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# NOTICE OF MEETING

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## PLANNING COMMITTEE

WEDNESDAY, 6 NOVEMBER 2019 AT 1PM

THE EXECUTIVE MEETING ROOM - THIRD FLOOR, THE GUILDHALL

Telephone enquiries to Jane Di Dino 023 9283 4060

Email: [Democratic@portsmouthcc.gov.uk](mailto:Democratic@portsmouthcc.gov.uk)

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

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### Planning Committee Members:

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

### Standing Deputies

Councillors Chris Attwell, George Fielding, Jo Hooper, Suzy Horton, Frank Jonas BEM, Gemma New, Robert New, Scott Payter-Harris, Lynne Stagg, Rob Wood and Tom Wood

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(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](http://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](mailto: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 held on 9 October 2019 (Pages 3 - 10)**
- 4 **Updates on previous planning applications**

**5 Updates on nitrates**

The Development Manager will give an update on the nitrates situation.

Planning Applications.

- 6 19/00762/FUL - 104 Elm Grove, Southsea PO5 1LP - Change of use from retail (Class A1) to restaurant/ café (class A3) to include installation of extraction system to the rear. (Pages 11 - 24)**
- 7 19/01047/FUL - Flat 1, 82A High Street, Portsmouth PO6 3AJ - change of use from residential (class C3) to residential/ house in multiple occupation (class C3/C4) mixed use**

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>

# Agenda Item 3

## PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held on Wednesday, 9 October 2019 at 1.00 pm 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)  
Judith Smyth (Vice-Chair)  
Matthew Atkins  
Lee Hunt  
Donna Jones  
Terry Norton  
Luke Stubbs  
Claire Udy  
Gerald Vernon-Jackson CBE (Standing Deputy)

Also in attendance

Councillor Robert New

### 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.

### 83. Apologies for absence (AI 1)

These had been received from Councillors Steve Pitt (who was represented by Standing Deputy Councillor Gerald Vernon-Jackson) and Suzy Horton.

### 84. Declaration of Members' Interests (AI 2)

Councillor Claire Udy declared that she had a prejudicial interest in the Rodney Road item and would therefore leave the meeting at this point, and the Chair varied the order of the agenda to accommodate this.

Councillor Matthew Atkins wished to clarify that whilst he had previously made declarations of interest regarding Stubbington Avenue, this was no longer a pecuniary interest for him.

During discussion of Rodney Road, reference was made to Portsmouth Football Club, at which point Councillor Donna Jones made a pecuniary declaration of interest and withdrew from the meeting.

**85. Minutes of the previous meeting held 11 September 2019 (AI 3)**

It was reported that Councillor Frank Jonas wished it to be recorded that he had also been present at the previous meeting.

Subject to that addition it was:

**RESOLVED that the minutes of the Planning Committee held on 11 September 2019 be approved as a correct record to be signed by the Chair.**

Under Matters Arising, regarding minute 72 relating to Mayfield School, it was reported that the correct remediation works were expected for the site, and the Development Management Lead needed to know the extent of works required.

**86. Updates on previous planning applications (AI 4)**

None.

**87. Updates on nitrates (AI 5)**

This item was discussed at the end of the meeting when the Assistant Director Planning & Economic Growth reported on the progress of the Mitigation Strategy, continued discussions with Natural England and work on the financial implications. There was also ongoing work with adjacent councils and through the Partnership for South Hants. The Assistant Director hoped that the documentation would be completed in weeks so that that delayed applications can start to come forward to committee at the end of November and some backlogged applications will be granted under delegated powers.

Members were concerned regarding the issue of developer viability challenges as there is the need to provide affordable housing. The cost of mitigation measures and possible charges to developers needs to be known. Questions were raised on the resource implication for officers dealing with this backlog, which was being reviewed by Ian Maguire as Assistant Director. On current calculations he estimated that the Mitigation Strategy would cover 2-3 years of delivery on applications. Work was also taking place to ensure that the emerging Local Plan (for which there may be slippage in its timetable) reflected the nitrates issues.

The verbal update was noted.

**88. 19/00510/FUL - Land to rear of 76 Vernon Road Portsmouth PO3 5DS - Construction of seven garages and one storage building (following demolition of existing outbuildings) and the construction of a fence (Report item 1) (AI 6)**

The presenting planning officer drew members' attention to the Supplementary Matters list which reported on additional representation:

*Four additional representations have been received following the publication of the committee report, raising the following concerns:*

a) *Use and condition of the access;*

- b) *Noise and disturbance;*
- c) *Ecological impacts of the scheme; and*
- d) *The use of the garages.*

*The majority of these points have been addressed within the Committee Report, with the exception being the possible ecological impacts of the proposal. Following this, the LPAs Ecological Consultant was contacted. While they consider the risks of the scheme to be fairly low, a precautionary approach has been taken and an extra condition is now proposed. This would require a Preliminary Ecological Appraisal to be completed prior to clearing of the site, and consideration of incorporating bird and/or bat boxes within the development.*

The recommendation remained unchanged but with an additional condition on ecological matters:

*Condition:*

*Prior to the commencement of development, a Preliminary Ecological Appraisal shall be submitted to and approved in writing by the LPA. The Appraisal shall inform any mitigation measures necessary. The development hereby permitted shall not be first brought into use until an Ecological Mitigation Strategy has been submitted to, and approved in writing by the Local Planning Authority. The Strategy shall be implemented as approved and maintained on the site as approved during the lifetime of the development.*

*Reason: To maintain and protect biodiversity in accordance with Policy PCS13 of The Portsmouth Plan and the Natural Environment and Rural Communities Act 2006.*

Deputations are not minuted in full but can be viewed as part of the webcast of the meeting:

<https://livestream.com/accounts/14063785/Planning-09Oct2019>

- i) Mr Cox spoke to object to the proposal on behalf of his mother in Glenthorne Road and felt that there had not been full engagement with local residents; their concerns include the use of the garages, access to them, light pollution and security issues. He quoted DEFRA guidance on orchards.
- ii) Councillor Robert New spoke as a ward councillor to support the concerned residents regarding access to the site along a privately owned route, it was overbearing, the garages should not be sublet and there could be anti-social behaviour. He raised the status of the land which had previously been a community orchard, with the land falling into disrepair.

Members' Questions

In response to questions raised by members the following was clarified by planning and legal officers:

- The County Ecologist was consulted. There was no formal planning designation of this land as an orchard or for the similar unkept land to the south (which was not part of the application site) but given this new

information about a DEFRA designation it would be prudent to fully examine the matter before determining the application.

- There were no Tree Preservation Orders on this land which had been taken into the curtilage of no76 Vernon Road.
- Biodiversity, lighting and domestic use were addressed by conditions.
- The renting of garages could only be for domestic use and domestic vehicles.
- Access to the site would be a private matter, with the consent of the land owner required, and was not a consideration for the committee.
- On the subject of visual amenity, demonstrable harm would need to be shown, and there were other outbuildings in the vicinity.

#### Members' Comments

Members were concerned that the full extent of the possible orchard designation was not known and the associated biodiversity impact and therefore favoured a deferral for further information to be sought.

**RESOLVED that consideration of this application be deferred for further information to be provided.**

89. **19/00716/FUL - Site 10 Rodney Road Southsea PO4 8SY - Change of use from retail (Class A1) to a hot food takeaway (Class A5); external alterations to include installation of extraction and ventilation equipment (Report item 2) (AI 7)**

Councillor Udy withdrew from the meeting due to her declaration of interest, and Councillor Jones also withdrew when mention was made of Portsmouth FC and declared an interest.

The presenting planning officer referred to the Supplementary Matters list which reported on additional representation:

*"One additional representation has been received following the publication of the committee report, raising the following concerns:*

- a) Contrary to Policy PCS11;*
- b) Impact upon the amenity of the surrounding occupiers caused by extended opening hours;*
- c) Increased traffic;*
- d) Lack of on-site parking;*
- e) Impact upon the Designated Heritage Asset 'Milton Cemetery';*
- f) Inappropriate use within the area;*
- g) Anti-social behaviour;*
- f) Erosion of historic character of nearby Edwardian streets;*
- g) Proliferation of fast-food takeaways leading to poor health; and*
- h) Waste.*

*The majority of these points have been addressed within the Committee Report, with the exception being the impact upon Milton Cemetery. Given that the proposal includes limited external alterations and is located a significant distance from the*

*listed 'Milton Cemetery Gates' it is not considered that the proposal would have any impact upon the designated heritage asset."*

The officer recommendation remained unchanged.

Deputations were heard from:

- i) Mr Leroy, as a local resident, wished to object on the grounds that the government recommend that takeaways should not be within a 5 minute walk of a school, and that councillors were seeking to stop leasing of council property to new fast food outlets.
- ii) Mr Sykes appeared as the applicant's agent in support of the application, which had not received objections from the statutory consultees and would bring investment to the site. He addressed the residential amenity concerns, regarding control of odours and plant use during operating hours. This site already benefited from A1 use without restrictions. There had been no policies officially adopted to restrict outlets on health grounds.

### Members' Questions

In response to members' questions officers clarified the following points:

- Access arrangements - the gate would be removed and access would be via Alverstone Road with exit via Rodney Road, reusing the previous access route for this business site and the Highways Engineer had not raised an objection.
- There is a separate application regarding residential use of the upper floor, and this was not part of this application.
- Whilst there had been a proposal to have a pilot area for reducing takeaway outlets near Arundel Court school (approved by the Health and Wellbeing Board) to address childhood obesity, this was not covered by national guidance. Further evidence would need to be gathered in conjunction with Public Health regarding a "proliferation"; this site was not near other fast food outlets, being on the edge of an industrial estate.
- There were 4 spaces for the motorbike drivers and there would be additional drivers using their own cars.
- A full traffic assessment was not required due to the size of this application site.

### Members' Comments

There was some concern that there would be U turns on a busy highway by customers near a major junction but customers should drive in a legal manner and other routes were available to get to southern destinations in the city. If permission were to be granted there should be additional/amended conditions to address amenity concerns of neighbouring residents, such as the use of electric mopeds and waste collections not to be at unsociable hours. It was noted that the fast food operating hours would not coincide with school hours. Members asked to be kept abreast of any developments in policy regarding addressing health objectives, which may also form part of the emerging Local Plan.

**RESOLVED that conditional permission be granted, subject to the conditions outlined in the Assistant Director's report, with the additional/amended conditions:**

Amended Condition 4:

Deliveries (incoming) and collections of refuse or recycling to and from the site shall only take place between 0730 hours and 1100 hours.

Reason: To protect the amenities of the occupiers or nearby properties in accordance with Policy PCS23 of the Portsmouth Plan.

Additional Condition 7:

Any deliveries dispatched to customers from the site that are undertaken by motorcycle or moped shall be restricted to the use of electric vehicles only. For the avoidance of doubt this restriction does not apply to motorcars.

Reason: To protect the amenities of the occupiers or nearby properties in accordance with Policy PCS23 of the Portsmouth Plan.

**90. 19/01143/FUL - 110 Stubbington Avenue Portsmouth PO2 0JG - Change of use from residential (Class C3) to mixed residential (Class C3) and house in multiple occupancy (Class C4) (Report item 3) (AI 8)**

The presenting planning officer drew members' attention to the Supplementary Matters list which reported:

*"One additional representation received following publication of the committee report, raising the following concerns:*

- a) Noise*
- b) Unbalanced community"*

The concerns raised had already been addressed in the Committee Report, so the officer's recommendation remained unchanged.

Members' Questions

Members examined the plans and layout of the communal space and toilet provision.

Members' Comments

Members noted that the applicant had responded to the committee's previous requests and had addressed their concerns.

**RESOLVED that conditional permission be granted, subject to the conditions outlined in the Assistant Director's report.**

The meeting concluded at 3.40 pm.



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Signed by the Chair of the meeting  
Councillor Hugh Mason

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# Agenda Item 6

## **PLANNING COMMITTEE 6 NOVEMBER 2019**

**1 PM EXECUTIVE MEETING ROOM,  
3<sup>RD</sup> FLOOR, GUILDHALL**

### **REPORT BY THE ASSISTANT DIRECTOR - PLANNING AND ECONOMIC GROWTH 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 - Planning and Economic Growth 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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**104 ELM GROVE SOUTHSEA PO5 1LP****CHANGE OF USE FROM RETAIL (CLASS A1) TO RESTAURANT/CAFE (CLASS A3) TO INCLUDE INSTALLATION OF EXTRACTION SYSTEM TO REAR****Application Submitted By:**

Mr Hersh Karadakh

**On behalf of:**

Mr Hersh Karadakh

**RDD:** 10th May 2019**LDD:** 14th August 2019**SUMMARY OF MAIN ISSUES**

The main issues for consideration are:

- Principle of the development
- Impact on neighbouring living conditions
- Highways and Parking

**SITE, PROPOSAL AND RELEVANT PLANNING HISTORY**Site and Surroundings

This application relates to a single-storey property located on the south side of Elm Grove, between The Thicket and Albany Road. The property forms one part of the 'Albany Buildings' a symmetrical building of five bays, this unit being the westernmost. The property is currently vacant but has Class A1 (retail) use. The unit previously formed part of a larger retail premises, 104-108 Elm Grove and then 104-106 Elm Grove I believe, however, the building has been divided down into smaller units. Directly to the rear of the site is a yard and access, although outside the red-edged application site.

The site is within the primary retail frontage of the Albert Road and Elm Grove District Centre as defined by policy PCS8 of the Portsmouth Plan, however, the site is also in close proximity to the Elm Grove secondary retail frontage (to the east of the application site, starting at no. 110). The surrounding area is characterised by a variety of independent and chain commercial units, including a mix of Class A1 retail, Class A3 café/restaurants, Class A4 bar/pubs, Class A5 takeaways. Directly to the west of the site is a retail unit (102 Elm Grove) which is occupied by the Co-Operative. To the immediate east, at no. 106, the unit was vacant for some time but was recently occupied by a Class A1 food store. North of the site, opposite on Elm Grove, is a range of uses which include a laundrette, oriental supermarket and a takeaway. The closest residential accommodation to the site is 1-9 Wish Court Lane which is situated approximately 20 metres opposite the site on the north side of Elm Grove (no. 129). To the south of the site is Owens Southsea Conservation Area (No.10) and an area of open space which lies behind the Portsmouth and Southsea Synagogue. The area of open space includes several trees which are protected by a Tree Preservation Order (TPO), however, the TPO area is separated from the site by a yard to the rear of the Albany Buildings and an access leading from Albany Road.

## Proposal

Permission is sought to change the use of the unit from retail (Class A1) to café/ restaurant (Class A3). The unit measures some 84 sqm. External alterations would include the installation of an extraction system to the rear (south) elevation of the property. Details of the carbon filter and wall mounted silencer in relation to the proposed extraction system have been provided.

The proposed opening hours for the unit are 06:00hrs until 17:00hrs Monday to Saturday and 08:00hrs until 16:00hrs Sunday and Bank Holidays. Up to ten members of staff would be employed on the site.

## Relevant Planning History

13/00441/FUL - Installation of new shopfront. Conditional Permission 11.06.2013

13/00445/FUL - Installation of new external condenser and 3 no. wall mounted air conditioning units. Conditional permission 12.06.2013

13/00956/CPE - Application for certificate of lawful development for existing use as a shop (Class A1). Certificate for lawful use granted 23.10.2013

## **POLICY CONTEXT**

The relevant policies within the Portsmouth Plan would include:  
PCS8 (District centres), PCS17 (Transport), PCS23 (Design and Conservation),

The aims and objectives of the revised NPPF (Feb 2019) would also be relevant in the determination of this application. The Parking Standards Supplementary Planning Document (SPD) would also be a material consideration.

## **CONSULTATIONS**

Highways Engineer - No objection.

Environmental Health - No objection subject to conditions:

- Details of the proposed kitchen extraction system;
- Noise assessment of external plant or equipment;
- Deliveries should not take place between the hours of 18:00 and 07:00 the following day, other than Sundays when the hours are 18:00 and 08:00.

## **REPRESENTATIONS**

Three comment letters received, two of which are from the same address, raising the following issues;

- Side access and back yard to the rear of the property is not within the applicant's ownership.
- Concerns regarding positioning of proposed extraction equipment

Letter of comment received from Stephen Morgan MP, making the following points:

- The applicant contacted me for assistance with this application.
- I am aware that the percentage of A1 frontage is currently under 50% and that the applicant must provide evidence to demonstrate that the unit in question has limited or no interest in occupying the premises for A1 purposes.

- I am happy to be of further assistance to support people in Portsmouth in their endeavours to grow local business.

## COMMENT

Determining Issues;

- (a) The principle of a change of use;
- (b) The impact on residential amenity;
- (c) The impact on the local highways network/parking.

### Principle of development

The application site is located on Elm Grove which forms part of the 'Albert Road and Elm Grove' District Centre as defined by policy PCS8 of the Portsmouth Plan. Policy PCS8 seeks to actively guide the mix of uses in the city's various town centres in order to maintain a healthy mix of shopping to non-shopping uses in order to provide vibrant and viable town centres. Albert Road and Elm Grove are characterised by a variety of specialist, independent shops which make the centre unique. The centre offers a combination of specialist retail along with evening and night time destinations. To balance the centre's roles of day to day shopping and night time economy, Policy PCS8 states;

*'... at least 50% of each section of primary frontage must remain in use as shops (A1) whilst no more than 23% of the total frontage of the centre will be in use as restaurants (A3), drinking establishments (A4) and hot food takeaways (A5) at any time'.* This means the 50% retail threshold applies to (in this instance) the Elm Grove primary frontage. The 23% A3/A4/A5 threshold applies to the whole centre, i.e. primary and secondary frontages in Albert Road and Elm Grove.

For the Elm Grove primary frontage (including vacant units), the existing A1 frontage amounts to 47.8%. This is already below the policy aim of 50% minimum. The proposed change of use would decrease that figure further below the policy threshold, to 46.4%.

For the whole centre (including vacant units), the existing A3/A4/A5 frontage amounts to 26.2%. This is already above the policy aim of 23% maximum. The proposed change of use would increase that figure further above the policy threshold, to 26.4%.

Therefore, the proposed change of use would conflict with both elements of Policy PCS8.

The Local Planning Authority acknowledges that the unit appears to have been vacant since c. 2016. The applicant (and the landowner) has submitted a supporting statement and various emails justifying the loss of an A1 unit. The applicant has stated that the only interest in the unit has been from food outlets (i.e. Class A3 or A5), however, I do not consider the information demonstrates that there is no longer a demand for an A1 unit in this location. The Local Planning Authority has given the applicant the opportunity to provide additional evidence to support the original statement. The landowner has provided a brief history of the site (over a period of some fifty years), referencing past A1 uses which have failed at the site. The applicant has provided additional information which states that the unit has been marketed using poster displays and telephone and email campaigns, and through a property agent (including a site board and via their website), and at a suitable market rate with "very substantial incentives". Unfortunately, the information submitted consists of statements of what has been done and market interest received, but there has been nothing more concrete to corroborate or elaborate upon the submissions.

The landowner also stated he believes the LPA's policy is flawed and without evidence base or rational justification, and he claims that several councillors have publically-stated that there is a

massive over-supply of retail premises in the city. I note that the LPA has its own data, its local plan policy rationale, and the low number of local vacancies does not tally with the landowner's statement about over-supply, at least not in this local centre.

Lastly, the landowner considers the Council's ability to charge rates on empty properties significantly influences the plan policy. I note the policy rests on the proper planning control to positively manage a local centre, as the NPPF requires ('Ensuring the vitality of town centres').

It is considered the additional information submitted does not adequately demonstrate that there is no longer a demand for A1 units. I do not consider the supporting statement demonstrates that there are special or mitigating circumstances that would justify the loss of the shop use. The recent occupation of no. 106 as a food store seems to demonstrate that there *is* a demand for this size of Class A1 retail unit in this local centre, undermining the Applicant's position.

104 Elm Grove is considered to form part of a healthy district centre which attracts a variety of specialist retail units where vacancies appear to be few. Not including the application site, Nos. 99 and 96 Elm Grove appear to be vacant, and no. 108 in Albany Buildings. Nos. 110 and 112 also appear to be vacant, but are outside the Primary Frontage. So, aside from Albany Buildings, there are only two premises apparently vacant, suggesting good local conditions, market attractiveness and retail vibrancy. By allowing A3 use in this specific unit would mean one less A1 unit for new or re-locating retail business, which would not follow the aims of Policy PCS8 which seeks to retain the variety of specialist and independent shops in the centre.

A recent appeal decision in the same wider centre supports the LPA's policy position - in dismissing a recent appeal at 149-149a Albert Road (LPA ref. 14/00854/FUL PINS ref. APP/Z1775/W/15/3002302), the Inspector concluded: *'Given the proposal relates to the change of use of a D2 use to an A4 use at ground floor level it would not affect the percentage of A1 uses within the section of primary frontage that the site forms part of. Consequently, it would not conflict with Policy PCS8 in this regard. However, based on the most up-to-date evidence in front of me the proposed development would increase the proportion of A3 to A5 uses, within the Albert Road and Elm Grove district centre from 23.13% to 23.58%....Therefore, the proposal would be contrary to the section of Policy PCS8 which seeks to ensure that no more than 23% of the total frontage of the centre is in an A3 to A5 use. Whilst I accept it would only result in a marginal increase above the 23% threshold set out in the policy, in my view, the cumulative effect of such proposals would have a negative effect on the balance of uses within the district centre which is what the policy attempts to avoid....Policy PCS8 clearly aims to try and achieve an appropriate balance between competing uses within the Albert Road and Elm Grove district centre. Furthermore, on the basis of my site visit, it is evident that the district centre is a vibrant area which does not currently suffer from a high level of vacant units. Accordingly, I see no reason to apply flexibility in respect of the appliance of Policy PCS8 in relation to the proposed development.'*

The Inspector went on to state: *'In considering the proposal I have taken account of the physical form of the appeal building and the ground floor frontage associated with it. I acknowledge that vacant buildings do little to enhance the character of any shopping centre and observe the view that the Class A4 use could contribute to the vitality and viability of the part of Albert Road to which the appeal site relates. Nevertheless, in my view, any benefits the proposal would bring in this regard do not outweigh the harm that would result in terms of the balance of uses on Albert Road....For these reasons the proposed development would have a negative effect on the balance of uses within the Albert Road and Elm Grove district centre. As a result there would be a conflict with CS Policy PCS8.'*

This application differs from the appeal as it relates to the Elm Grove primary frontage as opposed to the Albert Road primary frontage, however, the same policies apply. The reduction in A1 use would be small and clearly the direct harm to the centre from this proposal in isolation would itself be small. However, the policy draws a clear line and having regard to past appeal



decisions, the cumulative effect of several such changes of use would give rise to greater conflict with Policy PCS8 and greater harm to the centre.

### Amenity

The Council's Environmental Health Officer has been consulted on the application and given that there are no residential or sensitive premises attached to the site, considered the impact on neighbouring amenity is likely to be low. However, the most significant risk is considered to be from the kitchen extraction system in terms of noise and odour. Information has been submitted in relation to the proposed extraction system: details of a carbon filter and wall mounted silencer. Should permission be granted, the environmental health officer has requested conditions are imposed which would require the applicant to submit further information, i.e. the location, dimensions and appearance of any external flue. The environmental health officer has suggested a condition is imposed which would restrict when deliveries to the premises can take place (not between the hours of 18:00 and 07:00 the following day, other than Sundays when the hours are 18:00 and 08:00).

Somewhat more widely, and considering the coming and goings of patrons, I do not consider a day time café would cause harm to local amenity.

### Parking

The site does not benefit from off-street parking, however it is located within a District Centre where there is some scope for on-street parking along Elm Grove. There is parking available in front of the site which allows vehicles to be parked for a maximum of one hour. Furthermore, the nearest bus stop is located within 20 metres of the site. Having regard to the location of the site and the likely demand for parking that could be associated with the existing and proposed uses, it is considered that the proposal would be unlikely to have any significant impact on the safety or convenience of users of the local highway network. The Council's Highways Engineer has been consulted on the application and has raised no objection.

### Other points raised in the objection not addressed.

Concerns have been raised regarding the side access not being within the applicant's ownership. However, the side access and backyard has not been included within the red line on the site plan and it would seem that the proposed use could be serviced through the front door.

### **Conclusion**

The number of vacant units in the Elm Grove centre appears low, it is the LPA's policy position that premises should be maintained in Class A1 retail use in order to maintain the vibrancy and offer of the local centre. No convincing evidence has been forthcoming to persuade the LPA of the merits of a Class C3 use that would override the policy. The proposed change of use from Class A1 to a Class A3 use would result in the loss of a retail unit within the Albert Road and Elm Grove District Centre and would further reduce the total Class A1 proportion, to the detriment of the vitality and viability of the district centre. The proposal is therefore contrary to Policy PCS8 of the Portsmouth Plan (2012).

### **RECOMMENDATION                      Refuse**

- 1) The proposed change of use from Class A1 to Class A3 (Café/ Restaurant) would result in an over-concentration of non-shopping uses that would be detrimental to the vitality and viability of the district centre. The proposal is therefore contrary to Policy PCS8 of the

Portsmouth Plan (2012) and the guidance contained within the National Planning Policy Framework (NPPF 2019).

#### 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, the details of the application did not accord with pre-application advice and the application has been refused for the reasons outlined above.

**FLAT 1 82A HIGH STREET PORTSMOUTH PO6 3AJ****CHANGE OF USE FROM RESIDENTIAL (CLASS C3) TO RESIDENTIAL/HOUSE IN MULTIPLE OCCUPATION (CLASS C3/C4) MIXED USE.****Application Submitted By:**

Mrs Carianne Wells  
Thorns Young Ltd

**On behalf of:**

Mr Doe & Mr Allen

**RDD:** 4th July 2019**LDD:** 30th September 2019**SUMMARY OF MAIN ISSUES**

This application is brought to the Planning Committee for determination due to the undersized shared bathroom.

The main issues for consideration are:

- The concentration/balance of such uses in the area;
- Standard of accommodation;
- Impact on neighbouring living conditions;
- Highway matters.

**SITE, PROPOSAL AND RELEVANT PLANNING HISTORY**Site and Surrounding Area

The application site is a two-storey property located to the west of Cosham High Street, slightly north of Cosham train station.

The application site is currently being used as a C4 house in multiple occupation (HMO), when a site visit was conducted. The ground floor comprised a kitchen, dining/lounge and 1 no. bedroom at ground floor level, with 2 no. bedrooms and 1 no. bathroom at first floor level.

The property is accessed to the front from the High Street, whereby it shares a shop frontage with the neighbouring business which appears to be a tax firm fronting the High Street. To the side/ rear of the property, there is a shared communal area, which is accessed by a side door. To the rear of bedroom no.1 is a separate patio, which can be sectioned off from the shared communal area.

The area surrounding the site comprises mixed uses but is characterised predominantly by retail.

Proposal

Change of use from residential (Class C3) to residential/house in multiple occupation (Class C3/C4) mixed use, comprising a 3 no. bedroom property.

## Relevant Planning History

None

## **POLICY CONTEXT**

In addition to the National Planning Policy Framework, the relevant policies within the Portsmouth Plan (2012) would include: PCS17 (Transport), PCS20 (Houses in multiple occupation) and PCS23 (Design and Conservation). The Parking Standards Supplementary Planning Document (SPD) and Houses in Multiple Occupation Supplementary Planning Document (SPD) would also be a material consideration.

## **CONSULTATIONS**

### Private Sector Housing

Based on the layout and sizes provided there are no adverse comments to be made by Private Sector Housing. This property would not require to be licenced under Part 2, Housing Act 2004.

## **REPRESENTATIONS**

None received.

## **COMMENT**

The main issues to be considered in the determination of this application;

- (a) The concentration/balance of such uses in the area;
- (b) Standard of accommodation;
- (c) Impact on neighbouring living conditions;
- (d) Highway matters.

### The concentration/balance of such uses in the area

Permission is sought for the use of the property for purposes falling within Class C3 Dwellinghouse or Class C4 (house in multiple occupation) (HMO) as there is citywide Article 4 Direction in force which removes permitted development rights for such changes. The property currently has a lawful use as a dwellinghouse (Class C3). For reference, a Class C4 HMO is defined as a property occupied by between three and six unrelated people who share basic amenities such as a kitchen or bathroom.

Policy PCS20 of the Portsmouth Plan states that applications for the change 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 adopted Houses in Multiple Occupation SPD sets out how Policy PCS20 will be implemented and details how the City Council will apply this policy to all planning applications for HMO uses. The SPD states that a community will be considered to be imbalanced where more than 10% of residential properties within the area surrounding the application site (within a 50m radius) are already in HMO use.

Based on information held by the City Council, there are no HMOs within a 50m radius of the application site. Within this 50m radius there are 91 residential properties. Therefore, and with regard to the 10% calculations this would result in a 1.1% HMO population within the 50m at present.

Whilst this is the best available data to the Local Planning Authority (LPA) and is updated on a regular basis, there are occasions where properties have been included or omitted from the database in error or have lawfully changed their use away from Class C4 HMOs without requiring the express permission of the LPA. Beyond its own data sources, no additional HMOs have been brought to the attention of the LPA.

A further policy strand of the SPD seeks to ensure that the amenity and standard of living environment of neighbours and local occupiers is protected. Paragraph 1.22 (a) states: "*An application for HMO development would be deemed to be failing to protect the amenity, and the provision of a good standard of living environment, for neighbouring and local occupiers where:*

- *granting the application would result in three or more HMOs being adjacent to each other; or*
- *granting the application would result in any residential property (C3 use) being 'sandwiched' between two HMOs."*

This proposed development would not result in three or more Class C4 HMO's being adjacent to each other nor would it result in any residential property ( Class C3 use) being 'sandwiched' between two HMOs. It is therefore concluded that the proposed change of use would not result in an imbalance between HMO's and Class C3 dwellings in the prescribed area.

### Standard of Accommodation

The Houses in Multiple Occupation SPD sets out minimum size standards for rooms in order to ensure that an appropriate standard of living accommodation is achieved. A summary of the sizes of the rooms within this property in comparison to the minimum standards within the SPD is set out below. The Applicant has confirmed that all of the three bedrooms would be single occupancy.

HMO SPD - JULY 2018	Area Provided (m2)	Required Standard (m2)
Kitchen/ Dining	24.03	24
Bedroom 3	7.50	7.5
Bedroom 2	9.34	7.5
Shared Bathroom	3.05	3.74
Bedroom 1	14.45	7.5

During the course of the application, amended plans have been submitted to reduce the size of bedroom no.3 (the rear, ground floor bedroom), to achieve for the minimum space requirement for the shared communal area and yet still maintain a SPD-compliant bedroom size.

For a HMO accommodating between 1-4 persons the property must provide 1 no. bathroom and 1 no. WC (which can be combined, and are in this instance). It is noted that the shared bathroom at first floor falls short by 0.7 of a square metre. At a recent appeal decision, reference "APP/Z1775/W/18/3219118" at 37a Stanley Road, the inspector took the view that the bathroom which fell short of the SPD by 0.4 sqm would "*not result in unsatisfactory living conditions.*" I do not consider seeking to enlarge the bathroom by a limited width to bring it to standard, by taking room out of the adjacent bedroom, would serve much useful purpose.

To conclude, given the reasons above, the property is considered to provide an adequate standard of living accommodation.

### Impact on neighbouring living conditions

In terms of the impact on the living conditions of the adjoining occupiers, it is considered that the level of activity that could be associated with the use of any individual property either as a dwellinghouse (Class C3) which involves occupation by a single family, or as a Class C4 HMO,

would be unlikely to be significantly different from each other. The HMO SPD is supported by an assessment of the need for, and supply of, shared housing in Portsmouth and of the impacts of high concentrations of HMOs on local communities. Paragraphs 9.1-9.10 discuss the negative impacts of HMO concentrations on local communities and points to the cumulative environmental effects of HMO concentrations. However, given that there is not an over-concentration of HMOs within the surrounding area, it is considered that the impact of one further HMO would not be significantly harmful at this particular point in time.

In dismissing a 2017 appeal at 239 Powerscourt Road ref. APP/Z1775/W/17/3169402, the Inspector stated that:

*'Turning to noise and disturbance, the proposed Class C4 HMO would comprise between 3 and 6 persons. Although the persons within the HMO are unrelated, there is no evidence that they would generate greater activity than a typical family household or group of people living as a household. The proposed use would, therefore, be unlikely to have an unacceptable impact on the living conditions of the occupiers of neighbouring dwellings by reason of noise and disturbance.'*

Having regard to this material consideration, it is considered there would not be a significant impact on residential amenity from the use of the property within Classes C3/C4.

### Highways matters

The City Council's Parking Standards SPD sets the level of off-road parking facilities for new developments within the city whereby there is a requirement of 2 off-road for a C4 HMO.

The site does not benefit from off street parking, however it is noted that the High Street, and Portsmouth Road; due south of the application site, benefit from on street parking, given the prevailing character and nature of the surroundings, comprising; retail, businesses and other means of transport. Notwithstanding local parking conditions, the site is within the town centre with a wide range of shops and services, and is opposite the train station and has bus services. As such, the site is in a highly sustainable location.

In terms of cycle parking, the submitted drawings make no provision for this. However from a site visit, it was noted that there was the ability to provide secure cycle storage within the shared communal outdoor area. These provisions are recommended to be secured via a condition, in accordance with the Parking Standards SPD.

To conclude, given the above, a reason for refusal on the basis of parking grounds could not be sustained, therefore the proposal would be acceptable, subject to a condition regarding secure cycle storage to be retained in perpetuity or as long as the approved use subsists.

### Waste

The storage of refuse and recyclable materials would be located to the rear of the site, where an objection on waste grounds would not form a sustainable reason for refusal.

### Conclusion

Having regards to all material considerations, raised representations and planning policy, it is concluded that the development is acceptable.

**RECOMMENDATION**

**Conditional Permission**

## **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: TQRQM19183094006450 and 82HIGH-19-1 Rev A.

2) Within 3 months of this permission secure and weatherproof bicycle storage facilities for 4 bicycles shall be provided at the site and shall thereafter be retained during the life of the development for the parking of bicycles.

### **The reasons for the conditions are:**

1) To ensure the development is implemented in accordance with the permission granted.

2) To ensure that adequate secure storage provision is made for cyclists using the premises in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.

### **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 application process, and with the submission of amendments an acceptable proposal has been achieved.

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