



NOTICE OF MEETING

PLANNING COMMITTEE

WEDNESDAY, 19 JUNE 2019 AT 1.00 PM

THE EXECUTIVE MEETING ROOM - THIRD FLOOR, THE GUILDHALL

Telephone enquiries to Anna Martyn - Tel 023 9283 4870
Email: anna.martyn@portsmouthcc.gov.uk

If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

Planning Committee Members:

Councillors Hugh Mason (Chair), Judith Smyth (Vice-Chair), Matthew Atkins, Steve Pitt, Suzy Horton, Lee Hunt, Donna Jones, Terry Norton, Luke Stubbs and Claire Udy

Standing Deputies

Councillors Chris Attwell, Jo Hooper, Frank Jonas BEM, Gemma New, Robert New, Scott Payter-Harris, Lynne Stagg, Gerald Vernon-Jackson CBE, Rob Wood and Tom Wood

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

Please note that the agenda, minutes and non-exempt reports are available to view online on the Portsmouth City Council website: www.portsmouth.gov.uk

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 (e.g. 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**
- 2 **Declaration of Members' Interests**
- 3 **Minutes of the previous meeting - 23 May 2019 (Pages 3 - 8)**

RECOMMENDED that the Minutes of the Planning Committee held on 23 May 2019 be approved as a correct record to be signed by the Chair.

4 Chair's notices - Dates of meetings

Members are asked to note meeting dates for the remainder of the year (all on Wednesdays at 1 pm), which were agreed at the meeting on 12 December 2018:

17 July, 14 August, 11 September, 9 October, 6 November, 4 December.

5 Update on previous applications

To receive any updates on previous planning applications by the Interim Assistant Director for City Development.

6 Planning Applications (Pages 9 - 20)

Planning Application

19/00017/FUL - Connaught Arms, 119 Guildford Road, Portsmouth, PO1 5EA

Change of use from Class A4 (drinking establishment) to Class A1 (shop) to include external alterations to the shop front and construction of a single storey rear extension

7 Water Quality Issues in the Solent Catchment Area and Planning Decisions (Pages 21 - 26)

The Committee is asked to note the Cabinet report so that Planning Committee members are apprised of the issues as they may come to bear on planning applications. The recommendations in the report are not before the Committee.

Members of the public are permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting nor 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.

Whilst every effort will be made to webcast this meeting, should technical or other difficulties occur, the meeting will continue without being webcast via the Council's website.

This meeting is webcast (videoed), viewable via the Council's livestream account at <https://livestream.com/accounts/14063785>

PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held on Thursday, 23 May 2019 at 11.00 am in the The Executive Meeting Room - Third Floor, The Guildhall

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

Present

Councillors Hugh Mason (Chair)
Matthew Atkins
Steve Pitt
Donna Jones
Terry Norton
Luke Stubbs
Claire Udy

Welcome

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

Guildhall, Fire Procedure

The Chair 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.

46. Apologies (AI 1)

Apologies for absence had been received from Councillors Suzy Horton, Lee Hunt, Judith Smyth, and from Councillor Chris Attwell as Councillor Horton's standing deputy.

47. Declaration of Members' Interests (AI 2)

Item 4

Councillor Donna Jones declared the following Disclosable and Pecuniary Interest: she works for Portsmouth Football Club as a Strategic Stadium Director.

Item 3

The Legal Advisor declared a non-prejudicial interest on behalf of one of the Democratic Services Officers: she lives in the area. She had been advised that this does not interfere with her administrative functions and therefore is not a prejudicial interest.

48. Minutes of Previous Meetings - 20 February and 10 April 2019 (AI 3)

RESOLVED that the minutes of the Planning Committee meetings held on 20 February 2018 and 10 April 2019 be approved as correct records to be signed by the Chair.

49. Updates on previous planning applications (AI 4)

There were no updates on previous planning applications.

Chair's Notices

The Chair advised that meetings would revert to being held on their usual time and day on Wednesdays at 1pm.

The Chair thanked members who had attended the Planning training yesterday and advised that training scheduled for Wednesday 5 June would now be held on Tuesday 25 June. Although the training is not compulsory, it is highly recommended that members attend as otherwise the council could be open to legal challenges. Whether or not members have had training is taken into account when the High Court considers planning appeals. It was suggested that the training on 25 June could cover general topics in the morning and specific topics in the afternoon. Individual training can be arranged for members.

ACTION: The Planning Officers would make the necessary arrangements.

50. 19/00160/FUL - 29 Marmion Road, Southsea PO5 2AT (AI 5)

19/00160/FUL 29 Marmion Road Southsea PO5 2AT

Installation of an extractor duct to rear elevation

The Planning Officer introduced the report.

A deputation against the application was made by Christopher Eldred, a resident of Climaur Court, objecting on behalf of 17 other neighbouring residents.

Members' Questions

In response to questions from members, officers clarified the following points:

- There were two Velux windows in the roof. The flue extends to the ridge of the roof so that the discharge is at a sufficient height; however, issues relating to vents are outside the committee's remit and are not a reason to withhold consent.
- Officers agreed details from this and a previous application should be co-ordinated. The original application only covered change of use (from shop A1 to restaurants and café A3). Not all such changes of use require vents and ducting for restaurants. The original application had only covered grilling but the applicants now want more cooking.
- Environmental Health had carried out checks with regard to noise and if they were not satisfied they would have asked for more technical information and not recommended approval.
- Members were advised that they needed to assess whether the proposed extractor duct is in a suitable location and its visual appearance, not which elevation it is on.
- The Environmental Health Officers would have considered the height and speed of discharge of the down draft and that it would be high and fast enough.

- Condition 3 stipulates that anti-vibration mounts should be fitted. It was unclear to what extent the mounts would remove or mitigate vibrations.
- Officers had discussed the application with the Conservation Officer. The property is not listed (although it is in a conservation area) and the main Marmion Road frontage would not be affected as the duct would be sited at the rear. Members were advised that they must assess the application's impact on the conservation area and the fact that it is a newer building is a factor to consider. Members have to judge if it would have a wider adverse impact.

Members' Comments

During the discussion members made the following observations:

- It was noted that the change of use would mean that an otherwise empty building could be put to use and that there is now more demand for restaurants and takeaways than retail.
- Although the duct is at the rear of the building, for residents of Climaur Court it is on the front of their building. Furthermore, if the duct is attached to their building it ceases to be in keeping with the conservation area.
- There may be a fire risk as venting in the roof could be blocked, depending on if there is a fire break in the apex roof. Roof lights may not have been given full consideration.
- There were concerns about the duct's intrusive appearance, especially in Wilton Place, and the general effect on Marmion Road.
- Members were advised that if they were to refuse on the grounds of air quality they would lack an evidential base as this has already been assessed by Environmental Health. However, members can assess the visual impact.
- Members agreed that they were concerned about the size and visibility of a commercial type duct and that it is not appropriate on the front of Climaur Court, which is the residents' entry and exit, and where the building's name is displayed. The commercial aspects of the building are the front and side elevations whereas residents will see a commercial addition to the residential elevation.

RESOLVED that permission is refused.

REASONS

The proposed development by reason of its size, utilitarian/commercial design, and prominent position to the front elevation of Climaur Court, would introduce an intrusive and discordant feature to the detriment of the visual appearance of the residential property. The proposed development would cause harm to the character and appearance of the Owen's Southsea Conservation Area and would fail to outweigh any public benefit associated with the proposal. Therefore the proposal would be contrary to Policy PCS23 of the Portsmouth Plan and the principles of good design set out within the National Planning Policy Framework

51. 19/00215/FUL - 35 Kingsley Road, Southsea, PO4 8HJ (AI 7)

19/00215/FUL 35 Kingsley Road Southsea PO4 8HJ

Change of use from Dwellinghouse (Class C3) to purposes falling within Class C4 (House in Multiple Occupation) or Class C3 (Dwellinghouse).

The Chair agreed to bring forward item no.3 as the applicant had another commitment.

The Planning Officer introduced the item.

Romayne Spooner made a deputation in support of the application

Members' Questions

In response to a question, officers confirmed that condition 3 specifies the property is for three people. If more people were to occupy it then the applicant would have to re-apply for planning permission.

Members' Comments

Members emphasised the point that as all the bedrooms are a generous size and bigger than the required standard, this compensates for the bathroom being slightly smaller than the required standard and therefore permission could be granted on these grounds.

RESOLVED that conditional permission be granted.

52. 19/00295/CS3 - 45A High Street, Portsmouth, PO1 2LU (AI 6)

19/00295/CS3 45A High Street Portsmouth PO1 2LU

Replacement of asbestos roof; replacement of communal stairs windows and replacement of boundary railing

The Planning Officer presented the report.

Deputations were made by:

- Terence Smith, a resident, against the application.
- Stuart Lane, a surveyor with Portsmouth City Council (PCC), in support of the application.

Members' Questions

In response to questions from members, the Planning Officers clarified the following points:

- The gate is an introduction to the property's boundary and is in line with the front door.
- The visual impact of the roof is not the committee's consideration; the issue is the visual impact of the replacement of the roof.
- Manufacturers' comments about the railings cannot be taken into consideration.
- It was acknowledged that the replacement window design changed the side panels and it would be a pity if it was recessed. Conditions could be made about the window but there could be problems with keeping the original appearance.

Members acknowledged the need to comply with building regulations when refurbishing existing buildings.

- The tiles on the front elevation, which are in keeping with the 1960s architecture, would be retained. The words "replaced with a plain white render" will be deleted from the application.

Members' Comments

Members noted leaseholders have to pay for the work. The cost of the work is a matter for Housing.

RESOLVED that permission be granted subject to condition 2 being amended to state that approval of the final design of the casement window be delegated to Planning Officers.

53. 19/00518/FUL - Fratton Park, Frogmore Road, Portsmouth, PO4 8RA (AI 8)

19/00518/FUL Fratton Park Frogmore Road Southsea PO4 8RA

Relocation of 34M lattice column within secure enclosure

Cllr Donna Jones withdrew from the meeting at 12.50pm as she had declared an interest in this item.

The Planning Officer presented the report.

Matthew Pickup made a deputation in support of the application.

Members' Questions

There were no questions from members.

Members' Comments

Members agreed that the column had iconic value for Portsmouth's football heritage, was part of the Portsmouth landscape and that it would have little to no impact on the surrounding area.

RESOLVED that conditional permission be granted.

The meeting concluded at 1.05 pm.

Signed by the Chair of the meeting
Councillor Hugh Mason

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Agenda Item 6

PLANNING COMMITTEE 19 JUNE 2019

**1 PM EXECUTIVE MEETING ROOM,
3RD FLOOR, GUILDHALL**

REPORT BY THE ASSISTANT DIRECTOR - CITY DEVELOPMENT 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 report by the Assistant Director - City Development 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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01	19/00017/FUL	Connaught Arms, 119 Guildford Road, Portsmouth, PO1 5EA	PAGE 3

CONNAUGHT ARMS 119 GUILDFORD ROAD PORTSMOUTH PO1 5EA**CHANGE OF USE FROM CLASS A4 (DRINKING ESTABLISHMENT) TO CLASS A1 (SHOP)
TO INCLUDE EXTERNAL ALTERATIONS TO THE SHOP FRONT AND CONSTRUCTION OF
A SINGLE STOREY REAR EXTENSION****Application Submitted By:**BBD Architects
FAO Mr Laurence Wright**On behalf of:**Mr Matt Wylie
NM Investments Ltd**RDD:** 8th January 2019**LDD:** 4th April 2019**SUMMARY OF MAIN ISSUES**

The main determining issues are:

- * whether the principle of the change of use to Class A1 shop is acceptable;
- * whether the design of the proposed extension and external alterations is acceptable in the context of the recipient building and the wider surrounding area;
- * any likely impact on the surrounding highway network;
- * whether the residential amenity of occupiers of surrounding residential properties would be adversely affected by the proposal.

This application is being presented to the Planning Committee for determination following a call-in by Councillor Ashmore.

Site Description

This application relates to a building, built in 1891, which is located on the corner of Guildford Road opposite the junction with Penhale Road and to the south of the junction with Manchester Road. The building was formerly the Connaught Arms public house but has been vacant for a number of years.

Proposal

The application seeks planning permission for the change of use of the ground floor of the building from a Class A4 use (drinking establishment) to a Class A1 use (shop), including external alterations to the shop front and the construction of a single storey rear extension. The extension would cover the majority of the rear/side existing yard, with a small, open, service area retained accessed directly off Guildford Road, for bin storage. Metal roller shutters would be installed within the building, i.e. behind the shopfront, and so do not require planning permission. Expected employee numbers are not known, and no hours of use are proposed. The application is supported by a Design and Access Statement.

Planning History

The relevant planning history includes:

15/01738/FUL - Construction of single storey rear extension, alterations to front elevations to include new shop-front with roller shutters - Refused on 24.12.2015 for the following reasons:

1. The proposed extension would, by reason of its excessive scale and unsympathetic flat roof design, fail to relate appropriately to the recipient building and has no regard for the unique architectural features of the former public house. The proposal would therefore be contrary to the aims and objectives set out in the National Planning Policy Framework and policy PCS23 of the Portsmouth Plan.
2. The proposed roller shutters on the new shop front would, by reason of their unrelieved fortress like appearance, amount to an unsympathetic feature that would fail to relate to the unique architectural quality of the former pub. It would also amount to a visually obtrusive feature within the street scene that would be contrary to the aims and objectives as stated in the National Planning Policy Framework and Policy PCS23 of the Portsmouth Plan.

The subsequent appeal was dismissed (dated 13/9/16).

15/02037/FUL - Conversion of first floor flat into 2no. one bed flats with associated amended ground floor access and provision of cycle and refuse store - Conditional permission dated 12.04.2016.

16/00288/FUL - Construction of single-storey rear extension with external alterations to include installation of new door to front elevation (re-submission of 15/01738/FUL) - Refused dated 28.04.2016 for the following reason:

1. The proposed extension would, by reason of its excessive scale and unsympathetic roof design, fail to relate appropriately to the recipient building and has no regard for the unique architectural features of the former public house. The proposal would therefore be contrary to the aims and objectives set out in the National Planning Policy Framework and policy PCS23 of the Portsmouth Plan.

19/00633/FUL - Construction of three bedroom dwelling house and change of use of ground floor from Public House (Class A4) to 2 two bedroom flats (Class C3), to include single storey rear extension - Pending consideration.

POLICY CONTEXT

The relevant policies within the Portsmouth Plan would include:
PCS17 (Transport), PCS23 (Design and Conservation),

In addition to the above policy, the aims and objectives of the National Planning Policy Framework are relevant.

CONSULTATIONS

Environmental Health

Recommend conditions for noise attenuation.

Although the first and second floors were previously used for ancillary residential accommodation I believe that there is no change to the use on these floors other than that it will no longer be tied to the ground floor commercial use. Concerns with regards to the installation of refrigeration equipment within the shop on the ground floor, noise from this type of equipment particularly at 100Hz can flank up walls and floors and impact upon the residential accommodation on the first floor. Recommend the following condition:

1. A scheme of sound insulation measures to reduce the transmission of airborne sound between the proposed commercial use and the first floor residential accommodation, to achieve a minimum standard of Dntw+Ctr 50dB.

With regards to the internal refrigeration in the commercial premise, condensers are usually installed externally to support this equipment. The plans do not show any details of where this equipment will be located and the service area is showing a small court yard with a number of reflective surfaces. To ensure that the noise from this plant does not cause a loss of amenity for nearby residential properties or the residential accommodation above, recommend the following condition;

2. Prior to the installation of any mechanical plant or equipment an assessment of noise from the operation of the plant shall be undertaken using the procedures within British Standard BS4142:2014 and a report submitted to the local authority for approval. Appropriate measures shall be implemented to mitigate any identified observed adverse effect levels due to the operation of the plant.

Highways Engineer

No objection.

Guildford Road is a residential street dominated with terraced dwellings along the extent of the road. The demand for residential parking on street frequently exceeds the space available particularly overnight and at weekends. The road is located within a residential speed limit of 20mph, with time limited waiting opportunities to park immediately outside the site.

No traffic assessment has been provided to support this application. However the location and scale of the property within a residential area is unlikely to serve more than local clientele who are likely to access the shop by foot. The existing A4 use primarily generates trips in the evenings and at weekends (except deliveries) in conflict with the peak time for residential parking. Conversely the proposed A1 use is most likely to generate trips during the day, when there is more scope to accommodate these locally. As a consequence the variation in trip rate is not likely to have a material impact upon the local highway network.

Portsmouth City Council's Parking SPD does not give an expected number of spaces for non-residential developments rather requires applications to make an assessment of parking demand and demonstrate how this can be satisfied. No such assessment has been provided in support of this application and no parking can be provided on site for either staff or customers, therefore any demand associated with the site would have to be accommodated on street or via parking facilities. I am satisfied that sufficient parking opportunities exist nearby for customers of the site and is acceptable and that the nature of the deliveries will be similar to that of its current use.

REPRESENTATIONS

Publicity of the application has generated 27 letters of objection and a petition of 75 signatures also objecting to the proposal. These have been submitted by local residents, Cllr Coles on behalf of a number of residents, and the 'Penhale News' shop which is situated opposite the application site. The objections are based on the following grounds:

Change of use:

- * an additional shop is not wanted or needed; the area is already well served by existing shops within walking distance; an additional shop would not benefit the area;
- * an additional shop would have a detrimental impact on the viability of existing shops, which are part of the local community and family run;

- * the former public house has been closed for several years and residents have got used to a quieter street without unsociable behaviour and loud music; concern that a new shop would change the residential character of the area;
- * the site would be better used for residential purposes (particularly affordable homes); P.C.C should have compulsorily purchased the site; the upper floor flats under construction are welcomed;
- * concern about the type of shop proposed - would not want a takeaway due to cooking odours;
- * same proposal was dismissed at appeal in 2016;
- * permission would set an undesirable precedent for the conversion of more buildings in the area to shops.

Residential Amenity:

- * concern that the extension would be used for fridge/freezers/air conditioning and that the operation of such plant would cause noise, disturbance and fumes adversely affecting the residential amenity of surrounding occupiers;
- * security concern that the flat roof of the proposed extension would allow access to neighbouring gardens;
- * the extension would cause loss of light and overlook neighbouring gardens;
- * concern that shop bins may attract vermin;
- * shop likely to increase litter in area;
- * concern about late night opening; new shop could attract disruptive behaviour, crime, noise and disturbance particularly during unsociable hours; already a troubled area;
- * concern that any external roller shutters could be noisy when being operated.

Highway Matters:

- * parking is at a premium in this area (there is a residents parking scheme), parking needed for staff, customers and deliveries;
- * indiscriminate parking could hinder emergency vehicle access;
- * concern for highway safety as site is on the corner of a relatively busy crossroads for vehicles, cyclists and pedestrians (infant school nearby), extra lorry traffic for deliveries;
- * proposal will exacerbate congestion in area.

Other:

- * frustration at the number of applications submitted for the site;
- * de-valuation of nearby property values;
- * heard that there is another proposal for a 2 storey house on the site;
- * lack of health and safety being adhered to on site.

COMMENT

The main determining issues are:

- * whether the principle of the change of use to Class A1 shop is acceptable;
- * whether the design of the proposed extension and external alterations is acceptable in the context of the recipient building and the wider surrounding area;
- * any likely impact on the surrounding highway network;
- * whether the residential amenity of occupiers of surrounding residential properties would be adversely affected by the proposal.

Principle of Class A1 use

In 2017, permitted development rights with respect to changes of use from Class A4 to Class A1 were removed and therefore such a change of use now requires planning permission. This is the first application at this site that seeks permission to change the use to a shop - when the

Planning Inspector considered the appeal against the refusal of planning application 15/01738/FUL (for the construction of a single storey rear extension and alterations to the front elevations to include new shop-front with roller shutters), the change of use from Class A4 (drinking establishment) to Class A1 (shop) was permitted development.

The site is not in a designated local centre. Policy PCS18 of the Portsmouth Plan states that *'Proposals for town centre uses in out-of-centre locations will have to follow national policy regarding town centre uses, including the sequential test. Proposals for town centre uses of less than 280m² net floorspace will be exempt from this.'* The net additional floorspace created by the proposed extension would be 72m², creating an overall ground floor of 225m² i.e. exempt from the need for a sequential test.

Paragraph 91 of the National Planning Policy Framework makes reference to the need to aim to achieve healthy, inclusive and safe places which promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other. Paragraph 92 seeks to ensure that planning policies and decisions should plan positively for the provision and use of shared spaces and community facilities (including public houses). It is noted however that the Connaught Arms public house has not been in use for a number of years and that there are a range of public and private buildings in the area that could be used for community uses and therefore the loss of the public house use is not considered of significant harm to the local community so as to justify refusal of the application.

Therefore, there is no site specific land use policy that discourages the principle of a Class A1 use of this property.

Design

Policy PCS23 of the Portsmouth Plan echoes the principles of good design set out within the National Planning Policy Framework which requires that all new development will be of an excellent architectural quality; will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; will establish a strong sense of place; will respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation; relates well to the geography and history of Portsmouth and protects and enhances the city's historic townscape and its cultural and national heritage; and is visually attractive as a result of good architecture and appropriate landscaping.

Proposed Extension

It is noted that the building the subject of this application is neither a heritage asset nor in a conservation area. However, the elevations of the building do contain some degree of architectural articulation and features. Indeed, the Planning Inspector considering the earlier refusal (15/01738/FUL) wrote that *'while the building may indeed not be designated, my impression of it is that whilst it may lack some of the material refinements and facade embellishments of some of its contemporaries in other parts of the city, it is nonetheless an interesting building in its own right. More significantly, like the other corner pubs in Portsmouth, its location and form marks it out as a feature in the extensive, grid-iron like network of streets for housing. In this respect, it contributes much to the distinctive urban landscape of the area.'*

The principle of a single storey rear extension, with a very similar footprint to that considered by this application albeit with a flat roof, was accepted by the Planning Inspector in 2016. The Inspector stated that *'In respect of the extension proposed to the rear, I appreciate the concern of the Council for new-build volumes not to work against the balance of the building, which has a relatively compact footprint and vertical mass. However, the extension would occupy the rear yard and would be set behind the street wall along the back edge of the footway on Guildford Road. In regard to the main part of the building, the extension would not derogate proportionally, and it would be distinguishable as a back of house element. While it would extend to the back*

boundary of the site and have a flat roof marginally higher than the street wall, the breathing space provided by its set-back from the street wall would reduce its conspicuity. Its roof form would be distinct from the character of pitched roofs in the original building; given its displacement from the building, its yard location at street level behind a street wall, this appears to me a reasonable design approach. Because of these factors, I do not consider that the rear extension would harm the scale and balance of the building or its architectural integrity. There would be no conflict with Policy PCS23 of Portsmouth's Core Strategy 2012 which seeks, amongst other things, development that respects the character of the city and protects its historic townscape and cultural heritage and is of appropriate scale. In respect of the proposed rear extension, I conclude there would be no harm to the character and appearance of the host building.'

The Council's refusal of a proposed single storey rear extension of much smaller footprint but incorporating a pitched roof in April 2016 occurred prior to the Inspector's decision in September of the same year regarding an extension of a larger footprint.

The footprint of the proposed extension is similar to that accepted by the Planning Inspector in 2016 but the proposal now incorporates a pitched, plain clay tiled roof surrounding a flat roof which would cover the majority of the extension. The observations of the Inspector that the earlier flat roof design was considered a reasonable design approach does not discount that other roofing solutions may also be appropriate. It is considered that whilst the pitched roof would be more readily visible above the existing boundary treatment, it would not be unduly prominent and that subject to the use of quality external materials it is a solution that would not harm the character and appearance of the building and as such is capable of support.

The Inspector's concerns with the earlier application however lay with the proposed external roller shutters which do not form part of the current application.

Proposed External Alterations

In terms of physical works, in addition to the proposed extension, the application also seeks permission for various external alterations to the elevations of this corner property that fronts both Guildford Road and Penhale Road. The alterations involve fenestration changes predominantly to drop each existing ground floor window down to the top of the black-painted brick plinth and continuing the chamfered painted brickwork down the extended length of each window to a point eight brick courses below the existing cill banding. The new window frames would be constructed of powder coated aluminium with safety glazing. They would be set back with the same reveal depth as the existing windows, thereby retained some shadow and corresponding architectural quality. The main entrance into the shop would be located within the existing recessed entrance on Guildford Road elevation. A number of window openings would be blocked up and a new single door would be created in the Guildford Road elevation. Overall the proposed external alterations are considered to appropriately reference and acknowledge the vertically proportioned openings within the building and retain features such as decorative lintels and chamfered reveals thereby retaining the character of the building.

Impact on surrounding highway network

It is noted that the roads surrounding the application site are residential in nature, dominated with terraced dwellings typical of the city and that the demand for residential parking on street frequently exceeds the space available particularly overnight and at weekends. The road is located within a residential speed limit of 20mph, with time limited waiting opportunities to park immediately outside the site.

The Highway Authority advise that the location and scale of the property within a residential area is unlikely to serve more than local clientele who are likely to access the shop by foot. Whilst the Connaught Arms public house is currently not in use, the site still benefits from a Class A4 drinking establishment use which would primarily generate trips in the evenings and at

weekends (except deliveries) in conflict with the peak time for residential parking. Conversely the proposed Class A1 use is most likely to generate trips during the day, when there is more scope to accommodate these locally. As a consequence the variation in trip rate is not likely to have a material impact upon the local highway network.

No on-site parking provision has been identified on the plans and therefore any demand associated with the site would have to be accommodated on street. Given its location within a densely populated residential area, where a high level of customers would be anticipated to walk to the premises, it is considered that there are sufficient parking opportunities nearby for customers of the site who choose to drive. The nature of the deliveries would be similar to that of its current use.

Residential Amenity

Given the modest height of the proposed extension and the nature of the external alterations and the intervening distance between surrounding residential properties, it is not considered that the proposed physical works would result in any significant adverse impact on neighbouring occupiers in terms of available light, outlook, sense of space or privacy.

The change of use from a public house to a Class A1 shop is not considered likely to generate increased levels of noise, disturbance, activity or litter within the area over and above that which could be experienced by a public house use of the site.

Comments on additional matters raised by representations

The application is not within an identified centre and the size of the application site is below the threshold for any sequential testing and therefore the issue of potential retail competition is one for market resolution, and not via the planning system.

Whilst many objectors have voiced their preference for alternative uses of the site, the local planning authority must consider the merits of the application as submitted.

The applicant states that the occupier would be a 'national convenience store chain'. I note that a planning consent for Use Class A1 would allow for any retail operator - the occupier would have to operate within the remit of that use class. One objection concern relates to a takeaway use, but that use (Class A5) would not be granted by this proposal.

The application dismissed at appeal in 2016 related to a rear extension and external roller shutters; the change of use to a shop did not form part of the application.

Each site is considered on its own merits and therefore a precedent would not necessarily be set by granting permission for this application.

Plant and equipment has not been identified within the submission. The Environmental Health Service have recommended conditions to deal appropriately with noise generated by the operation of such equipment.

The concerns of residents regarding the potential for unsolicited access to their rear gardens via the flat roof of the proposed extension is acknowledged however this is not considered to be of any greater likelihood than the existing scenario of boundary walls and rear yard.

External roller shutters do not form part of this planning application.

De-valuation of property and matters of health and safety are not considerations within the planning remit.

Conclusion

For the reasons set out above, the proposal is considered capable of support.

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: Location Plan and Block Plan 1504/E/01 A, Proposed Elevations, Floor and Roof Plan 1504/P/10 H and Proposed Window Details 1504/P/11.
- 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match, in type, colour and texture those on the existing building.
- 4) Prior to the commencement of development, a scheme of sound insulation measures designed to reduce the transmission of airborne sound between the proposed commercial use and the first floor residential accommodation shall be submitted to the planning authority. These measures shall ensure that the airborne sound insulation can achieve a minimum standard of Dntw+Ctr 50dB. The measures approved in writing shall be implemented as approved and retained as such thereafter.
- 5) Prior to the installation of any mechanical plant or equipment an assessment of noise from the operation of the plant shall be undertaken using the procedures within British Standard BS4142:2014 and a report submitted to the local planning authority for approval. Appropriate measures, agreed in writing by the local planning authority, shall be implemented to mitigate any identified observed adverse effect levels due to the operation of the plant, prior to first use of the retail shop, and retained as approved thereafter.
- 6) The proposed external alterations hereby permitted to the windows within the Guildford Road and Penhale Road frontages shall be carried out in strict adherence to those details shown on approved drawing 1504/P/11.
- 7) The Class A1 premises shall be closed to and vacated of all customers between 21:00 hours to 07:00 hours daily.

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) In the interests of visual amenity in accordance with policy PSC23 of the Portsmouth Plan.
- 4) In the interests of the residential amenity of occupiers of the upper floors of this building in accordance with policy PCS23 of the Portsmouth Plan.
- 5) In the interests of the residential amenity of occupiers of nearby residential properties in accordance with policy PCS23 of the Portsmouth Plan.

6) In the interests of the maintaining the character of the building and the visual amenities of the wider surrounding area in accordance with policy PCS23 of the Portsmouth Plan.

7) In the interest of amenity in accordance with Policy PCS23 of the Portsmouth Plan.

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.

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Title of meeting:	Cabinet
Date of meeting:	11 June 2019
Subject:	Water Quality Issues in the Solent Catchment Area and Planning Decisions
Report by:	Interim Assistant Director of Planning & Economic Growth
Wards affected:	All
Key decision:	No
Full Council decision:	No

1. Purpose of report

- 1.1 The purpose of this report is to inform Cabinet of a key issue affecting development in the city. This report outlines the water quality and management issues in the Solent, the consequences of recent legal rulings and the subsequent advice by Natural England (NE).
- 1.2 At the current time this issue is affecting the granting of planning permissions for additional dwellings (or an intensification of dwellings), tourism related development and development likely to generate an overnight stay, unless proposals can demonstrate development is 'nitrate neutral'.

2. Recommendations

- 2.1 Cabinet is recommended to:
- 1. Note the issues covered in this report, in particular the implications for the authority and determination of planning applications;**
 - 2. Endorse the actions and mitigations proposed in section 3.9 to respond to this issue.**

3. Background

- 3.1 The Solent has recognised problems from nitrate enrichment; high levels of nitrogen from housing and agricultural sources in the catchment have caused excessive growth of green algae (a process called eutrophication) which is having a detrimental impact upon protected habitats and bird species. The Partnership for Urban South Hampshire (PUSH) authorities, Natural England and the Environment Agency jointly developed an *Integrated Water Management Strategy* (IWMS) (June 2018) to assess any implications from the region's planned growth on water resources and the quality of the water

environment. The report acknowledged that there are significant uncertainties beyond the year 2020 relating to water quality, quantity, the capacity for accommodating future growth and the impacts on European nature conservation designations. The PUSH Water Quality Working Group (WQWG)¹ was set up find a way forward on these issues and to develop strategic mitigation measures for the sub-region if necessary.

- 3.2 Since the PUSH IWMS was published, changes in case law mean that the water quality problems in the Solent have become an immediate issue for local planning authorities. A Court of Justice of the European Union (CJEU) decision, known as the 'Dutch Case'² (in combination with the 'Sweetman' judgement³) has implications for areas where the conservation status of a habitat type is already known to be "unfavourable" (as in the case in the Solent) and the authorisation of activities (i.e. new housing) which would add further nitrogen loading to that habitat (through additional sewage output).
- 3.3 The judgement affects the internationally designated sites in the Solent catchment (Special Protection Areas (SPAs), Special Areas of Conservation (SACs), and potential Special Protection Area (pSPA) and Ramsar Sites) and therefore applies to the Local Planning Authorities that fall within this area. Although water quality degradation from nitrates and phosphates largely stems from agricultural practices (with contributions from sewer network overflows, private discharges, industrial discharges and natural sources) such practices often operate within existing consent regimes. There is therefore an argument that the planning system has scope to (and must) address the issue explicitly where new consents for developments could result in additional nitrate outputs.
- 3.3 Following the CJEU ruling, Natural England (NE), the government's adviser for the natural environment, advises that, under the requirements of the Habitat Regulations, the existing uncertainty about the deterioration of the water environment must be appropriately addressed in order for the assessment of a proposal to be legally compliant. They recommend that this is addressed by securing suitable mitigation measures to ensure that proposals achieve 'nitrate neutrality'. It is recognised that it would be difficult for small developments or sites on brownfield land (which form the majority of applications in Portsmouth) to be nitrate neutral.
- 3.4 NE has therefore advised a neighbouring planning authority that 'planning permission[s] should not be granted at this stage'⁴ whilst the uncertainty around this issue means that a comprehensive assessment of the impacts of a proposal cannot be satisfactorily carried out and while an interim strategic solution is being developed for the sub-region'. Natural England's advice is that proposals

¹ Comprised of the PUSH LAs, Natural England, Environment Agency and water companies.

² Joined Cases C-293/17 and C-294/17 *Coöperatie Mobilisation for the Environment UA and Others v College van gedeputeerde staten van Limburg and Others* issued on 07 November 2018.

³ *People Over Wind, Peter Sweetman v Coillte Teoranta* judgement issued in April 2018 by the CJEU. This ruling means that mitigation measures cannot be

⁴ Email from Natural England to Havant Borough Council on 09.04.19.

for new employment or leisure uses which do not entail an overnight stay are generally not subject to these concerns.

- 3.5 Officers sought advice from Queen's Counsel on the matter, which confirmed the validity of Natural England's position (as of 05.05.19). As per the legal advice received, and in the absence of any pre-existing mitigation strategy, the City Council has temporarily ceased granting planning consent for additional dwellings (or an intensification of dwellings), tourism related development and development likely to generate an overnight stay at this time. Such applications can still be considered on an individual basis if they are able to demonstrate that the development would be 'nitrate neutral'. It is understood that other Local Authorities within the Solent catchment have also temporarily stopped granting planning consent for development affected by this matter whilst mitigation strategies are being developed.

Consequences and Risks for the Council

- 3.6 There are consequences for the Council (procedural, political, reputational and financial) from the current stop on residential permissions. This includes the following:

- a. Planning applications and permissions in principle: In the short term the Council would be susceptible either to challenges by developers for refusal or for non-determination, or by persons concerned about the environmental implications of a potentially inadequate Appropriate Assessment (under the Habitat Regulations).

This presents significant consequences for residential development where decision notices are imminent.

Certain proposals, approved at Planning Committee, but awaiting legal agreements or other matters prior to the issue of planning permission, may have to return to Committee for determination as the material considerations of the application have now changed.

- b. Prior Approval applications: for additional dwellings and development likely to generate an overnight stay⁵. Development affecting designated habitat sites cannot commence before the developer has received written notice of the approval of the Council, essentially removing any permitted development rights for additional dwellings. Prior approvals are also time sensitive and are usually deemed consented if decisions are not issued within the set time period.
- c. Planning Decision Appeals: The Planning Inspectorate has been notified of the eutrophication issue in statements of case sent to the Inspectorate on

⁵ Under Schedule 2 of the Town and Country Planning (General Permitted Development) Order (England) 2015.

29th April 2019 as a key issue to reach a determination on in appeal cases in Portsmouth. The Planning Inspectorate must follow the case law in the same way as the Council. The Council awaits the Inspectors' decisions with great interest as any further appeal to the High Court would set a precedent on the issue and help raise awareness with Government.

- d. Financial losses: Potential loss of planning applications fees, either from dissuading applicants to apply at this time, or from refunds due to non-determination (from 26 weeks or after an agreed extension of time). There could also be reductions in Community Infrastructure Levy (CIL) and New Homes Bonus payments (over £500k in 2018/19), either temporary or permanent which may also impact upon the Council's revenue and capital budgets. Beyond the Council, there could be an impact on the Portsmouth economy, particularly for small and medium sized builders that operate in the area.
- e. Uncertainty for the service: in the interim there may be an impact on the planning service's targets, reputation and morale. This includes impacts on the ability to meet the Government's Housing Delivery Test; if a Local Planning Authority's housing delivery falls below its requirements (under 95%), then the government will introduce sanctions depending on the extent of the shortfall. The Council is also promoting significant regeneration and economic development (including housing-led regeneration) and a key element of this will be the Council (and especially Planning) as being "open for business". The current position does not necessarily reflect such an approach.

- 3.7 However, the current situation does present an opportunity for the Council to further consider how it can minimise the environmental impacts of its processes and decisions, and how possible mitigation options could contribute to the Council's wider climate change aims. In this context, further reports on this matter will be considered by the new Climate Change Board.
- 3.8 An option open to the Council would be to ignore the advice of NE and continue to issue planning consents for residential development. Whilst this may seem an attractive option in light of the negative impacts of abiding by the advice, it is a more complex matter. First, officers have exercised "due diligence" and sought Queen's Counsel's advice on this matter. Second, making such a decision will open the council to legal challenge by way of Judicial Review. This will have reputational and financial issues, and which will potentially be exacerbated by having our own legal advice on this matter that clearly sets out the respected status to be accorded to statutory consultees in their specialist areas.

Actions and Mitigation Options

- 3.9 The Council, together with partner authorities and agencies, are actively exploring a number of both direct and in-direct mitigation options that will help to

both improve water quality in the Solent and enable development to resume in the city expediently. It is clear that a combination of management measures at the catchment level are needed to address the main sources of the problem. A mix of short and long term options are being considered.

- 3.10 The Council's work will be supplemented by:
- an interim strategic solution for the sub-region to be developed via the PUSH Water Quality Working Group that will ensure the uncertainty for the water environment can be fully addressed by all applications; and
 - a review of the IWMS which will assess the sensitivity of the whole catchment, consider the impacts of nutrients from both housing and agricultural sources and comprehensively assess existing uncertainties.
- 3.11 Immediate actions being progressed are as follows:
- a) Portsmouth and the PUSH authorities to lobby central government on the approach to the matter. There appears to be disconnect between government agencies on their advice to Local Authorities, including a clear conflict between the approach to the water quality issue and the pressure to meet the government's housing delivery targets. We will be urging Government to examine the sources of the nitrates problem, including its own environmental permitting regimes and insufficient wastewater treatment practices by statutory undertakers, rather than solely focusing on the planning system/ development industry to present solutions.
 - b) PUSH authorities have agreed to explore a strategic solution to the nitrates problem that can be used as mitigation by all authorities.
 - c) Officers are identifying and exploring with Natural England and other relevant parties short term measures which could enable planning consents to resume in the short term while a more comprehensive and strategic solution is determined.
 - d) Officers are arranging to meet with Southern Water to explore any existing capacity for improvements in the operation of the existing waste water treatment infrastructure and the scope, timescales and mechanisms to improve the existing treatment.
- 3.12 As noted in para. 3.6, whilst the current risks and uncertainties raise significant issues for the Council and other parties, the new legal position, and advice from Natural England, does provide added impetus to dealing with the long-term issue of nitrates in the Solent, with longer term environmental and ecological benefits. Therefore, when progressing the options for mitigating this issue, officers will be considering the potential for all mechanisms to have additional benefits for the city, including any contribution it can make towards the city's response to the climate emergency declared at Council in March 2019.
- 3.13 Positive outcomes in addressing this issue will be reported to Members as soon as possible.

4. Equality impact assessment

- 4.1 An equality impact assessment is not required as the recommendations do not have a disproportionately negative impact on any of the specific protected characteristics as described in the Equality Act 2010 for the following reasons:
- This report updates members on issues affecting all types of residential and tourism related development, rather than the needs of specific groups.
 - The report recommends that this information is noted and does not seek a decision on the topic at this time.
 - Any supplementary planning documents to be developed on this topic will be subject to an Equality Impact Assessment if required.

5. Legal implications

- 5.1 These are embedded in the main body of the report.

6. Director of Finance's comments

- 6.1 Financial implications for the Council are outline in section 3. The finance implications of any proposed mitigation measures will be reported back to Cabinet in subsequent reports.

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Signed by:

Appendices: None.

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
PUSH (June 2018) <i>Integrated Water Management Study</i> prepared by Amec Foster Wheeler Environment & Infrastructure UK Ltd	Summary report to PUSH available from: https://www.push.gov.uk/wp-content/uploads/2018/07/Item-10-Integrated-Water-Management-Study-Cover-Report.pdf

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: