occurred for a continuous period of at least 6 months within the period of 3 years ending on the day that planning permission first permits the chargeable development.

## **6.0 Planning Consideration Key Issues**

6.1 The key issues for consideration of this application are the impacts and principle of introducing an HMO use and the quality of the residential environment provided.

6.2 The residential use of the building was considered previously at appeal of the currently extant enforcement notice on the property (see **Appendix 3** and **Appendix 4**). At the time, the applicant argued that the existing unauthorised use of the property as 6 flats was as an HMO use. Given that the rooms were outfitted

with small kitchen areas and bathrooms (all the necessary features for independent living) the Council was of the opinion that the use was as 6 independent flats. The Inspector agreed with this assessment and considered the appeal on this basis. As a result, as part of the appeal the Inspector did not formally consider the potential of an HMO use, but concluded that *'I find that the space available in each flat falls below a level that could reasonably be considered as adequate for permanent residential accommodation. The shortfalls in internal living space in this context, and also in the context of the national minimum standard, are substantial and result in significant harm to the living conditions of the occupiers'*.

- 6.3 The current application proposes a very similar layout to the existing unlawful residential layout of the site considered under the enforcement appeal with the exception for some proposed alterations to the internal layout, including the use of a room at ground floor level as a cycle store and the conversion of one of the existing flats to serve as a shared kitchen/living room for use by the remaining 5 tenants
- 6.4 Threshold
- 6.5 In terms of assessing the appropriateness of the principle of new HMO dwellings within the city, Southampton has introduced an HMO Supplementary Planning Documents which outlines a threshold assessment that the Council will undertake. This assessment looks at surrounding residential properties in the nearby area in order to undertake a review of the context and character of the nearby area and see if it would be appropriate to introduce the further particular residential intensity and impacts associated with HMO properties.
- 6.6 In this case the property is situated in a slightly unusual location, directly on the main Shirley Road frontage. While there are a large number of residential properties within the radius, they are primarily flatted units (either dedicated residential blocks or flatted premises above commercial uses). The HMO SPD outlines how flatted units will be incorporated into the threshold assessment by identifying the units but discounting those that are incapable of HMO occupancy by the size. The full details of the properties identified in the threshold assessment were considered and outlined during the enforcement appeal and are available under **Appendix 5**.
- 6.7 As a result, in accordance with the methodology outlined in the Council's HMO SPD, the proposal fails to adhere to the 10% threshold outlined in the HMO SPD. The 40m radius would include 1 HMO if this application were approved (25%). The proposal does represent an unusual set of circumstances, however in laying out the methodology for the threshold assessment the Council considered the potential for a preponderance of flatted units to have similar knock on impacts as HMO properties and specifically laid out the methodology to take account of this in terms of how flatted units would be considered. On balance it is felt that the proposal is triggered by the HMO SPD and therefore it is considered appropriate to refuse the application on this basis.
- 6.8 Listed building
- 6.9 One of the most fundamental considerations is the status of the property as a listed building. The applicant has undertaken a number of unauthorised alterations to the listed building without the necessary consent being sought. As such it is considered that a clear record of what alterations have been undertaken, how the work has

been undertaken and what steps will be taken in future to ensure that the special significance of the building has not and will not be compromised by the proposed development. While the applicant has submitted some details of the undertaken works they have not provided a full schedule of works clearly outlining the specifics of what works have specifically been undertaken. With reference to the Councils specialist consultation advice outlined in section 5.4, it is not considered that the submitted details are sufficient to demonstrate that the submitted works have not had a harmful impact on the special significance of the listed building and therefore the application should be refused. As such, officers have agreed to await further information before determining the associated listed building application (18/01466/LBC) and this application is not included on this agenda.

#### 6.10 Amenity

The property does not benefit from any private external amenity space and the residential facilities available to the occupiers will be somewhat compromised by the sharing of the premises with a commercial use at ground floor level. Notwithstanding the ostensibly low residential density proposed, it is considered that the living conditions for the proposed occupiers are under a significant amount of pressure as a result of these features of the site.

6.11 In determining the enforcement appeal the Planning Inspector found the living environment of the proposed units to be cramped. This will be somewhat improved in the proposed application as a result of the conversion to an HMO use reducing the bedrooms from 6 down to 5 and the provision of some communal living space for the occupiers. It is noted that in order to function as an HMO, rather than continue the flatted use, any scheme would need to ensure the removal of the existing internal outfitting of the units which includes kitchen facilities in each room.

6.12 Some of the side facing windows of the property do have a somewhat constrained outlook given the vegetation running along this side of the site however on balance it is not considered that the proposed outlook is inappropriate given the nature of the barrier, the set back and the location of the development in the Shirley centre. The expansion of the car sales business across the forecourt of the proposed residential use does, however, result in a poor residential environment for the proposed residents and this forms part of the above reason for refusal.

#### 6.13 Transport

6.14 The site lies in an area of identified high accessibility. In accordance with the Councils HMO SPD, a 5-bed HMO would have a maximum parking provision of 2 spaces. While there is potentially space to secure this on site, the application proposes no on-site parking for the HMO use, with the forecourt turned over to visitor/customer parking for the adjacent car sales use. An internal bike store is proposed to meet the transport needs of the occupants.

6.15 The site is positioned in a highly accessible location, with good access to public transport and other facilities and amenities associated with the Shirley centre. In considering the enforcement appeal the Inspector did not find the lack of on-site parking to be an issue of concern. Notwithstanding this, some concern is raised with the currently proposed cycle store which is accessed through multiple doors and down a short staircase, making it somewhat difficult to utilise. It is considered that further details are required to ensure that adequate provision is made for

appropriate cycle storage to meet the transport needs of the occupiers. Had the application been recommended for approval a planning condition and/or further negotiation would have been appropriate.

#### 6.16 Refuse

6.17 Notwithstanding the partially retrospective nature of the scheme, no details have been submitted outlining how the refuse needs of the occupiers will be addressed. Further clarification is required, particularly in the context of the shared commercial use and special importance of the appearance of the listed building, to clarify how the refuse needs of the occupiers will be met and ensure that bins are not left out on the frontage. Had the application been recommended for approval a planning condition and/or further negotiation would have been appropriate.

#### 6.18 Habitat Regulations

6.19 With reference to Habitat Regulation Assessment, attached as **Appendix 6**, the application relates to an increase in the number of residential dwellings within the city which have the potential to impact specially protected area within the wider south coast area. The application has failed to secure mitigation for these impacts and thereby proves contrary to the requirements of the Conservation of Habitats and Species Regulations 2010 (as amended).

### 7.0 Summary

7.1 With reference to the issues outlined above it is considered that the principle of the HMO use of the property is unacceptable, the application has failed to demonstrate that the special character and significance of the listed building will not be harmed and has not mitigated the wider impacts of additional residential development within the south coast area. On this basis the application is recommended for refusal.

### 8.0 Conclusion

8.1 It is recommended that the Council refuse this application for an HMO for the reasons set out above.

#### **Local Government (Access to Information) Act 1985**

#### **Documents used in the preparation of this report Background Papers**

1. (a) (b) (c) (d) 2. (b) (c) (d) (f) 4.(f) (g) (qq) (vv) 6. (a) (b)

**JF for 09.10.18 PROW Panel**

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## **Application 18/01465/FUL**

### **POLICY CONTEXT**

#### Core Strategy - (as amended 2015)

|      |  |
|------|--|
| CS4  | Housing Delivery   |
| CS6  | Housing Density  |
| CS13 | Fundamentals of Design                                     |
| CS14 | Historic Environment                                       |
| CS16 | Housing Mix and Type                                       |
| CS19 | Car & Cycle Parking  |
| CS20 | Tackling and Adapting to Climate Change                    |
| CS22 | Promoting Biodiversity and Protecting Habitats             |
| CS25 | The Delivery of Infrastructure and Developer Contributions |

#### City of Southampton Local Plan Review – (as amended 2015)

|       |                               |
|-------|-------------------------------|
| SDP1  | Quality of Development        |
| SDP4  | Development Access            |
| SDP5  | Parking                       |
| SDP10 | Safety & Security             |
| SDP11 | Accessibility & Movement      |
| SDP12 | Landscape & Biodiversity      |
| SDP24 | Advertisements                |
| HE3   | Listed Buildings              |
| H1    | Housing Supply                |
| H2    | Previously Developed Land     |
| H4    | Houses in Multiple Occupation |
| H5    | Conversion to residential Use |
| H7    | The Residential Environment   |
| REI5  | District Centres              |
| REI6  | Local Centres                 |

#### Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)

Planning Obligations (Adopted - September 2013)

Parking Standards SPD (September 2011)

Houses in Multiple Occupation SPD (2016)

#### Other Relevant Guidance

The National Planning Policy Framework (2018)

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

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### Application 18/01465/FUL

#### Relevant Planning History

18/01468/LBC, Listed building consent sought for the display and storage of motor vehicles within the curtilage of 350 Shirley Road (submitted in conjunction with 18/01467/FUL)

Pending

18/01467/FUL, Use of part of the curtilage of 350 Shirley Road for the display and storage of motor vehicles for sale (submitted in conjunction with 18/01468/LBC)

Pending

18/01466/LBC, Listed building consent sought for internal alterations to facilitate the change of use of the property to a house in multiple occupation (part retrospective) (submitted in conjunction with 18/01465/FUL)

Pending

18/01465/FUL, Change of use of part of the ground floor, first floor and second floor of the building to a 5 bedroom House in Multiple Occupation (HMO) (C4 Use) including internal works to facilitate this use (part retrospective) (submitted in conjunction with 18/01466/LBC)

Pending

18/00230/LBC, Listed building consent sought for internal alterations to the property  
Withdrawn, 29.08.2018

17/01863/LBC, Listed building consent sought for installation of 2 x externally illuminated fascia signs (submitted in conjunction with 17/01862/ADV) (retrospective)

Refused, 22.08.2018

*The siting, colouring, materials and size of the proposed signage are considered to be an unsympathetic and unduly dominant feature to the appearance and character of the existing building which is Grade II listed. The proposal would therefore adversely affect the character and setting of a Grade II listed building. As such the proposal would have an unacceptable on visual amenity and therefore be contrary to saved policies SDP24 and HE3 of the adopted City of Southampton Local Plan Review (March 2006) and policies CS13 and CS14 of the adopted Local Development Framework Core Strategy Development Plan Document (Amended 2015).*

17/01862/ADV, 2 x externally illuminated fascia boards and 1 x externally illuminated hoarding sign (submitted in conjunction with 17/01863/LBC) (retrospective)

Refused, 22.08.2018

*With regard to the advert proposed on land at 348 Shirley Road the proposed externally illuminated advertisement hoarding sign would, due to its scale, position and orientation introduce a feature that would be overly dominant in relation to the adjacent building, result in a visually detrimental impact to the character of the area with residential properties in close proximity and is harmful to the setting of the adjacent Listed Building. The proposal proves contrary to policy SDP1, SDP24 and HE3 of the adopted City of Southampton Local Plan Review (March 2006), CS13 of the Southampton Core Strategy Development Plan Document (Amended 2015)*

*With regards to the adverts proposed at 350 Shirley Road, the siting, colouring, materials and size of the proposed signage are considered to be an unsympathetic and unduly dominant feature to the appearance and character of the existing building which is Grade II listed. The proposal would therefore adversely affect the character and setting of a Grade II listed building. As such the proposal would have an unacceptable on visual amenity and therefore be contrary to saved policies SDP24 and HE3 of the adopted City of Southampton Local Plan Review (March 2006) and policies CS13 and CS14 of the adopted Local Development Framework Core Strategy Development Plan Document (Amended 2015).*



**IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**TOWN AND COUNTRY PLANNING ACT 1990  
(as Amended by the Planning and Compensation Act 1991)**

**ENFORCEMENT NOTICE**

**ISSUED BY: SOUTHAMPTON CITY COUNCIL**

**1 THIS NOTICE** is issued by the Council, because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the development plan and other material planning considerations.

**2 THE LAND TO WHICH THE NOTICE RELATES**

Land at 350 Shirley Road, Southampton, SO15 3HY, shown edged red on the attached plan ("the Land").

**3 THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, change of use of the Land to a mixed use of storage, display and sale of motor vehicles and residential use.

**4 REASONS FOR ISSUING THIS NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last four years.

The positioning and intensity of display vehicles, in close proximity to the Grade II Listed Building neither preserves nor enhances the setting of the building. The frontage of the building appears cluttered and dominated by the vehicle display which detracts from the character and appearance of the building.

In addition to this, the first floor residential accommodation is designed without adequate storage for cycles and in the absence of a mechanism (such as a planning condition) to secure cycle storage for the lifetime of the development, the conversion fails to promote cycling as a sustainable alternative to the private car.

**350 Shirley Road**  
**Enforcement Notice**



|   |
|---|
| <b>Legend</b>   |
|  |

|                     |  |
|---------------------|--|
| <b>Organisation</b> |  |
| <b>Department</b>   |  |
| <b>Comments</b>     |  |
| <b>Date</b>         |  |

Furthermore, in the absence of either a scheme of works or a completed Section 106 legal agreement or unilateral undertaking to support the residential development, the application fails to mitigate against its wider direct impact with regards to the additional pressure that further residential development will place upon the Special Protection Areas of the Solent Coastline. Failure to secure mitigation towards the 'Solent Disturbance Mitigation Project' in order to mitigate the adverse impact of new residential development (within 5.6km of the Solent coastline) on internationally protected birds and habitat.

The unauthorised use is therefore contrary to saved Policies SDP1, SPD5, SPD7, HE3 (i) and H7 of the City of Southampton Local Plan Review (March 2015), CS13, CS14, CS19 and CS22 of the Local Development Framework Core Strategy (March 2015) and The Habitat Regulations as supported by The Residential Design Guide Supplementary Planning Document (2006).

The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections

## 5 WHAT YOU ARE REQUIRED TO DO

- Cease the use of the Land for the storage, display and sale of motor vehicles;
- Remove from the Land all vehicles from the land for the purpose of storage, display and sales;
- Remove all signage in relation to the vehicles sales;
- Cease the residential use of the land;
- Remove all fixtures and fittings facilitating the residential use.

## 6 THE TIME FOR COMPLIANCE

28 days after this Notice takes effect.

## 7 WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 28<sup>th</sup> July 2017, unless an Appeal is made against it beforehand.

Dated: 28<sup>th</sup> June 2017

Signed .....



**SERVICE DIRECTOR: LEGAL & GOVERNANCE**

**RICHARD IVORY, Solicitor**

Southampton & Fareham Legal Services Partnership

Southampton City Council

Civic Centre

Southampton SO14 7LY

## **ANNEX**

### **YOUR RIGHT OF APPEAL**

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the date specified in paragraph 7 of the notice. The enclosed information sheet from The Planning Inspectorate sets out how to do this. Read it carefully.

### **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in paragraph 6 of the notice. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and/or remedial action by the Council.

**TOWN AND COUNTRY PLANNING ACT 1990  
(as amended by the Planning and  
Compensation Act 1991)**

**ENFORCEMENT NOTICE**

**LAND AT 350 SHIRLEY ROAD,  
SOUTHAMPTON  
SO15 3HY**

CST Room 3/13  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Direct Line      0303-444 5000  
Fax No         0117-372 8782

## THIS IS IMPORTANT

If you want to appeal against this enforcement notice you can do it:-

- on-line at the Planning Casework Service area of the Planning Portal ([www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs)); or
- by getting enforcement appeal forms by phoning us on 0303 444 5000 or by emailing us at [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**You MUST make sure that we receive your appeal before the effective date on the enforcement notice.**

In exceptional circumstances you may give notice of appeal by fax or letter. You should include:-

- the name of the local planning authority;
- the site address;
- your address; and
- the effective date of the enforcement notice.

We MUST receive this before the effective date on the enforcement notice. This should **immediately** be followed by your completed appeal forms.




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## Appeal Decision

Site visit made on 12 February 2018

**by Thomas Shields MA DURP MRTPI**

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

**Decision date: 30 April 2018**

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**Appeal Ref: APP/D1780/C/17/3180925**

**350 Shirley Road, Southampton, SO15 3HY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
  - The appeal is made by Mr Paul Finnegan against an enforcement notice issued by Southampton City Council.
  - The enforcement notice was issued on 28 June 2017.
  - The breach of planning control as alleged in the notice is without planning permission, change of use of the land to a mixed use of storage, display and sale of motor vehicles and residential use.
  - The requirements of the notice are:
    1. Cease the use of the land for the storage, display and sale of motor vehicles;
    2. Remove from the land [sic] all vehicles from the land for the purposes of storage, display and sales;
    3. Remove all signage in relation to the vehicle sales;
    4. Cease the residential use of the land;
    5. Remove all fixtures and fittings facilitating the residential use;
  - The period for compliance with the requirements is 28 days.
  - The appeal proceeds on the grounds set out in section 174(2)(a) (f) and (g) of the Act.
- 

### Decision

1. It is directed that the enforcement notice be corrected by:
  - (i) in Section 3 deleting the words "residential use" and substituting instead the words "six flats";
  - (ii) in Section 5.2 between the words "Remove" and "all", deleting the words "from the land";
2. It is directed that the enforcement notice be varied by:
  - (i) in Section 5.5 deleting all of the words after the word "Remove" and substituting instead the words "from each of the six flats the fridges, microwave ovens and the kitchenette, to include the kitchen cupboard storage units, worktops and sinks";
  - (ii) in Section 6, deleting 28 days and substituting instead the following time limits. For requirements 5.1 to 5.4 a period of 6 months. For requirement 5.5 a period of 7 months.
3. Subject to the corrections and variations **the appeal is dismissed**, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

## Procedural Matters

4. For the sake of clarity, and ease of reference, I have substituted the five bullet points in Section 6 of the enforcement notice for numerals 1 to 5 as set out in the banner heading of this decision.
5. The phrase "from the land" is erroneously repeated in Section 5.2 of the notice. I have therefore corrected the notice by deleting one of the phrases.
6. A ground (a) appeal and deemed planning application can only seek planning permission for the development constituting the alleged breach of planning control. In this regard the land is used in part for residential purposes. However, the parties dispute whether the residential use is as six individual flats or as a house in multiple occupation (HMO).
7. These two uses have different planning consequences and considerations when considering whether planning permission should be granted. It is therefore necessary to define the alleged breach of planning control (the development for which planning permission is sought) more precisely. Both parties made representations on this matter and to which I have had full regard. In these circumstances I am satisfied I can correct the without injustice to either party.
8. Consequently, for reasons set out in more detail below, I have corrected the notice to refer to six flats using powers available to me in section 176(1) of the Act.

## The alleged breach of planning control

9. Section 254(1) of the Housing Act 2004 sets out in law the primary definition of a HMO, and to which the Council's SPD<sup>1</sup> refers. It sets out that a building, or part of a building, is a HMO provided that it meets specific conditions. The conditions include that two or more of the households occupying the living accommodation must share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities. "Basic amenities" are defined in the Housing Act as a toilet, personal washing facilities, or cooking facilities.
10. However, another condition at section 254(2)(a) is that the building, or part of a building, must *consist of one or more units of living accommodation **not** (my emphasis) consisting of a self-contained flat or flats*. Section 254(8) of the Housing Act 2004 defines a self-contained flat as a separate set of premises (whether or not on the same floor) which forms part of a building; either the whole or a material part of which lies above or below some other part of the building; and in which *all three basic amenities are available for the **exclusive** (my emphasis) use of its occupants*.
11. There are no shared showers/bathrooms or toilet facilities in the residential part of the appeal building. Hence, the key issue in this matter relates to the provision of cooking facilities.
12. In this regard a very small first floor room contained a sink, worktop with cupboard under, and a free standing cooker. This is the only shared means of cooking I saw during my visit to the appeal property. It seems to me, in comparison to the kitchenette facilities in each separate unit, to be a very

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<sup>1</sup> Houses in Multiple Occupation Supplementary Planning Document (2016), Appendix 2

- restricted and limited kitchen provision for sharing between six units of accommodation.
13. The Council's Appendix 1 includes copies of an estate agency's website advertising material for the accommodation which I note it describes as "flats", rather than as shared accommodation. It goes on to list the facilities in each unit to include *a kitchenette* and *a microwave and grill oven*.
  14. Additionally, the Council's Appendix 3 provides an undisputed summary of officers' inspections of the property following the issue of the notice. During the unannounced inspection of 22 September 2017 the officer recorded a microwave oven and a two ring electric hob in one of the accommodation units. In a subsequent inspection on 27 September 2017 the officer recorded a microwave oven in the kitchenette areas of all six units and additionally a toaster in units 2 and 4. During a third inspection on 3 October 2017 the officer recorded a two ring hob in one of the flats. All of these observations are consistent with my own observations during my visit to the appeal property.
  15. The Council's evidence also refers to email correspondence dated 4 October 2017 with one of the occupiers, stating that all six units had two ring hobs which were removed prior to the officer's inspection on 27 September 2017 and returned afterwards. I have not been provided with a copy of the relevant correspondence. However, the Council's evidence on this point is not disputed.
  16. Even without two ring hobs, and irrespective of the limited single cooker facility on the first floor, each accommodation unit clearly has its own facilities for the cooking of food. Consequently, each unit has all three of the "basic amenities" available for the exclusive use of its occupants; consistent with the definition of a self-contained flat within section 254(8) of the Housing Act 2004.
  17. Taking account of all the evidence before me, I conclude as a matter of fact and degree that the six units of accommodation are self-contained flats. Furthermore, my view that each unit is occupied as a separate dwelling house (self-contained flat) is reinforced by the Court's judgment in *Gravesham*<sup>2</sup> where it was held that the distinctive characteristic of a dwelling house was its ability to afford to those who used it the facilities required for day to day private domestic existence. I consider that to be the case here.

### **Appeal on ground (a)/deemed application for planning permission**

18. The ground of appeal is that planning permission should be granted for the breach of planning control in the (corrected) notice. That is a mixed use of storage, display and sale of motor vehicles and six flats.

#### Main Issues

19. The main issues are:
  - (i) the effect on the living conditions of the occupiers of the flats with particular regard to whether there is adequate internal living space, external amenity space, and refuse storage facilities;
  - (ii) whether there would be adequate provision for vehicle parking and cycle storage facilities; and

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<sup>2</sup> *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

(iii) whether the setting of the listed building would be preserved or enhanced.

### Reasons

#### *(i) Living conditions*

20. The Council has no adopted local policy or guidance for internal living space standards for flats. They refer instead to those set out in *Technical Housing Standards – Nationally Described Space Standard* (DCLG 2015) (“the Standards”).
21. With reference to the submitted drawings the gross internal floor area (GIA) for Flats 3 and 6 are approximately 20m<sup>2</sup>, and for Flats 1, 2, 4, and 5 approximately 25m<sup>2</sup>. These GIAs fall well short of the 37m<sup>2</sup> minimum requirement for a one bedroom/one person unit set out in the Standards by 46% and 32.5% respectively.
22. However, given that the proposal relates to a conversion of an existing building within a built up area with good links to shops, public transport and services, together with a need to take account of the local population’s range of varied economic needs, I agree with the appellant that the Standards should not be strictly applied. Nonetheless, they do provide an established benchmark against which to assess proposals, and I have therefore taken a more flexible approach in assessing whether the internal living space provided in the flats provides adequate living conditions for occupiers.
23. From my observations during my visit to the appeal site I found that all the flats had noticeably restricted movement and circulation space allowing for only a limited range of furniture and storage space for personal belongings. Overall, they felt distinctly cramped.
24. Given that there is no additional private or shared internal or external amenity space available to occupiers, I find that the space available in each flat falls below a level that could reasonably be considered as adequate for permanent residential occupation. The shortfalls in internal living space in this context, and also within the context of the national minimum standard, are substantial and result in significant harm to the living conditions of the occupiers.
25. I accept that the internal fixtures and fittings and refurbishment of the property are relatively recent and of overall good quality, but that does not mitigate the harm to living conditions resulting from inadequate internal living space. As such, the development conflicts with Policies SDP1 and H7 of the City of Southampton Local Plan Review (2015) (LP).
26. In the context of this busy urban area I accept that provision of external amenity space for flatted developments should be considered flexibly, taking account of each site’s constraints. However, given that in this particular case I have found the flats to have poor levels of internal living space, the absence of any external amenity space for occupiers further conflicts with LP Policies SDP1 and H7, adding further weight against allowing the appeal.
27. There is sufficient space within the site to provide a suitable refuse storage facility. Such provision could be secured by a planning condition on the grant of planning permission. Consequently, this matter does not weigh against allowing the appeal.

*(ii) Parking and cycle storage facilities*

28. A room for cycle storage is indicated on the submitted drawings. I am satisfied that this and/or alternative cycle storage could be provided within the site and secured by a planning condition. Consequently, I find no policy conflict with regard to this matter and it does not weigh against allowing the appeal.
29. The Council contest the methodology, and hence reliability, of the appellant's submitted parking stress survey which indicates that no on-site parking provision would be appropriate.
30. However, there is no contrary evidence before me. While it may have some limitations, I find the appellant's survey does provide some useful information in respect of local parking conditions and I attach due weight to it accordingly. That notwithstanding, the site is located in a busy urban district centre having a level 4 PTAL rating, with shops, services and public transport links within close walking and cycling distance. In such a tight knit urban area I consider that the provision of cycle storage provision, with reduced car parking spaces, would make the flats far more attractive to non-car owning occupiers, thereby encouraging walking, cycling and public transport as more sustainable forms of transport.
31. I find on balance therefore that that no on-site provision of car parking spaces would be a sustainable form of development, consistent with the objectives of LP Policy SDP 5, Policy CS 19 of the Local Development Framework Core Strategy (2015) (CS) and the core planning principles of the National Planning Policy Framework (2012)<sup>3</sup> (the Framework).

*(iii) Whether the setting of the listed building would be preserved or enhanced*

32. 350 Shirley Road is identified as a Grade II listed building (Ref: 1340002) constructed early to mid-19<sup>th</sup> century. As set out in the listing description it was constructed in yellow brick with three windows on each floor. The centre breaks forward slightly with a shallow gable. There are ornamental barge boards to the gable and eaves, windows are sashes with Gothic style glazing and with drip moulds to the side windows. There is a four centred head to the centre and the central closed porch has a four centred outer opening. Overall, it is an attractive Gothic style villa in terms of its architecture and detailing and evidences the historic residential expansion of Shirley Road in the 19<sup>th</sup> century. All of these factors without doubt contribute to the building's special architectural and historic interest (its significance).
33. Also part of the building's significance is its setting; that being the surroundings in which the building may be seen and experienced.
34. The appellant's assessment of the significance of the listed building and its setting is comprehensive, detailing changes and alterations to the building and its surroundings over a long period of time. Some of these changes have not always been sensitive or sympathetic to the building or its setting, and I agree that the surroundings, in particular the open land subject of the enforcement notice, have changed in more recent years to a more modern and commercial character. Noting that it has evolved over time, I consider that the setting of the listed building has also evolved and includes views and appreciation of it from Shirley Road.

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<sup>3</sup> Paragraph 17, 11<sup>th</sup> bullet point

35. There is no dispute that the last lawful use of the building was for offices, with the open hard-surfaced land within the site being used for car parking associated with the office use. It is against this last lawful use that the effect of the appeal development on the setting of the listed building must be assessed.
36. During my visit to the appeal site I saw that vans were stored and displayed for sale by being positioned very tightly together, covering the Shirley Road forecourt area, and abutting the whole of the eastern elevation of the appeal building. As such, the lower part of this elevation of the building, including the lower parts of the ground floor windows, were obscured from view from along Shirley Road. Also, given the nature of the business, the blocking of views of the lower part of the building's eastern elevation would be a permanent feature, since any vans, once sold, would be replaced with others.
37. The size of the former parking area, relative to the internal office space that would have been available, indicates to me that the physical appearance of vehicles on the site would have been relatively low key. There is no convincing evidence before me that it was not so. Moreover, the ancillary parking of vehicles and related movements in association with the former primary office use would not have been a permanently blocking feature in the way that vans are currently stored on site.
38. Taking account of these factors, and on the balance of all other evidence before me, I find that the current use of the land is permanently intrusive, blocking views and appreciation of the listed building from Shirley Road. It is thereby harmful to the setting of the listed building, eroding its significance in conflict with LP Policies SDP 7 and HE3, and CS Policies 13 and 14.
39. The suggested condition to segregate small vans to one part of the site, and larger vans to the other, would not overcome this harm given that the smaller vans, as seen during my visit to the appeal site, result in the harm I have identified. The harm would be less than substantial in terms of paragraph 134 of the Framework.
40. The appellant refers to employment and supply chain opportunities. However, these have not been quantified or explained in any detail and hence there is no convincing evidence before me that the use has directly resulted in such benefits. That said, I acknowledge that the expansion of the business would contribute towards its economic success and hence the general vitality and viability of the district centre as a whole, thereby comprising a public benefit.
41. On balance, I conclude that the public benefits advanced by the appellant do not outweigh the harm I have identified. In such circumstances paragraph 133 of the Framework indicates that proposed developments should be refused consent.

#### *Other Matters*

42. One of the Council's reasons for issuing the enforcement notice relates to the absence of a mechanism to secure mitigation for wider direct impacts on protected birds and habitats resulting from residential pressure upon the Special Protection Areas of the Solent Coastline.
43. During the appeal process a section 106 Obligation in the form of a Unilateral Undertaking (UU) was submitted by the appellant in order to secure such mitigation. However, the outcome of any assessment of the UU I might make

would make no difference to my decision on the appeal on ground (a) which I dismiss in any event for other reasons.

*Conclusion on ground (a)*

44. While I have found in support of the appeal with regard to parking provision and refuse and cycle storage facilities, these matters are outweighed by the significant harm I have found to the living conditions of occupiers with regard to inadequate internal living space and external amenity space. Added to this harm is the resulting harm to the setting (and significance) of the listed building.

45. For all the above reasons the appeal on ground (a) fails.

**Appeal on ground (f)**

46. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The appellant argues that requirements 5.3 and 5.5 are excessive.

47. The purposes of an enforcement notice are set out in section 173 of the Act. They are either to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the mixed use of the land to completely cease and all vehicles, signage, and fixtures and fittings associated with the residential use to be removed, the purpose is clearly to remedy the breach.

48. Long established case law sets out that an enforcement notice directed at a material change of use may require the removal of works which were integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development within section 55 of the Act, or might be permitted development, or might be immune from enforcement, so that the land is restored to its condition before the change of use took place.

49. The signage referred to in Section 5.3 does not form part of the alleged breach of planning control at Section 3, which relates only to a material change of use. Thus, the notice was not issued for the purpose of seeking to control a breach of the Advertisement Regulations. Since the signage installed on the site was integral to and solely for the purpose of facilitating the unauthorised use, the requirement to remove it is not excessive.

50. Similarly, notwithstanding that internal "fixtures and fittings" are not development within section 55 of the Act, they were integral to and facilitated the unauthorised residential use. Hence, it is not an excessive requirement to require the removal of such internal works.

51. However, I consider the phrase "fixtures and fittings" in Section 5.5 of the notice is somewhat imprecise. If particular elements are required to be removed it would have been clearer and more reasonable to the appellant if the notice had specified them more precisely. I am also concerned what effect the generality of such a requirement might have on the listed building. However, at the same time, I cannot vary the notice in such a way as to impose more onerous requirements on the appellant.

52. I will therefore vary requirement 5.5 so that it requires within each flat only the removal of the fridges, microwave ovens and the kitchenette, to include the kitchen cupboard storage units, worktops and sinks. That would be more precise. Also, in conjunction with the requirement at Section 5.4, I am satisfied that the breach would be remedied.
53. Therefore the appeal succeeds to the limited extent I have set out above with regard to requirements, and I have varied the notice accordingly.

**Appeal on ground (g)**

54. The ground of appeal is that the period of time for compliance with the notice falls short of what should reasonably be allowed.
55. The Council seeks compliance with all of the notice requirements within 28 days. The appellant seeks a period of 7 months for the residential use of the building but does not specify a different period for the storage, display and sale of vehicles.
56. I have not been provided with copies of tenancy agreements and so cannot be sure what periods of tenancy are still left to run for existing occupiers. However, I consider that six months is a more reasonable period of time for tenants to find and secure alternative accommodation. One month in which to carry out the (as varied) requirement 5.5 is also reasonable. Such works, and any necessary contractors for their completion, can be arranged in advance of tenants leaving the property.
57. I agree that the notice should not unduly affect the viability of the business. A reasonable period of time should therefore be allowed in order to secure alternative arrangements. In this regard one month is too short a period of time. I consider that six months would be more reasonable in all the circumstances.
58. Therefore, the appeal on ground (g) succeeds to the extent set out above and I have varied the notice accordingly.

*Thomas Shields*

INSPECTOR

### APPENDIX 6.

| #  | Road         | Use | Evidence   |
|--|--------------|-----|--|
| <b>40m</b>   |              |     |  |
| 346  | Shirley Road |     | 10/00829/FUL not implemented, discounted at Stage 1 as not residential   |
| 348  |              |     | Discounted at stage 1 as not residential   |
| 350 (F1-18 Basing House)   |              |     | 920680/W – 18x 1-bed flats<br>Counted as 1 property at stage 1, discounted at stage 2 as =<2 bed units                           |
| Hatherley Mansions   |              |     | 1091/D (outline) and 1137/35 – 144 flats in 3 blocks<br>Counted as 1 property at stage 1, discounted at stage 2 as =<2 bed units |
| 341  |              |     | Discounted at stage 1 as not residential   |
| 339  |              |     | Discounted at stage 1 as not residential   |
| 337  |              |     | Discounted at stage 1 as not residential   |
| 335  |              |     | Discounted at stage 1 as not residential   |
| 329-333  |              |     | Discounted at stage 1 as not residential   |
| Burlington Mansions  |              |     | 14/01588/FUL – addition storey and 10x 2-bed flats<br>Counted as 1 property at stage 1, discounted at stage 2 as =<2 bed units   |
| <b>3 residential properties identified in 40m, additional properties to bring up to 10</b> |              |     |  |
| Lumsden Mansions (41m)   | Shirley Road |     | 1091/D (outline) and 1137/35 – 144 flats in 3 blocks<br>Counted as 1 property at stage 1, discounted at stage 2 as =<2 bed units |
| 343 (42m)  |              |     | Discounted at stage 1 as not residential   |
| 345 (44m)  |              |     | Discounted at stage 1 as not residential   |
| 347 (47m)  |              |     | Discounted at stage 1 as not residential   |
| 349-353 (52m)  |              |     | Discounted at stage 1 as not residential   |
| 344 (52m)  |              |     | Discounted at stage 1 as not residential   |
| 327 (54m)  |              |     | 04/01615/FUL – 2x 1-bed and 2x 2-bed at ff level   |

|                           |  |  |   |
|---------------------------|--|--|---|
|                           |  |  | Counted as 1 property at stage 1, discounted at stage 2 as =<2-bed units  |
| 340A (57m)                |  |  | 13/00945/PA56 – 4 flats (1x1, 3x2)<br>13/01635/PA56 – 6 flats (3x1, 2x2, 1x3)<br>14/02107/SIA – BC for 6 flats<br><br>Counted as 1 property at stage 1, 1x3-bed unit identified at stage 2.<br>No licensed HMO.<br>No record of HMO use in Ctax.<br>No record in electoral roll.        |
| 340B                      |  |  | 14/01611/PA56 – 4 flats (4x 1-bed)<br>14/12026/SIA – BC for 4 flats<br>14/12026/SIA/A – BC for 4 flats<br><br>Counted as 1 property at stage 1, discounted at stage 2 as =< 2-bed units   |
| 338 (64m)                 |  |  | Discounted at stage 1 as not residential  |
| 321-323 (F1-6) (64m)      |  |  | Ground floor commercial, no planning history for residential units (one flat above each commercial unit 321-313). Only 2 nearest properties counted to bring total up to 10.<br>UPRN for Flats 1-6<br>No licensed HMO.<br>No record of HMO use in Ctax.<br>No record in electoral roll. |
| Witherwood Mansions (68m) |  |  | 1091/D (outline) and 1137/35 – 144 flats in 3 blocks<br>Counted as 1 property at stage 1, discounted at stage 2 as =<2 bed units  |
| 336 (68m)                 |  |  | Discounted at stage 1 as not residential  |
| 363-363 (69m)             |  |  | Discounted at stage 1 as not residential  |
| 334 (72m)                 |  |  | Discounted at stage 1 as not residential  |

Total properties (excluding properties confirmed as =<2-bed (including application site): 4

Existing HMOs: 0 (0%)

Proposed HMOs: 1 (25%)





### Appendix 6 Habitat Regulation Assessment (HRA) Screening Matrix and Appropriate Assessment Statement

**PLEASE NOTE:** Undertaking the HRA process is the responsibility of the decision maker as the Competent Authority for the purpose of the Habitats Regulations. However, it is the responsibility of the applicant to provide the Competent Authority with the information that they require for this purpose.

|  |                 |
|--|-----------------|
| HRA completion date:   | See Main Report |
| Application reference:   | See Main Report |
| Application address:   | See Main Report |
| Application description :  | See Main Report |
| Lead Planning Officer:   | See Main Report |
| Please note that all references in this assessment to the 'Habitats Regulations' refer to The Conservation of Habitats and Species Regulations 2017. |                 |

| Stage 1 - details of the plan or project  |  |
|---|--|
| European site potentially impacted by planning application, plan or project:              | Solent and Southampton Special Protection Area (SPA) and Ramsar site. Solent Maritime Special Area of Conservation (SAC). Collectively known as the Solent SPAs.<br>New Forest SAC, SPA and Ramsar site. |
| Is the planning application directly connected with or necessary to the management of the | No. The development consists of an increase in residential dwellings, which is neither connected to nor necessary to the management of any European site.  |

|  |   |
|--|---|
| <p>site (if yes, Applicant should have provided details)?</p>  |   |
| <p>Are there any other projects or plans that together with the planning application being assessed could affect the site (Applicant to provide details to allow an 'in combination' effect to be assessed)?</p> | <p>Yes. All new housing development within 5.6km of the Solent SPAs is considered to contribute towards an impact on site integrity as a result of increased recreational disturbance in combination with other development in the Solent area.</p> <p>Concerns have been raised by Natural England that residential development within Southampton, in combination with other development in the Solent area, could lead to an increase in recreational disturbance within the New Forest. This has the potential to adversely impact site integrity of the New Forest SPA, SAC and Ramsar site.</p> <p>The PUSH Spatial Position Statement (<a href="https://www.push.gov.uk/work/planning-and-infrastructure/push-position-statement/">https://www.push.gov.uk/work/planning-and-infrastructure/push-position-statement/</a>) sets out the scale and distribution of housebuilding which is being planned for across South Hampshire up to 2034.</p> |

|  |  |
|--|--|
| <p><b>Stage 2 - HRA screening assessment</b></p>   |  |
| <p>Screening under Regulation 63(1)(a) of the Habitats Regulations – The Applicant to provide evidence so that a judgement can be made as to whether there could be any potential significant impacts of the development on the integrity of the SPA/SAC/Ramsar.</p>   |  |
| <p><b>Solent SPAs</b></p> <p>The proposed development is within 5.6km of the collectively known European designated areas Solent SPAs/Ramsar sites. In accordance with advice from Natural England and as detailed in the Solent Recreation Mitigation Strategy, a net increase in housing development within 5.6km of the Solent SPAs is likely to result in impacts to the integrity of those sites through a consequent increase in recreational disturbance.</p> <p>Development within the 5.6km zone will increase the human population at the coast and thus increase the level of recreation and disturbance of bird species. The impacts of recreational disturbance (both at the site-scale and in combination with other development in the Solent area) are analogous to impacts from direct habitat loss as recreation can cause important habitat to be unavailable for use (the habitat is functionally lost, either permanently or for a defined period). Birds can be displaced by human recreational activities (terrestrial and water-based) and use valuable resources in finding suitable areas in which to rest and feed undisturbed. Ultimately, the impacts of recreational disturbance can be such that they affect the status and</p> |  |

distribution of key bird species and therefore act against the stated conservation objectives of the European sites.

### **The New Forest**

The New Forest National Park attracts a high number of visitors (13.3 million annually), and is notable in terms of its catchment, attracting a far higher proportion of tourists and non-local visitors than similar areas such as the Thames Basin and Dorset Heaths. Research undertaken by Footprint Ecology, Sharp, J., Lowen, J. and Liley, D. (2008) Changing patterns of visitor numbers within the New Forest National Park, with particular reference to the New Forest SPA. (Footprint Ecology.), indicates that 40% of visitors to the area are staying tourists, whilst 25% of visitors come from more than 5 miles (8km) away. The remaining 35% of visitors are local day visitors originating from within 5 miles (8km) of the boundary.

The report states that the estimated number of current annual visits to the New Forest is predicted to increase by 1.05 million annual visits by 2026 based on projections of housing development within 50km of the Forest, with around three quarters (764,000) of this total increase originating from within 10km of the boundary (which includes Southampton).

Residential development has the potential to indirectly alter the structure and function of the habitats of the New Forest SAC, SPA and Ramsar site breeding populations of nightjar, woodlark and Dartford warbler through disturbance from increased human and/or dog activity. The precise scale of the potential impact is currently uncertain however, the impacts of recreational disturbance can be such that they affect the breeding success of the designated bird species and therefore act against the stated conservation objectives of the European sites.

### Stage 3 - Appropriate Assessment

Appropriate Assessment under Regulation 63(1) - if there are any potential significant impacts, the applicant must provide evidence showing avoidance and/or mitigation measures to allow an Assessment to be made. The Applicant must also provide details which demonstrate any long term management, maintenance and funding of any solution.

#### Solent SPAs

The project being assessed would result in a net increase of dwellings within 5.6km of the Solent SPAs and in accordance with the findings of the Solent Recreation Mitigation Strategy, a permanent significant effect on the Solent SPAs due to increase in recreational disturbance as a result of the new development, is likely. This is contrary to policy CS 22 - Promoting Biodiversity and Protecting Habitats, of the Southampton Core Strategy Partial Review, which states that,

*Within Southampton the Council will promote biodiversity through:*

*1. Ensuring development does not adversely affect the integrity of international designations, and the necessary mitigation measures are provided; or the development otherwise meets the Habitats Directive;*

In line with Policy CS22, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

Southampton City Council formally adopted the Solent Recreation Mitigation Strategy (SRMP) in March 2018. The SRMP provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development. This strategy represents a partnership approach to the issue which has been endorsed by Natural England.

As set out in the Solent Recreation Mitigation Strategy, an appropriate scale of mitigation for this scheme would be:

| Size of Unit | Scale of Mitigation per Unit |
|--------------|------------------------------|
| 1 Bedroom    | £337.00                      |
| 2 Bedroom    | £487.00                      |
| 3 Bedroom    | £637.00                      |
| 4 Bedroom    | £749.00                      |
| 5 Bedroom    | £880.00                      |

Therefore, in order to deliver the an adequate level of mitigation the proposed development will need to provide a financial contribution, in accordance with the table above, to mitigate the likely impacts.

A legal agreement, agreed prior to the granting of planning permission, will be necessary to secure the mitigation package. Without the security of the mitigation being provided through a legal agreement, a significant effect would remain likely. Providing such a legal agreement is secured through the planning process, the proposed development will not affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites.

### **New Forest**

The project being assessed would result in a net increase in dwellings within easy travelling distance of the New Forest and a permanent significant effect on the New Forest SAC, SPA and Ramsar, due to an increase in recreational disturbance as a result of the new development, is likely. This is contrary to policy CS 22 - Promoting Biodiversity and Protecting Habitats, of the Southampton Core Strategy Partial Review, which states that,

*Within Southampton the Council will promote biodiversity through:*

*1. Ensuring development does not adversely affect the integrity of international designations, and the necessary mitigation measures are provided; or the development otherwise meets the Habitats Directive;*

In line with Policy CS22, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

At present, there is no scheme of mitigation addressing impacts on the New Forest designated sites, although, work is underway to develop one. In the absence of an agreed scheme of mitigation, the City Council has undertaken to ring fence 5% of CIL contributions to fund footpath improvement works within suitable semi-natural sites within Southampton. These improved facilities will provide alternative dog walking areas for new residents.

The proposed development will generate a CIL contribution and the City Council will ring fence 5% of the overall sum, to fund improvements to footpaths within the greenways and other semi-natural greenspaces.

### **Stage 4 – Summary of the Appropriate Assessment (To be carried out by the Competent Authority (the local planning authority) in liaison with Natural England**

In conclusion, the application will have a likely significant effect in the absence of avoidance and mitigation measures on the above European and Internationally protected sites. The authority has concluded that the adverse effects arising from the proposal are wholly consistent with, and inclusive of the effects detailed in the Solent Recreation Mitigation Strategy.

The authority's assessment is that the application coupled with the contribution towards the SRMS secured by way of legal agreement complies with this strategy and that it can therefore be concluded that there will be no adverse effect on the integrity of the designated sites identified above.

In the absence of an agreed mitigation scheme for impacts on the New Forest designated sites Southampton City Council has adopted a precautionary approach and ring fenced 5% of CIL contributions to provide alternative recreation routes within the city.

This represents the authority's Appropriate Assessment as Competent Authority in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Article 6 (3) of the Habitats Directive and having due regard to its duties under Section 40(1) of the NERC Act 2006 to the purpose of conserving biodiversity. Consideration of the Ramsar site/s is a matter of government policy set out in the National Planning Policy Framework 2012.

Natural England Officer: Becky Aziz (email 20/08/2018)

Summary of Natural England's comments:

Where the necessary avoidance and mitigation measures are limited to collecting a funding contribution that is in line with an agreed strategic approach for the mitigation of impacts on European Sites then, provided no other adverse impacts are identified by your authority's appropriate assessment, your authority may be assured that Natural England agrees that the Appropriate Assessment can conclude that there will be no adverse effect on the integrity of the European Sites. In such cases Natural England will not require a Regulation 63 appropriate assessment consultation.

**Planning and Rights of Way Panel 9<sup>th</sup> October 2018**  
**Planning Application Report of the Service Lead- Infrastructure, Planning & Development**

|  |   |                             |  |
|--|---|-----------------------------|--|
| <b>Application address:</b><br>35-36 Oxford Street, Southampton  |   |                             |  |
| <b>Proposed development:</b><br>Change Of Use Of Basement To Bar Venue providing Food, Drink, Dancing and Musical Entertainment And External Alterations To Front Elevation. |   |                             |  |
| <b>Application number</b>  | 18/01561/FUL  | <b>Application type</b>     | FUL                                    |
| <b>Case officer</b>  | Melanie Robertson   | <b>Public speaking time</b> | 5 minutes                              |
| <b>Last date for determination:</b>  | 10.10.2018  | <b>Ward</b>                 | Bargate                                |
| <b>Reason for Panel Referral:</b>  | Referred by the Service Lead-Infrastructure, Planning & Development | <b>Ward Councillors</b>     | Cllr Bogle<br>Cllr Noon<br>Cllr Paffey |

|  |                         |
|--|-------------------------|
| <b>Applicant:</b> Mr Simon & Mrs Carol Foderingham | <b>Agent:</b> Jb Design |
|--|-------------------------|

|   |                              |
|---|------------------------------|
| <b>Recommendation Summary</b>               | <b>Conditionally approve</b> |
| <b>Community Infrastructure Levy Liable</b> | <b>Not applicable</b>        |

**Reason for granting Permission**

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations including the Conservation Area location of the site 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. 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 39-42 of the National Planning Policy Framework (2018).

Policies - SDP1, SDP7, SDP9, SDP16, HE1, REI7, and REI8 of the City of Southampton Local Plan Review (March 2006), CS3, CS13, CS14 and CS23 of the Local Development Framework Core Strategy Development Plan Document (Amended 2015), and AP8 the City Centre Action Plan (Adopted 2015)

|                          |                           |  |  |
|--------------------------|---------------------------|--|--|
| <b>Appendix attached</b> |                           |  |  |
| 1                        | Development Plan Policies |  |  |

## Recommendation in Full

Conditionally approve

### **1.0 The site and its context**

- 1.1 The site is located at the eastern end of Oxford Street close to its junction with Terminus Terrace. The ground floor is currently operated as a restaurant with separate bar area. The upper floors have been converted to residential flats.
- 1.2 The site is within the Oxford Street Conservation Area and also within one of the Evening Zones as defined by policy AP8 of the City Centre Action Plan (Adopted 2015).

### **2.0 Proposal**

- 2.1 Consent was granted in 2013 for change of use of the basement to Private Members Club.
- 2.2 This application went before the Planning Panel with an officer recommendation for closing hours of 12.00 am (midnight) Monday to Sunday including recognised Public Holidays in accordance with the Local Plan policy CLT 14 (now replaced by City Centre Action Plan policy AP8). The applicant requested operating hours of 10am - 2.30am every day of the week including Sundays and recognised Public Holidays. The Planning and Rights of Way Panel approved an amended condition for operating hours 10am - 2.30am every day of the week including Sundays and recognised Public Holidays, with the additional condition of a Register of Members to ensure operation as a Private Members Club to protect the amenities of local residents
- 2.3 However the use did not commence within the 3 year period conditioned therefore this permission expired and the current application seeks to re-invoke this consent with operating hours Monday – Thursdays 10- 2am, Fridays and Saturdays and Bank Holidays 10-2.30am and Sundays 10-1.30am. However the current application seeks use as a public late night bar rather than a Private Members Club.
- 2.4 The basement is currently used for storage and some office used but otherwise unused and deteriorating.
- 2.5 Access to the club would be achieved by re-instating an original door opening along the Oxford Street frontage and forming a new staircase within the existing ground floor restaurant , via a sound and fireproof lobby, to the basement area.
- 2.6 Alterations are also required to the rear elevation (largely hidden from public view in John Street) to facilitate emergency exit, and refuse storage and collection. Confirmation of these alterations would be required prior to the use becoming operational.
- 2.7 The current operating hours of the ground floor bar/restaurant are 10am -1am Monday to Saturday and Middyay to 1am on Sundays.

### **3.0 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), the City of Southampton Core Strategy (Amended 2015), and the City Centre Action Plan (Adopted 2015). The most relevant policies to these proposals are set out at **Appendix 1**.

3.2 The National Planning Policy Framework (NPPF) was reviewed in 2018 and replaces the original 2012 version and the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy and City Centre Action Plan 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.

#### **4.0 Relevant Planning History**

4.1 99/01055/FUL: Change of use of basements to private members club for food, drink dancing and musical entertainment.

Approved subject to Conditions.

4.2 13/00922/FUL: Change of use of basement to Private Members Club (Sui Generis Use Class), and external alterations to front elevation.

Approved subject to Conditions.

4.3 These consents have since expired without implementation.

#### **5.0 Consultation Responses and Notification Representations**

5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, and erecting a site notice on 07.09.2018. 33 notification letters were sent out. At the time of writing the report **0 representations** had been received from surrounding residents.

5.2 **SCC Highways** – No objections to extension of existing use

5.3 **SCC Flood Risk**– No comments

5.4 **SCC Heritage** – No objections

5.5 **SCC Environmental Health** -No objections

#### **6.0 Planning Consideration Key Issues**

6.1 The key issues for consideration in the determination of this planning application are:

- i. Principle of development
- ii. Character and Impact on Conservation Area
- iii. Nature of the use
- iv. Hours of use

##### **6.2 Principle of Development**

6.2.1 The principle of development is acceptable. Utilising the basement area will help maintain the fabric of the building and bring back into use an underused area of a building which will complement existing uses at ground floor. Other night time uses in the surrounding area add to the diversity and variety of the Oxford Street night-time economy.

##### **6.3 Character and Impact on Conservation Area**

6.3.1 The proposed external alterations to the building include re-introducing an original access door onto Oxford Street and rationalising/improving the rear area in John Street. The alterations will not have a detrimental impact on the character of the Conservation Area but will maintain the high quality frontage of Oxford Street.

## 6.4 Nature of the Use

6.4.1 Evening/ late night venues are part of a diverse night-time economy. Planning conditions relating to sound attenuation, sound amplification and surveillance systems mean that the facility is less likely to attract or be the cause of anti-social behaviour.

## 6.5 Hours of Use

6.5.1 The applicant has highlighted that the existing bar and restaurant (ground floor) operate until 1am and that given nature of the venue should not generate the type of activity or problems that should result in a restriction of opening hours.

6.5.2 The detailed work undertaken to inform policy decision making (The Local Development Framework City Centre Action Plan - The Nighttime Economy Background Paper August 2013) identifies that the terminal hour for uses within the Oxford Street Zone should be midnight. This is consistent with the previous background paper on the night-time economy which supported Policy CLT14 of the City of Southampton Local Plan Review 2006.

6.5.3 Unless other material planning considerations are judged to outweigh up to date policies, then those policies should be followed to ensure consistent decision making. Oxford Street has been allocated as a nighttime zone but due to the mixed nature of the area which includes flats the policy identifies that late night uses should be limited to midnight in order to safeguard amenity.

6.5.4 Although an earlier consent gave approval for later hours this was following careful consideration by the Planning Panel and a restriction on the basement's use as a private members club/bar. The current application is for a public bar but again seeks extended hours past the midnight position set out in our current policy/guidance. This is a material consideration and officer's recommend that extended hours as requested would be contrary to policy and potentially harmful to residential amenity in neighbouring streets as patrons leave the bar in the early morning thereby extending the impacts. A difficult precedent for other similar requests could also arise. On this basis the scheme is recommended for permission, but with a midnight close. Hampshire Constabulary have been notified of the application and any comments will be reported verbally at the meeting.

## 7.0 Summary

7.1 The use of the basement area as bar venue providing food, drink, dancing and musical entertainment and will add to the vibrancy and diversity of what is an important and high quality part of Southampton's night-time economy. The external changes to the building maintain the character of the Conservation Area. The bringing back into use the basement area will benefit the building. The suggested conditions are required to ensure that the use operates in a manner which does not affect local amenity at hours when nearby residents should expect to enjoy quiet amenity without undue disturbance notwithstanding the city centre location.

## 8.0 Conclusion

The scheme is recommended for approval for the reasons set out above subject to the conditions set out below.

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

1 (a) (b) (c) (d), 2 (b) (c) (d), 3 (a), 4 (d), 6 (c), 7 (a).

**MR for 09/10/18 PROW Panel**

**PLANNING CONDITIONS**

**01 APPROVAL CONDITION - Full Permission Timing Condition - Change of use**

The use 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 - Extract Ventilation/Air Conditioning and other Plant and Equipment - Pre-Commencement Condition**

Details of all external ventilation fans to compressors and acoustic shielding, ducting, flues or other plant, machinery or equipment used for the purposes of providing an adequate extract ventilation system or in connection with the provision of air conditioning shall be submitted to and approved by the Local Planning Authority before the development commences. No additional ventilation fans, ducting, flues, plant or machinery or other equipment shall be installed without the prior written consent of the Local Planning Authority.

REASON

The Authority wish to retain control over the ducting and flues to be installed externally in the interests of the visual amenities of the Conservation Area.

**03. APPROVAL CONDITION - Hours of Use - Performance Condition**

Unless the Local Planning Authority agree otherwise in writing, the premises to which this permission relates shall not be open for business outside the hours specified below:-

10.00 am to 12.00 am (midnight) Monday to Sunday including recognised Public Holidays.

REASON

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

**4. APPROVAL CONDITION - Sound Amplification systems - Performance Condition**

No sound amplifying equipment which is audible outside the premises shall be installed in the basement area without the prior written consent of the Local Planning Authority.

REASON

To protect the amenities of the surrounding area.

**5. APPROVAL CONDITION - Site Surveillance - Pre-occupation Condition**

Before the use hereby permitted is implemented a detailed scheme for the surveillance of the site frontage including door access and outside customer waiting area shall be

submitted to and agreed by the Local Planning Authority. The agreed scheme shall be in place and fully implemented to the satisfaction of the Local Planning Authority before the use hereby permitted is commenced.

REASON In the interests of public safety and security and to protect the amenities of the surrounding area.

6. APPROVAL CONDITION - Refuse Storage - Pre-occupation Condition  
Full details of the facilities to be provided for the storage and removal of refuse, within the building, shall be submitted to the Local Planning Authority before the use of the basement first commences. No refuse storage shall take place along the Oxford Street frontage.

REASON To ensure refuse is stored inside the building within a properly designed store to the rear of the building in the interests of the visual amenities of the Conservations Area.

7 APPROVAL CONDITION - Sound Attenuation - Pre-occupation Condition  
Before the use hereby approved commences, a detailed scheme for the soundproofing of the building including measures for ventilation, transmission of noise between other parts of the buildings and transmission of noise beyond the building shall be submitted to and approved by the Local Planning Authority. Such agreed scheme of soundproofing shall be fully implemented to the satisfaction of the Local Planning Authority before the basement area is first brought into use.

REASON To protect the amenities of the surrounding area.

8. APPROVAL CONDITION - Delivery Times - Performance Condition  
No deliveries to the basement use shall take place or be dispatched from the site outside the hours of 8.00 am - 6.00 pm Monday to Saturday and at no time on Sundays, Bank or Public Holidays.

REASON To protect the amenities of the surrounding area

9. APPROVAL CONDITION - Approved Plans  
The development hereby permitted, including the external alterations to the front elevation 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. Any additional external alterations required to be carried out to facilitate the development must be the subject of additional plans to be submitted and approved in writing by the Local Planning Authority prior to those works being undertaken.

Notwithstanding current submitted plans, details of access arrangements for wheelchair users and ambulant disabled to be confirmed in writing with the Local Planning Authority prior to commencement.

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

**POLICY CONTEXT**

Core Strategy - (January 2010)

|      |                             |
|------|-----------------------------|
| CS1  | City Centre Approach        |
| CS3  | Promoting Successful Places |
| CS13 | Fundamentals of Design      |
| CS14 | Historic Environment        |
| CS23 | Flood Risk                  |

City of Southampton Local Plan Review – (March 2006)

|       |   |
|-------|---|
| SDP1  | Quality of Development                      |
| SDP7  | Urban Design Context                        |
| SDP9  | Scale, Massing & Appearance                 |
| SDP16 | Noise                                       |
| HE1   | New Development in Conservation Areas       |
| REI7  | Food and Drink Uses (Classes A3, A4 and A5) |
| REI8  | Shopfronts                                  |

City Centre Action Plan (March 2015)

AP8 – The Night Time Economy

Other Relevant Guidance

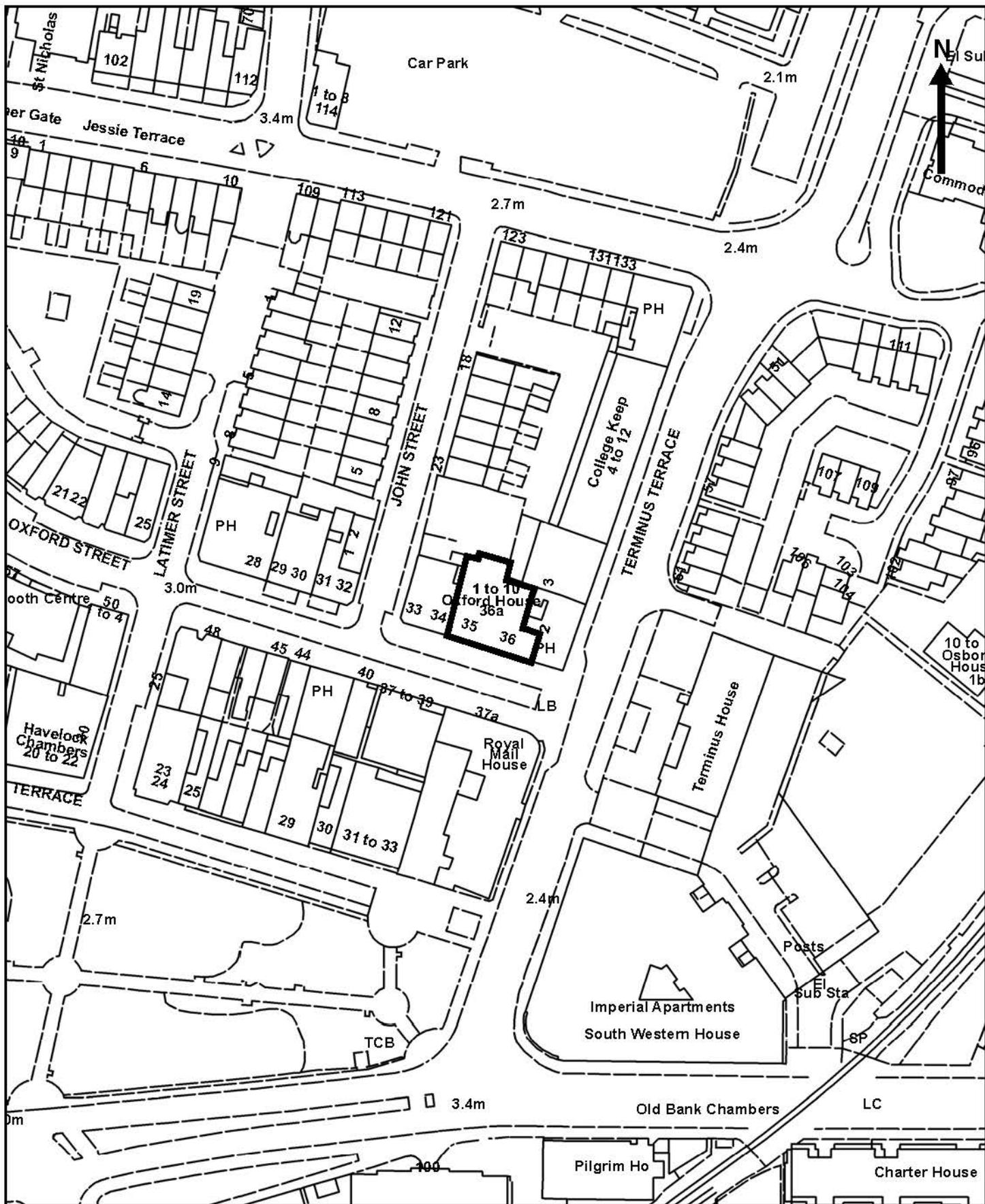
The National Planning Policy Framework 2018

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# Agenda Item 11

# 18/01561/FUL

Appendix 1



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