

NOTICE OF MEETING

PLANNING COMMITTEE

WEDNESDAY, 16 SEPTEMBER 2015 AT 5.00 PM

THE COUNCIL CHAMBER - SECOND FLOOR, THE GUILDHALL

Telephone enquiries to Lisa Gallacher 0239283 4056

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Planning Committee Members:

Councillors Aiden Gray (Chair), Stephen Hastings (Vice-Chair), Jennie Brent, Ken Ellcome, David Fuller, Colin Galloway, Scott Harris, Hugh Mason, Sandra Stockdale and Gerald Vernon-Jackson

Standing Deputies

Councillors John Ferrett, Margaret Foster, Hannah Hockaday, Suzy Horton, Lee Hunt, Donna Jones, Lee Mason, Robert New, Darren Sanders, Linda Symes and Rob Wood

(NB This Agenda should be retained for future reference with the minutes of this meeting.)

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Representations by members of the public may be made on any item where a decision is going to be taken. The request needs to be made in writing to the relevant officer by 12 noon of the working day before the meeting, and must include the purpose of the representation (eg. for or against the recommendations). Email requests to planning.reps@portsmouthcc.gov.uk or telephone a member of the Technical Validation Team on 023 9283 4826

AGENDA

- 1 Apologies for absence**
- 2 Declaration of Members' Interests**
- 3 Minutes of Previous Meeting - 12 August 2015 (Pages 1 - 8)**

The minutes of the Planning Committee on 12 August are attached.

RECOMMENDED that the minutes of the Planning Committee held on 12

August be confirmed as a correct record and signed by the Chair.

4 Code for Councillors and Officers in respect of Planning Matters - an introduction (Pages 9 - 20)

The Assistant Director of Culture and City Development and the Senior Solicitor (Planning) will briefly introduce the revised code. Members will be invited to ask questions relating to implementing the Code.

5 Updates by the City Development Manager on previous planning applications

6 Planning appeal decision relating to 591 London Road, Hilsea (Pages 21 - 24)

Purpose of report

To advise the Committee of the outcome of the appeal.

Recommendations

That the report is noted.

Planning Applications

7 15/00862/FUL - 94 Napier Road Southsea PO5 2RB - Change of use from dwelling house (Class C3) to purposes falling within Class C3 (dwellinghouse) or C4 (house in multiple occupation) (Pages 25 - 46)

8 15/01161/FUL - Northern Pavilion And Bowling Green Adjacent To Eastern Parade Canoe Lake Southsea Esplanade - Change of use from bowls club to day nursery; external alterations to pavilion to include construction of front and side extensions, new pitched roof, veranda and cladding; landscaping to include canopies, play equipment and raised planters; and associated boundary treatments, refuse storage facilities and entrance (Re-submission of 14/00414/FUL)

Members of the public are now permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting or records those stating explicitly that they do not wish to be recorded. Guidance on the use of devices at meetings open to the public is available on the Council's website and posters on the wall of the meeting's venue.

Agenda Item 3

PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held on Wednesday, 12 August 2015 at 5.00 pm in the Executive Meeting Room - Third Floor, The Guildhall, Portsmouth.

These minutes should be read in conjunction with the agenda and associated papers for the meeting.

Present

Councillors Aiden Gray (Chair)
Stephen Hastings (Vice-Chair)
Jennie Brent
Colin Galloway
Robert New (Standing deputy)
Darren Sanders (Standing deputy)
Sandra Stockdale
Gerald Vernon-Jackson

Also in attendance

Councillor Paul Godier

Welcome

The chair welcomed members of the public and members to the meeting.

Guildhall, Fire Procedure

The chair, Councillor Gray, explained to all present at the meeting the fire procedures including where to assemble and how to evacuate the building in case of a fire.

81. Apologies for absence (AI 1)

Apologies for absence were received from Councillors Ken Ellcome, Steve Harris and Hugh Mason. Councillors Darren Sanders and Robert New were in attendance as standing deputies.

82. Declaration of Members' Interests (AI 2)

Councillor Aiden Gray declared an interest in application 1 - Myfanwy House, 14-16 Magdala Road, Portsmouth - in that he has been personally working with residents and the 'Friends of Myfanwy House'. He was also appearing as a deputation on the matter.

83. Minutes of previous meeting - 22 July 2015 (AI 3)

RESOLVED that the minutes of the Planning Committee meeting held on 22 July 2015 be approved as a correct record and signed by the chair.

84. Updates by the City Development Manager on previous planning applications (AI 4)

There were no updates.

85. DA:15/00244/FUL: Myfanwy House 14-16 Magdala Road Portsmouth PO6 2QG - Demolition of existing 3 storey building and construction of a part 2-/part 3-storey building to form a home for the elderly (within use Class C2) for 14 persons with staff sleepover unit, office, communal facilities and associated refuse/buggy storage, landscaping and parking (report item 1) (AI 5)

Councillor Steve Hastings took the chair for this item following Councillor Gray's earlier declaration of interest.

It was reported in the Assistant Director of Culture and City Developments supplementary matters list that notwithstanding the submission of a report outlining the results of survey work to establish whether the existing building has a roost, or roosts, for bats, in response to a concern from the occupier of the adjoining property a further survey was undertaken and the results were forwarded to the Council's ecologist for assessment. His comments were attached to the supplementary matters list. It is concluded that even if the building did support small numbers of pipistrelle bats, and if the measures set out in the report to address this were to form the basis of an application for a European protected species mitigation licence from Natural England (NE), then it is considered that the development would be likely to be granted a licence, and would appear to be able to be accommodated under the low-impact class licence. It is therefore recommended that the following condition be attached should permission be granted:

Development shall proceed in accordance with the recommendations set out in the Additional Bat Detector Survey Work & Report - Redevelopment of Myfanwy House, 14-16 Magdala Road, Portsmouth, PO6 2QG for the Abbeyfield Solent Society Ltd (FOA Ecology, letter report dated 5th August 2015) regarding pre-commencement bat survey work and subsequent working methods and integration of new bat roost features.

Reason: To protect biodiversity in accordance with Policy PCS13 of the Portsmouth Plan.

A deputation was heard from Mr Potter, representing himself and the Hunt family of No.18 Magdala Road who included the following points in his representations:

- The development will result in a compromise in privacy.
- Proposed building is substantially larger than current one.
- There are few windows and a fire-escape currently facing No.18.
- There is a greater mass coming towards No.18.
- New development will require additional staff.
- Sewer system won't be able to take any more developments.
- Much of Cosham's architecture has been vandalised over the last decade.
- Cosham's heritage is being taken away and has very little Edwardian/Victorian architecture left.
- The ambience of Cosham will be affected.
- Strongly object to the findings of the bat survey. Feel it is flawed.

- I see bats in numbers every night and would invite anyone to view at dusk and dawn to see what I see.
- It may be seen as impartial but I do not believe it to be.
- The Planning Committee needs to re-address the bat survey.
- No.14 was gifted to the Abbeyfield Society. It needs to continue in its current form to provide facilities for elderly persons.
- Would ask that there is a covenant to restrict the change of use to residential.

Deputations were also heard from Mr Mitchell (the applicant) and Mr Knight (the applicant's agent) who included the following points in their representations:

- The development will provide supported sheltered housing for 7-11 residents in individual units.
- This is not a care or nursing home but a residential home for older persons who do not want to live alone.
- We need to update the facilities to meet the growing aspirations of our residents.
- Have six properties in this area and each has a house keeper/manager.
- We are able to record a high occupancy rate and a healthy waiting list.
- Except for one other, all our properties will need updating over the next ten years.
- This is private accommodation, providing three meals a day, warmth and comfort whilst living independently in a friendly and supported atmosphere.
- Myfanwy House will be a welcome addition to the street scene.
- Car parking is provided for the manager. Residents do not own a vehicle only a mobility scooter.
- No resident is under the age of 60.
- Had considerable pre-application negotiations and discussions with the council.
- Have reduced the bulk and mass of the building.
- Any windows overlooking residential properties will be fixed and obscure glazed.
- Roof design and window proportion are all in keeping with Cosham.
- There are no recorded bats present or any that have been seen.

A deputation was also heard from Cosham ward Councillor Aiden Gray who included the following points in his representations:

- Have been working very closely with residents who feel that that there was not sufficient consultation taken particularly in relation to the size and footprint of the building.
- This is a fantastic architectural and stunning building.
- There will be a loss of light and amenity to No.18.
- The proposal is overbearing and the building is too big for this area.
- The carcass of the building could be re-used and made fit for modern purpose.
- With regards to the bats, I have seen a number of bats in the evenings and would ask the committee to defer for a re-assessment.
- This development will have an impact on an already over stretched sewer system.

- The development will have more residents who may not have their own cars but they will have visitors.
- The area deserves better.

Councillor Gray left the room after giving his deputation.

The senior ecologist from Hampshire County Council further explained the process and guidance used when undertaking a bat survey.

Members' questions

Members sought clarification as to whether permission would be needed to demolish the building and asked why it wasn't a listed building. Permission was not needed prior to demolition and members were informed that buildings are valued in their surrounding landscape. The conclusion for this building is that it is not listed and there is no reason why demolition cannot occur.

Members asked whether there are bats or not. In response members were advised that based on the likelihood that there will be a breach of the regulations, it is unlikely. There is no evidence to say that the bat came from the building and nothing to say that the bat won't go there to roost. We are suggesting pre-demolition checks just to ascertain whether a bat has started to roost. Work must stop if evidence of bats is found.

Members also questioned what consultation if any had taken place with residents and whether the council officers had seen the covenant. Members were advised that the issue of whether there is a covenant present or not was not a planning matter. There is no requirement for developers to involve the community but it is good practice for any developer to speak and engage with neighbours and residents.

Members raised the issue of car parking and whether a condition could be added, were permission to be granted, restricting the age of the residents occupying the development.

Members' comments

Members on the whole did not want to see the current beautiful building demolished and encouraged the re-use of the current building. Members felt that the new proposal was overbearing and not in keeping with the character of the area and street-scene.

RESOLVED that planning permission be refused for the following reason: The proposed building would, by virtue of its increased scale and footprint, result in a reduction in the sense of openness on a prominent corner plot and would thereby be out-of-keeping with the area and would have an overbearing impact in relation to the street scene. The proposal would therefore be contrary to the objectives of policy PCS23 of the Portsmouth Plan.

86. **DA: 15/00544/FUL: 1 Plymouth Street Southsea PO5 4HW - Conversion and extension of former public house (Class A4) to sixteen bedroom house in multiple occupation (sui generis) (report item 2) (AI 6)**

Councillor Aiden Gray was back in the chair for the remainder of the meeting.

This application had been brought to the committee at the request of ward Councillor Paul Godier.

A deputation was heard from ward Councillor Paul Godier who included the following points in his representations:

- With 16 units parking will be a problem. Previous use as a pub, people used to walk so parking was never an issue.
- Could be potentially over 30 car users.
- Concerned about the tenants who may live there.
- This is a family area.
- The area has been beautified with the hub and improvements with the school.
- Concerned about the potential of social problems. There are elderly, vulnerable residents living in Ladywood House who rarely leave their properties.
- Policy PSC16 refers to community benefit - do not believe there is any benefit to the community with this development.

Members' questions

Members questioned the number of parking permits allocated to the development, the number of bathrooms per floor and the 'open space' for the occupiers of the development. The development is entitled to two parking permits under the parking scheme. With regards to the number of bathrooms, there are two on the ground floor and one bath and one shower on the second floor. The yard area to the rear of the property is the amenity space for the occupiers.

Members' comments

Members felt that the proposal was an over-development with 16 units, it is inappropriate for the area, particularly with the lack of cooking and bathing facilities it was unlikely to be for student use and the lack of parking provision.

RESOLVED that planning permission be refused for the following reason:

- 1. In the opinion of the Local Planning Authority, the proposed use of the building as extended would amount to an over-intensive development of the site and provide a poor quality of accommodation for future occupiers. The proposal is therefore contrary to the aims and objectives of the National Planning Policy Framework and to policy PCS23 of the Portsmouth Plan.**
- 2. In the absence of a suitable agreement to secure appropriate mitigation measures, the development would be likely to have a significant effect on the Solent Protection Areas and so is contrary to Policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended).**

- 87. DA: 15/00895/FUL: 1 North End Avenue Portsmouth PO2 9EA - Change of use from builders store to mot station and repair garage and installation of replacement roof covering and re-cladding to part of front elevation (amended scheme) (report item 3) (AI 7)**

The Assistant Director of Culture and City Development reported in the supplementary matters list that the following comments had been received from the Highway Engineer:

Whilst on-street parking in the vicinity is unrestricted, it is severely congested due to the predominantly terraced housing without off-road parking facilities. A proposed parking scheme was rejected by residents within 3 years ago as the majority of vehicles are associated with residents but the width of the housing frontages allows for 1 space per household. Vehicles associated with vehicle repair/MOT garages can cause frustration for local residents, with vehicles left in the residential roads on a regular basis, reducing parking availability. However, considering the unrestricted parking in the vicinity of the site an objection on highway grounds cannot be sustained and therefore no objection is raised.

A further objection had been received on the grounds that the applicants existing garage in Wadham Road causes parking problems and is noisy.

Deputations were heard from Mr Farah, Mr Hoard and Mr Knight, all objecting to the proposal, who included the following points in their representations:

- This is the third time the applicant has sought to change the use of the building. The first was withdrawn and the second was refused.
- This proposal has produced 32 objections from residents.
- A repair centre will impact on local residents.
- The noise will have an impact. This proposal brings an additional 60 hours of noise.
- The proposal will generate additional traffic.
- There is an issue of personal safety to pedestrians on the thoroughfare.
- Nearest home is 12 inches away.
- There is a major risk of fire and explosion from this use.
- There is no talk of improvement for local residents from what is there already.
- Residents' objections have not been addressed.
- The proposal does not offer economic or social benefit to residents.
- The corrugated roof and plastic curtain will not delight or enhance the area.
- The proposal is on a 2-way road with vehicles crossing.
- I live next door to the site and have done for 30 years.
- It has always been used as a store. Vehicles would arrive to drop off/pick up items from the store maybe twice a day. Sometimes noise could be heard from items being thrown into the van or into the store.
- The noise associated with a repair garage and MOT testing station is going to be far greater.

A deputation was also heard from the applicants' agent, Mr Tutton who included the following points in his representations:

- The building stands back 2m from the footpath.
- There are obscure glazed windows on the east elevation which are mainly broken.
- The previous application for the change of use was refused for one reason. Rather than appeal the decision the applicant decided to address the reason for refusal.
- The asbestos roof will be replaced.

- There will be plastic cladding on the front and plastic windows to replace the broken ones.
- A heavy plastic curtain will be fixed across the entrance to curtail noise.
- Highly unlikely that these works will have an adverse impact on local residents.
- This will provide an alternative commercial use for these premises.

Members' questions

Members sought clarification on the term 'sui generis', the noise and fumes from an MOT testing station, the number of parking permits a garage is entitled to in a residential area, the opening hours and whether there was to be an extraction fan system to be installed. The term 'sui generis' in planning law refers to something which doesn't fall within any use class. A noise assessment has been undertaken and based on that report and the proposed works as offered by the applicant, officers do not feel that there will be any demonstrable harm. Vehicles are tested/run for between 30 seconds to 1.30 so fumes are minimal. It was noted that the garage opening hours were from 0800 to 1800 hours daily. It was also noted that garages are entitled to eight parking permits for vehicles.

Members' comments

Members felt that this proposal would have an impact on local residents particularly with the revving of engines in a small confined space creating noise and disturbance. The parking of vehicles in residential roads will also have an impact on residential amenity. Councillor New supported the application. He felt that with the acoustic noise treatment there would not be a noise impact to residents. He was supportive of the applicant running a small business employing local people and felt he had done well to address the previous reasons for refusal.

**RESOLVED that planning permission be refused for the following reason:
The proposed use of the building would, by reason of the noise and disturbance associated with it, be likely to give rise to an unacceptable loss of residential amenity to the detriment of the occupiers of neighbouring properties. The proposal is therefore contrary to policy PCS23 of the Portsmouth Plan.**

The meeting concluded at 7.15 pm.

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Signed by the Chair of the meeting
Councillor Aiden Gray

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Agenda Item 4

CODE FOR COUNCILLORS AND OFFICERS IN RESPECT OF PLANNING MATTERS¹

1. Introduction

- 1.1. This Planning Code sets out the standards of conduct the City Council requires of all Councillors and officers of the Council in dealing with planning matters, including applications, policy development, and enforcement.
- 1.2. Councillors and officers must make themselves aware of the Planning Code and put it into practice consistently.
- 1.3. Officers must also comply with any professional codes of conduct applicable to their own profession (regardless of whether they are members of the relevant professional body).

2. Relationship to the Councillors Code of Conduct

- 2.1. If you are a member of the Council, the rules in the Councillors' Code of Conduct apply as a priority, in particular the rules relating to declarations of personal and disclosable pecuniary interests².
- 2.2. The rules in this Planning Code supplement the Councillors' Code of Conduct for the purposes of planning matters. Where Councillors or officers fail to abide by the requirements of the Codes the Council will be at risk of legal challenge and sanctions may be applied to the individual member by the Governance and Audit and Standards Committee.

3. General Role and Conduct of Councillors and Officers

- 3.1. Whilst this Planning Code deals primarily with development proposals at both the pre application /planning applications and post decisions , its principles also apply to consideration of planning policy, enforcement cases, and all other planning matters.
- 3.2. You should comply with the Planning Code equally in formal decision making, in Council meetings, and in less formal circumstances, such as member/officer meetings, meetings with the public, and consultative meetings.
- 3.3. Decisions by the Council in its role as local planning authority must be made in accordance with the Development Plan unless material considerations indicate otherwise.³ There are additional statutory obligations in respect of decisions affecting a listed building or its setting, or development within a

¹ For ease referred to as "the Planning Code"

² See the Council's Constitution, Part 4A

³ See Section 38(6), Planning and Compulsory Purchase Act 2004

Conservation Area, which require impacts to be given special consideration as a priority before other material considerations.⁴

4. Councillor Declaration and Registration of Interests

- 4.1. Councillors who have substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Planning Committee.
- 4.2. Under the Code of Conduct Councillors are obliged to register disclosable pecuniary interests. Advice on when to disclose such interests is available from the Monitoring Officer.
- 4.3. **It is each Councillor's personal responsibility to seek such advice and to decide how to act in respect of the advice received. This should be sought in advance of the Committee meeting (or before any other planning related meeting).** The Councillors' Code requires Councillors to declare all personal interests. Councillors must not seek to participate if they have a disclosable pecuniary interest or a personal pecuniary interest in a matter being considered.
- 4.4. Whether or not you are a member of the Planning Committee and may be called upon to make decisions in respect of planning matters, when dealing with any planning matter you are required to disclose your interest at any relevant meeting, or in any dealings with planning officers.
- 4.5. The need to secure transparent conformity to the highest standards of public service necessitates compliance with the Councillors' Code and the Planning Code, and declaration of relevant interests not only in formal situations but also in all informal meetings and discussions with developers, applicants or officers.
- 4.6. In the same way as your declaration of interest must be recorded for formal meetings, you should ensure that such declarations are recorded on the application file as soon as possible. You should disclose your interest at the beginning of the meeting or as soon as it becomes apparent to you.

5. Effect of having a personal interest in a matter at a Planning Committee Meeting

- 5.1. Once such an interest has been declared and specified, you may stay and take part in the debate and decision on that item. However, if you have an interest that might lead to a perception of bias on your part, either in favour of or opposed to a particular decision, then you should withdraw from the meeting to enable the decision to be made without risk of legal challenge.

6. Effect of having a pecuniary interest in a matter

⁴ See Sections 66 and 72, Planning (Listed Buildings and Conservation Areas) Act 1990

- 6.1. During a Planning Committee meeting you must leave the meeting room/ chamber for the duration of consideration and decision on the item and not seek to influence the debate or decision. You are required to leave in these circumstances to avoid inhibiting the freedom of expression of Councillors who remain and who have to discuss and decide the matter before them.

7. Effect of having a disclosable pecuniary interest

- 7.1. Make sure that the Register of Member Interests has been properly completed.
- 7.2. Do not participate, or give the appearance of trying to participate, in the making of any decision on the matter, including any decision whether the matter should be dealt with by officers or referred to the Planning Committee.
- 7.3. Do not get involved in the processing of the relevant application.
- 7.4. Do not seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor.
- 7.5. Your normal rights as councillor to have information about any matter of Council business as required to fulfil the duties of your role and serve those whom you represent are suspended. In a matter where you have a prejudicial interest your role as councillor is also suspended, and you have only the rights of any other private citizen (except that you may not make personal representations at Committee meetings or in writing as a representation to a planning application). You should not seek information about the matter that would not be available to a member of the general public.
- 7.6. If members of the public, other councillors or officers attempt to refer to you about a matter where you have a disclosable pecuniary interest, you should recommend to them another councillor with whom they might discuss their concerns.
- 7.7. When you are not a member of the Planning Committee or standing deputy and you attend a meeting of the Committee to observe proceedings generally, or in respect of a particular application, you must also disclose any relevant interests you have in a matter to be considered by the Committee. In these circumstances you must conform to the same rules, including retiring from the room immediately after making your declaration and without making any deputation.

8. Development Proposal Submitted by Councillors

- 8.1. The following requirements apply to city council Councillors making or opposing any planning application or any other application under the Town and Country Planning Acts in respect of land or premises in the city of Portsmouth. The code will apply:

- 8.1.1. whether the application is made, or opposition expressed by the member, or by his/her agent or other person acting on their behalf;
 - 8.1.2. to applications made or expressions of opposition or approval where the councillor has a pecuniary interest in the relevant matter;
 - 8.1.3. to applications made or opposition expressed by Councillors of the immediate family of the Councillor where the member knows of the application or objection.
- 8.2. On or before the date when any application or objection as set out in 5.1 is made, the Councillor concerned shall inform the Monitoring Officer giving:
 - 8.2.1. the address of the site of the relevant application;
 - 8.2.2. a description of the nature of the proposed development, or the other matters referred to by the application or objection; and
 - 8.2.3. full details of the councillor's interest in the site and / or the application or the objection.

The Monitoring Officer shall advise the City Development Manager.

- 8.3. Should the Councillor or his/her agent wish to obtain further information concerning the application, or objection, or to carry out any discussions on it, these should be undertaken directly with either the City Development Manager or the Officers appointed to act in her absence and not with any other member of the respective staffs of the departments. A record shall be kept of any verbal or telephone conversation with the relevant application file. The normal rules of information disclosure in regard to planning applications shall apply to such records.
- 8.4. Any application will be processed in the normal way. Any statutory or other advertisements shall not disclose the applicants' name or status, unless required by statute to do so.
- 8.5. In the circumstances of such an application, all the other controls and guidance in the Member Code and this Planning Code shall apply.
- 8.6. In having regard to the aim of assuring public confidence in open, ethical and effective decision-making in respect of planning matters, any member or officer seeking planning permission should take steps to avoid any appearance that they may receive preferential treatment. In such circumstances, to maintain the best appearance of propriety it is preferable to appoint agents to act in their name, rather than dealing directly with planning officers. This necessitates an additional expense, but it protects both the applicant and the Council from allegations of maladministration which may be based on confusion or malice, but nevertheless is time-consuming and expensive to rebut.

9. Development Proposals submitted by Officers

- 9.1. Where an officer makes an application for permission, the officer should advise the City Development Manager. In such a case, all communications about the proposal should be solely through the Council's Planning Service. There should be no contact with other officers or Councillors, which would be a form of lobbying prevented by this Planning Code.
- 9.2. Best practice requires that serving councillors, or officers other than planning officers, should not act as agents for private individuals or companies pursuing or objecting to a planning application made to the City Council.
- 9.3. Proposals submitted by Councillors and those Council staff who work in the Planning Department, or by agents acting on their behalf, should be reported to the Planning Committee as written agenda items and not dealt with by officers under delegated powers. As part of the committee report, the Monitoring Officer must confirm that, as far as he/she is aware, the application has been processed normally. This requirement applies to contractors working for the Council who are normally located within the Council's Civic Offices, Portsmouth.

10. Development proposed by the Council

- 10.1. Parliament has decided that local planning authorities are, in the majority of circumstances, the appropriate body for determining planning applications affecting the area, including where the application is submitted by the Council itself. There are separate statutory requirements for the Council in determining applications to develop its own land, or to develop it jointly with another body.
- 10.2. Proposals for the Council's own development (or development involving the Council and another party) should be treated by Councillors and officers involved in reaching a determination of the application in the same way as those by private developers. The planning decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating such applications on an equal footing with all other applications, as well as actually doing so.

11. Making decisions transparently, and fairly

- 11.1. Councillors who have to make decisions on planning matters and applications will begin to form a view as more information and options become available. When approached by applicants, developers or objectors, Councillors must make it clear that the decision on any planning matter must be taken in accordance with the law, and can only be taken at the Planning Committee when all available information is to hand and has been considered.

- 11.2. Individual Councillors should reach their own conclusions on an application or other planning matter after considering all the information, advice and material available to them and relevant to the decision. Rather than follow any previously expressed opinion, the lead of another Councillor, or of any political group, each councillor must weigh up the factors that are relevant, ignore matters that are not relevant, and make a reasonable decision that could be justified if challenged.
- 11.3. Officers who are wholly or partly involved in the processing or determination of planning matters should not attend public meetings in connection with pre-application development proposals or submitted planning applications unless their attendance has been agreed by their manager. To do so could lead to allegations of prejudice or bias to a particular point of view. If it occurs accidentally that officers are put in such a position, officers should limit remarks and comments to provide information and give no view on the merits or otherwise of the proposal.
- 11.4. When attending public meetings, Councillors should take great care to maintain their impartial role as a Councillor, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals and submitted planning applications.
- 11.5. If Councillors consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer, who will advise the Councillor.

12. Pre-application discussions

- 12.1. A comprehensive written note of pre-application discussions in meetings and telephone calls must be made to be kept on subsequent related application files. This is best practice: it helps to protect the reputation of the Council, its Councillors and officers, and gives transparency to the planning process. Having a record of discussions may also prevent any misrepresentation of Councillors by the public, whether caused by confusion or malice.
- 12.2. Pre-application discussions between applicants, officers and, on occasions Councillors, can be of great benefit in addressing key issues at an early stage in the application process. It may be of particular relevance to involve Councillors when dealing with major or sensitive development schemes. The exchange of views and information can allow Councillors to understand the proposal and bring to the applicant's attention possible local concerns. Officers may gain some understanding of particular sensitivities and concerns expressed by Councillors on behalf of local residents and businesses. It is now recognised that this interaction can help achieve positive outcomes for all involved in the process.
- 12.3. It is preferable if this form of engagement takes place before the application has been submitted. Before the application is submitted, it may be appropriate for Councillors of the Planning Committee to be involved in the same way as Ward Councillors. At any such meeting it must be made explicit that these

discussions cannot bind in any way the decision of the Council or control the voting intentions of the Councillor.

- 12.4. Planning officers should always be in attendance at pre-application discussions with applicants and agents involving Councillors. A comprehensive note of the meeting should be placed on file and sent to the Member concerned. **If an application is made following such discussions, a copy of the note must be put on that application file.**
- 12.5. Where planning officers are involved in pre-application discussions, it should always be made clear at the outset of discussions that by law they cannot commit the Council to make a particular decision. Officers should also make it known that any views expressed are their provisional professional opinions, based on their knowledge of development plan policies and of locally relevant material considerations. **A note that these statements were made should be kept on file**
- 12.6. Every effort will be made to ensure that the advice of planning officers is consistent and that there are no significant differences of interpretation of planning policies between planning officers. **A note of the advice given should be kept on file.**
- 12.7. Planning officers will ensure that their advice does not favour the interests of particular individuals or groups, to reduce any risk that their subsequent advice could be seen as advocacy for a particular point of view. Two or more officers will attend potentially contentious meetings and a follow-up letter should be sent, particularly when material has been left with the Council by the applicant or agent.
- 12.8. If a Councillor is approached by a potential applicant the first course of action should be a clear written note from the Councillor to the City Development Manager recording what has been discussed and any specific comments or advice that has been given by the Councillor.

13. Predisposition, Predetermination and Bias

- 13.1. Members of the Planning Committee must avoid giving any appearance that an application or other matter referred to the Committee has already been determined before the Committee has the opportunity to consider the merits and demerits of a matter in accordance with the law, in public, and in accordance with the normal conduct of the Committee business. Every person making application to the Council or objecting to an application must be encouraged to believe that in considering the matter before it, the Committee will give consideration to all views that are expressed, that such views will be openly heard, and fairly considered in a balanced way before the Committee's decision is made.
- 13.2. It is particularly important that members of the Planning Committee do not give the impression that they have already made up their mind about a matter that will come before the Committee, or that their minds are closed to any

alternative, and that no additional or different information or advice will persuade them to change that fixed view. Such "pre-determination" has been held to amount to the "surrender by a decision-maker of its judgment by having a closed mind and failing to apply it to the task".

- 13.3. The Localism Act 2011 has clarified the position of members of the Council who have expressed a preference for a particular outcome of an application as it proceeds to determination. Such a "pre-disposition" is acceptable and the Councillor concerned will not be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate the view that had been or might be taken in respect of a matter.
- 13.4. Councillors and officers should also be concerned to avoid the appearance of bias, that is, appearing to give undue weight to particular matters on the basis of personal attributes, or social acquaintance, that may influence their conduct generally. Whilst it may remain possible for a member to apply an open mind to the matter to be determined in such circumstances, Councillors must avoid giving the impression or appearance that particular personal interests or attributes would lead them to consider aspects of an application more carefully or with more regard than other aspects unaffected by their own character and experience. It should be understood that the perception of justice *"is rooted in confidence, and that confidence is destroyed when right-minded people go away thinking that the judge was biased"*.⁵
- 13.5. From time to time, Councillors are invited by prospective developers or objectors to attend meetings to discuss proposed development schemes and questions have been asked about the propriety of such attendance. Councillors and the Council have been challenged in the past where they have expressed their opinion of proposals during or after such meetings, or in advance of Committee consideration.
- 13.6. The administrative system by which planning applications are determined in accordance with the law, and as necessary in a democratic society, would be brought into disrepute if it became evident that decisions favourable to an applicant or an objector could be obtained by lobbying Councillors outside the procedural framework. On the other hand, Councillors may be said to have a duty, particularly as Ward Councillors, to inform themselves of proposals which affect their wards and to be alive to public opinion. Councillors can play a constructive role in listening to and objectively gathering and reporting such views to the Councillors who will determine the application.
- 13.7. With these points in mind, it is suggested that the following guidelines may be helpful to Councillors when considering whether to accept an invitation to a meeting.
 - 13.7.1. Where Councillors accept invitations to meetings from prospective developers or objectors when an application for planning permission has been received, even if the invitation is

⁵ Lord Denning

made to them ostensibly as a Ward Councillor, they should avoid expressing any fixed view of the matter.

- 13.7.2. Councillors must not make any commitment to determine a matter in a particular way, for any reason
- 13.7.3. Ward Councillors (subject to paragraphs 1 and 2 above) should not accept invitations to meetings from prospective developers or objectors unless it is clear to them that the meeting is either a public meeting or one to which residents or other persons with an interest in the potential development have also been invited. If a Ward Councillor attends such a meeting in the belief that others have been invited but finds that no other persons are present apart from the developer and Councillor(s), s/he should decline to take part in any discussion of the scheme. There is no reason to distinguish between meetings in neutral premises and meetings in the prospective developer's or objector's own premises.
- 13.7.4. There is nothing to stop Councillors inspecting a site if they choose to do so in order to better acquaint themselves with the details, but Councillors should be aware of the risk of contact with the applicant or objector and inferences which might be made.
- 13.7.5. There is nothing to stop Councillors responding to invitations to a meeting if properly convened through the Chief Executive or by officers in the planning service to which all relevant Councillors have been invited, provided that if the merits and problems of the application are discussed Councillors make it clear that they have no fixed view of the matter at that stage.

It will, of course, remain open for the Governance and Audit and Standards Committee of the Council to sanction a departure from these guidelines in special circumstances.

14. The Decision Making Process and Decisions Contrary to Officer Recommendations and/or the City Plan

- 14.1. All Committee decisions are made by a simple majority.
- 14.2. In discussing, and determining a planning application or other planning matter, Councillors should try to confine their discussion to the policies of the Development Plan, and to those material considerations which should influence their decision. The reasons for making a final decision should be clear, convincing and supported by material considerations and the planning merits.
- 14.3. However, it is acknowledged that deputations by applicants or members of the

public may refer to matters which should not properly be part of the reasoning of the Councillors' decision. On such occasions it may be difficult for Councillors of the Planning Committee to confine their comments to the appropriate planning issues without appearing to disregard expressed concerns. Where it appears that the clarity of the decision-making process may be undermined, the Committee Chairman and officers may give guidance on any elements of the discussions which refer to irrelevant or immaterial considerations, and any elements which should be disregarded by the Committee in formulating its decision. Officers will clarify the weight to be given to the details of reports, or information which comes forward during deputations or in the course of debate.

- 14.4. If Councillors wish to refuse an application against officer advice, to impose additional conditions on a planning permission, or to approve an application contrary to officer recommendation, an officer should explain the implications of such action.
- 14.5. Where they do not accord with the officer's recommendation, the Committee's reasons to grant an application or to refuse it or any additional conditions to be applied must be clearly stated by the member making the proposal to grant the application.
- 14.6. If Councillors cannot give sound and clear-cut reasons for a decision which may override the recommendations of the officers, it is not appropriate to require or expect that the officers can explain such decisions to applicants, objectors or a planning inspector.
- 14.7. When the Committee has made such a decision, the Chairman will allow brief discussion to ensure that officers have understood the intentions and reasons of the Committee. All conditions, including ones which the Committee may wish to impose on a planning permission, must be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.⁶
- 14.8. If the report of the City Development Manager recommends approval of a departure from the City Plan, the full justification for that recommended departure will be included in the report.

15. Councillor /Officer relations and Planning decisions

- 15.1. The City Development Manager or someone deputising will always attend meetings of the Planning Committee to ensure that procedures have been properly followed and planning issues properly addressed.
- 15.2. Other senior officers with appropriate professional and technical experience will also be present when an application has aspects relating to their professional expertise. Where the Council's professional experts, such as

⁶ See National Planning Practice Guidance, Paragraph: 003 Reference ID: 21a-003-20140306

environmental protection officers or highway engineers, attend Committee to ensure that appropriate advice can be given and discussed with their assistance, Councillors must give due weight to such advice. It is the obligation of such officers to give considered and independent advice for the benefit of the Council.

16. Site Visits by Councillors

- 16.1. The other guidance in the Member Code and this Code applies equally to considering whether to conduct a site visit, and to the conduct of officers and Councillors during the site visit.
- 16.2. Councillors and officers must remember, in conducting a site visit, that their presence is permitted in circumstances where anything said or done by them should be restricted to the purposes and interest of the Council as local planning authority.
- 16.3. The purpose of an organised Council site visit is for Councillors to gain knowledge of the development proposal, the application site and its relationship to adjacent sites. The potential benefit of attending the site should be sufficient to justify the administrative expense and any consequential delay to determining the application.
- 16.4. The decision to hold a site visit prior to the Committee meeting is to be made by the most senior planning officer responsible for preparing the agenda in consultation with the Chairman.
- 16.5. The purposes of a formal site visit prior to the Committee meeting are:
 - 16.5.1. to view the setting of the application;
 - 16.5.2. to consider any other matters seen on site which may be material to consideration of the application; and
 - 16.5.3. to find facts, especially when the application site is not visible from public land.
- 16.6. During a site visit Councillors and officers should avoid any appearance of impropriety, and must not accept gifts or hospitality. Comments should be restricted to planning matters, and questions should be put through the planning officers attending the site visit. Officers and Councillors must refrain from making comments that might be construed as supporting or opposing a particular view, and from making any personal comments.
- 16.7. The purpose of a formal site visit is not to receive or allow representations to be made outside the formal Committee meeting. Where Councillors and officers attending site during a formal visit are approached by persons wishing to speak about the application, officers will explain that any representations may be made by deputation to the Committee at the meeting, and give the website reference to the explanation of how deputations may be made.

- 16.8. Site visits should be requested by Councillors, prior to the application being reported to Committee Councillors should only request a site visit when the application has reached the determination stage if they consider it essential to clarify an issue that cannot be understood without such a visit, and which could not have been considered earlier. The Committee may decide to visit a site because particular factors to be seen on site are significant in terms of the weight to be afforded to them in determining the application and because following discussion in Committee, Councillors have reduced confidence that such factors can be fairly considered in the absence of a site visit to assess such details. In proposing a site visit, the member who wishes the Committee to have additional opportunity to do so should specify the factors to be noted if the site visit is agreed.
- 16.9. Councillors with a pecuniary interest in a planning application should not make representations seeking a site visit in respect of an application. Councillors with a pecuniary interest in a particular application or agenda item must not attend any related site visit

17. Review of planning decisions

- 17.1. From time to time arrangements will be made for Councillors to visit a sample of implemented planning permissions, so that a regular review of the quality of planning decisions can be undertaken.
- 17.2. The outcome of this review will be considered by the Planning Committee, and may lead to identification of possible amendments to existing policies or practice.

18. Complaints and record keeping

- 18.1. In order that planning procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interest by Councillors.
- 18.2. The same principles of good record keeping will be observed in relation to all enforcement and planning policy matters. The monitoring of record keeping will be undertaken regularly by the City Development Manager.

Agenda Item 6

Decision maker: Planning Committee

Subject: Appeal decision at 591 London Road, Hilsea

Report by: Claire Upton-Brown
Assistant Director Culture and City Development

Ward affected: Hilsea

1. Purpose of report

To advise the Committee of the outcome of the appeal.

2. Recommendations

That the report is noted.

3. Background

An application for the change of use of No591 London Road from a dwellinghouse to an office within Class B1(a) of the Use Classes Order was refused permission under delegated powers on 20 January 2015.

The reason for refusal was as follows;-

"The proposal would lead to the undesirable and inappropriate loss of a family home, which is not considered to achieve sustainable development and would be contrary to the aims and objectives of paragraphs 17 and 50 of the NPPF, policies PCS10 and PCS18 of the Portsmouth Plan and recent government initiatives which seek to increase the supply of dwellings, and likely to give rise to localised noise and general disturbance by manoeuvring of vehicles into and out of the three 'tandem' parking spaces necessary to serve an office use contrary to policy PCS23 of the Portsmouth Plan to the detriment of amenity and enjoyment of a good standard of living environment for neighbouring occupiers."

The applicant lodged an appeal against that decision and, on 3 August 2015 the Inspector issued his decision letter upholding the appeal and granting conditional permission.

In reaching his decision the Inspector considered that the main issues were the effect of the proposed development on the supply of family

housing within Portsmouth and the effect on the living conditions of nearby residents, with particular reference to noise and disturbance.

The Inspector noted that the property comprised a large four bedroom detached house, and that the percentage of four bedroom homes in Portsmouth falls below both the national and regional average and acknowledged that new developments are failing to meet the Council's target in respect of the provision of family housing. The Inspector also acknowledged the thrust of National and Local Policies to achieve new housing. Nonetheless, the Inspector found that there are no specific policies, either within the Framework or Core Strategy that would preclude a residential dwelling being converted to an office.

Although noting the potential cumulative impact of such a proposal on current housing stock, the Inspector opined that as a result of the higher land values that are normally associated with residential use it is very unlikely that the proposal would set a precedent. He also noted that the building could easily revert back to residential use in the future.

Whilst the Inspector was of the view that the property would provide suitable living accommodation, notwithstanding its close-knit relationship with adjoining properties and proximity to a main road, the quality of the residential accommodation was not a key determining factor.

In terms of the impact of the proposed use on residential amenity the Inspector noted the relationship of the site to other properties, notably the adjoining day nursery, and comparatively high ambient noise levels. He considered that the level of activity associated with the proposed use, in particular vehicle movements, and the likely hours of operation were such that the living conditions of the adjoining residential properties would not be harmed.

The Inspector had regard to the issues raised by local residents and Councillors, and noted the comments that other office space was available in the city. However, he concluded that those issues were not sufficient to outweigh his conclusions on the principal matters.

In upholding the appeal the Inspector imposed the following conditions:-

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3215-001 Rev B, 002 and 3215-004 Rev B.

3) The parking spaces shown and highlighted in red on the approved plan 3215-004 Rev B shall be used for no other purpose than vehicular parking by staff and customers of the development hereby permitted.

4) Prior to the building being occupied as a Class B1a use bicycle storage facilities shall be laid out within the site in accordance with the approved plan 3215-004 Rev B for 6 bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.

Concluding remarks

In making the original decision to refuse permission it must be recognised that the issues in this case were finely balanced, given the general thrust of the NPPF and Core Strategy to promote new housing and the desirability where possible to retain existing family housing stock. In reaching his decision the Inspector placed significant weight on the absence of specific policy guidance within the NPPF or the Core Strategy aimed at protecting existing family houses. The Inspector also considered that vehicular activity at the rear would not adversely affect the living conditions of adjoining occupiers.

4. Reasons for recommendations

For information to the Planning Committee

5. Equality impact assessment (EIA)

None.

6. Legal Services' comments

The report is for information only.

7. Head of finance's comments

The report is for information only.

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Signed by:

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Agenda Item 7

PLANNING COMMITTEE 16 SEPTEMBER 2015

**5 PM COUNCIL CHAMBERS,
2ND FLOOR, GUILDHALL**

REPORT BY THE CITY DEVELOPMENT MANAGER ON PLANNING APPLICATIONS

ADVERTISING AND THE CONSIDERATION OF PLANNING APPLICATIONS

All applications have been included in the Weekly List of Applications, which is sent to City Councillors, Local Libraries, Citizen Advice Bureaux, Residents Associations, etc., and is available on request. All applications are subject to the City Councils neighbour notification and Deputation Schemes.

Applications, which need to be advertised under various statutory provisions, have also been advertised in the Public Notices Section of The News and site notices have been displayed. Each application has been considered against the provision of the Development Plan and due regard has been paid to their implications of crime and disorder. The individual report/schedule item highlights those matters that are considered relevant to the determination of the application

REPORTING OF CONSULTATIONS

The observations of Consultees (including Amenity Bodies) will be included in the City Development Manager's report if they have been received when the report is prepared. However, unless there are special circumstances their comments will only be reported VERBALLY if objections are raised to the proposals under consideration

APPLICATION DATES

The two dates shown at the top of each report schedule item are the applications registration date- 'RD' and the last date for determination (8 week date - 'LDD')

HUMAN RIGHTS ACT

The Human Rights Act 1998 requires that the Local Planning Authority to act consistently within the European Convention on Human Rights. Of particular relevant to the planning decisions are *Article 1 of the First Protocol- The right of the Enjoyment of Property*, and *Article 8- The Right for Respect for Home, Privacy and Family Life*. Whilst these rights are not unlimited, any interference with them must be sanctioned by law and go no further than necessary. In taking planning decisions, private interests must be weighed against the wider public interest and against any competing private interests Planning Officers have taken these considerations into account when making their recommendations and Members must equally have regard to Human Rights issues in determining planning applications and deciding whether to take enforcement action.

Web: <http://www.portsmouth.gov.uk>

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94 NAPIER ROAD SOUTHSEA PO5 2RB**CHANGE OF USE FROM DWELLING HOUSE (CLASS C3) TO PURPOSES FALLING WITHIN CLASS C3 (DWELLINGHOUSE) OR C4 (HOUSE IN MULTIPLE OCCUPATION)****Application Submitted By:**

Mr Joshua Stewart

On behalf of:

Mr Joshua Stewart

RDD: 1st June 2015**LDD:** 5th August 2015**SUMMARY OF MAIN ISSUES**

This application has been brought to Committee at the request of Councillor Donna Jones.

The determining issues for this application relate to the suitability of the proposed C3/C4 use within the existing community and its potential impact upon the living conditions of adjoining and neighbouring residents. Other considerations are whether the proposal complies with policy requirements relating to car and cycle parking.

The Site

This application relates to a two storey mid-terraced dwellinghouse located on the western side of Napier Road. The property comprises a combined sitting/dining room, kitchen and shower room at ground floor level and three bedrooms at first floor level. An existing lean-to is shown on the proposed floor plans to be used for the purposes of bike storage.

The site falls within the indicative area at risk of flooding (zones 2 and 3).

The Proposal

The lawful use of the property falls within Class C3 (dwellinghouse) of the Use Classes Order. This application seeks to change the use of this property from Class C3 (dwellinghouse) to purposes falling within Class C3 (dwellinghouse) or Class C4 (House in Multiple Occupation). Normally, a change of use between Class C3 and Class C4 would be classed as permitted development within the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). On the 1st November 2011 however, Portsmouth City Council implemented an Article 4 Direction relating to HMOs. As a result, planning permission is now required for a change of use between Class C3 (dwellinghouse) and Class C4 (House in Multiple Occupation) where between three and six unrelated people share at least a kitchen and/or bathroom.

Planning History

No element of the planning history is considered relevant in the determination of this application.

POLICY CONTEXT

The relevant policies within the Portsmouth Plan would include:
PCS12 (Flood Risk), PCS17 (Transport), PCS20 (Houses in Multiple Occupation (HMOs)),
PCS23 (Design and Conservation),

In addition to the above policies, the aims and objectives of the National Planning Policy Framework and the Houses in Multiple Occupation Supplementary Planning Document are relevant.

CONSULTATIONS

None

REPRESENTATIONS

14 letters of objection have been received on the following grounds:

- * would place additional pressure on existing limited available parking
- * alarmed at increase in number of HMO's in area - suggest the 10% threshold must be exceeded already
- * general concern about the unkempt appearance of some HMO properties and the often noisy and unsociable nature of some of the occupants
- * a HMO use would not be an appropriate use of a property surrounded by young families and small children

COMMENT

The determining issues for this application relate to the suitability of the proposed C3/C4 use within the existing community and its potential impact upon the living conditions of adjoining and neighbouring residents. Other considerations are whether the proposal complies with policy requirements relating to car and cycle parking. Whilst the property lies within an indicative flood risk area it is not considered that the proposed change of use would render the property or its occupants any more vulnerable to tidal inundation than at present.

This application seeks permission to change the use of this property from purposes falling within Class C3 (dwellinghouse) to purposes falling within Class C3 (dwellinghouse) or Class C4 (House in Multiple Occupation). This would give the applicant greater flexibility to change between these two use classes.

Policy PCS20 of the Portsmouth Plan states that applications for changes of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses or where the development would not create an imbalance. The Houses in Multiple Occupation SPD provides further detail on how this policy will be implemented and how the City Council will apply this policy to all planning applications for HMO use.

Of the 88 properties located within a 50m radius of this property, 6 are currently in Class C4 HMO use. The use of this property for purposes falling within Class C4 would increase this to 7 out of 88 or 7.95%. This is below the 10% threshold set out in the Houses in Multiple Occupation SPD. The existing community is not currently imbalanced by a concentration of Class C4 HMO

uses and subsequently, the use of this property for C3/C4 purposes does not give rise to an imbalance of such uses.

With regards to the impact of the proposed use upon the living conditions of adjoining occupiers, the level of activity, including the demands placed on existing available on-street parking, associated with the use of any individual property as a Class C4 HMO is unlikely to be materially different to the use of a single household as a Class C3 dwellinghouse occupied by either a single family or other groups living as a single household. The Houses in Multiple Occupation SPD is supported by an assessment of the supply, demand and community impacts of shared housing in Portsmouth. Paragraphs 9.1-9.10 discuss the negative impacts upon local communities resulting from concentrations of Class C4 HMO uses. It is therefore considered that the use of this property for C3/C4 purposes does not have a detrimental impact upon the living conditions of local residents.

There is no off street parking provision at this property and none is proposed as part of this application however, this property is located within a short walk of local transport links, shops and services. The submitted proposed ground floor plans indicate the use of an existing enclosed lean-to at the rear of the property for cycle storage. This is considered adequate provision. A planning condition is recommended to ensure its retention for such purposes.

Storage for refuse and recyclable materials would remain unchanged.

RECOMMENDATION Conditional Permission

Conditions

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.
- 2) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Proposed Floor Plans (received 10/6/15)
- 3) Prior to the first occupation of the property as a Class C4 HMO, the cycle storage facilities shown on the Proposed Ground Floor Plan approved shall be made available and shall be retained thereafter for the use of occupiers of the property for that purpose.

The reasons for the conditions are:

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To ensure that adequate cycle storage is provided for occupiers of this property in order to encourage an alternative use to the private car in accordance with policies PCS17 and PCS23 of The Portsmouth Plan.

1) PRO-ACTIVITY STATEMENT

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

**NORTHERN PAVILION AND BOWLING GREEN ADJACENT TO EASTERN PARADE
CANOE LAKE SOUTHSEA ESPLANADE**

CHANGE OF USE FROM BOWLS CLUB TO DAY NURSERY; EXTERNAL ALTERATIONS TO PAVILION TO INCLUDE CONSTRUCTION OF FRONT AND SIDE EXTENSIONS, NEW PITCHED ROOF, VERANDA AND CLADDING; LANDSCAPING TO INCLUDE CANOPIES, PLAY EQUIPMENT AND RAISED PLANTERS; AND ASSOCIATED BOUNDARY TREATMENTS, REFUSE STORAGE FACILITIES AND ENTRANCE (RE-SUBMISSION OF 14/00414/FUL)

Application Submitted By:

Building Plans & Estimating
FAO Mr Robert Abbott

On behalf of:

Dysart Nursery
FAO Mrs Samia McMinn

RDD: 14th July 2015

LDD: 9th October 2015

SUMMARY OF MAIN ISSUES

The key issue in this application is whether the changes from a previous similar scheme allowed at appeal are acceptable.

The main planning issues are whether the principle of the development is acceptable in the location proposed having regard to its designation as protected open space and previous leisure use, whether the development would be acceptable in design terms, whether it would preserve or enhance the character and appearance of the 'Seafront' Conservation Area and the setting of the 'Craneswater & Eastern Parade' Conservation Area, whether it would preserve the setting of Cumberland House which is listed for its special architectural or historic interest (Grade II) and Southsea Common which is included on the Register of Historic Parks and Gardens, whether it would have a significant adverse impact on the residential amenity of adjoining occupiers, whether it would be acceptable in highways terms and whether the proposal would result in an increased risk of flooding at the site.

The Site and Surroundings

This application relates to a former bowling club located to the south of Eastern Parade within part of the seafront commonly referred to as Canoe Lake. The site itself incorporates one of two former bowling greens (north), the former main pavilion and two triangular plots of ground that provide landscaping. The site is bounded by Eastern Parade to the north, allotment gardens and Cumberland House (Grade II Listed) to the west, a tree lined footpath and grass tennis courts to the east and recently completed tennis courts to the south.

The site is located within the 'Seafront' Conservation Area (No.10), within the boundary of Southsea Common which is included on the Register of Historic Parks and Gardens and abuts the 'Craneswater & Eastern Parade' Conservation Area to the north. The site is also located within the indicative flood plain (Flood Zones 2 & 3).

The wider Canoe Lake area comprises a range of leisure uses and attractions including a boating lake, child play areas, a museum, model village, grass and hard surface tennis courts, basketball court, cricket club, 9-hole golf course, formal gardens and large open grassed areas popular for sporting and recreational activities. There are also a number of small tearooms and cafés. A mix of residential properties along Eastern Parade forms the backdrop to the seafront and marks the boundary between the open character of the coastline and denser residential development to the north. Generally the Canoe Lake area has a pleasant verdant character with an air of spaciousness provided by large areas of open space. This is however, reduced to the south and east of the application site where a mixture of hedges and fences divide the various recreational uses, and views towards the sea are obscured by the partially dismantled Lumps Fort.

The Proposal

Planning permission is sought for the change of use from bowls club to a day nursery; external alterations to the pavilion to include the construction of front and side extensions, new pitched roof, veranda and cladding; landscaping to include canopies, play equipment and raised planters; and associated boundary treatments, refuse storage facilities and entrance.

A separate application is currently under consideration for land raising at the site which is associated with alterations and additions at the adjoining tennis court/café site. (15/00576/PLAREG).

Planning History

A previous application for the change of use of the site from a bowls club to a day nursery, the construction of a single-storey side extension and refuse store, and the installation of a 1.8 metre high chain link boundary fence was refused by the Planning Committee on 15th July 2014 (ref.14/00414/FUL). The reason for refusal was as follows: 'In the opinion of the Local Planning Authority the proposed change of use to a day nursery and the construction of a single-storey side extension would result in a loss of protected open space which would compromise the overall integrity of the city's green infrastructure network. Furthermore, the use of the site as a day nursery would have a significant adverse impact on the amenity of the occupiers of adjoining and nearby properties in terms of increased noise and disturbance. The proposal is therefore contrary to policies PCS13 and PCS23 of the Portsmouth Plan and the aims and objectives of the National Planning Policy Framework'.

A subsequent appeal was allowed by the Planning Inspector on the 8th December 2014 (ref. APP/Z1775/A/14/2224520). A copy of the Inspector's appeal decision is attached for reference within Appendix 1. Work to implement this permission has already commenced.

POLICY CONTEXT

In addition to the aims and objectives of the National Planning Policy Framework, the relevant policies within the Portsmouth Plan would include: PCS9 (The Seafront), PCS12 (Flood Risk), PCS13 (A Greener Portsmouth), PCS17 (Transport) and PCS23 (Design and Conservation). Saved policy DC21 of the Portsmouth City Local Plan 2001-2011, The Seafront Materplan Supplementary Planning document (SPD) and Conservation Area appraisals for the 'Seafront' and 'Craneswater & Eastern Parade' Conservation Areas would also be material to the determination of this application.

CONSULTATIONS

Sport England

Comments yet to be received at the time of writing.

Garden History Society

Comments yet to be received at the time of writing.

Highways Engineer

Comments yet to be received at the time of writing.

Contaminated Land Team

Historic maps show the area as being MoD land until c.1923, and a site investigation for the Canoe Lake area identified some elevated concentrations of contaminants. However, following the submission of the results of indicative testing of soils at the site (Site Investigation Factual Report. Canoe Lake Leisure. August 2015 REC Ltd 1CO100066/P2R0), the Contaminated Land Team does not require further testing.

An informative relating to soils to be used in the raised planters and soft landscaping is suggested.

Environmental Health

Comments yet to be received at the time of writing.

OFSTED - Office For Standards In Education

Comments yet to be received at the time of writing.

Hampshire Garden Trust

Comments yet to be received at the time of writing.

REPRESENTATIONS

At the time of writing 5 letters of representation had been received from local residents. The objections can be summarised as follows: (a) The proposed use is not in keeping with the Canoe Lake area; (b) The site should be opened up to the public; (c) There are better locations for a nursery within the city; and (d) Work has already commenced at the site.

COMMENT

The determining issues in this application are:

1. Principle of the proposed development;
2. Design, including impact on heritage assets;
3. Impact on residential amenity
4. Highways/Parking Implications;
5. Flood risk
6. Others including matters raised within representations

Planning permission is sought for the use of the application site as a day nursery which would include a number of alterations and additions to the pavilion building and the former bowling green itself. Given the similarities with the previous proposal (ref.14/00414/FUL) which was allowed on appeal, significant weight must be given to the decision of the Planning Inspector.

Principle of the proposed development

Having regard to the previous decision of the Planning Inspector and the existing extant permission at the site, it is considered that the principle of the proposed use would be acceptable.

Whilst the proposed use of the site as a day nursery was not envisaged during the conception of the Seafront Masterplan SPD, it is considered that the proposal would not conflict with the wider vision for the seafront area and would ensure the long term use and maintenance of a site that is no longer required for recreational purposes.

Design, including impact on heritage assets

Policy PCS23 of the Portsmouth Plan echoes the principles of good design set out within the NPPF requiring that new development should be of an excellent architectural quality; create public and private spaces that are clearly defined as well as being safe, vibrant and attractive; relate well to the geography and history of Portsmouth and protect and enhance the city's historic townscape and its cultural and national heritage.

When determining planning applications the Local Planning Authority (LPA) must also consider what impact the proposal would have on both designated and non-designated heritage assets. Section 66 of the Listed Buildings and Conservation Areas Act 1990 (as amended) places a duty on the LPA to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Furthermore, Section 72 of the Act requires that LPAs pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

The application site is situated within an area of the city that is covered by a number of statutory heritage designations including 'The Seafront' Conservation Area and Southsea Common which is included on the Register of Historic Parks and Gardens. It is also located adjacent to the 'Craneswater & Eastern Parade' Conservation Area and Cumberland House, a grade II listed building.

Due to the limited scale of the pavilion in relation to the wider site, the applicant considers that an enlargement of the building is necessary to make the proposed use economically viable. Therefore, as part of the conversion works, alterations and extensions are proposed to the main pavilion building. These differ slightly from those previously considered and approved by the Inspector comprising: the construction of front (west) and side (south) extensions, the construction of a new pitched roof across the entire building with an open veranda and balustrading along the western elevation; the installation of new windows and doors and the cladding of the building with cedar. This would give a similar appearance to the smaller pavilion that has recently been converted to a café on the adjoining site to the south.

The existing building comprises a simple single-storey flat roof building clad in dark horizontal timber panels. This lacks the traditional architectural qualities of a bowling pavilion that are evident at the adjoining sites (Greens Café & Grass Tennis Court Pavilion) and makes little contribution to the character and appearance of the 'The Seafront' Conservation Area, the setting of the 'Craneswater & Eastern Parade' Conservation Area or the setting of the adjoining Listed Building and Southsea Common.

Notwithstanding the increase in scale, it is considered that the incorporation of a new dual-pitched roof finished in slate, a veranda with white timber supports and balustrading, and new cedar cladding to the external elevations would significantly improve the external appearance of the building creating a structure more akin to a typical bowls pavilion and similar to those located at the adjoining sites. On that basis it is considered that the proposed alterations to the pavilion building would enhance the character and appearance of 'The Seafront' Conservation Area and

the setting of the 'Craneswater & Eastern Parade' Conservation Area, Cumberland House and Southsea Common.

In addition to similar boundary treatments proposed by the previous application (1.8m green chain link fence), permission is sought for a landscaping scheme containing a range of children's play equipment, canopies, raised beds and tree planting. These are all considered to be acceptable in visual terms and given their modest scale and siting, would maintain a good degree of visibility across the site and would not detract from its open character. These elements are considered to preserve character and appearance of 'The Seafront' Conservation Area and the setting of the 'Craneswater & Eastern Parade' Conservation Area, Cumberland House and Southsea Common.

As the proposal is seen to preserve the setting and character of the designated and non-designated heritage assets within the area, the requirements of paragraphs 132-134 of the NPPF, which seeks to address the significance of any harm caused by development, would not be applicable in this instance.

Notwithstanding the positive visual improvements highlighted above, the proposed extensions would result in the loss of approximately 58sq.m. of protected open space at the site, 28 sq.m. more than previously proposed and permitted. Policy PCS13 of the Portsmouth states that: 'The City Council will work collaboratively to protect, enhance and develop the green infrastructure network in the following ways: Refusing planning permission for proposals which would result in the net loss of existing areas of open space and those which would compromise the overall integrity of the green infrastructure network in the city, unless there are wider public benefits from the development which outweigh the harm'. The supporting text to this policy states: 'There is a great deal of pressure on Portsmouth's green infrastructure network from increasing population numbers to climate change and the need for new development sites. The city lacks suitable spaces to provide additional green infrastructure assets to absorb this pressure. Therefore the council's priority will be to focus resources on protecting, enhancing and linking together the existing network. There will be a presumption against any development involving the net loss of open space unless there are wider public benefits that outweigh the harm of this loss'.

In allowing the previous appeal the Inspector had regard to Policy PCS13 when considering the impact of a smaller extension to the building. He stated "The proposed development would involve minor extension works to the existing pavilion to infill an existing canopy and add an extension and refuse store. In the context of the size of the building and the nature of the alterations proposed, these would have little discernible impact on the openness of the site and would be seen as extremely modest alterations and additions. The building is well separated from other buildings in the area and is reasonably well screened further reducing any impact that the proposed extensions may have on the wider area".

Although the proposed extensions would be slightly larger than the previous "modest additions", they are still considered to be of a relatively modest scale in the context of the recipient building and would not have a significant impact on the openness of the site. Furthermore, it is considered that the presumption against the loss of protected open space would be outweighed by the public benefit associated with the provision of early years childcare places within an identified area of deficiency (Childcare Sufficiency Assessment 2011), and the significant improvements to the appearance of the pavilion building that will contribute to the character and appearance of the conservation areas and the setting of Southsea Common.

Once in use, the proposed day nursery would acquire the same permitted development rights as schools, college's universities and hospitals (Class M & N of Part 7 of Schedule 2 of the GPDO) that are generally located on much larger sites. This could allow relatively generous additions and alterations at the site significantly affecting its appearance and open character. On that basis, and having regard to the location of the site within a conservation area forming part of Southsea Common, and its designation as protected open space, it is considered necessary

and reasonable to impose a suitably worded planning condition removing permitted development rights at the site.

Impact on residential amenity

A number of residential properties are located immediately to the north of the application site beyond Eastern Parade. The majority of these properties are flats located within purpose built blocks which include balconies to the southern elevation. Due to the scale of the application site, the degree of separation to the nearest residential property varies from 25 metres at its northern point to more than 80 metres at its southern point.

Having regard to the existing and previous uses at the site and the wider Canoe Lake area, it was previously considered that the use of the site as a day nursery for up to 49 children was unlikely to have a significant adverse impact on the amenity of the occupiers of adjoining properties in terms of increased comings and goings or noise and disturbance.

The City Council's Environmental Health Team previously highlighted that as a result of the physical size of the nursery (internal capacity) the number of children using the external play area would be limited. Therefore, noise and disturbance from outside play would be restricted and was unlikely to be detrimental to the amenity of local residents. It was highlighted that a number of nurseries operate across the city within close proximity of residential properties without significant impact to adjoining occupiers. Whilst this proposal would result in a modest increase in internal capacity, it is considered that this would not significantly change its potential impact.

Regard is also given to the decision of the Inspector and the existing extant planning permission at the site for a similar sized day nursery.

Highways/Parking Implications

Many residential properties to the north benefit from off road parking facilities with additional unrestricted on-road parking provided along Eastern Parade and the adjoining side roads. In the absence of any parking restrictions or requirement for payment, these roads can be busy with visitors to the Canoe Lake area and the wider seafront, particularly at weekends and week days during summer months. However, it is considered that the area does not suffer from any significant parking issues that are common elsewhere within the city.

Notwithstanding the generally light traffic flows on the surrounding highway network which encourages walking and cycling, it is accepted that the proposal would result in a number of children arriving and leaving the site by car. Activity associated with the pick-up and drop-off of children at a nursery would generally be spread across a longer period when compared to that of a school, and will vary depending on parents working patterns. This would reduce the number of vehicles manoeuvring during at any given period, unlike a school where all pupils start and finish at the same time. Regard must also be given to the previous lawful use of the site as a bowling club where there was not only a demand for pick-up and drop-off, but also a requirement for long term parking spaces for members of the club throughout the day.

The previous similar application was considered by the City Council's Highways Engineer who concluded that for the reasons highlighted above, the proposal would not have a significant adverse impact on the surrounding highway network and would not significantly increase the demand for parking beyond that of previous lawful use. Given the proposed hours of operation the nursery would not affect resident and visitor parking facilities during the evening and weekends. Furthermore, and as highlighted above, having regard to the proximity of residential development within the surrounding area and the ease of access on foot, it cannot be assumed that all staff and children would arrive by car.

The City Council's Highways Engineer previously confirmed that accident analysis for the past 5-year period indicated no pedestrian injury accidents in the vicinity of the site. With ample on street car parking available in the surrounding area and general light trafficking; the Highway Authority did not foresee any highway safety issues with the development.

Regard in this respect is also given to the decision of the Inspector and the existing extant planning permission at the site for a similar sized day nursery.

Flood risk

The application site is shown to be located within, but on the very edge, of the indicative flood plain (Flood Zones 2 & 3 of the Environment Agency's Flood Maps). However, the site is also located within the Southsea flood cell as identified in the Portsea Island Coastal Defence Strategy. This area is covered by the Interim Position between Portsmouth City Council and the Environment Agency for the provision of flood defences. This agreement assumes that the flood risk management infrastructure will be provided to at least the 1:200 year standard of protection by the time that it is required.

The proposal has been considered in line with paragraphs 100-108 of the NPPF which seeks to ensure that inappropriate development in areas at risk of flooding is avoided where possible by directing development away from areas at highest risk. Having regard to Policy PCS12 (Flood Risk) of the Portsmouth Plan, there is no requirement in this instance for the applicant to apply the sequential test, which would identify more suitable sites within areas of the city at lower risk of flooding. However, there is a requirement for the exception test to be met.

In this respect, it is accepted that the proposal would represent a more vulnerable use when compared to the previous 'sports and recreation' use. However, the wider sustainable benefits of the use have been identified and it is considered that the proposal would not result in an increased risk of flooding elsewhere. Safe/dry escape routes would also be available towards the south and east should a sudden flood event occur, which is considered unlikely. Improvements to flood risk infrastructure along the seafront has also been taken into consideration.

The application is also supported by a Flood Risk Assessment that seeks to demonstrate that the development and its occupiers would be safe from flooding. The conclusions of this assessment are considered to be reasonable and residual flood risk measures that can be taken at the site are appropriate. These residual measures include, sealed service ducts, location of electrical equipment above predicted flood levels and access to a flood warning services can be required through the inclusion of a suitably worded planning condition.

Other matters raised within representations

A number of representations suggest that there are alternative more suitable locations for nurseries within the city. However, there is no requirement for a sequential test and therefore, the application must be determined on its own merits. This would be the case for all future applications within the area and any decision on this application would not set a precedent.

It is highlighted that construction work has already commenced at the site. The applicant has been advised that all works not covered by the existing extant planning permission are being carried out entirely at their own risk. The commencement of development should not however, form a material consideration of this application and would be addressed separately should permission be withheld.

Conclusion

In conclusion, it is considered that the wider public benefits of the proposal in providing early years childcare places in an area of the city where there is an identified need and the significant visual improvements to the pavilion building would outweigh the presumption against the loss of protected open space and existing sports facilities at a site. The physical alterations and additions would be acceptable in design terms preserving the open character of the site and the contribution it makes to the conservation area and the wider seafront area and the setting of Cumberland House and Southsea Common. Having regard to the previous lawful use of the site for sports and recreational activities, it is considered that the proposal would not put significant additional pressure on the surrounding highway network or have a significant adverse impact on the amenity of the occupiers of adjoining and nearby properties. Based on the points above it is considered that the proposal would be in accordance with policies PCS9, PCS12, PCS13, PCS17 and PCS23 of the Portsmouth Plan and the aims and objectives of the NPPF and The Seafront Masterplan SPD.

RECOMMENDATION - Delegated authority to grant Conditional Permission subject to no representation raising new material planning issues.

Conditions

- 1) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Site Location Plan, Proposed Elevations & Roof Plan, Proposed External Play Areas Plan, Proposed External Play Areas Elevations, Proposed Bin Store Fencing and Proposed Elevation, Section & Plan (received 3/9/15).
- 2) Prior to the installation of the boundary fencing a scheme for the safeguarding of all trees, shrubs and hedges on and immediately adjoining the application site from damage as a result of proposed works in accordance with British Standard:5837 (2005) shall be submitted to the Local Planning Authority for approval in writing. The works shall then be carried out in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.
- 3) Notwithstanding the submitted information, a detailed schedule of materials and finishes to be used for all external surfaces of the development hereby permitted shall be submitted to the Local Planning Authority for approval in writing within one calendar month of the date of this decision. The development shall thereafter be carried out in accordance with the approved details.
- 4) The approved landscaping scheme shall be carried out in the first planting and seeding seasons following this decision. Any trees or plants which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) The boundary fence (including supporting structure) hereby permitted shall be colour treated in green or such other colour as may be agreed in writing with the Local Planning Authority and shall be permanently retained in that condition.
- 6) The day nursery hereby permitted shall, unless otherwise agreed in writing by the Local Planning Authority, incorporate the flood resilience measures set out within the submitted Flood Risk Assessment.
- 7) Prior to first use of the site as a day nursery, the refuse store and associated enclosure shall be provided in accordance with the approved details and shall thereafter be retained.

8) Notwithstanding the submitted details, the proposed bin store fencing shall be completed in cedar shiplap boarding to match the cladding to the main pavilion building unless otherwise agreed in writing with the Local Planning Authority.

9) The use of the site as a day nursery shall not take place other than between the hours of 0700 - 1830 Mondays - Fridays and not at all on Saturdays or Sundays.

10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking and or re-enacting that Order with or without modification) no building, structure or other alteration permitted by Class M or Class N of Part 7 of Schedule 2 or Class A of Part 2 of Schedule 2 of the Order shall be erected on the application site without the prior written permission of the Local Planning Authority obtained through the submission of a formal planning application.

11) The site shall be used for a day nursery and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

The reasons for the conditions are:

- 1) To ensure the development is implemented in accordance with the permission granted.
- 2) In order to protect the existing landscape features of amenity value from damage to health and stability (including root systems) and the character and appearance of the surrounding area, in the interests of amenity in accordance with policies PCS13 and PCS23 of the Portsmouth Plan.
- 3) In the interests of visual amenity having regard to the sites location within 'The Seafront' Conservation Area in accordance with policy PCS23 of the Portsmouth Plan.
- 4) To improve the appearance of in site in the interests of visual amenity having regard to the sites location within 'The Seafront' Conservation Area in accordance with policy PCS23 of the Portsmouth Plan.
- 5) In the interests of visual amenity having regard to the sites location within a conservation area in accordance with policy PCS23 of the Portsmouth Plan.
- 6) To minimise the risk from flooding in accordance with policy PCS12 of the Portsmouth Plan.
- 7) To ensure that adequate and visually acceptable provision is made for the storage of refuse and recyclable materials having regard to the location of the site within a conservation area in accordance with policies PCS15 and PCS23 of the Portsmouth Plan.
- 8) In the interests of residential amenity in accordance with policy PCS23 of the Portsmouth Plan.
- 9) In order to control any further alterations and additions having regard to the sites designation as protected open space and its location within the 'Seafront' Conservation Area in accordance with policies PCS13 and PCS23 of the Portsmouth Plan.
- 10) In order that the Local Planning Authority may exercise further control of potential impacts from the wide range of alternative uses within Class D1 by different patterns of activity, hours of operation, parking/servicing or noise and general disturbance, having regard to the character of

the locality and in the interests of the amenities of occupiers of nearby properties, to accord with policies PCS17 and PCS23 and the aims and objectives of the Seafront Masterplan SPD.

1) PRO-ACTIVITY STATEMENT

In accordance with the National Planning Policy Framework the City Council has worked positively and pro-actively with the applicant through the pre-application process to achieve an acceptable proposal without the need for further engagement.

2) NB This permission is granted in accordance with the provisions of Section 73 of the Town and Country Planning Act 1990, which makes provision for the retrospective granting of planning permission for development which has commenced and/or been completed.

Appeal Decision

Site visit made on 10 November 2014

by Kenneth Stone Bsc(Hons) DipTP MRTPI

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

Decision date: 8 December 2014

Appeal Ref: APP/Z1775/A/14/2224520

**Northern Pavilion and Bowling Green, adjacent to Eastern Parade,
Southsea P04 9RA**

- ☐ The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- ☐ The appeal is made by Mrs Samia McMinn against the decision of Portsmouth City Council.
- ☐ The application Ref 14/00414/FUL, dated 10 April 2014, was refused by notice dated 15 July 2014.
- ☐ The development proposed is described as 'change of use from bowls club to day nursery and construction of single storey side extension, enclosure of veranda, construction of refuse store and installation of 1.8m high chain link boundary fence'.

Decision

1. The appeal is allowed and planning permission is granted for the change of use from bowls club to day nursery and construction of single storey side extension, enclosure of veranda, construction of refuse store and installation of 1.8m high chain link boundary fence at Northern Pavilion and Bowling Green, adjacent to Eastern Parade, Southsea P04 9RA in accordance with the terms of the application, Ref 14/00414/FUL, dated 10 April 2014, subject to the conditions contained in the schedule at the end of this decision.

Procedural matters

2. I have used the site address from the Council's decision notice which adds clarity to that of the description used by the appellant in the appeal forms. The original description of the site in the application form refers to a different location but the area the subject of the application is evident from the plans and details submitted with the application. I have also adopted the description of development from the Council's decision notice as this more accurately describes the works for which permission is sought. I have considered the appeal on this basis and reflected these points in my formal decision.

Main Issues

3. The main issues in this appeal are the effect of the proposed development on

- ☐ open space provision in Portsmouth and the overall integrity of the City's green infrastructure network; and
- ☐ the living conditions of the occupiers of adjoining and nearby properties, with particular reference to noise and disturbance.

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Reasons

4. The appeal site was previously occupied as a bowling green and club house located on the south side of Eastern Parade. It is set within a wider open space area used for a variety of formal and informal recreation uses running along the seafront which according to the Council is referred to as Canoe Lake. At the time of my visit the pavilion was vacant and the bowling green had been filled and levelled. I understand this was in connection with the implementation of a planning approval for the adjoining site where works to construct all weather tennis courts and an extension to a further pavilion were

also being undertaken.

Open Space

5. Policy PCS13 of Portsmouth City Council's The Portsmouth Plan: Portsmouth's Core Strategy (CS) seeks to protect, enhance and develop the Green Infrastructure network of the city by a series of specified actions including refusing planning permission for proposals which would result in the net loss of existing areas of open space unless there are wider public benefits from the development which outweigh the harm. The policy does not directly refer to public or private space or to the nature of the use of the space for recreational purposes. Indeed in the preceding paragraphs at paragraph 4.56 the table sets out examples of some of the Green Infrastructure assets and spaces in Portsmouth. This includes Southsea Common as an amenity green space and Canoe Lake as provision for children and teenagers. The list also includes reference to outdoor sports facilities, Parks and Gardens, natural and seminatural urban green spaces allotments and Churches and cemeteries. These are not all areas where the public has access to and are not all recreational facilities and the benefits of the Green Infrastructure as stated at paragraph 4.55 include, visual amenity and recreation space for residents and visual relief from the urban character of the city.

6. In the context of policy PCS13 the protection for the areas of open space cannot therefore be interpreted as affording protection to recreational or sporting facilities per se but to the open spaces that they provide along with other open spaces. In this regard the appeal site contributes to the wider open space of Canoe Lake and Southsea Common of which it forms a part which although providing recreational and sporting facilities also provides for relief to the built development of the city by virtue of its open character.

7. The proposed development would involve minor extension works to the existing pavilion to infill an existing canopy and add an extension and refuse store. In the context of the size of the building and the nature of the alterations proposed these would have little discernible impact on the openness of the site and would be seen as extremely modest alterations and additions. The building is well separated from other buildings in the area and is reasonably well screened further reducing any impact that the proposed extensions may have on the wider area.

8. The proposed open chain link fencing that would surround the former bowling green would maintain a reasonable degree of visibility through and across the site and would be similar to many of the recreational facilities in the immediate vicinity of the site which have similar means of enclosure. I noted similar fencing being erected on the adjoining tennis courts, surrounding land to the west of the appeal site and other pitches within the Southsea Common area.

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The fencing would also be set behind an existing landscaped boundary onto Eastern Parade which would further reduce its impact in the wider area.

9. The proposals would maintain the sense of openness and add planting to the area that would enhance the biodiversity value of the site and the visual softening that the site contributes to the surrounding area. It would thereby support and enhance the function of the site in its contribution to the Green Infrastructure of the City. The use of the site as a day nursery would not undermine the physical and visual contribution the site makes to that Green Infrastructure.

10. For the reasons given above I conclude that the proposed development would not result in material harm to the open space provision in Portsmouth and the overall integrity of the City's Green Infrastructure network. Consequently it

would not conflict with policy PCS13 of the CS which seeks to protect enhance and develop the City's Green Infrastructure.

Living conditions

11. The proposed development would allow for the use of the site for a day nursery for up to 49 children. Concerns have been expressed that the noise and disturbance that would arise from the use would be seriously detrimental to the living conditions of the occupiers of surrounding properties. The closest properties are those on the north side of eastern parade. For the most part those directly opposite the site are blocks of flats which face onto the Southsea Common area. This wider area contains a variety of recreational and sporting facilities. Including a boating lake, children's play area, tennis courts and basketball courts amongst the informal walking and other areas. This is likely to be a highly active and intensively used location where it would be reasonable to expect a degree of activity and the associated noise. It is not a quiet residential suburb where there may be a more reasonable expectation for a more tranquil location.

12. The hours of operation of the nursery have been confirmed by the appellant¹ as being from 7:00 am to 6:30pm Monday to Friday and this could be secured by condition. The suggested opening times would protect the weekends, later evening and early mornings and mean the premises would be operating during normal day time hours. Any noise and activity generated by the proposed use would therefore not be unduly intrusive.

13. For the reasons given above I conclude that the proposed development would not result in material harm to the living conditions of the occupiers of adjoining and nearby properties, with particular reference to noise and disturbance. Consequently it does not conflict with policy PCS23 which amongst other matters requires that developments protect and provide a good standard of living environment for neighbouring and local occupiers.

Other matters

14. The site lies within an area covered by a number of statutory heritage designations including The Seafront Conservation Area (TSCA) and the Southsea Common registered park and garden. It is adjacent to the Craneswater and Eastern Parade Conservation Area (CEPCA) and Cumberland House, a grade II listed building on Eastern Parade. The Council did not object

¹ Letter dated 30th May 2014 from Sam Brooks to Portsmouth City Council

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to the proposals based on its impact on these heritage assets and given my conclusions above I am satisfied that the proposed development would preserve the character and appearance of the TSCA and the setting of the adjoining CEPCA and would preserve the setting of Cumberland House and this section of Southsea Common.

15. A number of residents raised concerns about parking and highway safety. However, I agree with the conclusions of the Highway Authority and the Local Planning Authority that there would be adequate parking in the vicinity of the site. There are limited parking restrictions on this section of Eastern Parade other than double yellow lines at the junctions of adjoining roads.

16. A number of comments referred to other more appropriate locations for the proposed use however I am required to consider the proposals in front of me and whether any resultant harm arises or not, as I have done in this case.

17. My attention has been drawn to a potential fall back position that could be adopted by the appellant to Change the Use of the bowling pavilion to a registered nursery by exercising permitted development rights under the Town and Country Planning (General Permitted Development) Order 1995, as amended. However these, rights require a prior approval process to be

undertaking before they can be utilized and no such approval is in place. It is not for me to consider such a matter in this case and I have therefore afforded this very little weight.

Conclusions and conditions

18. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be allowed.

19. I have considered the suggested conditions provided by the Council in the context of the advice in the Planning Practice Guidance (PPG) and the wording of the suggested models of acceptable conditions in appendix A to Circular 11/95 'The use of conditions in planning permissions' which remains extant.

20. I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interests of proper planning as advised at paragraph 21a-022 of the PPG. Conditions to require investigation for the potential of contamination on the site given the site history and the sensitivity of the end user are appropriate. Conditions related to landscaping, materials for the building works and the colour of the fencing are required in the interests of the appearance of the development and the surrounding area. Conditions restricting the hours of operation and the future permitted development rights for the development are required in the interests of the amenity of the occupiers of surrounding properties and the character of the area. It is reasonable to incorporate flood resilience measures into the development given the sites location, and I have thereby imposed a condition in this regard.

Kenneth Stone

INSPECTOR

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SCHEDULE OF CONDITIONS FOR APPEAL REF: APP/Z1775/A/14/2224520

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers: 14.19993.100, 1993.102 Rev A, 14.1993.104 Rev-B and the fencing image received by the Local Planning Authority on 24. 04.2014.

3) Development shall not commence until there has been submitted to and approved in writing by the Local Planning Authority, or within such extended period as may be agreed with the Local Planning Authority:

a) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the history of the site and in accordance with BS10175:2011 +A1 2013 – Investigation of potentially contaminated sites – code of practice; and unless otherwise agreed in writing by the Local Planning Authority,

b) A detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring.

Such scheme shall include nomination of a competent person to oversee the implementation of the works.

4) The development hereby permitted shall not be occupied/brought into use until there has been submitted to and approved in writing by the Local Planning Authority verification by the competent person approved under the provisions of condition 3(b) that any remediation scheme required and approved under the provisions of condition 3(b) has been implemented fully in accordance with the approved details (unless varied with the written consent of the Local Planning Authority in advance of

implementation). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise (but not be limited to):

- a) As built drawings of the implemented scheme;
- b) Photographs of the remediation works in progress; and
- c) Certificates demonstrating that imported and/or material left in situ is free of contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 3(b).

5) No development shall commence on site until a landscaping scheme including a scheme for safeguarding of all trees, shrubs and hedges on and immediately adjoining the application site from damage as a result of proposed works in accordance with British Standard 5837 (2005) has been submitted to and approved in writing by the Local Planning Authority. The landscaping and works for the safeguarding of trees, shrubs and hedges shall then be carried out in accordance with the approved scheme.

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6) The materials to be used in the construction of the external surfaces of the extensions and refuse store hereby permitted shall match those used in the existing building.

7) The boundary fence (including support structure) hereby permitted shall be colour treated in green or such other colour as may be agreed in writing by the Local Planning Authority and shall be permanently retained in that condition.

8) The day nursery hereby permitted shall, unless otherwise agreed in writing by the Local Planning Authority, incorporate the flood resilience measures set out within the submitted Flood Risk Assessment.

9) The use shall not take place other than between the hours of 0700 - 1830 Mondays – Fridays and not at all on Saturdays or Sundays.

10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no building, structure or other alteration permitted by Class A or Class B of Part 32 of Schedule 2 or Class A of part 2 of Schedule 2 of the Order shall be erected on the site.

11) The premises shall be used for a day nursery and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and reenacting that Order with or without modification).

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