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# NOTICE OF MEETING

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## PLANNING COMMITTEE

TUESDAY, 30 MARCH 2021 AT 2.00 PM

## VIRTUAL REMOTE MEETING

Telephone enquiries to Democratic Services - Tel 023 9283 4870

Email: Democratic@portsmouthcc.gov.uk

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### Planning Committee Members:

Councillors David Fuller (Chair), Judith Smyth (Vice-Chair), Matthew Atkins, Chris Attwell, Lee Hunt, Donna Jones, Terry Norton, Lynne Stagg, Luke Stubbs and Claire Udy

### Standing Deputies

Councillors Hugh Mason, George Fielding, Jo Hooper, Suzy Horton, Frank Jonas BEM, Gemma New, Robert New, Scott Payter-Harris, Steve Pitt and Tom Wood

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

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Representations by members of the public may be made on any item where a decision is going to be taken. The request needs to be made in writing to the relevant officer by 12 noon 7 working days preceding the relevant 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 previous meeting - 23 February 2021 (Pages 3 - 10)**

RECOMMENDED that the minutes of the Planning Committee held on 23

February 2021 be approved as a correct record to be signed by the Chair.

**4 Minutes of previous meeting - 9 March 2021 (Pages 11 - 18)**

RECOMMENDED that the minutes of the meeting held on 9 March 2021 be approved as a correct record to be signed by the Chair.

**5 Update on previous applications**

Planning applications

**6 St James Hospital, Locksway Road, Southsea, PO4 8HW - 18/00288/OUT (Pages 19 - 270)**

Outline application for the construction of 107 dwellings including provision of vehicular and pedestrian access, public open space and hard and soft landscaping (principles of access, layout and scale to be considered)

**7 Queen Alexandra Hospital, Cosham, Portsmouth, PO6 3LY - 21/00232/FUL**

Construction of four level multi-storey car park with elevated link bridge and associated landscaping

**8 Fontenoy House, Grand Parade, Portsmouth, PO1 2NF - 20/00158/FUL**

Construction of mansard roof extension to form two bedroom apartment (Class C3) with roof terrace and alterations to existing building, including brickwork, render to ground floor and extension of external staircase and balconies

**9 St Helen's Pavilion, Eastern Parade, Southsea - 20/01209/FUL**

Construct disabled WC extension, creation of changing room facilities, improvement of scorers' balcony at first-floor level and exterior alterations

# Agenda Item 3

## PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held remotely on Tuesday 23 February 2021 at 2pm.

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

### Present

Councillors David Fuller (Chair)  
Judith Smyth (Vice-Chair)  
Matthew Atkins  
Chris Attwell  
Lee Hunt  
Donna Jones  
Terry Norton  
Luke Stubbs

### Welcome

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

#### 11. Apologies (AI 1)

Apologies for absence had been received from Councillor Claire Udy.

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

Item 5: Park House, 1 Clarence Parade, Southsea, PO5 3RJ - 19/01163/FUL

Councillor Stubbs declared a non-prejudicial interest as he had called this application in and although he had discussed the matters of process with the applicant, he had not discussed the merits of the application.

#### 13. Minutes of previous meeting - 26 January 2021 (AI 3)

**RESOLVED that the minutes of the Planning Committee held on 26 January 2021 be approved as a correct record.**

#### 14. Update on previous applications (AI 4)

The Head of Development Management gave the following updates:

The council is currently defending enforcement notice appeals for 22 Pains Road, 60 Cottage Grove, 23 Manners Road, 78 Manners Road, 134 Francis Road and 278 Fawcett Road. The enforcement notice requires the owners of the properties to cease using them as HMO Sui Generis. The Inquiries were ongoing and would continue on 25 February and 2 March 2021.

Two appeals are currently with the Planning Inspectorate and relate to dormer extensions at: 225 Stubbington Avenue and Flat 17 Villiers Road. Officers decided that it would cause greater harm to the host property and the surrounding area if the applications were approved.

One appeal for 1 Fourth Avenue was dismissed. The Inspector considered the proposed two storey front extension to be too harmful to the character of the host property and the surrounding area

**15. 3 Pains Road, Southsea, PO5 1HE - 19/00866/FUL (AI 5)**

The Planning Officer presented the report and drew attention to the Supplementary Matters report which stated that:

*It has been brought to Officer's attention that there is an error within the Committee Report, in respect of the bathroom sizes for the property. The first floor shower room is listed at 3.77sqm, in actuality it measure 3.5sqm. Additionally the second floor bathroom is listed at 3.74sqm and actually measures 3.54sqm. As such both shower rooms are marginally undersized by at most 0.24sqm. Given that the shower rooms would still be usable in their layout and the minor under-provision of space, the officer's recommendation is unchanged and the property is still considered to provide an acceptable standard of accommodation for seven individuals sharing.*

*The recommendation remains unchanged.*

Further written deputations were read out as part of the officer presentation from the Owner - Applicant. Deputations are not included in the minutes but can be viewed on the livestream using the following link [Planning Committee, 23 February 2021](#).

Members' Questions

In response to questions from members, officers explained that:

- The future intended occupier of the bedroom marked 7 would need to make their way through two fire doors, the kitchen and also the shared communal space to use the toilet or bathroom. While this is a negative aspect of the scheme the officer did not believe that it was sufficient to recommend refusal of the application.
- Before putting forward the recommendations the officer had read all of the recent appeal decisions that had come in regarding HMOs. This had been factored into the officer's judgement and considerations and he thought that on balance the communal space and living standards were acceptable.
- The only planning history for this application was the 2019 application that was to change class C4 to class C3 or C4.
- The application that was determined at committee in March 2020 for 48 Green Road included a basement lounge area. The committee on that occasion did approved the application, however the two applications have slightly different bedroom and communal area sizes. The officer advised that it is mainly a judgement on whether the basement does provide adequate amenity space, adequate standard of accommodation and if it overcomes the under provision of ground floor communal space.

Members' Comments

Members felt that despite the planning officer's report the living conditions were not up to standard and would contravene the council's guidelines. Members did not believe that there was sufficient natural light to the basement area and that the outlook was not good. Although the under provision was only 0.24 sq metres, taken with the layout of the house the functionality of the property becomes poor. This

coupled with the toilet spaces not meeting council's requirements makes it become a poorly configured property.

Members noted that residential amenities for the future occupier of bedroom 7 would not be good enough. The kitchen is long and narrow leading to the communal space meaning the intended occupier would have to awkwardly negotiate the space.

**RESOLVED that the application be refused for the following reasons:**

**1) The proposed development would give rise to a poor quality living environment for existing and future occupiers of the property, having regard to reduced room sizes, distance from bathroom facilities and poor levels of light and outlook. This would be contrary to Policy PCS23 (Design and Conservation) of the Portsmouth Local Plan (2012), the Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2019) and the National Planning Policy Framework (2019).**

**2) It has been identified that any residential development in the city will result in a significant effect on the Solent Special Protection Areas, through additional recreational pressures and nutrient output; with mitigation against these impacts being required. No justification or mitigation measures have been secured and, until such time as this has been provided, the proposal would have a significant detrimental impact on the Special Protection Areas; contrary to Policy PCS13 of The Portsmouth Plan (2012), the Conservation of Habitats and Species Regulations (2017), the Wildlife and Countryside Act (1981), and Section 15 of the NPPF (2019).**

**16. The Churchillian Public House, Portsdown Hill Road Portsmouth PO6 3LS - 20/00131/FUL (AI 6)**

The Planning Officer presented the report and drew attention to the Supplementary Matters report which stated that:

*Members are advised that of the 6 parking spaces to be lost as a consequence of the proposals, the two existing disabled parking bays are to be re-provided immediately to the east of the new seating area.*

*The Council's Environmental Health and Licencing teams have also provided comments on the proposed external seating and with regard to potential noise issues arising. Members are advised that no concerns are raised by either team, as seating areas beneath the proposed pergola are already in existence. Furthermore, seating proposed east of the outdoor bar area would be well screened by boundary fencing and a store building in the grounds of Harbour Heights. In addition, the public house has not received any noise complaints to date. The existing pub licence is restricted to indoor entertainment other than an allowance for a controlled number of outdoor events. Overall therefore, Officers do not consider there would be sufficient justification to apply conditions relating to noise and the existing site licence will continue to address these matters.*

*The recommendation remains unchanged.*

Members' Questions

In response to questions from members, officers explained that:

- No additional lighting would be added to the original arrangements around the outside of the premises and may not be suitable in any case due to the rural location.
- No information had been provided in terms of noise issues. Officers consider that the existing arrangement is unlikely to be significantly altered as the proposals are to improve the existing facilities.
- The officers have looked into the possibility of adding a condition with regards to the closing time of the outdoor bar and believe that it would be unreasonable to impose such a condition to what is effectively an existing situation.

#### Members' Comments

Members were happy with this sensible proposal and felt that the scheme would improve the area and represent a good use of the outdoor space.

Members noted the loss of the parking spaces but felt that as there were enough spaces and also a carpark next door there would be no significant impact.

**RESOLVED to grant conditional planning permission as set out in the officer's committee report and the supplementary matters report.**

#### **17. Park House, 1 Clarence Parade, Southsea, PO5 3RJ - 19/01163/FUL (AI 7)**

The Planning Officer presented the report and drew attention to the Supplementary Matters report which stated that:

*Since the publication of the Committee Report, 12 additional representations have been received from neighbouring residents, 11 offering support for the proposal and 1 objecting to the proposal.*

*The comments from the additional representations are similar in nature to those previously mentioned within the Committee Report and as such the Officer has no additional comments.*

*The recommendation remains unchanged.*

Further written deputations were read out as part of the officer presentation from Rowan and Jason West (the applicant) and Joseph Moser (the agent). Deputations are not included in the minutes but can be viewed on the livestream using the following link [Planning Committee, 23 February 2021](#).

#### Members' Questions

In response to questions from members, officers explained that:

- The recommendation for refusal on design grounds relates to the front elevation of the building not being in alignment and the view from the front of the building from the street.
- If the plan is to remove the existing roof and replace with a parapet roof it should adjoin correctly with the neighbouring development. The cut out of the balustrade and the use of glass are also points of objection.
- The three points together were found to be unacceptable. Discussions did not take place with regards to simply fixing the issue with the glass; it was always about fixing the front as a whole. Just the realignment of the front would still have been deemed objectionable and slightly peculiar as the glass would not have respected the original character of the building.

- 31 deputations were made in support of the proposal during the general application process and a further 13 deputations in support and 1 objection were received since the publication of the committee report.
- The Local Planning Authority (LPA) had no issue with the applicant developing the roof space in principle given the previous development to the adjoining side. The proposal did not get to a place where it was suitable in design but if another acceptable more symmetrical scheme was proposed by the applicant the LPA would be more likely to support it.
- It was a very difficult approach given the different heights at eaves level of both buildings and the LPA has to take great care given that the proposal is within a conservation area. The approach with glass balustrading is a very different situation to what is there at the moment and the planning officer expressed the need for caution in order to preserve and enhance the conservation area.
- The local highways officer has objected due to a lack of parking and no parking survey had been carried out by the applicant. However officers did not feel the lack of parking would give rise to safety concerns on the public highway and in line with the NPPF, there was not considered to be grounds for refusal.

#### Member's Comments

Members felt that although the seafront has a mixture of styles and materials, it is essentially and largely a conservation area. Members acknowledged that the local planning officer's report was looking to protect and enhance the local conservation area and thought that on this occasion they were right to do so. Some members thought that the proposal was too big and they were also concerned about going against conservation guidelines regarding roof extensions.

Other members disagreed and felt that this was a well-considered application that was unlikely to impact on neighbours. They noted that there were already a number of glass balustrades along the seafront and found this to be of an acceptable design. It was also highlighted that this application met the internal size standards.

**RESOLVED that the application be refused for the following reasons:**

**1) The proposed alterations would, by reason of their bulk, material choice and relationship with adjoining section of roof, represent an unsympathetic and incongruous form of development that would fail to relate in an appropriate manner to the recipient building and the wider street scene. Furthermore the proposal would fail to preserve or enhance the character and appearance of the 'Owen's Southsea' Conservation Area. The proposal is therefore contrary to the principles of good design set out in the National Planning Policy Framework and to policy PCS23 of The Portsmouth Plan.**

**2) It has been identified that any residential development in the city will result in a significant effect on the Solent Special Protection Areas, through additional recreational pressures and nutrient output; with mitigation against these impacts being required. No justification or mitigation measures have been secured and, until such time as this has been provided, the proposal would have a significant detrimental impact on the Special Protection Areas; contrary to Policy PCS13 of The Portsmouth Plan (2012), the Conservation of Habitats and Species Regulations (2017), the Wildlife and Countryside Act (1981), and Section 15 of the NPPF (2019).**

**18. 39-40 High Street, Portsmouth, PO1 2LU - 20/00069/FUL (AI 8)**

The Planning Officer presented the report and drew attention to the Supplementary Matters report which stated that:

*Following Members briefing and discussions with the applicant, an additional condition is proposed to the permission requiring that the proposed glass balustrade is of a clear glazing and not coloured or obscured. This is to ensure that the proposal is lightweight and non-disruptive towards the character and appearance of the Conservation Area and the setting of the nearby Listed Heritage Assets.  
The recommendation remains unchanged, besides the additional condition:*

*3. The proposed glass balustrading hereby permitted shall be of a clear non-coloured glazing and shall be retained as such at all times, unless otherwise agreed by the Local Planning Authority.*

Further written deputations were read out as part of the officer presentation from Terry Henderson (a local resident) and the applicant. Deputations are not included in the minutes but can be viewed on the livestream using the following link [Planning Committee, 26 January 2021](#).

Following the deputations Councillor Luke Stubbs declared an interest in the application due to a close association with Terry Henderson and withdrew from the item. He remained out of the meeting for the remainder of this item.

Members' Questions

In response to questions from members, officers explained that the previously refused balustrading was comprised of a much tighter set of railings which was much more visible and prominent. The new balustrade would be made of clear glazed frameless glass secured by condition, which would give a much lighter appearance on the roof.

Members' Comments

Members were happy with this proposal and felt that the glass balustrade would improve the situation.

**RESOLVED to grant conditional planning permission as set out in the officer's committee report and supplementary matters report.**

**19. Fontenoy House, Grand Parade, Portsmouth, PO1 2NF - 20/00158/FUL (AI 9)**

The Planning Officer presented the report.

*The recommendation remains unchanged.*

Further written deputations were read out as part of the officer presentation from:

Mr Anthony Knight - Chair of the Fontenoy House Leaseholders Group

Mr Ian Woodward - Local resident

Mr Jason & Mrs Kate Phillips - Applicant

Mr John Clapham - Local resident

Mr Richard Blair - Local resident

Mr Richard Bray - Local resident

Mr Russell Best - Local resident



Cllr Tom Wood - Ward Councillor

Deputations are not included in the minutes but can be viewed on the livestream using the following link [Planning Committee, 26 January 2021](#).

#### Members' Questions

In response to questions from members, officers explained that:

- There had been no dialogue with the applicant with regards to whether they would be willing to go back to the same footprint as the previous application that had already gained planning permission.
- It would be possible to defer the decision on this item to clarify whether the applicant would be willing to change their proposal on that basis.
- The general height for the approved application is 2.7m with the highest point being 3.1m. The new application would have a general height of 3.1m with the balustrade taking it up to 4.1m.
- In the officer's opinion as the property is in a conservation area and the external rendering and other improvements would have a material effect on the external appearance, the changes would also need planning permission.
- One of the planning conditions (number 3) talks about appearance and colours of external materials which would mean that the windows would have to remain white. The wording of this condition could be amplified should councillors consider that preferable.

At this point in the meeting the Chair was advised that a deputation from The Friends of Old Portsmouth was missing and had not been read out.

Members suggested a deferral so that this deputation could be included and taken into consideration.

#### Members' Comments

There were no comments.

**RESOLVED to defer determination of this application.**

**20. 17 Merton Road, Southsea, PO5 2AF - 18/02093/FUL (AI 10)**

The Chair agreed to determine this application first.

The Planning Officer presented the report and drew attention to the Supplementary Matters report which stated that:

*It has been identified that the application description for the property is not strictly correct as the building comprises a single ground floor self-contained 1-bed flat plus 10 bedsit rooms (currently empty). It is therefore necessary to change the description to reflect this and to undertake re-consultation and fresh publicity on this basis.*

*'Conversion of existing residential building (comprising 1No. 1-bed flat and HMO (sui generis)) to form 1no. one-bedroom, 3no. two-bedroom and 1no. three-bedroom residential units; to include construction of rear single storey extension and the provision of cycle and refuse storage'*

*A further condition is recommended to secure details of the final style and external appearance of the proposed side entrance door.*

*In view of the need for further consultation, Members are requested to DEFER consideration of this item until this has occurred.*

Members' Questions

There were no questions.

Members' Comments

There were no comments.

**RESOLVED to defer determination of this application.**

The meeting concluded at 6.15pm.

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Signed by the Chair of the meeting  
Councillor David Fuller

## PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held on Tuesday, 9 March 2021 at 3.00 pm in the Virtual Remote Meeting

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

### Present

Councillors David Fuller (Chair)  
Judith Smyth (Vice-Chair)  
Matthew Atkins  
Lee Hunt  
Donna Jones  
Terry Norton  
Lynne Stagg  
Luke Stubbs  
Claire Udy

#### 21. Apologies (AI 1)

Councillor Chris Attwell sent his apologies. Councillor Hugh Mason deputised for him.

The Chair informed the committee that Portsmouth City Council is the applicant for Item no. 1 on the agenda, which is the planning application for the Tipner Interchange M275 Junction 1 off slip from Junction 12, M27 Portsmouth. The applicant has decided to withdraw this Item from the agenda to enable them to carry out a briefing with members on the application and to further consider the details.

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

No interests were declared.

#### 23. Update on previous applications. (AI 3)

The Head of Development Management reported that the council had received notification of an appeal submission for 36, Pains Road, Southsea - a change of use from a C4 HMO to a Sui Generis premises for more than six people.

1, St John's Road, Portsmouth. This an appeal for non-determination for the building of a first floor extension and dormer windows to the rear. Officers marked it for refusal and referred it to the Secretary of State.

The planning enforcement inquiry on 6 nos. appeal has concluded. It is hoped that the PINS decisions for the enforcement notices will be received shortly.

#### 24. 20/00457/OUT Tipner Interchange M275 Junction 1 off slip from Junction 12, M27 Portsmouth (AI 4)

This application had been withdrawn by the applicant.

**25. 20/01483/FUL The Registry, St Michael's Road, Portsmouth (AI 5)**

The Senior Planning Officer presented the report and drew attention to the Supplementary Matters document which reported that:

Additional Consultation Response:

Crime Prevention Design Advisor

*Broad support, conditional upon residents being at the appropriate stage of their recovery to reside within this style of accommodation, the provision of effective onsite support for the residents at all times and the fitting of appropriate physical security measures.*

*Reviewing the information held by Hampshire Constabulary for the period 20/9/20 to 6/1/21, there were 45 reports of incidents relating to the premises.*

*City centre location with nearby open spaces. Our concerns centre on the possible problems from residents both within the accommodation and within the local area. Hampshire Constabulary recognises the need for accommodation for the homeless to assist with their journey back to a more normal lifestyle. Effective management / support of the residents is key to reducing the opportunities for crime and disorder.*

*To provide for the safety and security of residents and visitors, the external doors should be fitted with an electronic door access system. The system should provide for fob access for residents and staff and audio and visual access for visitors. If entry is gained into the building it is possible to access all parts of the building, this increases the vulnerability of the building to crime and anti-social behaviour (ASB). To reduce that vulnerability, a CCTV system should be installed within the building, to provide images of the external doors, stairwells, lifts, other common access ways, the office and communal facilities, and basement.*

Planning Officer's comment: *The response relating to the 45 reports of incidents cannot categorically be claimed that the incidents were resultant from occupants of the premises. The applicant has provided the Council with a copy of their Management Plan. There is an entrance intercom on the front door, and to each occupier's room, and an individual key to each occupier's room. This plan together with the CCTV provisions which are controlled by condition, are considered sufficient measures to ensure the safety and security of the premises.*

Further Representation

*The University of Portsmouth has submitted an objection. A summary of the comments raised are as follows:*

- (i) The university is supportive of the need for a solution to homelessness in the city and supported the use during the pandemic, but it was never envisaged that this would become a permanent location. This objection is not to be perceived as 'anti-homeless' but to identify and raise concerns about the impact the use of this specific building and its management has had on the users of the City Centre Campus. The University is set to return to business as usual from early / mid-March. There is clearly a change in planning circumstances in the near future with*

- more people interacting with the local area than what was experienced when the change of use first happened and since the temporary permission was granted.
- (ii) There have been a number of incidents that occurred involving university students and staff, which has led to concerns over the safety, security and amenity.
  - (iii) The university feel that it is too soon to grant permanent permission, the temporary permission allows for the use to be monitored and managed safely and effectively. A permanent permission should only be granted after the temporary permission has been assessed and expired.
  - (iv) There will be times of the day when Registry full staff surveillance of all residents is not possible, eg having lunch
  - (v) Rough sleepers who associate with The Registry have used the University's hygiene stations to wash. Individuals have also hidden within toilets in an attempt to sleep overnight.
  - (vi) Large groups congregate next to Mercantile House which the university own.
  - (vii) Hypodermic needles have been found within the grounds of St Andrews Court.
  - (viii) Vehicles have been parked in the University's House car park, which had to be moved on in case of potential drug dealing.
  - (ix) The safety and security concerns have a direct impact on staff and students, as well as the wider perception of the University
  - (x) Hampshire constabulary received 25 reports of incidents 1st October – 12th November 2020 in relation to the building, which may not reflect those incidents occurring in the surrounding area. Increased to 45 over 20th September – 6th January 2021
  - (xi) Suggested that there should be a patrol around the external areas of the building that would ensure there is staff presence around the building as well as inside.
  - (xii) It would appear as though the safety measures in place are not working.
  - (xiii) Proposal is contrary to policies PCS4 and PCS23
  - (xiv) In conclusion, wish to see a number of factors demonstrating the success of the temporary permission, after which, it should then be considered appropriate to assess the permanent change of use. These include reduction in the number of incidents, exclusions, details of 'moving-on'.

Planning Officer's comment: It became apparent prior to the determination of the temporary planning permission that a permanent application had been submitted and was to be determined imminently.

The premises has sufficient shower and cleaning facilities to cater for the occupiers of the premises, on this basis there is no need for the occupiers to wash outside of their own accommodation.

With regards to any illegally parked cars, these should be moved along in the normal fashion, by public or private traffic enforcement, or any suspected illegal activity reported to the police.

These and other incidents raised cannot be categorically related to occupiers of The Registry.

The applicant has a robust management process and tenancy, and strict eviction policy, for use if/when necessary. The applicant works closely with the Police, community Warden team and the Rough Sleeper Partnership Board, to ensure the best-possible cross-agency support is provided.

*Officers have considered the policy position as part of both the Temporary consent as well as the current permanent proposal and has recommended that the proposal is policy compliant. The applicant is a responsible authority will continue to work with the various agencies, and with the University, to provide vital accommodation and support, to prevent difficulties in the first place, and address any new issues as-and-when they arise.*

*The officer's recommendation remained unchanged.*

It was noted that Councillor Fuller had dropped out of the meeting at the start of this item and although he had since re-joined, he had not heard the officer's presentation and therefore would not Chair this item nor vote.

Councillor Darren Sanders, Cabinet Member for Housing and the Prevention of Homelessness gave a deputation on three applications: The Registry, Kingsway House and the former Elm Grove Library. Deputations are not included in the minutes but can be viewed on the livestream on the following link [Planning Committee 9 March 2021 on Livestream](#).

#### Members' Questions

In response to a question, Councillor Stagg explained that she had asked the Safety Team to look into the possibility of installing bollards at the front of the premises to enhance the safety of residents. The planning officer added that this had been raised by the committee in January and is outside of the application site. He added that the land is probably managed by Highways.

#### Members' Comments

Members agreed that the barriers were outside this committee's remit and noted that the pavement was narrower outside the Hampshire Boulevard further up the road.

It was felt that this was a very successful programme and the staff should be congratulated for their high quality work.

The premises' overall size and room sizes were considered to be appropriate for the tenants and their belongings.

Members were disappointed that the university has not offered to help fund and run courses for the residents at the Registry to help them get back on their feet and that the university had not reported the incidents that it had listed in its deputation.

Councillor Matthew Atkins joined the meeting at this point. He declared that he had no interests to declare and would not vote on this application.

**Resolved to grant conditional planning permission as set out in the officer's committee report and the Supplementary Matters report.**

#### **26. 20/01482FUL - 155-157 Elm Grove Southsea (AI 6)**

The Principal Planning Officer presented the report.

It was noted that the deputation which Councillor Sanders had given at the start of the previous application also covered this application.

#### Members' Questions

In response to questions from members, Councillor Sanders explained that tailored support is provided to residents and is broken into three categories: one for residents who require the lowest level of support; two for those who need a little more and three for those whose needs are complex.

#### Members' Comments

Members noted that despite having reservations when this project had been proposed, the residents opposite the premises have not reported any problems.

Kingsway House which is situated nearby can offer additional help and support for the tenants.

**Resolved to grant conditional planning permission as set out in the officer's committee report.**

### **27. 20/01484/FUL - Kingsway House, 130 Elm Grove Southsea (AI 7)**

The Principal Planning Officer presented the report.

*The Principal Planning Officer drew attention to the Supplementary Matters which reported that an additional consultation response had been received from Natural England. They had no objection to the application.*

It was noted that the deputation which Councillor Sanders had given at the start of the other applications also covered this one.

#### Members' Questions

In response to questions from members, Councillor Sanders explained that the support given to residents was tailored to their individual needs and included assistance with job hunting, mental health and increasing self-confidence. He added that funding for mental health support is available from Public Health England.

#### Members' Comments

There were no comments from members.

**Resolved to grant conditional planning permission as set out in the officer's committee report and the Supplementary Matters report.**

### **28. 20/00470/HOU - 12 Blake Road, Drayton and Farlington, Portsmouth (AI 8)**

The Planning Officer presented the report and drew attention to the Supplementary Matters which reported that:

*Since the publication of the committee report, a neighbour has notified the Local Planning Authority (LPA) of some statements and dimensions in the report they*

*consider to be inaccurate. In-the-round, the LPA consider that the Committee report is fair in its content, and need only comment on the following three specific points:*

*The neighbour considers the following statement in Paragraph 5.15 of the report to be incorrect: 'a two-storey rear extension.... 19/00129/HOU at no.14, the dimensions of this extension are not dissimilar to those of the proposed extension'. The approved two-storey extension at no. 14 projected 2.2m from the rear elevation and was 3.5m wide. The current application's two-storey extension would project 4m from the rear elevation, and be approx. 4.4m wide.*

*The neighbour also notes that his objection reference to planning application 16/00824/HOU at 6 Blake Road has not been raised in the Committee report, the LPA will take this opportunity to rectify the omission, and with apologies. The neighbour considers the rear terrace at no. 6 to be equally pertinent to the current application. That terrace was approx. 4.7m deep, and was refused planning permission. The current application's terrace is 1.3m/1.6m deep (please see below).*

*Lastly, the neighbour measures the proposed terrace as 1.6m deep, while the Committee report states it is 1.3m deep. The terrace does indeed measure 1.6m deep from wall to edge of the first step, but the Applicant has explained that a safety balustrade would be necessary, set-in approximately 0.3m from the edge of the first step. In any event, in my opinion the difference of 0.3m is not material in its effect on amenity, and the Planning Inspector would consider any necessary conditions on such details were the appeal to be allowed.*

*The recommendations remained unchanged.*

Two written deputations from Malcolm Cook and Tom Pasterfield were read out which were against granting of the application and were read out to the committee. A written deputation from the applicant was also read out. Deputations are not included in the minutes but can be viewed on the livestream on the following link [Planning Committee 9 March 2021 on Livestream](#).

#### Members' Questions

In response to questions from members, the officer explained that:

The proposed extension would project 5m from the rear elevation which is the same as the extension at number 10. The owners at number 14 have planning permission for an extension of the same length.

There is a large raised terrace at number 6 which comprises raised decking. An extension is a built structure and therefore the planning considerations would be different. However the potential impact on neighbouring amenities would be assessed in both cases.

#### Members' Comments

It was noted that many householders on this slope build these type of extensions to take advantage of the view.

As there is already an extension of the same size at number 14, members felt that there was no reason to reject this application.



The first floor would be of a reasonable size and any potential overlooking of number 10 would be minimal given that there is a screen already in place.

People should be encouraged to adapt their homes to fit the needs of future generations.

**RESOLVED**

**Grant delegated authority to the Assistant Director of Planning & Economic Growth to advise the Secretary of State that the local planning authority would have determined that the application should be approved subject to the imposition of conditions, and to supply to the Secretary of State a copy of the relevant report and meeting minutes accordingly.**

The meeting concluded at 5.18 pm.

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Signed by the Chair of the meeting  
Councillor David Fuller

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# Agenda Item 6

## **PLANNING COMMITTEE 30 MARCH 2021**

**2 PM VIRTUAL MEETING**

### **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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18/00288/OUT WARD: MILTON

ST JAMES HOSPITAL LOCKSWAY ROAD SOUTHSEA PO4 8HW

**OUTLINE APPLICATION FOR THE CONSTRUCTION OF 107 DWELLINGS INCLUDING PROVISION OF VEHICULAR AND PEDESTRIAN ACCESS, PUBLIC OPEN SPACE AND HARD AND SOFT LANDSCAPING (PRINCIPLES OF ACCESS, LAYOUT AND SCALE TO BE CONSIDERED)**

**Application Submitted By:**

LDA Design - Mr David Bell

**On behalf of:**

Mr Bruce Voss - Homes England

**RDD:** 19th February 2018

**LDD:** 23rd May 2018

## 1. Purpose of report

The application was originally reported to Planning Committee on 20<sup>th</sup> February 2019 but was deferred to allow the Council to seek further legal advice in relation to the question of whether or not Fair oak and The Beeches should be deemed curtilage listed in association with the main St James' Hospital building pursuant to s.1(5) of the Planning (Listed Buildings & Conservation Areas) Act 1990 ("the 1990 Act"). This report addresses the curtilage listing issue. Following resolution of this issue the outline application itself will be reported back to the next available Planning Committee for determination.

The application was submitted on 21 February 2018; it seeks permission for 107 dwellings on part of the former St James' Hospital site. The application site covers 3.6ha and is shown edged red on the Plan provided at Appendix 1 to this report. There are four buildings with associated areas of hardstanding within the application site. These are the Child Development Centre (Solent NHS)/former Harbour School and three buildings (Fair oak, The Beeches and Yew House) that were previously in NHS use but are now vacant. All four buildings would be demolished to make way for the new development.

There are two Grade II listed buildings on the wider hospital site: these are the main St James Hospital Building and the hospital Chapel. These are shown marked on the Plan at Appendix 1.

## 2. Recommendation

The Villas are not considered to be curtilage listed pursuant to s.1(5) of the 1990 Act.

## 3. What is curtilage listing?

Section 1(5) of the 1990 Act says that:

“listed building” means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act—

.. any ... structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948,

shall ... be treated as part of the building."

In this case the issue is whether Fairoak and the Beeches are curtilage listed building. Both are pre-1948 buildings. As set out in more detail below, it is therefore necessary to decide whether they are “structures” (the Court have established this has a particular meaning in this context); and whether they stand within the “curtilage” of the main St James Hospital Building (the Courts have also explained how this issue should be considered).

#### **4. Background**

The Council first considered whether the demolition of Fairoak and the Beeches would need listed building consent in late 2014 / early 2015, when NHS Solent presented its earliest concepts for the redevelopment of the site. Officers were mindful that other villas on the wider hospital site had previously been demolished without the Council requiring listed building consent (Gleave Villa and Light Villa) and concluded at the time that listed building consent would not be required for the removal of Fairoak and the Beeches.

Furthermore, a local resident had previously asked Historic England (HE) to urgently assess whether Fairoak and The Beeches were worthy of statutory listing in their own right. HE assessed the two buildings and concluded that they were not suitable for statutory listing, being considered to be of insufficient historic or architectural interest.

The outline planning application was originally to be reported to the Planning Committee in February 2019. However, at the request of Officers, it was withdrawn from the agenda pending further review of the curtilage listing issue. Progress on the application has been much delayed since its deferral, (the application was also affected by the nitrates mitigation issue and re-validation of the application after part of the 'red line' boundary of the site was found not to be within the Applicant's ownership).

During the intervening period, further information has been submitted to the Council by the Applicant (contending that the two villas are not curtilage listed) and by the Milton Neighbouring Forum (contending that they are). The Council has also taken independent legal advice from counsel. The list below details the documentation that has been received, set out in chronological order.

Each of the documents referred to is provided as a separate appendix to this report and Members are asked to consider these in full.

## 5. Reason for recommendation

To establish the Planning Committee's position in relation to the recommendation on the curtilage listing issue alone (before moving onto and weighing up the other wider material planning issues associated with the outline application).

## 6. Are the Villas "structures" for the purposes of the 1990 (LBCA) Act?

Case law establishes that "structure" has a particular meaning in the context of s.1(5) of the 1990 Act.

The Court of Appeal has held that to be a "structure" for the purposes of s.1(5) of the 1990 Act the building in question should be so clearly related to the listed building that its removal would adversely affect the interest of the listed building. The House of Lords subsequently narrowed this test down so that it applies only to structures that are ancillary to the listed building, giving the example of the stable block of a mansion house, or the steading of a farmhouse.

The High Court has recently said (in *Hampshire CC v Secretary of State for Environment, Food and Rural Affairs (2020)*) that the imposition of this 'ancillary test' was intended "to avoid the inclusion of a building in the statutory list from having too wide an effect, for example, by bringing within the scope of the listing another building complete in its own right, which is not subordinate to the listed building".

The applicants contend that the villas were originally intended to operate as open facilities, unlike the rest of the hospital which, until construction of the villas remained locked and gated. The hospital was constructed in 1875-1879, whilst the villas were built later in their own distinct curtilages.

Officers consider that the buildings are not considered to be ancillary to the main hospital as they are not subordinate to the main hospital building, but are 'complete in their own right' as set out in the *Hampshire* case. Whilst the submitted evidence indicates that the buildings in question have had an historic working relationship with the main hospital, they are not considered to be 'so clearly related' to the main listed hospital buildings that their removal would adversely affect the special interest of the main hospital buildings. Conversely, they are not considered to be 'so closely related' as to enhance the hospital aesthetically. The buildings, on the ground, appear distinctly separate from the main building complex and are not considered to be subordinate to it. On this basis the villas are not considered to be ancillary to the main hospital building and are not "structures" for the purposes of the s.1(5) of the 1990.

## 7. Are the Villas in the curtilage of the Hospital?

Case law establishes that in order to fall within the curtilage of a listed building for the purposes of s.1(5) of the 1990 Act, the building in question and the listed building must form an “integral whole” / a “single unit”. In looking at this question it is particularly relevant to consider the issues of physical layout, ownership and function.

### Physical Layout

The villas lie within the historic boundaries of the hospital site, were constructed pre-1948 and have presumably been in the ownership of the NHS since its creation. The nature of their use or function has continued to respond to evolving mental health practice and subject of change up to the point where they were considered no longer necessary or suitable for patient use and were therefore surplus to requirements.

Despite the historical associations with the hospital, visually the villas appear separate from the main hospital building, sitting in their own part of the wider hospital site. Their presence is more discreet and the land surrounding them was historically enclosed by planting/fencing, expressing a degree of separation that remains to the current day. It is also clear from historical mapping and photographs that the two Villas were originally separated from both the main hospital building and the chapel by significant landscaping including a number of mature trees. This created a barrier between the listed buildings and the Villas, which largely survives to this day. This intervening vegetation means there is little inter-visibility between the area of Phase 1 Land and the hospital's main building.

In this context they do not have a strong aesthetic relationship with the listed hospital and nor do they share a similar architectural style. They also face south, away from the hospital, into their own rear gardens.

The layout significantly supports a conclusion that the Villas appear distinctly separate from the main hospital. They do not appear to have, or ever have had, a close physical relationship to the main hospital complex. Officers note and accept the point made by the Milton Neighbourhood Planning Forum that the planting represents an intrinsic quality or facet of such hospitals, creating “..sylvan avenues with the express intention of connecting, not separating elements within the hospital estate.” On balance, however, it does not alter Officers' site-specific planning judgement in this case, as outlined above.

### Ownership

The relevant parts of the site have been in the ownership of the NHS since its inception in 1948. Whilst there remains some continued disagreement between the Applicant and the Forum as to the precise date the two villas were constructed, it is clear that they have always been in the same ownership.



## Function

The applicant's Heritage Impact Report (HIR) states that the villas were built to undertake functions separate to those of the main hospital building, despite all 3 serving medical functions in the broadest sense:

*“Fairoaks and The Beeches are identical houses erected at the same time to provide extra facilities for the hospital. They were two of six “villas”, Fairoak being originally named Dickens Villa and The Beeches, Brunel Villa. Map evidence dates them to between 1910 (Fig. 12) and 1932 (OS 1932) (Fig. 13). They can be more precisely dated to the period 1926-1932 as they were constructed as a result of Dr. Thomas Beaton’s innovative approaches to mental health, which occurred after 1926 (Freeman 1962). Evidence suggests that it is likely that they post-date 1928 as documentary evidence details that “From about 1928, changes began to be made in the mental hospital. ... The gates were removed, the front door unlocked and some wards opened.” (ibid). The ‘Villas’ were intended to provide open wards for patients who were considered suitable for such accommodation. Prior to this, all wards were locked as well as the main door of the hospital and its gates”.*

Officers do not accept that the functions were "totally" different as between the hospital and the respective villas, as suggested in the applicant QC's legal opinion (Appendix 2, paragraph 6). Furthermore, Officers do not dispute that there was likely to have been some historic shared use of kitchens, for example, as cited by the Forum. However, Officers consider that there was nonetheless a distinctly separate function between the main psychiatric focus of the hospital and the more general medical functions of the villas. There is also evidence of possible uses relating to infectious diseases or as recovery units, for example. Officers conclude that on balance there is sufficient evidence to support the view that the function is different (even if not radically so) in as far that the villas were performing a different medical role to that of the main hospital.

## Planning Balance

Ultimately, Members need to decide whether the Villas are curtilage listed, applying the test set out in s.1(5)(b) of the 1990 Act as explained by the Courts. For the reasons set out above, it is not considered that the Villas are “structures” for the purposes of s.1(5)(b), nor that they fall within the curtilage of the main hospital building. The removal of the Villas would not adversely effect the historic or architectural interest of the listed hospital building, which would very much remain, and the original rationale for listing of the main buildings would not be undermined. It is the overall conclusion of Officers that the two villas are not so closely related to the main hospital to the extent that they enhance it aesthetically. The intent of s.1(5)(b) remains that statutory listing should not have too wide an effect and should not bring into the scope of that listing buildings that are not ancillary to the main listed building or stand outside its curtilage.

In sum, having regard to all of the evidence available including the detailed representations made by the Milton Neighbourhood Planning Forum, it is concluded that Fairoaks and The Beeches do not comprise “structures” under

s.1(5)(b) and are not within the curtilage of the main hospital and are not therefore to be regarded as curtilage listed.

**8. Equality impact assessment (EIA)**

None.

## **Appendix 1**

### **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:

<b>Title of document</b>
Villa Site Plans
Applicant Heritage Statement - February 2018
Officer's report - outline application 18/00288/OUT - dated 20 February 2019
QC opinion (produced by Peter Village QC, April 2019) on curtilage listing for the applicant, Homes England
Letter from Homes England to PCC, dated 5.5.2019
QC opinion (produced by Robert Walton QC, June 2019) on curtilage listing for PCC
Second QC opinion (produced by Robert Walton QC, May 2020) on curtilage listing for PCC
Milton Neighbourhood Forum - (undated) document entitled 'In Support of Curtilage Listing' and more recently received (Feb 2021)
Email from Homes England dated 16.2.2021
List entry for 19 <sup>th</sup> -century St James' Hospital and attached piers and lamp posts - WHER ref DPM276
List entry for 19 <sup>th</sup> -century St James' Hospital Chapel - WHER ref DPM366

QUEEN ALEXANDRA HOSPITAL, SOUTHWICK HILL ROAD, PORTSMOUTH, PO6 3LY

**CONSTRUCTION OF FOUR LEVEL MULTI-STOREY CAR PARK WITH ELEVATED LINK BRIDGE AND ASSOCIATED LANDSCAPING.**

**Application Submitted By:**

Nicholas Taylor + Associates  
FAO Brian Kavanagh

**On behalf of:**

Portsmouth Hospitals University NHS Trust

**RDD:** 16th February 2021

**LDD:** 25th May 2021

**1.0 SUMMARY OF MAIN ISSUES**

- 1.1 This application is included on the agenda due to the scale of the development.
- 1.2 This committee report has been published before the final consultation expiry date. Any further representations or consultation responses received following publication of this report will be made publically available to view online and an update to the report will be prepared for consideration at the planning committee.
- 1.3 The main matters for the determination of this application are as follows:
- Principle of the proposal
  - Scale, design and appearance
  - Impact on neighbouring residential amenity
  - Access, transport impact and parking
  - Air quality
  - Energy efficiency
  - Landscaping, trees and ecology
  - Contaminated land
  - Drainage
- 1.4 Site and Surroundings
- 1.5 The application site comprises the northern side of the North Car Park, on the north side of the Queen Alexandra Hospital site. The North Car Park is a public car park for hospital patients and visitors and currently provides 300 parking spaces, accessed via Harvey Road. The site is predominantly hard surfaced with the exception of some strips of grass and trees separating the parking spaces, and a grass bank and some trees to the north. There are no specific environmental or policy constraints associated with the site, although there is the potential for ground contamination to exist.
- 1.6 The main hospital complex lies to the south of the site, with additional hospital buildings located to the east and north. The nearest residential properties are located on Boston Road and Peterborough Road to the west, beyond a row of boundary trees.
- 1.7 Proposal
- 1.8 Planning permission is sought for the construction of a four level multi-storey car park (MSCP) on the northern side of the North Car Park, with access from Harvey Road. The

MSCP would measure 97.5m in length, 32m in depth and up to 13.4m in height to the top of the lift/stair cores from the lowest ground level. There would be 3 lift/stair cores, 2 on the southern elevation and 1 on the northern elevation. The development would include the construction of a link bridge at first floor level, which would link to a new Ward Block that was granted planning permission in December 2020 (ref. 20/01256/FUL). Construction work on the new Ward Block is due to commence towards the end of March 2021. To the south of the MSCP a new internal access road and drop off point would be created, and the scheme incorporates new landscaping including tree planting.

- 1.9 The car park would accommodate a total of 541 car parking spaces and 6 motorcycle spaces:
- Ground floor - 129 car parking spaces (including 31 disabled) and 6 motorcycle spaces;
  - Level 1 - 135 car standard car parking spaces;
  - Level 2 - 137 standard car parking spaces;
  - Level 3 - 140 standard car parking spaces.
- 1.10 The car park would be a metal frame construction, with aluminium mesh panels on the east and north elevations and a mix of aluminium mesh and 'wood-alike' aluminium cladding to the west and south elevations. The lift and stair cores would be faced with terracotta cladding, with some wood effect cladding.
- 1.11 The application is accompanied by the following reports: Flood Risk Assessment; Drainage Strategy and Maintenance Report; Contaminated Land Desk Top Study; Lighting Assessment; Noise Assessment; Statement of Community Involvement; Transport Assessment; Framework Transport Strategy; Construction Phase Plan; and Tree Survey.
- 1.12 Planning history
- 1.13 The hospital has an extensive planning history. The most recent and relevant permissions are as follows:
- 1.14 20/01256/FUL - Construction of 72 bed, two storey hospital ward with enclosed link to rehabilitation centre and access ramp, to include reconfiguration of car park, service yard and associated landscaping - conditional permission, 10 December 2020
- 1.15 20/00257/FUL - installation of pipework with associated services, canopy, hardstanding and barriers - conditional permission, 29 April 2020
- 1.16 19/01688/FUL - construction of elevated gantry with access building, to include canopy structure, retaining wall, screens to conceal services and associated hard and soft landscaping - conditional permission, 16 January 2020
- 1.17 A\*36713/AE - application for approval of reserved matters for planning permission  
A\*36713/AC - conditional approval, 1 April 2004
- 1.18 A\*36713/AC - construction of up to eight storey hospital building (up to 79,000 sqm floorspace), associated car parking with new access from Southampton Road, and residential development of up to forty dwellings - conditional outline planning permission, 29 April 2003

## **2.0 POLICY CONTEXT**

- 2.1 Portsmouth Plan (2012)
- PCS12 (Flood Risk)

- PCS13 (A Greener Portsmouth)
- PCS14 (A Healthy City)
- PCS15 (Sustainable Design and Construction)
- PCS16 (Infrastructure and Community Benefit)
- PCS17 (Transport)
- PCS23 (Design and Conservation)

## 2.2 Portsmouth City Local Plan 2001-2011 (Adopted 2006)

- Saved Policy CM6 (Queen Alexandra Hospital)
- Saved Policy DC21 (Contaminated Land)

## 2.3 Other Guidance

- National Planning Policy Framework (NPPF) (2019)
- National Design Guide (2019)
- National Planning Practice Guidance
- Achieving Employment and Skills Plans Supplementary Planning Document (2013)
- Parking Standards and Transport Assessments Supplementary Planning Document (2014)

## 3.0 CONSULTATIONS

### 3.1 Crime Prevention Design Advisor

3.2 Comments awaited.

### 3.3 Hampshire Fire & Rescue Service

3.4 Advice provided for the applicants attention regarding fire safety, fire protection and emergency vehicle access.

### 3.5 Environment Agency

3.6 Comments awaited.

### 3.7 Contaminated Land Team

3.8 Comments awaited.

### 3.9 Environmental Health

3.10 Comments awaited.

### 3.11 Landscape Group

3.12 Planting species and plans are suitable for the site. Pleased to see the proposal to inspect existing soils for contamination and compaction and to ensure that planting depths are appropriate to ensure healthy growth. Regular maintenance and replacement of any failed planting should be carried out over the first 5 years.

### 3.13 Coastal and Drainage

3.14 A well thought out and exemplary Drainage Strategy. Further information provided regarding overland flow and interceptor agreed as acceptable.

- 3.15 Tree Officer
- 3.16 No objection.
- 3.17 Health Development Manager
- 3.18 Comments awaited.
- 3.19 Ecology
- 3.20 Comments awaited.
- 3.21 Highways Engineer
- 3.22 The principle intent of the proposal and broader transport strategy is to vary the allocation of parking provision on site, increasing the patient/visitor parking capacity whilst reducing that for staff, with the demand being accommodated in the Park and Ride facility. The currently constrained patient/visitor parking at QAH is considered to be a key component in the success of the strategy of reducing the use of private cars. A practical increase in on-site parking for patients and visitors would release suppressed demand and generate additional traffic to/from the site with consequent implications for highway capacity and air quality. This is at odds with the planning policy intent established in the NPPF.
- 3.23 The submitted Transport Assessment (TA) considers the application along with the proposed Emergency Department (ED). However, an application for the ED remains to be submitted and therefore this application is considered in isolation. On this basis, the car park would result in an increase in 346 patient/visitor spaces and in turn increase traffic movements. The submission does not include an assessment of the impact of the application in isolation on the local highway network, which currently operates in excess or approaching capacity at peak periods.
- 3.24 If considered in the broader context of the planned ED development, then the effect of both proposals would be to maintain essentially the same quantum of parking on the site as currently exists but with more patient/visitor spaces and reduced staff spaces. Whilst this would also increase traffic movements it would not be to an extent that would raise highway capacity concern. If the application is to be approved, it is recommended that a condition is imposed to limit the number of spaces in operation at any one time, with a cap on patient/visitor parking.
- 3.25 Satisfied that adequate parking capacity could be retained on site during construction.

#### **4.0 REPRESENTATIONS**

- 4.1 The applications have submitted a Statement of Community Involvement, which outlines various ways in which the local community has been kept updated about the proposed development and future schemes at the hospital. This included letter drops to local residents prior to submission of the application and liaison with Ward Councillors and hospital staff.
- 4.2 PCC publicity dates:
- Neighbour letters sent: 23 February 2021; expiry 19 March 2021
  - Site notices displayed: 24 February 2021; expiry 19 March 2021
  - Press notice: 26 February 2021; expiry 19 March 2021
- 4.3 No representations received at the time of writing this report.

## 5.0 COMMENT

### 5.1 Principle of the proposal

5.2 The new car park is required to provide additional visitor parking space for the hospital and to better manage on-site parking in the long term. The new parking provision would compensate for parking spaces lost through other developments, including a new Ward Block recently permitted on the southern part of the North Car Park and a proposed extension to the Emergency Department, an application for which is due to be submitted within the next 2 months. The provision of this new car park is part of a long term strategy for the development and improvement of the Hospital site, to include a reorganisation of public and staff car parking.

5.3 Saved Policy CM6 of the Portsmouth City Local Plan (2006) states that proposals within the Queen Alexandra (QA) boundary will be supported provided that they contribute to long term strategy aims, are compatible in scale and form to the existing complex and are acceptable in terms of traffic generation and highway impact. The proposed car park is a fundamental element of the Hospital's long term development plan and is therefore considered acceptable in principle. The provision of development to meet the wider needs of the hospital also accords with some of the core principles set out in the National Planning Policy Framework (NPPF), to create safe and healthy communities and support healthcare provision. Matters relating to scale and highway impact are addressed within this report.

### 5.4 Scale, design and appearance

5.5 Policy PCS23 of the Portsmouth Plan requires new development to be well designed and appropriate in terms of scale, layout and appearance in relation to the context in which it is set.

5.6 The existing hospital complex is characterised by a mix of buildings of varying scale / height. The proposed multi-storey car park (MSCP) would be a large rectangular structure up to 13.4m in height and section plans have been provided to show how it would relate to that of the immediate surrounding buildings. These plans confirm that the car park would be no taller than the adjacent Rehabilitation building to the east and would be lower than the main hospital buildings to the south. Therefore, whilst it is acknowledged that the car park would be a large structure, it would not be out of scale with the buildings on the wider hospital site.

5.7 The applicants have explained that the aim of the elevation design is to reflect the appearance of the existing MSCP on the south-west side of the hospital site, to create a visual 'link' between these functional buildings whilst complementing the appearance of the main hospital. The frame of the new MSCP would be a metal construction, incorporating wood effect metal cladding on the west and southern elevations, and the north and eastern elevations would remain more open with metal mesh cladding for ventilation. The use of wood effect cladding would reflect the wood cladding used on the existing MSCP, and would add visual interest to the appearance of the structure. The stair/lift cores would be faced with terracotta cladding to complement the colour of cladding on some of the nearby Hospital buildings. Wood effect cladding would also be used between the windows on the largest stair core on the south-west side of the building to visually break up the mass of this element.

5.8 To conclude, the scale and design approach is considered to be appropriate in relation to the surrounding hospital complex, in accordance with Policy PCS23 of the Portsmouth Plan and the design principles set out within the National Planning Policy Framework (NPPF).



5.9 Impact on residential amenity

- 5.10 Policy PCS23 of the Portsmouth Plan requires development to protect the amenity of neighbouring residents.
- 5.11 The nearest residential properties are located in Boston Road to the west of the site and there would be a distance of approximately 30m from the western elevation of the car park and the nearest of these residential properties. There is a border of mature trees along the western boundary of the hospital site, which provide some visual screening from the neighbours, although less so in the winter months. However, given the separation distances involved, it is not considered that the car park would result in any significant loss of outlook or light to these neighbours.
- 5.12 The main considerations for the impact on neighbours, as well as future occupants of the adjacent Ward Block, would relate to increased noise and light pollution. In relation to noise, the application is accompanied by a Noise Assessment Report. This report concludes that the proposed MSCP would not expose the nearby residents / occupants to adverse noise levels, subject to the provision of noise barriers to the upper floors of the car park. These noise barriers would need to be impermeable to a height of not less than 1m above floor level on each floor, and have been incorporated into the design. The report also considers increased noise from additional traffic using Harvey Road and refers to the potential for an acoustic fence along the western side of the road. However, the applicant has confirmed that subsequent assessments have determined that an acoustic fence is not required to mitigate noise impact on neighbouring residents.
- 5.13 With regard to light pollution, a Lighting Assessment has been provided, which makes recommendations for levels of luminance and positions of lighting to ensure no adverse impact from light glare on the neighbouring properties or future occupants of the adjacent Ward Block.
- 5.14 Subject to implementation of the development in accordance with the recommendations of the Noise and Lighting Assessments, the development would not harm the amenities of nearby residents or patients and would accord with Policy PCS23 of the Portsmouth Plan.
- 5.15 Access, transport impact and parking
- 5.16 On the hospital site as a whole, there is a total of 801 public parking spaces and 1,411 staff car parking spaces. Conditions attached to a planning permission in 2003 for the redevelopment of the hospital (planning permission ref. A\*36713/AC), required at least 664 spaces to be permanently reserved for patients and visitors, and not more than 1,572 spaces for staff. The current level of parking falls within these limits.
- 5.17 In terms of accessibility, the hospital site is well served by buses, with 8 routes stopping within the hospital grounds, providing links to various parts of the city and beyond. Cosham railway station is approximately 1.4km from the site and the site is also well linked to cycle routes.
- 5.18 The proposed MSCP would provide a total of 541 car parking spaces and 6 motorcycle spaces. Of the car parking spaces, 32 would be accessible parking bays, and 8 spaces (including one accessible space) would accommodate electric charging provision. There are currently 195 parking spaces on the northern side of the North Car Park, therefore the MSCP proposal when considered on its own would represent a net increase of 346 spaces on this part of the site. However, this proposal is related to two other development schemes at the hospital, these being the new Ward Block permitted in December 2020 on the southern side of the North Car Park and proposed

redevelopment of the Emergency Department, the application for which is due to be submitted within the next two months.

- 5.19 The submitted Transport Assessment has been prepared as a joint assessment to take account of the Ward Block and Emergency Department schemes. The purpose of preparing a joint TA is to ensure that the overall, long term strategy relating to staff and visitor parking is properly planned and managed. A Framework Transport Strategy has also been submitted. This document is an overarching document, which sets out how parking provision and travel across the site will be managed in the short, medium and long term.
- 5.20 In terms of overall parking provision, the MSCP would result in a net increase in 346 parking spaces. However, the combined effect of the MSCP along with the Ward Block and Emergency Department development would be to reduce the overall level of parking on the hospital site by 98 spaces, as summarised in the table below.

<b>PARKING PROVISION</b>	<b>2003 Condition requirement</b>	<b>Existing (whole site)</b>	<b>Proposed (whole site)</b>	<b>Change</b>
<b>Staff</b>	1,572 maximum	1411	1066	- 345
<b>Public</b>	664 minimum	801	1048	+ 247
<b>Total</b>		<b>2212</b>	<b>2114</b>	<b>- 98</b>

- 5.21 In summary, upon completion of the three developments, the numbers of parking spaces on the site as a whole would be reduced by 98 (4.4%), but would remain within the public/staff number limits set by the conditions on the 2003 planning permission. The main difference is that the balance of spaces between staff and public would change, with a greater proportion of public spaces being provided, equivalent to a net increase of 247 public spaces, and a net decrease of 345 staff spaces.
- 5.22 The TA includes an assessment of the impact of the change in proportion of spaces and concludes that it would not result in any significant degree of net traffic generation and would not represent an impact on the surrounding highway network. Having regard to the resulting reduction in staff parking, the TA concludes that there would be a reduction in trips to the site over the day as a whole, and no significant impact during AM and PM peak times.
- 5.23 The Framework Transport Strategy explains how loss of on-site parking would be managed during the various stages of the Ward Block, MSCP and Emergency Department construction processes. The document explains that during construction of the Ward Block and MSCP (if permitted), public parking spaces would be made available in other areas of the site such as in the existing multi-storey car park, to ensure that the number of spaces remains as existing at 801. This would mean the loss of varying amounts of staff parking spaces at different points in the construction process, and these spaces would be re-provided at the Fort Southwick Park and Ride.
- 5.24 In the long term, the overall reduction in staff parking provision would be mitigated by further use of the Park and Ride. There are currently 992 parking spaces available for QA staff at the Park and Ride and surveys have established that there are around 450 available spaces daily, demonstrating that there is sufficient capacity to accommodate the reduced on-site parking. The applicants have also outlined a number of on-going measures that are being put in place at the Hospital to encourage more use of sustainable transport, including the following:
- On-going review of staff parking permit availability;
  - Providing incentives for increased use of public transport, e.g. provision of interest free season tickets;

- Considering options for further increased parking provision at the Fort Southwick Park and ride and associated increased bus provision;
  - Considering appointment times for outpatient services across the hospital to reduce conflict with peak parking demand;
  - Undertaking staff travel surveys to inform the provision of a hospital wide Travel Plan to provide a long term more formal basis for managing sustainable travel;
  - Continuing to respond and react to technology advances, e.g. further provision of electric vehicle parking, and use of electric scooters.
- 5.25 In relation to cycle parking, the applicants have noted that there are an existing 200 cycle parking spaces on the hospital site, for use by staff and visitors. This provision is considered to be sufficient for the site and no further cycle parking is proposed as part of this application.
- 5.26 The application is also accompanied by a Construction Phase Plan, which outlines the measures to be put in place during the construction phase of the development to mitigate noise and pollution and ensure highway safety. Adherence to this plan will be secured by condition.
- 5.27 It is important to note that whilst the Transport Assessment and Transport Strategy have been formulated to take account of the proposed Emergency Department development, it is not possible to formally link the determination of this application to that of a potential future development. It is therefore necessary to consider that if the Emergency Department did not come forward, there would be an increase in parking provision at the site of 346 spaces. Whilst the Highway Engineer has raised concerns about the potential impact of this increased parking provision on the local highway network, it is considered that any resulting impact of the additional parking provision could be addressed and mitigated through updates to the Parking Mitigation Strategy within the Transport Assessment, as secured through condition.
- 5.28 Air quality
- 5.30 Air quality monitoring was carried out at the site in January, which calculated that the maximum level of NO<sub>2</sub> was well below the annual mean Air Quality Objective. The report notes that the most significant factor influencing air quality is existing traffic movements around the site and emissions from heating/ventilation plant. Whilst the proposal would increase parking capacity at the site in the short term, it is not likely to generate a significant number of increased visitors, and is also likely to have a positive impact of reducing queuing on the internal access roads. It is concluded that the development is not likely to impact nearby residents or patients in terms of poor air quality. Any air quality issues during construction would be short term and can be managed through appropriate pollution control measures, as set out in the Construction Phase Plan.
- 5.31 Energy efficiency
- 5.32 Policy PCS15 of the Portsmouth Plan requires all new development to contribute to the aims of addressing climate change through energy efficient design. A number of energy efficiency features have been incorporated into the design of the car park as follows:  
 Use of natural ventilation instead of mechanical ventilation;  
 LED lighting with daylight motion sensors;  
 Provision of 8 electric vehicle parking points;  
 Use of recyclable materials;  
 Use of demountable parking system (steel and concrete planks) to reduce waste;  
 Utilising local companies for materials where possible.

- 5.33 It is considered that these such measures would ensure that the development would the principles of sustainability and energy efficiency in accordance with the objectives of Policy PCS15.
- 5.34 Landscaping, trees and ecology
- 5.35 Policy PCS13 of the Portsmouth Plan seeks to protect, enhance and develop the city's green infrastructure and requires development to achieve a net gain in biodiversity where possible.
- 5.36 The trees on site are not protected but are considered to contribute positively to the visual amenity of the wider hospital site. The proposed landscaping scheme would include new tree planting to the north and south of the car park to compensate for the loss of trees and to soften the visual appearance of the structure. The landscape proposals have been reviewed by the Council's Landscape Architect who has confirmed that the planting species and plans are appropriate for the site. The implementation and maintenance of the landscape scheme can be secured by condition.
- 5.37 The existing site comprises predominantly hard surfacing with some strips of landscaping and semi-mature trees between parked cars. It is not considered that this environment would be suitable to support protected species. It is considered that with the proposed replacement tree planting and landscaping, the scheme would result in a biodiversity net gain in accordance with Policy PCS13 of the Portsmouth Plan.
- 5.38 Contaminated land
- 5.39 There is the potential for contamination to exist on the site due to its past use as MOD land and military hospital. Further information is required to assess the level of contamination and agree requirements for mitigation. This information will be requested and secured by condition.
- 5.40 Drainage
- 5.41 The site lies within Flood Zone 1 and is therefore at low risk of flooding. The application is supported by a Flood Risk Assessment, Drainage Strategy and maintenance details, and these have been reviewed and agreed with the Council's Drainage Engineer. The Drainage Strategy would ensure that surface water is properly managed to prevent any increased risk of flooding to the site or surrounding area, in accordance with Policy PCS12 of the Portsmouth Plan.
- 5.42 Conclusion
- 5.43 The proposed development is part of a long term strategy to manage and enhance parking provision and facilities at the hospital. The scale and design of the car park is acceptable in relation to the wider hospital complex and the development would have no significant impact on the amenities of nearby residential properties. The scheme includes acceptable schemes for drainage, lighting and noise mitigation and further contaminated land assessments can be secured by condition.
- 5.44 In relation to highway impact, the proposed car park, when considered in conjunction with wider development proposals at the hospital, is not considered to generate a significant increase in visitors / traffic generation and the submitted Transport Assessment outlines how the parking provision at the hospital would be managed over the long term.

- 5.45 The development is considered to accord with the relevant policies of the Portsmouth Plan (2012), saved policies of the Portsmouth City Local Plan (2006) and the objectives of the National Planning Policy Framework (NPPF).

## **RECOMMENDATION                      Conditional Permission**

### **Conditions**

#### **Time Limit**

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

#### **Approved Plans**

- 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:
- J1708-STRIPE-XX-XX-M3-AX-00001 Version P06 - Site Location Plan
  - J1708-STRIPE-XX-00-DR-AX-90002 Version P04 - Proposed Site Plan / Level 0 Plan
  - J1708-STRIPE-XX-01-DR-A-30001 Version P03 - Level 01
  - J1708-STRIPE-XX-01-DR-A-30002 Version P03 - Level 02
  - J1708-STRIPE-XX-01-DR-A-30003 Version P03 - Level 03
  - J1708-STRIPE-XX-01-DR-AX-30501 Version P06 - Proposed elevations 1 of 2
  - J1708-STRIPE-XX-01-DR-AX-30502 Version P04 - Proposed elevations 2 of 2
  - J1708-STRIPE-XX-01-DR-AX-30602 Version P02 - Proposed Sections 1 & 2
  - J1708-STRIPE-XX-XX-M3-AX-00001 - Soft Landscape Plan

Reason: To ensure the development is implemented in accordance with the permission granted.

#### **Contaminated Land**

- 3) No works pursuant to this permission shall commence until there has been submitted to and approved in writing by the Local Planning Authority or within such extended period as may be agreed with the Local Planning Authority:
- a) A *Phase 1 desk study* (undertaken following best practice including *BS10175:2011+A2:2017 'Investigation of Potentially Contaminated Sites Code of Practice'*) documenting all the previous and current land uses of the site. The report shall contain a conceptual model (diagram, plan, and network diagram) showing the potential contaminant linkages (including consideration of asbestos), including proposals for site investigation if required (the sampling rationale for all proposed sample locations and depths should be linked to the conceptual model); and once this report is accepted by the LPA, unless otherwise agreed in writing by the LPA,
- b) A *Phase 2 site investigation* report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the conceptual model in the desk study (to be undertaken in accordance with *BS10175:2011+A2:2017* and *BS8576:2013 'Guidance on investigations for ground gas - Permanent gases and volatile organic compounds (VOCs)'*). The report shall refine the conceptual model of the site and confirm either that the site is currently suitable for the proposed end-use or can be made so by remediation; and once this '*Phase 2*' report is accepted by the LPA, unless otherwise agreed in writing by the LPA,
- c) A *Phase 3 remediation method statement* report detailing the remedial scheme and measures to be undertaken to avoid risk from contaminants and/or gases when the development hereby authorised is completed, including proposals for future maintenance and monitoring, as necessary. If identified risks relate to bulk gases, this will require the submission of the *design report, installation brief, and validation plan* as detailed in *BS8485:2015+A1:2019 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings* and have consideration of CIRIA 735 *Good practice on the testing and verification of protection systems for buildings against hazardous ground gases*. The remedial options

appraisal shall have due consideration of sustainability as detailed in *ISO 18504:2017 Soil quality — Sustainable remediation*. It shall include the nomination of a competent person to oversee the implementation of the remedial scheme and detail how the remedial measures will be verified on completion.

Reason: To ensure that the risks from land contamination to the future users of the land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and offsite receptors, in accordance with saved Policy DC21 of the Portsmouth City Local Plan (2006).

#### **Contaminated Land Verification**

4) The development hereby permitted shall not be first occupied/brought into use until there has been submitted to, and approved in writing by, the Local Planning Authority a stand-alone verification report by the competent person approved pursuant to condition (3)c above. The report shall demonstrate that the remedial scheme has been implemented fully in accordance with the *remediation method statement*. For the verification of gas protection schemes the applicant should follow the agreed *validation plan*.

Thereafter the remedial scheme shall be maintained in accordance with the details approved under conditions (3)c.

Reason: To ensure that the risks from land contamination to the future users of the land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and offsite receptors, in accordance with saved Policy DC21 of the Portsmouth City Local Plan (2006).

#### **Parking Management**

5) (a) The development shall be implemented in accordance with the parking mitigation strategy outlined in Appendix D of the approved Transport Assessment (Mode Transport Planning, 15th February 2021);

(b) any amendments to the approved mitigation strategy must first be submitted to and approved in writing by the Local Planning Authority prior to implementation.

Reason: To ensure that the loss of parking on site is properly managed during the various stages of construction and occupation, to prevent additional parking pressure within the hospital site and on the surrounding road network in the interest of amenity and highway safety, in accordance with Policies PCS23 and PCS17 of the Portsmouth Plan (2012).

#### **Travel Plan**

6) (a) Unless otherwise agreed in writing with the Local Planning Authority, the car park shall not be operated until a Travel Plan with the aim of reducing staff car use/dependency and encourage sustainable modes of travel, has been submitted to and approved in writing by the Local Planning Authority; and

(b) The development shall thereafter be carried out in full accordance with the provisions of the Travel Plan approved pursuant to part (a) of this condition.

Reason: To encourage the use of alternative means of travel to the private car, in accordance with Policy PCS17 of the Portsmouth Plan (2012).

#### **Materials**

7) No development above foundation/slab level shall be commenced until precise details of the colour treatment and size of the cladding panels to the car park facades and lift/stair cores, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed in accordance with the approved material details.

Reason: To ensure a high quality appearance in the interest of visual amenity, in accordance with Policy PCS23 of the Portsmouth Plan (2012).

### **Construction Management Plan**

8) The development shall be carried out in accordance with the approved Construction Phase Plan prepared by Ballast Nedam Parking, for as long as construction is taking place at the site.

Reason: To minimise disruption to the operation of the hospital site and surrounding highway network in the interest of highway safety, in accordance with Policies PCS17 and PCS23 of the Portsmouth Plan (2012).

### **Landscaping**

9) (a) The soft landscaping scheme shall be carried out in accordance with the details shown on the approved Soft Landscape Plan ref. J1708-STRIFE-XX-XX-M3-AX-00001, in the first planting season following commencement of the use of the car park;

(b) Any trees or plants which, within a period of 5 years from the date of Practical Completion of the landscaping scheme, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interest of visual amenity to achieve a high quality development in accordance with Policies PCS13 and PCS23 of the Portsmouth Plan (2012).

### **Biodiversity enhancements**

10) (a) No development above foundation/slab level shall take place at the site until a scheme for proposed biodiversity enhancements and their timing, to achieve a net gain in biodiversity, has been submitted to and approved in writing by the Local Planning Authority;

(b) The scheme for biodiversity enhancement shall be fully implemented in accordance with the details approved under part (a) of this condition and thereafter retained.

Reason: To achieve a net gain in biodiversity in accordance with Policy PCS13 of the Portsmouth Plan (2012).

### **Drainage**

11) Unless otherwise agreed in writing with the Local Planning Authority, the drainage strategy for the development shall be implemented in accordance with the details set out within the approved Drainage Strategy Report (Stripe Consulting, February 2021).

Reason: To ensure that the development would not increase flood risk at the site in accordance with Policy PCS12 of the Portsmouth Plan (2012).

### **Lighting**

12) The development shall be carried out in accordance with the details set out in the approved Lighting Design report (Stripe Consulting, February 2021).

Reason: To minimise light glare in the interest of visual and residential amenity, in accordance with Policy PCS23 of the Portsmouth Plan (2012).

### **Noise**

13) The car park hereby approved shall incorporate noise mitigation panels to Levels 1, 2 and 3 in accordance with the details set out in the approved Noise Impact Assessment (EAS Ltd, March 2021).

Reason: To ensure no adverse noise impact on nearby residents and patients, in accordance with Policy PCS23 of the Portsmouth Plan (2012).

## 03

The application was deferred at planning committee (23<sup>rd</sup> February 2021). Additional representation information was required. There have been no changes to the scheme since or any other change in circumstances. No further representations have been received.

**Application No. 20/00158/FUL**

**WARD: St Thomas**

### **FONTENOY HOUSE, GRAND PARADE, PORTSMOUTH, PO1 2NF.**

Construction of mansard roof extension to form two bedroom apartment (Class C3) with roof terrace and alterations to existing building, including brickwork, render to ground floor and extension of external staircase and balconies.

**Application Submitted By:**

John Pike (Pike Planning)

**On behalf of:**

Mr and Mrs Jason and Kate Phillips Starfall Limited

#### **1.0 SUMMARY OF MAIN ISSUES**

- 1.1 This application is being presented to the Planning Committee due to the sensitive nature of the site and the degree of public objection.
- 1.2 The main issues for consideration are:
- Principle of Development
  - Design and Conservation of Heritage Assets
  - Residential Amenity
  - Transport and Parking
  - Impacts on the Special Protection Areas

#### **2.0 SITE, PROPOSAL AND RELEVANT PLANNING HISTORY**

##### Site and Surroundings

- 2.1 The application site comprises the residential apartment block of Fontenoy House, a three storey block of eight flats located in a prominent position on the south-western side of the junction of High Street and Grand Parade.
- 2.2 The site is located within the Old Portsmouth Conservation Area and within Flood Zone 3 (high risk). The site is adjacent to a number of designated heritage assets, the most significant of which are the Grade II listed buildings of 63 High Street (to the west), 60 High Street (to the north-east on the opposite side of Grand Parade) and the grade II listed telephone box located adjacent to 60 High Street.
- 2.3 The site due to its siting also forms part of the wider setting of the Square Tower, the hot walls, and the Cathedral Church of St Thomas, all of which are Grade I listed structures.

##### Proposal

- 2.4 Planning permission is sought for the construction of a single storey roof extension to form a 2-bed flat, and associated alterations, including brickwork, render to ground floor and extension of external staircase and balconies.



- 2.5 The scale of proposed scheme is comparable to that which was approved by the planning inspectorate under application 13/00989/FUL, and again by the Local Planning Authority (LPA) under application 17/00566/FUL.
- 2.6 The application is supported by a Planning, design, access and heritage statement and a Flood Risk Assessment.

#### Planning History

- 2.7 13/00989/FUL - Construction of single storey extension to roof to form 2 flats, to include raising of existing parapet wall, installation of balustrading and extension to existing external fire escape (Re-submission of 13/00536/FUL) - This application was refused by the LPA for reasons relating to design and parking. The decision was appealed and the proposal was allowed by the planning inspector.
- 2.8 17/00566/FUL - Construction of single storey extension to roof to form 2 flats to include raising of existing parapet wall, installation of balustrading and extension to existing external fire escape - This application sought to effectively renew the permission granted under 13/00989/FUL and was approved by the LPA on 26 May 2017.
- 2.9 18/01634/FUL - Construction of additional two storeys to form one dwellinghouse (Class C3); extension to existing external fire escape, and alterations to existing building to include installation of replacement windows, Juliet balconies, new brickwork and raising of parapet walls. Refused - bulk/mass/height/design and impact on heritage assets, odour or noise impacts, impact on Special Protection Areas.
- 2.10 19/01657/FUL - Construction of single-storey extension to roof to form 2 flats to include raising of existing parapet wall, installation of balustrading and extension to existing external fire escape. Approved 28 April 2020.

### **3.0 POLICY CONTEXT.**

- 3.1 In addition to the National Planning Policy Framework, the relevant policies within the Portsmouth Plan include:
- PCS10 (Housing Delivery)
  - PCS17 (Transport)
  - PCS23 (Design and Conservation)
  - PCS12 (Flood Risk)
  - PCS13 (A Greener Portsmouth)
  - PCS21 (Housing Density)
- 3.2 The Council's published Conservation Area guidelines of Old Portsmouth are also relevant to this proposal. The Parking standards and transport assessments, Sustainable Design & Construction and Housing Standards SPDs are also of relevance to the proposed development.
- 3.3 The Council's published Conservation Area guidelines describe Grand Parade as "a formal looking three-sided city square whose hard landscaping is now primarily used for car parking. Grand Parade was, in the 18th and 19th Centuries, the most fashionable address in Old Portsmouth.

- 3.4 The eastern side is lined by listed 19th Century 3-4-storey buildings, while the western side consists entirely of post war rebuild". The guidelines recognise that "as a result of damage incurred during the Second World War, much of Old Portsmouth consists of architecturally indifferent buildings built during post war decades, but due to the deference displayed to the scale, vernacular, historic street pattern and grain of development incumbent in the area, the overall visual appearance remains pleasing, and even weaker parts are still markedly superior to other urban areas characterised by post-war building".

#### **4.0 CONSULTATIONS**

- 4.1 Highways Engineer Objection - Lack of car and cycle parking
- 4.2 Environment Agency No objection
- 4.3 Drainage No objection
- 4.4 Contaminated Land No objection
- 4.5 Regulatory Services "I am concerned about the potential impact of noise and odour on the proposed future residents from the extraction system which serves The Wellington PH. The extraction system discharges vertically at above eaves level of the two-storey building it is attached to, approximately 9 metres from Fontenoy House. Without further information or design changes to the proposal, there is a significant risk of harm to the amenity of future occupants of the proposal. "

#### **5.0 REPRESENTATIONS**

- 5.1 8 representations have been received raising objections to the proposed development. These are based on the following reasons:
- Amenity concerns, particularly in relation to loss of light, privacy and outlook to neighbouring properties.
  - Inappropriate scale, design and use of materials.
  - Unsympathetic to the Old Town Conservation Area, and the historic character of the area.
  - Harmful to nearby listed buildings.
  - Contrary to the Councils Conservation Area Guidance.
  - Insufficient car parking
  - Impact on existing occupiers
  - Lack of detailed plans
  - Lack of operational chimney
  - Amenity concerns, particularly in relation to size and bulk resulting in trapped smells and lack of wind.
- 5.2 1 representation has been received in support of the proposal.

#### **6.0 COMMENT**

##### i) Principle of development.

- 6.1 The proposed development is comparable to that which was granted planning permission under application reference number 17/00566/FUL by the Local

Planning Authority on 26th May 2017. In this case and whilst the design of the development appears different, the plans are not seeking to intensify development. The applicants propose to reduce the number of units from 2 two bedrooms, previously approved to 1 two bedroom unit.

- 6.2 This in itself is judged to be acceptable and previous decisions should be afforded significant weight in the consideration of this application. Given the sustainable location of the site, similarities to the previous application, a lack of significant change at local or national policy level, and a lack of change in local circumstances to the site, it is considered that the principle of the proposed development is acceptable.
- 6.3 The Council's published Conservation Area guidelines state that the "City Council will encourage an ideal building height of 3-4 storeys throughout the Conservation Area". Having regard to this advice and the prevailing mix of three and four storey developments in the locality it is considered that the principle of adding an additional floor to the building is acceptable subject to it being of an appropriate design and its having an acceptable relationship with neighbouring properties.
- 6.4 The National Planning Policy Framework (NPPF) states that planning decisions should be based on a presumption in favour of sustainable development (paragraph 11), and that where a local planning authority cannot demonstrate a five year housing land supply of deliverable sites, the adopted policies should be taken to be out of date and permission should be granted for development unless:
- i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 6.5 Currently, the Council is unable to demonstrate five year housing land supply of deliverable sites and this development would contribute towards meeting housing needs through a net gain of 1 new dwelling.
- 6.6 The above presumption however does not apply where the project is likely to have a significant effect on a 'habitats site' (including Special Protection Areas) unless an appropriate assessment has concluded otherwise (paragraph 177). The principle of the proposal is therefore considered acceptable, subject to assessment in accordance with the tests set out in paragraph 11 (i and ii) of the NPPF and paragraph 177.

#### Design Impact

- 6.7 Design and Conservation Section 72 of the Listed Buildings and Conservation Areas Act 1990 (as amended) requires that Local Planning Authorities pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
- 6.8 As a conservation area is a designated heritage asset, the provisions of paragraph 196 of the NPPF also apply in consideration of an application which has the potential to affect the character and appearance of a conservation area. Paragraph 196 of the NPPF states that where a development proposal will lead to less than

substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

- 6.9 Policy PCS23 of the Portsmouth Plan requires excellent architectural quality in new buildings and changes to new buildings, development that relates well to Portsmouth's history and protection and enhancement of important views and settings of key buildings.
- 6.10 The Conservation Area guidelines state that "extensions will be discouraged where they would have an adverse visual effect on the existing building or townscape" and where "extensions are permitted they should match the existing original property in respect of design, materials and detail. The size of an extension should not overpower the original building size".
- 6.11 The guidelines also recognize that "where large extensions are permitted, they might be better designed to complement the original, so that both can be recognised and appreciated". Furthermore the guidelines advise that "the City Council will aim to prioritise the attention paid to window design in new developments so that their appropriateness for both building and wider setting can be ensured and so that they enhance, rather than detract from both".
- 6.12 The proposed roof extension is described as a "single level penthouse on the flat roof, including a roof terrace" within the submitted design and access statement. As well as improvements and upgrading of the external fabric of Fontenoy House, the proposals seek to add the single storey onto a refreshed brick facade, including rendering the ground floor.
- 6.13 The additional floor would be constructed in standing seam zinc and would have large glazed windows, taking the form of a lightweight addition to the existing building.
- 6.14 Having regard to the somewhat bland appearance of the existing building, and taking account of previous decisions, it is considered that the contemporary design approach is acceptable and broadly sympathetic to the appearance of the recipient building and the character and appearance of the conservation area.
- 6.15 The design as proposed incorporates a setback of the additional floor from the existing elevations and this would ensure that the addition would appear subordinate and not dominate the host building.
- 6.16 In terms of its height which is single storey with clear glazed frameless balustrades above and would not appear significantly dissimilar to that which was granted consent under application 13/00989/FUL. The appeal inspector commented that "the additional height would be seen in the context of the variety of height and styles of the surrounding buildings" and that it was not felt that it would "appear overly prominent, particularly as its overall height would still be less than that of No. 60".
- 6.17 The inspector went on to conclude that "the proposed roof extension would not be harmful to the Old Portsmouth Conservation Area, which would be preserved", and therefore it would "comply with Policy PCS23, which requires new development to

be of an excellent architectural quality and to respect the character of the city" whilst "preserving the heritage assets in a manner that is appropriate to their significance."

- 6.18 Given this, and bearing in mind that the proposal just like the appeal case, presented a single storey addition to the host building, it is considered that these assessments are still relevant. Whilst the footprint of this building is slightly increased to the west of the site, the overall, scale and massing is deemed to be acceptable, particularly in view of the fact that the addition will be set in from the perimeter of the host building. In addition, the proposed use of zinc panelling for the elevations represents an acceptable degree of contrast from the existing brickwork, and responds to other material palates found on surrounding properties.
- 6.19 The use large windows creates definition in the proposed elevations and adds articulation and interest to the proposed roofscape. The glazed railing surrounding the roof terrace is also thought to be acceptable in this instance given its design and materials which give off a light appearance in keeping with the rest of the proposal. Overall, it is considered that the proposed development is sympathetic in terms of design and scale to the host building and surrounding buildings, and would not result in detrimental harm to the character and appearance of the Old Portsmouth Conservation Area, or that of the setting of the hot walls, the Square Tower, the Cathedral Church of St Thomas or any other listed buildings.
- 6.20 In considering there is a lack of harm to designated heritage assets resulting from the proposed development, the starting point for the determination of this application in accordance with paragraph 11 (i and ii) of the NPPF is that it should be considered sustainable development as the LPA cannot demonstrate a five year supply of housing, and it would contribute towards meeting housing needs through a net gain of a dwelling.
- ii) Residential Amenity
- 6.21 The application site forms part of a tight knit 'island' of development that has a perimeter block layout with some properties having rear courtyards of varying sizes. Furthermore due to the tight knit pattern of development, the rear elevations of most of the properties are the subject of a relatively high degree of overlooking and benefit from restricted levels of light and outlook. Having regard to the scale and siting of the proposal it is considered that it would not result in such a significant increase in overlooking, loss of light or increased sense of enclosure that could justify a refusal on amenity grounds.
- 6.22 Whilst a development of the type proposed would undoubtedly give rise to some short-term noise and disturbance, this could not be used as a reason to refuse planning permission.
- 6.23 All habitable rooms within the proposed flat benefit from an appropriate level of light and outlook, and the resulting flat has a gross internal floor area in excess of the nationally described space standard for 2-bed, 4 person units, which is 70m<sup>2</sup>.
- 6.24 It is therefore considered that the proposal would provide an appropriate standard of amenity for future occupiers.

- 6.25 The relationship with existing neighbouring properties is considered to be acceptable.
- 6.26 The proposed addition would not increase the sense of enclosure to the communal courtyard, nor is it felt that the proposed flats would introduce a significant amount of noise or nuisance to the area over and above existing levels.
- 6.27 As previously noted by the appeal inspector in application 13/00989/FUL, the need to provide additional areas for bins and secure cycle storage would result in a loss of space within the internal courtyard. The proposal would reduce its usefulness as a private amenity space for residents however, it is considered that a suitable scheme to provide adequate bin and cycle storage, whilst retaining more of the amenity space could be secured by condition.
- 6.28 It remains the Local Planning Authorities consideration that this could be achieved with more consideration so a condition is attached to this recommendation requiring further bin and cycle storage details to be provided and agreed in writing.
- 6.29 The proposed flat would lie within close proximity to the Wellington Public House, and a kitchen extraction system located at the rear of the pub has been noted as a potential concern. The Council's Regulatory Services Officer has commented raising concern about the potential impact of noise and odour on future residents, from the extraction system which serves The Wellington PH.
- 6.30 "The extraction system discharges vertically at above eaves level of the two-storey building it is attached to, approximately 9 metres from Fontenoy House. This will place the efflux point some way below the proposed third floor construction at Fontenoy House. In addition, the prevailing West / South-Westerly winds places the efflux point upwind of the development effectively meaning that odour and smoke discharged from the extraction system will be blown towards the proposed construction. The proposal includes a number of windows on the western façade which, when open, increases the risk of odour impacting on the amenity of the future residents. In addition, the roof terrace is directly west of the efflux point and the impact from odour on the amenity of this space is in question."
- 6.31 The design measures secured within the previous application included a fixed-shut window on the southwest façade in order to afford better protection from potential noise and odour from this extraction system. It is possible in this instance to secure fixed-shut windows along the western elevation, given that all affected windows serving habitable rooms are only secondary windows.
- 6.32 Overall, it is concluded that the proposal would not result in unacceptable harm to the living conditions of the residents of Fontenoy House and neighbouring properties arising from visual intrusion, nuisance or loss of light and amenity space. The proposal would therefore comply with Policy PCS23 of the Portsmouth Plan, which requires the provision of a good standard of living environment for neighbouring and local occupiers as well as future residents and users of development.
- iii) Transport and Parking
- 6.33 The application site is located in a part of the City with a substantial demand for on-street parking from both residents and visitors. Fontenoy House benefits from

limited off-street parking in the form of two garages at ground floor level of the existing building, however there is no scope for any additional parking to be provided as part of this application.

6.34 In the previous appeal for two flats, the Inspector concluded 'that the proposed development would not give rise to unacceptable additional demand for on-street parking.

6.35 The proposal would accord with Policy PCS17, which seeks to reduce the need to travel and provides a sustainable and integrated transport network ". It is also noted the NPPF advises that applications for development should only be refused on transport grounds where the residual cumulative impacts of development are severe. This part of the NPPF remains relevant and there is insufficient evidence in my opinion to demonstrate that this application would result in such a significant effect that it should be refused.

iv) Energy and water efficiency

6.36 Policy PCS15 of the Portsmouth Plan requires new development to be designed to be energy efficient and originally required development to meet specific requirements under the Code for Sustainable Homes. The Ministerial Statement of 25th March 2015 set out that Local Planning Authorities should no longer require compliance with specific levels of the Code for Sustainable Homes (the Code) or to require a certain proportion of the Dwelling Emission Rate (DER) to be offset through Low or Zero Carbon (LZC) Energy.

6.37 Policy PCS15 has required both of these in all new dwellings since its adoption in 2012. However, the Statement does set out that a standard of energy and water efficiency above building regulations can still be required from new development in a way that is consistent with the Government's proposed approach to zero carbon homes. As such, the standards of energy and water efficiency that will be required from new residential development are as follows:

6.38 A 19% improvement in the DER over the Target Emission Rate as defined in Part L1A of the 2013 Building Regulations - Water efficiency - 110 litres per person per day (this includes a 5 litre allowance for external water use). These standards can be secured by condition.

v) Impact on the Solent Special Protection Area (SPA) and Nitrates

6.39 The application site is within 5.6 m of Portsmouth Harbour Special Protection Area (SPA) and will lead to a net increase in residential (2 bedrooms) accommodation.

6.40 The Conservation of Habitats and Species Regulations 2010 [as amended] and the Wildlife and Countryside Act 1981 place duties on the Council to ensure that the proposed development would not have a significant likely effect on the interest features of the Solent Special Protection Areas, or otherwise affect protected habitats or species. The Portsmouth Plan's Greener Portsmouth policy (PCS13) sets out how the Council will ensure that the European designated nature conservation sites along the Solent coast will continue to be protected.

6.41 There are two potential impacts resulting from this development, the first being potential recreational disturbance around the shorelines of the harbours and the

second from increased levels of nitrogen and phosphorus entering the Solent water environment.

#### Wading birds

- 6.42 The Solent Recreation Mitigation Strategy (December 2017) was adopted by Portsmouth City Council on 1st April 2018 and replaces the Interim Solent Recreation Mitigation Strategy (December 2014) and the associated Solent Special Protection Areas Supplementary Planning Document (SPD), which was revoked by the City Council from 1st April 2018. The Strategy identifies that any development in the city which is residential in nature will result in a significant effect on the Special Protection Areas (SPAs) along the Solent coast. It sets out how development schemes can provide a mitigation package to remove this effect and enable the development to go forward in compliance with the Habitats Regulations. Mitigation in this development is considered necessary for the management of the SPA.
- 6.43 Based on the methodology set out within the Strategy, an appropriate scale of mitigation for this development is £487 which the applicant has opted to pay through a S106 legal agreement. With this mitigation, the LPA can conclude that the adverse effects arising from the proposal would be consistent with the requirements of the Solent Recreation Mitigation Strategy. The requirement for a payment to secure mitigation is both directly related to the development and is fairly and reasonably related in scale to the development.

#### Nitrates

- 6.44 Natural England has provided guidance advising that increased residential development is resulting in higher levels of nitrogen and phosphorus input to the water environment in the Solent with evidence that these nutrients are causing eutrophication at internationally designated sites. A sub-regional strategy for the nitrates problem is being developed by the Partnership for South Hampshire, Natural England, and various partners and interested parties. In the meantime, Portsmouth City Council wishes to avoid a backlog of development in the city, with the damaging effects on housing supply and the construction industry, so the Council has therefore developed its own interim strategy.
- 6.45 The Council's Interim Nutrient-Neutral Mitigation Strategy expects Applicant to explore their own mitigation solutions first. These solutions could be Option 1: 'off-setting' against the existing land use, or extant permission, or other land controlled by the Applicant. Or it could be Option 2: mitigation measures such as Sustainable Urban Drainage Systems (SUDS), interception, or wetland creation. If, however, the Applicant sets out to the Council that they have explored these options but are unable to provide mitigation by way of these, they may then request the purchase of 'credits' from the Council's Mitigation Credit Bank. These credits are accrued by the Council's continuous programme of installation of water efficiencies into its own housing stock, and making these credits available to new development.
- 6.46 The Council's Mitigation Strategy sets out that the credit per new unit for non-major schemes will be charged at £200. The credit costs required to mitigate against this scheme in its entirety would therefore amount to £200. Natural England have confirmed they have no objection to the approach of the Council's Interim Strategy, subject to mitigation.



- 6.47 The applicant has provided a statement, which confirms they are unable to provide nitrate mitigation via Option 1 or 2, and they would like to provide mitigation by using the Council's Mitigation Credit Bank. This is accepted in this instance. A condition is attached which prevents occupation of the development until the mitigation is provided, i.e. the credits are purchased. In accordance with the Strategy, the sum charged for the credit will be finalised and secured by way of a Section 106 legal agreement. It is also considered necessary to restrict the time implementation (condition) limit to one year, given the limited availability of Council mitigation 'credits'.
- 6.48 Therefore, the nitrates mitigation will be provided, by way of the condition and legal agreement, and subject to further consultation with Natural England. Subject to these matters, the development would address the nitrate impact on the Solent Special Protection Areas.

#### Conclusion.

- 6.49 The site is well-located within the urban area for a range of shops, services and public transport and is acceptable in principle for residential development. The development would provide the benefit of contributing towards the city's housing supply, which currently does not meet the 5 year requirement. Nearby residents' amenities would not be unduly affected and it is considered that scale and design is appropriate, including with respect to heritage assets. In addition, appropriate mitigation has been made to safeguard the Special Protection Areas. As such, the proposal constitutes sustainable development, and complies with the NPPF and the Local Planning Framework, and therefore should be approved.

## **RECOMMENDATION**

**RECOMMENDATION I** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to satisfactory completion of a Legal Agreement to secure the following:

- SPA nitrate mitigation
- SPA recreational impact mitigation

**RECOMMENDATION II** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to add/amend conditions where necessary, and;

**RECOMMENDATION III** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to refuse planning permission if a Legal Agreement has not been satisfactorily completed within three months of the date of this resolution.

## **CONDITIONS**

### **Time limit**

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.  
Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

### **Approved plans**

- 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: 22/12/P/03A, 22/12/P/04, 250 A, 251 A, 252 A, 253 A, 254 A, 255 A, Photo Montage 1, Photo Montage 2, Photo Montage 3.

Reason: To ensure the development is implemented in accordance with the permission granted.

### **Materials**

- 3) No development shall commence on site until details of the types and colours of the external materials to be used have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of the visual amenities of the area, designated as the Old Portsmouth Conservation Area, in accordance with policy PCS23 of the Portsmouth Plan.

### **Windows**

- 4) The proposed windows shown in the western elevation of the additional floor shall be fixed shut and so maintained for the life of the development.

Reason: To protect the amenities of future residential occupiers of the approved development in accordance with Policy PCS23 of the Portsmouth Plan.

### **Bin and Cycle storage**

- 5) Details of an alternative scheme to that shown on Drawing No: 22/12/P/12A to provide bin storage and secure, weatherproof cycle parking shall be submitted to and approved in writing by the local planning authority. The scheme will be implemented in accordance with the approved details prior to the first occupation of either of the flat hereby permitted. It shall be retained thereafter for the continued use by the residents of the flat for those purposes at all times.

Reason: To ensure adequate provision is made for waste and cycle storage, in the interests of the amenities of future occupiers of the development and to accord with Policy PCS23 of the Portsmouth Plan.

### **Energy and Water Efficiency**

- 6) The development hereby permitted shall not be occupied until written documentary evidence has been submitted to, and approved by, the local planning authority, proving that the development has achieved: - a minimum of a 19% improvement in the dwelling emission rate over the target emission rate, as defined in The Building Regulations for England Approved Document L1a: Conservation of Fuel and Power in New Dwellings (2013 edition). Such evidence shall be in the form of an As Built Standard Assessment Procedure (SAP) Assessment, produced by an accredited energy assessor; and - a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a post-construction stage water efficiency calculator.

Reason: To ensure that the development as built will minimise its need for resources and be able to fully comply with policy PCS15 of the Portsmouth Plan.

## **Nitrates Mitigation**

- 7) The development hereby permitted shall not be occupied until a scheme for the mitigation of increased nitrogen and phosphorus levels resulting from the development has been (a) submitted to, and approved in writing by the Local Planning Authority, and (b) implemented in accordance with the approved scheme with any mitigation measures thereafter permanently retained.

Reason: To ensure that the development would not have an adverse effect on the integrity of the Solent Special Protection Area in accordance with Policy PCS13 of the Portsmouth Plan, the Conservation of Habitats and Species Regulations 2017 [as amended] and the Wildlife and Countryside Act 1981.

### **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 and did not therefore require any further engagement with the applicant.

**ST HELENS PAVILION EASTERN PARADE SOUTHSEA****CONSTRUCT DISABLED WC EXTENSION, CREATION OF CHANGING ROOM FACILITIES, IMPROVEMENT OF SCORERS BALCONY AT FIRST-FLOOR LEVEL AND EXTERIOR ALTERATIONS****Application Submitted By:**

Mr Rick Marston

**ON BEHALF OF**

Portsmouth Cricket Club

**RDD:****LDD:****EOT:****1.0 SUMMARY OF MAIN ISSUES**

1.1 This application is brought to the planning committee for determination as the land is in the ownership of Portsmouth city council and it is in the interests of the public for the application to be determined by the Planning Committee

1.2 The main issues for consideration in determination of the application are as follows –

- principle of development
- design and character
- conservation
- flood risk

**2.0 SITE AND SURROUNDINGS,**

2.1 This application relates to a cricket club located to the south of Eastern Parade within part of the seafront commonly referred to as Canoe Lake. The site comprises of ten grass tennis courts, 4 artificial surface courts and 2 hard courts and a large modern pavilion to its western end which was completed in 2019. To the west, the site is bounded by a public footpath lined with a number of semi-mature Holm Oaks, to the north by Eastern Parade and to the south by a large hedge with landscaped gardens beyond.

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

2.3 The wider Canoe Lake area comprises a range of leisure uses and attractions including a boating lake, child play areas, a museum, model village, artificial and hard surface tennis courts, basketball court, cricket club, 9-hole golf course, formal gardens and large open grassed areas popular for sporting and recreational activities. There are also a number of small tearooms, cafés and a day nursery. A mix of residential properties along Eastern Parade forms the backdrop to the seafront and marks the boundary between the open character of the coastline and denser residential development to the north.

Generally the Canoe Lake area has a pleasant verdant character with an air of spaciousness provided by large areas of open space. This is however, reduced to the south of the application site where a mixture of hedges and fences divide the various recreational uses, and views towards the sea are obscured by the partially dismantled Lumps Fort.

### **3.0 DESCRIPTION OF DEVELOPMENT**

- 3.1 The application seeks planning permission for the construction of a disabled wc extension, creation of changing room facilities, improvement of scorers balcony at first-floor level and exterior alterations. The works are required in connection with the expansion of the girls/women's section of the club.
- 3.2 A number of the changes are internal relating to improved facilities for which planning permission is not required. Externally the existing first floor scorer's balcony will be brought forward and extended with balustrading, an exit will be blocked and the existing entrance will also be brought forward. A small extension at ground floor will allow provision of a disabled toilet. The existing softwood cladding will be replaced with Hardie Plank and rendered exposed brickwork.

### **4.0 RELEVANT PLANNING HISTORY**

- 4.1 There is a long history associated with the open air recreational use of this site. Most recently, the following decisions were made -
- i. 16/00493/PLAREG - retrospective application for erection of outbuilding for storage (refused)
  - ii. 16/01979/PLAREG - retrospective application for erection of outbuilding for storage (approved)
  - iii. 09/00120/FUL - Installation of permanent cricket nets (approved)

### **5.0 POLICY CONTEXT**

- 5.1 In addition to the aims and objectives of the National Planning Policy Framework (NPPF), the relevant policies within the Portsmouth Plan would include: PCS9 (The Seafront), PCS13 (A Greener Portsmouth) and PCS23 (Design and Conservation).

### **6.0 CONSULTATIONS**

- 6.1 Environment Agency - no comments received.
- 6.2 Eastern Solent Coastal Partnership - Coastal Partners have no objection in principle to the proposed development. The site is currently located just within the Environment Agency's present day Flood Zone 1, and is predicted to remain so until 2115. Therefore it can be considered at low risk (less than 1 in 1000 year / 0.1% annual probability) of experiencing an extreme tidal flood event.
- 6.3 For information, the present day 1:200 year extreme tidal flood level for Portsmouth Harbour is 3.2mAODN, increasing to a predicted 4.3mAODN by the year 2115 (design tide level), due to the effects of climate change.
- 6.4 The applicant has submitted a Flood Risk Assessment (FRA) which sufficiently outlines how residual flood risk at the site will be mitigated. The FRA states that floor levels will be set no lower than existing levels and that there is no overnight accommodation proposed. It is also stated that flood proofing of the proposed development has been incorporated where appropriate, but the FRA does not provide further details on this.

- 6.5 The proposed alterations to St Helens, Pavilion Eastern Parade, Southsea does not change the 'less vulnerable' classification of the development.
- 6.6 Natural England - considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.

## **7.0 REPRESENTATIONS**

- 7.1 Neighbours were consulted for a period ending 26/02/2021. By the end of the period two representations expressing support for the proposals were received.

## **8.0 COMMENT**

- 8.1 The main considerations within this application are:
- a) whether the principle of the development is acceptable with regard to the loss of protected open space;
  - b) whether the design is acceptable in relation to the recipient building and wider streetscene;
  - c) whether it preserves or enhances the character and appearance of 'The Seafront' Conservation Area; and,
  - d) whether the building would impact upon the setting and special character of the Grade II registered park (Southsea Common).
  - e) flood risk

### Principle

- 8.2 The most notable and distinctive feature of this conservation area is that it is almost entirely open space. Much of this space is very open but there are several distinct areas within the seafront area including several sheltered areas with a more enclosed character. The open aspect of the seafront means that it affords views out to sea to residents and visitors including views towards Haslar, Gilkicker, the Isle of Wight, and out to sea towards the sea forts & Nab tower. This development would result in the loss of 4 4.6 s.q.m. of protected open space which is largely in the form of infill development and is not considered to be significant in the context of a building of 172.4 sq.m.
- 8.3 Policy PCS13 of the Portsmouth Plan states that: 'The City Council will work collaboratively to protect, enhance and develop the green infrastructure network in the following ways: Refusing planning permission for proposals which would result in the net loss of existing areas of open space and those which would compromise the overall integrity of the green infrastructure network in the city, unless there are wider public benefits from the development which outweigh the harm'. The supporting text to this policy states: 'There is a great deal of pressure on Portsmouth's green infrastructure network from increasing population numbers to climate change and the need for new development sites. The city lacks suitable spaces to provide additional green infrastructure assets to absorb this pressure. Therefore the council's priority will be to focus resources on protecting, enhancing and linking together the existing network. There will be a presumption against any development involving the net loss of open space unless there are wider public benefits that outweigh the harm of this loss'.
- 8.4 Policy PCS9 and the supporting Seafront Master Plan Supplementary Planning Document seek to ensure that all new development contributes towards the revitalisation of the Seafront, tourism and wider regeneration strategy for Portsmouth. This will be achieved by, but not limited to: encouraging and supporting the redevelopment of existing buildings for leisure and tourism uses; encouraging and supporting proposals for small scale restaurants, cafes and other uses that will diversify the leisure and cultural

offer without detracting from the open character of the seafront; and protecting the open nature of the area around the Common and other undeveloped areas.

- 8.5 Portsmouth Cricket Club is the current occupier of St Helens Pavilion after taking a long term lease from the City Council to provide high quality recreational sporting facilities for members and maintaining the grounds of the club to enable the playing areas to be of a professional standard. In the context that this represents modernisation and improvement of an existing open air facility and the modest nature of the additional development, the principle is considered to be acceptable.
- 8.6 The extensions are either at first floor or are modest infill extensions at ground floor only. In this case, it is considered that there is sufficient benefit in allowing the marginal loss of protected open space to enable Portsmouth Cricket Club to provide its service to local communities

#### Design and heritage

- 8.7 When determining applications in conservation areas or affecting registered parks, the local planning authority (LPA) must have regard to Section 66 of the Listed Buildings and Conservation Areas Act 1990 (as amended) which states: 'special regard shall be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses' and at s72 which states: 'special attention shall be paid to the desirability of preserving or enhancing the character and appearance of the conservation area.
- 8.8 The existing cricket club comprises a mixed brick and painted timber built flat roofed structure that occupies the north-west corner of the St Helens Field Cricket Ground and the club store a number of items ancillary to its use around this building. There is some mesh screening on the boundary fence to reduce the appearance of items contained within the grounds of the cricket club.
- 8.9 The proposal relates to the use of sympathetic materials, notably external cladding that would blend the appearance of the alterations into that of the main building The proposal is considered to preserve the character and appearance of the conservation area.
- 8.10 The site is also in close proximity to the Grade II registered Park (the Southsea Common) and due to the sympathetic materials that would be used, their colour and acceptable relationship with the existing building, it is considered that the structure or use of materials would not result in harm to the setting of this Grade II listed park.
- 8.11 In conclusion it is considered that the development preserves the character and appearance of 'The Seafront' Conservation Area; and would not impact upon the setting and special character of the Grade II registered park (Southsea Common).

#### Flood risk

- 8.12 The applicant has submitted a Flood Risk Assessment (FRA) which sufficiently outlines how residual flood risk at the site will be mitigated. The FRA states that floor levels will be set no lower than existing levels and that there is no overnight accommodation proposed. It is also stated that flood proofing of the proposed development has been incorporated where appropriate
- 8.13 The proposed alterations to the pavilion do not change the 'less vulnerable' classification of the development and it is concluded that no material issues relating to flood risk arise

#### Conclusion

- 8.14 The development accords with the general principles and objectives of the Local Plan and the NPPF and also with matters of local character, nearby residential amenity, heritage and flood risk. As such the application is recommended for approval.

## **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: PCC100;05A;06C;07A;08D;09C
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match, in type, colour and texture those on the existing building.

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 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.



**From:** Homes England  
**Sent:** 16 February 2021 17:26  
**To:** Dunn Lwin, Simon; Ekeledo, Eze; Maguire, Ian  
**Subject:** ST JAME'S HOSPITAL CURTLAGE ISSUE

Dear Simon

In response to the opportunity to comment on this issue by 16 February.

Homes England has commissioned Feilden Mawon to consider the merits of curtilage listing the Fairoak and Beeches villas and to comment on the opinion and evidence provided by the Milton Neighbourhood Forum.

Their evidenced report attached concludes that:

- These buildings were not part of the original historic planform but were much later additions to provide for a change in medical practice.
- They have been considered for independent listing and rejected and were not included in the description of the historical when it was listed.
- They are undesignated assets of limited significance, neither architecturally distinguished or historically important as innovative buildings of their type.
- Potential association with designated heritage assets St. James Hospital and the Chapel has been assessed, the two Villas do not affect the setting or significance of either asset.

The evidence has been reviewed by Pinsent Mason who conclude *that "it is clear that the Villas do not meet the tests for them to be considered as 'curtilage listed' to the main hospital building and chapel"*

I should be grateful if you would draw the attention of the planning committee to the Pinsent Mason letter, the Feilden Mawson report and the evidence supporting the conclusion when they consider the curtilage listing issue.

Homes England submit that there is insufficient evidence to support curtilage listing and ask that the committee reject this proposal.

Regards

**Peter Wynn**  
Senior Planning and Enabling Manager Dip TP MRTPI

**Sent:** 16 February 2021 16:26

**To:** Dunn Lwin, Simon; Ekeledo, Eze

**Subject:** Curtilage Listing of Villas at St James' Hospital

Dear Simon

The QC's last advice to PCC (first attachment for convenience) says at para 3 he didn't think at first, the degree of physical and functional connection was sufficient between the Villas and the main Hospital to warrant either Villas being considered as Curtilage Listed within it. He says at para 4 we "subsequently" provided PCC with more information. We had provided PCC in May 2018 with about as much information as they should reasonably be expected to receive to question the authenticity of the applicant's HIA and make their own checks including with Historic England's Guidance of 2018.

The QC has referred you to the 1990 Act in relation to structures within the Curtilage and referenced the "Calderdale" Case as the principal for the discretion in granting or withholding Listed Building Consent.

The issue for us is that PCC has not followed the usual process for determining whether or not to grant or withhold LBC, by advising the applicant there is no need for Prior Approval to demolish the buildings.

In his reference to the "Hampshire" case, the QC is referring you to the interest of the Hospital which for St James' is as a Victorian Asylum and Listed for its special architectural or historic interest as is the Chapel some 25-30m from either building. He refers you to the "ancillary test" to distinguish between excluding unrelated buildings and including those with a close relationship to the main Listed Building, where the loss of which adversely affects the interest of the main building.

The second attachment is our further evidence to support our claim these buildings are Curtilage Listed and that their loss adversely affects the interests of the main building.

Please acknowledge receipt:- it is a fairly large attachment.

We want to make it absolutely clear; the landscape and the tree screening is at the root of their essence in providing improvements to mental health care as part of the late Victorian and early 20th Century's increased knowledge of psychiatric therapy and not the means to disassociate them from the main Building. The boundary wall is deemed Curtilage Listed and that too is disassociated in the landscape from the main Hospital with trees, open spaces and buildings in between. The Villas themselves having been designed and built by the apprentice to the Hospital's main architect is of historic significance as is their design to afford south facing views within a verdant and landscaped setting consistent with the main Hospital's design to maximise daylight.

The field boundary running north/south and the trees and bushes running east/west along Woodlands Walk had already been planted. It would have been counter-intuitive to have erected these buildings in a poorer location less able to benefit from the tranquil landscape and yet still be in such close proximity to the main Building and Chapel to share staff and services.

The value of the Villas should be considered from the south rather than from "Woodlands Walk" because, as with the Hospital main building itself, later 20th Century "service" additions pre-Listing, were introduced to the north elevations under Crown Development exemptions.

These pair of Villas, and the pair to north, also built by Cogswell in 1907/1908, all face south and were recommended by Historic England's adviser to our Neighbourhood Plan, Robert Lloyd-Sweet, to be treated for their "Group" contribution to the setting of the Hospital.

We will be pleased to hear from you with your comments, and we would of course, welcome another joint meeting with the QC if further clarification is needed.

We consider it more appropriate to request the applicant submit a Listed Building Consent application in order that the public be able to comment and make representations.

Kind regards

Rod Bailey  
Chair Milton Neighbourhood Planning Forum

16 February 2021

## INTRODUCTION

Robert Walton QC 27<sup>th</sup> May 2020 At para 23 “the Council’s case Officer will need to review the evidence underpinning the competing assertions and form a view as which to accept.”

These notes seek to inform clarify and sharpen the differences between the competing assertions.

The Fielden + Mawson Heritage Impact Assessment (HIA) of February 2018. Prepared by Ruth Morrison

Relies in the main upon

A built heritage assessment for Phase 1 Land prepared by Cotswold Archaeology.<sup>i</sup>

An Archaeological Desk-Based Assessment (DBA) by Cotswold Archaeology

Is this the correct attribution as the DBA quoted at pages 19-20 is from a 2012 DBA by RSK and produced for Portsmouth City Teaching (PCT)!

Regardless, it is instructive in that “*the extant Light Villa in the western part of land parcel B being the first to be constructed (most likely along with the other northern villas in 1907, although this is not specifically mentioned in Purvis’ account), followed by Gleave Villa (now demolished) in its western part in 1931.*”

That date should have spiked the researcher’s interest. Specifically, the published date of 1910 2nd OS which post-dates the survey revision of 1907 which would not have captured the Cogswell villas which we will show were building in 1907.

This simple oversight permits the HIA to construct a narrative to the detriment of the villa’s significance.

The built heritage assessment upon which the HIA narrative relies.

They can be more precisely dated to the period 1926-1932 as they were constructed as a result of Dr. Thomas Beaton’s innovative approaches to mental health, which occurred after 1926 (Freeman 1962). Evidence suggests that it is likely that they post-date 1928 as documentary evidence details that.

*“From about 1928, changes began to be made in the mental hospital....The gates were removed, the front door unlocked and some wards opened.”*

The Source is Hugh Freeman’s article for the March 1962 ‘Medical Officer’ was abbreviated and given a local perspective by the author of the St James Hospital Journal 1962 September. It is this online document that is mined

<http://historyinportsmouth.co.uk/events/beaton-track.htm>

Closer reading shows “*From about 1928* refers to merely the name change an event hardly noteworthy for the date\* but of local interest. (\*see Cefn Coed 1923 and West Ham 1918 mental institutions).

It is misleading to elide the above from the author of the St James Journal with the following

*The gates were removed...* from a Board of Control Report of 1936!

Enoch Powell delivered his 'Water Tower' speech sounding the death knell for Mental Institutions in 1961 and by extension care in the community. Dr Hugh Freeman was a prominent psychiatrist and historian of psychiatry and his interest in Thomas Beaton relates to their shared promotion of out-patient care which both did much to advance.

Beaton was undoubtedly an innovator and a well-loved superintendent at the hospital. To suggest *they were constructed as a result of* is a huge leap of faith they were constructed as a result of the 1913 Mental Deficiency Act.

## PHYSICAL LAYOUT

### Background

The drowned valleys of the Hampshire Basin have given rise to a series of north south aligned islands interspersed with bottle shaped harbours.



Looking East Gosport, Portsea and Hayling Island and Selsey Bill

On Portsea Island trackways connect the mainland to the sea following a north-south grain the frame for the island's development.

To the west of the island strip farming remained viable into the 19th century whereas most of Milton's farmland had been enclosed before the final enclosure acts.

The marginally higher ground was let to tenant farmers the marshy ground to the east was common grazing. To the north farmland reached down to the open waters of Milton Lake, to the south the ill-starred Portsmouth Arundel Canal provided a boundary. A path south from Milton Lake foreshore gave access to the farmlands it continued as a field boundary along the line of Mayles Road the western extents of the land that would be purchased to build the asylum.

The farmland had a central division holding to the higher ground it can be identified within the hospital by the line of Woodlands Walk its sinuous trajectory suggests its antiquity. Two further field boundaries existed prior to development notably the north-south alignment that will become Chapel Way with a continuance south to Locksway Road.

This was the rural setting upon which St James and its enhanced landscape was laid out remote, private, and secure.

It is an artificial construct to divorce a buildings function from its physical location particularly within a designed landscape that from its outset was built to be adaptive to advances in medical provision.

Outlined above the extents of the hospital estate. As built the Hospital was flanked to the east and west of the airing courts by the farmlands of the Goldsmiths, to the south a cricket table was laid out and to the north the asylum home farm ran down to the open waters of Milton Lake.

The hospital was oversubscribed from the outset and had already undergone three campaigns of expansion (see function) before in 1905 four detached pavilions were planned. Removed from the main build their function was entirely ancillary to that of the main build.

Land to the east of the chapel was still farmland and the 1885 Sanatorium's location and function precluded development on the grounds of symmetry and health, respectively.

The commissioners then chose for their new villas the only suitable location that gave access to the hospital's service wing where meals could be prepared and transported in wagons to the new villas.<sup>ii</sup>

In keeping with established best practise these villas (pavilions) would face south and were positioned asymmetrically to the north east and south east of the hospital.

To the north-east two pauper villas for working chronic patients who would work the home farm.

To the south-east two villas private fee-paying patients were in keeping with their social status, afforded a degree of privacy nestled behind the tree lined Woodland Walk.

Each villa was identified by name the private villas after eminent Victorians with local connections, (Isambard Kingdom) Brunel and (Charles) Dickens, the working villas after local dignitaries associated with the asylum, (Sir William) King and (Mayor William) Pink.

As completed in 1907-08 the villas formed part of a discreet group of ancillary buildings that included the chapel and the sanitorium.

The trees existing in 1905 were part of the original designed landscape beloved by asylum planners. From the outset a rectangular stand of trees occupied the west side of Chapel Way at its junction with Woodland Walk. Designed as a green counterpoint to the simple flint built neo-Gothic Early English chapel. To this day Woodlands Walk still provides a bucolic processional walk from the hospital before the reveal of the chapel. A deliberate and therapeutically comforting counterpoint to the grandeur of the main block. There is no sense that these trees are a screen for the yet to be constructed villas.



Stand of Trees to the North of the future position of Dickens Villa.  
OS 1907 Revision Published 1910

A metal gate of some antiquity west of the stand of trees still exists. This would have provided staff access from the main hospital's Beaton Block onto Woodlands Walk close by the most westerly of the villas.

Upon the death of the last of the Goldsmith family in 1911 the sizeable estate was broken up and sold off. To the west of the hospital land was purchased by speculative builders who by 1914 had built the long rows of terraced housing that characterises much of Milton.

The asylum doubtless not wishing to be surrounded by housing purchased 28 acres of land to the east and an isolation hospital was erected in 1912, this completed the homogenous built estate at the time of the Mental Deficiency Act of 1913. <sup>iii</sup>



## FUNCTION

### Background

Mental illness was for centuries regarded as a spiritual affliction rather than a medical one capable of treatment.

The function of the asylum can be seen to change over time and those changes can be traced through the designs used to deliver the care the society of the day deemed appropriate.

Historic England groups asylums thusly Conglomerate, Corridor, with the Pavilion as the third and final stage.

Prior to the County Asylum Act of 1808, provision had been a chaotic mix of gaols, houses of correction, poorhouses, and private mad houses. The 1808 act instructed county magistrates to build asylums for county paupers. The few large asylums that were built employed the disciplinary concept exemplified by Jeremy Bentham's panopticon.

The 1845 Asylum Act compelled counties and Hampshire Knowle 1853 was built on the corridor plan with a central administration block flanked on either side by long corridors.

Overcrowding and poor sanitation at the Scutari Military Hospital (Crimea) as reported by The Times led to a public outcry and a call for a civilian response. It was I K Brunel's 'magnificent huts' of Nightingale fame that were to translate after the war into a breakthrough in hospital design.

PAPHE<sup>iv</sup> adds the echelon and the colony to explain the evolving placement of the pavilion within the hospital estate.

Locally, Portsmouth and Southampton were exempted from contributing to building Knowle. Instead, they continued to place their pauper lunatics separately but within the workhouse. By 1867 the Lunatic Commissioners pressed Southampton that they would require the borough to erect an asylum of its own, or conjointly with Portsmouth.<sup>v</sup>

Southampton built a better workhouse.<sup>vi</sup>

Portsmouth Borough's response was more generous.

The St James Asylum of 1879 by George Rake was built on the favoured corridor pavilion design in a remote rural location distant from the expanding town. Its south facing aspect and designed landscape were part of its therapeutic ambience. Its dramatic Byzantine Gothic styling echoes the High Victorian Country House in contrast to the utilitarian foreboding of the workhouse.

As the two ports cities grew exponentially in the late 19<sup>th</sup> century the failure of both Southampton borough and the County to build a third asylum in Hampshire meant that pauper lunatics, particularly from Southampton, were housed in Portsmouth.

By way of response additions were made to the main building in 1882, 1892 and 1896<sup>vii</sup>. The latter is particularly noteworthy as A E Cogswell apprenticed to Rake in 1879 used

angled extensions on both sides of the central block. His work here mirrors that of the pre-eminent asylum designer G T Hine's whose innovative compact echelon design of the early 1890s was to dominate asylum building to WW1. In short, pavilions are laid out in an arrowhead shape plan so more patients could enjoy a south elevation or a fine view which is what Cogswell achieved at St James.

The final stage in hospital design to which these Cogswell villas belong is the colony plan. Here the ward pavilions typical of the echelon model are detached from the main build, reduced in size to accommodate fewer patients, and placed within a designed landscape.

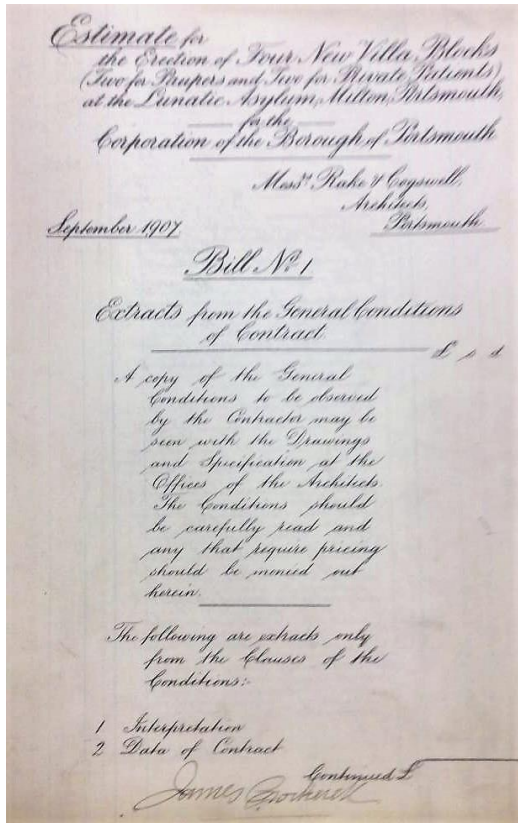
The colony system as employed by architects working with the psychiatric profession were introduced in Austro-Hungary. The restorative benefits of separation and independence inherent in the plan were rapidly adopted in much of Europe and the USA.

Hine as the country's leading asylum's architect had advocated for detached pavilions (villa) as providing the best chance of recovery.<sup>viii</sup>

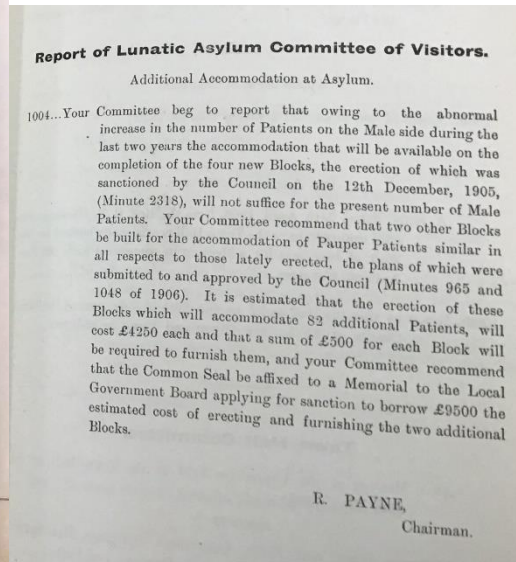
However, the perceived failings of the nation in subduing the Boers cast a pall over the psychiatric profession which was besieged by a rising tide of pseudoscientific thinking (eugenics).

London County Council by some degree the largest single client for Hine designed asylums felt defectives were too difficult to be accommodated in villas and his suggestions were ignored.

It is in this context then that remarkably then when further expansion was required Cogswell's argument for villas proved sufficiently convincing and commissioners sanctioned the building of four villas on the 12<sup>th</sup> December 1905.<sup>ix</sup>



1907 Tender for Four Villas



1907 Request for two further villas

As with the original build the philanthropic hand of freemasonry maintained the Borough's preference for quality over cost.<sup>x</sup> The villas were built to a high standard and with a moral purpose predicated on recovery. Their function was to provide extra capacity in this instance for 152 patients. Meals were to be supplied by the main kitchen and transported to the villas in special food wagons.<sup>xi</sup>

Even before their completion the Committee of Visitors warned that the four villas would not be able to meet demand. They requested that two further pauper villas would be required.

Oversubscription ceased to be an issue when finally, the 2<sup>nd</sup> County Asylum opened at Park Prewitt Basingstoke. It had been planned for from as early as 1899 with Hine as the architect but a series of delays meant that it was completed after the WW1 to an altered design that reflected the changes brought about by 1913 Mental Deficiency Act.

The 1913 Mental Deficiency Act enacted the recommendations of the 1908 Royal Commission on the Care and Control of the Feeble-Minded, that sought to improve the nation by placing some 65,000 feeble-minded in mental deficiency colonies.

The demolished villas Light of 1927 and Cleave and Devine of 1930<sup>xii</sup> that the HIA describes are indeed imitative and conservative villas and are a response, albeit, much delayed to the 1913 Act.

By contrast the vernacular-style employed by Cogswell bears a close resemblance to the emerging contemporary garden city style. It is no coincidence that the villas share a similar planning device: social improvement through architecture. They have the feel of a

commodious suburban villa and their clean uncomplicated lines provide an interesting and deliberately quiet ambiance.

The reader of the HIA could be forgiven for readily dismissing the villas given that the only views from are from the north the service side. A shame then that the HIA site visit 8/9/2014 were unable to include views from the therapeutically important sunny south facing side.



Dickens Villa The therapeutic sunny south facing side.

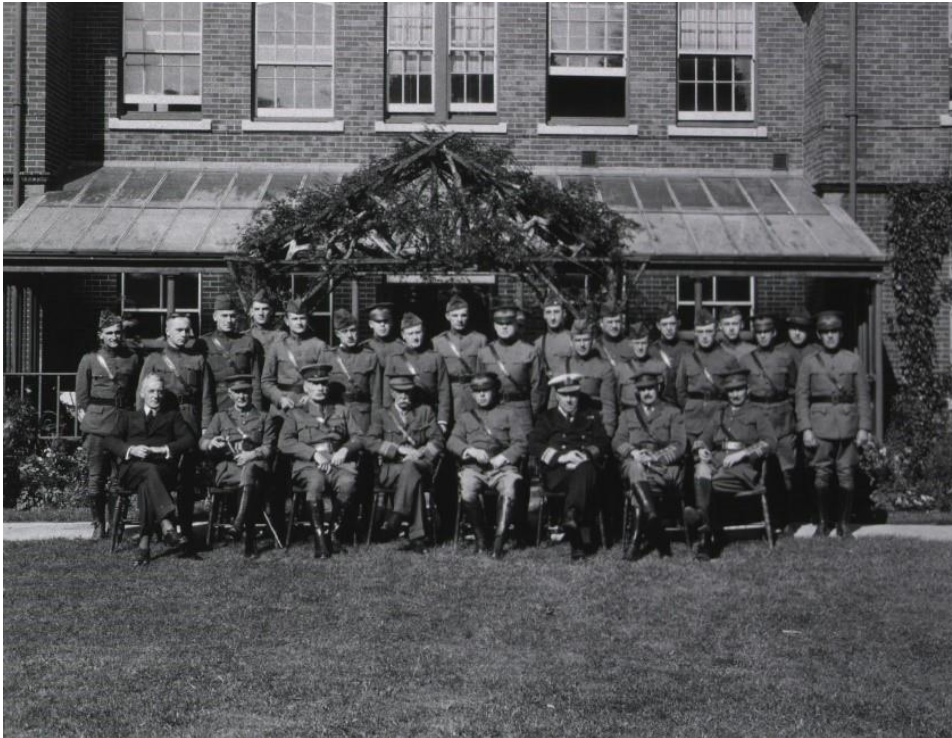


Dickens Villa 2017

## SIGNIFICANCE

The villas setting contributes to the significance and value of the listed hospital and chapel.

Community cohesion will be promoted by championing local heritage and honouring its local distinctiveness and character to thriving communities. The villas have a diverse history and diverse range of users and was occupied by the US 33<sup>rd</sup> Army Hospital toward the end of WW1. Pertinent given that US practitioners were at the forefront of understanding the neurosis caused from being under fire.



The villas architect A E Cogswell was Portsmouth's leading architect during the period of its greatest growth over a remarkable five decades. Eight of his buildings are listed nationally and 21 locally despite this much of his work has been lost to bombing and injudicious planning. The vernacular-style employed by Cogswell here bears a close resemblance to the emerging contemporary garden city style its preservation would be locally important and add to his oeuvre.

Historically the villas attest to the highwater mark of psychiatric advancement in England. There is probably no institutional landscape in England that can so clearly chart the later stages of the evolution of the mental hospital design within its still surviving landscape.

The villas at St James are close to their hospital and tell the story of meeting expanding local demand in an enlightened way echoing the colony ideals that were deliberately eschewed as unsuitable for the nations feeble minded.

GT Hine did manage to place a few villas into his large LCC echelon designed asylums. The very few survivals are removed from their hospital and illegible within a sea of development.

Culturally the villas have a national and local importance. The Royal Academician Edward King was an inmate of one of the villas 1925-51 from where he painted many views of the hospital and was commissioned to paint the devastation reeked on the city by enemy bombing.



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<sup>i</sup> The author of this note wrote to Cotswolds Archaeology requesting their 2014 research. a 2<sup>nd</sup> request 6<sup>th</sup> April 2018 after permission to demolish had been given. 30<sup>th</sup> May 2018 I was informed that "our client has not consented to its distribution".

<sup>ii</sup> G Purvis. *The History of St James' Hospital (1879-1977)*, unpublished document, Portsmouth History Centre ref 362.11

<sup>iii</sup> Kathryn Morrison 1991-1995 RCH01/008 RCHME's survey of historic hospitals

<sup>iv</sup> Present and future of European hospitals heritage

<sup>v</sup> *The Builder* 1868 Volume 26 p.235:

<sup>vi</sup> Susan Margaret Barr 2003 'Fit Objects for the Asylum' *The Hampshire County Lunatic Asylum and its Patients, 1852-1899*. PhD Southampton University Faculty of Social Sciences p 62

<sup>vii</sup> Kathryn Morrison *ibid*

<sup>viii</sup> George T. Hine, „Asylums and Asylum Planning“, *Journal of the Royal Institute of British Architects*, 23 February 1901, pp. 161-84.

<sup>ix</sup> Lunatic Asylum Committee of Visitors 1905 (Minute 2318)

<sup>x</sup> Susan Margaret Barr *ibid*, pg64

<sup>xi</sup> G Purvis. *The History of St James' Hospital (1879-1977)*, unpublished document, Portsmouth History Centre ref 362.11

<sup>xii</sup> Kathryn Morrison *ibid*

## **In Support of Curtilage Listing**

### **Introduction**

The Milton Neighbourhood Planning Forum believes that the Edwardian Villas associated with the care and treatment of mentally ill patients within the estate of the Grade II Listed Victorian Asylum, St James' Hospital, should be considered as curtilage listed. This is contrary to the advice presented to Portsmouth City Council by an appointed QC.

This paper seeks to provide further evidence and information to fully demonstrate why the villas should be considered curtilage listed. There are three key factors considered when determining curtilage listing: ownership, physical layout, and function. This paper focuses on the latter two as there is no contention over the ownership status of the villas either now or in the past.

### **Historic Context**

Arthur Edward Cogswell 'hospital architect', prolific over five decades in Portsmouth and Hampshire, worked with George Rake, in 1879, on building the main hospital, and was then responsible for most of the extensions, and was still flourishing with the construction of the mortuary in 1932.<sup>1</sup>

Established best practise sited hospitals in an elevated location to face S or SE<sup>2</sup>. Sunshine was recognised as important for the patients' therapy<sup>3</sup>. Equally important was that 'cleansing north winds' would have the greatest impact to the rear of the wards. St James was no exception to this orthodoxy. So, it is of no surprise that Cogswell should build his four villas also with south facing aspects. Built in an Arts and Crafts style their design included verandas that further maximised the restorative properties of the sun.

They were built in 1907 as opposed to the later villas of 1927 and 1930 which were built as directed by the 1913 Mental Deficiency Act.

### **Physical Layout**

Physically the villas are part of a suite of ancillary buildings that included sanitorium, isolation ward and chapel and were within 30 metres of the male airing courts that were integral to the original hospital design. The site is a palimpsest with the under-lying field system contributing to the creation of the designed landscape. The villas are placed within that landscape. Fielden and Mawson states that "Significant landscaping including mature trees"<sup>4</sup> this suggests landscaping other than trees – there was not. It should also be borne in mind that the land at the SE corner of the hospital was until the mid-1950's occupied by one of the male airing courts, and that trees and bushes encountered here are later introductions. In keeping with the country house idiom tree planting was used extensively to recreate a series of sylvan avenues with the express intention of connecting not separating elements within the hospital estate.

### **Function**

The villas function was to provide extra capacity in this instance for 152 patients. Meals were to be supplied by the main kitchen and transported to the villas in special food wagons.<sup>5</sup> Oversubscription had been an ongoing issue from the hospital's opening. The failure of both Southampton borough and the County to build a third asylum in Hampshire meant that pauper lunatics, particularly from Southampton, were housed in Portsmouth. As the two ports cities grew exponentially in the late 19<sup>th</sup> century the problem became acute. Additions made in 1882, 1892 and 1896<sup>6</sup> before the villas, and a further two villas, were proposed immediately after the 1907 build.<sup>7</sup> Oversubscription ceased to be an issue when the 2<sup>nd</sup> County Asylum opened at Park Prewitt Basingstoke in 1921.

The highest tender of £22,025 was accepted for the villas and they were built to a high standard and with a moral purpose that was predicated on recovery and continuing the Asylum's preference for quality over cost.<sup>8</sup> The county's leading asylum's architect, George T Hine, had advocated for villas as providing the best chance of recovery.<sup>9</sup> London County Council by some degree the largest single operator of asylums felt defectives were too difficult to be accommodated in villas and Hine's suggestions were ignored. Remarkably then in Portsmouth it would appear that the architect's argument for villas proved sufficiently convincing.<sup>10</sup>

It is important to again visit the Heritage Impact Statement at pg. 17

Revisions to the 2<sup>nd</sup> edition OS are based on surveys made in 1907 and would not have captured the building of the villas. The publication dates of OS maps are not to be relied upon when accurately ascribing building dates and consultation of Historic England's archive would have been useful in this regard.

Compounding this lacuna with the story of Dr Thomas Beaton's benign local innovations is charming but naïve. The 1913 Mental Deficiency Act enacted the recommendations of the 1908 Royal Commission on the Care and Control of the Feeble-Minded, that sought to improve the nation by placing some 65,000 feeble-minded in mental deficiency colonies. These later imitative villas are a response, albeit, much delayed by WW1 and the consequential labour shortage.<sup>11</sup>

Others notably have commented.

- 2012 RSKA Archaeology for Portsmouth Hospitals Teaching Trust in advance of the Crayfern development stated that Light Villa was directly representative of the mental health care regime at St James Hospital at the time of its inception, and contextually related to the Listed buildings.
- 2016 CBRE Heritage Assessment the site 'The Beeches falls within the curtilage of St James Hospital when seeking consent to erect fencing.
- 2016 NHS Property services 'West Lodge falls within the grounds of the Grade II listed St James Hospital, and as such is curtilage listed'
- Finally, it is hard to escape the view of the Council's own Conservation Officer that the wall "demarcates the historic curtilage of the hospital" before concluding that "it is perfectly reasonable to consider the wall listed"<sup>12</sup>

## Summary

The Edwardian date 1908 for the Villas is proven. The functional and physical relationship of "Fair oak House" and "The Beeches" to the hospital is unequivocal and remained so at Listing in 1998. Both the Hospital and the Villas were in the ownership of the NHS at the date of Listing. The only reasonable conclusion must be that these buildings are "Curtilage Listed". The Council should therefore advise the applicant they erred in issuing their letter of April 2018 and recommend Homes England will require Listed Building Consent to undertake works to these Villas.

<sup>1</sup> 'AE Cogswell: Architect within a Victorian City' by Andy Nash (Portsmouth Polytechnic, 1976)

<sup>2</sup> Commissioners in Lunacy *Suggestions and Instructions in Reference to (1) Sites, (2) Construction and Arrangement of Buildings, (3) Plans of Lunatic Asylums*, (London: HMSO, 1887 [Originally published in 1856]), p.3.

<sup>3</sup> Clare Hickman June 2012: 'Therapeutic Landscapes' in [Green Places, 37-40](#)

<sup>4</sup> Fielden & Mawson Heritage Impact Statement in support of Outline Planning Permission Phase 1 St James Feb 2018 pg27

<sup>5</sup> G Purvis. *The History of St James' Hospital (1879-1977)*, unpublished document, Portsmouth History Centre ref 362.11

<sup>6</sup> Kathryn Morrison 1991-1995 RCH01/008 RCHME's survey of historic hospitals

<sup>7</sup> P.C.R.O. PR/H8/1/7/4, BPLA, A.R.V.R., 1907- 8, p. 5.



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<sup>8</sup> Susan Margaret Barr 2003 *'Fit Objects for the Asylum' The Hampshire County Lunatic Asylum and its Patients, 1852-1899*. PhD Southampton University Faculty of Social Sciences 'several of the decision makers were freemasons committed to a philanthropic ethic'.pg64.

<sup>9</sup> George T. Hine, „*Asylums and Asylum Planning*“, *Journal of the Royal Institute of British Architects*, 23 February 1901, pp. 161-84.

<sup>10</sup> Susan Margaret Barr 2003 *ibid*

<sup>11</sup> Kathryn Morrison 1991 *ibid*

<sup>12</sup> PCC application 18/00475/LBC.



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# NOTICE OF MEETING

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## PLANNING COMMITTEE

WEDNESDAY, 20 FEBRUARY 2019 AT 1.00 PM

## COUNCIL CHAMBER - THE GUILDHALL

(Public Galleries are accessed on the Upper Second Floor\*)

Enquiries to Democratic Services 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), Jo Hooper, Suzy Horton, Donna Jones, Gemma New, Steve Pitt, Lynne Stagg, Luke Stubbs and Claire Udy

### Standing Deputies

Councillors Frank Jonas BEM, Leo Madden, Robert New, Scott Payter-Harris, Jeanette Smith, David Tompkins, Gerald Vernon-Jackson CBE, 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 (eg. 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 4916.

## AGENDA

- 1 **Apologies**
- 2 **Declaration of Members' Interests**

Planning Applications

- 3 **18/00288/OUT - St. James' Hospital, Locksway Road, Southsea PO4 8HW - Outline application for the construction of 107 dwellings including provision of vehicular and pedestrian access, public open space and hard and soft landscaping (principles of access, layout and scale to be considered) (Pages 3 - 86)**
  
- 4 **18/00475/LBC - Solent NHS Trust St. James' Hospital, Locksway Road, Southsea - Partial demolition of boundary wall and construction of brick pier**
  
- 5 **18/01868/FUL - Former Kingston Prison, Milton Road, Portsmouth PO3 6AS- Redevelopment of former prison comprising conversion of listed buildings to provide 76 dwellings and a commercial unit (Use Class A1 or A3; retail or cafe/restaurant), construction of five buildings ranging from three to seven storeys and construction of two additional storeys to B-Wing to provide 191 dwellings, part-demolition of listed prison wall, formation of new vehicular accesses to Milton Road and St Marys Road, and provision of car parking and associated landscaping and other works. Amended proposals following planning permission 16/00085/FUL**
  
- 6 **18/01632/LBC - Former Kingston Prison, Milton Road, Portsmouth PO3 6AS - Conversion and alteration of listed buildings to provide 76 dwellings (Use Class C3) and a commercial unit (Use Class A1 or A3: retail or cafe/restaurant), construction of two additional storeys to B-Wing to provide a further 8 dwellings, and part-demolition of listed prison wall. Amended proposals following Listed Building Consent 16/00086/LBC**

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 20 FEBRUARY 2019**

**1 PM COUNCIL CHAMBER,  
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>

## INDEX

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3	18/01868/FUL	Former Kingston Prison, Milton Road	PAGE 53
4	18/01632/LBC	Former Kingston Prison, Milton Road	PAGE 76

**ST JAMES HOSPITAL LOCKSWAY ROAD SOUTHSEA PO4 8HW****OUTLINE APPLICATION FOR THE CONSTRUCTION OF 107 DWELLINGS INCLUDING PROVISION OF VEHICULAR AND PEDESTRIAN ACCESS, PUBLIC OPEN SPACE AND HARD AND SOFT LANDSCAPING (PRINCIPLES OF ACCESS, LAYOUT AND SCALE TO BE CONSIDERED)****Application Submitted By:**

LDA Design - Mr David Bell

**On behalf of:**

Mr Bruce Voss - Homes England

**RDD:** 19th February 2018**LDD:** 23rd May 2018**SUMMARY OF MAIN ISSUES**

The principal issue is whether this proposal would contribute to the achievement of sustainable development, in accordance with national and local planning policy. Key issues for consideration are the principle of residential development, aspects of design (layout, scale and access) sought for approval, impact on heritage assets, traffic/transportation implications, impact on nature conservation, loss of trees, flood risk/drainage, sustainable design and construction/site contamination and residential amenity.

**The site**

The application site covers 3.6ha in area. It is currently accessed from Locksway Road via a single carriageway route running north / south that is positioned along the eastern site boundary, which also links to The Orchards. The southern boundary of the application site adjoins Locksway Road, which would provide the primary access on an east / west orientation to Milton Road (A288) to serve the proposed housing development.

Forming part of the St James Hospital and Langstone Campus sites, the agents describe the main hospital block as "largely an administrative centre with significant vacant and underused space, and a minimal amount of clinical activity." The Solent NHS Trust has released surplus public sector land for housing development at the St James campus but does not include the NHS Solent Trust operated buildings at Oakdean, The Orchards and Lime, which remain operational.

The application site consists of two broadly rectangular areas that connect in the south-east and north-west corners respectively. Four buildings with associated areas of hardstanding currently occupy the site. These include the Child Development Centre (Solent NHS)/former Harbour School and three buildings (Fair Oak House, The Beeches and Yew House) that were in use as ancillary to the main hospital but are now vacant. Demolition of these buildings and hardstanding areas would be required to facilitate the proposed development.

Beyond the application site but effecting its setting are the main hospital building (to the north-west) and the former hospital Chapel (to the north); both of these buildings are statutorily listed (Grade II). The site is bounded to the south by Locksway Road, NHS buildings and existing

residential properties on Fair Oak Road. A listed boundary wall fronting onto Locksway Road would be retained.

Existing trees across the site are covered by a Tree Preservation Order that form a rich landscape character of important assets for nature, wildlife and recreation. The applicant's supporting tree survey identifies 191 different trees, classified as follows:

- o 4 as Category A (high quality with estimated life expectancy of 40+ years),
- o 30 as Category B (medium quality with estimated life expectancy of 20+ years),
- o 151 as Category C (lower quality with estimated life expectancy of 10+ years or trees with a stem diameter below 15cm) and
- o 6 as Category U (realistically not longer than 10 years).

## **The proposal**

Outline planning permission is sought for residential redevelopment of the site for 107 dwellings. The principles of layout, scale and access are to be considered. Should outline permission be granted, the approval of two further details relating to appearance and landscaping would be considered later at "reserved matters" stage.

The proposed layout (General arrangement plan - drawing no.5018\_011G) shows siting of three flatted blocks and other dwellings. The breakdown of the total of 107 dwellings is: 27no 1-bed and 18no 2-bed flats with 43no 3-bed and 19no 4-bed houses.

The nature and density of the two areas differ in response to the site constraints; the context of the 'west' side is a strong verdant character from a very substantial number of established trees that contribute to the attractive parkland setting of the main hospital (to the north-west) and hospital Chapel (to the north). All the flatted development and some other housing is proposed to be sited clear of the canopies and root protection areas of existing trees to be retained. The 'east' side has a more tight-knit urban grain of housing with a continuation of the linear park encompassing the remainder of existing trees to be retained. The proposed layout provides for a total of 1.32ha of public open space that includes 1.12ha of informal green spaces and equipped play space.

The proposed site layout requires around 34 existing trees to be removed. These are mainly Category U and C trees. The existing trees along the frontages with Woodlands Walk would be retained. Existing tree belts are sought to be enhanced where possible and other new tree planting is proposed in streets and public open space. The illustrative masterplan indicates around 80 new trees to be potentially planted across the site, within the public realm and private gardens (that includes some in rear garden situations that inevitably limits any streetscape contribution) but landscaping forms a "Reserved Matter".

The scale of proposed residential development is shown on Building Heights Plan (drawing no.5018\_020) in a mix of 2 and 2½-storey houses and 3-storey flats. An accompanying 'Building Dimensions' table indicates maximum heights at 9.5m for 2-storeys, 11m for 2½-storeys and 10m for 3-storeys.

Separate vehicular access arrangements are proposed to serve each of the two broadly rectangular (conjoined) areas, with the 'east' side directly onto Locksway Road and the other also via Locksway Road but through Fair Oak Road, along a length of existing carriageway of approximately 150m.

The application is supported by the following documents and drawings:

### Technical Reports

- o Planning Statement (this document) (LDA Design)
- o Design and Access Statement (DAS) (LDA Design)
- o Statement of Community Involvement (SCI) (LDA Design)
- o Environmental Appraisal Report (EAR) (WSP)

- o Transport Assessment (TA) and Travel Plan (WSP)
- o Flood Risk Assessment (FRA) and Drainage Strategy (WSP)
- o Heritage Impact Assessment (Fielden and Mawson)
- o Tree Survey (WSP)
- o Preliminary Bat Tree Roost Survey Report (WSP)
- o Biodiversity Mitigation and Enhancement Plan (WSP)
- o Information to Inform Habitats Regulation Assessment (WSP)
- o Bat Tree Assessment (WYG)
- o Bat Emergence Report Building 59 & 60 (WYG)
- o Solent Wader and Brent Goose Strategy Memorandum (WSP)

#### Drawings

- o Location Plan - 5018\_001
- o Site Plan - 5018\_002
- o Illustrative Masterplan - 5018\_004D
- o General Arrangement Plan - 5018\_011G
- o Land Use Parameter Plan - 5018\_005
- o Access and Movement Parameter Plan - 5018\_006
- o Landscape Parameter Plan - 5018\_007
- o Density Parameter Plan - 5018\_009
- o Building Heights Plan - 5018\_020
- o Access Arrangement - 70016874-SK-006-D
- o Swept Path Analysis (Refuse) - 70016874-ATR-004-B
- o Swept Path Analysis (Fire Tender) - 70016874-ATR-005-B
- o Swept Path Analysis (Car) - 70016874-ATR-006-B
- o Internal Highways Visibility Splays - 70016874-SK-005-D
- o Internal Highways Geometry and Dimensions - 70016874-SK-009-B
- o Internal Cross Sections - 70016874-SK-010-B
- o Preliminary Surface Water Drainage Strategy - 6874-D-001C
- o Tree Constraints Plan - 70016874\_TCP\_01\_B (2 sheets).

#### Environmental Impact Assessment

The Council issued a formal Screening Opinion on the 12th August 2017, confirming that the proposed development was not considered to be EIA development and that the submission of an ES was not required.

#### Community Engagement

The application is supported by a Statement of Community Involvement.

- o Presentation to Milton Neighbourhood Forum community meeting - June 2017
- o Local Councillor and Council Executive presentation - 20th July 2017
- o Public Consultation event - 24th July 2017
- o Presentation to Milton Neighbourhood Forum - 13th September 2017

3,500 flyers distributed to properties and businesses within the local area. Over 100 feedback forms were completed.

#### Planning history

The applicant's Design & Access Statement includes some details of the site history, as follows. Dickens Villa (now Fair Oak House) and Brunel Villa (now The Beeches) were constructed in the north-west section of the site between 1909 and 1932. Milton Ford School (later Harbour School) was constructed in the east of the site between 1962 and 1969. An 'L-shaped' building (now known as Yew House) was constructed by 2000.



There are an array of applications relating to minor works or alterations to the former NHS buildings, Harbour School and Child Development Centre on the site, in addition to works to TPO trees.

In 2018 an application for prior approval, supported by a 'Demolition Method Statement', was submitted for "Demolition of vacant buildings known as The former Harbour School; Fair Oak House; The Beeches; and Yew House" (under 18/00484/DEM). Whilst a number of objections were raised regarding the demolition of the buildings on heritage grounds, the principle of the loss of the buildings was not considered as part of the prior approval process. The buildings in question were neither listed buildings nor within a designated conservation area. The prior approval process considered the proposed method of demolition and any restoration of the site. The decision issued in April 2018 concluded that 'Prior Approval not required.'

Land to the north of the application site includes the development of The Limes (under 08/00517/FUL), which is a 36-bed elderly person's mental health facility that replaced a former villa building on the same site that fell into dis-use and was demolished following a fire. The Orchards facility replaced two existing buildings known as the Children's Cottages and the Social Club. Both buildings were subsequently demolished with services moved to The Orchards.

## **POLICY CONTEXT**

The relevant policies within the Portsmouth Plan would include:

PCS21 (Housing Density), PCS10 (Housing Delivery), PCS12 (Flood Risk), PCS13 (A Greener Portsmouth), PCS14 (A Healthy City), PCS15 (Sustainable design and construction), PCS16 (Infrastructure and community benefit), PCS17 (Transport), PCS23 (Design and Conservation),

There are relevant saved development management and site allocation policies that still apply from the Portsmouth City Local Plan (2001-2011) that are material to the application. These include DC21 (Contaminated land) and MT3 (Land at St James' Hospital); the latter relates to the site as well as encompassing land north of the site.

Policy MT3 allocates land at St James' Hospital for a mix of new mental health care development and housing. The provision of the healthcare element of this allocation has already been fulfilled through the provision of The Orchards and Lime NHS Solent Trust buildings to the north of the site, within the policy allocation area and intended to remain.

### **National Planning Policy Framework**

Still at the heart of the (revised) NPPF July 2018 is a presumption in favour of sustainable development which means approving development proposals that accord with development plan policies without delay (para 11). However, the presumption in favour of development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being determined (para 177).

The NPPF describes the purpose of the planning system is to contribute to the achievement of sustainable development and the three dimensions to achieving it: economic, social and environmental. The proposal should be assessed against development management policies in the NPPF and, in particular, the following paragraphs:

38 Core planning principles for decision making

54 Consider if otherwise unacceptable development made acceptable by conditions or planning obligations

59-61 Delivering a sufficient supply of new homes (including affordable housing)

80 Significant weight on the need to support economic growth through the planning system

95 Promote public safety, reduce vulnerability, increase resilience

96 Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities

97 Existing open space not to be built on unless surplus, replaced or benefits outweigh loss

- 103 Locate developments generating significant movement where need to travel minimised
- 104 Development designed for sustainable travel
- 109 Highways refusal only if an unacceptable impact on safety or road network severe
- 124 High quality buildings and places is fundamental to what planning should achieve
- 129 Make use of and have regard to recommendations made by design review panels
- 130 Refuse poor design that fails to improve the character and quality of an area
- 174 Protect and enhance biodiversity
- 177 Presumption in favour of sustainable development (para 11) does not apply where AA required under Birds or Habitat Directives
- 178 Sites should be suitable for its proposed use where affected by contamination
- 180 Impacts of noise, air quality and light pollution should be mitigated and managed
- 189 Applicants should describe the significance and potential impact on any heritage assets
- 190 LPAs to identify and assess significance of any heritage asset
- 193 Great weight should be given to the asset's conservation
- 194 Any harm/loss of a designated heritage asset requires clear and convincing justification
- 195 Where leads to substantial harm, should be refused (unless substantial public benefits)
- 196 Where leads to less than substantial harm, to be weighed against public benefits
- 199 Weight to non-designated heritage assets of archaeological interest (where significant)

Other relevant policy guidance:

Parking Standards and Transport Assessments SPD (July 2014)

Sustainable Design & Construction SPD (January 2013) and

Reducing Crime Through Design SPD (March 2006)

Achieving Employment and Skills Plans (July 2013)

Milton Common Local Nature Reserve Management Plan (July 2015)

Solent Recreation Mitigation Strategy / Bird Aware Solent Strategy (December 2017)

#### Neighbourhood Planning

Milton Neighbourhood Planning Forum - formally designated in June 2015 - intend bringing forward a Neighbourhood Plan for the whole of the Milton Ward, including the application site, but have not yet published their draft Neighbourhood Plan.

## CONSULTATIONS

### Natural England

Updated comments (20.11.18) following review of additional information:

- Recreational disturbance on the designated sites

NE note that additional information has been provided with respect to the financial contributions to the Solent Recreation Mitigation Strategy / Bird Aware Solent Strategy.

Provided the applicant is fully compliant with the Solent Recreation Mitigation Partnership Definitive Strategy and an appropriate planning obligation or condition is attached to any planning permission to secure the contributions towards this mitigation measure, Natural England is satisfied that the applicant has mitigated against the potential adverse effects of in-combination recreational disturbance on the integrity of the European site(s).

It is also noted that contributions will be made for improvements to Milton Common in proportion to the number of units included within the Project; as detailed within the Milton Common Local Nature Reserve Management Plan (which provides a strategic framework for mitigating recreational impacts). The Shadow Habitats Regulations Assessment states that a proportionate funding contribution is to be agreed through the Section 106 agreement. We advise that further details are included in the local planning authority's HRA and Appropriate Assessment in due course.

#### - Supporting Habitat

The proposed development site is located adjacent to a Secondary Support Area as identified in the Solent Waders and Brent Goose Strategy. The Shadow HRA considers the potential for noise and visual disturbance and the mitigation proposed includes visual screening on scaffolding during construction within the eastern part of Plot 1, when above the height of the wall demarcating the eastern boundary.

There is also the potential for some construction activities to result in sudden high levels of noise with potential disturbance to this sensitive area.

NE advise that the following condition is attached to any planning permission and included in the HRA:

Wherever possible, percussive piling or works with heavy machinery (i.e. plant resulting in a noise level in excess of 69dbAmax - measured at the sensitive receptor) should be avoided during the bird overwintering period (i.e. October to March inclusive).

Note: The sensitive receptor is the nearest point of the SPA or any SPA supporting habitat (e.g. high tide roosting site).

If such a condition is problematic to the applicant than Natural England will consider any implications of the proposals on the SPA bird interests on a case by case basis through our Discretionary Advice Service.

#### - Construction Environmental Management Plan (CEMP)

Natural England advises that best practice measures are adopted to minimise potential disturbance during the construction phase from demolition and construction work and traffic. We advise that a Construction Environmental Management Plan (CEMP) should be submitted to and approved in writing by the county ecologist/biodiversity officer that identifies the steps and procedures that will be implemented to avoid or mitigate constructional impacts on species and habitats. The CEMP should address the following impacts:

- Location of construction compound
- Storage of construction materials/chemicals and equipment;
- Dust suppression
- Chemical spillages and/or fuel run-off from construction
- Waste disposal
- Noise/visual/vibrational impacts
- Visual screening (for SPA birds)

The approved CEMP should be secured via an appropriately worded condition attached to any planning consent and shall be adhered to at all times, unless otherwise first agreed in writing with the Local Planning Authority.

#### - Biodiversity Mitigation and Enhancement Plan

Natural England welcomes the Biodiversity Mitigation and Enhancement Plan that has been submitted with the planning application documents. Please can you confirm whether the HCC Ecologists' are satisfied with the submitted BMEP.

If this is the case and the full implementation of the plan is secured by any permission then no further consultation with Natural England on this aspect of the proposal is required. In the event that a BMEP cannot be agreed with the applicant then Natural England should be re-consulted on the proposals so that we can reconsider our advice.

## Initial comments

Natural England originally advised, in short, that further information was required to determine impacts on designated sites since the proposal could have potential significant effects on Chichester and Langstone Harbours Special Protection Area and Ramsar site. NE required further information to determine the significance of these impacts and the scope for mitigation.

The additional information requested included:

- 1) a copy of the Environmental Appendices 8.1-8.9
- 2) further assessment of the impacts of the development on the immediately adjacent supporting habitat identified in the Solent Wader and Brent Goose Strategy (P25) and its close proximity to a further site (P23B).
- 3) the submission of a Biodiversity Mitigation and Enhancement Plan (BMEP), or equivalent, that has been agreed by a Hampshire County Council (HCC) Ecologist.

### **Historic England**

No comments received on the outline application.

### **Southern Gas Network**

No comments received.

### **Southern Electric**

No comments received.

### **Hampshire Fire & Rescue Service**

Detailed comments provided on 16.03.18 relating to Building Regulations (Access for Firefighting), access to the site for the Fire Service in accordance with Hampshire Act 1983 as well as other advisory recommendations such as access for high-reach appliances, water supplies, promotion of fire protection systems (with periodic testing) for both business and domestic premises, the impact of fire-fighting on the environment and timber-framed buildings (as particularly vulnerable to severe fire damage and fire spread during the construction phase).

### **Ecology**

Updated comments (6.2.19) following review of additional information:

Overall, there are now no outstanding concerns with this application. Following receipt of further information, with regard to the SPA, the comments and suggested conditions from Natural England are agreed.

Regarding protected species, additional information (bat survey) and the BMEP, along with Bat Tree Assessment (Date of Survey: 04 October 2018) and Bat Emergence Report - Building 59 & 60 (November 2018), has been reviewed.

Trees: All the accessible trees were further inspected by qualified tree climbers. This work found that all of the trees previously identified as having high or moderate roost suitability in fact only offered low or negligible suitability. This is generally because features that appear from the ground offer suitable roost conditions, turn out to be less suitable (or completely unsuitable) when inspected at close quarters.

One tree was not able to be accessed; however, this tree will not be removed under the current proposals.

Buildings: The further survey work confirmed a bat roost in one of the buildings, for an individual soprano pipistrelle bat. This roost will be lost, but the report recommends suitable mitigation, which is capable of support.

In previous comments, it was noted that the submitted BMEP was acceptable, but also recognised that much detail was missing as this is an Outline rather than Full application and recommended that an updated BMEP be provided at Reserved Matters / secured through condition on any Outline permission.

It is still advised that this is the best course of action; however, in view of the findings and recommendations in these new reports, the updated BMEP should include the recommendations and mitigation measures set out in these new reports. Possible condition wording:

Prior to commencement, an updated and detailed Biodiversity Mitigation and Enhancement Plan (BMEP), incorporating detailed recommendations from the November 2018 bat tree roost assessment and bat emergence survey reports, together with detailed specifications and locations (with plans) of compensatory bat roost provision and site-wide biodiversity shall be submitted to and approved in writing by the local planning authority.

Initial comments - objection - dated 28.03.18

In summary, concerns are raised over the submitted ecological information and would request further clarification. This includes missing information (Environmental Appraisal Appendices), shortfalls in survey data (bat roosts and trees) and unsupported mitigation recommendations (high tide SPA roost sites for over wintering birds).

The Ecology chapter of the Environmental Appraisal references Appendices 8.1 to 8.9, which includes survey reports and Information to Inform Habitats Regulations Screening. These cannot be found in the submission and this makes a full assessment of the Ecology chapter difficult. Once these are provided updated comments can be provided, although it should be noted that the Ecology chapter summary also appears to be unfinished.

From the information available at present, the key issues that will need further work are raised.

#### Designated Sites

The Environmental Appraisal (Ecology Chapter 8) has not identified the value of the adjacent site as part of the Solent Waders and Brent Goose Strategy and does not seem aware of the Strategy and identified sites. The adjacent site is known as "P25" and is known to support dark-bellied Brent geese and Oystercatcher SPA species, something confirmed by the developer surveys (peak count 985 Brent geese representing approximately 5.75% of the SPA population). Impacts on this site during the construction and operational phase are identified by the Environmental Appraisal, but the Ecology chapter conclusion that construction phase noise impacts are likely to remain relatively constant during working hours is not supported by the Noise Chapter of the Environmental Appraisal.

The conclusion that for the construction phase "this effect will not be negligible in terms of effects on individuals which may be disturbed or forage elsewhere; but effects at a population scale would be negligible" is not a satisfactory conclusion to present. The evidence offered (personal observation of another population at one other site which experiences very different conditions; lack of quantitative assessment of impacts; lack of assessment of different construction activities, notably demolition), lack of appreciation of the wider site network and the lack of mitigation presented leaving a negative residual impact is not sufficient. Any CEMP based on this conclusion would not be likely to deliver effective mitigation.

For the Operational phase the development will result in a net increase in residential dwellings within 5.6km of the Solent Special Protection Areas (SPAs). This distance defines the zone identified by recent research where new residents would be considered likely to visit these sites. The SPAs supports a range of bird species that are vulnerable to impacts arising from increases in recreational use of the sites that result from new housing development. While clearly one

new house on its own would not result in any significant effects, it has been demonstrated through research, and agreed by Natural England (the government's statutory nature conservation advisors) that any net increase (even single dwellings) would have a likely significant effect on the SPAs when considered in combination with other plans and projects.

Portsmouth City Council has adopted a strategy whereby a scale of developer contributions has been agreed that would fund the delivery of measures to address these issues and to demonstrate that PCC as a competent authority under the provisions of the Habitats Regulations has had regard for any potential impacts that the project may have.

With respect to the Solent sites, funding is to be provided to the Solent Recreation Mitigation Partnership (SRMP) and may be in addition to any on-site mitigation.

### Protected Species

The summaries of the protected species survey work (in the absence of access to detailed report) suggest that these are largely appropriate and suitable for a baseline assessment of the development.

The notable exception to this is bat roosts and trees, where a number of potential roost features have been identified but no surveys carried out. Trees on the Plot 1 Site have been assessed for their potential to support roosting bats, but no further survey work to establish the presence or likely absence of bat roosts in these trees has been carried out. This has been described as follows:

"Trees on the Plot 1 Site were assessed as having moderate, low and negligible potential to support roosting bats, and further survey work to be carried out prior to works commencing has been recommended in Appendix 8.7 and Appendix 8.8. Current proposals for the Plot 1 Site indicate that 30 trees will be removed which were assessed either individually, or within groups. Of the trees to be removed, nine trees were assessed as having moderate potential to support roosting bats, ten had low potential and 11 had negligible. The trees being removed are mostly smaller or poor quality specimens".

It is therefore considered that there is a reasonable likelihood that bats would be present and affected by the development and it is therefore necessary to request the applicant to provide further information on this issue. All survey work should be carried out to recognised standards, as set out in the Bat Conservation Trust's good practice survey guidelines (3rd edition, 2016), unless otherwise fully justified by the ecological consultant.

The survey findings should be provided to PCC in an updated report, which should also include any further assessment of the impacts the development will have on bats and if required, details of mitigation measures to be followed to show that the favourable conservation status of identified species would be maintained.

Once this information has been obtained, the planning authority will be in a position to consider if bats will be affected and if so, the likelihood of the development being granted a licence.

Unfortunately it is not appropriate to defer bat surveys as a condition of a planning permission - Circular 06/2005 identifies that information on protected species must be available before a decision is made, and this is supported by Natural England's standing advice on protected species. Planning authorities are required to engage with the Habitats Regulations and without the right level of information (survey, impact assessment and appropriate, proportional avoidance, mitigation and compensation measures), this engagement is not possible.

Biodiversity net loss, ecological enhancement, protecting and improving green infrastructure

There is also concern about overall biodiversity net loss resulting from the development. The Environmental Appraisal references this essentially being dealt with through soft landscaping and limited provision of features within the site, however the amount of space available for soft landscaping and its distribution would appear that this will be unlikely to be achieved. It is requested that further details from the ecologist on this issue including quantitative comparisons.

### **Head Of Community Housing**

Housing Enabling offers the following comments:

#### **- Scheme Breakdown**

The outline submission proposes to build up to 107 units, a mix of houses and flats.

#### **- Pro-Rata Mix**

The proposed development mix consists of: 19x 4bed houses, 42x 3bed houses, 18x 2bed flats and 27x 1bed flats, this would mean a S106 pro-rata provision of 5x 4bed houses, 13x 3bed houses, 6x 2bed flats and 8x 1bed flats, a total of 32 units. However, with the proposed blocks of Flats having a mix of 9x 1bed units and 6x 2 bed units we will need to go for a slightly amended mix of 4x 4bed houses, 13x 3bed houses, 6x 2bed flats and 9x 1bed flats which will then allow us to have a complete block of flats.

N.B The above development mix could potentially be subject to change in a reserved matters application.

#### **- Unit Sizes**

Being a draft proposal there are no overall sizes for each unit in square meters (which would need to be in excess of the Nationally Described Space Standards - NDSS) or how many stories the houses will be (2storey or 3 storey or a mix of both). We do not know if the 2bed flats are 3 person or 4 person, if the 3 bed houses are 5 person or 6 person or the 4 bed houses 6 person, 7 person or 8 person.

In a previous pre-application consultation response (dated 16 Jan 2018) we emphasize that for our housing need, the 2bed flats should be 4 person, the 3bed houses need to be 6 person rather than 5 person (or a mix of both with priority on 6 person) and the 4 bed houses 7 or 8 person or a mix of both - this has not changed and reflects our housing need.

#### **- Disabled Accommodation**

Another point we raised in the pre-application consultation and would again emphasize is that some of the units (a couple of ground floor flats - 1x1bed and 1x 2bed- and at least 1x 3/4bed house) are designed for full time wheelchair users as we have a desperate need for disabled homes. This will mean a larger footprint for both the flats and house/s and will need to be designed in as early as possible.

#### **- Tenure mix**

We will need to look at the tenure mix once the Registered Provider is identified will be working with Homes England to provide the affordable provision.

#### **- Car Parking**

Looking at the plan most of the units have at least 1 - 1.5 spaces per unit.

#### **- 'Pepper Potting'**

The pepper potting of the units within the development will need to be looked at once we talk to the developers on which units will be allocated for affordable. Having looked at the draft plan we have made suggestions for the affordable element.

I have also attached a plan showing a proposal for the affordable housing units based on the outline plan. The suggested affordable units have been highlighted in yellow. Obviously this will be subject to the plans not changing with any reserved matters application and the units being in excess of the minimum NDSS requirements. The space standards for any disabled units would need to be checked carefully to meet full wheelchair requirement.

### **Crime Prevention Design Advisor**

Within this area of Portsmouth our records show there are reasonable levels of acquisitive crime and anti-social behaviour and it is against this background that comments are made.

The site has high levels of permeability which does increase the vulnerability of the development to crime and anti-social behaviour. To reduce the vulnerability of the development to crime and anti-social behaviour it is recommended that the two areas are not linked and that they are isolated from each other.

Access to the rear gardens of several properties is via a communal rear access footpath. Some acquisitive crimes such as burglary and theft are often facilitated by easy access to the rear of the property. Planning guidance advises "Planning should promote appropriate security measures" it continues "Taking proportionate security measures should be a central consideration to the planning and delivery of new developments and substantive retrofits." To reduce the opportunities for crime in the first instance it is recommended that all rear garden access is in-curtilage, but if this is not desirable it is recommended that all rear garden access gates are fitted with a key operated lock that operates from both sides of the gate.

It appears possible to gain access to the ground floor windows and doors of the 3 apartment blocks, this will increase their vulnerability to crime and anti-social behaviour. Planning guidance advises "There should be a clear definition between public and private space. A buffer zone, such as a front garden, can successfully be used between public outdoor space and private internal space to support privacy and security." To reduce the opportunities for crime and anti-social behaviour some defensible space should be provided about the apartment blocks. This may be achieved by enclosing the accommodation blocks within a robust boundary treatment (perhaps hoop topped railings) at least 1.8m high.

Flank walls of dwellings should be protected from direct access from the public realm which increases their vulnerability to crime and anti-social behaviour. Planning guidance advises "There should be a clear definition between public and private space. A buffer zone, such as a front garden, can successfully be used between public outdoor space and private internal space to support privacy and security." To reduce the opportunities for crime and anti-social behaviour a generous private garden should be provided along any such flank walls.

It appears possible to gain access to a number of car parks from areas of public open space, this increases the vulnerability of these car parks to crime. Planning guidance advises "Planning should promote appropriate security measures" it continues "Taking proportionate security measures should be a central consideration to the planning and delivery of new developments and substantive retrofits." To reduce the opportunities for crime robust fencing (perhaps hoop topped railings) at least 1.8m high should be placed along the boundary of the car parks and the public open space to prevent access between the two areas. Direct access from the informal running footpath running between the two areas into the car parks should be omitted from the final scheme.

The plan shows a number of footpaths / cycle ways providing connectivity throughout the development. Whilst there is some overlooking of these routes there are areas along the routes that are not well overlooked from the nearby dwellings. Planning guidance advises that routes should be safe. Therefore, it is recommended that planting along these routes should be such that it facilitates natural surveillance along the route and that it does not create a place where a person might lie in wait.

To provide for the safety and security of residents and visitors lighting throughout the development should conform to the relevant sections of BS5489:2013. Some consideration will have to be given as to whether the pathways giving connectivity throughout the public open space are to be used during the hours of darkness, if they are, appropriate lighting should be



provided along the entire length of the pathway, to provide for the safety of those using the pathway.

### **Highways Engineer**

Following amendment to the site layout the LHA is now satisfied with the internal arrangements although an objection on the issue of accessibility to public transport services remains (at # below).

Initial comments raise objection (dated 17.04.18)

The Transport Assessment (TA) and drawings in support of this outline application have been reviewed, noting only the principles of access, layout and scale are to be considered.

In summary:

The TA refers to the extensive pre-application discussions between PCC and the applicant and references both the TA scoping document and subsequent discussions/meetings at para 1.4; despite these the submitted TA has not been prepared on the basis required by PCC and advice given following review of a draft TA. Rather than using the trip rates recorded in the 2014 surveys to establish the baseline traffic generation, surveys undertaken in 2016 have been used and factored up reflecting the floorspace in use at the time to determine a trip rate assuming use of 100% of the floorspace. However, a sensitivity test has been undertaken to consider the trip rate which would arise should the hospital be operating at 80% of capacity which is broadly equivalent to those rates observed in 2014 and since used those to inform the LHA assessment of the acceptability of the proposal.

On the basis of the hospital operating at 80% of capacity (PCC has previously established it would accept the traffic flows observed in 2014 as a baseline) the effect of this application in the am peak period would be to increase the departures via Locksway Road by 23 movements and in the pm peak the arrivals by 27 movements. We would ordinarily require further junction capacity assessment where the increases in the peak hour were greater than either 5%, 30 total additional movements through a junction or 30 additional movements on a single link to a junction. In this case taking the proposed development of phase 1 in isolation no further analysis of traffic impact is necessary and the LHA has no objection to the proposal on the basis of increased traffic generation and associated impact as an increase in traffic generation of this limited scale would not amount to a material impact on the operation of the local highway network.

# The LHA has concerns regarding the broader accessibility of the site which the TA finds at paragraph 4.3.7 to be in an accessible location despite it being some 900m from bus stops at Milton Road, being broadly equivalent to an 11 minute walk. This is contrary to the guidance given in the CHIT publication 'Planning for Walking' being more than twice the distance that people in residential areas can reasonably be expected to walk to a bus stop. The bus stops on Locksway Road are currently used by private bus service serving the University of Portsmouth. Should public bus services be introduced, the site would benefit from direct access to these facilities, thereby improving the sustainability of not only St James but also the wider area, although no such improvement in bus service is proposed. As a consequence, in the absence of securing such services, the LHA must raise an objection to the application on the basis of the accessibility of the site.

The following specific observations are made on the TA:

Paragraphs 2.4.10 and 2.4.12 of the TA refer to the CIHT publication 'Guidelines for Providing For Journeys on Foot' published 2000 and DMRB TA91/05 'Provision for Non-Motorised Users' which suggests that walking distance of up to 2km and 2miles respectively are reasonable walking distances. However, that guidance was informed by surveys of existing development at the time rather than being specific to planning for new developments where an increase active travel mode share is sought. Furthermore, that guidance has largely been replaced by the CIHT publication 'Planning for Walking' published April 2015 which identifies at paragraph 6.3 'Land

use planning for pedestrians' that 'Most people will only walk if their destination is less than a mile away.' It continues to explain that 'Walking neighbourhoods are typically characterised as having a range of facilities within 10 minutes' walking distance (around 800 metres)' and that 'The power of a destination determines how far people will walk to get to it. For bus stops in residential areas, 400 metres has traditionally been regarded as a cut-off point and in town centres, 200 metres. People will walk up to 800 metres to get to a railway station, which reflects the greater perceived quality or importance of rail services.' Whilst this is reference is paragraph 2.4.14 of the TA greater reliance is placed on the outdated guidance and as a consequence the assessment of accessibility made in section 2.4 is undertaken on an incorrect basis and the site is not as accessible as is suggested.

Section 3.3 explains the calculation of the trip rate assumed in the rest of the document for the 'existing' hospital uses. This applies the occupied floorspace in 2014 to the traffic surveys undertaken at that time to determine a trip rate which is then applied to the total floorspace to establish a traffic generation. This approach was specifically not agreed, rather it was required that the assessment be undertaken on the basis of the 2014 traffic surveys reflecting the total generation associated with the permitted uses. As a consequence the figures in Table 12 should be reduced to reflect those found in the 2014 traffic surveys.

Section 3.4 seeks to estimate the current quantum of traffic movements on the local highway network associated with the hospital by proportioning the '100% occupancy' disagreed trip rate to reflect the current occupancy of the buildings. This approach was also not agreed. If the hospital is now operating at 50% of the 2014 occupancy then it may be possible to simply reduce the traffic generation found by the 2014 surveys by 50% to estimate the current generations although that would assume that the floorspaces are being operated at the same intensity in terms of trip generation. This requires a leap of faith and relies on a survey now more than 3 years old. In the circumstances, it would be more appropriate to resurvey the traffic generations to confirm the current number of movements associated with the NHS uses before deducting those from the 2016 surveys of the wider network to establish the baseline traffic conditions.

Paragraph 4.2.6 3rd bullet should note that the 'severe' measure of residual development impacts does not apply to issue of highway safety which should be assessed on a binary basis *Mayowa-Emmanuel v Royal Borough of Greenwich* [2015] EWHC 4076 (para 29) refers.

Paragraph 4.3.7 suggests that the site is located in an accessible location being within 900m of 4 bus services and 30 mins walk of Fratton Rail station. This is contradictory to CIHT publication 'Planning for Walking' published April 2015 (see above) and it cannot be concluded that the site is in an accessible location.

Paragraph 4.3.8 similarly draws on out of date guidance to determine that the site has good accessibility which does not measure up to the advice of the current guidance. As a consequence of relying on out of date guidance the findings throughout section 4.3 that the site is in compliance with both the Portsmouth Local Plan and Portsmouth LTP are flawed.

Section 5.5 considers the internal layout and explains at paragraph 5.5.3 that to ensure that there is adequate space for utilities / pedestrian refuge a 1.8m wide service strip has been provided in addition to the 4.8m carriageway on the most logical side of the road. Such provision is required on both sides of the carriageway to allow for overhang of manoeuvring vehicles as well as utility services and pedestrian refuge as previously advised and was confirmed would be included in the response to the LHA comment on section 5.5 of the draft TA.

There seem to be two double garages which directly abut the carriageway and one double garage immediately adjacent to the footway. These will need to be set back to provide both visibility and allow for the garage doors to be operated without a car having to stand in the carriageway.

- o The layout of the scheme has not been revisited to resolve the 'secured by design' concern regarding the routing of the footway between the two development blocks.
- o The vehicular access to two of the properties seems to be via a footway link which is too narrow

The LHA is comfortable with the methodology for prediction trip rates associated with proposed houses on the site as is detailed in paragraph 6.2.7 of the TA. However, TRICS data relied upon to determine the trip rate for flat retains a significant proportion of developments located at edge of town centre likely to have significantly better accessibility to local service and public transport. The LHA has previously advised that these do not seem comparable with the site location given the comparative inaccessibility of the site and only those sites outside of the town centre should be used to inform the trip generation.

The assumed distribution of development trips in section 6.3 seems reasonable although the calculations thereafter assume an inappropriate trip rate and are compared with an unagreed baseline which is then rolled forward to inform chapter 8 'Development Impact - Highways' which will similarly need to be revisited as will section 9 'Summary & Conclusions'. However as explained above, the LHA has not relied on these sections to inform its assessment of the traffic impact.

### **Environmental Health**

In summary, no objection raised (in comments dated 05.04.18)

#### **- Air Quality and Additional Traffic Movement**

An air quality assessment has been carried out and reported in the Environmental Appraisal Report - Chapter 4. It has been predicted that the air quality impacts from traffic do not exceed the air quality emission for NO<sub>2</sub> or PM<sub>10</sub> and it is negligible at this location.

The proposed development is also unlikely to generate significant additional traffic movements in the area.

#### **- Traffic Noise**

From the noise monitoring carried out by the applicants acoustic consultant, they have predicted that the sound insulation performance of the glazing fronting onto Locksway Road should achieve 34 dB RW+Ctr for all habitable rooms. An example glazing construction to achieve this sound insulation performance would be a 8mm glass/12mm airspace/10.8mm laminated glass unit.

For dwellings set further back from, or behind buildings fronting Locksway Road, a standard thermal double glazing units should be sufficient. Subject to this glazing specification or similar being installed, this will be sufficient to achieve the target internal noise criteria below:

Daytime LAeq(16hr) (7:00 to 23:00) 35 dB

Night-time LAeq(8hr) (23:00 to 07:00) 30 dB and LAmax 45dB

#### **- Commercial Noise**

There is a service yard close to the Orchards which has two compactors and a substation. The plan illustrates that gardens and the boundary line for the proposed development is close to this location. Prior to the development commencing it is recommended that a noise assessment is carried out to ensure that a loss of amenity is not being caused to the gardens in this location.

Summary

Further to the above, no objection raised to this (outline) application being granted.

### **Contaminated Land Team**

In summary, no objection raised (in comments dated 04.04.18)

The Contaminated Land Team (CLT) have reviewed the above application together with the following documents which have either been submitted with the application, or previously as part of a zip file of pre-application information in July last year:

- o St James and Langstone - Plot 1, Preliminary Risk Assessment, WSP, Project no. 70016874, July 2017;
- o St James Hospital - Plot 1, Environmental Appraisal, WSP, Project no. 70016874, December 2017.

The Environmental Appraisal covers various environmental issues, with section 6 covering contaminated land. This section is predominantly a summary of the Preliminary Risk assessment report detailed above.

The reports describe a site investigation which WSP carried out on the proposed development site in February 2016. Unfortunately this report has not been made available to the CLT, or provided in the appendices in either of the above reports, and as such the data cannot be reviewed and a full assessment made. The developer should therefore be advised to submit this report as soon as possible to the CLT for review and comment in relation to the above application.

Notwithstanding the above, the Preliminary Risk Assessment concludes that there are potential sources of contamination on/adjacent to the site that need further assessment, with further intrusive site investigation recommended including at least 6 rounds of gas monitoring to fully assess the ground gas regime on site. As such given the above, together with the scale and sensitive nature of the proposed development, the following full conditions are required should planning approval be granted:

Conditions:

- (i) No works pursuant to this permission shall commence until there has been submitted to and approved in writing by the Local Planning Authority before development commences or within such extended period as may be agreed with the Local Planning Authority:
  - a) A desk study report documenting all the previous and existing land uses of the site and adjacent land in accordance with best practice including BS10175:2011+A2:2017 'Investigation of Potentially Contaminated Sites Code of Practice'. The report shall contain a conceptual model showing the potential pathways that exposure to contaminants may occur both during and after development; and unless otherwise agreed in writing by the LPA,
  - b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk study created in accordance with BS10175:2011+A1:2013+A2:2017 and BS 8576:2013 Guidance on investigations for ground gas. Permanent gases and Volatile Organic Compounds (VOCs); the laboratory analysis should be accredited by the Environment Agency's Monitoring Certification Scheme (MCERTS) where possible; the report shall refine the conceptual model of the site and state either that the site is currently suitable for the proposed end-use or that will be made so by remediation; and, unless otherwise agreed in writing by the LPA,
  - c) A remediation method statement detailing the remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. For risks related to bulk gases, this will require the production of a design report and an installation report for the gas as detailed in BS 8485:2015 - Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings. The scheme shall consider the sustainability of the proposed remedial approach. It shall include nomination of a competent person<sup>1</sup> to oversee the implementation and completion of the works.
- (ii) The development hereby permitted shall not be occupied/brought into use until there has been submitted to and approved in writing by the Local Planning Authority verification by the competent person approved under the provisions of condition (i)c that any remediation scheme required and approved under the provisions of conditions (i)c has been implemented fully in accordance with the approved details (unless varied with the written agreement of the LPA in

advance of implementation). Unless otherwise agreed in writing by the LPA such verification shall comprise a stand-alone report including (but not be limited to):

- a) Description of remedial scheme
- b) as built drawings of the implemented scheme
- c) photographs of the remediation works in progress
- d) certificates demonstrating that imported and/or material left in-situ is free of contamination, and records of amounts involved.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under conditions (i)c.

Reason (common to all): To ensure that the risks from land contamination to the future users of the land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

### **Coastal And Drainage**

Initial comments relating to the (outline) planning application dated 03.04.18 are:

- o Groundwater results from a PCC owned borehole in St James Green are provided just to the west of the site. it can be seen that groundwater is stable at around 3m below the surface, with very little tidal or rainfall interaction. It is reasonable to assume that these conditions are likely to be very similar for the development site. below is the BH log showing ground conditions, which shows clay at 6m depth. The present proposal shows the bottom of the geocellular storage for parcel A at 1.1m below surface. Assuming that groundwater should not be released to ground by infiltration if GW levels are less than 1m from the bottom of the infiltration pit, it would seem feasible that infiltration is a possibility with room to spare, saving unnecessary sewer flows. This strategy could be applied to all site parcels A, B and C
- o Recommend GI in the areas of permeable paving and geocellular storage to determine if infiltration can be undertaken. Reference to Site Investigation is noted, however, this information is not available within the application pack in order to review. Did it include infiltration tests? Or regular interval groundwater monitoring over a sustained period including spring tides? The Drainage Team is not aware of tidal interaction within groundwater levels in this location. It is considered more likely that tide levels will impact sewer flows, which is especially relevant as the site is proposed to drain to gravity sewer and out to sea.
- o There is a lack of detail regarding the outlets from each parcel. For instance, highway drainage, cross sections, footway drainage, levels and how the site drains presently (existing highway in parcel C). This detail will be required at detailed design stage
- o Disagree with section 4.5.3 of the Surface Water Drainage Strategy, storing above ground. There appears to be plenty of opportunity to get the water away from the surface, especially given the amount of green space that is available. In addition, for this proposal the team would need to see exceedance routes to be happy with the design
- o There does not appear to currently be support from Southern Water Services with regards to draining the site to sewer. This is fundamental to the present proposal.
- o It appears that leisure facilities are positioned over the proposed geocellular storage area, which could lead to future maintenance issues. Suggest the two areas do not share the same footprint
- o Oil separator should be positioned in order for easy access direct from the highway in terms of maintenance machinery and vehicles

Essentially there is a lack of detail and draining the whole site to sewer does not seem the right option.

Additional comments (dated 02.05.18) following receipt of the GI information

3.2 - Hydrogeology assumptions not confirmed. Groundwater monitoring is required to reach these conclusions.

5.2 - groundwater monitoring using a logging device will be required to determine what is causing the slight change in groundwater levels. The weather records held by PCC indicate around 38mm of rainfall between 8th January and 20th January 2016. It is possible the

groundwater is reacting to rainfall and not tidal levels. Would suggest a saline logger to confirm if there is indeed a tidal influence.

9.6 Drainage - "Soakaway testing was not carried out during the investigation therefore the rate of infiltration within the near surface soils has not been assessed. However is likely that the infiltration rate will improve as depth increases into the coarse grained soils. This will need to be confirmed by undertaking infiltration tests within machine excavated trial pits or boreholes."

Table 10.2 - all soil exceedances could be remediated as the lowest bgl is 0.6m, reducing the risk to the environment by mobilisation of contaminants

11.3 - groundwater contamination risk pathway could be mitigated by remediation

11.6.4 and 12.1 - risk to Secondary A aquifer is classed as Low

There is still more information needed to back up the Drainage Strategy.

In response, the drainage consultant advised that the "...proposed drainage strategy was based on the WYG groundwater data (which showed groundwater levels close to the ground surface) and the approval by Southern Water for the site to discharge into their system, but essentially it shows that the site can be drained." In terms of the planning application the design team considered this is sufficient to obtain approval, suggesting a short addendum to the FRA which recommended soakage testing prior to the detailed design stage is provided.

The Drainage Team accept this approach by addendum to the FRA (in comments dated 22.10.18).

#### **Leisure/Arb Officer**

In summary, no objection raised (in comments dated 13.03.18).

Several site visits have been undertaken in support of this and other applications for the St James Hospital site. This outline application is the result of an extensive pre-application process and much discussion over the development proposals for this site.

The content of WSP Tree Survey dated May 2017 is accepted and agreed.

It is worthy of note that the layout of the proposal and landscaping scheme is significantly influenced by the presence of trees across the site and seeks to retain the mature character of the landscape where possible. Those trees identified for removal predominantly constitute poorer quality, Category U and C trees. Category U trees are trees that are in such a condition that they cannot realistically be retained as living trees in the context of the current land use for longer than 10 years. Category C trees are trees of low quality with an estimated remaining life expectancy of at least 10 years, or young trees with a stem diameter of below 150mm.

There are currently no arboricultural objections to this proposal.

#### **Waste Management Service**

No comments received.

#### **Environment Agency**

No objection to the proposal as submitted.

#### **RSPB**

The RSPB object to the proposal based on insufficient information, assessment and mitigation provided in support of this application.

Initial comments - dated 09.04.18

The application site lies within a highly sensitive area for wintering birds. It is less than 400m from the edge of the Chichester and Langstone Harbours Special Protection Area (SPA)/Ramsar site, and within 300m of three brent goose feeding areas, which are functionally

linked to the adjacent SPA; the closest of those sites, Portsmouth University Playing Fields, immediately abuts the application site. Without effective mitigation measures, the development (both alone and in combination with other proposed housing in the Milton area) is likely to have a detrimental effect on these sensitive areas, contrary to the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

The Environmental Appraisal Report (February 2018) references appendices 8.1 to 8.9, which includes information to inform Habitat Regulations Screening but these documents do not seem to be available for consideration. The report does appropriately identify the wintering birds as a sensitive receptor and the importance of the Portsmouth University Langstone Campus, adjacent to the Plot 1 Site, with a peak count of 985 Brent geese (representing approximately 5.75% of the SPA population<sup>51</sup>), however, fails to make reference to the most up to date Solent Wader and Brent Goose Strategy (2017). We are increasingly concerned by the incremental loss and indirect impact to SPA supporting sites across the Solent. We urge the Council to apply a high standard of protection to these sites, as required under the Birds and Habitats Directives.

The Council has previously identified through its Local Plan that development in this location has the potential to impact on Portsmouth Harbour, Chichester and Langstone Harbours, and Solent and Southampton Water SPAs and Ramsars and that mitigation would be required to prevent the adjacent areas becoming unsuitable for geese and waders. Mitigation should include timing of construction to avoid periods that birds are present, the use of appropriate screening and sympathetic building design (including height restrictions, restricted illumination and directional lighting) and provision should also be made for managing increases in recreational activity, particularly within the playing fields. However, based on the information accompanying the application it appears that only limited consideration has been given to screening during the construction phase by the applicant.

The RSPB disagree with the conclusions in the Environmental Appraisal Report, both of the anticipated effects during construction and operation of the site, these consistently underestimate the impacts from the proposals, fail to appropriately consider the importance of these features and fail to put appropriate safeguards and mitigation in place to provide appropriate protection. For example, one of the mitigation measures is that increases in noise resulting from the construction will be limited to working hours, however, this makes no assessment of when the adjacent feeding areas are likely to be used by Brent geese, which is likely to be entirely within working hours. The extent to which geese will become habituated to construction noise, which is likely to involve sudden loud noises, is considered to be overstated. The works should be timed outside of the most important monthly for the overwintering birds.

Critically, insufficient assessment has been made of the potential for access of the new residents to the surrounding Brent goose feeding sites. In the case of the University Playing Fields, current and future potential access should be considered. It is also important that the assessment considers the in-combination effects with the additional houses planned for the immediate area.

The above matters should be fully considered by the Council as part of an appropriate assessment under the requirements of the Habitats Regulations. However, we would advise that, based on the current information provided by the applicant, it would not be possible to conclude no adverse effect on either the Chichester and Langstone Harbours SPA/Ramsar site or the Portsmouth harbour SPA/Ramsar site due to a lack of information regarding the potential impacts on and measures to protect Brent goose feeding sites in the surrounding area.

Notwithstanding the above matters, the applicant will also be required to make a per dwelling contribution towards the Solent Recreation Mitigation Partnership (SRMP), in order to mitigate recreational pressures within the Solent SPAs. The RSPB supports the SRMP Strategy as the most appropriate mechanism for mitigating recreational disturbance to the SPA created by new residential development. This strategy is based on the best available scientific evidence for delivering recreational mitigation. The wider benefits of the greenspace enhancement for the

residents are appreciated, however, this would need to be in addition to contributions to the SRMP Strategy. We fundamentally disagree with para 8.7.30 that the measures outlined will be sufficient in isolation to accommodate increased recreation from the proposed development either alone or in-combination.

Additional comments - objection - dated 29.05.18

Following submission of additional/amended documents to support the proposals the RSPB state that consistent with the earlier response on 9th April, their comments remain valid. The RSPB remain concerned that there is insufficient certainty provided regarding mitigation for overwintering birds and therefore question the validity of the assessment's conclusions, despite appendices of the supporting Environmental Statement being made available.

The amended Environmental Appraisal Report (Feb 2018) does not appear to have been updated, therefore there remains sections which have not been completed such as Table 23. The document does not make reference to the most current legislation - the Conservation of Habitats and Species Regulations 2017, nor does it make use of the most up to date version of the 'Solent Wader and Brent Goose Strategy' 2017, rather than 2010, for the importance of the supporting network of SPA sites. Appendix 8.9 (information to inform Habitats Regulations Screening) does not seem to be available for consideration.

Whilst Appendix 8.6 identifies in the absence of mitigation that the development could have an adverse impact on overwintering birds and recommends possible mitigation measures, it fails to provide sufficient certainty regarding which mitigation measures will be provided to support the conclusions of the assessment. We consider that the mitigation measures outlined in section 4.6 of Appendix 8.6 could have the potential to provide appropriate mitigation. However, without further detail on the mitigation measures to be delivered, their scale and how these will be secured, we consider there is insufficient information and certainty to inform an Appropriate Assessment.

As highlighted previously, the applicant will also be required to make a per dwelling contribution towards the Solent Recreation Mitigation Partnership (SRMP), in order to mitigate recreational pressures within the Solent SPAs. The RSPB supports the SRMP strategy as the most appropriate mechanism for mitigating recreational disturbance to the SPA created by new residential development. This strategy is based on the best available scientific evidence for delivering recreational mitigation. The wider benefits of the greenspace enhancements for the residents are appreciated, however, this would need to be in addition to contributions to the SRMP strategy. The RSPB fundamentally disagree with paragraph 8.7.30 that the measures outlined will be sufficient in isolation to accommodate increased recreation from the proposed development, either alone or in-combination.

The RSPB are increasingly concerned by the incremental loss and indirect impact to SPA supporting sites across the Solent so urge the Council to apply a high standard of protection to these sites, as required under the Birds and Habitats Directive.

Additional comments - objection - dated 02.07.18

Whilst Appendix 8.9 is helpful in providing some further clarification, the RSPB would highlight the following points:

- o does not reflect the recent CJEU judgment (People over Wind, Peter Sweetman v Coillte Teoranta) in the consideration of avoidance and reduction measures in Habitats Regulations Assessment. I attach the PINS note which you are no doubt familiar.
- o Whilst the SDMP work is referenced in Appendix 9.8 it is understood from para 5.2.4 that the improvements to Milton Common are being proposed instead of a per dwelling contribution to the definitive SRMP / Bird Aware Strategy. Consistent with our previous response given the proximity of this development to the SPA and to appropriately address the likely effects of



recreational disturbance resulting from this development both in-combination and alone, we maintain that the greenspace enhancements must be in addition to per dwelling contributions to the SRMP Strategy. Without the SRMP contributions we disagree with the conclusions of this assessment that the potential impacts have been avoided.

o Recommendations are included in ES Section 6 of Appendix 8.6 and summarised in para 1.1.8 including retention of terrestrial foraging habitat or re-creation of habitat in a suitable location, sensitive design of coastal access etc. It does not appear that the detail of these measures has been provided to give certainty in terms of their delivery, particularly in terms of their scale and how they will be secured. Without this information it is considered that there is insufficient information to undertake an Appropriate Assessment.

#### **Hants & IOW Wildlife Trust**

No comments received.

#### **Southern Water**

SW offers no comments regarding access and scale of the proposed development. SW provide a plan of its sewer records showing the approximate position of a public surface water sewer and combined sewer within the site (but suggest their exact position is determined on site by the applicant before finalising the layout of the proposed development).

SW provide detailed comment and available guidance (where relevant), on Sustainable Urban Drainage Systems (SUDS), protection and access maintenance of existing infrastructure during construction, separation distances from new tree planting and soakaways etc.

In order to protect drainage apparatus, SW requests that if consent is granted, a condition is attached to the planning permission: "The developer must advise the local authority (in consultation with Southern Water) of the measures which will be undertaken to protect the public sewers, prior to the commencement of the development."

Our initial investigations indicate that SW can provide foul sewage disposal to service the proposed development. Southern Water requires a formal application for a connection to the public foul sewer to be made by the applicant or developer. We request that should this application receive planning approval, the following informative is attached to the consent: "A formal application for connection to the public sewerage system is required in order to service this development, please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk)"

SW has undertaken a desk study of the impact of the proposed development on the existing public surface water network. The results of this assessment indicate that with connection at the "practical point of connection" as defined in the New Connections Services implemented from 1st April 2018 that there is an increased risk of flooding if the proposed surface water run off rates are to be discharged at proposed connection points. SW requests that should this application receive planning approval, the following condition is attached to the consent: "Construction of the development shall not commence until details of the proposed means of surface water run off disposal in accordance with Part H3 of Building Regulations hierarchy as well as acceptable discharge points, rates and volumes have been agreed by the Lead Flood Authority, in consultation with Southern Water."

It is the responsibility of the developer to make suitable provision for the disposal of surface water. Part H3 of the Building Regulations prioritises the means of surface water disposal in the order

- a Adequate soakaway or infiltration system
- b Water course
- c Where neither of the above is practicable sewer

SW supports this stance and seeks through appropriate planning conditions to ensure that appropriate means of surface water disposal are proposed for each development. It is important

that discharge to sewer occurs only where this is necessary and where adequate capacity exists to serve the development. When it is proposed to connect to a public sewer the prior approval of SW is required.

Alternatively, the developer can discharge surface water flow no greater than existing levels if proven to be connected and it is ensured that there is no overall increase in flows into the surface water system. You will be required to provide a topographical site survey and/or a CCTV survey showing the existing connection points, pipe sizes, gradients and calculations confirming the proposed surface water flow will be no greater than the existing contributing flows.

SW request that should this application receive planning approval, the following condition is attached to the consent: "Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Southern Water."

### **Portsmouth Water**

No comments received.

### **Eastern Solent Coastal Partnership**

In summary, no objection in principle and the following comments are offered (dated 20.06.18).

The site is shown to currently lie within the Environment Agency's Flood Zone 1 and is therefore considered to be at low risk (<1 in 1000 year annual probability) of experiencing an extreme tidal flood event. However, flood mapping from the Partnership for Urban South Hampshire's Strategic Flood Risk Assessment (PUSH SFRA) shows that the site is likely to be increasingly affected by rising sea levels in the future, with a small part of the southern portion of the proposed development site lying within the Environment Agency's Flood Zones 2 and 3 by the year 2115. These areas may therefore be at risk from a 1:1000 year (0.1% annual probability) to 1:200 year (0.5% annual probability) extreme tidal flood event. For information, the present day 1:200 year extreme tidal level for Langstone Harbour is 3.3m AOD, increasing to 4.4m AOD by the year 2115 (design tide level), due to the effects of climate change.

The applicant has submitted a Flood Risk Assessment (FRA) compiled by WSP and dated February 2018. As stated within the FRA, the external ground levels for the northern portion of the proposed development site range from 4.96m AOD to 5.46m AOD, well above the design tide level of 4.4m AOD for Langstone Harbour. Ground levels for the southern portion of the site vary from 4.46m AOD to 4.96m AOD, also above both the present day and predicted design tide level. In addition, a localised area of the southern portion of the site lies at 4.26m AOD, well above the present day 1:200 year extreme tidal level of 3.3m AOD for Langstone Harbour, and 0.14m below the predicted design tide level in 2115. As a result, this localised area is shown to lie within Flood Zone 3 by 2115.

The FRA states that finished floor levels for the dwellings will be set a minimum of 150mm above the external ground levels, therefore finished floor levels in all areas of the site will be located above the predicted design tide level of 4.4m AOD for Langstone Harbour in 2115 and will provide occupants with safe internal refuge during an extreme tidal flood event. There is, however, ambiguity regarding which area of the development will move into Flood Zones 2 and 3 in the future. The FRA concludes that the area along the western boundary of the southern part of the application site, where none of the proposed dwellings will be situated, will move into Flood Zones 2 and 3. However, on review of the PUSH SFRA and the amended proposed layout drawing, it is clear that a number of the proposed dwellings which are located along the eastern boundary of the southern part of the application area will also be located within Flood Zones 2 and 3 by the year 2115.

The FRA demonstrates consideration of present day safe access and egress, and in the event of an extreme tidal flood event safe access and egress will be available via Locksway Road to the south. However, a small portion of Locksway Road is shown to lie within Flood Zones 2 and

3 from 2085 onwards, and there is no demonstration of safe access and egress to the application site during future flood events.

#### Advice

The FRA states that mitigation measures against coastal flooding are not considered necessary for inclusion within the proposed development, however the ESCP would strongly advise that flood resistance and resilience measures be incorporated into the proposed development, where practical to do so, and particularly for those dwellings shown to lie within future flood zones. Additionally, safe access and egress to the site may be limited during a future extreme tidal flood event, with occupants therefore being reliant upon the provision of safe internal refuge within the dwellings (set above the design tide level). Due to the scale of the proposed development, it is therefore also recommended that all occupants of the site sign up to the Environment Agency's Flood Warning Service and prepare a Flood Warning and Evacuation Plan, in accordance with advice from both the Environment Agency and Portsmouth City Council's Emergency Planning Department.

#### **Design Review Panel**

The panel were positive in their response to the analysis of the elements presented for their consideration. They were satisfied that the density, connectivity and parking rationale for the scheme were appropriate, and were also content with proposed siting in relation to the listed chapel.

The panel also commended the level of tree retention on the site and commented on the high quality of the work that has work so far been undertaken suggesting it had captured the essence of the site.

Despite these positives, and the presence of other components which allude to architecture, the panel were nevertheless convinced that more information is required before their support could be offered. They noted the lack of any analysis of scale and massing and were surprised and disappointed at the overall absence of detailed building design, particularly given the presence of the listed buildings on the site, which they were convinced demands the sharing of more information regarding the finished appearance of the scheme. For this reason they considered the scheme ultimately falls short and were not prepared at this stage to offer their support. Recommendation of the panel - the scheme is not supported in its current form.

#### **REPRESENTATIONS**

University of Portsmouth - comment - 6th April 2018

- o Application reviewed in context of University's adjoining operational campus and its future development potential, as identified to date by our participation in the emerging Portsmouth Local Plan.
- o The University is supportive of the principle of residential development in the area. However, the University wish the proposal to be considered in the context of the Development Principles and Framework Document for the St James' Hospital and Langstone Campus Masterplan Area, prepared jointly by the landowners, and under consideration by Portsmouth City Council.
- o The University may also wish to make specific comments on identified infrastructure impacts and mitigation measures once you have received all responses from statutory consultees and formed a recommendation in this regard.

The Portsmouth Society - objection - 11th April 2018

- o Unnecessary demolition of two of the four buildings in the grounds. We have no comment on the former Harbour School. Agree with the demolition of Yew House, if replaced with landscaping or quality architecture could enhance views of the listed Chapel.

o Blinkered assessment of importance of the two well-constructed and designed villas: Fair Oak House and The Beeches (by important Portsmouth architect A E Cogswell), concludes they are not technical 'heritage assets', demolition is judged as 'on balance neutral'. There is no consideration of what could be done to make further use of the villas, no reason to demolish them, both in excellent condition. Could have landscaping around them and information plaques detailing their link to the hospital and their place in progressive mental health treatment. Could be refurbished as either residential, doctors surgeries, child or healthcare centres. No photographs from the South, the aspect designed for patients' convalesce.

Hampshire Buildings Preservation Trust - objection - 23rd April 2018

o Deep concern on proposed demolition of two historic therapeutic villas, support the strong case made by the Milton Neighbourhood Forum. Heritage England identified the grounds of the hospital as a Therapeutic Landscape being of specific importance and also held a dedicated conference there on this subject.

The Milton Neighbourhood Planning Forum - objection - 26th April 2018

o Summary: the application is based on outdated Planning Policy for St James' Hospital. Supporting documentation is incomplete and flawed. The development would cause harm.

o Portsmouth Plan policies (2001-2011 and carried forward into 2011-2026) plan growth to be sustained with strategic policies on transport, health and education services. None of this has happened. Traffic congestion is rising and the Council has no means of improving public transport to enable lower car-dependency. There are expanding GP waiting lists and rising deficits in hospital bed numbers leading to a worsening of health outcomes and consequential increased costs. Rising deficits in school-place sufficiency. Placing 'portakabin' classrooms in playgrounds as a reaction to growing pupil numbers means less space to play with effects on childhood obesity. The policies are outdated and the failures in transport, health and education have contributed to Portsmouth's lower levels of deprivation, life expectancy and educational achievement. As such, should not replace health care and education facilities with housing, should re-use for social care or dementia care.

o An entire section of the Environmental Appraisal Appendices not published notwithstanding a request by Natural England. Applicant not submitted a Biodiversity Mitigation and Enhancement Plan. Statutory Bodies and the public are not being provided with all of the facts.

o The local community has largely been ignored. The submission assumes compliance with a Site Allocations document of 2014 but that was never adopted. Some of the densities are excessive and inconsistent with the Portsmouth Plan: the site is poorly accessible by public transport and 40 dph is more appropriate.

o Would not enhance the setting of a Grade II Listed Chapel : buildings are too high, close and unsympathetic to the Hospital's landscape and design.

o The Transport Assessment is not realistic, takes little account of developments elsewhere impacting on an already congested road network, and the city's population is forecast to grow significantly. Unrealistic comparisons are made to the existing site's traffic and parking.

o Fair Oak Road would have a daily increase of 220 vehicles, with the applicant claiming: "no access is shown to experience a significant increase of vehicles in any one direction, suggesting that the development will have a nil detriment impact on the local highway network". No account taken of the dog walker vans parked in Fair Oak Rd for St James' Green. It is nonsense to describe Locksway Road and Milton Road as working well : long traffic queues in pm rush hour and on Summer weekends. The DfT Traffic Count figures for this junction indicate a 6.3% increase in vehicles from 2014 to 2016.

o As traffic generation is not properly assessed, cannot make any reliable statement on compliance with Air Quality standards. Indeed, applicant relies on an Environmental Appraisal and a Transport Assessment by the same consultancy Company WSP: conflicting aims, objectivity lost. The Council's 2017 Air Quality Strategy was deemed by DEFRA as inadequate, AQMA 9 at Velder Avenue/Eastern Road exceeded annual NO2 Limits in 3 of the last 4 months of reporting so it cannot be assumed adding more traffic to the area will be safe.

o Concern about reasonableness of walking 2 miles to facilities, walking and cycling in Portsmouth is hard to encourage due to personal safety - above average deaths or serious

injuries. The proposal is only "considered" to be in compliance with policy by offering electric vehicle charging points and requiring Travel Plans. Aside from GPs, any new school would take far longer to build than the housing.

- o Heritage Assessment is inconsistent and should not describe Fair oak and The Beeches as undesignated and insignificant, they can be described as 'curtilage listed' by their association with the boundary wall. Also, they have a national significance as they are very early and rare examples of the 'Colony-Plan system of psychiatric care, and have a local significance by virtue of their designer, Arthur E Cogswell.

St James' Memorial Park Trust - objection - 27th April 2018

- o The site has important history dating from its construction in 1878, with landscape and trees, important and attractive buildings and health care. Villas were built around the turn of 19th century for private, fee-paying patients, Fair oak and Yew Tree are the only two which remain to the south. Fair oak Villa has its roof in good repair. It backs on to Milton Village Green and if demolished and flats built on the site and garden, they would overlook the village green. Yew Tree Villa has a brand new slate roof with 12 parking spaces to the south - ideal for conversion into flats whilst retaining the former garden forever and wildlife. Each villa is within 20-25m of the Grade II listed chapel. The villas would be overshadowed by the proposed 3-storey flats. Trees are at risk. Many families have had their children christened here and others have loved ones buried here.

- o No objection to demolition of the Child Development Centre, but object to proximity of residential houses to The Orchards - no mental health patient wants this proximity to residential development, and vice-versa. Neither should there be a play area in this green space. Request repair of the damaged entrance wall.

NHS Property Services (NHSPS) & Solent NHS Trust - support - 27th April 2018

- o We are part-owners of the wider site and have reviewed the proposals in the context of the Solent NHS Trust adjoining operational services and future development potential of NHSPS and Solent NHS landholdings. This is a Strategic Site Allocation in PCC's Issues and Options document, 2017, we support the strategic allocation. The Plot 1 proposals should be considered in the context of the Development Principles and Framework Document for the St James' Hospital and Langstone Campus Masterplan Area, prepared jointly by the landowners and currently under consideration by PCC. The Framework will ensure a proportionate contribution is made by each of the principal landowners towards redevelopment of the wider site, there is considerable variation in the nature and complexity of the issues that each landowner has to address in order to deliver a high quality place. The more straightforward sites such as Plot 1 should contribute towards helping to deliver areas of the site with more challenging infrastructure issues. The Framework will strike a successful balance between identifying key parameters and fixes, agreed by the key parties, whilst maintaining sufficient flexibility in other areas.

- o Homes England have conducted significant pre-application meetings with PCC and positively engaged with the local community and key stakeholders. Portsmouth needs 17,020 homes between 2011-2034, these proposals would make a positive contribution to delivering the city's housing requirement, the site is on previously developed land, is sustainably located, with good access to services and within an area of established residential character, it represents a significant opportunity to provide much needed housing.

- o The Plot 1 'Design and Access Statement' identifies edge conditions to address varying requirements of the development. Need a privacy fence with enhanced planting screen to the NHS entrance, to recognise the sensitive nature of the boundary between The Orchards and development site, with agreement of NHS. A four-bed detached dwelling is proposed close to the boundary between The Orchards and development site, its second floor habitable windows should be obscure glazed for privacy for both new residents and NHS patients.

- o Wish to work with applicant and PCC to ensure construction activities take health and well-being of neighbouring NHS patients and staff into account - need a construction method

statement. Wish to make specific comments on identified infrastructure impacts and mitigation measures as matters progress.

'Keep Milton Green' - objection - 25th April 2018

- o Portsmouth Plan policies (2001-2011 and now into 2011-2026) plan growth to be sustained with strategic policies on transport, health and education services. None of this has happened. Traffic congestion is rising and the Council has no means of improving public transport to enable lower car-dependency. They are expanding GP waiting lists and rising deficits in hospital bed numbers leading to worsening of health outcomes and consequential increased costs. Rising deficits in school-place sufficiency. Placing portakabin classrooms in playgrounds as reaction to growing pupil numbers means less space to play (childhood obesity). The policies are outdated and the failures in transport, health and education have contributed to Portsmouth's lower levels of deprivation, life expectancy and educational achievement. Should not replace health care and education facilities with housing, should re-use for social care or dementia care.
- o Home England's statutory objectives are to secure regeneration of an area, sustainable development, good design, and meet people's needs. No evidence to suggest these objectives have been applied.
- o Local community largely been ignored. The submission assumes compliance with a Site Allocations document of 2014 but that was never adopted. Some of the densities are excessive and inconsistent with the Portsmouth Plan: site is poorly accessible by public transport and 40 dph is more appropriate.
- o Would not enhance the setting of Grade II Listed Chapel : buildings are too high, close and unsympathetic to the Hospital's landscape and design. Heritage Assessment is inconsistent and should not describe Fair Oak and The Beeches as undesignated and insignificant, they can be described as 'curtilage listed' by their association with the boundary wall. Also, they have a national significance as they are very early and rare examples of the 'Colony-Plan system of psychiatric care, and have a local significance by virtue of their designer, Arthur E Cogswell. The Harbour School element (the area closest to playing fields) is ok.
- o Transport Assessment is not realistic, including taking little account of developments elsewhere impacting on an already congested road network, and city's population forecast to grow significantly. Unrealistic comparisons made to existing site's traffic and parking. High level of road accidents in the city.
- o Fair Oak Road would have a daily increase of 220 vehicles, with the applicant claiming: "no access is shown to experience a significant increase of vehicles in any one direction, suggesting that the development will have a nil detriment impact on the local highway network". No account taken of the dog walker vans parked in Fair Oak Rd for St James' Green. It is nonsense to describe Locksway Road and Milton Road as working well : long traffic queues in pm rush hour and on Summer weekends. The DfT Traffic Count figures for this junction indicate a 6.3% increase in vehicles from 2014 to 2016.
- o As traffic generation is not properly assessed, cannot make any reliable statement on compliance with Air Quality standards. Indeed, applicant relies on Environmental Appraisal and Transport Assessment by the same consultancy Company WSP: conflicting aims, objectivity lost. The Council's 2017 Air Quality Strategy was deemed by DEFRA as inadequate, AQMA 9 at Velder Avenue/Eastern Road exceeded annual NO2 Limits in 3 of the last 4 months of reporting so it cannot be assumed adding more traffic to the area will be safe.
- o Concern about reasonableness of walking 2 miles to facilities, walking and cycling in Portsmouth is hard to encourage due to personal safety - above average deaths or serious injuries. The proposal is only "considered" to be in compliance with policy by offering electric vehicle charging points and requiring Travel Plans. Aside from GPs, any new school would take far longer to build than the housing.

A total of 347 representations have been received, across two public consultation phases (March and May 2018), raising objection on the following grounds:

Principle:

- o This land is truly a community resource, of heritage and green space, should not lose a fantastic asset, must consider every alternative option before using this land. New homes should be built on brownfield sites only and old buildings should be reused, not demolished. Better to build new houses in the centre of the town.
- o This is not the sort of housing that is required in Portsmouth, houses will not be affordable to young families.
- o Concerns re unsustainable development negatively impacting on social infrastructures, wildlife habitat and the health and wellbeing of Portsmouth residents. To contemplate such development in a city already at breaking point is utterly incomprehensible and highly irresponsible - horrendous traffic, poor air quality, insufficient school places and doctors' surgeries, ever-decreasing green spaces. PCC must take stock of the incessant and irreversible damage on the environment and the people of Portsmouth through seemingly unbridled and irresponsible development across the city.
- o Application should not be regarded in isolation but in context of the announced proposals for further unsustainable development at St James Hospital, The University Campus at Furze Lane, the Fraser Range at Eastney and unprecedented additional 6,000 homes across the city by 2027.
- o Policy MT3 is dated back to 2001 and to provide 145-170 no. homes, this policy is now outdated and inappropriate

#### Loss of Green Space:

- o UK does have a housing crisis but in this case more than 205,000 residents would lose even more access to green space, Portsmouth has half the green space per citizen compared to national average. The habitat and green space is vital for health of the city, including tackling childhood obesity.

#### Affordable Housing:

- o The villas should be used for help with hospital bed-blocking or the homeless, or dementia patients. Some of the purported affordable housing would be way beyond prices local residents can afford (£275,000 - £400,000). 4 bed houses are not affordable.

#### Character & Layout:

- o Milton is already an overcrowded area, new houses have already been built in this area and negative impacts are noticeable such as less attractive environment
- o Need to be clear about responsibility of fences between site and Fair Oak/Cheriton/Oakdene Road estate. Proposed density too high (80 dph) - such densities are for areas with very good public transport links and close to facilities, policy states should be 40 dph. Density inappropriate for green and tranquil area.
- o Having apartment blocks face Woodlands Walk will be at odds with natural grain of the hospital and the philosophy behind their placement facing south to maximise natural light.

#### Heritage Issues:

- o Absolutely tragic to see chapel being dwarfed and over-shadowed by buildings that are too big and too close.
- o Until recently, chapel was running. It has now been gutted but this does not mean that the building itself can be disregarded. Really disappointing to see that two more of the Edwardian villas are proposed to be demolished, are in good condition so from an economic perspective they should be kept. Surely Fair Oak and The Beeches should be considered as curtilage listed and reused, given the NHS objected to the construction of a shed in the grounds of West Lodge, some 150m from hospital, on grounds that West Lodge was curtilage listed? The obvious option of converting the main listed building into homes which would leave grounds untouched and intact for benefit of nature, wildlife and future generations.
- o new flats could easily sit on the uninteresting eastern side of the development with well-spaced residential houses by the Chapel.
- o Demolition would be disruptive and counter-therapeutic for patients of St James, as grounds are important part of therapeutic space
- o Heritage Assessment claims loss of villas can be justified by virtue of their disassociation from the hospital and chapel by existing tree screening. This is not a justification - they are set in leafy landscape because philosophy of Victorian and early 20th century psychiatric care was to foster tranquillity through careful well planned landscaping

#### Ecology and trees:

- o Every single green space is now vitally important to our wildlife. Would affect many birds: Brent Geese, rare-breeding green woodpeckers, sparrowhawks, kestrel, Owls, woodpeckers and firecrests. Also affect bats and foxes. Hospital grounds host a great variety of edible plants
- o Site in current state plays an important role in the ecological network of the area including the adjoining Ramsar site - development will have significant detrimental impact
- Amenity Issues:
  - o Local residents use area for sports and recreation - its loss will have an overall negative impact on mental and physical well being of local community
  - o Large sections of proposed development are open and exposed to potential criminal activity and anti-social behaviour
- Highway Issues:
  - o More and more houses are being built with no mention of road improvements. Concerns about pedestrian safety, and emergency vehicle access
  - o Lack of garaging and parking, 1.5 parking spaces per household is unrealistically low
  - o The entrance will be in Locksway Road, which is already congested at certain times
  - o Proposal to use Fair Oak Road to access the development is pure madness - the road is narrow and winding, consistently used by children, walkers and dog walkers visiting St James' Green and regularly suffers from parking problems, which negate safe passage by pedestrians and vehicles. Concern also about construction traffic, including disturbance for residents.
  - o Recent HMO approval on Fair Oak Road has caused restrictions for large vehicles to pass safely when vehicles parked on both sides
  - o Residents already suffer due to no road markings or double yellow lines, with cars parked on corners, across dropped kerbs and dog walkers van parked across entrance to park - opening Fair Oak Road to new development will mean the danger to children and walkers will increase ten fold
  - o Traffic along Locksway Road has doubled in last six months and turned into van parking area between St James main entrance and Fair Oak Road
  - o need two access roads?
  - o need provision of separate space for park users
  - o Capacity of Eastern Road and St Mary's Road will be further stretched at peak times and during football matches
  - o Traffic assessment must have been done in the dead of night
  - o no frequent bus service - the one at the moment is not reliable and it finishes around 6pm each night
  - o Would be easier to place a mini roundabout on Locksway Road. Would it not be possible to consider only one access with mini-roundabout at Woodlands Walk? This would have additional benefit of reducing speed on the racetrack called Locksway Road.
  - o Better to use main hospital entrance as main access road for construction vehicles
  - o Traffic survey undertaken by local people shows that two junctions (Locksway Road/Milton Road and Moorings Way/Velder Avenue) already operating over-capacity
  - o Transport Assessment lacks credibility, does not recognise that the No 13 bus exists, and it places Londis shop on Locksway Road in Milton Road.
  - o Have they forgotten Phase 2 and the Langstone site with another possible 300 dwellings and attendant vehicles - will that also result in their stated betterment on the local road network?
  - o can see no proposal which will positively encourage people to reduce their car use. Was a former place of employment so new residents will have to travel, by car, presumably, to their place of employment
  - o Moorings Way has become a dangerous rat run along with other side roads leading to Locksway Road
  - o 2011 Plan aimed to make Portsmouth an accessible city with sustainable and integrated transport by ensuring there is adequate supporting infrastructure for new development and growth of the city - this has not happened
  - o PCC is relying on Local Transport Plan 3 but that is out of date
  - o TA's conclusions on accessibility and sustainable transport is wrong as it says walking 2 miles is reasonable - this standard is not intended to be applied to new developments
- Air Quality:



- o PCC's 2017 Air Quality Strategy accepted by DEFRA as being flawed and PCC required to produce another one to be compliant by 2020 - applicant is basing assumptions on same flawed assessment. Portsmouth is already on top of the list of cities requiring urgent action on air quality - how can it be legal to deliberately grant this planning application knowing that an increase in traffic will make the problem far worse? Developing over green space and removing trees will lead to less pollution capture and less carbon sequestration leading to higher greenhouse levels.
  - o Not clear how can say impact from air pollution will be negligible, when estimate of nearly 500 vehicle movements per day
- Infrastructure:
- o Portsmouth is most densely populated city in the UK and Milton cannot support this many new dwellings. Concerns re pressure on schools, GP and dental services, emergency services, traffic and parking. More residents will mean more waste, higher possibility of sewage entering Langstone Harbour and more pollution from traffic. Result in reduced broadband speed for existing estate.
  - o Flood risk due to removal of trees and changed land use is not expressly considered in reports
  - o Prior to any development on this site the infrastructure needs to be put in place with a holistic approach
  - o Inability of Southern Water to cope with sewage created - SW currently having to make an average of 2 discharges into Langstone Harbour every day as they have not invested in coping with Portsmouth's sewage and until that investment is made, no more houses should be built on Portsea Island
  - o Policy PCS16 requires development to provide or contribute towards the provision of infrastructure needed to support it - where new infrastructure is needed , it must be operational no later than the completion of the development or phase of development for which it is needed. How can that be made to happen?

Other:

- o Better uses for site : convalescent homes to aid QA hospital, or help ex-service personnel in need of temporary accommodation. Why did NHS sell land and give up hospital? It is needed more than ever.
  - o Is it safe to dig up land that may contain plague pits?
  - o Home England's statutory objectives are to improve the supply of housing in line with government policy, secure the regeneration or development of land or infrastructure and contribute to the achievement of sustainable development and good design, with a view to meeting the needs of people - they say these objectives have guided these proposals but there is no real evidence they have applied them.
- Following the receipt of additional information and the second round of public notification (May 2018), many of the initial set of comments reported above were repeated, and the following similar and/or new comments made:
- o Must be options to approach central government to alleviate the building allocation for the city and save part of last open green areas
  - o There are alternatives proposed by the Milton Neighbourhood Forum which are much more appropriate
  - o Proposed development does not equate to sustainable development under the NPPF - the Portsmouth Plan should take account of sustainable development from NPPF and correspond to the definitions of sustainable development in its contents
  - o Whilst aware that more housing is required generally, at some point, have to accept that Portsmouth is full to capacity.
  - o Without doubt, 107 homes is probably first phase of a much larger plan to build more properties
  - o Portsmouth needs affordable housing but there are other industrial sites such as Tipner where it can be built
  - o Need alternative methods of affordable housing
  - o Once Langstone Campus is built on there will be complete housing estate running from shore westward along Locksway Road, completely changing area

- o Houses are characterless and detract from traditional feel of an area
- o Every possibility people will buy houses and commute out of city so nothing is achieved to benefit of local or wider community
- o We want to be seen as a city of culture yet ache to bulldoze any local heritage we have left. Would detract from the cultural and historical value of the church
- o Effect on swifts, jays, goldcrests, nut hatches, finches, warblers, robins, blackbirds and song thrushes and rare beetles. Cuckoos, hedgehogs, jays, woodpeckers, squirrels all now noticeable by their absence.
- o Outrageous plans to fell over 40 beautiful mature trees that would take many decades to replace
- o Loss of trees will lead to higher water table and risk of flooding
- o Why are so many trees classed as C Category?
- o Bus services are not good - the 13/14 route runs only hourly and stops at 7pm weekdays and 5.30pm weekends
- o Will developer subsidise services or enhance them?
- o University bus which runs until midnight is a private contract - having it available to all would vastly improve bus access
- o Currently dangerous approaching Fair Oak Road from Locksway Road, especially turning in as traffic is always back up at junction - only a matter of time before there will be a serious accident
- o Velder Avenue/Moorings Way already suffer air quality issues from increased levels of pollutants harmful to public health/environment above the Clean Air Act
- o how is Council going to monitor impact of development on site on local infrastructure as a whole?

One letter of support has also been received commenting:

- o As an ever growing city need to continue to build new homes to provide accommodation for the new and existing residents, improper to deny others a home whilst sitting comfortably in my own
- o Site is largely unused and although agree with some of the concerns re infrastructure, feel the development is necessary.

## **COMMENT**

The principal issue is whether this proposal would contribute to the achievement of sustainable development, in accordance with national and local planning policy. Key issues for consideration are the principle of residential development, aspects of design (layout, scale and access) sought for approval, impact on heritage assets, traffic/transportation implications, impact on nature conservation, loss of trees, flood risk/drainage, sustainable design and construction/site contamination and residential amenity.

### **Principle of residential development**

Policy PCS10 outlines the strategy for the delivery of housing within the city over the plan period, stating that new housing will be promoted through conversions, redevelopment of previously developed land and higher densities in defined areas. This is supported by paragraphs 59-61 of the NPPF which states that "To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed... Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities etc)."

The supporting text to PCS10 states: "...the city needs to provide more homes to cater for the natural increase in population, a decrease in household size and to house those people on the

council's housing register. Additional homes are also needed to support economic growth. Providing a large number of new homes in the city is in line with the PUSH strategy of focusing new homes in urban areas to regenerate the cities and to relieve pressure on the surrounding countryside...".

Saved Policy MT3 allocates an area of land which includes the application site for a mix of new mental health care development and housing. Healthcare development has already been delivered by the provision of The Orchards and the Lime NHS Solent Trust buildings to the north of the site (outside of the application boundary for the proposed development, but within the boundary of the allocation). Although the circumstance of the whole St James site, and the potential for the future uses has evolved since the adoption of that saved policy in 2006, it was always envisaged that housing development would form part of the former grounds as set out in the saved policy.

The principle of housing development is therefore considered to be acceptable.

- Housing Land Supply

The position on Portsmouth's housing need, as defined in national planning policy and guidance, is currently under review. The government has published a standard method for assessing local housing need. It has also published an amendment to the methodology which proposes that councils base this standard calculation on the 2014-based household projections, which if confirmed in the New Year will have the result of increasing the level of need significantly. However, whatever the outcome of that proposed amendment to the national policy and guidance, it is the case that the city has an ongoing need for all types of housing, including family housing, which this proposal will help to meet.

- Affordable housing/housing mix

New residential development of this nature must make provision for sufficient affordable housing which will contribute to meeting the identified need in the city at 30% under Policy PCS19 of the Portsmouth Plan. Based on the maximum level of development of 107 dwellings, this would equate to the provision of 32 affordable dwellings.

Policy PCS19 also seeks provision of accommodation to meet the needs of families and larger households, to achieve a target of 40% family housing where appropriate. The breakdown of 107 dwellings is 45 flats (1 and 2-bed) with 62 houses (3 and 4-bed), exceeding the 40% target.

The comments of the Housing Enabling Officer are set out in the consultations section of this report. It welcomes the provision of affordable housing and based on the proposed site layout of the outline application recognises the need for a slightly amended mix for the 32 affordable dwellings as 4x 4bed houses, 13x 3bed houses, 6x 2bed flats and 9x 1bed flats (ie a complete block of flats).

- Standard of accommodation

The applicants "Building Dimensions" Table includes a breakdown of internal floor area by building type and all achieve at least the minimum floorspace requirements of the Nationally Described Space Standards (without detail, at this stage, as to how the dwellings would all meet the technical requirements [a]-[i] in para 10 of the standards).

The principle of housing development, mix, affordable housing provision and standard of accommodation are therefore considered to be acceptable, in accordance with policies PCS10 and PCS19 as well as saved policy MT3.

**Site layout, scale and access**

Policy PCS23 echoes the principles of good design set out within the NPPF, stating that all new development must be well designed and in particular, respect the character of the city. It sets out a number of criteria which will be sought in new development, including excellent architectural quality, public and private open spaces which are clearly defined, safe, vibrant and attractive, appropriate scale, density, layout, appearance and materials in relation to the particular context, creation of new views and juxtapositions that add to the variety and texture of a setting, amongst others.

In addition, policy PCS21 requires "housing density should not be less than 40dph" (applies all areas of the city other than those specifically listed in the policy for higher density). The policy caveats that appropriate densities depend on various factors but the rationale for different levels to those outlined in the policy should be made in an accompanying design and access statement (DAS). The provision of 107 dwellings across a total area of 3.6ha equates to an overall site density of around 30dph.

The views of the Design Review Panel are set out in the consultations section of this report. The panel was positive about the analysis presented (as capturing the essence of the site) and satisfied that the density, connectivity and parking rationale for the scheme were appropriate. The panel was also content with siting in relation to the listed chapel and commended the level of tree retention. Despite these positives and the presence of other components which allude to architecture, the panel was nevertheless convinced that more information is required before their support could be offered, noting the lack of any analysis of scale/massing and absence of detailed building design (given the presence of the listed buildings) suggesting it demands the sharing of more information regarding the finished appearance of the scheme.

Outline approval is only sought for the layout, access and scale of the proposed residential development. Other matters of appearance and landscaping would therefore be considered at Reserved Matters stage, should outline permission be granted. However, the application is seeking permission for a maximum level of development on the site of 107 dwellings. Consideration therefore needs to be given to the ability of the site to accommodate the level of development proposed, in the context of site constraints, such as protected trees to be retained, setting of heritage assets, character of its surroundings etc.

- Site layout

The applicant's DAS states that the design concept for the proposed development has been based on four design principles, as follows:

- o Create a strong route network with clear definition between public and private spaces;
- o Create strong frontages to encourage overlooking of public open spaces;
- o Retain and enhance key tree corridors as ecological and open space amenity; and
- o Retain views of the listed Chapel and create and enhance its setting within the site.

The design concept for the two broadly rectangular connected areas envisages the site as two distinct character areas and development typologies, described in the DAS as traditional perimeter blocks and woodland pavilions.

The applicant states: "The eastern area is proposed for lower density (40 dwellings per hectare) family housing in keeping with the immediate residential surroundings. The western area has a stronger mature landscape setting with a number of trees that the development proposals are seeking to retain. This area is also constrained by the need to appropriately respond to the Grade II listed Chapel. As such, this area requires a design response that delivers housing numbers with a reduced building footprint, avoiding root protection areas and providing a suitable new setting to the listed Chapel. Apartment buildings have been proposed in this location in response to the above."

The eastern area proposes detached and semi-detached houses with short terraces. The applicants Density Parameter Plan shows 40dph for the eastern area by including the houses

and private gardens with access roads and all parking spaces but excluding public open space serving the development. The nature of the proposed layout for the eastern area would not be dissimilar in character to nearby housing at Fair Oak Road/Cheriton Road; it would present a fairly hard urban form with houses positioned close to back edge of pavements and hardsurfacing for parking. The site layout includes garages to reduce, as far as practicable, the presence of parked vehicles. The perimeter blocks would limit the opportunities for tree planting capable of contributing to the streetscene and consequently relegate most of the additional tree planting, as replacements for existing trees lost from the site, into rear garden situations.

The western area has an established landscape character with many substantial trees (to be retained) and located adjacent to and within the setting of the listed Chapel and main hospital beyond. The western area closest to the Chapel proposes a design solution of 'woodland pavilions' within building footprints seeking to avoid the root protection areas/canopies of trees, to respond to the setting to the listed Chapel. Flatted development is proposed in this location and the parameter plans provide control over how reserved matters applications for appearance and landscaping pursuant to outline permission should respond to site constraints and principle design concepts in a manner that would preserve the setting of the heritage assets. Introduction of flats provides an opportunity for higher density. The applicants Density Parameter Plan shows 70dph for the western area, once again, by including the dwellings and their gardens with access roads and all parking spaces but excluding public open space. The applicants describe the development in compliance with policy PCS21 at not less than 40dph. In reality 107 dwellings across a total area of 3.6ha, equating to an overall site density of around 30dph, is not considered in conflict with PCS21 since the policy requires an assessment to the ability of the site to accommodate the level of development proposed, in the context of site constraints of protected trees to be retained, the setting of heritage assets and character of its surroundings.

The proposal includes public open space provision totalling 1.32ha. It is not coincidental that most of the existing (protected) trees to be retained are within the proposed open space. There are other TPO trees located within proposed private gardens in the south-east corner of the site (western area). A planning condition will be necessary and appropriate to remove 'permitted development' rights for the proposed dwellings (western area, accessed via Fair Oak Road) to ensure any future extensions, boundary treatments and/or outbuildings would not adversely impact the canopy/root protection areas of the TPO, maintain hedge boundaries that form part of the proposed setting for the development and preserve the setting of the heritage assets.

- Scale

A Building Heights Plan accompanies this outline application. It proposes a mix of 2 and 2½-storey houses and 3-storey flats. A supporting 'Building Dimensions' table indicates maximum heights for development for the site at 9.5m for 2-storeys, 11m for 2½-storeys and 10m for 3-storeys. No building within the site would exceed three storeys and this would be appropriate to control by planning condition. In the northernmost part of the site, the Table suggest three-storey buildings, opposite the listed Chapel, could be designed with a flat-roof or (lower) pitch-roof form to ensure that the overall scale/massing of the development would remain appropriate in the context of the surrounding area and that would not compete with or have an overdominant relationship to the listed Chapel, to preserve its setting.

- Access

Locksway Road would provide the principal access to connect the proposed housing to the local highway network onto Milton Road (A288). Separate vehicular access arrangements are proposed to serve each of the two broadly rectangular (conjoined) areas. Access to the 'east' side would be created by the widening of an existing single carriageway along the eastern site boundary directly onto Locksway Road. Access to the 'west' side would also be via Locksway Road but through Fair Oak Road, along a length of existing carriageway of approximately 150m.

In conclusion, these aspects of design (for approval by the outline application) are considered to demonstrate how the quantum of development would be capable of being assimilated onto the site in a satisfactory manner that responds to its constraints and context. The proposal would thereby accord with relevant component parts of policy PCS23, subject to (a) other matters considered in the following sections and (b) future key details at "reserved matters" stage, relating to appearance and landscaping, to ensure high architectural quality buildings and well defined public and private spaces.

## **Heritage impact**

- Designated heritage assets

A legislative obligation falls upon the local planning authority under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. It places a duty to have special regard to the desirability of preserving a listed building and its setting, and this special regard is beyond a mere material consideration. The NPPF (at para 193) requires great weight should be given to the asset's conservation and significance can be harmed (amongst other things) by development within its setting.

The application site at 3.6ha is relatively large and sits within the historic grounds of the listed hospital building and in close proximity to (but not physically connected with) the listed chapel. Where an impact exists, it would be on the setting of these assets rather than directly on their fabric. Both the hospital building and chapel were included in statutory list on 9 December 1998.

The proposed siting of the three blocks of flats, toward the northernmost boundary and closest to the listed chapel, would be very similar to existing buildings at the site. Amendment has secured slight realignment of the central block further to the east to secure an approach view from Fair Oak Road. This would be considered to make the chapel (rather than any new building) the visual focal point and terminus of views north. Whilst relatively modest, the amendment is considered an important improvement to the overall layout.

The NPPF (at para 189) requires an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The local planning authority (at para 190) should identify and assess the particular significance of any heritage assets that may be affected by a proposal (including its setting) taking account of the available evidence and any necessary expertise.

A Heritage Impact Assessment (HIA) has been produced in support of this proposal. A review of the HIA has been undertaken and found the range of assets considered to be appropriate and proportionate to the scheme, as is the quantity of analysis undertaken by the applicant. Where comment or judgment has been made on the assets significance (including contribution of setting to that significance) it has, however, tended to downplay its importance.

The applicant's Planning Statement offers a summary: "There is an impact on the setting of two of the assets identified, St James Hospital and the chapel. Viewed in the whole, such impacts would be seen as causing less than substantial harm, with little likely effect on the setting of the listed hospital building. The Site is visually separated from the hospital by a mature belt of vegetation which creates a strong buffer and a pleasant setting to the listed building. The design will aim to retain this relationship and not impact any potential views of the hospital. The design of the scheme has aimed to reduce and mitigate the effect on the chapel, firstly by removing the existing, poor quality environment and maintaining a clear open space immediately south of the chapel so that public views of the chapel are not impeded, secondly by thinning out the planting to the south of the Church which improves the immediate setting and thirdly by providing a designed and landscaped space that will also improve pedestrian and road safety. Through the application of these measures the development of the site will enhance the setting of the listed chapel and will integrate this sensitively. There are four undesignated buildings located within the Phase 1 Land. Fair Oak and the Beeches are of limited heritage significance. Their demolition

would cause limited harm. Sufficient mitigation of the harm caused by their demolition would be a photographic record with a measured ground plan. Yew Tree House and the school are of no heritage significance. Therefore, their demolition would cause no harm, meaning that they require no mitigation. In heritage terms, the overall effect of the proposals is on balance assessed as neutral. The proposed development is therefore considered to be in conformity with Portsmouth Plan Policy PCS23."

Officers' findings of low/medium and medium adverse impacts to the setting of the designated assets, considered in overview the finding of an overall cumulative impact of the proposal on the setting of the assets is medium. Officers are of the view that an on balance opinion of 'less than substantial harm' to the significance of the heritage assets for the scheme is overall reasonable.

The NPPF (at para 196) states "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits... including, where relevant, securing its optimum viable use."

The applicants do not address public benefits on the basis of their findings "In heritage terms, the overall effect of the proposals is on balance assessed as neutral." The release of surplus NHS land to meet local housing needs and delivery of new homes on an allocated site, including affordable housing and provision of larger dwellings for families are public benefits.

- Non-designated heritage assets

Chapter 5 of the supporting Environmental Appraisal Report (EAR) relates to archaeology and the potential impact of the proposed development on buried heritage assets. This states that there have been no previous archaeological investigations within the site and as such, the archaeological potential of the site is unknown. However, the main potential within the site is thought to be for prehistoric remains of medium or high significance and for later medieval/post-medieval agricultural remains of low or negligible significance. As such, a programme of 'archaeological evaluation' is proposed to clarify the nature, date, extent, preservation and significance of any remains present and to inform an appropriate mitigation strategy, as required.

Third party objection has been raised to the loss of villas known as Fair Oak House and The Beeches. The objectors contend these have national significance, representing very early and rare examples of the "Colony-Plan" System of psychiatric care and local significance, designed by architect Arthur E Cogswell (1858-1934) and consider them worthy of retention and re-use.

These villas are not held to be curtilage listed, which is a question of fact and degree. The villas lie within the historic boundaries of the hospital site, were constructed pre 1948 and have presumably been in the ownership of the NHS since its creation. The nature of their use or function has continued to respond to evolving mental health practice and subject of change up to the point where they were considered no longer necessary or suitable for patient use and therefore surplus to requirements. Despite their proximity and historical associations with the hospital they ceased to be a single unit with it. Visually the villas do not sit in an open relationship with the main hospital building. Their presence is more discreet and the land surrounding them was historically enclosed by planting/fencing, expressing a degree of separation. They are partially screened by soft landscaping addressing the road. In this context they do not have an exceptionally strong aesthetic relationship with the listed hospital. They do not enjoy the enhanced significance of buildings that were disposed in a manner suggesting their siting was underpinned by a deep or explicit architectural/philosophical concern for the creation of a formal artistic arrangement. Nor do they share a similar architectural style.

The significance, status and application requirements relating to villas at the hospital site were considered in late 2014 and early 2015, as part of the engagement with NHS Solent around early concepts for its redevelopment. The history of earlier loss/removal of other villas ('Gleave' and in particular 'Light') is relevant to the reasoned approach to the question of approvals

required for the removal of other villas on the hospital site. As for 'Gleave', it seems this was severely damaged by fire. Planning records reveal no prior approval (or other application) for removal of the villa. For 'Light', originally located adjacent to 'Gleave', this villa was demolished as part of a scheme for new dwellings on the site. Planning records confirm that the villa was not considered to be curtilage listed and no application submitted or determined for listed building consent. An application for Prior Approval ref 12/00293/DEM was submitted and approved.

Heritage consultants, acting on behalf of the applicants, undertook analysis of the history and significance of buildings in Plot 1 including Fair Oak House and The Beeches, identifying these as follows:

"very ordinary, old-fashioned designs, typical of large houses of the period 1890-1920 and decidedly conservative, even in the late 1920s. They exhibit no interesting aspects of design or material, and are of limited architectural significance... the buildings have some historical significance as examples of purpose-built structures related to new ideas, in the late 1920s, of treating mentally-ill patients. This hospital was a pioneer in this type of treatment. However, the buildings do not clearly express these ideas as they contain no design elements that overtly indicate this history. Consequently they are of little historical significance."

It was agreed that the villas' significance rests principally on their historical value as examples of purpose-built structures related to pioneering ideas in the open treatment of the mentally-ill. There is nothing, however, in appearance of the villas that makes this explicit.

A request was made by a local resident to Historic England to urgently assess the two buildings for listing. Following HE's assessment, the villas were not recommended for statutory listing, notwithstanding some local architectural and historic interest, commenting as follows:

- o Degree of architectural interest - "they are well-constructed but plain and neither quite symmetrical nor boldly asymmetrical. Later external alterations include the loss of chimney stacks, the insertion of roof-lights, alterations to windows and the loss of a verandah."
- o Degree of historic interest - "they are not innovative as providing for mental health patients, as there are earlier examples of detached houses or villas used as asylums dating from the later C19."
- o Group value - "with the main St James Hospital building of 1875-1879 and chapel of 1879, both by George Rake, is acknowledged but does not outweigh the lack of architectural and historic interest in the national context."

### **Traffic/transportation implications**

The application is supported by a Transport Assessment.

#### **- Proposed access**

The TA confirms that 'Plot 1 East' would be accessed via the existing Private Road/Woodlands Walk via the 3-arm priority junction. The junction itself is proposed to be upgraded, to improve sight lines and sustainable transport connections. A new section of footpath would be constructed along the western side of the Private Road/Woodlands Walk, measuring 2m in width as a minimum.

'Plot 1 West' would be accessed via an extension of Fair Oak Road, with 2m footway provision. The main access road would be 6m in width before connecting to the shared surface internal road network.

Emergency vehicle access would be via a link through to Woodlands Walk to the north. A pedestrian link is proposed between the eastern and western development parcels.

The internal highway layout will be designed as shared surfaces of at least 4.8m width, with 1.8m service margins alongside. The TA states that 20mph speed restriction would be in place.



#### - Traffic Generation

The TA refers to traffic survey work undertaken in 2014, when approximately 80% of the floor area of the buildings within Plot 1 was in use - 2,181sqm, out of a total of 3,778sqm. It states that the hospital uses at the time generated 576 vehicle movements in the AM peak period, 335 vehicle movements in the PM peak period and 4,319 total daily vehicle movements. These figures result in a 'hospital vehicle trip rate' per 100sqm of floor space of 2.23 vehicles in the AM peak, 1.29 vehicles in the PM peak and 16.69 daily vehicle movements.

The TA also provides an assessment of the vehicle trip generation for the buildings within the application site, Plot 1, assuming 100% occupancy. This assessment indicates 84 vehicle movements in the AM peak, 49 vehicle movements in the PM peak and a total of 631 daily vehicle movements.

The TA goes on to state that further survey work was undertaken in 2016 when occupancy levels were approximately 50% of those recorded in the 2014 survey work. This resulted in vehicle trip generation figures of 24 movements in the AM peak, 14 in the PM peak and a total of 182 daily movements.

Locksway Road lies to the south of the site and is a single carriageway road, which runs in an east-west direction. The road is covered by a 20mph speed limit

#### - Parking provision

The Council's 'Parking Standards and Transport Assessment' SPD outlines the expected level of car parking provision for new dwellings, as set out below:

- o 1 space per 1-bed/studio dwelling
- o 1.5 spaces per 2-3 bed dwelling
- o 2 spaces per 4-bed (or more) dwelling

The TA confirms that 173 parking spaces are proposed across the site, in accordance with these requirements, as set out below:

- o 27no 1-bed units with 27no spaces
- o 61no 2/3 bed units with 92no spaces
- o 19no 4+ bed units with 38no spaces

The SPD states that visitor parking provision is expected to equate to 10% of the total number of parking spaces - the plans show that 16no visitor spaces are proposed across the site.

#### - Sustainable Transport

4 regular bus services which can be accessed within 900m of the site. The closest bus stop lies 350m to the south of the site on Locksway Road but is a private service serving the UoP.

NCR222 runs east to west along Locksway Road and NCR2 lies 1.5km to the north of the site. The site is 2.3km from the nearest railway station at Fratton.

The views of the Highways Authority are set in full in the consultations section of the report. Initial detailed concerns raised by them have since been resolved through amendments. The one exception and residual issue remains giving rise to an objection on the issue of accessibility to public transport services.

The applicants TA (para 4.3.7) considers the proposal to be in an accessible location despite it being some 900m from bus stops at Milton Road. Equivalent to an 11 minute walk the LHA consider this is contrary to the guidance given in the CHIT publication 'Planning for Walking' being more than twice the distance that people in residential areas can reasonably be expected

to walk to a bus stop. The bus stops on Locksway Road are currently used by private bus service serving the University of Portsmouth. The LHA add that should public bus services be introduced, the site would benefit from direct access to these facilities, thereby improving the sustainability of not only St James but also the wider area, although no such improvement in bus service is proposed. As a consequence, in the absence of securing such services, the LHA must raise an objection to the application on the basis of the accessibility of the site.

Accessibility will have formed an integral component of decision-making in site allocation for housing and any shortcoming of an 11-minute walk to the nearest bus stops in Milton Road served by 4 regular bus services weighed into consideration and would not be held to make such development so unsustainable as to warrant refusal. A residential travel plan, with contribution for monitoring, is considered necessary and appropriate to secure by S106 agreement.

### **Impact on nature conservation**

A summary of the mitigation and enhancement measures to be implemented at the application site to avoid or reduce effects on habitats/species, ensure compliance with the relevant legislation, and/or deliver biodiversity benefits, is provided in the Biodiversity Mitigation and Enhancement Plan (BMEP) (dated July 2018, at Table 1). Some additional information on protected species has since been provided and must be read alongside the BMEP. A planning condition is considered necessary and appropriate to, firstly, update the BMEP to reflect the additional information and, secondly, secure implementation and verification of the approved measures.

The views of PCC's Ecologists conclude that overall there are now no outstanding concerns with this application.

The supporting 'Information to Inform Habitats Regulation Assessment' also addresses potential effects as a consequence of recreational disturbance.

The Solent Recreation Mitigation Strategy (December 2017) was adopted by Portsmouth City Council on 1st April 2018 and replaces the Interim Solent Recreation Mitigation Strategy (December 2014) and the associated Solent Special Protection Areas Supplementary Planning Document (SPD) which was revoked by the City Council from 1st April 2018. The Strategy identifies that any development in the city which is residential in nature will, in combination, result in a significant effect on the Special Protection Areas (SPAs) along the Solent coast. It sets out how development schemes can provide a mitigation package to remove this effect and enable the development to go forward in compliance with the Habitats Regulations. This development is not necessary for the management of the SPA.

The former SPD also acknowledged (in section 3.11) that "there may be some developments, which due to the scale or location, could cause a significant effect alone, regardless of other development which might take place nearby. In these situations, developers will need to present a bespoke mitigation package for the development."

The Milton Common Local Nature Reserve Management Plan (at para 2.8) provides further guidance of such "significant in scale and built out on sites ranging from immediately next to the SPA to 1km away".

Natural England initially advised, in short, that further information was required to determine impacts on designated sites since the proposal could have potential significant effects on Chichester and Langstone Harbours Special Protection Area and Ramsar site. Appendix 8.9 of the EAR provides 'Information to Inform Habitats Regulations Screening'. Following submission of additional information with respect to the financial contributions (for mitigating recreational impacts both alone and in combination) (a) to the Solent Recreation Mitigation Strategy / Bird Aware Solent Strategy and (b) for improvements to Milton Common in proportion to the number

of units included within the Project as detailed within the Milton Common Local Nature Reserve Management Plan, Natural England is satisfied that the applicant has mitigated against the potential adverse effects recreational disturbance on the integrity of the European site(s).

The relevant financial contributions are proposed based on the methodology set out within the Strategy, an appropriate scale of mitigation would be calculated as £59,487 based on: (27 x 1-bedroom units @ £337) + (18 x 2-bedroom units @ £487) + (43 x 3-bedroom units @ £637) + (19 x 4-bedroom units @ £749). A proportionate funding for 107 dwellings based on the Milton Common Local Nature Reserve Management Plan would provide an appropriate scale of mitigation at 107 x £8,747\* per dwelling (\*plus indexation, since this is based on 2015 prices).

With the above mitigation and based on the advice of Natural England and PCC's Ecologists, it can be concluded that there will be no adverse effect on the integrity of the designated sites identified above. The requirement for a payment to secure mitigation by s106 agreement would be both directly related to the development and be fairly and reasonably related in scale to the development.

There is an objection from RSPB. In part it appears based on an understanding that only one rather than both component parts of the relevant mitigation offered by the applicants. The RSPB has been contacted to clarify this matter. Natural England is the statutory consultation body and satisfied on the mitigation measures (for recreational disturbance).

### **Loss of trees**

Existing trees across the site are covered by a Tree Preservation Order that form a rich landscape character of important assets for nature, wildlife and recreation. The applicant's supporting tree survey identifies 191 different trees, classified as follows:

- o 4 as Category A (high quality with estimated life expectancy of 40+ years),
- o 30 as Category B (medium quality with estimated life expectancy of 20+ years),
- o 151 as Category C (lower quality with estimated life expectancy of 10+ years or trees with a stem diameter below 15cm) and
- o 6 as Category U (realistically not longer than 10 years).

The proposed site layout requires around 34 existing trees to be removed. These are mainly Category U and C trees. The existing trees along the frontages with Woodlands Walk would be retained. Existing tree belts are sought to be enhanced where possible and other new tree planting is proposed in streets and public open space.

Landscaping will form a "Reserved Matter". However, the illustrative masterplan indicates around 80 new trees to be potentially planted across the site, within the public realm and private gardens (that includes some in rear garden situations that inevitably limits any streetscape contribution). The proposed development is considered to be informed and influenced by the presence of trees on site and the illustrative masterplan demonstrates potential replacement tree planting is capable of being assimilated on the site, to achieve at least equal value to mitigate those lost. It is thereby considered to accord with relevant components of policy PCS13.

### **Flood risk/drainage**

In summary, the risk of flooding to the site from all flood sources is considered to be low to negligible with the exception of sewer and drainage infrastructure sources, which is considered to be moderate.

To mitigate any risk of the proposed development exacerbating surface water flood risk to neighbouring property a Surface Water Drainage Strategy (SWDS) has been submitted. The SWDS seeks to provide the necessary storage of surface water in permeable paving structures located beneath road and parking areas. The proposed strategy provides adequate attenuation volume to cater for the 1% annual probability storm event plus 20% allowance on peak rainfall

intensity for climate change. Finished floor levels are proposed to be set a minimum of 150mm above external levels to further mitigate the risks of flooding at the site.

The proposed development is considered to minimise flood risk and demonstrate provision of sufficient additional drainage capacity, to meet the requirements of policy PCS12.

### **Sustainable design and construction/site contamination**

All development within the City must comply with the relevant sustainable design and construction standards set out within Policy PCS15 of the adopted Local Plan and the Council's 'Sustainable Design and Construction' SPD (as amended by the Portsmouth Housing Standards Review).

The applicants supporting Planning Statement confirms that the proposed housing will demonstrate compliance with Policy PCS15. The Portsmouth Housing Standards Review for all new build residential requires a 19% improvement for water and energy efficiency and a suitably worded planning condition will be imposed for written documentary evidence to prove that the development has been implemented to achieve these water and energy efficiency requirements.

Chapter 6 of the Environmental Appraisal Report (EAR) deals with the effects of the proposed development in relation to contaminated land. Given the history of the site, the report states that there are 'limited possibilities' for ground contamination to be present, with the most likely sources being known or potential infilling on the site. It goes on to state that limited exceedances of lead in near-surface soils could be managed through the design and construction phases and recommends further investigation works.

The Council's Contaminated Land Team has raised no objection to the proposals, subject to a number of detailed conditions to secure further investigation works and remediation strategies as required, as well as the implementation and verification of any such remediation strategy. Subject to these conditions, the proposals are considered to be in accordance with saved policy DC21 of the PCLP.

### **Residential amenity**

Policy PCS23 (Design & Conservation) lists a number of criteria against which development proposals will be assessed, including the need to protect amenity and the provision of a good standard of living environment for neighbouring and local occupiers, as well as future residents and users of the development. In terms of residential amenity, there are two elements for consideration, these being the impact on existing neighbouring residents to the site and secondly, the impact on future occupiers of the scheme.

The proposed site layout makes provision for a landscape corridor with footpath connections wrapping around and separating the proposed dwellings from existing neighbouring properties in Fair Oak Road/Cheriton Close. The proposal is considered to show a relationship to existing adjoining properties that is appropriate and neighbourly. Subject to noise insulation measures to the houses along the southern boundary in close proximity to Locksway Road, the impact on future occupiers is considered to be acceptable in accordance with relevant components of policy PCS23 of the Portsmouth Plan.

### **Other matter raised in representations**

The points of objection from residents and community groups are addressed within the report. Objection is raised to the proposal that Milton cannot support so many new dwellings due to increased pressure on schools, GP and dental services.

Education in the city is funded through CIL. There are no representations from the NHS and planning for health services is done at a strategic level via the local plan system.

## Conclusions

In the opinion of the Local Planning Authority residential redevelopment of an allocated site represents, in principle, an appropriate use of a site located within a predominantly residential area, contributing positively to the city's housing need, including more family sized homes and affordable housing. This outline application satisfactorily demonstrates that new housing would contribute to the achievement of the three dimensions to sustainable development: of economic, social and environmental roles, in accordance with the policies and objectives of the NPPF and the Portsmouth Plan; the latter includes policies PCS12 (Flood risk), PCS13 (A Greener Portsmouth), PCS14 (A Healthy City), PCS15 (Sustainable design and construction), PCS16 (Infrastructure and community benefit), PCS17 (Transport), PCS19 (Housing mix, size and affordable homes), PCS21 (Housing Density), PCS23 (Design and Conservation) and saved policies DC21 (Contaminated land) and MT3 (Land at St James' Hospital) of the Portsmouth City Local Plan 2001-2011.

The following planning obligations are considered necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale to the development. The proposal is considered to satisfactorily demonstrate how access could be provided to serve 107 dwellings with its associated parking, subject to the applicant's first entering into a Section 106 Agreement for the provisions listed below:

- o at least 30% affordable housing, equating to 32 houses/flats, provided before first occupation of 40th (open market) dwelling
- o open space with and LEAP (Local Equipped Areas of Play) to be provided and maintained for public use, either by transfer to PCC (with appropriate commuted sum for future maintenance) or an open space Management Agreement
- o mitigating the impact of new development on Special Protection Areas (SPAs), by securing financial contributions financial contributions (for mitigating recreational impacts both alone and in combination) (a) to the Solent Recreation Mitigation Strategy / Bird Aware Solent Strategy and (b) for improvements to Milton Common in proportion to the number of units included within the Project as detailed within the Milton Common Local Nature Reserve Management Plan, payable upon implementation of planning permission
- o Travel Plan with travel plan monitoring (at a cost of £5500 over 5 years) requiring an initial baseline survey Yr1 (at either 50 units or within 6 months whichever is earlier), with final targets to be determined and agreed with PCC within 2 months of the Yr1 baseline survey and to repeat the residents survey at Yrs 3 and 5, where monitoring fee is payable upon implementation of planning permission
- o Prepare and implement Employment and Skills plans (such employment and skills plans will help develop resident workforce skills and provide a route to employment for local people);
- o Project management fee for the Section 106 Agreement, payable upon implementation of planning permission

**RECOMMENDATION I** Delegated Authority to grant **Conditional Outline Permission** subject to the completion of a Section 106 Agreement in accord with the principles outlined in the report including an appropriate level of mitigation set out Solent Recreation Mitigation Strategy and Milton Common Local Nature Reserve Management Plan (so there would not be a significant effect on the SPAs)

**RECOMMENDATION II** That delegated authority be granted to the Assistant Director of Planning and Regeneration to add/amend conditions where necessary.

**RECOMMENDATION III** That delegated authority be granted to the Assistant Director of Planning and Regeneration to refuse planning permission if the legal agreement has not been completed within three months of the date of the resolution.

## Conditions

1) Outline Planning Permission for the principle of the development proposed and the matters sought for consideration, namely access, layout and scale, are approved subject to the following

(i) Plans and particulars showing the detailed proposals for the following aspects of the development, the 'Reserved Matters', shall be submitted to the Local Planning Authority prior to any works taking place on the site:

(a) The appearance of all buildings including a detailed schedule of the type, texture and finishes of all external materials;

(b) A scheme of hard and soft landscaping works that shall specify species, planting sizes, spacing and numbers of trees/shrubs to be planted, the layout, contouring and surfacing of all open space and all hardsurfacing materials/finishes to the site as well as details of the appearance, dimensions and materials/finishes of all walls, fences, railings and other means of enclosure in accordance with the type/alignment of walls and other enclosure types specified on the approved drawing 5018\_011\_G.

(ii) Application(s) for the approval of the outstanding 'Reserved Matters' shall be made in writing to the Local Planning Authority before the expiration of three years from the date of this Outline Permission.

(iii) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the final 'Reserved Matter'.

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 - 5018\_001;

Site Plan - 5018\_002;

Illustrative Masterplan - 5018\_004D;

General Arrangement Plan - 5018\_011G;

Land Use Parameter Plan - 5018\_005;

Access and Movement Parameter Plan - 5018\_006;

Landscape Parameter Plan - 5018\_007;

Density Parameter Plan - 5018\_009;

Building Heights Plan - 5018\_020;

Access Arrangement - 70016874-SK-006-D;

Swept Path Analysis (Refuse) - 70016874-ATR-004-B;

Swept Path Analysis (Fire Tender) - 70016874-ATR-005-B;

Swept Path Analysis (Car) - 70016874-ATR-006-B;

Internal Highways Visibility Splays - 70016874-SK-005-D;

Internal Highways Geometry and Dimensions - 70016874-SK-009-B;

Internal Cross Sections - 70016874-SK-010-B;

Preliminary Surface Water Drainage Strategy - 6874-D-001C; and,

Tree Constraints Plan - 70016874\_TCP\_01\_B (2 sheets).

3) (a) No works (except demolition) shall take place at the site until details of future maintenance and phasing of the hard/soft landscaping of the site shall be submitted to an approved in writing by the Local Planning Authority.

(b) The soft landscaping scheme approved under condition 1(i)(b) shall be carried out in the first planting season following the occupation of the dwellings or the completion of the development whichever is the sooner.

(c) The date of Practical Completion of the landscaping scheme shall be submitted to and agreed in writing by the Local Planning Authority within 7 days of that date.

(d) Any trees or plants which, within a period of 5 years from the date of Practical Completion of the landscaping scheme, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

(e) The surface treatments shall be carried out in accordance with the hard landscaping approved by condition 1(i)(b) before first occupation of the dwellings (or such other period or phasing as may be agreed in writing with the Local Planning Authority).

4) No works (except demolition) shall take place at the site until details shall have been submitted to and approved in writing by the Local Planning Authority of the proposed phasing of development including the provision of public open space; and the development shall thereafter be implemented in accordance with the approved phasing.

5) No works (except demolition) shall take place at the site until there has been submitted to and approved in writing by the Local Planning Authority (or within such extended period as may be agreed with the Local Planning Authority):

a) A desk study report documenting all the previous and existing land uses of the site and adjacent land in accordance with best practice including BS10175:2011+A2:2017 'Investigation of Potentially Contaminated Sites Code of Practice'. The report shall contain a conceptual model showing the potential pathways that exposure to contaminants may occur both during and after development; and unless otherwise agreed in writing by the LPA,

b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk study created in accordance with BS10175:2011+A1:2013+A2:2017 and BS 8576:2013 Guidance on investigations for ground gas. Permanent gases and Volatile Organic Compounds (VOCs); the laboratory analysis should be accredited by the Environment Agency's Monitoring Certification Scheme (MCERTS) where possible; the report shall refine the conceptual model of the site and state either that the site is currently suitable for the proposed end-use or that will be made so by remediation; and, unless otherwise agreed in writing by the LPA,

c) A remediation method statement detailing the remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. For risks related to bulk gases, this will require the production of a design report and an installation report for the gas as detailed in BS 8485:2015 - Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings. The scheme shall consider the sustainability of the proposed remedial approach. It shall include nomination of a competent person<sup>1</sup> to oversee the implementation and completion of the works.

6) The development hereby permitted shall not be occupied/brought into use until there has been submitted to and approved in writing by the Local Planning Authority verification by the competent person approved under the provisions of condition 5(c) that any remediation scheme required and approved under the provisions of conditions 5(c) has been implemented fully in accordance with the approved details (unless varied with the written agreement of the LPA in advance of implementation). Unless otherwise agreed in writing by the LPA such verification shall comprise a stand-alone report including (but not be limited to):

a) Description of remedial scheme

b) as built drawings of the implemented scheme

c) photographs of the remediation works in progress

d) certificates demonstrating that imported and/or material left in-situ is free of contamination, and records of amounts involved.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under conditions 5(c).

7) (a) Prior to first occupation of the dwellings (or any phasing of the development as may be approved in writing by the local planning authority under condition 4) the public open space shown on drawing no.518\_005 shall be provided. Thereafter, the area of open space shall be retained and maintained as public open space.

(b) The public open space shall include Local Equipped Areas of Play (LEAP) shown on drawing no.5018\_011\_G that shall have been completed in accordance with a detailed scheme for equipped play, including any safety surfacing treatment and seating facilities, to be submitted to and approved in writing by the Local Planning Authority; and the equipped play spaces shall

be made available for use as an integral part of the public open space and shall thereafter be retained.

8) No development (except demolition) shall take place at the site until details have been submitted to and approved in writing by the Local Planning Authority relating to the highways works necessary for the construction of the new access onto Fair Oak Road and alterations to the existing access onto Locksway Road. The highway works to Fair Oak Road and Locksway Road shall be carried out in accordance with the approved details and these accesses made available for use prior to the first occupation of the development.

9) No works (except demolition) shall take place at the site until the following details have been submitted to and approved in writing by the Local Planning Authority:-

- (i) a specification of the type of construction for the roads and footpaths, including all relevant horizontal cross-sections and longitudinal sections showing the existing and proposed levels, together with details of street lighting and the method of disposing surface water; and,
- (ii) a programme for making up of the roads and footpaths.

10) Prior to first occupation of the dwellings the proposed car parking shown on approved drawing no.5018\_011\_G, in a combination of in-curtilage spaces, garages, parking courts and on-street (visitor) provision shall be surfaced, marked out and made available for use; and the approved parking facilities, including garages, shall thereafter be retained at all times for the parking of vehicles.

11) Prior to first occupation of the dwellings the proposed secure and weatherproof facilities to be provided for the storage of bicycles shall be constructed and made available, or within such extended period as agreed in writing with the Local Planning Authority, in accordance with a detailed scheme for their siting, dimensions and appearance that shall have been submitted to and approved in writing by the Local Planning Authority beforehand; and the cycle storage facilities shall thereafter be retained for the storage of bicycles at all times.

12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any Order amending, revoking or re-enacting that Order, no building or alteration or structure within Schedule 2, Part 1 and Part 2, Classes as listed below shall be erected, altered or carried out to any dwellinghouse hereby permitted without the prior written permission of the Local Planning Authority through the submission of a planning application:

Class A (enlargement of a dwellinghouse), including a garage or extension,

Class D (porch),

Class E (curtilage structures), including a garage, shed, greenhouse, other outbuilding etc,

Class F (hard surface area)

or Class A of Part 2 (gates, fences, walls or other means of enclosure) .

13) Prior to first occupation of the flats the proposed facilities to be provided for the storage of refuse/recyclable materials shall be constructed and made available, or within such extended period as agreed in writing with the Local Planning Authority, in accordance with a detailed scheme for the dimensions and appearance in the positions shown on approved drawing no.5018\_004\_D that shall have been submitted to and approved in writing by the Local Planning Authority beforehand; and the facilities shall thereafter be retained for the purposes of waste/recyclables storage at all times.

14) No works (except demolition) shall take place at the site until a detailed drainage scheme for the proposed means of foul and surface water sewerage disposal including proposed mitigation measures by on-site attenuation measures, shall have been submitted to and approved in writing by the Local Planning Authority; and the development shall be carried out in accordance with the approved scheme.



15) The development shall only be carried out in accordance with the approved Flood Risk Assessment and Drainage Strategy (report second issue, produced by WSP and dated February 2018) to include the following proposed mitigation measure:

o Finished floor levels are set a minimum of 150mm above existing ground level;  
The mitigation measure shall be implemented to each dwelling before their first occupation.

16) (a) No works (except demolition) shall take place at the site until an updated detailed scheme for proposed biodiversity enhancements and their timing shall have been submitted to and approved in writing by the Local Planning Authority, based on the measures in the Biodiversity Mitigation and Enhancement Plan (BMEP) (prepared by WSP, Project ref 70016874, dated July 2018) and incorporating recommendations from the November 2018 bat tree roost assessment and bat emergence survey reports, together with detailed specifications and locations (with plans) of compensatory bat roost provision.

(b) The updated BMEP scheme for biodiversity enhancements shall be implemented in full in accordance with the timing approved under condition 16(a).

(c) A verification report shall be submitted to and agreed in writing by the Local Planning Authority, to demonstrate that the biodiversity enhancements approved under condition 16(a) have been carried out in full, within 3 months of its implementation under condition 16(b).

(d) The approved biodiversity enhancements shall thereafter be retained, unless otherwise agreed in writing with the local planning authority.

17) No percussive piling or works with heavy machinery (ie plant resulting in a noise level in excess of 69dbAmax - measured at the sensitive receptor, the nearest point of the SPA or any SPA supporting habitat/high tide roosting sites) to be undertaken during the bird overwintering period, between 1st October and 31st March.

18) (a) Prior to first occupation of the dwellings (or any phasing of the development as may be submitted to and approved in writing by the local planning authority) the boundary walls and other means of enclosure types, along the alignments specified on approved drawing 5018\_011\_G and in accordance with details approved under condition 1(i)(d), shall be erected.

(b) The approved boundary walls and other means of enclosure shall thereafter be retained, unless otherwise agreed in writing by the local planning authority.

19) The proposed apartment buildings shall not exceed three storeys in height and the proposed houses shall not exceed two storeys in height, with the exception of the 3-bedroom terrace and 3-bedroom semi-detached type 1 and type 2 houses that shall not exceed 2.5-storeys in height, as shown on the approved Building Heights Plan no.5018\_020 and 'Building Dimensions' Table.

20) (a) No works (except demolition) shall take place at the site until a Construction Environmental Management Plan shall have been submitted to and approved in writing by the Local Planning Authority to include, but not limited to details of: Location of construction compound; Storage of construction materials/chemicals and equipment; Chemical spillages and/or fuel run-off from construction; Waste disposal; Times of deliveries; Wheel wash facilities; Site office facilities; Contractor parking areas; Loading/off loading areas; Visual screening (for SPA birds); Method Statement for dust suppression and control of emissions from construction and demolition; an Assessment and Method Statement for the control of construction noise/visual/vibrational impacts for the site specifying predicted noise levels, proposed target criteria, mitigation measures and monitoring protocols.

(b) The development shall be carried out in accordance with the approved Construction Environmental Management Plan and shall continue for as long as construction/demolition is taking place at the site.

21) (a) No works shall take place at the site until a detailed scheme of noise insulation measures for the proposed dwellings positioned in along the southern site boundary (a short terrace of four houses and one detached house, as shown on General Arrangement Plan

drawing no.- 5018\_011G) immediately adjacent to Locksway Road shall be submitted to and approved in writing by the local planning authority.

(b) The approved noise insulation measures shall be implemented in full and shall thereafter be retained.

22) (a) No works shall take place at the site until details of the implementation of a programme of archaeological assessment is secured in accordance with a Written Scheme of Investigation (WSI) that shall have been submitted to and approved in writing by the local planning authority in order to recognise, characterise and record any archaeological features and deposits that may exist at the site.

(b) The approved WSI shall be implemented in full, unless otherwise agreed in writing by the local planning authority.

(c) Following completion of all archaeological fieldwork at the site a report shall be produced by the developer in accordance with an approved programme/timescale approved in writing by the local planning authority as part of the WSI setting out and securing appropriate post-excavation assessment, specialist analysis and reports, publication and public engagement.

23) The dwellings hereby permitted shall not (unless otherwise agreed in writing by the Local Planning Authority) be occupied until written documentary evidence has been submitted to, and approved in writing by the Local Planning Authority demonstrating that the development has:

a) achieved a minimum of a 19% improvement in the dwelling emission rate over the target emission rate, where such evidence shall be in the form of an As Built Standard Assessment Procedure (SAP) Assessment, produced by an accredited energy assessor; and

b) achieved a maximum water use of 110 litres per person per day, where such evidence shall be in the form of a post-construction stage water efficiency calculator.

24) No works/demolition shall take place at the site until a scheme for the safeguarding of all trees and other natural features not scheduled for removal during the course of the site works and building operations in accordance with British Standard:5837 (2005) has been submitted to and approved in writing by the Local Planning Authority. All trees or features to be protected shall be fenced along an alignment to be submitted to and approved in writing by the Local Planning Authority, based on root protection areas shown on Tree Constraints Plan no.70016874\_TCP\_01\_B (2 sheets), with:

a) 1.5 m high chestnut paling securely mounted on scaffold framing which is firmly secured in the ground and braced to resist impact; or

b) 2.4 m high heavy duty hoardings securely mounted on scaffold framing which is firmly secured in the ground and braced to resist impact.

Such fencing shall be maintained during the course of the works on site. No unauthorised access or placement of goods, fuels or chemicals, soil or other materials shall take place inside the fenced area.

**The reasons for the conditions are:**

1) To comply with Section 92 of the Town and Country Planning Act 1990 (as amended) and to enable the Local Planning Authority to control the development in detail, to secure a high quality setting to the development and biodiversity value of the site, well defined public and private spaces, and in the interests of highway safety, to accord with policies PCS13, PCS17 and PCS23 of the Portsmouth Plan and the aims and objectives of Reducing Crime Through Design SPD and the NPPF.

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

3) In order to secure a high quality hard/soft landscaping to the development within the parkland setting of the listed hospital/Chapel and biodiversity value of the site, in accordance with policy PCS13 and PCS23 of the Portsmouth Plan.

- 4) In order to ensure a properly programmed development with related contribution of community benefits (CIL requirements), to accord with policies PCS16 & PCS23 of the Portsmouth Plan.
- 5) To ensure that the risks from land contamination to the future users of the land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors, in accordance with saved policy DC21 of the Portsmouth City Local Plan 2001-2011.
- 6) To ensure that the risks from land contamination to the future users of the land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors, in accordance with saved policy DC21 of the Portsmouth City Local Plan 2001-2011.
- 7) To improve the appearance of the site, enhance its biodiversity and improve green infrastructure assets, to accord with policies PCS13 and PCS23 of the Portsmouth Plan and the aims and objectives of the NPPF.
- 8) In the interests of maintaining a safe and efficient highway network, in accordance with policies PCS17 & PCS23 of the Portsmouth Plan and the aims and objectives of the NPPF.
- 9) To ensure roads and routes for pedestrians/cyclists are constructed to an appropriate standard, in accordance with policies PCS17 and PCS23 of the Portsmouth Plan and the aims and objectives of the NPPF.
- 10) To ensure adequate parking provision in a suitable manner to serve the development, to minimise opportunity for crime and avoid congestion of surrounding roads, in accordance with policies PCS17 and PCS23 of the Portsmouth Plan, Reducing Crime Through Design SPD and the aims and objectives of the NPPF.
- 11) To meet the transport needs of future occupants of the dwellings and to promote and encourage more sustainable transport modes and healthy choices likely to reduce the amount of vehicular traffic on roads, in accordance with policies PCS14, PCS17 and PCS23 of the Portsmouth Plan.
- 12) In order that the Local Planning Authority may exercise further control in this locality given the small private garden and amenity areas provided as part of this development, the close proximity to canopies/root protection areas of existing (protected) trees and to preserve the setting of the listed Chapel, in the interests of the comprehensive development of the site, the visual amenities of the area and the impact on TPO trees/heritage asset, in accordance with policies PCS13 and PCS23 of the Portsmouth Plan and the aims and objectives of the NPPF.
- 13) To the interests of provision of adequate waste/recyclables storage and collection in an acceptable manner in the interests of amenity, in accordance with policy PCS23 of the Portsmouth Plan.
- 14) In order to ensure adequate capacity in the local drainage network to serve the development that might otherwise increase flows to the public sewerage system placing existing properties and land at a greater risk of flooding, in accordance with policy PCS12 of the Portsmouth Plan.
- 15) To ensure the dwellings remain safe from any potential flooding over the lifetime of the development, in accordance with policy PCS12 of the Portsmouth Plan.
- 16) To enhance the biodiversity value of the site and improve green infrastructure assets, to accord with policies PCS13 and PCS23 of the Portsmouth Plan, the aims and objectives of the NPPF and duty to have regard to the NERC Act.

- 17) To mitigate against the potential adverse effects of the development on the integrity of the European site, in accordance with policy PCS13 of the Portsmouth Plan.
- 18) To secure a quality setting to the development that defines public and private space well with robust and attractive boundary walling and to ensure that adequate site access visibility is retained in the interests of highway safety, in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.
- 19) To secure a sympathetic scale and quality setting to the development, to preserve the setting of the listed chapel and wider relationship to the hospital building, in accordance with policies PCS17 and PCS23 of the Portsmouth Plan and the aims and objectives of the NPPF.
- 20) To protect amenity by preventing excessive nuisance and minimise adverse effects on the local environment and the interests of the European site, including highway impacts, as far as practicable, during works of demolition and construction on the occupiers of adjoining and nearby properties, in accordance with policy PCS23 of the Portsmouth Plan.
- 21) To ensure that acceptable noise levels within the dwellings and the curtilages of the dwellings are not exceeded in the interests of residential amenity, in accordance with policy PCS23 of the Portsmouth Plan.
- 22) In the interests of protecting and/or conserving evidence of the City's early heritage and development by assessing any archaeological potential for the remains of buildings dating from the earliest settlement phase of the area to survive within the site and ensure information is preserved by record for any future generations, in accordance with policy PCS23 and the aims and objectives of the NPPF.
- 23) To ensure that the residential development as built will minimise its need for resources and be able to fully comply with policy PCS15 of the Portsmouth Plan and the adopted Sustainable Design and Construction SPD.
- 24) To ensure that all trees other natural features to be retained are adequately protected from damage to health and stability throughout the construction period in the interests of amenity in accordance with policy PCS13 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.

18/00475/LBC

WARD:MILTON

**SOLENT NHS TRUST ST JAMES HOSPITAL LOCKSWAY ROAD SOUTHSEA**

**PARTIAL DEMOLITION OF BOUNDARY WALL AND CONSTRUCTION OF BRICK PIER**

**Application Submitted By:**

LDA Design - FAO Mr David Bell

**On behalf of:**

Mr Bruce Voss - Homes England

**RDD:** 19th March 2018

**LDD:** 15th May 2018

**SUMMARY OF MAIN ISSUES**

The determining issue is whether partial demolition of a boundary wall and alteration by a new pier would preserve the special architectural or historic interest of the listed structure.

This application is submitted in the context of the related scheme on behalf of Homes England for residential development on 3.6ha of land that was formerly part of the St James Hospital (reference 18/00288/OUT). To facilitate access for the eastern part of the wider residential scheme, works are required to remove a section of wall at the former entrance to the Harbour School site off Locksway Road. The section of wall identified for removal is attached to a section of wall that is considered by the local planning authority to be listed.

A 75 metre long wall is located on the northern side of Locksway Road. It forms the southern boundary to land that was formerly part of St James Hospital. The wall consists of two distinctive sections, one of late 19th/early 20th century appearance (the 'original wall') and a later section, of 1960's construction (the 'modern section' of wall). The application site covers the modern section, which leads away from Locksway Road to the north and forms part of the access to the former Harbour School site.

Supporting information describes the original wall as having "...a deep stepped plinth, regularly spaced piers and integrated panels featuring dog tooth headers, finished with a profiled coping. At its far western end, the original wall is terminated by a brick pier (shown as 'Pier 1' on drawing 5018\_302). The modern section of wall consists of a simple square pier where it meets the original wall (shown as 'Pier 2' on dwg 5018\_302) and is made up of a modern flush brick wall contrasting in design texture and colour to the original wall."

The modern section of wall would be demolished up to the point where it meets the original wall, which is retained in its entirety. The pier at the western end of the original wall would be replicated at the eastern end, to replace the modern pier. The design solution for outline application 18/00288/OUT incorporates retention of the original wall so that the proposed dwellings immediately to the north would back onto it, with the wall forming enclosure of their rear curtilages.

**POLICY CONTEXT**

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

There is a relevant saved site allocation policy that still applies from the Portsmouth City Local Plan (2001-2011), which is material to the application. Policy MT3 allocates land at St James' Hospital for a mix of new mental health care development and housing. The provision of the healthcare element of this allocation has already been fulfilled through the provision of The Orchards and Lime NHS Solent Trust buildings to the north of the site, within the policy allocation area and intended to remain.

#### National Planning Policy Framework

The (revised) NPPF July 2018 is a presumption in favour of sustainable development which means approving development proposals that accord with development plan policies without delay (para 11). The proposal should be assessed against development management policies in the NPPF and, in particular, the following paragraphs:

- 124 High quality buildings and places is fundamental to what planning should achieve
- 130 Refuse poor design that fails to improve the character and quality of an area
- 189 Applicants should describe the significance and potential impact on any heritage assets
- 190 LPAs to identify and assess significance of any heritage asset
- 193 Great weight should be given to the asset's conservation
- 194 Any harm/loss of a designated heritage asset requires clear and convincing justification
- 195 Where leads to substantial harm, should be refused (unless substantial public benefits)
- 196 Where leads to less than substantial harm, to be weighed against public benefits

## CONSULTATIONS

### Historic England

No comments.

### Ancient Monuments Society

No response received.

### Council For British Archaeology

No response received.

### SPAB

No response received.

### The Georgian Group

No response received.

### The Victorian Society

No response received.

### Twentieth Century Society

No response received.

### The Portsmouth Society

Comments received to the related outline application ref 18/00288/OUT.

## REPRESENTATIONS

None.

## COMMENT

The determining issue is whether partial demolition of a boundary wall and alteration by a new pier would preserve the special architectural or historic interest of the listed structure.

A legislative obligation falls upon the local planning authority under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. It places a duty to have special regard to the desirability of preserving a listed building/structure and its setting, and this special regard is beyond a mere material consideration.

The applicants have provided relevant heritage assessment. It states:

"The hospital boundary wall itself was completed after the hospital was built in 1879. During the 20th century, modernisation work in the post-war period brought change and at the main entrance to the hospital, in the 1950s and 60s included the removal of the Victorian gates and pillars. Milton Ford School (latterly the Harbour School) was constructed on an isolated area of the site with its own separate access provided from Locksway Road. Despite improvements, the hospital became a target for closure and redevelopment for housing has taken place adjacent to the school, further physically divorcing it from the remainder of the site and involving the demolition of the former officers' residences at 113 - 115 Locksway Road and an adjacent unit. Access to the administrative block has been provided by insertion of another gate further along Locksway Road.

The original wall has been subject to many interventions as part of modernisation or redevelopment of the site. The remaining section that has survived, thought to be part of the original boundary wall, will be retained.

It is considered that the loss of the modern section of the wall will not impact on the setting of the listed assets and its demolition would cause no harm to a heritage asset."

The removal of the modern section of wall would be considered to have a neutral impact and a new (replacement) pier to match in dimensions, colour, bond and coping considered a sympathetic treatment following the removal of the modern wall/pier, to preserve the special architectural or historic interest of the original wall. The proposal is considered to accord with policy PCS23 of the Portsmouth Plan and then aims and objectives of the NPPF.

## **RECOMMENDATION                      Conditional Consent**

### **Conditions**

- 1) The development to which this consent relates shall be begun before the expiration of 3 years from the date of this consent.
- 2) Unless agreed in writing by the Local Planning Authority, the consent hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Location Plan - 5018\_301; and, Plans & Elevations - 5018\_302.
- 3) The materials to be used in the construction of the new (replacement) pier shall match, in type, colour and texture those on the existing listed boundary wall.

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

- 1) To comply with Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and to prevent an accumulation of unimplemented consents.
- 2) To ensure the development is implemented in accordance with the consent granted.
- 3) In the interests of visual amenity and to preserve the special architectural or historic interest of the listed boundary wall, in accordance with policy PCS23 of the Portsmouth Plan and the aims and objectives of the NPPF.

### **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.

**FORMER KINGSTON PRISON MILTON ROAD PORTSMOUTH PO3 6AS**

**REDEVELOPMENT OF FORMER PRISON COMPRISING CONVERSION OF LISTED BUILDINGS TO PROVIDE 76 DWELLINGS AND A COMMERCIAL UNIT (USE CLASS A1 OR A3; RETAIL OR CAFE/RESTAURANT), CONSTRUCTION OF FIVE BUILDINGS RANGING FROM THREE TO SEVEN STOREYS AND CONSTRUCTION OF TWO ADDITIONAL STOREYS TO B-WING TO PROVIDE 191 DWELLINGS, PART-DEMOLITION OF LISTED PRISON WALL, FORMATION OF NEW VEHICULAR ACCESSES TO MILTON ROAD AND ST MARYS ROAD, AND PROVISION OF CAR PARKING AND ASSOCIATED LANDSCAPING AND OTHER WORKS. AMENDED PROPOSALS FOLLOWING PLANNING PERMISSION 16/00085/FUL.**

**Application Submitted By:**

Mr Adrian Fox

**On behalf of:**

Mr Adrian Fox

City &amp; Country Portsmouth Ltd

**RDD:** 8th November 2018**LDD:** 7th February 2019**SUMMARY OF MAIN ISSUES**

I consider the principal matters to consider with this application include:

- \* Principle of residential development;
- \* Scale, layout, design of new build (and effect on heritage assets and local character)
- \* Surrounding residents' amenity;
- \* Future occupiers' amenity;
- \* Trees and landscape;
- \* Transportation matters;
- \* Ecology;
- \* Drainage;
- \* S.106 obligations

**PROPOSALS****Summary:**

Members may be aware that conversion and development proposals at the former prison were approved in 2017, to provide 230 flats. The planning application and corresponding Listed Building application were submitted in 2016 (16/00085/FUL and 16/00086/LBC respectively), and were considered by the Planning Committee on 6th July 2016.

As the Applicants have carried out the consented demolitions, and had the corresponding opportunity to better understand the physical fabric of the remaining former prison buildings, more costs have become apparent. The Applicant has also wished to generally reduce the financial deficit of the consented scheme. Therefore, the same Applicants now wish to achieve consent for an amended scheme, initially submitted as 271 flats, since amended to 267 flats. The new scheme remains broadly similar to the consented scheme, i.e. with the retention and conversion of the remaining, listed former prison buildings, and the erection of five new buildings of three to seven storeys height. The new buildings would be distributed around the western and northern perimeters of the site, in the same locations as the consented development. The



principal, or most obvious, change from the 2016 scheme is an extra storey to each half of three of the new blocks, with associated design changes, to accommodate some of the extra flats now proposed. Car parking arrangements are also amended and the number of spaces increased. A number of amendments are also proposed to the retained listed buildings.

In summary, the new development would be as follows:

- Conversion of Listed Buildings: 76 flats;
- Extension to Listed B Wing: 8 flats;
- Five new-build blocks: 183 flats.

There is a corresponding application elsewhere on this agenda for Listed Building Consent (18/01632/LBC) for the conversion and alteration of the historic building, the construction of two additional storeys to B-Wing, and part-demolition of parts of the listed prison wall.

#### Access

As per the consented development, the site would be accessed from three points, one on St Mary's Road, two on Milton Road.

The St Mary's Road access would be new and formed through the listed prison perimeter wall. It would serve vehicular traffic, be two-way, and be the only access point for large vehicles, i.e. deliveries and refuse vehicles. A pedestrian and cycle access point would be provided adjacent.

The Gatehouse would retain its access purpose, with one-way entrance traffic only, and be available for cyclists and pedestrians.

The Milton Road access would be new and formed through the listed prison perimeter wall. It would serve vehicular traffic, be one-way exit only, and be available for cyclists and pedestrians. Existing vehicles would head north on the one-way Milton Road-Baffins Road gyratory.

Associated with this new access would be alterations to the highways around the site, the same as the 2016 application, consisting of:

- A pedestrian (toucan) crossing would be provided on St Mary's Road;
- Provision of a footway to St Mary's Road;
- A right-turn waiting lane painted on the west-bound St Mary's Road to turn into the site, and a right-turn waiting lane painted on the east-bound St Mary's Road to turn into Whitcombe Gardens.
- Improvement of the Milton-St Mary's Rd roundabout and its approaches.

Within the site, there would be a network of internal roads to connect to the various buildings and parking areas. Block N at the north would have pedestrian and cycle store access from Bowler Avenue, with vehicular, pedestrian and cycle access also achieved from within the site via an undercroft parking area. This latter access would also require a new aperture through the listed prison perimeter wall, which also formed a part of the 2016 proposals and is part of the current Listed Building application elsewhere on this agenda.

#### Conversion of listed buildings

The previous listed building consent secured the demolition of some of the former prison buildings, and those buildings have already been removed. The remaining buildings are now proposed for conversion into 76 flats, those buildings being The Gatehouse fronting Milton Road, and Wings A to E, with The Rotunda at their centre. The construction of two additional storeys to B-Wing would add 8 more flats. This new accommodation would consist of 33 one-bedroomed flats, 49 two-bedroomed, and 2 three-bedroomed. A small Commercial unit (39 sqm Gross Internal Area) (Class A1 Retail or Class A3 restaurant/cafe) would be provided in The Gatehouse, as per the consented development.

Residents' pedestrian access into the flats would be via various entry points, external or internal. In Wings A, D and E, the ground floor flats would be accessed from the retained, internal

circulation space of the former prison, consisting of a 4.5m wide 'corridor'. This space extends to the upper storeys, where there are mezzanines providing access to those upper flats, with stairways at various points. The flats at Ground floor in Wings B and C would have individual, external front doors, while those on the upper levels would have internal, corridor access. External balconies would be provided to the new-build flats in Wing B only. With lower ground floor accommodation also, in Wings A, D, E, the converted buildings would provide three and four storeys of flats.

The former cells are small and so typically every second and third wall is proposed for removal or partial-removal, but many internal walls are still retained, within and between new flats. Many of the prison windows were small and high-level. Externally, at ground floor, many existing window apertures would be enlarged to form suitably sized and positioned windows for the new occupiers, and/or to provide new front door access. Not all of these works require planning permission, but are set-out here for completeness - they are part of the corresponding listed building application, elsewhere on this agenda (18/01632/LBC), which also contains many more alterations to historic fabric and which are considered in that report.

#### New build blocks

Blocks J and K would sit parallel to the western boundary to the railway line, sited a minimum of 4.8m from that boundary (the retained, listed prison wall, approximately 5.8m tall). Like all the new blocks, they would consist of two elements linked by an access core of hall, stairs and lift, with one element set slightly forward of the other. Blocks L and M would lie on the northern half of the site, set around the perimeter, so forming a new, large courtyard framed by new and retained buildings. Block L would sit 11.4m from the nearest residential property to the north, 2 Bowler Court, while Block M would sit parallel to Milton Road, a minimum of 5m from the perimeter wall. Block N would be sited on the former prison car park on Bowler Avenue, outside the perimeter wall. Because of the staggered footprints described above and tapering site, the front (north) elevation would be set back between 0.8 and 3.4m from the back of the Bowler Avenue pavement.

The blocks measure 45m wide by 19m deep, would be flat-roofed, and be of seven storeys (Blocks J and K), four storeys (M), three storeys (N), and three/six storeys (L). The tallest, seven storey buildings are 21.8m tall, a maximum height some 0.5m lower than approved previously, due to a slight decrease achieved in floor-to-ceiling heights. The predominant facing materials are grey-buff bricks and metal-framed windows and railings set within a framework of off-white, pre-cast architectural masonry (i.e. prefabricated stone). These materials would be repeated at the extension to Wing B. The ground floors would be clad in flint-faced concrete blocks, the core would be faced in curtain-wall glazing. Blocks L, M and N would have the ground floors consisting of part-undercroft parking, part-flats. All flats would have bike stores, gas meter rooms, waste stores, etc. at ground floor. The rear (west)-facing ground floor flats in Blocks J and K would have 4.8m deep individual gardens, set out facing the former prison wall. Otherwise, new-build flats would all have their kitchen-living rooms provided with a balcony, 2.4m wide by 1.6 deep.

The new-build blocks would provide 28 one-bedroomed flats, and 155 two-bedroomed. Across the whole development, this would amount to 61 one-bedroomed flats, 204 two-bedroomed, and 2 three-bedroomed.

#### Site layout, parking and landscape

Two principal courtyards would be formed between the retained and new buildings. To the south, Block J and Wings B and C would frame a new space of approximately 30m width. To the north, Blocks K, L, M and Wings C and D would frame a new space of between 50 and 70m width. These spaces, and the other secondary spaces, would be filled by internal roads, parking and landscaping, along with some external bike stores. The different landscaped areas are indicated to be of different characteristics/themes, e.g. a 'Potager Garden' between Wings B and C, and the main 'Central Garden Square'.

Outside the perimeter walls, heavy-standard trees would be planted along St Mary's and Milton Roads. To the north of The Gatehouse, the existing tarmac parking area would be remodelled and retained. To the south of The Gatehouse, it is proposed to use a relatively small part (approximately 358 sqm) of the Council-owned grassed area outside the current site, to add to the prison's existing tarmac parking area, to form an enlarged parking area (to part-provide for the extra flats now proposed over and above the consented scheme). This additional triangle of land sought and would require the removal of two Category B trees. The existing site wall here (not listed) would be extended around the extra area.

Car parking provision would be 347 spaces, equating to 130% provision for the 267 flats. Bicycle parking provision would be 522 spaces (474 in enclosed stores for residents, 48 in open hoops for visitors), equating to 196%.

Heads of Terms (Section 106 legal agreement)

The consented development secured S.106 contributions for off-site Public Open Space, Solent Bird Mitigation, and Travel Plan monitoring. The Applicant has agreed to these provisions again with the current application, these matters are set out more fully later in this report. With respect to Affordable Housing, the Applicant's Financial Appraisal shows the development with a negative Residual Land Value, of -£11.49 million. As such, the Applicant proposes that the scheme cannot provide any Affordable Housing. This matter will be considered in more detail later in this report.

The site measures 2.64 hectares, with a proposed development density of 101 dwellings per hectare.

The Local Planning Authority (LPA) has issued a Screening Opinion that concludes that the proposal does not require an Environmental Impact Assessment.

The application is supported by a number of documents:

Planning Statement, Design & Access Statement, Townscape Visual Impact Assessment, Heritage Assessment, Archaeological Report, Archaeological Assessment, Structural Survey, Transport Assessment, Travel Plan, Ecology Appraisal, Tree Report, Flood Risk Assessment, Noise Assessment, Preliminary Risk Assessment (ground water etc.), Utility Assessment, Financial Appraisal.

## SITE AND SURROUNDS

The application site comprises the site of the former HMP Kingston which closed in 2013. The site was bought together with three others by the applicant. The site is grade II Listed and with the exception of a car park to the north adjacent to Bowler Avenue is bounded by a 5 metre high (or taller) flint-faced wall, part of the listing. The site contains the original prison buildings with their radial plan, and gatehouse facing Milton Road. A number of much later buildings and structures mostly dating from the 1960's and 70's were removed following the previous consent.

A car park at the north of the site, fronting Bowler Avenue, lies outside the prison walls, and is set on slightly higher land than the highway. Other areas outside the prison walls are more car parking along the eastern frontage on Milton Road, an area of grass and some trees at the large roundabout to the south-east (which also contains some utilities structures and a phone mast), and a long strip of grass fronting St Mary's Road. The site and wider area is generally fairly level.

The site's western boundary lies alongside the city railway line, set down in a cutting, with both sides tree'd. Beyond that to the west is the Grade II Listed Historic Park/Garden of Kingston Cemetery, which also contains two Grade II Listed Chapels. Houses are close to the site on three sides: on Bowler Court and Bowler Avenue to the north, opposite on Milton Road to the east, and opposite to the south on Whitcombe Gardens and flats on the site of the former Union Workhouse (Grade II Listed).

## PLANNING HISTORY

18/01531/FUL, Approved: Installation of an electricity sub-station.

18/00778/FUL, Approved: Change of use of Main Prison Building from prison (Class C2a) to an Airsoft event centre (Class D2).

17/01888/FUL, Approved, Retrospective application for the partial change of use of the Main Prison Building from Prison (Use Class C2a) to Storage (Use Class B8) (Amended Description).

16/00085/FUL, Approved: Redevelopment of former prison comprising: part demolition and conversion of listed buildings to provide 73 dwellings and commercial unit (within Class A1 or Class A3); demolition of non-listed structures; construction of five blocks of between three and seven stories to provide 157 dwellings; part demolition of listed prison wall and formation of new vehicular accesses to Milton Road and St Marys Road; and provision of car parking and associated landscaping and other works.

16/00086/LBC, Approved: Demolition of listed engineering/workshop building, part demolition and conversion of listed prison buildings (with associated internal and external alterations) to provide 73 dwellings and a commercial unit and part demolition of listed prison wall.

Otherwise, the site was subject to crown immunity until 2006, prior to when works carried by the Home Office or Ministry of Justice did not require the consent of the Local Planning Authority.

## POLICY CONTEXT

In addition to the aims and objectives of the National Planning Policy Framework, the relevant policies within the Portsmouth Plan would include: PCS10 (Housing Delivery), PCS13 (A Greener Portsmouth), PCS14 (A Healthy City), PCS15 (Sustainable design and construction), PCS16 (Infrastructure and community benefit), PCS17 (Transport), PCS19 (Housing mix, size and affordable homes) and PCS21 (Housing Density), PCS23 (Design and Conservation), PCS24 (Tall Buildings). Saved policy DC21 (Contaminated Land) of the Portsmouth City Local Plan.

Supplementary Planning Documents (SPD) in respect of Housing Standards (January 2013), Parking Standards and Transport Assessments (July 2014), Sustainable Design & Construction (January 2013) Solent Protection Areas (April 2014), Reducing Crime Through Design SPD (March 2006), Air Quality and Pollution, Planning Obligations, Tall Buildings, are also relevant to the determination of this application.

## CONSULTATIONS

### Natural England

No objection subject to avoidance/mitigation measures being considered through an 'Appropriate Assessment', concerning impacts on the Solent & Southampton Water Special Protection Area. Recommend a Biodiversity Mitigation and Enhancement Plan, considering Protected Species, new habitat creation, swift and bat boxes, providing a new footpath, lighting to encourage wildlife, a green roof for new buildings, water efficiency.

### Southern Gas Network

No response received.

**Southern Electric**

No response received.

**Southern Water**

No objection. Request an Informative be attached to the Decision Notice, addressing the Applicant's obligations for connection to the public sewer.

**Portsmouth Water**

No response received.

**Hampshire Fire & Rescue Service**

Require compliance with Fire Rescue Services Act 2004 & Part B5.

**Ecology**

The submitted updating Preliminary Ecological Assessment notes the current status of the site, as a construction site. The mitigation measures are therefore brief, however If you were minded to grant permission, I would simply request a condition to secure the biodiversity measures set out in the submitted 2018 Update Preliminary Ecological Assessment. I note and support Natural England's request for a Biodiversity Mitigation and Enhancement Plan to be secured by condition.

**Historic England**

Do not wish to offer any comments, suggest you seek the views of your specialist conservation and archaeological advisers, as relevant.

**Crime Prevention Design Advisor**

Recommend an electronic access control system, and meeting specified standards for communal access doors, ground-floor glazing, and site-wide lighting. Recommend defensible space outside ground-floor French windows. Need to address natural surveillance for the undercrofts at Blocks L, M, N, and cycle stores. Planting should not obscure natural surveillance through the site. Recommend 'through-the-wall' mail boxes, not the boxes shown in the blocks' lobbies.

**Highways Engineer**

Original comments of 10th December 2018:

No objection on the issue of traffic impact, the increase in trip generation of 15 movements in the am peak period and 18 movements in the pm peak period is not sufficient to have a material impact. This is subject to securing the same off-site highway improvements as with the previous consent, to resolve both capacity issues and improved local accessibility. Accessibility: the accessibility of the site by walking is less than suggested by the Transport Assessment so little weight can be given to its findings in that regard. The proposals do not meet the SPD's standards for either car or cycle parking and so refusal is recommended. An acceptable arrangement for the servicing for the new sub-station would not be provided.

Further comments, of 18th January 2019, made following further information submitted by the Applicant, including cycle parking increased from 388, to 522, and noting the lower parking arrangements of the stated development partner:

The accessibility of the site by walking is significantly over-stated in the Applicant's submission, and so does not justify a reduction in parking standard. The increase in cycle parking now meets the SPD standard. The replacement of the previously-approved cycle parking in the Rotunda basement with a new flat is disappointing, as residents will have to walk to other blocks to store their bicycles. However, this would not justify a reason for refusal.

The further work to seek to justify a lower parking provision is not persuasive. The SPD expectation is of 376 spaces at this site, 347 are proposed (including those that would be provided on the extra land sought at the site's south-east corner). Even in a site that meets the SPD standard, demand frequently exceeds the capacity in the new development and residents/visitors often park within the carriageway. While this does not generally cause a problem, this site provides little opportunity for parking on the internal access roads. There is no capacity for off-site parking in the adjoining roads including the controlled parking zone but as the new residents of the development would not be entitled to obtain parking permits for these roads, any shortfall in site parking would be unlikely to give rise to highway safety concerns beyond the site, or impact of existing residents' amenities. Notwithstanding, as the development does not meet the SPD's parking expectation, refusal is still recommended. In the event of planning consent being granted, the same conditions and legal agreement obligations should be secured as for the 2016 application.

Further comments, of 7th February 2019:

As Whitcombe Gardens is within 200m of the site and is not subject to a controlled parking scheme, some new residents within the prison site who cannot find a parking space may choose to park on-street at Whitcombe Gardens. I note, though, that being on the opposite side of St Mary's Road, that road may be perceived as a barrier. Furthermore, the first 70m of Whitcombe Gardens has double-yellow lines. I consider any displaced parking is unlikely to cause a highway safety concern although it could impact on residential amenity.

With respect to the extra land sought at the south-east corner of the site, the Applicant may not gain control over that land. As such, and if planning consent is recommended, please impose an extra, Grampian-style condition, requiring certainty regarding provision of all of the parking shown.

#### **Contaminated Land Team**

No objection, require standard conditions: Desk study; Site investigation report; Remediation method statement; Post- remediation verification report.

#### **Leisure/Arb Officer**

Leisure: request spend on local public open space provision.

Tree Officer: No objections. Four tree removals on frontage are noted, they are far outweighed by the extensive tree planting proposed. Detailed Landscape proposals and management required by, including addressing proximity to roads and parking areas, drainage, co-location of services.

#### **Head Of Public Protection**

Air Quality - no objections to the re-submitted air quality impact assessment. We can confirm that the Applicant's conclusions are acceptable - the predicted long and short term NO<sub>2</sub> and PM<sub>10</sub>, at all the assessed receptors and for all modelled scenarios, would not exceed the relevant air quality objectives and that on the basis of the dispersion modelling, all receptors are predicted to experience a negligible impact on air quality as a result of development.

#### **Cemeteries Manager**

No response received.

#### **Environmental Health**

Recommend the same conditions as previously: noise insulation for habitable rooms (for road and rail noise); control of plant noise; control of fumes and odour for the permitted Class A3 unit; the A1/A3 unit restricted to opening between 8am - 10pm. Scheme of artificial ventilation for facades facing the railway line. The provision of Juliet balconies or amenity balconies on facades facing the railway line will require careful noise mitigation, including for windows being partially open. If it is not possible to achieve suitable internal noise levels with the windows opened, details of alternative ventilation must be supplied. The applicant will need to

demonstrate that noise levels do not exceed those recommended by the World Health Organisation.

#### **Archaeology Advisor**

Understand that the archaeological concerns previously expressed (and secured by condition) have been satisfactorily dealt with, the amendments to the scheme do not introduce any additional archaeological concerns.

#### **Waste Management Service**

No objection.

#### **Landscape Group**

The landscape scheme is largely unchanged from the previous scheme, which achieved a high quality of detail and character through the materials and planting design, to avoid what would otherwise be a rather forbidding site. This attention to detail must not be lost through value engineering and construction procurement. However, the impact of having more parking within the walls is going to make for a visually busier, more intensified scheme and housing environment, the design of planting will help soften this impact, but cannot wholly change the fact there will be more lines of parked cars than before.

Outside south-east corner, the new hedge proposed would limit the impact of extended parking. Tree removals noted here, but new trees to be planted, and retained trees create quite a screen already.

#### **Head Of Community Housing**

A large procurement (over 180 units) for Affordable Housing (Social Rent and Shared Ownership) units on this site is progressing separately to the planning application. A legal agreement attached to the planning application for the provision of affordable housing would conflict with the Homes England Grant Funding, and so cause the collapse of the above mentioned procurement. As such, I make no such request in this instance.

#### **Highways Contractor (Colas)**

A permanent wheel wash shall be in place at all times on the exit point, and the Developer must contact Colas before any works commence on site, for coordination purposes.

#### **Coastal And Drainage**

Local Lead Flood Authority (LLFA) - No objection. The LLFA supports the proposed 20% reduction in discharge rates, agrees that infiltration techniques are not suitable for the site. There should be flexibility to revise the drainage strategy if new information favourable to infiltration comes to light. It needs to be confirmed if the existing outfall from the site is to be re-used for the St Marys Road connection, it will need investigating and confirmation of its suitability for reuse if this is the case. Official confirmation will be required from Southern Water for this also.

Eastern Solent Coastal Partnership - No objection.

#### **Network Rail**

A long series of comments and requirements relating to working and site safety with respect to the adjacent railway line, including light & glare, maintenance space, drainage, construction working space, scaffolding, piling, fencing, noise & vibration, vehicle incursion barrier.

#### **Design Review Panel**

Does not support the application in its current form. Disappointed by the architect's response to the task of adding more units to the scheme, flat façades have been generated, the height of a number of key blocks has been equalised, and others significantly increased. These changes have 'de-finessed' the scheme, eroding the elegance of both the blocks and the setting of the prison's roofscape. Overall the panel considered the quality of the scheme to have gone backwards.

## REPRESENTATIONS

Local occupiers and Baffins Ward Councillors notified.

This public consultation has elicited twelve letters of objection, and one letter of support, which are set out in summary form below.

Twelve letters of objection, from local residents, Baffins Neighbourhood Forum, Milton Neighbourhood Forum, Councillor Jeanette Smith, and the Portsmouth Hospitals NHS Trust, raising the following points:

**Land use:** Would have been better to use the former prison as a Police HQ, or as a training establishment for various apprentices, could also include a section for Mental Health. Or could be for community use, use the dance studio and football pitches. Could re-site the Stacey Centre and use that site for flats/houses, or hotel/conferencing, or small business lets (very little in Portsmouth). Could be a heritage museum with ample parking, and convert the current city museum for flats.

**Scale & design:** Height of the buildings needs to be reduced, the scale and design would not enhance the historic buildings, and not in keeping with the surrounding area of smaller buildings particularly on Bowler Avenue. Existing houses are mainly red brick with sloping roofs and gables. No justification provided for the intensification of the scheme.

**Neighbours' amenity:** The prison wall is 8 feet from Bowler Court's boundary, Block L will overlook me and my neighbours in Bowler Avenue - loss of privacy in our gardens, and overshadowing. Noise level will drastically increase especially in the summer months with windows and balcony doors open.

**Road congestion:** Two new access roads onto St Mary's Road and Milton Road, these roads are already completely overloaded, and Baffins Road and Tangier Road will also be affected. Additional traffic that will have a huge impact on rush hour traffic (and on football days) on an already dangerous roundabout. Should not be building more in already over-crowded city, the last consent was a grave mistake. There is a high pedestrian footfall locally.

**Public transport:** this is poor locally, only one bus per hour from Tangier Road to city centre. Have to use car, but quicker to drive to Chichester than city centre, no wonder Commercial Road is dying as a shopping centre. New residents will not use local public transport or cycle to work.

**Parking :** insufficient parking provided, forcing residents in densely populated area to park in a residents parking zone that is already at capacity. Number of allotted parking spaces in the development has gone up but so has the demand with the proposed extra flats, many of which will be occupied by households owning two cars. Current visitors' car park should be retained for multi-storey parking.

**Air quality:** question the veracity of the Applicant's figures on predicted traffic increases, believe they will be much higher than stated. Also believe there would be an increase in traffic into AQMA9. There are large numbers of school pupils and other pedestrians. NPPF requires compliance with values and objectives for air quality. Is there an environmental impact assessment for the effect of the increased traffic on air pollution? DEFRA requires Portsmouth to reach air quality compliance in the shortest possible time. Need a publically-accessible walled garden with trees and shrubs to improve air quality and increase the levels of green infrastructure.

**Safety of pedestrians and cyclists:** will suitable provision be made, especially cyclists coming down the bridge when there's a new exit/entrance?



Green space: should not reduce green space in order to deal with anti-social behaviour, seems to be the wrong approach, we need all the trees we can get.

Sustainability: will the homes be carbon-neutral and built to the highest environmental standards?

Affordable Housing: One person welcomes affordable housing, and hopes will be maximised. Another person states its absence fails to comply with PCS 19.

Local Services: School and Doctors are full to capacity.

Ecology: We note the recommendations for bird nest boxes and House Sparrow terraces but feel that these could be improved and simplified, to provide better opportunities for Swifts and House Sparrows. These species are in decline and depend heavily on man-made structures for urban nesting, which are 'Swift bricks', not the more standard nest boxes and terraces.

Please provide at least twelve swift brick nest sites.

Fails to provide an 'Appropriate Assessment' to ensure mitigation for the protected birds and harbour sites.

New/improved public open space: Councillor Jeanette Smith: I would like to see all S.106 money previously or currently earmarked for Kingston Rec to be provided for open spaces facilities in the PO3 6 postcode (Baffins Ward). The main work for which the money was earmarked in Kingston Rec is now done and so has no need for it, open spaces in PO3 6 and it is only right and proper that they benefit from what is the biggest development in this postcode for the foreseeable future.

Affordable Housing: the lack of affordable housing provision is contrary to policy. The appraisal does not explain the Site Value estimate of £1m, and it is not synonymous with the actual purchase price. The reported negative value of £11.49m post-development supports the argument for no development at all - the Council has no obligation to mitigate a developer's loss, nor endorse an over-the-odds bid-price made in order to secure the site from the MoJ. The developer must take the risk, the Council is not obliged to accept a developer's profit of 20%.

Healthcare: Portsmouth Hospitals NHS Trust do not support the application unless a financial contribution of £83,560 is made. The Trust is currently operating at full capacity in the provision of acute and planned healthcare, it cannot plan for unanticipated additional growth in the short to medium term. The extra population derived from the development (76 dwellings) will require additional suitably-qualified agency-based staff otherwise the NHS will be unable to maintain the 'on-time' service delivery nor comply with quality requirements.

One letter of support, raising the following points:

Is a unique and landmark building in our city which requires redevelopment and can greatly assist the need for housing (including affordable). On the whole, the proposals respect the Victorian architecture of the prison, the 2016 approval set out the principles and this amended application doesn't differ enough from that to cause concern. The bulk of new massing is still to the western side of the site away from existing dwellings, and the prospect of the prison walls being penetrated to open the development to the wider public is a sacrifice worth making.

Parking levels seem to conform to planning policy, although I'd like to see more emphasis on cycling. Use of the green space on the corner of St Mary's Road and Milton Road is welcomed, due to current anti-social behaviour.

I was happy for original proposal to omit affordable housing due to financial viability, only concern is perhaps the level of affordable housing is now too high - also need quality market housing to attract higher skilled people and employers to the city.

## COMMENT

I consider the principal matters to consider with this application include:

- \* Principle of residential development;
- \* Scale, layout, design of new build (and effect on heritage assets and local character)
- \* Surrounding residents' amenity;
- \* Future occupiers' amenity;
- \* Trees and landscape;
- \* Transportation matters;
- \* Ecology;
- \* Drainage;
- \* S.106 obligations

### Principle

The principle of residential use of this site is acceptable, and has already been established with the consented scheme. I note the site's location within the urban, residential area, where it is served by roads and public transport (buses on both roads, and Fratton rail station 1km away), with shops, a park and other services available within relatively short distances.

### Scale, layout, design of new build (and effect on heritage assets and local character)

The distribution of new buildings was carefully considered before and during the course of the application for the consented scheme, and the proposed layout was approved. This new application proposes the new-build blocks in the same locations as the consented scheme and I consider that layout to be acceptable again.

The LPA's Tall Buildings policy sets out zones where 'tall buildings' are expected/can be accommodated. This site is not within any of those zones, but the LPA determined with the 2016 application that blocks of up to seven stories could be accommodated at this site. The consented scheme had the new-build blocks of two elements, one taller than the other by one storey. Also, the taller element's top storey was set-back from the main front and rear facades with the set-back filled by a lightweight colonnade structure. This was a design approach to achieve visual interest and to mitigate the effect of massing on the setting of the Listed Buildings, and views into the site from its surroundings. The height of the two elements to each block has been equalised with this new application (with the exception of Block L, explained later in this report), with the colonnade element removed. Concurrently, floor-to-ceiling heights have been slightly compressed, which slightly mitigates the at-height design changes now proposed. In my opinion, this massing change does not change the conclusion with respect to your Tall Buildings policy: that the height of the scheme is acceptable. I shall go on to consider the effects of the design and massing change with respect to wider amenity and heritage matters, as follows below.

The altered scale and design to the tops of the new-build blocks produces a slightly less pleasing effect compared to the consented scheme, in my opinion. The Design & Review Panel share this view. However, the test is not one of comparison with the previous scheme, but whether this new scheme is acceptable in itself. I do not consider the new design and massing would have a harmful effect on local character and amenity (not considering heritage matters, which are set out below), especially if the quality of materials and construction is high. Since application submission and the DRP comments, the Applicants have also introduced an extra string course between the 5th and 6th storeys on Blocks J and K, to attempt to visually reduce the appearance of massing at height. I consider this alteration to produce a minor, positive change.

With respect to heritage matters, the extra massing at height is not ideal, in my opinion. This is with respect to both the setting of the former prison Listed Buildings and the Historic Park/Garden of the cemetery, including important views of the site (of the rich and varied prison

roofs, towers, chimneys, etc.) from the surrounding area. However, since the main, overall form of the buildings would remain as approved, with only the building tops amended, and the footprint the same as previously, I conclude that the at-height design change produces relatively limited change with respect to the settings of the heritage assets. I consider 'less than substantial' harm would result. The significant areas to be given over to hard and soft landscaping, including roads and parking, would be a somewhat different setting to the former prison buildings. These new spaces and uses would be expected with a residential development and, if carried out well and maintained well, would complement the new land use. As such, I consider their effect on setting would be neutral.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a legal duty on the Local Planning Authority when considering applications for development which affect a listed building or its setting to "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".

The National Planning Policy Framework (NPPF) requires LPAs to consider the significance of heritage assets, and take account of the desirability of sustaining and enhancing the significance of the assets and putting them to viable uses consistent with their conservation. It notes the positive contribution that conservation of heritage assets can make to sustainable communities, including their economic viability. Great weight should be given to the asset's conservation. Any harm to, or loss of, the significance of the asset should require clear and convincing justification. Harm may be categorised as 'substantial' or 'less than substantial', I have concluded the latter would exist in this case. Less than substantial harm should be weighed against the public benefits, including where appropriate securing the asset's optimum viable use (my emphasis).

The preamble to Policy PCS23 of the Portsmouth Local Plan sets out that the Council will work proactively to ensure the valuable elements of the city's history are preserved and enhanced. The Policy seeks excellent architectural quality in new buildings and changes to existing buildings, and public and private places that are clearly defined, as well as being safe, vibrant and attractive. The Policy seeks protection and enhancement of the city's historic townscape and its cultural heritage, and creation of new views and juxtapositions that add to the variety and texture of a setting.

I consider the development proposed is of a robust, contemporary form which would reflect something of the austerity of the existing buildings. Its final quality would be secured by exact choice of materials, design detail, and construction quality, supplemented by the quality of the various hard and soft landscaped areas, all to be addressed by conditions. Crucially, the new build blocks, and the conversions and extension to heritage buildings, would bring about an extremely positive re-use of the site, which would otherwise likely struggle to find an appropriate alternative. The site's future, and its contribution to the heritage and history of Portsmouth, would be secured by the scheme, providing a significant number of new homes to assist in meeting the city's housing demand. Corresponding benefits include new or improved open space on and off-site, construction employment, and a considerable CIL payment. Therefore, in-the-round, I consider the proposals meet the local and national tests, particularly through the securing of the asset's optimum viable use, and providing public benefits that outweigh the harm to the heritage assets.

#### Surrounding residents' amenity

The changes to the converted buildings compared to the consented scheme would be little discernible from outside the site, so would have no further effect in my opinion on surrounding residents' amenities. Irrespective of any comparison, I consider the effect would be acceptable.

The new-build blocks J, K, and M are the three where the 2016 scheme's approach of 6/7 storey and 3/4 storey has been amended to an equalised height of 7 and 4 storeys. The change at Block J is to its northern half, away from the nearest residents to the south facing St Mary's

Road, so there would be no material effect on those residents. Similarly, the change at Block K is to its southern half, away from the nearest residents to the north on Bowler Court. The extra massing to Block M would be obvious to the residents opposite on Milton Road. However, given the busy main road, a distance of at least 27m between Block M and Milton Road elevations, the potential for new landscaping on the prison frontage, and the existing tall prison wall, I consider the effect of the extra massing on the outlook for Milton Road residents would not be unacceptable. I consider any effect on daylight would be negligible, and effect on direct sunlight very limited indeed.

The 2016 scheme had Block L at 3 and 6 storeys - the lower half due to its position next to the terrace of houses on Bowler Court to the north. The new application increased it to 4 and 6 storeys, which raised concerns from residents and the Case Officer alike with respect to outlook and dominance, overlooking, and loss of light. The Case Officer requested the building be returned to the 3 and 6 storeys and the Applicant obliged, and I now have no objection to the relationship to existing residents. The tall, retained, Listed prison wall would be retained and so provide significant screening between the new and existing residents.

Objection from Bowler Court also concerned noise levels, from windows and balconies of the adjoining flats proposed. I do not consider the new occupiers would be any more likely to be noisy than other existing residents on Bowler Court and Bowler Avenue.

Block N, of three storeys, faces Bowler Avenue residents, as per the 2016 scheme. I consider this to be an acceptable relationship, on townscape and amenity grounds.

In-the-round, the physical regeneration of the former prison site and its positive re-use for housing would produce a positive effect on local residents' amenities, in my opinion.

#### Future occupiers' amenity

The Nationally Described Space Standard sets out internal space requirements for new dwellings. For a one-bedroomed dwelling, it has given sizes depending on whether the occupancy is anticipated to be one or two person, similarly for two-bedroomed, etc.. The Applicant has not sought to prescribe the future occupancy. In the 'worst-case' scenario of maximum occupancy per bedroom (i.e. two people in each double-bed room), seventeen flats in the entire development of 267 flats would be below the Standard. In the 'best-case' scenario of lower occupancy per bedroom, only three flats would be below the Standard (and only by 2 sqm each). The seventeen/three flats are all in the Listed Buildings. Given the size of the scheme, and the difficulties and constraints of converting heritage assets, I have no concern at all about this matter. I also note that many of the flats in the other 250 would be significantly larger than the National Standard.

Outdoor amenity space: The great majority of the flats would either be within the listed former prison buildings, or look directly at them, so I consider all the occupiers would enjoy an interesting and attractive heritage setting. The majority of new-build flats would have their own small amenity areas, in the form of balconies mostly, or the gardens for the rear ground floor units in Blocks J and K. Otherwise, the majority of units would overlook and pass through a variety of landscaped areas, with the larger ones being 'mini-parks' to sit out in and enjoy. Kingston Park, and Kingston Cemetery are larger public space just to the south and west of the site and so are also easily available to residents, while other parks are also available within walking and cycling distance.

Outlooks: The majority of flats would enjoy generous outlooks, typically across the various landscaped areas within the site, and some also west across to Kingston Cemetery. The more restricted outlooks would be in the lower two storeys of the new blocks where they face the tall perimeter wall, and in the converted buildings were the wings (A, E, D) converge upon the central Rotunda. For the latter, this is unavoidable and was accepted in the consented scheme. At first floor level in the new blocks, this is as per the consented scheme also. Therefore, the

new relationship is for the ground floor, rear-facing (west) flats in Blocks J and K, where flats replace the previously consented undercroft parking. Four of these flats would face the tall perimeter wall at a distance of 4.8m, the other two at 8.0m. Outlook for these first four flats would be very limited, and daylight and sunlight limited by the height of the building itself and the tall wall. However, these units would also have their kitchen-living rooms with a secondary, south-facing window, and are only a very small proportion of flats within the larger scheme - compromises are usually necessary in a significant development and I consider the arrangement would be acceptable. Overall, I consider the future occupiers would have a good standard of amenity.

### Crime and safety

The Police have made some site-wide comments, mostly on details concerning matters of access to communal areas, lighting, surveillance, and 'defensible space' (to areas outside ground floor flats). The Case Officer has also addressed positioning of boundaries, to restrict access to the rear of some blocks. The detailed resolution of these issues will be addressed in various conditions.

### Trees and landscape

The Applicant has provided proposed approaches to landscaping in their Design & Access Statement, showing very significant levels of tree planting and other hard and soft landscaping throughout the site, with sizeable gardens provided between Listed wings, between retained and new buildings. The scheme has the support of your Landscape and Tree Officers, and I concur that a good level of amenity and character is illustrated. The details will be secured through the relevant conditions. The quality of the landscaping provided, and its proper long-term management, will be crucial to the overall success of the development. The proper control of site-wide parking, i.e. preventing parking onto the edges of landscaped areas, through a combination of discreet physical measures and/or on-site management will be a part of that success.

Earlier in this report I noted the proposal to use some of the Council-owned grassed area near the junction of St Mary's Road - Milton Road. The land lies along the front of the former prison site, i.e. at the back (west) of the area seen from the public perspective, and to the north of the utilities meter cabinets and telecommunications monopole fronting St Mary's Road. The proposal would require the removal of two trees, and would constitute some 358 sqm of the area's total of 1474 sqm.

The area is designated as a 'Protected Open Space' in the 2012 Portsmouth Plan ('A Greener Portsmouth' chapter). PCS13 states that proposals which would result in the net loss of existing areas of open space will be refused, unless there are wider public benefits from the development which outweigh the harm.

First, it does not appear to me that the area is a particularly 'usable' area for public recreation, given its location at a busy road junction and with the formal Kingston Park nearby. Nevertheless, the land does nevertheless provide a pleasant green feature. As the land-take proposed is 24% of the existing, a good area would remain for public benefit - dog walking, and as a green area as visual amenity for residents and passers-by. More importantly, the development itself would provide publically-accessible open space that does not currently exist - the site would not be closed off or gated, and so non-residents would be able to enter the site and use the open space should they wish. Given the size and expected quality of the open spaces, I would expect some existing residents nearby may use the site for some form of recreational purposes. As such, I consider there would be wider public benefits from the development which outweigh the (limited) harm, and so Policy PCs13 would be complied with.

### Transportation matters

The Council's Transportation comments are set out earlier in this report. In simple summary, the traffic from the scheme, both in itself and in comparison to the 2016 development, is deemed not to have a significant impact on the highway network, eg a maximum of 18 extra movements in the pm peak period. This conclusion is dependent on the implementation of the various highway measures proposed at the site and in its environs, and so these are secured by conditions, along with the Travel Plan secured by the S.106 legal agreement.

The situation for parking is different, compared to the 2016 scheme. For Members' information, the 2016 application provided 331 car parking spaces for 230 flats = 144%, and did not attract objection from PCC Transportation on this point. The new application proposes 347 car parking spaces for 267 flats = 130%. Achieving all 347 spaces is dependent on the Applicant securing the extra land at the site's south-eastern corner from the Council, by lease or purchase, which would allow a more efficient layout and provide 22 extra spaces. The lease or purchase of this area from Portsmouth City Council would be subject to a separate consent/contract to this planning application, but I am not aware of any likely impediment to the Applicant securing the use of this land for the extra parking. Without the extra land, parking spaces would be some 325, providing 122%. Whether 130% or 122%, my assessment of the proposal is as follows and, as such, I do not consider the Transportation Officer's request for a Grampian condition to require the extra 22 spaces is necessary.

Your 'Parking Standards and Transport Assessment' Supplementary Planning Document would require this development provide 370 spaces (for the amended number of 267 flats). The proposed shortfall has therefore led to objection from PCC Transportation. However, the decision-maker must consider the effect of any likely unmet parking demand, not just the failure to meet the standard alone. I have already set out how the LPA intends to control parking within the site, for reasons of overall amenity, the setting of the listed buildings, and general safety. For potential overspill parking outside the site, one needs to understand the parking conditions in the surrounding roads. Here, within the stipulated 200m of the site, all roads except parts of Whitcombe Gardens and Andrew Close to the south-west are covered by residents' parking zones. Residents of the new development would not be issued with permits to park in those zones, so would not be able to park there beyond two hours (with no return within another four hours). PCC Transportation raise no highway safety concern to potential extra on-street parking in Whitcombe Gardens and Andrew Close. As such, the area would largely be unaffected by the occupation of the former prison site, with respect to on-street parking. Cycle parking provision is high, and the Travel Plan will introduce measures to further encourage new residents to travel on foot, by bike, by public transport, as well as linking into other city-wide and local initiatives that the City Council may be developing.

Broadly-speaking, the site is in a reasonably accessible location in the urban area, with buses, Fratton train station 0.9km as the crow flies, reasonably close shops and services, local parks close by, and the city centre 1.85km away (as the crow flies).

#### Ecology:

Special Protection Area (SPA) mitigation: The Conservation of Habitats and Species Regulations 2010 [as amended] and the Wildlife and Countryside Act 1981 place duties on the Council to ensure that the proposed development would not have a significant likely effect on the interest features of the Solent Special Protection Areas, or otherwise affect protected habitats or species. The Portsmouth Plan's Greener Portsmouth policy (PCS13) sets out how the Council will ensure that the European designated nature conservation sites along the Solent coast will continue to be protected.

The Solent Recreation Mitigation Strategy (December 2017) was adopted by Portsmouth City Council on 1st April 2018 and replaces the Interim Solent Recreation Mitigation Strategy (December 2014) and the associated Solent Special Protection Areas Supplementary Planning Document (SPD) which was revoked by the City Council from 1st April 2018. The Strategy identifies that any development in the city which is residential in nature will result in a significant

effect on the Special Protection Areas (SPAs) along the Solent coast. It sets out how development schemes can provide a mitigation package to remove this effect and enable the development to go forward in compliance with the Habitats Regulations. This development is not necessary for the management of the SPA.

Based on the methodology set out within the Strategy, an appropriate scale of mitigation for this development is £121,179, which would be secured through the s.106 legal agreement. With this mitigation, the LPA has concluded that the adverse effects arising from the proposal are wholly consistent with and inclusive of the effects detailed in the Solent Recreation Mitigation Strategy. The LPA's assessment is that the application complies with this strategy and that it can therefore be concluded that there will be no adverse effect on the integrity of the designated sites identified above. The requirement for a payment to secure mitigation is both directly related to the development and be fairly and reasonably related in scale to the development.

Other Ecology: the site was thoroughly surveyed last summer. It has patchy vegetation and a line of small, semi-mature cherry trees. No badger setts were found, nor mammal paths, it is concluded that no badgers reside or forage at the site. No trees exist of an age or size to provide roosting potential for bats, and an inspection of the roof voids and other such features found no roosting. There was some bat activity towards the north-west portion of the site, reflecting its position between areas of open space to the near west and south-west, and further to the east, with the recorded activity considered to be commuting bats. There are no suitable habitats for reptiles, newts, dormice, water voles or otter. There were no active bird nests. The Applicant's consultant recommends native, enhancement tree and shrub planting, bat boxes/tubes, nest boxes. These and other measures, including the requested 'swift bricks' will be provided via the biodiversity enhancement condition.

#### Drainage:

The site lies in Flood Zone 1, i.e. an expectation of flooding from fluvial or tidal sources less than 1 in 1000 in any year. The development would increase the impermeable area on site but surface water would be accommodated with modular storage, permeable paving, and detention basins. The Lead Local Flood Authority (LLFA) raises no objection, I attach a condition to address drainage matters.

#### S.106 obligations, and Community Infrastructure Levy

The consented development secured S.106 contributions for off-site **Public Open Space, SPA Mitigation, and Travel Plan monitoring**. The Applicant has agreed to these provisions again with the current application, and to the higher sums that this larger development generates for the first two.

Off-site Public Open Space: as with the consented scheme, the site would provide good areas of open space on-site, but not sufficient to meet policy expectation to correspond with the development's population. Therefore, and consistent with the consented scheme, the Applicant has agreed to make a financial contribution, of approximately £60,000, to pay for off-site public open space provision/improvement. This is in spite of the scheme showing a significant financial deficit, in which scenario some or all S.106 obligations might be expected to be waived. The exact details of that provision - final sum, and spend location and purpose - will be confirmed to you at the Committee meeting.

The SPA Mitigation sum would be £121,127 and is agreed by the Applicant. The Travel Plan monitoring sum would be £5,400 and is agreed by the Applicant.

A residential development of this size would normally be required to provide Affordable Housing. This, though, is dependent on the development being financially viable, and guidance on this area is set out in the new NPPF of 2018. The Applicant's Financial Appraisal shows the development with a negative Residual Land Value, of -£11.49 million. As such, the Applicant

proposes that the scheme cannot provide any Affordable Housing, which is the same overall scenario as with the 2016 application. The extra 37 flats now proposed, though, have reduced the negative Residual Land Value of -£18 million in 2016, to the -£11.49 million now. Financial assessments are a complex area and this matter is only addressed in simple summary here, but the matter has been closely scrutinised first by an independent Financial Consultant appointed jointly by the Applicant and LPA, and then by the Case Officer. As is often the case, the Financial Consultant has identified some elements of the Applicant's Financial Appraisal which she considers should be discounted or adjusted, and she comments on the other particular elements. In-the-round, the Consultant agrees that the development is not technically viable and has a negative Residual Land Value in the region of -£11 million, which means therefore that the application cannot support the provision of Affordable Housing. Having considered and discussed her review, I concur.

With a scheme of this size and construction period (three years) and sales period (another year beyond last building works), there is a high degree of sensitivity - relatively limited changes to build costs and/or sales values could significantly affect viability (positively or negatively). As such, and as is common with schemes of this size and as per the 2016 application, the S.106 would have a **Review Mechanism** which would secure Affordable Housing in the event of the development actually being profitable.

Outside the scope of the planning application, and purely for completeness and for Members' information, the Applicants state that they will complete a contractual partnership with Vivid Housing Association upon the issuing of a planning consent, wherein Vivid would construct and own all of the new-build blocks (183 of the 267 flats), and provide all of those flats as affordable units. I understand the intention of Vivid would be to start construction this summer. This scheme requires funding from Homes England. I understand that funding does not allow for any S.106 clauses relating to Affordable Housing. As such, just prior to publication of this report, the LPA understands the intended Review Mechanism could prevent the delivery of Affordable Housing altogether. This matter will be reviewed after report publication and addressed at the actual Planning Committee meeting.

Portsmouth Hospitals NHS have belatedly requested a sum of £83,560, for the provision of acute and planned healthcare. This is a significant and unexpected request, that has not been discussed with the LPA. Officers will review the matter and report to the Planning Committee meeting.

Community Infrastructure Levy (CIL)

The proposed development would yield a sum calculated at £2,505,298.

#### Remaining points of objection from local residents

Many of the points of objection raised by local residents and community groups have already been addressed above. Of those remaining:

Some objectors propose alternative land uses for the site. The LPA is required to determine the land use proposed (housing, which is acceptable) and not to consider whether others might also be appropriate or considered better.

Some objectors are concerned about pressure on local schools and doctors. Education in Portsmouth may be funded through CIL and this site will deliver a very significant sum for the city. Local residents' concerns about pressure on doctors/health services overlaps with comments from the NHS. The NHS' request for funding from this development cannot be met because they seek to spend the monies on staff, not infrastructure - as such, it does not meet the requirements of planning legislation.



## CONCLUSION

This is a major development for the local area and the city, which would provide good-quality/robustly scaled and designed new buildings, and sensitive conversion of listed buildings, to provide a significant number of new homes. The effects of the development on matters such as traffic, parking, open space, air quality, ecology, surrounding residents' amenities are deemed to be within acceptable bounds subject to appropriate mitigation where necessary. I consider the proposals constitute Sustainable Development and can be recommended for approval, subject to:

**RECOMMENDATION A:** that delegated authority be given to the Assistant Director of Planning & Regeneration to grant planning permission, subject to the following conditions, and subject to completion of a Section 106 Legal Agreement to secure the measures outlined in bold above;

**RECOMMENDATION B:** that delegated authority be given to the Assistant Director of Planning & Regeneration to add and amend conditions where necessary;

**RECOMMENDATION C:** that delegated authority be given to the Assistant Director of Planning & Regeneration to refuse planning permission if the Section 106 Legal Agreement has not been completed within three months of the date of this resolution.

## 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 documents set out in the Plans Schedule of 12th February 2019.
- 3) The development of the site shall, unless otherwise agreed in writing by the Local Planning Authority, be carried out in accordance with the details shown on the Phasing Plan (reference 0330-KIN-100-Rev D).
- 4) No works pursuant to the construction of the new build blocks hereby permitted shall commence until there has been submitted to and approved in writing by the Local Planning Authority before development commences or within such extended period as may be agreed with the Local Planning Authority:
  - a) A desk top study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2 and 3 and BS10175:2011+A1:2013; and unless otherwise agreed in writing by the LPA,
  - b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS10175:2011+A1:2013 - Investigation of potentially contaminated sites - Code of Practice; and, unless otherwise agreed in writing by the LPA,
  - c) A detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include nomination of a competent person to oversee the implementation of the works.

5) No phase of the new build development hereby permitted shall be occupied or brought into use until there has been submitted to and approved in writing by the Local Planning Authority verification by the competent person approved under the provisions of condition 4(c) that any remediation scheme required and approved under the provisions of condition 4(c) has been implemented fully in accordance with the approved details (unless varied with the written agreement of the Local Planning Authority in advance of implementation). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise;

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

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 4(c).

6)a) Development shall not commence until a Construction Management Plan (to include construction vehicle routing, deliveries timing, the provision of loading/offloading areas, wheel wash facilities, site office, contractors parking area and any temporary traffic restrictions) has been submitted to and approved in writing by the Local Planning Authority.

b) The approved plan shall be implemented and maintained until the development is complete.

7)a) The construction of any phase of the new build development hereby permitted shall not commence until a schedule and samples of all external facing and roofing materials to be used for the new buildings hereby permitted have been submitted to and agreed in writing by the Local Planning Authority.

b) The development shall thereafter take place in complete accordance with the agreed materials and details.

8)a) The construction of each phase of the development hereby permitted shall not commence until a schedule and samples of all surface treatments and finishes, hard landscaping and floorscape treatments relating to that phase of the development have been submitted to and agreed in writing by the Local Planning Authority.

b) The development shall thereafter take place in complete accordance with the agreed materials and details.

9)a) The construction of each phase of the development hereby permitted shall not commence until the detailed constructional design of key architectural features such as eaves, balconies, entrances, windows/doors at a 1:20 scale (or such other appropriate scale as may be agreed) relating to that phase of the development have been submitted to and approved in writing by the Local Planning Authority.

b) The development shall thereafter be carried out in complete accordance with the approved details.

10) No part of any phase of the development hereby permitted shall be occupied until boundary treatments relating to that phase have been completed in accordance with a scheme detailing the type, alignment, height, appearance, materials / finishes of any boundary treatment or other gate / fence / railing / barrier / bollard or similar means of enclosure that shall previously be submitted to and approved in writing by the Local Planning Authority.

11) (a) Development shall not commence, unless otherwise agreed in writing by the Local Planning Authority, until details of (i) the proposed means of foul and surface water sewerage disposal, (ii) the measures to be undertaken to protect any existing public sewers infrastructure, and (iii) the details of any 'sustainable urban drainage' systems (including future management and maintenance), shall have been submitted to and approved in writing by the Local Planning Authority, and

(b) No part of each phase of the development shall be occupied until the drainage works referred to in (a) above and any required attenuation have been carried out in accordance with the approved details relating to that phase, unless otherwise agreed in writing by the Local Planning Authority.

12) (a) Works related to the landscaping of any phase of the development hereby permitted shall not take place, unless otherwise agreed in writing by the Local Planning Authority, until a detailed landscaping scheme for the external areas, which shall specify species, planting sizes, spacing and density / numbers of trees / shrubs to be planted; the phasing and timing of planting; a detailed scheme of ground preparation and maintenance for planting areas, and provision for its future maintenance has been submitted to and approved by the Local Planning Authority in writing.

(b) The works approved shall be carried out in the first planting and seeding season following occupation of the buildings within that phase of the development, or the completion of that phase of the development, whichever is the sooner; and any trees or plants which, within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of the same species, size and number as originally approved.

13) (a) Development shall (unless otherwise agreed in writing by the Local Planning Authority) not commence until details of biodiversity enhancements in the form of a Landscape and Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority.

b) The development shall subsequently proceed in accordance with the Landscape and Environmental Management Plan approved pursuant to part a) of this condition.

c) The enhanced habitats shall be thereafter be maintained and retained in accordance with the Landscape and Environmental Management Plan approved pursuant to part a) of this condition.

14) None of the residential accommodation hereby permitted with habitable rooms facing the railway line, Milton or St Marys Roads shall be occupied, until they have been insulated against external noise in accordance with a scheme that shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall thereafter be retained.

15) The retail unit hereby permitted shall be closed to and vacated of customers between the hours of 10 pm and 8 am the following day.

16) Prior to the installation of any fixed air conditioning, refrigeration or extraction plant associated with the retail unit hereby permitted, a scheme for protecting residential premises from noise generated by any such plant or equipment shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the plant or equipment being brought into use and thereafter maintained.

17) Prior to the installation of any kitchen extraction system associated with the retail unit hereby permitted, details of measures to abate and disperse odours and fumes emitted from cooking operations shall be submitted to and approved in writing by the Local Planning Authority. The approved mitigation shall be implemented prior to the extraction system being brought into use and thereafter maintained.

18) The car parking spaces shown on the approved plans shall be surfaced, marked out made available for use before the first occupation of that phase of the development and shall thereafter be retained for car parking purposes.

19) No part of any phase of the development hereby permitted shall be occupied until secure cycle storage facilities serving that phase have been provided in accordance with a detailed scheme that shall previously have been submitted to and approved in writing by the Local Planning Authority. The facilities shall thereafter be retained.

20) No part of any phase of the development hereby permitted shall be occupied until the facilities for the storage of refuse and recyclable materials serving that phase have been provided in accordance with a detailed scheme that shall previously have been submitted to and approved in writing by the Local Planning Authority. The facilities shall thereafter be retained.

21) No part or phase of the development hereby permitted shall (unless otherwise agreed in writing by the Local Planning Authority) be occupied until the following highway improvement measures have been completed:

- \* the installation of a Toucan crossing to St Marys Road;
- \* the installation of an uncontrolled crossing between the new access to St Marys Road and Whitcombe Gardens;
- \* the improvement of the Milton and St Marys Road roundabout and approaches thereto;
- \* the provision of a footway to the northern side of St Marys Road.

22) a) Unless otherwise agreed in writing by the Local Planning Authority, development shall not commence until details of cycle slip lane between St Mary's Road and Milton Road northbound have been submitted to and agreed in writing with the Local Planning Authority.

b) No part or phase of the development shall be occupied until the cycle slip lane between St Mary's Road and Milton Road north has been provided in accordance with the details approved pursuant to part a) of this condition.

23) a) No part of the development hereby permitted shall be occupied until a dropped kerb serving new accesses onto Milton Road and St Mary's Road have been provided.

b) The final phase of development shall not be fully occupied or otherwise brought into use until any redundant dropped kerbs around the site perimeter not required in conjunction with the development hereby permitted shall be to be removed and reinstated as full height kerbs with associated footway.

24) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending, revoking and re-enacting that Order with or without modification) no structure or apparatus or other alteration shall be mounted externally on building including any works permitted by Part 16 of Schedule 2 of the Order without the prior written permission of the Local Planning Authority, obtained through the submission of a planning application.

25) Development of any phase of the development shall only proceed in accordance with the Written Scheme of Investigation prepared by Cotswold Archaeology (ref 770469 dated October 2016), or any alternative that may be submitted to and approved in writing by the Local Planning Authority

26) Following the completion of all archaeological work reports shall be produced in accordance with an approved programme (including where appropriate historic structural analysis, specialist analysis, publication of work and public engagement) that shall be submitted to and approved in writing by the Local Planning Authority.

27) The development shall not be fully occupied until the interpretative area to be located in the gatehouse has been provided in accordance with a detailed scheme that shall previously have been submitted to and approved in writing by the Local Planning Authority. The interpretative area shall thereafter be retained.

**The reasons for the conditions are:**

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To ensure the provision of public realm and highway works and the timely restoration of the listed building in accordance with policies PCS7 and PCS23 of the Portsmouth Plan.

- 4) In order to ensure that the site is free from prescribed contaminants in accordance with saved policy DC21 of the Portsmouth City Local Plan 2001-2011.
- 5) In order to ensure that the site is free from prescribed contaminants in accordance with saved policy DC21 of the Portsmouth City Local Plan 2001-2011.
- 6) To minimise the potential for conflict with or hazard to existing users of the surrounding highway network in accordance with policy PCS17 of the Portsmouth Plan.
- 7) To secure high quality external finishes to a building and to preserve the setting of the adjacent listed buildings in accordance with policies PCS23 and PCS24 of the Portsmouth Plan.
- 8) To secure high quality external finishes to a building and to preserve the setting of the adjacent listed buildings in accordance with policies PCS23 and PCS24 of the Portsmouth Plan.
- 9) To secure high quality external finishes to a building and to preserve the setting of the adjacent listed buildings in accordance with policies PCS23 and PCS24 of the Portsmouth Plan.
- 10) To secure a high quality appearance to the development in a visually prominent location, to protect the privacy (where relevant) of users of the scheme in the interests of the amenity of the area and to balance safety/security needs with townscape improvement, in accordance with policy PCS23 of the Portsmouth Plan, Reducing Crime Through Design SPD and the principles of good design in the NPPF.
- 11) To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of the surface water drainage system in accordance with the aims and objectives of the NPPF and policy PCS12 of the Portsmouth Plan.
- 12) To secure a high quality setting for the development in the interests of the visual amenity of the area and to conserve and enhance biodiversity, in accordance with policies PCS13 and PCS23 of the Portsmouth Plan and the aims and objectives of the NPPF.
- 13) To secure a high quality setting for the development in the interests of the visual amenity of the area and to conserve and enhance biodiversity, in accordance with policies PCS13 and PCS23 of the Portsmouth Plan and the aims and objectives of the NPPF.
- 14) To ensure that acceptable noise levels within the dwellings and the curtilages of the dwellings are not exceeded in the interests of residential amenity in accordance with policy PCS23 of the Portsmouth Plan.
- 15) To protect adjoining and nearby residential occupiers from noise and disturbance late at night and into early morning hours in accordance with Policy PCS23 of the Portsmouth Plan.
- 16) To ensure that acceptable noise levels within the dwellings and the curtilages of the dwellings are not exceeded in the interests of residential amenity in accordance with policy PCS23 of the Portsmouth Plan.
- 17) To prevent the emission of odours which could affect the residential amenities of the occupiers of neighbouring properties in accordance with policy PCS23 of the Portsmouth Plan.
- 18) In the interests of highway safety in accordance with policy PCS23 of the Portsmouth Plan and the Car Parking Standards SPD.
- 19) To ensure adequate provision for and to promote and encourage cycling as an alternative to use of the private motor car in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.

20) To ensure that adequate provision is made for the storage of refuse and recyclable materials in accordance with policy PCS23 of the Portsmouth Plan.

21) To secure the package of off-site highway improvement works required to mitigate the highway impacts of the development, in accordance with policies PCS17 and PCS23 of the Portsmouth Plan.

22) To reduce the need for cyclists to use the roundabout in the interests of highways safety.

23) In the interests of enhancing the safety and convenience of users of the adjacent highway.

24) To ensure these prominent buildings and their roofscape remains free of visual clutter and to reduce the impact to nearby heritage assets by any subsequent alteration or addition in accordance with policy PCS23 of the Portsmouth Plan.

25) To record the original features and character of the prison building that would otherwise be lost through development and to assess the extent, nature and date of any archaeological deposits that might be present within the sports field and the impact of the development upon these heritage assets.

26) To contribute to our knowledge and understanding of our past by ensuring that opportunities are taken to capture evidence from the historic environment and to make this publicly available.

27) To provide a publicly accessible record of the history and evolution of the sites heritage in accordance with the aims and objectives of the National Planning Policy Framework and Policy 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.

**FORMER KINGSTON PRISON MILTON ROAD PORTSMOUTH PO3 6AS**

**CONVERSION AND ALTERATION OF LISTED BUILDINGS TO PROVIDE 76 DWELLINGS (USE CLASS C3) AND A COMMERCIAL UNIT (USE CLASS A1 OR A3: RETAIL OR CAFE/RESTAURANT), CONSTRUCTION OF TWO ADDITIONAL STOREYS TO B-WING TO PROVIDE A FURTHER 8 DWELLINGS, AND PART-DEMOLITION OF LISTED PRISON WALL. AMENDED PROPOSALS FOLLOWING LISTED BUILDING CONSENT 16/00086/LBC.**

**Application Submitted By:**

City & Country Portsmouth Ltd

**On behalf of:**

City & Country Portsmouth Ltd

FAO Mr Adrian Fox

**RDD:** 1st October 2018

**LDD:** 7th February 2019

**SUMMARY OF MAIN ISSUES**

The impact on heritage assets, from the various proposed works to Listed buildings and walls.

**PROPOSALS**

Elsewhere on this Agenda, Members have for consideration the principal application (18/01868/FUL) for the conversion and re-development of the former prison site, to provide a total of 267 dwellings (all flats). Planning and Listed Building consents were approved in 2017, to provide 230 flats. 76 dwellings would be provided within the Listed Buildings, and a further 8 within a two-storey extension to the Listed Wing B. The Applicant now wishes to provide altered arrangements across the site including within the Grade II Listed Buildings, hence this new application. This LBC application accompanies the main application, to secure numerous alterations across the development, summarised as follows:

- construction of two additional storeys to B-Wing to provide 8 dwellings;
- part-demolition of listed prison wall to form new perimeter access points on St Mary's Road and Milton Road;
- part-demolition of listed prison wall at Block N;
- numerous alterations to the Listed Buildings to facilitate their use for dwellings (flats) and a small Class A1/A3 unit, principally consisting of removal of some original and non-original internal walls, provision of new internal walls, removal of ceiling and new mezzanine floor in E Wing, removal and addition of internal balustrades, closing of some internal and external apertures, lowering of some window cills (approximately half), new windows, insertion of rooflights, and provision of new apertures to from external front doors to flats.

Raised garden terraces to the north elevation of Wing C were removed at Officer request during the course of the application (to minimise accretions around the historic buildings).

## SITE AND SURROUNDS

The application site comprises the site of the former HMP Kingston which closed in 2013. The site was bought together with three others by the applicant. The site is grade II Listed and with the exception of a car park to the north adjacent to Bowler Avenue is bounded by a 5 metre high (or taller) flint-faced wall, part of the listing. The site contains the original prison buildings with their radial plan, and gatehouse facing Milton Road. A number of much later buildings and structures mostly dating from the 1960's and 70's were removed following the previous consent.

A car park at the north of the site, fronting Bowler Avenue, lies outside the prison walls, and is set on slightly higher land than the highway. Other areas outside the prison walls are more car parking along the eastern frontage on Milton Road, an area of grass and some trees at the large roundabout to the south-east (which also contains some utilities structures and a phone mast), and a long strip of grass fronting St Mary's Road. The site and wider area is generally fairly level.

The site's western boundary lies alongside the city railway line, set down in a cutting, with both sides tree'd. Beyond that to the west is the Grade II Listed Historic Park/Garden of Kingston Cemetery, which also contains two Grade II Listed Chapels. Houses are close to the site on three sides: on Bowler Court and Bowler Avenue to the north, opposite on Milton Road to the east, and opposite to the south on Whitcombe Gardens and flats on the site of the former Union Workhouse (Grade II Listed).

### History of the Prison

Kingston Prison was built 1874-77 to the designs of local architect, George Rake (d.1883), to replace the Portsmouth Borough Gaol in Penny Street. Rake is also believed to be responsible for Kingston cemetery gateway and chapels.

Kingston was the last of a group of 19 radial-plan prisons erected between 1842 and 1877, when the Prison Act received royal assent (coming into force in April 1878). Under the act, local authorities' obligations with respect to prisons ceased, and became the responsibility of the Home Secretary. The substantial cost of Kingston, built just prior to the act, was therefore borne locally, but almost immediately the prison was taken under national control. When it first opened the prison could accommodate 104 men and 52 women, all in separate cells; A-wing (one of three cell blocks) was designated for female prisoners. There were a number of subsidiary buildings on the site which have since been lost. These included a debtors' prison (which extended west from the boundary wall behind the Governor's house), various workshops for carpentry, smithery etc, and a wheel-house for the treadwheel.

The prison was closed between October 1931 and early 1933 and subsequently held preventative detainees. These, under the 1908 Prevention of Crime Act, were habitual criminals, who had spent three terms in prison since the age of sixteen and who persisted in leading a dishonest life, and who thereby might receive an additional term of five to ten years' preventive detention. During the Second World War it was used as naval detention quarters. In 1948 it opened as a recall centre for Borstal detainees, and from 1969, it operated as a training prison for male prisoners serving life sentences. In 2003 the prison became a more general category B and C prison, and closed in 2013.

### The Listing

The Listing summarises the former HMP Kingston as including the principal prison building, comprising a series of radiating cell blocks executed in a robust, polychromatic, idiom; the boundary wall; and the entrance complex (comprising gate tower, Chief Warder's and Governor's houses and detached gate piers), executed in a decorative castellated style; surrounding the site is the imposing flint and brick wall. It was built 1874-77 to the designs of George Rake. The early-C20 engineers' workshop, which includes earlier fabric to the north and west, is included in the listing but is of lesser special interest.



The reason for the listing as Grade II is given as:

- \* Architectural interest: comprised of both decorative castellated and robust polychromatic components, the buildings form a striking architectural ensemble with a high quality of design and detail, and a craftsmanly use of materials;
- \* Planning interest: the prison was the last of 19 radial plan prisons to be built between 1842 and 1877;
- \* Level of survival: aside from the loss of original ancillary buildings on the site, the distinctive architectural character, fabric and plan-form of the prison remains unusually intact.

#### Description

The prison is constructed of massed concrete, faced with snecked Plymouth blue stone rubble, flint, red and blue Stourbridge brick, and Bath stone ashlar dressings. The roofs are slated with stone and blue brick chimney stacks. Windows are generally multi-pane steel casements. The prison has a radial plan, with five wings (A-E) arranged around a central octagonal, top-lit rotunda. Three of the five wings are near-identical cell blocks, arranged in a Y-shape (on a horizontal axis) around the rotunda. The arms of the Y are the south-east A-wing and north-east D-wing, and the tail of the Y is the west C-wing. Between A- and D-wing is E-wing, originally housing a chapel on the first floor, with offices beneath. To the south-west, between A- and C-wing, is B-wing: built as a single-storey wing (originally the infirmary), it was later extended upwards but has now been returned to a single storey. To the north of the prison building is a large open space, originally a garden, more recently used as a football pitch. The whole site is surrounded by a high brick and flint wall, with the main entrance built into the wall to the east. The entrance complex comprises a gate tower with flanking gate houses, originally for the Governor (that to the south) and Chief Warder (that to the north).

#### PLANNING HISTORY

18/01531/FUL, Approved: Installation of an electricity sub-station.

18/00778/FUL, Approved: Change of use of Main Prison Building from prison (Class C2a) to an Airsoft event centre (Class D2).

17/01888/FUL, Approved, Retrospective application for the partial change of use of the Main Prison Building from Prison (Use Class C2a) to Storage (Use Class B8) (Amended Description).

16/00085/FUL, Approved: Redevelopment of former prison comprising: part demolition and conversion of listed buildings to provide 73 dwellings and commercial unit (within Class A1 or Class A3); demolition of non-listed structures; construction of five blocks of between three and seven stories to provide 157 dwellings; part demolition of listed prison wall and formation of new vehicular accesses to Milton Road and St Marys Road; and provision of car parking and associated landscaping and other works.

16/00086/LBC, Approved: Demolition of listed engineering/workshop building, part demolition and conversion of listed prison buildings (with associated internal and external alterations) to provide 73 dwellings and a commercial unit and part demolition of listed prison wall.

Otherwise, the site was subject to crown immunity until 2006, prior to when works carried by the Home Office or Ministry of Justice did not require the consent of the Local Planning Authority.

#### POLICY CONTEXT

In addition to the aims and objectives of the National Planning Policy Framework, the relevant policies within the Portsmouth Plan would include: PCS23 (Design and Conservation).

## **CONSULTATIONS**

### **Historic England**

On the basis of the information available to date, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation adviser.

### **Ancient Monuments Society**

No response received.

### **Council For British Archaeology**

No response received.

### **SPAB**

No response received.

### **The Georgian Group**

No response received.

### **The Victorian Society**

No response received.

### **Twentieth Century Society**

No response received.

### **The Portsmouth Society**

No response received.

## **REPRESENTATIONS**

Letters of various comments were submitted but nearly all concerned the main application, and so are reported and addressed in the report for that application, elsewhere on this Agenda. One letter was directed at the proposals for the listed buildings, noting:

Each occupier in a historic building would need to apply for the smallest changes, e.g. heightening of a window.

## **COMMENT**

### **PLANNING CONSIDERATIONS**

The principal matter to consider with this application is the impact of the various alteration works on the important heritage assets.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a legal duty on the Local Planning Authority when considering applications for development which affect a listed building or its setting to "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".

The National Planning Policy Framework (NPPF) requires LPAs to consider the significance of heritage assets, and take account of the desirability of sustaining and enhancing the significance of the assets and putting them to viable uses consistent with their conservation. It notes the positive contribution that conservation of heritage assets can make to sustainable communities, including their economic viability. Great weight should be given to the asset's conservation. Any harm to, or loss of, the significance of the asset should require clear and convincing justification. Harm may be categorised as 'substantial' or 'less than substantial'.

Substantial harm or loss to Grade II listed Buildings should be wholly exceptional and should be refused, unless it can be demonstrated that the harm/loss is necessary to achieve substantial public benefits that outweigh the harm/loss(my emphasis). Alternatively, all of the following should apply: the nature of the asset prevents all reasonable uses; no viable use can be found in the medium term; grant-funding or some form of public/charitable ownership is not possible and; the substantial harm/loss is outweighed by the benefit of site re-use.

Less than substantial harm should be weighed against the public benefits, including where appropriate securing the asset's optimum viable use (my emphasis).

The preamble to Policy PCS23 of the Portsmouth Local Plan sets out that the Council will work proactively to ensure the valuable elements of the city's history are preserved and enhanced. The Policy seeks excellent architectural quality in new buildings and changes to existing buildings, and public and private places that are clearly defined, as well as being safe, vibrant and attractive. The Policy seeks protection and enhancement of the city's historic townscape and its cultural heritage, and creation of new views and juxtapositions that add to the variety and texture of a setting.

I shall go on to assess each of the principal sets of proposed alterations within the above policy context.

Construction of two additional storeys to B-Wing to provide 8 dwellings:

B Wing has been reduced down to its original single-storey, it is proposed to add two storeys to provide eight flats. The extension would match the existing footprint: 24m long by 14.5m wide. The structure would be flat-roofed, and of similar architectural design to the other new-build blocks proposed across the site, i.e. of matching materials (grey buff brick) and with matching fenestration. The principal difference to the other new-build would be the absence of the horizontal and vertical design accents (pre-cast architectural masonry), given a slightly simpler appearance.

The previous removal of non-original structure was welcomed, and I have no objection in principle to the provision of a three-storey building, to better match the scale of the other wings. Design is straightforward and appropriate in my opinion, to ease assimilation with the ground-floor original structure. I do not consider there would be any harm to the heritage asset.

Part-demolition of listed prison wall to form new perimeter access points on St Mary's Road and Milton Road:

The new apertures involve a loss of historic fabric which in itself is harmful. The visual and functional integrity of the wall would be compromised. However, I consider the new apertures are necessary to enable the wider re-use of the site, by providing suitable 'permeability' across the site, i.e. a choice of routes in and out of the site. The loss of wall has been minimised and the proposals are the same as with the previous Listed Building Consent. As with the numerous other alterations across the site, the LPA would exercise careful control of the making-good of the edges of areas of historic fabric that are altered, as well as the use of new materials.

Part-demolition of listed prison wall at Block N:

These works are to the north-eastern corner of the site, where the southern elevation of Block N meets the perimeter wall. It is necessary to form a break in the wall so that the new Block can link functionally to the main site, with pedestrian and car access. The previous scheme had a 'T-shaped' break in elevation, i.e. 5.4m wide for the lower half of the wall, and 17.5m wide for the top half. During the course of this new application, the proposal has been widened at both top and bottom to a uniform 18.1m wide - the Applicant states that following further engineering investigations, the original break would have provided too-weak a retained wall and required unfeasible supportive works to retain the weight of the new-build south element of Block N above. With hindsight, this difficulty is not a surprise. Notwithstanding that, the further loss of

historic fabric is harmful. The visual and functional integrity of the wall would be compromised. However, the change is apparently necessary, and is not excessive in extent - I note the great majority of the listed wall would remain around the site perimeter, and this corner of the site would be well-screened from more general views within the site by Blocks L and M. At the time of publication, I am awaiting fuller details of the proposals for this specific area.

Numerous alterations to the Listed Buildings to facilitate their use for dwellings (flats) and a small Class A1/A3 unit, principally consisting of removal of some original and non-original internal walls, provision of new internal walls, removal of ceiling and new mezzanine floor in E Wing, removal and addition of internal balustrades, closing of some internal and external apertures, lowering of some window cills, new windows, insertion of rooflights, and provision of new apertures to from external front doors to flats:

The removal of non-original features is positive. The removal of many individual cell walls, and the enlargement of existing apertures and introduction of new apertures, consists of a harmful loss of historic fabric, and a reduction in the historical integrity of the building as an ex-prison. Of course, to find a positive, new function for the site will inevitably require alterations, and I am satisfied that the series of changes are necessary to provide a good standard of residential accommodation and to make best-use of the space available. The same conclusions are drawn for the closing of some internal and external apertures and the insertion of rooflights. The provision of entirely new windows, to modern standards, is to be expected.

Aside from the above considerations, there remains the one objection comment to address, which was: each occupier in a historic building would need to apply for the smallest changes, e.g. heightening of a window. This is a reasonable point but not a matter that would justify withholding Listed Building Consent for the conversion of the buildings to a use that will secure their long-term future. Given the thickness of the walls, and therefore the practical difficulty and cost of alteration, I would not expect future occupiers to pursue such changes. There could be other more minor alterations that might be desired, in which case the Local Planning Authority would take a view on each case - whether LBC is required in the first instance, and if it is, the merits of the proposal.

## CONCLUSIONS

A wide range of alterations to the listed buildings and walls are proposed, many of which amount to quite significant interventions. While some are positive, many are harmful in themselves individually and cumulatively. In-the-round, and given the scale and complexity of the heritage asset, I would summarise the harm in NPPF-terms as 'less than substantial'. The policy test, therefore, is that this harm should be weighed against the public benefits, including where appropriate securing the asset's optimum viable use.

There is an over-arching need to secure the renovation, re-use and subsequent maintenance of the site. Notwithstanding the financial viability deficit set out in the sister report elsewhere on this agenda, I consider a residential use of the site to be the most likely land use to actually come forward as suitable and achievable at this residential location and in these buildings, and therefore the most likely to secure the renovation and long-term positive re-use of a very important historical site in Portsmouth. The public benefits of retaining and converting these historic buildings, and for much-needed housing, clearly outweigh the harm, in my opinion. Therefore, I consider the development meets the NPPF test. Also, the proposals, in my opinion, comply with PCS23 with respect to preserving a valuable element of the city's history, and have paid special regard to the desirability of preserving the buildings or their settings or any features of special architectural or historic interest, in accordance with the 1990 Act. As such, the application is recommended for approval, with various important conditions.

## RECOMMENDATION

## Conditional Approval

### Conditions

1) The development to which this consent relates shall be begun before the expiration of 3 years from the date of this consent.

2) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the documents set out in the Plans Schedule of 12th February 2019.

3) a) Development shall not commence until details of precautions to be undertaken to secure and protect the interior and exterior features against accidental loss, damage, or theft during the execution of authorised works on site have been submitted to and approved in writing by the Local Planning Authority before the relevant works are carried out.

b) The development shall thereafter be carried out in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

c) No protected features shall be disturbed or removed temporarily or permanently except as indicated on the approved drawings and details or with the prior written approval of the Local Planning Authority.

4) a) Development shall not commence until details, to include the extent, materials (including samples of the type, texture, profile, finish bonding pattern, mortar and method of pointing) and method of all external and internal works of making good to the main prison building (including A, C, D & E Wings and the rotunda) have been submitted to and approved in writing by the Local Planning Authority.

b) The development shall thereafter be carried out in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

5) a) Development shall not commence until a detailed scheme (to include the provision of sample panels on site) of the proposed methods of cleaning the brick and stone of the retained listed buildings has been submitted to and approved in writing by the Local Planning Authority.

b) The development shall thereafter be carried out in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

6) a) Development shall not commence until details (to include a clear illustration at a scale of 1:5 of the proposed opening method, ironmongery, surface finishes, beading and glazing and a method statement relating to both the removal of the existing windows and installation of replacement) of all new and replacement windows, including full size samples have been submitted to and approved in writing by the Local Planning Authority.

b) The development shall thereafter be carried out in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

7) No part of any of the listed buildings shall be occupied until any existing windows to be retained have been repaired or altered in accordance with a detailed scheme (to include the proposed opening method, ironmongery and surface finishes and if appropriate samples) that shall have been submitted to and approved in writing by the Local Planning Authority prior to relevant works commencing.

8) a) Development shall not commence until full details (to include materials, architectural detailing finishes and cross sections) of the proposed level changes and external accesses to the rotunda have been submitted to and approved in writing by the Local Planning Authority

b) The development shall thereafter be carried out in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

9) a) Development shall not commence until details of all works to the roof of the main prison building (including any repairs and full detail of new and replacement rooflights) have been submitted to and approved in writing by the Local Planning Authority.

b) The development shall thereafter be carried out in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

10) a) Development shall not commence until full details (to include all external materials, windows, doors, mortar, bonding pattern, method of pointing, finishes, features and detailing) of all works to B Wing including all making good following part demolition and new build elements have been submitted to and approved in writing by the Local Planning Authority.

b) The development shall thereafter be carried out in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

11) a) Development shall not commence until full details (to include all external materials, windows, window design and detailing, doors, mortar, bonding pattern, method of pointing, finishes and detailing) of all works to the gatehouse complex (including the former Governors and Chief Warders Houses) including all making good following part demolition and replacement doors and windows have been submitted to and approved in writing by the Local Planning Authority.

b) The development shall thereafter be carried out in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

12) a) Development shall not commence until full details (including method of demolition and details of making good) of all alterations to and new openings in the listed prison wall have been submitted to and approved in writing by the Local Planning Authority.

b) The development shall thereafter be carried out in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

13) No part of the main prison building shall be occupied until the retained railings, balustrades and staircases have been altered and finished in accordance with a detailed scheme (to include details of alterations to and method of fixing of new fabric to the railings and adjacent flooring) that shall have been submitted to and approved in writing by the Local Planning Authority prior to relevant works commencing.

14) No part of the main prison building shall be occupied until all new external doors have been altered and finished in accordance with a detailed scheme (to include materials, ironmongery and surface finishes) that shall have been submitted to and approved in writing by the Local Planning Authority prior to relevant works commencing.

15) No part of the main prison building shall be occupied until all internal doors and doorways have been altered and finished in accordance with a detailed scheme (to include new doors, making good and surface finishes) that shall have been submitted to and approved in writing by the Local Planning Authority prior to relevant works commencing.

16) a) No part of the main prison building shall be occupied until all alterations to the existing fabric of that wing of the building have been completed and finished in accordance with a detailed scheme (to include method of removal, and subsequent making good and finished appearance) that shall have been submitted to and approved in writing by the Local Planning Authority prior to relevant works commencing.

b) No part of the main prison building shall be occupied until all new fabric of the building (to include walls floors, ceilings and staircases) has been constructed and finished in accordance with a detailed scheme (to include method of construction, making good and finished appearance) that shall have been submitted to and approved in writing by the Local Planning Authority prior to relevant works commencing.

17) No part of any of the listed buildings or structures shall be painted unless details of the new external paint scheme (to include paint type, texture and colour) has been submitted to and approved in writing by the Local Planning Authority prior to relevant works commencing.

18) a) If during the course of works, any hidden historic features are revealed, they shall be retained in situ and any work potentially impacting on such features or their setting halted and the Local Planning Authority shall be notified immediately.

b) Works shall not restart until provision shall be made for the retention, salvage or proper recording of any such hidden features has taken place in accordance with a scheme that shall be agreed in writing by the Local Planning Authority.

19) No new plumbing, soil stacks, flues, vents, ductwork or rainwater goods and soil pipes shall be fixed on the external faces of the listed structures unless shown on the drawings hereby approved or as otherwise may be agreed in writing by the Local Planning Authority.

20) No new grilles, security alarms, lighting, cameras, display screens, signage or other appurtenances shall be fixed on the external faces of the listed structures unless shown on the drawings hereby approved or as may be submitted to and approved in writing by the Local Planning Authority prior to relevant works commencing.

**The reasons for the conditions are:**

1) To comply with Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

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

3-20) To protect the special architectural and historic interest of the Grade II Listed former Kingston Prison in accordance with the aims and objectives of the National Planning Policy Framework and the provisions of policy 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.



Interim Assistant Director of City Development  
12<sup>th</sup> February 2019

HOMES ENGLAND

IN THE MATTER OF LAND AT ST.JAMES' HOSPITAL, LOCKSWAY ROAD,  
SOUTHSEA, PO4 8HW

OPINION

Introduction

1. Homes England has made an outline planning application for the construction of 107 dwellings including the provision of vehicle and pedestrian access, public open space, and hard and soft landscaping on land at St. James' Hospital, Southsea.
2. Notwithstanding the clear and reasoned advice of the planning officer in his report to committee on 20<sup>th</sup> February 2019 recommending the approval of the planning application subject to conditions, the committee deferred a decision on the planning application on the advice of the Council's Legal Services officer, who advised that two buildings on the application site are curtilage listed, and as such listed buildings consent would be required for their demolition. Strangely, no reasoning has been offered for this apparent advice. This is all the more surprising, and indeed unreasonable, in light of the fully reasoned advice of the planning officer who advised the committee that "these villas are not held to be curtilage listed, which is a question of fact and degree". I shall set out, in the course of this Opinion, some of the closely reasoned advice of the planning officer which led him to come to that clear view. But in circumstances where such advice has been given by a planning officer, I can advise that the unreasoned, contrary conclusion of the planning committee would very likely be considered to amount to unreasonable behaviour in the event that this application proceeds to appeal against non-determination or refusal. I have to say that at this stage, it is unclear that the committee have in fact concluded that the two buildings are curtilage listed, given that they have merely deferred a decision on the



application. The committee should be asked to make a determination on the issue.

3. I have been asked to advise as to Homes England whether there is substance to the legal officer's advice that the buildings are curtilage listed. It is similarly unclear whether it is contended that the curtilage listing is the curtilage relating to the Hospital, or the Chapel. The Chapel is physically much closer to the two buildings. I undertook an accompanied site inspection with my instructing solicitors and client prior to writing this Opinion.

#### Summary

4. The summary of my Opinion is set out in my Conclusion below.

#### Background

5. St James' Hospital, which I shall refer to as "the Hospital", was built in 1878 as a purpose designed lunatic asylum. It was listed as Grade II under the Planning (Listed Buildings and Conservation Areas) Act 1990 for its special architectural or historic interest. The St James' Hospital Chapel, ("the Chapel") was built a year later and is also listed Grade II. Neither of the buildings which are the subject of the application for planning permission - now known as Fair Oaks and The Beeches - are mentioned in the listing descriptions.
6. The two buildings, described somewhat generously as "villas" in the officer's report, were built some considerable time later, certainly post 1910 and they are not evident on the 1910 OS map. The Heritage Impact Assessment suggests that "most probably" they were constructed after 1928. In terms of function, I am instructed that the buildings functioned totally differently from the Hospital building which was a lunatic asylum: one of the buildings was used as an isolation ward for infectious diseases; the other was used as a recovery unit. Unlike the Hospital Building, neither of the buildings was secure - ie to prevent inmates escaping.

7. Even in 1910 the OS Map shows planting between the site of the Hospital Building and what became the site of the “villas.” By the time of the listing in 1998, that planting would have been as extensive as it is today, and provided a very significant screen between the two villas and the Hospital Building. There is no intervisibility between them. Both buildings have and retain their own private, enclosed and extensive gardens, which are extensively screened. In short, there is nothing which ties the villas and the Hospital Building together. The same is true of the listed Chapel. The villas are clearly divorced from the Chapel, and were at all material times functionally different from the Chapel.
8. Thus, in terms of the Hospital Building and the Chapel, the villas were not constructed at the same time, they are not built in the same style or vernacular, they did not (and never have) functioned in the same way, there is no intervisibility between them, and the villas were intended as free-standing buildings, quite substantial in their own right. I shall consider the foregoing points in the context of the case-law relating to building curtilages below.
9. The objectors to the housing development are nothing if not persistent. They have already sought but failed to have the two villas added to the List of Buildings of Special Architectural or Historic Interest. Historic England confirmed on 9<sup>th</sup> October 2018 that they were not prepared to add them to the List. It was noted that they lacked the architectural interest to merit their inclusion - “neither quite symmetrical nor boldly asymmetrical. Later external alterations include the loss of chimneystacks, the insertion of roof lights, alterations to windows and the loss of a veranda”. I would add that both buildings have been the subject of rather unflattering flat roofed extensions.
10. Finally, by way of background, I should add that there has been substantial development around what would once have been the Hospital grounds. There has never before been any suggestion by the Council that such development was in the grounds of a listed building or buildings.

## The Law on curtilages

11. There are three factors which are relevant in determining the extent of a curtilage for the purposes of listing: (1) physical layout, (2) past and present ownership and also (3) use and function past and present (para.3 from the case of *Attorney General ex rel Suttcliffe v Calderdale MBC* [1982] 7 WLUK 340). In the context of this case, the relevant considerations relate to criteria (1) and (3).
  
12. With regards to physical layout, the cases of *Methuen-Campbell v. Walters*, (1979) Queen's Bench and *Dyer v Dorset County Council* [1988] 3 W.L.R. 213 are relevant. For ease of reference, key passages are set out here. In *Methuen-Campbell* Court of Appeal considered the meaning of the term curtilage. Lord Justice Buckley stated:

*“What then is meant by the curtilage of a property? In my judgment it is not sufficient to constitute two pieces of land parts of one and the same curtilage that they should have been conveyed or demised together, for a single conveyance or lease can comprise more than one parcel of land, neither of which need be in any sense an appurtenance of the other or within the curtilage of the other. Nor is it sufficient that they have been occupied together. Nor is the test whether the enjoyment of one is advantageous or convenient or necessary for the full enjoyment of the other. A piece of land may fall clearly within the curtilage of a parcel conveyed without its contributing in any significant way to the convenience or value of the rest of the parcel. On the other hand, it may be very advantageous or convenient to the owner of one parcel of land also to own an adjoining parcel, although it may be clear from the facts that the two parcels are entirely distinct pieces of property. In my judgment, for one corporeal hereditament to fall within the curtilage of another, **the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter.** There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded*

*as part of the messuage and such small pieces of land would be held to fall within the curtilage of the messuage. This may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway, a garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or parcel of land as extending must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole”.*

13. In *Dyer v Dorset County Council* [1988] 3 W.L.R. 213 the Court of Appeal considered the extent of curtilage at an estate described in the judgment as follows:

*‘consisting of about 100 acres of land containing Kingston Maurward House with extensive pleasure gardens, a park and a mass of outbuildings, including a lodge house at the entrance to the park, a subsidiary manor house, stables, outbuildings and so forth. .... The estate still retains its character as a single unit, ...’*

14. Nourse LJ concluded:

*‘While making every allowance for the fact that the size of a curtilage may vary somewhat with the size of the house or building, I am in no doubt that the 100 acre park on the edge of which Mr. Dyer’s house now stands cannot possibly be said to form part and parcel of Kingston Maurward House, far less of any of the other college buildings. Indeed, a park of this size is altogether in excess of anything which could properly be described as the curtilage of a mansion house, an area which no conveyancer would extend beyond that occupied by the house, the stables and other outbuildings, the gardens and the rough grass up to the ha-ha, if there was one....’*

15. More recently, in *Lowe v Secretary of State* [2003] EWHC 537 (Admin) Sir Richard Tucker reviewed the various authorities and stated:

*"21. Of the authorities cited to me, I derive most assistance from the decision of the Court of Appeal in Dyer v Dorset CC , and in particular the judgment of Nourse LJ in the passage already referred to at p.358F-G. The expression 'curtilage' is a question of fact and degree. It connotes a building or piece of land attached to a dwelling house and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers. It may include stables and other outbuildings, and certainly includes a garden, whether walled or not. It might include accommodation land such as a small paddock close to the house. But it cannot possibly include the whole of the parkland setting in which Alresford Hall lies, nor the driveway along which the fence was erected. It could not sensibly be contended that the site of the fence was attached to the hall, or that it formed one enclosure with it, or was part of the enclosure of it."*

16. Taking into account the above cases, and the factors which I have set out in paragraphs 5-9 above, the physical layout of the Site as a whole and the relationship of the two villas to the Hospital Building and the Chapel, I am firmly of the view that the villas do not lie within the curtilage of either the Hospital Building or the Chapel. I note the planning officer's report where he advised that "Visually the villas do not sit in an open relationship to the main hospital building. Their presence is more discreet and the land surrounding them was historically enclosed by planting/fencing, expressing a degree of separation." The officer went on to distinguish the architectural styles of both sets of buildings, noting there was "no formal artistic arrangement". I concur with those views. The two villas were not so intimately associated with the Hospital Building or the Chapel as to fall within their curtilage. The villas functioned differently and were physically separate from both listed heritage assets. In terms of the Hospital Building, the separation is greater than the Chapel. But the Chapel has a clear physical limit and divorced from surrounding buildings. Both

listed buildings were, at the time of listing, functionally different from the villas. Consequently listed building consent is not required for the villas' demolition or alteration. For the avoidance of doubt I should add that the fact that all the buildings were in the same ownership does not affect my conclusion.

### Conclusion

17. In my Opinion, the two villas known as Fair Oaks and The Beeches do not fall within the curtilage of the listed St James Hospital, or the listed Church. I set out the reasons for this Opinion in paragraph 16 above.

**PETER VILLAGE QC**

**Friday, 26 April 2019**

**39 ESSEX CHAMBERS**

**LONDON**

**WC2A 1DD**

## St James' Hospital, Portsmouth

### Opinion

1. The background of this matter will be well known to those reading this so I do not rehearse it in any detail here.
2. I am asked to advise whether two buildings – Fair Oaks and The Beeches, both of which stand within the grounds of St James' Hospital – are curtilage listed pursuant to s.1(5) of the Planning (Listed Buildings & Conservation Areas) Act 1990.
3. In short the issue here is whether either building falls within the curtilage of the main St James' Hospital building (Grade II listed) or the separately listed St James' Hospital Chapel (also Grade II).
4. This question arises in the context of a planning application made by Homes England (HE) for the development of 107 new houses on part of the hospital site. The scheme would involve the demolition of Fair Oaks and The Beeches. In a report to Committee dated 20<sup>th</sup> February 2019 the Council's Assistant Director of City Development concluded that neither building was curtilage listed. The Committee deferred its consideration of the application pursuant to legal advice from the Council's Legal Services Officer.
5. The first point to make is that whether or not a building is curtilage listed is not a matter of law. Rather, it is a matter of fact and degree and, ultimately, a matter of planning judgment.
6. I note in this regard that Homes England has submitted an opinion from Peter Village QC (PVQC) which appears to assert that it would be unreasonable for the Council to conclude that the two buildings are curtilage listed. PVQC does not however refer to the fact that HE has sought listed building consent in relation to the proposed demolition of part of the hospital's southern boundary wall – see application 18/00475/LBC. This is important because in the supporting documentation to that application HE's planning consultant quotes, without criticism, the views of the Council's Conservation Officer that the wall “demarcates the historic

curtilage of the hospital” and that “it is perfectly reasonable to consider the wall listed”. Given that HE has itself applied for listed building consent in relation to the boundary wall I do not share the view that it would be *unreasonable* for the Council to conclude that Fair Oaks and The Beeches are within the curtilage of the hospital.

7. That said, having visited the site and considered all the information available to me, my view is that the two buildings do not stand within the curtilage of the main hospital building.
8. As PVQC’s opinion notes, case law establishes that the key factors are physical layout, ownership, and function. I take these in turn below.
9. Physical Layout. Both buildings stand a considerable distance from the main hospital building. They are also separated from the hospital by very substantial landscape screening. The Heritage Impact Assessment submitted with the application states on page 27 that:

“It is clear from historical mapping and photographs that the two villas were originally separated from both the main hospital building and the chapel by significant landscaping including a number of mature trees. This created a physical barrier between the listed buildings and the villas, which largely survives to this day”.

10. On the ground today both buildings appear distinctly separate from the hospital. I agree with the view expressed in the Officer’s Report that “[v]isually the [buildings] do not sit in an open relationship with main hospital building. Their presence is more discrete”. I also note the Officer’s view, consistent with the Heritage Impact Assessment, that the land surrounding them was historically enclosed by planting / fencing, expressing a degree of separation. Further, it appears that both buildings faced south, away from the hospital, into their own garden areas. In short, they do not have, and do not appear ever to have had, a close physical relationship with the hospital.
11. Ownership. I understand that the building has been in NHS ownership since 1948.
12. Function. The Heritage Impact Report states on page 17 that:

“Fair Oaks and The Beeches are identical houses erected at the same time to provide extra facilities for the hospital. They were two of six “villas”, Fair Oak being originally



named Dickens Villa and The Beeches, Brunel Villa. Map evidence dates them to between 1910 (Fig. 12) and 1932 (OS 1932) (Fig. 13). They can be more precisely dated to the period 1926-1932 as they were constructed as a result of Dr. Thomas Beaton's innovative approaches to mental health, which occurred after 1926 (Freeman 1962). Evidence suggests that it is likely that they post-date 1928 as documentary evidence details that "From about 1928, changes began to be made in the mental hospital...The gates were removed, the front door unlocked and some wards opened." (ibid). The 'Villas' were intended to provide open wards for patients who were considered suitable for such accommodation. Prior to this, all wards were locked as well as the main door of the hospital and its gates".

13. It appears from this that although the two buildings were used as hospital wards, they were built to function separately from the main building. This ties in with the fact that they were built away from the main building with substantial landscape screening (see above).
14. I should add here that I am not clear as to the evidential basis for the instructions given to PVQC (see opinion para 6) that: "the buildings functioned totally differently from the Hospital building which was a lunatic asylum: one of the buildings was used as an isolation ward for infectious diseases; the other was used as a recovery unit" and so do not rely on this. If there is an evidential basis for this then it would weigh further in support of my conclusion that the two buildings are not within the curtilage of the hospital.
15. In conclusion, my view is that notwithstanding the common ownership, the degree of physical and functional separation is sufficient to mean that neither building fall within the curtilage of the main building. I should stress however that this is only *my* view and this is not an easy case to decide.
16. With regard to the chapel, I can see no basis on which it could be suggested that either building falls within the curtilage of the Chapel. The Chapel was designed to serve the wider hospital site. If it has a curtilage at all then it would be closely confined to the building.
17. In terms of next steps it will be necessary to update the Committee Report so that Members are reminded of the reason for deferral and are informed as to what has happened since the meeting in terms of correspondence, meetings, legal opinions etc. It will also be important for the Report to set out a clear analysis as to whether, in the Officer's opinion, the two

buildings are curtilage listed. Given the strength of objection to the scheme it will be important to ensure that this analysis is legally watertight. I would be happy to review the final draft if that would help. By reference to the current version of the Officer's Report:

- (i) It would be helpful to consider the issue expressly by reference to the key tests: (a) physical layout; (b) ownership; and (c) function – all of which need to be considered over time, i.e. past and present.
- (ii) The Report says “[d]espite their proximity and historical associations with the hospital [the two buildings] ceased to be a single unit with it”. It is not clear quite what this means, when this is considered to have happened, or why the conclusion is reached. This needs to be re-visited.
- (iii) Whilst it is fair to point out that the Council has previously granted consents / prior approvals in relation to buildings within the hospital grounds without having concluded that the buildings concerned were curtilage listed, I think it important for the Report to inform Members that although this is relevant background information, it is not a determinative factor, i.e. the issue has been considered afresh this time around.
- (iv) The Report should respond expressly to any points raised by Objectors on this issue.
- (v) It will be important to reach a clear conclusion on whether the buildings are curtilage listed before turning to consideration of the merits of their demolition. In the current report this transition begins with paragraph beginning “Heritage Consultants, acting on behalf of ...”. It will be important to flag this up as a new issue in the next version of the Report.

18. I trust this helps; please do not hesitate to get in contact to discuss any issues arising.

**Robert Walton QC**

**Landmark Chambers**

**21<sup>st</sup> June 2019.**

## St James' Hospital, Portsmouth

### Opinion

#### Introduction

1. The background of this matter will be well known to those reading this so I do not rehearse it in any detail here.
2. I am asked to advise Portsmouth City Council whether two buildings – Fair Oaks and The Beeches, both of which stand within the grounds of St James' Hospital – are curtilage listed pursuant to s.1(5)(b) of the Planning (Listed Buildings & Conservation Areas) Act 1990.
3. I have previously advised the Council in relation to this matter by way of an Opinion dated 21<sup>st</sup> June 2019. Having reviewed the information that was available to me at that time I reached the view that notwithstanding the common ownership, the degree of physical and functional separation between the villas and the main hospital was sufficient to mean that neither villa fell within the curtilage of the main hospital building. I stressed however that this was only *my* view and it was not an easy case to decide (see paragraph 17).
4. The Milton Neighbourhood Planning Forum has subsequently provided the Council with some more information in relation to the history of the two villas<sup>1</sup>. The Forum states that in the light of this information the “only reasonable conclusion” must be that the villas are curtilage listed.
5. I am asked to advise the Council whether the new information provided by the Forum changes the conclusions I reached in my previous Opinion.

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<sup>1</sup> Undated document headed “In support of Curtilage Listing”.

## Analysis

6. Section 1(5) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”) states that:

“In this Act “listed building” means a building which for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act –

- (a) ...
- (b) any ... structure within the curtilage of the building which, ... forms part of the land and has done so since before 1st July 1948,

shall ... be treated as part of the building.”

7. As can be seen, there are two key questions here:

- (i) Are the villas “structures” for the purposes of the 1990 Act? and
- (ii) Do they fall within the curtilage of the listed hospital building.?

These two questions need to be considered separately and, as set out below, there is case law that explains the approach that needs to be taken.

8. Importantly, the approach to be taken in relation to s.1(5) of the 1990 Act is different to the approach that needs to be taken in non-heritage cases: see *Holgate J’s* very recent decision in *Hampshire CC v Secretary of State for Environment, Food and Rural Affairs* [2020] EWHC 959 (Admin), to which I refer further below.
9. The two key authorities on curtilage listing are the Court of Appeal’s decision in *Attorney General ex rel. Sutcliffe v Calderdale Borough Council* (1982) 46 P & CR 399 and the House of Lords’ decision in *Debenhams plc v Westminster City Council* [1987] AC 396.
10. As set out above, the first issue here is whether the villas are “structures” for the purposes of the 1990 Act. Importantly, “structure” has a specific meaning in this context. In *Calderdale* Stephenson LJ held at [409] that:

“I would approach section 54(9) [of the Town and Country Planning Act 1971, now s.1(5) of the Listed Building Act 1990], its construction and application, and both its limbs with the obvious reflection that the preservation of a building of architectural or historic interest cannot be considered or decided, either by the Secretary of State or by those specialists he is required by section 54(3) to consult, in isolation. The building has to be considered in its setting, as is made clear by the amendment to section 56(3), and by paragraph 25 of circular no. 23/77, as well as with any features of special architectural or historic interest which it possesses. The setting of a building may consist of much more than man-made objects or structures, but there may be objects or structures which would not naturally or certainly be regarded as part of a building or features of it, but which nevertheless are so closely related to it that they enhance it aesthetically and their removal would adversely affect it. Such objects or structures may or may not be intrinsically of architectural or historic interest, or worth preserving but for their effect on a building which is of such interest. But if the building itself is to be preserved unless the Secretary of State consents to its demolition, so also should those objects and structures be. That object is achieved by section 54(9) requiring them to be treated as part of the listed building. They do not thereby become absolutely immune from demolition, but the power is there to give or withhold consent to the demolition of all or some of them. If that is the right approach, it indicates a broad approach to the subsection as a whole and a construction of it which will enable the Secretary of State to exercise his discretion to grant or withhold listed building consent over a wide rather than a narrow field” (my underlining).

11. In *Hampshire CC* Holgate J set out the above quote before concluding that:

“Thus, the Court of Appeal held that a structure or object which is so clearly related to a listed building that its removal would adversely affect the interest of that building, should be treated as falling within the extended definition of “listed building”, even if that item would not otherwise be regarded as part of, or one of the features of, that building .... The object was to promote the preservation of listed buildings. That was said by the Court of Appeal to justify a broad approach to s. 1(5) as a whole”.

12. Importantly, however, in *Debenhams* the House of Lords was not prepared to accept the width of the Court of Appeal’s reasoning in *Calderdale*. Lord Keith of Kinkel held at [403] that for the purposes of what is now s.1(5)(a) and (b):

"structure" is intended to convey a limitation to such structures as are ancillary to the listed building itself, for example the stable block of a mansion house, or the steading of a farmhouse, either fixed to the main building or within its curtilage” (underlining added).

13. In *Hampshire CC* Holgate J observed that the House of Lords had:

“adopted this “ancillary test” in order to avoid the inclusion of a building in the statutory list from having too wide an effect, for example, by bringing within the scope of the listing another building complete in its own right, which is not subordinate to the listed building. The House of Lords gave the example of a terrace of houses only one of which is listed for historical interest”.

14. Drawing this altogether, in listed building cases the test on the authorities as they currently stand is whether the structure in question is so clearly related to the listed building in question that its removal would adversely affect the interest of the listed building (as per *Calderdale*) subject to the “ancillary” test laid down in *Debenhams*: see Holgate J in *Hampshire CC* at [106].

15. The second issue is whether the villas stand within the curtilage of the hospital.

16. Importantly, the approach that needs to be taken in heritage cases is different to the approach that needs to be taken in relation to non-heritage cases.

17. In *Calderdale* the High Court had held that:

“ ... the word curtilage has to be construed having regard to the fact that the 1971 Act as a whole deals with town and country planning and that the part of the Act we are concerned with deals with buildings of architectural or historical interest. I have to ask myself, from a planning rather than a strict conveyancing viewpoint, whether the buildings within the alleged curtilage form a single residential or industrial unit and, in this instance, whether the mill and the terrace form part of an integral whole” (my underlining).

18. In the Court of Appeal Stephenson LJ held T [409] that:

“I have found this question difficult to answer, but I have ultimately come to the conclusion, not without doubt, that the terrace has not been taken out of the curtilage by the changes which have taken place, and remains so closely related physically or geographically to the mill as to constitute with it a single unit and to be comprised within its curtilage in the sense that those words are used in this subsection.” (my underlining).

19. As Holgate J explained in *Hampshire CC* (see [120] – [121]) this goes “substantially beyond” the test than would apply in the case of non-listed buildings, where the test is whether the area of land in question forms “part and parcel” of the relevant building as per the approach laid down by the Court of Appeal in *Methuen-Campbell v Walters* [1979] QB 525 per Buckley LJ at 543F-G and *Dyer v Dorset CC* [1989] QB 346 per Nourse LJ at [358D-E].
20. In assessing the extent of a listed building’s curtilage, the three factors identified by Stephenson LJ in *Calderdale* will be key, i.e. physical layout, ownership (past and present), and use / function (past and present).
21. Turning to the present case, the issue is whether, applying the approach set out above, the two villas should be considered to be statutorily listed pursuant to s.1(5)(b) of the 1990 Act.
22. The difficulty here is that certain facts are contested. These include:
- (i) The date on which the villas were built. The applicant contends for between 1926 and 1932<sup>2</sup> whereas the Forum contends for 1907<sup>3</sup>;
  - (ii) The extent to which the villas were physically separated from the hospital. The Applicant contends that “It is clear from historical mapping and photographs that the two villas were originally separated from both the main hospital building and the chapel by significant landscaping including a number of mature trees. This created a physical barrier between the listed buildings and the villas, which largely survives to this day”<sup>4</sup>. The Forum rejects this, stating that “In keeping with the country house idiom tree planting was used extensively to recreate a series of sylvan avenues with the express intention of connecting not separating elements within the hospital estate”<sup>5</sup>.
  - (iii) The extent to which the villas functioned as part of the hospital. The Applicant contends that “The ‘Villas’ were intended to provide open wards for patients who were considered suitable for such accommodation. Prior to this, all wards were locked

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<sup>2</sup> Fielden + Mawson Heritage Statement September 2017 page 17 of 38

<sup>3</sup> “In Support of Curtilage Listing” page 1 under “Historic Context”.

<sup>4</sup> Fielden + Mawson Heritage Statement September 2017 page 27 of 38

<sup>5</sup> “In Support of Curtilage Listing” page 1 under “Physical Layout”.

as well as the main door of the hospital and its gates”<sup>6</sup>. This relates to the period after 1928 – and as set out above, the Forum contends that the villas were built just over 20 years earlier. The Forum contends that the function of the villas was “to provide extra capacity” for the hospital, with food being supplied by the main kitchen and transported to the villas in special food wagons”<sup>7</sup>.

23. As I said in my previous Opinion, whether or not a building is curtilage listed is not a matter of law. Rather, it is a matter of fact and degree and, ultimately, a matter of planning judgment. I am not in a position to resolve the disputed facts (as to which see above). Rather, the Council’s case Officer will need to review the evidence underpinning the competing assertions and form a view as to which to accept.

24. In my view, if the Council was to accept the Forum’s version of events this would strongly tend towards the conclusion that the villas should be seen as curtilage listed. In particular, the Forum contends that the villas were designed and functioned as part of the overall hospital estate, and that they had an ancillary relationship to the main hospital (providing additional accommodation and being serviced from the hospital’s kitchens). I note in this regard that the Applicant accepts that the villas previously had an ancillary relationship with the main hospital: “The site is currently occupied by 4 buildings, 3 of which were in use as ancillary to the main hospital”<sup>8</sup>. I read this concession as relating to the fairly recent past, given the use of the present tense in the first part of the sentence. If that is right then on the Forum’s approach it would point to a longstanding ancillary relationship. With regard to the extent of the hospital’s curtilage, I note that the Applicant considers that the wall running along

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<sup>6</sup> Fielden + Mawson Heritage Statement September 2017 page 17 of 38. I should add here that I am still not aware of the source of the assertion set out in paragraph 6 of Peter Village QC’s opinion dated 26.4.19 that the villas functioned “totally differently” from the main hospital – see paragraph 14 of my previous Opinion. This is potentially an important point so should be clarified with the Applicant.

<sup>7</sup> “In Support of Curtilage Listing” page 1 under “Function”.

<sup>8</sup> Fielden + Mawson Heritage Statement September 2017 page 13 of 38



Locksway Road marks the hospital's historic curtilage. The historic position is relevant but not necessarily determinative: see Calderdale, and see also paragraph 18(vi) of the High Court's decision Challenge Fencing [2019] EWHC 553 Admin. The villas are however now screened to a very substantial degree by intervening vegetation – a point that the Forum has not addressed per se, but which in my view weighs against the Forum's conclusions.

25. As can be seen, it will be important for the Council to reach a view on the competing versions of events. This is a matter of judgment for the Council, not a matter of law (see paragraph 18(i) in *Challenge Fencing*). It will of course be important for the Council to consider the issues by reference to the approach set out in the case law referred to above.

26. In terms of next steps it seems to me that it would be helpful for the Council to reach a considered position in writing on this issue. That analysis could then form the basis of the Council's position going forward, e.g. in terms of further discussions with the Applicant / as the basis for the Case Officer's Report to Committee. I would be happy to review a draft of the analysis if that would assist.

27. I trust this helps; please do not hesitate to get in contact to discuss any issues arising.

**Robert Walton QC**

**Landmark Chambers**

**27<sup>th</sup> May 2020**

# ST JAMES HOSPITAL CHAPEL

## Overview

Heritage Category: Listed Building

Grade: II

List Entry Number: 1103824

Date first listed: 09-Dec-1998

Statutory Address: ST JAMES HOSPITAL CHAPEL, LOCKSWAY ROAD

## Location

Statutory Address: ST JAMES HOSPITAL CHAPEL, LOCKSWAY ROAD

The building or site itself may lie within the boundary of more than one authority.

District: City of Portsmouth (Unitary Authority)

National Grid Reference: SU 67212 00078

## Details

PORTSMOUTH - SU60SE LOCKSWAY ROAD, Milton 774-1/4/286 St James' Hospital Chapel 09/12/98

### GV II

Hospital chapel. 1879. By George Rake. Knapped flint with stone dressings. Welsh slated roofs. PLAN: 5-bay nave, 1 bay apsidal chancel, south-west porch and west bellcote, north vestry. EXTERIOR: north face: 5 stone 2-light Y tracery windows with leaded lights, flanking offset buttresses. To left (east) is a vestry projecting from chancel with lean-to roof. At centre is a recessed 4-panelled diamond boarded door with overlight set under flat stone shouldered arch, stone sill and rusticated jambs. On left return to vestry is a 2-light window with leaded lights set under flat stone arch with rusticated jambs. East face of chancel with lower roof has within apse 3 narrow lancet windows each set under stone pointed arch. rusticated jambs. East facing gable to nave has stone eaves. Kneelers, offset diagonal buttress at south corners. To right (north) of nave is octagonal stack. South face: four 2-light windows with flanking offset buttresses similar to north face. To left (west) is a projecting porch, recessed boarded with ornamental iron strap hinges, set under recessed stone pointed arch with flanking engaged Corinthian columns; outer arch

stone pointed with hoodmould and stone roll moulded jambs. Flanking offset buttresses, facing stone coped gable with kneelers. West face: nave has slightly projecting and stepped centre bay. To left and right a lancet headed window. At centre over projecting bay is a stone base, with on each side paired engaged stone columns, pointed blinded arches with hoodmould surmounting stone bellcote with pointed arched opening, hoodmould and steep pitched facing gable. INTERIOR: nave has a 5-bay hammer beam roof with boarded ceiling. Curved boarded ceiling to chancel. Nave and chancel have stained glass windows. (Hampshire Telegraph and Sussex Chronicle: Winchester: 1879-).

Listing NGR: SU6610802158

# ST JAMES HOSPITAL AND ATTACHED PIERS AND LAMP POSTS

## Overview

**Heritage Category:** Listed Building

**Grade:** II

**List Entry Number:** 1103820

**Date first listed:** 09-Dec-1998

## Location

**Statutory Address:** ST JAMES HOSPITAL AND ATTACHED PIERS AND LAMP POSTS, LOCKSWAY ROAD

The building or site itself may lie within the boundary of more than one authority.

**District:** City of Portsmouth (Unitary Authority)

**National Grid Reference:** SU 67046 00100

## Details

PORTSMOUTH - SU60SE LOCKSWAY ROAD, Milton 774-1/4/285 St James' Hospital and attached 09/12/98 piers and lamp posts

GV II

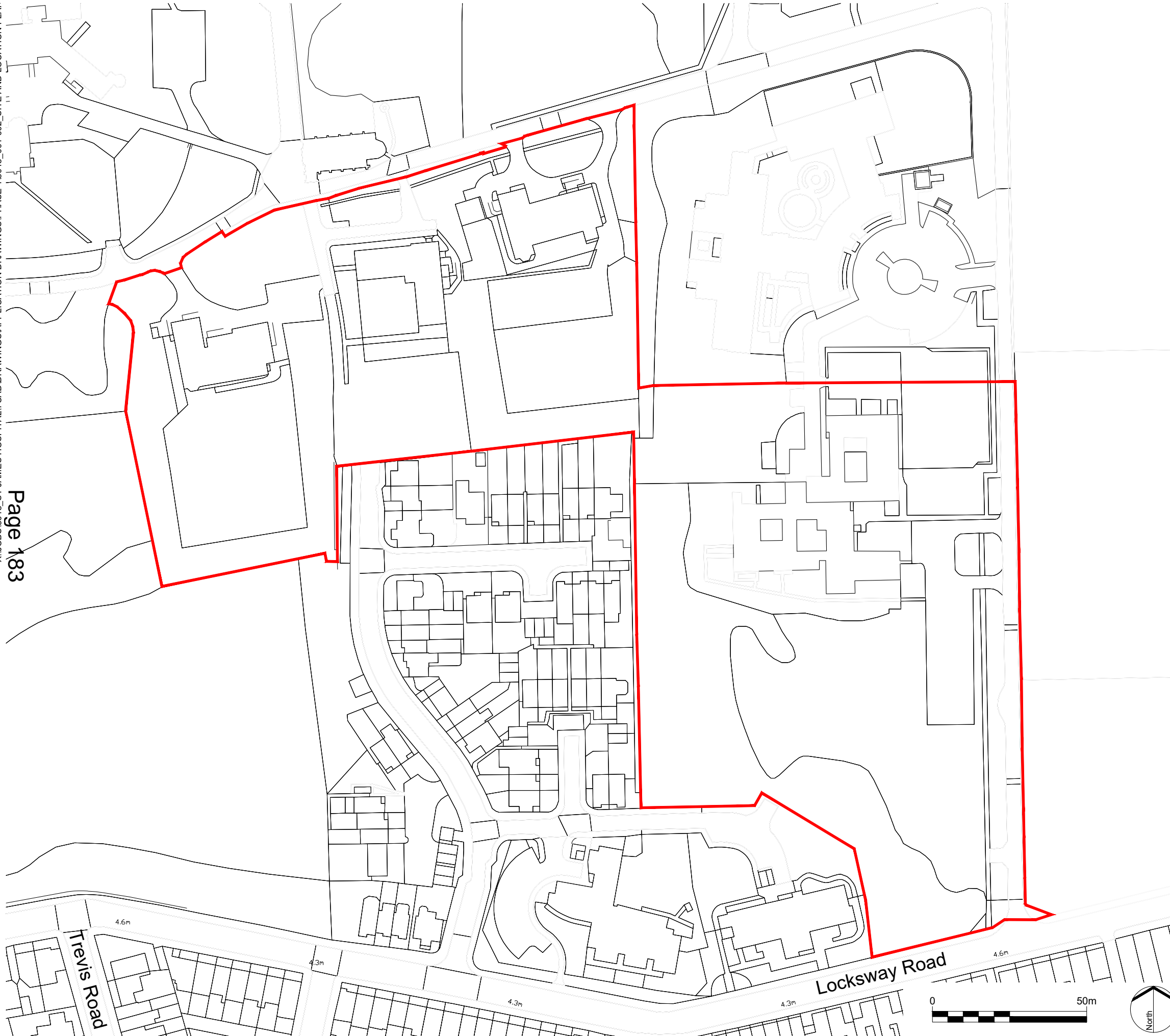
Hospital. c1878. By George Rake. Red brick in English bond, stone dressings. MATERIALS: steep pitched Welsh slate roofs, brick stack with oversailing brick capping to left and right of main entrance block, to centre and right of left block, to centre and left of right block and to left, centre and right of each projecting south facing block. STYLE: Byzantine Gothic. PLAN: symmetrical box plan with projecting wings. EXTERIOR: main entrance block 3 storeys, 5 bays; each flanking block 2 storeys, 6 bays; far left and right towers each 4 storeys, 1 bay, and each of the two south facing projecting blocks 2 storeys, 7 bays (1 wide/1/1/1 wide/1/1/1 wide/). Quoins have rusticated rock face stonework. Central main entrance block has at centre a 1-storey open arcade with three 4-centred gauged brick arches, square gauged brick piers with vertical flutes set on rock-faced stone bases. Banded dripstone, gauged brick parapet with quatrefoil

pierced stone inset panels, stone coping raised at centre with inset date stone inscribed 1878 and with Portsmouth City coat of arms, segmental pointed dripstone with dropped labels. 6 terrazzo steps approach the central arcade opening with low flanking staircase walls, 2 front piers, each supporting a short ornate iron lamp post. To rear recessed wall at centre of arcade is a revolving glazed door with side screens, fanlight set under segmental pointed stone arch, stone jamb with roll mouldings. To left and right is a 2-light wide stone transomed and mullioned casement. Each projecting end bay has a canted stone transomed and mullioned bay window with 3-light wide front and 1-light wide to each side, each light with casement, banded dripstone, brick parapet with stone insets similar to entrance arcade parapet, rock-faced stone plinth below sill. First floor has 5 stone transomed and mullioned windows with eaved and shouldered architraves and flat arch, centre 3-lights wide and flanking 2-lights wide with casements, 4-light wide to each end bay with sashes. Second floor stone sillband with 5 similar windows, centre 2-light wide, flanking 1-light wide and 3-light wide to each end bay. Over each first and second floor window is a gauged brick relieving arch, segmental pointed to first floor and pointed to second floor, each tympanum filled in with foliated terracotta in panels. Each of the 3 centre second floor windows set under stone coped brick gable with stone kneelers. Each end bay has a stone coped facing gable with stone kneelers, horizontal stone band halfway up gable and apex of roof over band is recessed. At centre of block is a lead covered clock turret with spirelet. Left and right returns 3 bays wide have similar stone transomed and mullioned windows with brick relieving arch over each first floor window. To left and right of central block is a recessed 1-storey link with two similar 1-light wide stone transomed and mullioned windows each with timber casement, dripstone band, brick parapet with moulded stone coping. Rock-faced stone plinth. To right of right link and left of left link is a 2-storey wing. Right wing has on right a wide canted bay running through first floor with stone transomed and mullioned windows, 3-light wide to front and 1-light to each side, each light with casement, banded dripstone. First floor has stone banded sill and similar window 2-lights wide, gauged brick pointed relieving arch with terracotta panels to tympanum, facing stone coped brick gable with stone kneelers, hipped roof. To left of bay and on first floor is a 1-light wide, then 2-light wide and on far left 3-light wide similar stone transomed and mullioned windows with casements. First floor centre window is full height and runs down to dripstone band. Left wing is similar but reversed with the canted bay to the left. To left and right of each wing is a recessed 1-storey link with 3 open 4-centred gauged brick arches with square gauged brick piers each set on a rock-faced stone plinth. Recessed behind each arcade is at centre a late C20 2-leaf door with overlight set under a flat rendered arch and to left and right a 2-light wide stone transomed and mullioned window with casements all as before.

Banded dripstone and stone coped brick parapet. On far left and right to each corner is a 4-storey projecting square tower. At centre of each tower and to inward return faces is a 1-light wide stone transomed and mullioned window as before described, banded dripstone. First floor has a similar 2-light window with gauged brick pointed relieving arch and panelled terracotta tympanum. Second floor has stone sillband with similar 2-light window, banded dripstone. Third floor has moulded stone sillband, similar 3-light window, banded dripstone, brick and stone coped crenellated parapet. From outward corner of each tower runs a 2-storey long south projecting wing. Main south facade to each wing has projecting end bays each with facing gable. At centre is a C20 conservatory. On left of right wing and right of left wing is a canted stone transomed and mullioned bay window 4-lights wide at front and 1-light to each side, each light with sash, banded dripstone and brick and stone parapet. Rock-faced stone plinth. To outward end bay of each wing is a 5-light wide stone transomed and mullioned window with sashes. First floor moulded stone band and each wing has at each end and centre a 5-light wide stone transomed and mullioned window with sashes, and each end bay has a brick relieving arch with terracotta panels to tympanum. Centre window has facing gable. To left and right of centre window are 2 similar 1-light wide stone transomed and mullioned windows each with sash set under eaves. INTERIOR: original features generally intact. The aisled entertainment/recreation room/theatre now encased in hardboard, but it is understood that all original features such as terracotta medallions by Blashfield survive under this covering in walls of alternating red brick and chalk bands. HISTORY: c1875 Portsmouth Town Council adopted the powers of the Lunatic Asylums Act of 1853, and after a period of sending local paupers to the Hants. County Asylum at Knowle and Fisherton, they resolved to build an asylum on 75 acres of land between Eastney lake and Velder Creek. (Hampshire Telegraph and Sussex Chronicle: Winchester: 1879-).

Listing NGR: SU6610802158

Site Boundary



REV.	DESCRIPTION	APP. DATE
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# LD&DESIGN

PROJECT TITLE  
St James Hospital Phase 1

DRAWING TITLE  
Site Plan

ISSUED BY	London	T: 020 7467 1470
DATE	December 2017	DRAWN RS
SCALE@A3	1:1,250	CHECKED MW
STATUS	Planning	APPROVED MW

**DWG. NO 5018\_002**

Do not scale from this drawing, other than for Local Planning Authority purposes. All dimensions are to be checked on site. Area measurements for indicative purposes only.

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Sources Ordnance Survey



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**HOMES ENGLAND**

**HERITAGE IMPACT ASSESSMENT  
FEBRUARY 2018**

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# **ST JAMES PLOT 1 OUTLINE PLANNING APPLICATION**



Homes  
England

Feilden+Mawson





Heritage Impact Assessment  
**St James Hospital &  
Langstone Campus**  
8243 Rev A03 September 2017



## Document Control

Revision	Description	Originator	Approved	Date
A00	Draft for comment	Feilden+Mawson LLP	SAJ	15/09/2017
A01	For Issue	Feilden+Mawson LLP	SM	14/12/2017
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A03	Ammended to reflect proposals	Feilden+Mawson LLP	SM	31/01/2018

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1.0 Introduction

## Introduction

This Heritage Impact Assessment is written in support of an application for planning permission for the high quality residential development in a mature landscape setting.

### The purpose of a Heritage Impact Assessment

BS7913 2013 states that the purpose of heritage impact assessments (HIAs) is to gain an understanding of the effect of developments and changes on the historic asset, and how the impact of the change might be mitigated.

HIAs can be carried out at various levels of scale and complexity, from the effects of building works on small structures to the effects of major development in a world heritage site.

HIAs should identify the significance of the element concerned on the relative scale of values, the nature of the proposed change, an assessment of whether the change needs to be mitigated and if so how this is to be achieved. The mitigation measures should be justified on the basis of the heritage assets significance.

## Summary

The proposals for the residential development of 107 dwellings on the St. James and Langstone Campus have no direct physical impact on the historic fabric of any heritage asset identified within 1km of the site.

There are no designated heritage assets within the Phase 1 land.

Development would thus not lead to 'substantial harm or total loss of significance' or 'less than substantial harm' to any designated heritage assets and would not be contrary to paragraphs 132 - 134 of the NPPF; Sections 66(1) and 72(2) of the 1990 Planning Act; or development plan policy within the Portsmouth City Local Plan.

Potential non-physical effects upon designated heritage assets in the wider site vicinity have been assessed, and development would not harm the significance of any such assets through changes to their setting.

There is an impact on the setting of 2 of the assets identified, St James Hospital and the Chapel. Viewed in the whole, such impacts would be seen as causing less than substantial harm, with little likely effect on the setting of the listed hospital building. The site is visually separated from the hospital by a mature belt of vegetation which creates a strong buffer and a pleasant setting to the listed building. The design will aim to retain this relationship and not impact any potential views of the hospital. However, the most obvious effect will be on the setting of the Chapel. While the hospital and chapel make an important contribution to each other's significance, the proposed development is located

to the south-east and would not harm this visual and contextual relationship. The setting of the chapel is essentially the roadside and open lawns to the west and north, and redevelopment of the former villas to the south would simply continue the character of changing buildings surrounding the key historic buildings (hospital and chapel).

There are four undesignated buildings located within the Phase 1 Land. Fairoak and the Beeches are of limited heritage significance. Their demolition would therefore cause limited harm. Sufficient mitigation of the harm caused by their demolition would be a photographic record with a measured ground plan. Yew Tree House and the school are of no heritage significance. Their demolition would therefore cause no harm, meaning that they require no mitigation.

A section of wall along Locksway Road, whose construction is contemporaneous with the hospital buildings, is believed to demarcate the historic curtilage of the hospital site. This wall has been retained and incorporated into the proposals, forming part of the rear gardens.

The development of the site will enhance the setting of the listed Chapel and will integrate this sensitively. In heritage terms, the overall effect of the proposals is on balance assessed as neutral.

## Methodology

The methodology employed during this assessment was based upon key professional guidance including the 'Standard and Guidance for Historic Environment Desk-Based Assessment' (Institute for Archaeologists 2012); and the English Heritage 'Conservation Principles' (2008).

This built heritage assessment has considered a 500m study area centred on the site (Fig. 15). The size of the study area ensured that the assessment covers all built heritage assets which may potentially be harmed by the proposed development.

Built heritage assets within the Phase 1 Land and study area are discussed in Section 5. A gazetteer of built heritage assets in the study area has been compiled.

### Built Heritage assets

Built heritage assets are defined by the National Planning Policy Framework (NPPF Annex 2) as 'A building... identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest. Built heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing)' (Department of Communities and Local Government (DCLG) 2012) Designated built heritage assets include Listed buildings and Conservation Areas. Non-designated built heritage assets include buildings understood to have a degree of heritage value.

### Heritage value/ significance

The significance of a heritage asset is defined in NPPF as the value of a heritage asset to this and future generations because of its heritage interest (DCLG 2012). The assessment of significance within this report has been undertaken in accordance with the policies and guidance contained in Conservation Principles (English Heritage 2008). The significance of a heritage asset (termed 'place' within Conservation Principles) is described as a combination of evidential value; historical value; aesthetic value; and communal value (English Heritage 2008).

Evidential value derives from those elements of an historic asset that can provide evidence about past human activity, including its physical remains or historic fabric. Historical value can derive from particular aspects of past ways of life, or association with notable families, persons, events or movements – it is the connection between past events and society with the present. Aesthetic value derives from the sensory and intellectual stimulation people draw from an historic asset. It may include its physical form, and how it lies within its setting. It may be the result of design, or an unplanned outcome of a process of events. Communal value derives from the meanings that an historic asset has for the people who relate to it, or for whom it figures in their collective experience or memory. It may be commemorative or symbolic, such as meaning for identity or collective memory.

### The Setting of Heritage Assets – the stepped approach

This assessment has been guided in its composition by policy contained within the NPPF (DCLG 2012).

The methodology is based on the guidance provided in the Heritage guidance pre-dates NPPF and in June 2012 English Heritage issued a Revision Note stating that they were in the process of revising their guidance, but that it "still provides useful advice and case studies". The Setting of Heritage Assets provides guidance on setting and development management, including assessing the implications of development proposals. A staged approach is recommended for the latter, the first step of which is to identify the heritage assets affected and their settings.

The second step is to assess whether, how and to what degree these settings make a positive contribution to the significance of the heritage asset(s), i.e. 'what matters and why'. This includes a description of the key attributes of the heritage asset itself, then considers:

- the physical surroundings of the asset, including its relationship with other heritage assets;
- the way the asset is appreciated; and
- the asset's associations and patterns of use.

The third step (where appropriate) is to assess the effect of the proposed development on the significance of assets through the consideration of the key attributes of the proposed development in terms of its:

- location and siting;
- scale;
- additional effects; and
- permanence.

The fourth step is to maximise enhancement and minimise harm and step five is making and documenting the decision and monitoring outcomes.

Information on designated heritage assets was obtained from English Heritage's National Heritage List, the Portsmouth History Centre. For the current settings assessment, steps 1, 2 and 3 have been followed in line with English Heritage guidance (English Heritage 2011).

#### Step 1 methodology

Step 1 utilises readily available information to establish whether heritage assets and their settings may be affected by development. A study area of 0.5km was adopted for this assessment. All designated heritage assets within this area were examined.

Those assets considered to be potentially sensitive to the proposed development were selected for field assessment. These comprise:

- the Grade II Listed main building of St James's Hospital and its attached piers and lamp posts (Fig. 2);
- the Grade II Listed St James's Hospital Chapel (Fig. 3);
- the Milton Locks Conservation Area (including the Grade II Listed 19th-century sea lock and basin) and
- the locally listed Milton Infant and Junior School.

#### Step 2 and 3 methodology

The field inspection was undertaken on 8th September 2014. The site itself was inspected, and the selected designated assets identified within step 1 were visited. Each of the heritage assets identified for step 2 and 3 assessment was visited in the field as closely as possible from publicly accessible land. A selection of the photographs are reproduced in this report (Figs. 4-11). Figure 15 depicts the proposed development site and the locations of each of the assessed heritage assets.

#### Assessment of heritage asset significance

The setting of a heritage asset can contribute to, or detract from, any of the four values described in Heritage Value/Significance (English Heritage 2011, 32). Within the settings assessment below (Section 6), the contribution setting makes to the significance of the asset is specifically discussed in terms of how it contributes to, or assists in the ability to appreciate, these four forms of value.



## Impact Assessment

This Heritage Impact Assessment is written in support of an application for planning permission to construct 107 new dwellings on the site, located in the Milton Area in south eastern Portsmouth and which forms part of the St. James' Hospital and Langstone Campus site.

*It has been prepared following Historic England's Advice Notes 1,2 and 3 and the NPPF with regard to the heritage assets that may be affected by the proposals to redevelop land that was formerly part of St. James' Hospital with the purpose of providing new dwellings with associated parking, access landscaping and public open space, which is part of a wider development plan for the regeneration of the whole site. This is to inform development works for the building, to ensure that any works commissioned are consistent with, and appropriate for, the historic fabric. This statement should be read in conjunction with the proposed drawings, Design and Access statement, and other statements which accompany the application.*

### The purpose of a Heritage Impact Assessment

BS7913 2013 states that the purpose of heritage impact assessments (HIAs) is to gain an understanding of the effect of developments and changes on the historic asset, and how the impact of the change might be mitigated.

HIAs can be carried out at various levels of scale and complexity, from the effects of building works on small structures to the effects of major development in a world heritage site.

HIAs should identify the significance of the element concerned on the relative scale of values, the nature of the proposed change, an assessment of whether the change needs to be mitigated and if so how this is to be achieved. The mitigation measures should be justified on the basis of the heritage assets significance.

### Summary

There are no designated heritage assets within the Phase 1 Land. However, a section of wall along Locksway Road, likely constructed in the same period as the hospital buildings is believed to demarcate the historic curtilage of the hospital site and can be considered listed.

Potential non-physical effects upon designated heritage assets in the wider site vicinity have been assessed, and development would not harm the significance of any such assets through changes to their setting. Development would thus not lead to 'substantial harm or total loss of significance' or 'less than substantial harm' to any designated heritage assets and would not be contrary paragraphs 132-134 of the NPPF; Sections 66(1) and 72(2) of the 1990 Planning Act; or development plan policy within the Portsmouth City Local Plan.

The design of the scheme has aimed to reduce and mitigate the effect on the chapel, primarily by maintaining a clear open space immediately south of the Chapel so that public views of the Chapel are not impeded. The proposed apartment building immediately

opposite the Chapel is located largely on the footprint of Yew House and has been moved as far east as possible without impacting on root protection areas. A distance of 19m has been retained between the chapel and the new development. Offsetting the new apartment building to open up the frontage of the Chapel would fully mitigate any impacts of the new development

Landscaping improvements include retention of mature trees, while thinning out the planting to the south of the Church will improve the immediate setting. The landscaped space provided will also improve pedestrian and road safety.

In heritage terms, the overall effect of the proposals is on balance assessed as enhancing the setting of the chapel.

**Table 1 Criteria for Grading the Value of the Heritage Assets**

Very High (International Significance)	Assets of acknowledged international importance including World Heritage Sites and the individual attributes that convey their Outstanding Universal Value. Areas associated with intangible cultural heritage activities as evidenced by the register, and areas with associations with particular innovations, scientific developments, movements or individuals of global importance.
High (National Significance)	Assets of national importance; Scheduled Monuments, all Listed Buildings (Grade I, II*, II). All Registered Historic Parks and Gardens (Grade I, II*, II). Also includes unscheduled sites and monuments of schedulable quality and/or importance discovered through the course of evaluation or mitigation.
Medium (Regional Significance)	Assets of importance within a regional or county context; Conservation Areas and Sites of Importance within a district level. Historic townscapes with historic integrity in their buildings or built setting. Unlisted historic buildings that can be shown to have exceptional qualities or historic association. Locally listed buildings.
Low (Local Significance)	Assets of local importance. These sites may have been partially destroyed by past land use, whether by agricultural activity or previous development. May include unlisted buildings of modest quality in their fabric or historical association and historic townscapes with limited historic integrity in their buildings or built setting. Also includes archaeological sites whose importance is limited by poor preservation and/or poor survival of contextual associations.
Negligible	Sites/features/buildings/components that are so badly damaged that too little now remains to justify their inclusion in a higher grade. Sites with no surviving historic content.
Unknown	The importance of the asset has not been ascertained from available evidence.

Professional judgement is applied in considering these criteria to determine the relative importance of the resource, especially where features have no current national or local designation.

### Assessing Magnitude of Impact

The assessment of the magnitude of impact is the identification of the degree of the effect of the Proposed Development upon elements of the historic environment. There is no standard scale of comparison against which the severity of effects on heritage assets may be judged, because of the great variety of resources and receptors.

The assignment of a magnitude of impact is a matter of professional judgement. The assessment takes account of the construction and operational requirements, both of which may have permanent or temporary effects. Potential effects for each of these elements have been identified, whether direct or indirect. Effects may be adverse, neutral or beneficial.

Direct impacts are sometimes permanent, as the loss or damage to heritage assets cannot always be repaired, replaced or recreated. For the purpose of this assessment, features that fall within the footprint of the Proposed Development are viewed as being subject to direct effect. Assessment of indirect effects is concerned with the effects of the construction and operational phases of the Proposed Development other than direct physical effect.

The magnitude of impacts (summation of direct and indirect impacts) on heritage assets has been assigned a value of High, Medium, Low, Negligible or No Change, as shown in Table 12.2. In each case, the magnitude of impact should be weighed against the public benefits of the Proposed Development (this includes securing the

**Table 2: Criteria for Assessing Magnitude of Impact**

High	Complete destruction of a site, feature, or structure. Change to most or all key archaeological materials, or key building elements, such that the resource is totally altered. Comprehensive changes to setting.
Medium	A fundamental change or appreciable difference to the existing environment. Changes to many key archaeological materials or key historic building elements, such that the resource is clearly modified. Considerable changes to setting that affect the character of the asset.
Low	A minor change to the site or feature. Changes to the key archaeological materials or key historic building elements, such that the asset is slightly altered. Slight changes to setting. Limited changes to historic townscape character.
Negligible	Very minor changes to archaeological materials, building elements, or setting.
No change	No change to the heritage asset or its setting.

**Assessing Significance of Effect**

Note: the term significance as used in an Environmental Impact Assessment is not exactly the same as its use in describing heritage assets as set out in the NPPF 2012, and cultural significance being largely intangible is distinct from sensitivity which is related to tangible objects such as historic fabric.

Significance of effect has been derived from a consideration of the importance/potential of the resource and the degree of impact upon it as a result of the Proposed Development. This is illustrated in the Significance of Effect Matrix presented in Table 3.

Where heritage assets are assigned a high value (e.g. Scheduled Monuments, Listed Buildings), the significance of effect for elements of the Proposed Development on these specific heritage assets will range from major to minor, depending on the magnitude of the impact. Where the matrix indicates a range of significance, e.g. moderate/minor, professional judgement may be applied to arrive at a single significance, taking into account the value of the feature, proportion affected, whether the effect will be temporary or permanent, and whether the effect is direct or indirect.

Where there is no perceivable change to any of the heritage assets, whether of Very High, High, Medium, Low or Negligible Value, then there is considered to be No Impact from the Proposed Development on these elements of the historic environment.

The resulting impact is then categorised as **Adverse** (harmful), **Neutral** or **Beneficial**.

An overall assessment of the impact of the proposals is made based on a judgement of the balance of these impacts.

**Table 3: Significance of Effect Matrix**

Very High (International Significance)	Major	Major	Major/ Moderate	Moderate/ Minor	No Impact
High (National Significance)	Major	Major/ Moderate	Moderate	Minor	No Impact
Medium (Regional Significance)	Major/ Moderate	Moderate	Moderate/ Minor	Minor/ Negligible	No Impact
Low (Low Significance)	Moderate	Moderate/ Minor	Minor	Negligible	No Impact
Negligible	Minor	Minor/ Negligible	Negligible	Negligible	No Impact

## Authorship

This report has been prepared by Sarah Morrison RIBA CA at Feilden + Mawson LLP. The built heritage assessment for Phase 1 Land was prepared by Cotswold Archaeology and involved consultation of readily available historical information from documentary and cartographic sources. The major repositories of information consulted comprised:

National Heritage List for England (English Heritage)

- Listed Buildings;
- Scheduled Monuments.

Portsmouth History Centre

- Historic maps and plans of Portsmouth;
- Published and unpublished documentary sources.

Online sources

- Including the British Geological Survey (BGS) Geology of Britain Viewer and local planning policy information.

Documentary Sources

- The Archaeological Desk-Based Assessment written by Cotswold
- Archaeology on St James's Hospital (Cotswold Archaeology 2014).

## 2.0 Site Description

### Location

The site is located in the Milton area in south eastern Portsmouth, north of Locksway Road and forms part of the St. James Hospital and Langstone Campus site.

### Site Overview

The site is currently occupied by 4 buildings, 3 of which were in use as ancillary to the main hospital and a building previously the Harbour School.

The site has a relationship with adjacent residential areas and remaining NHS buildings including St. James hospital and chapel to the north of the site. To the east lies the main building of the Harbour School and beyond that the University of Portsmouth sports fields and Langstone Campus. Key frontages face the Chapel across Locksway Road.

Mature tree planting across the site.



Figure 1. Site Location Plan

### 3.0 Setting and Context

The following is a summary of the key elements of the site's historical development. An archaeological Desk-Based Assessment was produced for the proposed development site (Cotswold Archaeology 2014).

There is little evidence for settlement around Langstone Harbour until the medieval period. With poor soils unsuited to agriculture it is likely that Portsea Island was sparsely inhabited during the early medieval period. The Domesday survey of 1086 recorded only three small manors on the island at Buckland, Copnor and Fratton (Page, 1908). Late in the 12th century the town of Portsmouth was founded in the south-western corner of the island. This was largely a response to the silting up of the harbour around Portchester at the north end of Portsmouth Harbour.

Throughout the medieval period Portsmouth increased in size and importance becoming one of England's major naval bases. It continued to be an important port and naval base throughout the post-medieval period, geographically restricted to the south-western part of the island. The town was enclosed by defensive walls with only a small civilian settlement; Portsea was located outside of it. The proposed development site, on the far eastern side of the island, occupied land on the fringes of the village of Milton an area of considerably different character to the burgeoning town and port to the west.

The town of Portsmouth expanded across Portsea Island over the course of the 19th and 20th centuries enveloping the existing villages and consuming the island's farmland, becoming a city in 1926. During the 19th-century a canal was constructed the

route of which runs to the south of the site. The Portsea Canal was a section of the Portsmouth to Arundel Canal running from Langstone Harbour into the centre of Portsmouth. The canal was a short lived commercial failure. It was opened in 1822 but closed in 1838 when its role was superseded by the railways. Most of the canal is now marked by road, footpath and the course of the railway, however a small part of it still lies extant in Milton at the end of Locksway road. This area is designated a Conservation Area and includes the remains of the tidal lock and sea lock which is Grade II Listed (Fig. 14).

Within the study area significant development does not become apparent until the early years of the 20th Century when the land around Milton village is developed (Fig.12). Residential development from this period is characterised by long rows of terrace housing set out in a grid-like pattern, a typical layout for 19th and early 20th century housing across the city. Early 20th-century urban development occurred across the land to the west and south of the site however on the strip of land to the east, adjacent to Langstone Harbour, farmland remained until the mid-20th century.

The townscape within the study area features a number of key historic buildings related to the municipal provision of services for the expanding city. This include the locally listed Milton Infant and Junior Schools which date from 1905, The Grade II Listed St James hospital (Fig. 2,) and the hospital chapel built in 1879 by George Rake (Fig. 3).

#### St James Hospital

Historic mapping demonstrates that the area around the site remained farmland until St James Hospital was constructed between the First Edition Ordnance Survey (OS) mapping dated from the 1860s and 1870s and the Second Edition OS of 1910 (Fig. 14).

St James Hospital was founded as the Portsmouth Borough Lunatic Asylum and opened in 1879 (Fig. 2). The hospital was designed to be fully self-sufficient and operated a 'home farm' located to the north, which farmed the land to the north and east. Other original 19th-century facilities included gardens that were ran by the patients and a chapel which is a Grade II Listed building (Fig. 3). The site was secured by a brick boundary wall with gates that were originally kept locked.

Ordnance Survey mapping from 1910 (Fig. 12) and from the early 1930s (Fig. 13) shows the expansion of the hospital throughout the early 20th Century. Additional facilities included a sanatorium built in 1893, a mortuary dating from the 1940s and a series of villas located to the north-east and east of the main hospital building, that were constructed over the course of the early 20th-century. Modern series Ordnance Survey mapping (not shown) depicts change at the site throughout the mid-late 20th-century and it can be seen that other modern buildings were added around the hospital's periphery. The core hospital buildings and areas of open space however appear to remain relatively unchanged throughout the later 20th century.

Designated Heritage Assets

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Figure 2. St James Hospital



## Designated Heritage Assets

The wider area around the hospital was largely rural at the time it was built. The gardens would have been used in order to help treat the patients (as well as helping with the self-sufficiency of the hospital).

### The Chapel

The hospital chapel, grade II listed, was built separate to the hospital and in stone, perceived as preferable at the time in order to give inmates a semblance of 'normal' life. It is essentially a simple single space with external decoration almost exclusively focused on the west front and the south-west porch, which would have been visible to the congregation as they approached from the hospital.

The interior is plain, having a 5-bay nave, a single bay apsidal chancel, porch and west bellcote and a north vestry. The main item of interest being the wooden hammer beam roof over the nave, currently boarded over.

Externally the south face, opposite the proposed new housing, has four 2-light windows with flanking offset buttresses similar to the north face. The projecting porch to the west has a recessed boarded door with ornamental strap iron hinges, set under a stone arch with flanking engaged corinthian columns and outer arch stone pointed with hoodmould and stone roll moulded jambs. Flanking offset buttresses complete the gabled facade with stone coping.

The west face of the nave has a shallow projecting central bay with a lancet window to either side. Over the



Figure 3. St James Hospital Chapel (East elevation)

## Undesignated Heritage Assets

central projecting bay is a stone base with paired stone columns either side and pointed blinded arches within. The bellcote has a pointed arch opening, hoodmould and steep pitched facing gable.

The north face has stone windows with leaded lights flanking offset buttresses. To the east the vestry projects from the chancel with a lean-to roof, and a recessed door with stone surround in the centre.

Restoration in 2008 provided a new foyer in the west end with a new, larger vestry and a WC opening off it, made from internal stud partitions. It is of moderate significance, being grade II listed and as it is unaltered since 1879 its exterior would be sensitive to change.

### Fairoak and the Beeches

Fairoak and The Beeches are identical houses erected at the same time to provide extra facilities for the hospital. They were two of six “villas”, Fairoak being originally named Dickens Villa and The Beeches, Brunel Villa. Map evidence dates them to between 1910 (Fig. 12) and 1932 (OS 1932) (Fig. 13). They can be more precisely dated to the period 1926-1932 as they were constructed as a result of Dr. Thomas Beaton’s innovative approaches to mental health, which occurred after 1926 (Freeman 1962). Evidence suggests that it is likely that they post-date 1928 as documentary evidence details that “From about 1928, changes began to be made in the mental hospital....The gates were removed, the front door unlocked and some wards opened.” (ibid).

The ‘Villas’ were intended to provide open wards

for patients who were considered suitable for such accommodation. Prior to this, all wards were locked as well as the main door of the hospital and its gates.

The two buildings were designed as large Edwardian-style houses, in a very conservative style for the actual period (Figs. 6 and 10) (as were the two surviving villas to the north). Their institutional character is given away only slightly, by the flat-roofed sanitation blocks at the north-east corners and the sun verandas at the rear (south side: that on The Beeches has been removed).

The four-over-one sashes, false timber framing in the barge-boarded gables and rendered first floors show the diluted influence of the “William-and-Mary” end of the Arts and Crafts movement of earlier in the century.

Verandas go out into large gardens surrounding the villas. The villas are set in their own “grounds”, within the overall hospital gardens.

The buildings have been modernised inside. Fairoak has had a lean-to added to the front elevation, forming an entrance lobby, this addition post-dates 1970. Double-glazed uPVC windows have been inserted on much of the ground floor facing north.

The Beeches has had a free-standing pavilion added near its north-east corner, connected by a curving path, also dating to post-1970.

The houses are very ordinary, old-fashioned designs, typical of large houses of the period 1890-1920 and decidedly conservative, even in the late 1920s. They exhibit no interesting aspects of design or material, and

are of limited architectural significance.

The buildings have some historical significance as examples of purpose-built structures related to new ideas, in the late 1920s, of treating mentally-ill patients. This hospital was a pioneer in this type of treatment. However, the buildings do not clearly express these ideas as they contain no design elements that overtly indicate this history. Consequently, they are of little historical significance.

### Yew House

Yew House is a collection of portacabin-type units fitted together to make a temporary, single-storey prefab structure, dating to post 1983, possibly even dating to 1990 (Fig. 9). It is of no architectural or historical significance.

### Harbour School



Figure 3a. View south-east towards The Harbour School

## Table of Assets and Receptors

This school was built between 1962 and 1972, and is typical of the modern designs espoused by most education authorities in this period, following the broad acceptance of the Hertfordshire School experiments of the 1940s and the national programme of new schools in the 1950s (Fig. 3a). This building is of no historical significance as it was not part of the early wave of innovative designs and techniques. This building is also of no architectural significance. Most, if not all, of the fenestration has been replaced with plastic units.

### Boundary Wall

The hospital boundary wall itself was completed after the hospital was built in 1879. During the 20th Century, modernisation work in the post-war period brought change and at the main entrance to the hospital, in the 1950s and 60s included the removal of the Victorian gates and pillars. Milton Ford school was constructed on an isolated area of the site with its own separate access provided from Locksway Road. Despite improvements, the hospital became a target for closure and redevelopment for housing has taken place adjacent to the school, further physically divorcing it from the remainder of the site and involving the demolition of the former officers' residences at 113 - 115 Locksway Road and an adjacent unit. Access to the administrative block has been provided by insertion of another gate further along Locksway Road. Fig 3b shows the splayed section of modern wall in the south east corner of the site abutting the original wall. The remaining older section of wall (late 19th century) has a deep stepped plinth, regularly spaced piers and integrated panels featuring dog tooth headers, finished with a profiled coping.



Figure 3b Boundary wall on Locksway Road

No.	Description	Period	Status	NGR	WHER ref. English Heritage ref.	Major Source
1	19th-century St James Hospital and attached piers and lamp posts	Modern	Grade II Listed building	46704 10010	DPM276	PHER
2	19th-century St James Hospital Chapel	Modern	Grade II Listed building	46720 10007	DPM366	PHER
3	Milton Locks	-	Conservation Area and Grade II Listed building	46778 99882	DPM161 and 21	PHER
4	Early 20th-century Milton Infant and Junior Schools	Modern	Locally Listed	46668 09956	MPPM954	PHER

## Archaeological Potential

This site remained farmland until development, associated with the hospital took place between the 1910 OS map and the 1932 OS map. This development consisted of the construction of two villas associated with the hospitals; Dickens Villa and Brunel Villa. These buildings are still located within the site today; the only difference appears to be that the area now called Fairoak and The Beeches.

Two more buildings were constructed within this area in the late 20th century. The Harbour School, located within the eastern part of the site and Yew House, which is located between Fairoak and the Beeches.

RSK Environment Limited (RSK) was commissioned by Portsmouth City Teaching PCT ('the Client') to undertake

an archaeological desk-based assessment (DBA) for three parcels of land (A, B, C) for redevelopment forming part of the grounds of St James' Hospital, Portsmouth (approximate central NGR 466730,100120 (see [Figure 14](#)).

The three land parcels are situated at the north-western (A), north-eastern (B), and south-eastern (C) periphery of the hospital grounds respectively.

The assessment identified nine Designated heritage assets, one conservation area, and ten non-Designated heritage assets, as well as four archaeological events, in a 1000m Study Area around the site. Two Designated heritage assets related to the historic institution itself fall within the limits of the hospital grounds.

The assessment identified a low to moderate, but largely unconfirmed, archaeological potential for the earlier prehistoric periods (Palaeolithic period to Bronze Age). Due to the proximity of the estuary, this may include waterlogged organic materials at depth.

The demonstrable period potential for the later prehistoric and earlier historic times is negligible, but may be the result of a past absence of opportunities for recovery. The overall potential is therefore classed, once again, as largely indeterminate, but low.

Map evidence shows an absence of post-medieval development in the area of the later hospital and the potential for the recovery of evidence from the post-medieval period not related to the hospital is considered negligible to low. As a historic hospital complex of some 125+ years the facility in itself is, of course,

a heritage asset in its own right, and both the main hospital building and on-site chapel are Grade II Listed buildings. The potential for the presence of significant historic materials related to these heritage assets varies between land parcels, and is considered low to negligible in land parcels A and C.

## Summary

In line with other documentary evidence, map regression shows the site of St James' Hospital to have been undeveloped agricultural land prior to its construction. Land parcels A, B and C, situated around the hospital ground periphery, furthermore continue in this way until the mid-/late 20th century, with the extant Light Villa in the western part of land parcel B being the first to be constructed (most likely along with the other northern villas in 1907, although this is not specifically mentioned in Purvis' account), followed by Gleave Villa (now demolished) in its western part in 1931. The extant V-shaped stores in land parcel A and school in land parcel C follow between 1963-1970. Map regression demonstrates that areas of currently open land (gardens and recreational ground) are unlikely to have experienced any noteworthy impact in the post-medieval and modern periods. This is most likely due to the location of the site in marginal land, noted to have been of 'poor' quality in other documentary sources, probably as a result of the proximity of the estuary, and likelihood of flooding prior to formal reclamation.

## Summary

The extant buildings on land parcels A and C are of little architectural merit. Light Villa is considered to be of a moderate local architectural and historic interest, in consideration of its date and its status of the few surviving examples of the original patients' 'villas'. Gardens and recreational areas in land parcels B and C are likely to have experienced some impact from the installation of services and from landscaping, but this is likely to be relatively light. All archaeological deposits in the footprint of the former Gleave Villa are likely to have been destroyed, depending, to some extent, on the presence of basements. The remains of Gleave Villa itself are of no historic interest.

## Heritage

Although very little is known about prehistoric activity in the Study Area, two of the few known sites fall within the limits of the hospital ground, namely the findspot of a Bronze Age hoard (RSK 2) and the lithic implements recovered during the redevelopment of Devine Villa in 2008 (RSK EV1). Palaeolithic flint tools are furthermore known from nearby Milton Cemetery (RSK 1). The dearth of knowledge for the prehistory of Portsea Island and Portsmouth adds a group value to the significance of any sites of that date encountered. The proximity of the shoreline raises the possibility that the area was marginal land and subject to periods of flooding at this time, and may have not been suitable for settlement or systematic exploitation without formal reclamation.

However, this also indicates a potential for the survival of rare waterlogged organic remains or paleoenvironmental at depth. The Milton Cemetery implements furthermore prove gravel strata at depth to be artefact-bearing in this locale. The archaeological potential for the earlier prehistoric periods is therefore considered low to medium, but largely unproven. The absence of sites related to the later prehistoric or earlier historic periods to the end of the medieval period may either be the result of a bias of recovery due to a lack of opportunities of discovery, as the area remained undeveloped until the late post-medieval period, or may reflect a true absence of sites. Once again, unfavourable ground conditions may have restricted the use of the site to that of grazing land most of the time. The site also lies a considerable distance from the historic core of Portsmouth.

However, the absence of development also indicates good preservation potential for any sites not later impacted by the construction of the hospital facilities. While the demonstrable period potential for the later prehistoric and earlier historic times is negligible, it is largely unproven, and the overall potential is therefore classed as low.

Map evidence shows a complete absence of prior development within the area that became the grounds of the hospital (this is borne out furthermore by Purvis' account).

Therefore, sites present in the Study Area not related to the hospital have little relevance to the current proposal, as no related evidence is likely to be present within the limits of the hospital grounds.

As a historic hospital complex of some 125+ years

the facility in itself is, of course, a heritage asset in its own right, reflected in the statutory protection of the main hospital complex and its chapel. While it is also reasonably well-recorded, some potential for the recovery of archaeological and evidence of its development and history exists, although this would be predominantly of a local, perhaps in some aspects of regional, significance. The likely survival of such evidence varies between the land parcels (as does the archaeological potential) in relation to the past-land use and previous impact.

In line with these considerations, the potential for the presence of significant historic materials in land parcel A and C is considered negligible to low. Land parcel B contains the extant Light Villa (RSK HB1), a building of a probable age of over 100 years. Most significantly, perhaps, is the fact that is directly representative of the mental health care regime at St James Hospital at the time of its inception, and as such, also seems largely unaltered. At this stage, the building is considered a heritage asset of low to medium significance. The remains of the floor levels of Gleave Villa, also present in this land parcel, are of negligible historic significance.



Figure 4. View south-east from the Hospital Main Building



Figure 5. View of St James Hospital Chapel and enclosed setting



Figure 6. View south from road, towards Fair oak



Figure 7. View north-west from Fair oak towards St. James Hospital



Figure 8. View south-west from St.James Hospital Chapel towards Fair oak



Figure 9. View south-east from St.James Hospital Chapel towards Yew House



Figure 10. View south-east from St.James Hospital Chapel towards The Beeches



Figure 11. View north-west from The Beeches towards St.James Hospital Chapel

4.0 Legislation and Guidance



## National Planning and Policy Framework

### Legislation Key Issues

Ancient Monuments and Archaeological Areas Act (1979)

It is a criminal offence to carry out any works on or near to a Scheduled Monument without Scheduled Monument Consent.

Planning (Listed Buildings and Conservation Areas) Act

No works can be carried out in relation to a Listed Building without consent. Designation of an area as a 'conservation area' introduces general controls over demolition and development.

Treasure Act (1996)

The 1996 Act defines what constitutes 'Treasure'. Any find of 'Treasure' must be reported to the local Coroner.

Burial Act (1857) and Disused Burial Grounds (Amendment) Act 1981

Under Section 25 of the 1857 Act, it is generally a criminal offence to remove human remains from any place of burial without an appropriate licence issued by the Ministry of Justice (MoJ), although recent legislative changes indicate that some cases are exempt from this requirement.

Hedgerow Regulations (1997)

A local authority can prohibit the removal of an 'important' hedgerow. Hedgerows can be considered important on grounds of historical

Planning Policy Statement 5 (PPS5)

PPS5 outlines government policy on the treatment 'heritage assets' (including Scheduled Monuments, Listed buildings, Conservation Areas, World Heritage Sites, Historic Parks and Gardens, and Historic Battlefields, but also non-Scheduled sites, including buried or suspected buried remains), within the local plan and development control process.

Register of Parks and Gardens of Special Historic Interest

The Register identifies important Historic Parks and Gardens, which should then be considered by the local planning authority in accordance with PPS5.

Register of Historic Battlefields

The Register identifies important battlefield sites, which should then be considered by the local planning authority in accordance with PPS5.

## Local Legislation

The Portsmouth Plan is Portsmouth's Core Strategy. It is the overarching planning policy document, which forms part of a wider set of local planning policy documents known as the Local Development Framework (LDF).

The LDF will gradually replace the City Local Plan, adopted in July 2006. A number of policies related to the historic environment have been saved, namely:

- DC10 Conservation Areas; and
- DC12 Locally Important Buildings and Structures.

Area-specific policies that have been saved include:

- Policies for Langstone Harbour, EC1, LH1, LH2

## 5.0 Statement of Significance

## Assessing Significance

This is largely a subjective process

Significance is defined in the NPPF glossary (in relation to heritage policy) as:

*“The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage assets physical presence but also from its setting.”*

(NPPF glossary p56)

Setting of a heritage asset is defined as:

*“The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral”*

(NPPF glossary p56)

### Physical impact on buildings within the site

The buildings within the site will all be demolished. Housing will be constructed across the whole site. Access roads to the houses will also be constructed, and the area landscaped. The mature vegetation located in-front of the Grade II Listed chapel will be retained, acting as a buffer between the church and the proposed houses.

A section of the boundary wall adjacent to Locksway

Road, constructed more recently in the 20th century and made up of a modern flush brick wall, will be demolished. The original wall has been subject to many interventions as part of modernisation or redevelopment of the site. The remaining older section that has survived, thought to be part of the original boundary wall, will be retained. The loss of the modern section of the wall will not impact on the setting of the listed assets.

### Non-physical impact

St James's Hospital Main Building (Fig. 2)

In c. 1875 Portsmouth Town Council adopted the powers of the Lunatic Asylums Act of 1853, and after a period of sending locals to the Hampshire County Asylum at Knowle and Fisherton, they resolved to build an asylum on 75 acres of land between Eastney Lake and Velder Creek. (Hampshire Telegraph and Sussex Chronicle: Winchester: 1879). The hospital was designed to be fully self-sufficient. When it was constructed it only consisted of the main building, surrounded by working gardens to the east and west and a cricket ground and pavilion was located to the south (Fig. 4 1910 OS map). The grounds of the hospital were left in an incomplete state, the plan being that the patients themselves would layout, plant and tend to the grounds as part of their treatment. The wider area around the hospital was largely rural at the time, with Velder Creek located to the north and Eastney Lake to the south (Fig. 4, 1910 OS map).

The Hospital was built on a symmetrical courtyard-

and-wing plan derived from Renaissance and later grand country houses and palaces, but finished in an eclectic version of 13th-century French Gothic, of c. 1878-1879, by George Rake. It is constructed of red brick in English bond with stone dressings. It has steep pitched Welsh slate roofs, and has a symmetrical box plan with projecting wings. The main entrance block is three storeys, with five bays; each flanking block is two-storeys, with six bays; the far left and right towers are both four-storeys, with one bay, and each of the two south facing projecting blocks are two-storeys, with seven bays. The significance of this asset is largely derived from its historical, evidential and aesthetic value of its built fabric, which will not be harmed by the proposed development.

The gardens would have been used in order to help treat the patients (as well as helping with the self-sufficiency of the hospital), and the cricket ground would have also been used as an amenity/treatment for the patients. The hospitals contextual relationship with the gardens and cricket ground therefore contribute to the historical value of the asset, and the views of these elements contribute to the aesthetic value, which relate to the experience of the asset. These key relationships and views will not be harmed by the proposed development within the Phase 1 Land.

The rural location of the hospital would have been one of the reasons for originally siting the hospital here, in order to enable the hospital to be self-sufficient. Its rural setting is no longer intact, as it was developed throughout the 20th century. The rural location of the asset is therefore only understood through documentary

and cartographic sources, rather than its current setting. Further development of the area would therefore cause no additional change to the setting of this asset.

The church and boundary walls (and farm buildings, no longer present today) were not completed until later in 1879. The hospital buildings also included a dairy, laundry, brewery, shoe makers and tailors. The land to the east was developed as part of the hospital during the early 20th century, and the land to north was developed as part of Portsmouth's expansion from the mid to late 20th century. The development within the Phase 1 Land to the south-east of the main hospital building would not harm any of the surviving visual and contextual relationships from the original late 19th century hospital, which contribute to the historical value of the asset.

The hospital and chapel make an important contribution to each other's significance, as they form an important historical group. The proposed development is located to the south-east so would not harm this contextual relationship.

The area surrounding the hospital has been heavily modified throughout the 20th century. In the 20th-century a large part of Eastney Lake was in-filled with domestic and dockyard waste as was Milton Lake, the former inlet to the north of the site, including Velder Creek. These areas now form Milton Common and Velder Avenue. Urban development had extended to the south and west of the hospital by the mid- 20th century, urbanising the original rural setting of the hospital. The gardens to the east and west of the hospital and the cricket ground to the south remain today, preserving

the immediate setting of the hospital. The proposed development within the Phase 1 Land is located to the south-east of the hospitals immediate setting so would not harm this.

Additional facilities were constructed within the hospital grounds throughout the 20th century, including the construction of six 'villas' which were used to provide open wards for patients, two of these residential units are located within the Phase 1 Land (Fairoak and the Beeches). The relationship between the hospital main building and villas contribute to the understanding of the historical development of the hospital. Two of the villas have already been demolished. Should an additional two be demolished as part of the proposed development, two would remain, preserving the relationship between the hospital main building and the villas. The historical value of the hospital main building, derived from the relationship between it and the villas, would remain unharmed. Alteration of these buildings into new residential homes would continue the character of changing buildings surrounding the key hospital buildings (the main hospital building and chapel).

#### St James's Hospital Chapel (Fig. 3)

The chapel was built in 1879, designed by George Rake as part of St James's Hospital. It is constructed of knapped flint with stone dressings, with Welsh slated roofs. It has a five-bay nave, with one-bay apsidal chancel, a south-west porch, west bellcote, and north vestry. The significance of this asset is partially derived from its evidential, historical and aesthetic value of its built fabric, which will not be harmed by the proposed

development.

The church was designed as a place of worship for the patients at St James's Hospital. The relationship of the church with its surrounding community (the patients of St James's Hospital), its communal value, makes an important contribution to significance of the church. At the time that the chapel was built St James's Hospital was contained within the main building, to the north-west of the chapel. The proposed development within the Phase 1 Land, to the south of the chapel, would not harm the important relationship between the chapel and the hospital main building. Additionally, the vegetation surrounding the chapel would largely screen the proposed development site from this asset (Fig. 7, 10).

The area to the south of the chapel was originally largely undeveloped. Fairoak and The Beeches villas were constructed within this open space between 1910 and 1932 (most probably after 1928) and Yew House, directly opposite the chapel, was constructed considerably later in the 20th century (post 1972). Further alteration to the previously open landscape to the south of the chapel will not harm the current setting.

It is clear from historical mapping and photographs that the two villas were originally separated from both the main hospital building and the chapel by significant landscaping including a number of mature trees. This created a physical barrier between the listed buildings and the villas, which largely survives to this day. This intervening vegetation means that there is little inter-visibility between the area of Phase 1 Land and the hospital's main building (Figs. 6, 9). The proposed

development will not alter any of the important elements of this assets setting, and will not harm those heritage values which contribute to its significance.

As discussed above the evidence suggests that the chapel was largely surrounded by planted landscaping, including a number of mature trees, so that by the time the villas were constructed to its south a significant physical and visual barrier existed.

The proposed apartment building immediately opposite the chapel is located close to where Yew House was originally sited but pushed as far East as Root Protection Areas will allow. This opens up almost the entire frontage of the chapel to the south, allowing uninterrupted views on the approach from Fair Oak Road. The apartment building will be set back 24m from the chapel, maintaining open space. The row of mature trees that stand within the open space to the south of the chapel will be retained and these will partially screen the apartment building from the chapel. At ground level the landscaping improvements will support a garden in keeping with the chapel setting.

The setting of the chapel overall is enhanced by this combination of landscaping improvements, retention of trees and set back of the apartment building opposite, which would mitigate any impact of the new development.

Milton Locks Conservation Area (including the Grade II Listed 19th-century sea lock and basin)

Milton Locks was designated as a conservation area

in 1977 and altered to include the remainder of the Langstone Harbour Fisherman's Association pound to the west of the lock in December 1996. The Conservation Area was not designated due to the buildings located within the area, but rather because of an individual piece of industrial archaeology. A guidelines publication was produced by the Portsmouth City Council in relation to the Milton Locks Conversation Area.

The sea lock and the basin are the largest examples of this kind in this part of the country. The structure is Grade II Listed. They are the only surviving remnants of the Portsea Canal which opened in 1822 to connect Langstone Harbour and Land port as part of the Portsmouth and Arundel Canal. The canal was an ambitious project planned to link the city with London via the Wey and Arun Canal, the River Wey and the River Thames. However, because of the time it had taken to construct the waterway, other cheaper and quicker methods of transport were developed, leading to the early demise of the Canal only eight years after it was first opened.

The Canal fell into disrepair and was closed in June It was filled in the 1890's. The route of the canal, which is now filled in, ran to the south of the site. The proposed development site would therefore not harm the historic relationship between the sea lock and the canal route.

Today the remaining canal basin is used by small boats belonging to Langstone Harbour Fisherman's Association. There is an abundance of vegetation within the Conservation Area, which is a positive feature giving

## Statement of Significance

the area a rural atmosphere that encourages wildlife as well as human recreation. This vegetation, and intervening 20th century development means that there is no intervisibility between the Conservation Area and the proposed development site.

Re-development within an area of land located c. 300m from the Conservation Area would not harm its significance. This part of the landscape already contains development. Further development, on a similar scale, would therefore not change the character of this area. Additionally, the site has no visual, historical or functional relationship with the Conservation Area.

Locally listed Milton Infant and Junior School (Fig. 2, 4)

Milton Infant and Junior Schools was built in 1905. This asset is located c. 620m south-west of the proposed development. Intervening 20th century development means that there is no intervisibility between the asset and the proposed development site. The site has no visual, historical or functional relationship with this asset so would not harm its significance.

The historic value of the site is unexceptional. It does have some heritage value as part of the setting of adjacent and nearby listed buildings, but this is limited and is visual.

6.0 Heritage Impact Assessment

### Proposed Works

- Provision of up to 107 new market and affordable homes in a sustainable location and close to existing schools, services and employment areas;
- Provision of new public open space, including a new play space and walking routes with connections to the local area;
- Provision of vehicular and pedestrian links onto Locksway Road and Fair Oak Road, ensuring good connections with the adjacent bus stops and National Cycle Network Route 222;
- Establishment of a permeable and legible street hierarchy structured around two separate access points;
- Retention, management and enhancement of existing trees to promote biodiversity, integrate the development with the existing landscape character and minimise its visual impact;
- Provision of designed landscape garden in character with the adjacent Grade II listed chapel to preserve and enhance its setting;

### Impact Assessment of the Proposals

The buildings within the site will all be demolished. Housing will be constructed across the whole site. Access roads to the houses will also be constructed, and the area landscaped. The mature vegetation located in front of the listed Chapel will be retained, acting as a buffer between the Chapel and the proposed houses.

## NPPF Paragraphs

NPPF – Conserving and enhancing the historic environment

The following paragraphs of the NPPF section 12 "Conserving and enhancing the historic environment" do not apply directly to the impact assessment of this application.

126, 127, 129, 130, 133, 136, 138, 140, 141

The following paragraphs are relevant:

128. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum, the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

This report describes the building and its site and assesses their significance.

129. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

The site is located within the administrative boundary of Portsmouth City Council. The Local Development Plan for the Portsmouth District is formed by the principle planning document The Portsmouth Plan. This plan was adopted in January 2012 and replaced many of the former policies of the Portsmouth City Local Plan. The policy of relevance to this assessment within The Portsmouth Plan is Policy PC232: design and conservation. This policy states that 'Protection and enhancement of the city's historic townscape and its cultural and natural heritage, in particular its links to the sea' will be sought in new development.

130. Where there is evidence of deliberate neglect or damage to a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.

There is no evidence of deliberate neglect or damage to the site or nearby listed buildings.

131. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

These proposals:

- Sustain and enhance the significance of the listed building at the core of the site
- Maintain the economic viability of the listed building by replacing the marginally viable outlying buildings with a more economically viable alternative, while retaining the heritage asset that is the listed building and its presence in the streetscape and immediate urban environment.

The new development that is part of these proposals makes a positive contribution to the local character and distinctiveness by masking the negative impact of the large modern buildings which surround the site on its west and southern sides.



132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a Grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, Grade I and II\* listed buildings, Grade I and II\* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.

Great pains have been taken in consultation with the Local Planning Authority to sustain and enhance the setting of the listed building and nearby heritage assets through the placement and design of the proposed new works, in particular to enhance the listed Chapel and the area as a whole by screening the negative visual impact of the nearby modern buildings on the west and south sides of the site.

There are no designated parks or gardens, protected wreck sites, battlefields, Grade I or II\* buildings, registered parks or gardens or World Heritage Sites affected by these proposals.

133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities

should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

The proposals do not lead to substantial harm to or loss of any of the designated heritage assets.

134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

135. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

The effect of the proposals on the significance of non-designated assets has been discussed in pre-application meetings with the Local Planning Authority and any concerns raised have been mitigated as far as possible, mainly by adjusting the site footprint and massing of the proposed new development and the choice of form and detail of the apartment buildings nearest the Chapel.

136. Local planning authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.

There is no loss in part or in whole of any identified heritage asset.

137. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.

138. Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 133 or less than substantial harm under paragraph 134, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.

The proposals are not within a Conservation Area or a World Heritage site. However, they do enhance the setting of the listed building as outlined above.

139. Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

Having consulted the HER and given the extent of previous modern building construction on the site, archaeological finds of this significance are not expected within the footprint of the proposals.

140. Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.

There are no proposals for enabling development.

141. Local planning authorities should make information about the significance of the historic environment gathered as part of plan-making or development management publicly accessible. They should also require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible.<sup>30</sup> However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.

This heritage assessment provides information about the significance of the listed building and its setting and are the first stage in recording the asset and advancing understanding of it. It has been carried out in a manner proportionate to the importance of the proposed impact and has guided the development and discussion of the proposals in the pre-application stages.

169. Local planning authorities should have up-to-date evidence about the historic environment in their area and use it to assess the significance of heritage assets and the contribution they make to their environment. They should also use it to predict the likelihood that currently unidentified heritage assets, particularly sites of historic and archaeological interest, will be discovered in the future. Local planning authorities should either maintain or have access to a historic environment record.

The HER has been consulted to gain an impression of the likelihood of unidentified heritage assets and the conclusion is that this will be low. However, an archaeological watching brief on any excavations is recommended.

## Conclusion

There are no designated heritage assets within the Phase 1 Land. Potential non-physical effects upon designated heritage assets in the wider site vicinity have been assessed, and development would not harm the setting or significance of any such assets. Development would thus not lead to 'substantial harm or total loss of significance' or to 'less than substantial harm' to any designated heritage assets and would not be contrary paragraphs 132-134 of the NPPF; Sections 66(1) and 72(2) of the 1990 Planning Act; or development plan policy within Portsmouth City's Local Plan.

There are four undesignated buildings located within the Phase 1 Land as well as part of the original boundary wall. Regarding the Framework, any adverse effect upon them should be judged according to the scale of harm and their significance, and weighed against the public benefits of the development (paragraph 135 of the Framework).

Fairoak and the Beeches were built c. 1928. They were two of six "villas", all erected at the same time to provide extra facilities for the hospital. They are of little architectural and historical significance. Their demolition would therefore cause harm to an undesignated asset of limited significance. Sufficient mitigation of the harm caused by their demolition would be an English Heritage Level 2 photographic record with a measured ground plan.

Yew Tree House is a single-storey prefab structure, dating to post 1983. The Harbour school was built between 1962 and 1972, and is typical of the modern designs espoused by most education authorities in this period. Both of these buildings are of no architectural or historical interest. Their demolition would therefore cause no harm to a heritage asset, meaning that they require no mitigation.

The section of wall adjacent to Locksway Road that is to be demolished is of 20th century construction, and its demolition would cause no harm to a heritage asset.

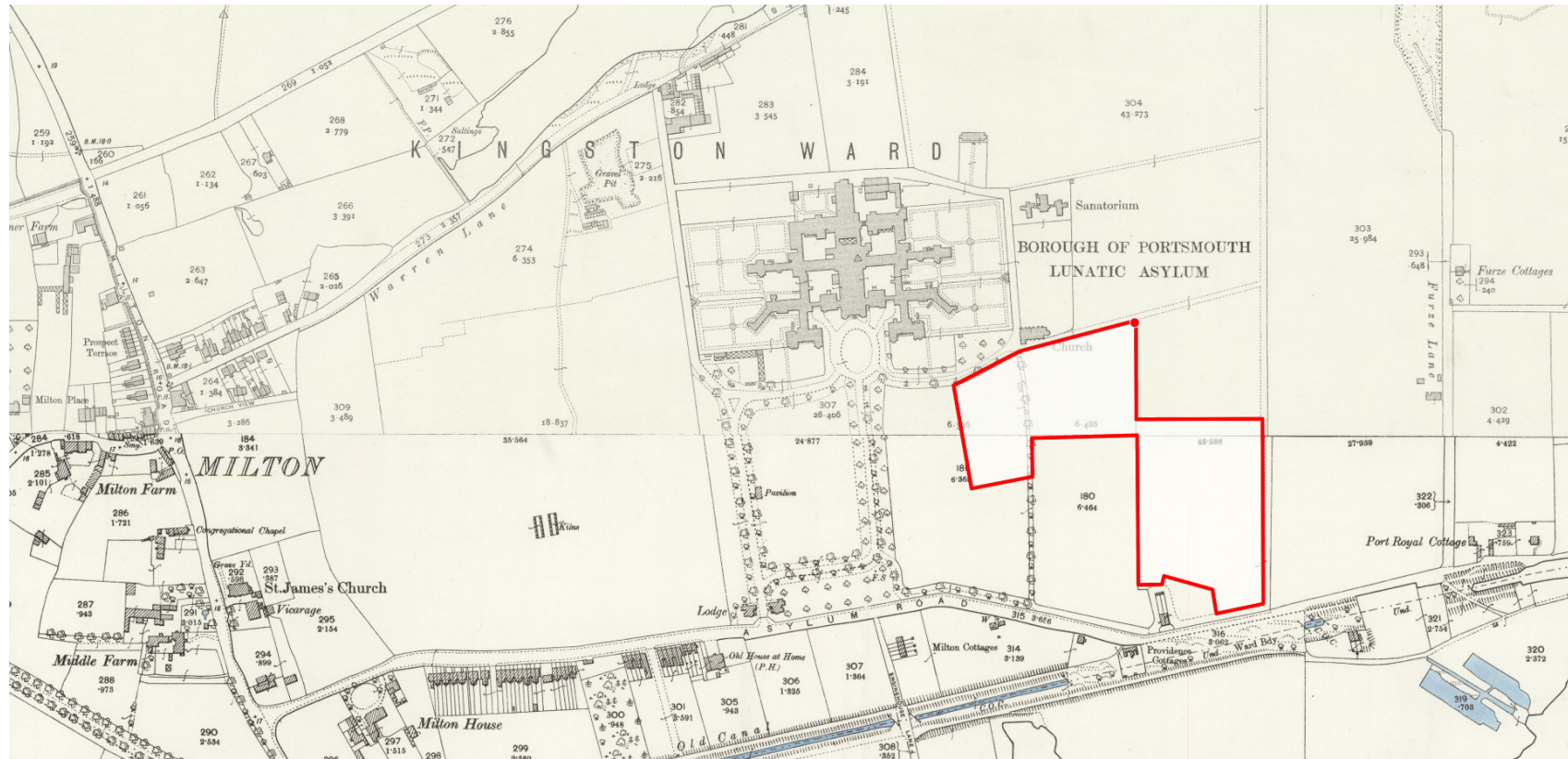


Figure 12. 1910 Ordinance Survey Map of the Site

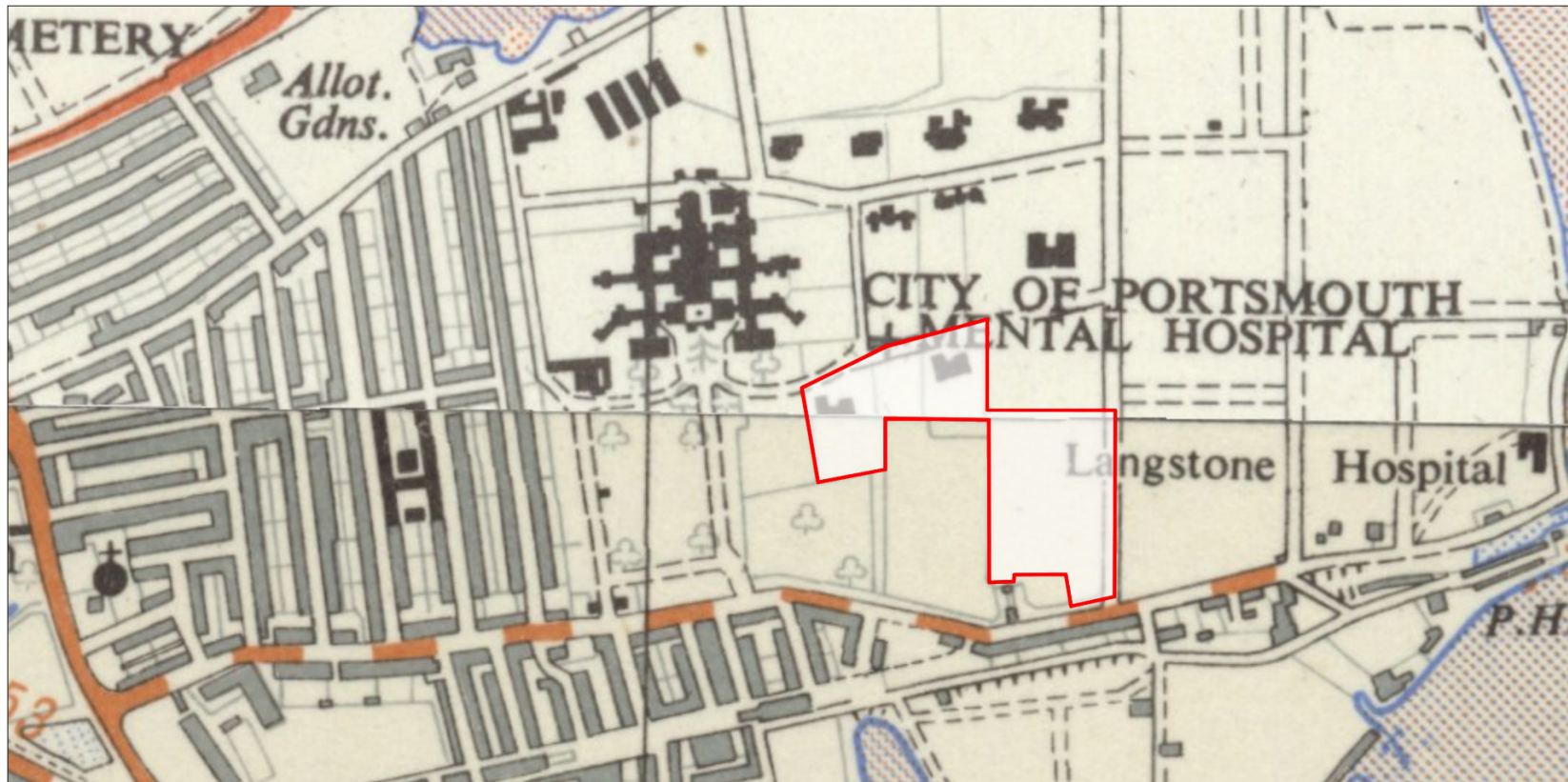


Figure 13. 1932/33 Ordnance Survey Map of the Site

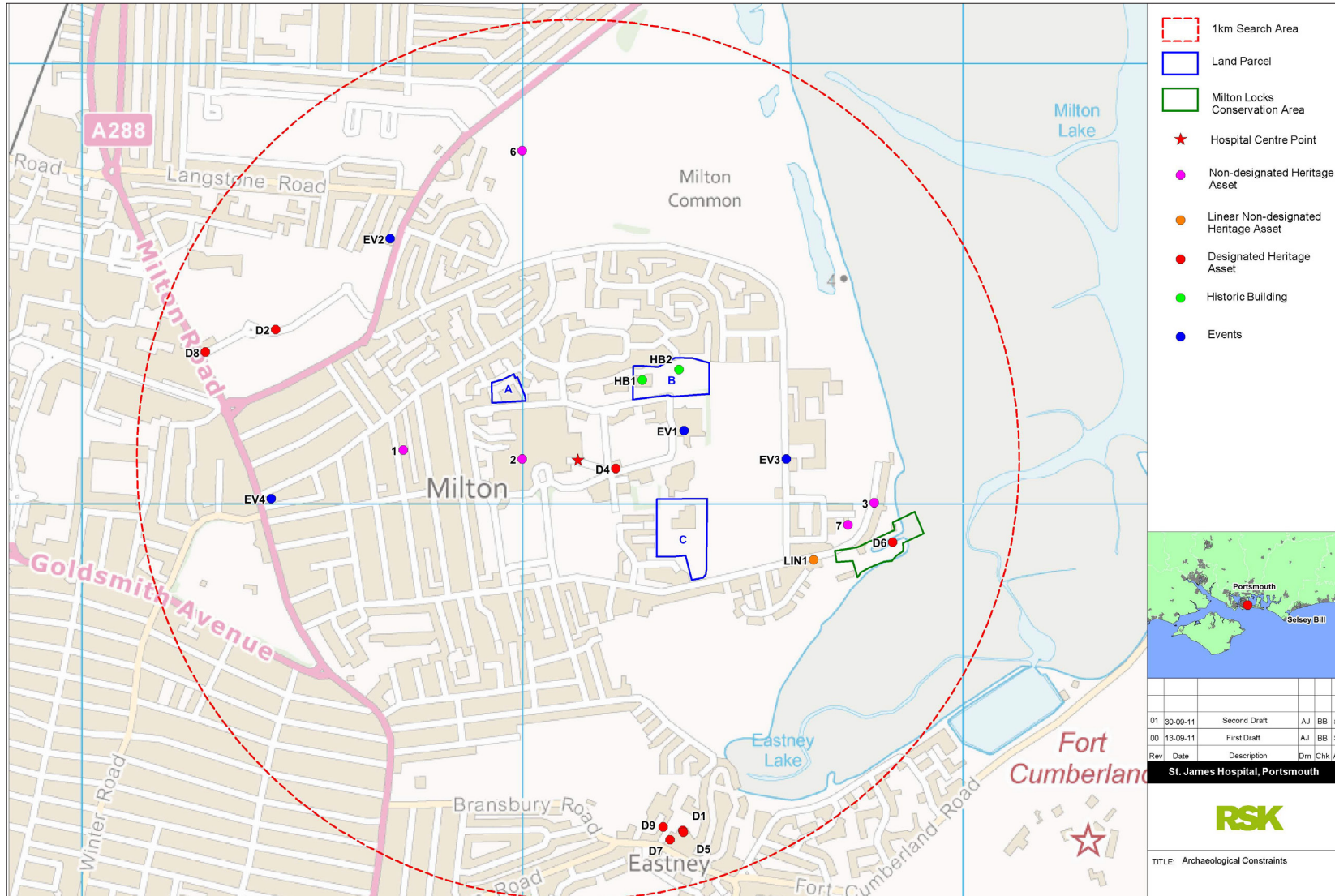


Figure 14. Archaeological Constraints

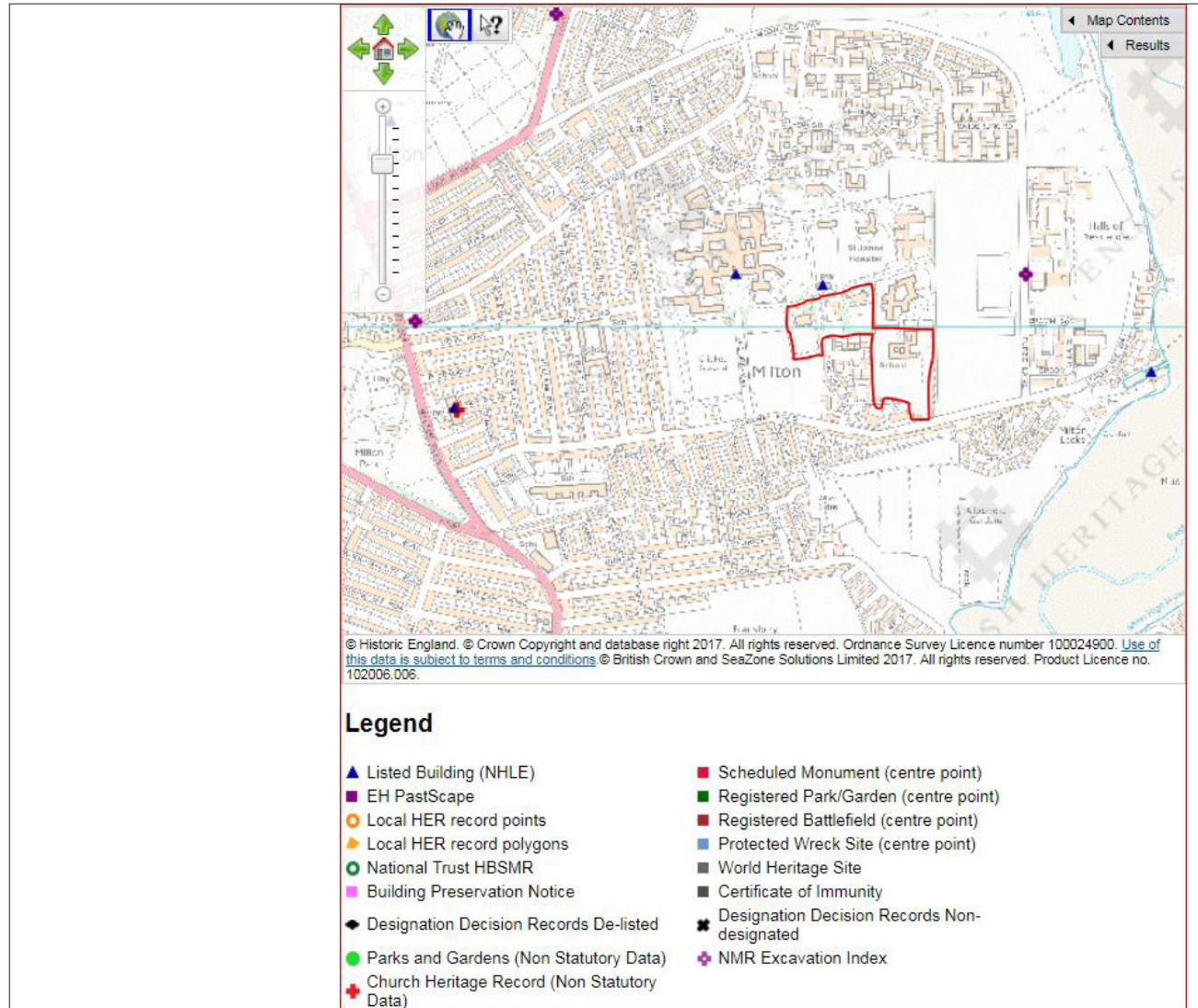


Figure 15. Map of Designated Assets within 1Km





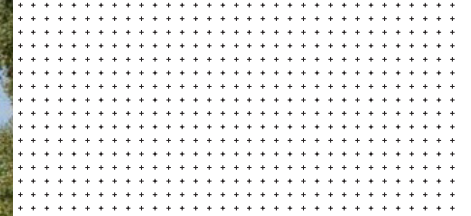
**ST JAMES PLOT 1 OUTLINE PLANNING APPLICATION**

**HERITAGE IMPACT ASSESSMENT  
FEBRUARY 2018**

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Curtilage Listing Report  
**Fairoak + The Beeches**  
8243 Rev A01 February 2021



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## 1.0 Introduction

This report is written expressly to consider the curtilage listing of the villas Fair oak + The Beeches at Locksway Road, Southsea, in relation to the Grade II Listed St James Hospital and Chapel.

The heritage 'value' being considered here will focus on any cultural association between the villas and the hospital to establish if a curtilage relationship existed or exists.

It is typical of hospital sites that curtilage listing is less straightforward as the buildings have had to evolve and adapt to changing need and buildings are often extended or added to on an ad-hoc basis; and St. James Hospital is no exception.

### Summary

The villas are not specifically mentioned in the detailed listing in 1998, indicating that these villas were not considered significant at the time of listing.

The villas are not situated in a Conservation Area and nor are any of the listed assets at St. James Hospital.

The cultural value of the buildings is negligible in their own right and this has been confirmed by Historic England in their response to a listing request submitted by a local resident in 2018 to get the villas listed in their own right which concluded that the buildings were not worthy in architectural or cultural terms of addition to the list.

In terms of contribution to historic setting, the villas are benign and in their current condition do not contribute or detract on the setting of the listed buildings St James Hospital and the Chapel. The villas are visually separated from the hospital by a mature belt of vegetation which creates a strong buffer and a pleasant setting to the listed building.

While the hospital and chapel make an important contribution to each other's significance, the Villas are located to the South-East and do not contribute to the significance of this relationship and their removal would therefore have nil impact.

The historic setting of the chapel is essentially the roadside and open lawns to the West and North and there is virtually no curtilage to the chapel.

Redevelopment of the former villas to the south would simply continue the character of changing buildings surrounding the key historic buildings (hospital and chapel). The villas are part of the character of expansion buildings surrounding these key historic buildings.

## 2.0 Site Location

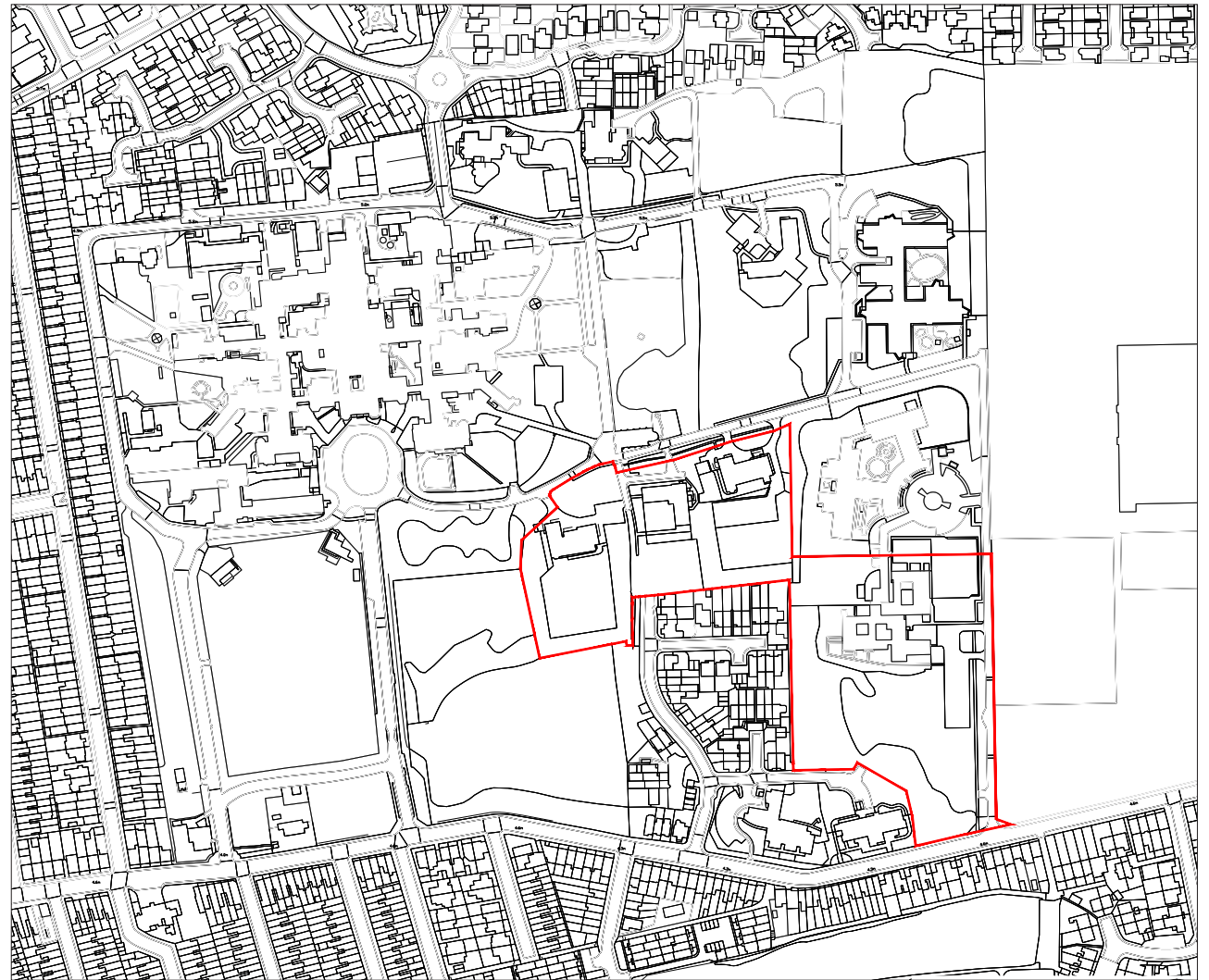
### Location

The site is located in the Milton area in South Eastern Portsmouth, North of Lockway Road and forms part of the St. James Hospital and Langstone Campus site.

### Site Overview

The site is currently occupied by 4 buildings, 3 of which previously provided various healthcare services, and a building, previously known as the Harbour School.

The site has a relationship with adjacent residential areas and remaining NHS buildings including St. James Hospital and chapel to the North of the site and more recent NHS buildings to the East. The villas face the Chapel across Lockway Road and there is mature tree planting across the site. The rear of the villas, providing car parking, services yard and bin storage, face the chapel, but their designed orientation faces South.



Site Location Plan



*View South-East from the Hospital Main Building*



*View of St James Hospital Chapel + enclosed setting*



*View South from road, towards Fair Oak*



*View North-West from Fair Oak towards St. James Hospital*





*View South-West from St.James Hospital Chapel towards Fair oak*



*View North-West from The Beeches towards St.James Hospital Chapel*



*View South-East from St.James Hospital Chapel towards The Beeches*

### 3.0 Setting + Context

The following is a summary of the key elements of the site's historical development.

The town of Portsmouth was founded in the 12th century in the south-western corner of Portsea island.

Portsmouth increased in size and importance becoming one of England's major naval bases. The site of St James Hospital, on the far eastern side of the island, occupied land on the fringes of the village of Milton; an area of considerably different character to the burgeoning town and port to the west.

The town of Portsmouth expanded across Portsea Island over the course of the 19th and 20th Centuries enveloping the existing villages and consuming the island's farmland, becoming a city in 1926.

Significant development does not become apparent until the early years of the 20th Century when the land around Milton village is developed.

Historic mapping demonstrates that the area around the site remained farmland until St James Hospital was constructed between the First Edition Ordnance Survey (OS) mapping dated from the 1860s and 1870s and the Second Edition OS of 1910.

#### St James Hospital

St James Hospital was founded as the Portsmouth Borough Lunatic Asylum, built between 1875-79 to a design by a local architect, George Rake.

The wider area around the hospital was largely rural at the time it was built.

The gardens would have been used in order to help treat the patients (as well as helping with the self-sufficiency of the hospital).

According to an unpublished account by Purvis (held at the Portsmouth History Centre), the hospital was built on 'poor land' that had not been developed prior to the hospital construction.

The facility was designed to operate, as far as possible, on a self-sufficiency principle, and originally included a farm, dairy, laundry, brewery, show maker and tailor.

Following the construction of the facility, according to Purvis' account

*"...the land was 'left in the same rough state as when purchased, the result of a deliberate policy to have much of the grounds and gardens layed (sic) out by patients..."*

Over time, the facilities were extended, first through the construction of a sanatorium in 1893, later followed by that of additional patients' accommodation in the form of outlying 'villas' between 1907 and 1931.

In these blocks, patients were separated according to their financial and gender status.

Further additions included a short-lived isolation hospital in 1914. The hospital continued to operate as an NHS mental health and training facility throughout the 20th and into the 21st century, although as part of the governmental 'Care in the Community' strategy the site has been subject to gradual closure in favour of community-based facilities.



St James Hospital



*The Chapel*

Ordnance Survey mapping from 1910 and from the early 1930s shows the expansion of the hospital throughout the early 20th Century.

Additional facilities included a sanatorium built in 1893, a mortuary dating from the 1940s and a series of villas located to the North-East and East of the main hospital building, that were constructed over the course of the early 20th Century.

Modern series Ordnance Survey mapping (not shown) depicts change at the site throughout the mid-late 20th Century and it can be seen that other modern buildings were added around the hospital's periphery. The core hospital buildings and areas of open space however appear to remain relatively unchanged throughout the later 20th Century.

### **The Chapel**

The hospital chapel, Grade II Listed, was built separate to the hospital and in stone, perceived as preferable at the time in order to give inmates a semblance of 'normal' life.

It is essentially a simple single space with external decoration almost exclusively focused on the west front and the South-West porch, which would have been visible to the congregation as they approached from the hospital.

### **Fairoak + The Beeches**

The villas were originally called Brunel and Dickens respectively and were built as private patients' blocks. Documentary evidence suggests that they were commissioned in 1907 as part of "Four New Villa Blocks (two for Paupers and two for Private Patients) at the Lunatic Asylum, Milton, Portsmouth".

They were designed by local architect Albert E Cogswell, of the practice of Rake & Cogswell and there are two possible dates of construction.

There is documentary evidence of a contract of 1907.

The other possibility is that they were built after the years following the First World War. Indeed they are present on the OS 1932 map, but not on the OS 1910 map. Stylistically the buildings appear Edwardian but may not have been built until the inter-war period.

Cogswell, like Rake, was a prolific local architect and his work on the villas consisted of two distinct types, one pair for working chronic inmates North of the sanatorium and a second pair to the South East of the main building for private, fee paying patients.



*Fairoak Villa*

Each villa was identified by a name – the private villas after eminent Victorians with local connections, (Isambard Kingdom) Brunel and (Charles) Dickens, the working villas after local dignitaries associated with the asylum, (Sir William) King and (Mayor William) Pink.

The exteriors of each type differed considerably, with much more decoration notable on the private villas in comparison with bare brick of those intended for paupers.

Fairoak + The Beeches were erected at the same time to provide extra facilities for the hospital, intended to provide open wards for patients who were considered suitable for such accommodation. Mobility was a governing factor and patients were neither expected or encouraged to remain in their beds during the day. Prior to this, all wards were locked as well as the main door of the hospital and its gates.



*The Beeches*

The two buildings were designed as large Edwardian style houses, in a very conservative style for the actual period as were the two surviving villas to the North.

Their institutional character is given away only slightly, by the flat-roofed sanitation blocks at the North-East corners and the sun verandas at the rear (South side: that on The Beeches has been removed).

Verandas go out into large gardens surrounding the villas for patients to sit out and enjoy the sunshine and are set in their own “grounds”, within the overall hospital gardens.

The buildings have been modernised inside with a number of external alterations. Fairoak has had a lean-to added to the front elevation, forming an entrance lobby, this addition post-dates 1970.

Double-glazed uPVC windows have been inserted on much of the ground floor facing North.

The Beeches has had a free-standing pavilion added near its north-east corner, connected by a curving path, also dating to post-1970.

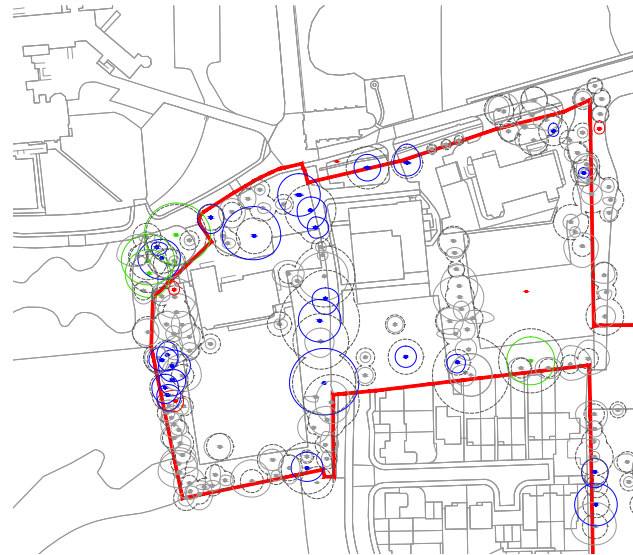
The houses are very ordinary, old-fashioned designs, typical of large houses of the period 1890-1920 and decidedly conservative, even in the late 1920s. They exhibit no interesting aspects of design or material, and are of limited architectural significance.

The buildings have some historical significance as examples of purpose-built structures related to new ideas, in the late 1920s, of treating mentally-ill patients.

However, the buildings do not clearly express these ideas as they contain no design elements that overtly indicate this history. Consequently, they are of little historical significance.

Better examples of hospital architecture and design are documented by the Royal Commission on the Historical Monuments of England (RCHME) English Hospitals 1660 - 1948 which analyse the changing ideas and institutions that created them.

## 4.0 Significance



Fairoak, Yew House + The Beeches

Historic England were asked to assess the villas for listing and this application was rejected.

The significance of the villas is summed up in the conclusion of the Historic England listing assessment report (following) and is not considered further in this report.

### Quote below from Historic England 09.10.2018

“Judged against the criteria, and the considerations in our supplementary guidance, and from the information supplied, Fairoak + The Beeches are not recommended for listing for the following principal reasons:

#### Degree of Architectural Interest

They are well-constructed but plain and neither quite symmetrical nor boldly asymmetrical. Later external alterations include the loss of chimneystacks, the insertion of roof-lights, alterations to windows and the loss of a veranda.

#### Degree of Historic Interest

They are not innovative as buildings providing for mental health patients, as there are earlier examples of detached houses or villas used as asylums dating from the later C19.

#### Group Value

With the main St James Hospital building of 1875-1879 and chapel of 1879, both by George Rake, is acknowledged but does not outweigh the lack of architectural and historic interest in the national context.

#### Conclusion

Fairoak + The Beeches are not recommended for statutory listing. However they are clearly of some local architectural and historic interest.”

### Summary

In line with other documentary evidence, map regression shows the site of St James' Hospital to have been undeveloped agricultural land prior to its construction.

Land situated around the hospital ground periphery, furthermore, continued in this way until the mid-/late 20th Century, with the extant Light Villa being the first to be constructed (most likely along with the other northern villas in 1907, although this is not specifically mentioned in Purvis' account), followed by Gleave Villa (now demolished) in its western part in 1931.

The extant V-shaped stores and school follow between 1963-1970.

Map regression demonstrates that areas of currently open land (gardens and recreational ground) are unlikely to have experienced any noteworthy impact in the post-medieval and modern periods.

This is most likely due to the location of the site in marginal land, noted to have been of 'poor' quality in other documentary sources, probably as a result of the proximity of the estuary, and likelihood of flooding prior to formal reclamation.

## 5.0 Curtilage Consideration

This is largely a subjective process

Significance is defined in the NPPF glossary (in relation to heritage policy) as:

*“The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage assets physical presence but also from its setting.”*

(NPPF glossary p56)

Setting of a heritage asset is defined as:

*“The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral”*

(NPPF glossary p56)

### St.James Hospital

St James' Hospital Main Building in 1875 Portsmouth Town Council adopted the powers of the Lunatic Asylums Act of 1853, and after a period of sending locals to the Hampshire County Asylum at Knowle and Fisherton, they resolved to build an asylum on 75 acres of land between Eastney Lake and Velder Creek. (Hampshire Telegraph and Sussex Chronicle: Winchester: 1879). The hospital was designed to be fully

self-sufficient. When it was constructed it only consisted of the main building, surrounded by working gardens to the East and West and a cricket ground and pavilion was located to the South 1910 OS map). The wider area around the hospital was largely rural at the time, with Velder Creek located to the North and Eastney Lake to the South (1910 OS map).

The significance of this asset is largely derived from its historical, evidential and aesthetic value of its built fabric, which is not affected by the villas.

The gardens would have been used in order to help treat the patients (as well as helping with the self-sufficiency of the hospital), and the cricket ground would have also been used as an amenity/treatment for the patients.

The hospital's contextual relationship with the gardens and cricket ground therefore contribute to the historical value of the asset, and the views of these elements contribute to the aesthetic value, which relate to the experience of the asset. These key relationships and views are not dependant on the villas, which are physically further removed from the main hospital building.

The rural location of the hospital would have been one of the reasons for originally siting the hospital here, in order to enable the hospital to be self-sufficient. Its rural setting is no longer intact, as it was developed throughout the 20th Century. The rural location of the asset is therefore only understood through documentary and cartographic sources, rather than its current setting.

The wider area surrounding the hospital has been heavily modified throughout the 20th Century. A large part of Eastney Lake was in-filled with domestic and dockyard waste as was Milton Lake, the former inlet to the North of the site, including Velder Creek. These areas now form Milton Common and Velder Avenue.

Urban development had extended to the South and West of the hospital by the mid- 20th Century, urbanising the original rural setting of the hospital. The gardens to the East and West of the hospital and the cricket ground to the South remain today, preserving the immediate setting of the hospital. The villas are located to the South-East of the hospitals immediate setting and would not affect this.

The church was completed later in 1879. The land to the East was developed as part of the hospital during the early 20th Century, and the land to North was developed as part of Portsmouth's expansion from the mid to late 20th Century. The villas do not affect the surviving visual and contextual relationships from the original late 19th Century hospital, which contribute to its historical value. The hospital and chapel make an important contribution to each other's significance, as they form an important historical group. The villas do not affect this contextual relationship.

### St James' Hospital Chapel

The chapel was built in 1879, designed by George Rake as part of St James's Hospital. The significance of this asset is partially derived from its evidential, historical and aesthetic value of its built fabric, not with any association with the villas.

The church was designed as a place of worship for the patients at St James' Hospital. The relationship of the church with its surrounding community (the patients of St James' Hospital), its communal value, makes an important contribution to significance of the church.

The Lunacy Acts of the 1840s made the provision of asylums for pauper lunatics compulsory and instituted a body of Commissioners in Lunacy. Commissioners insisted on the provision of a chapel and in 1887 they recommended that chapels should be detached. At the time that the chapel was built, St James' Hospital was contained within the main building, and the chapel was orientated to face the hospital. The villas do not affect the important relationship between the chapel and the hospital main building.

The area to the South of the chapel was originally largely undeveloped. Fair oak and The Beeches villas were constructed within this open space between 1910 (as they are not identified on the 1910 OS mapping) and 1932 (most probably after 1928) and Yew House, directly opposite the chapel, was constructed considerably later in the 20th Century (post 1972).

Further alteration to the previously open landscape to the south of the chapel will not harm the current setting.

It is clear from historical mapping and photographs that the two villas were originally separated from both the main hospital building and the chapel by established planting including a number of mature trees.

This created a physical barrier between the listed buildings and the villas, which largely survives to this day. This intervening vegetation means that there is little inter-visibility between the area of Phase 1 Land and the hospital's main building. The proposed development will not alter any of the important elements of this asset's setting, and will not harm those heritage values which contribute to its significance.

As discussed above the evidence suggests that the chapel was largely surrounded by planted landscaping, including a number of mature trees, so that by the time the villas were constructed to its south a significant physical and visual barrier existed. The mature vegetation located in-front of the Grade II Listed chapel acts as a visual buffer between the church and the villas and loss of the villas will not affect the setting of the chapel.

#### **Layout**

It is typical of hospital sites that buildings are extended, added and removed on an ad-hoc basis in response to evolving need and operational function. This makes interpreting curtilage listing with regards to layout complex.

There is nothing explicit in the original built platform of the St James site as illustrated on the 1898 map to suggest that later additions of the villas were located or set out in response to a masterplan or originally designed response to the surrounding landscape. Indeed, it is indicated in Purvis that the surrounding land has been *"left in the same rough state as when purchased, the result of a deliberate policy to have much*

*of the grounds and gardens layed (sic) out by patients..."*

The villas are placed within their own grounds with the main elevations orientated south and do not express any direct relationship to either the Hospital or Chapel. They are interpreted independently within the wider landscape and screened via mature planting reducing intervisibility.

The historic value of the site of the villas is unexceptional. It does have some heritage value as part of the setting of adjacent and nearby listed buildings, but this is limited and is visual.

Several NHS Trusts have at various times been responsible providing services within the wider St James estate, and as of 1998 the 'main' St James Hospital, The Beeches and Fair oak were providing services under different Trusts and operating independently.

Fair oak and Beeches were operated as independent units by Southern Health and Portsmouth City Primary Care Trust. Fair oak provided low security mental health long term beds and The Beeches provided Community Mental Health. At the time of listing, the two villas would have been operating as independent and self sufficient units, albeit from the main hospital site, providing different care needs.

Within the NHS, Trusts manage their own property portfolios which are run independently for operational purposes.

## 6.0 Response to MNPF

The full text of the Milton Neighbourhood Planning Forum statement in support of curtilage listing is quoted below in italics. Our response (highlighted in red) challenges assumptions within this statement.

*“The Milton Neighbourhood Planning Forum believes that the Edwardian Villas associated with the care and treatment of mentally ill patients within the estate of the Grade II Listed Victorian Asylum, St James’ Hospital, should be considered as curtilage listed. This is contrary to the advice presented to Portsmouth City Council by an appointed QC.*

*There are three key factors considered when determining curtilage listing: ownership, physical layout, and function. This paper focuses on the latter two as there is no contention over the ownership status of the villas either now or in the past.”*

Although all of the buildings within the Estate are under the umbrella of the NHS they have at various times been operated by separate trusts within the NHS, and these trusts are responsible for different aspects of healthcare and operate with a degree of interdependence. St James Hospital was founded as the Portsmouth Borough Lunatic Asylum. The hospital continued to operate as an NHS mental health and training facility throughout the 20th and into the 21st Century, although as part of the governmental ‘Care in the Community’ strategy the site has been subject to gradual closure in favour of community-based facilities.

*“Arthur Edward Cogswell ‘hospital architect’, prolific over five decades in Portsmouth and Hampshire, worked with George Rake, in 1879, on building the main hospital, and was then responsible for most of the extensions, and was still flourishing with the construction of the mortuary in 1932.*

*They were built in 1907 as opposed to the later villas of 1927 and 1930 which were built as directed by the 1913 Mental Deficiency Act.”*

There is conflicting evidence for the precise date of construction, as evidence only gives a date of commissioning. Plan regression shows that development expanded eastwards and southwards as the evolving accommodation demand increased and the requirement moved more towards open ward treatment in more homely and less institutional buildings.

### “Physical Layout

*Physically the villas are part of a suite of ancillary buildings that included sanatorium, isolation ward and chapel and were within 30 metres of the male airing courts that were integral to the original hospital design. The site is a palimpsest with the under-lying field system contributing to the creation of the designed landscape. The villas are placed within that landscape.”*

According to an unpublished account by Purvis (held at the Portsmouth History Centre), the hospital was built on ‘poor land’ that had not been developed prior to the hospital construction. Following the construction of the facility, according to Purvis’ account “(...) the land was ‘left in the same rough state as when purchased, the

*result of a deliberate policy to have much of the grounds and gardens layed (sic) out by patients”. There would not seem to be evidence to support the assumption that the villas were located in response to a planned landscape design or laying out of facilities in relation to the original buildings.*

*“Feilden and Mawson states that “Significant landscaping including mature trees” this suggests landscaping other than trees – there was not. It should also be borne in mind that the land at the SE corner of the hospital was until the mid-1950s occupied by one of the male airing courts, and that trees and bushes encountered here are later introductions. In keeping with the country house idiom tree planting was used extensively to recreate a series of sylvan avenues with the express intention of connecting not separating elements within the hospital estate.”*

Again there is lack of evidence to support this assumption. The facility was designed to operate, as far as possible, on a self-sufficiency principle, and originally included a farm, dairy, laundry, brewery, show maker and tailor.

Over time, the facilities were extended on an ad hoc basis, first through the construction of a sanatorium in 1893, later followed by that of additional patients’ accommodation in the form of outlying ‘villas’ between 1907 and 1931. Further additions included a short-lived isolation hospital in 1914. The original operation of the hospital locked patients into their accommodation or wards and open access was a later development. It is unlikely therefore that the original landscape design or



planting schemes would have intentionally or explicitly reflected the concept of connectivity to areas within or outside of the grounds. There would seem to be little evidence to support this assertion.

#### "Function

The villas function was to provide extra capacity in this instance for 152 patients. Meals were to be supplied by the main kitchen and transported to the villas in special food wagons. Oversubscription had been an ongoing issue from the hospital's opening. The failure of both Southampton borough and the County to build a third asylum in Hampshire meant that pauper lunatics, particularly from Southampton, were housed in Portsmouth. As the two ports cities grew exponentially in the late 19th century the problem became acute. Additions made in 1882, 1892 and 1896 before the villas, and a further two villas, were proposed immediately after the 1907 build. Oversubscription ceased to be an issue when the 2nd County Asylum opened at Park Prewitt Basingstoke in 1921."

Extra capacity could equally be considered as alternative accommodation. In these blocks, patients were separated according to their financial and gender status. They were not confined to live within the walled enclosure but were free to come and go.

It is worth noting that there is no citation on the supply of meals etc. and it is apparent that kitchens and catering facilities are present in the buildings so that if the arrangement existed at all, it no longer does.

*"The highest tender of £22,025 was accepted for the villas and they were built to a high standard and with a moral purpose that was predicated on recovery and continuing the Asylum's preference for quality over cost. The county's leading asylum's architect, George T Hine, had advocated for villas as providing the best chance of recovery. London County Council by some degree the largest single operator of asylums felt defectives were too difficult to be accommodated in villas and Hine's suggestions were ignored. Remarkably then in Portsmouth it would appear that the architect's argument for villas proved sufficiently convincing".*

The HE assessment report refers to earlier and better examples of this type of building. There is nothing in the architecture that expresses the use explicitly.

*"It is important to again visit the Heritage Impact Statement at pg. 17 Revisions to the 2nd edition OS are based on surveys made in 1907 and would not have captured the building of the villas. The publication dates of OS maps are not to be relied upon when accurately ascribing building dates and consultation of Historic England's archive would have been useful in this regard. Compounding this lacuna with the story of Dr. Thomas Beaton's benign local innovations is charming but naïve. The 1913 Mental Deficiency Act enacted the recommendations of the 1908 Royal Commission on the Care and Control of the Feeble-Minded, that sought to improve the nation by placing some 65,000 feeble-minded in mental deficiency colonies. These later imitative villas are a response, albeit, much delayed by WW1 and the consequential labour shortage. Others notably have commented.*

*2012 RSKA Archaeology for Portsmouth Hospitals Teaching Trust in advance of the Crayfern development stated that Light Villa was directly representative of the mental health care regime at St James Hospital at the time of its inception, and contextually related to the Listed buildings."*

We are not dealing with Light Villa, but in any case this is a loose description. However, Light Villa was demolished as part of a scheme for new dwellings on the site. Planning records confirm that the villa was not considered to be curtilage listed and no application submitted or determined for listed building consent. An application for Prior Approval ref 12/00293/DEM was submitted and approved.

*"2016 CBRE Heritage Assessment the site 'The Beeches falls within the curtilage of St James Hospital when seeking consent to erect fencing."*

A number of physical alterations have been made to the buildings themselves, including the loss of chimneystacks, the insertion of roof-lights, alterations to windows and the loss of a veranda. There appears to be no record that any of these works required Listed Building Consent.

*"2016 NHS Property services 'West Lodge falls within the grounds of the Grade II Listed St James Hospital, and as such is curtilage listed"*

This was constructed at the same time as the hospital as is evident in the 1910 map. It also formed the entry lodge to the site, whereas the latter additional villas in question do not have this relationship.

"Finally, it is hard to escape the view of the Council's own Conservation Officer that the wall "demarcates the historic curtilage of the hospital" before concluding that "it is perfectly reasonable to consider the wall listed"

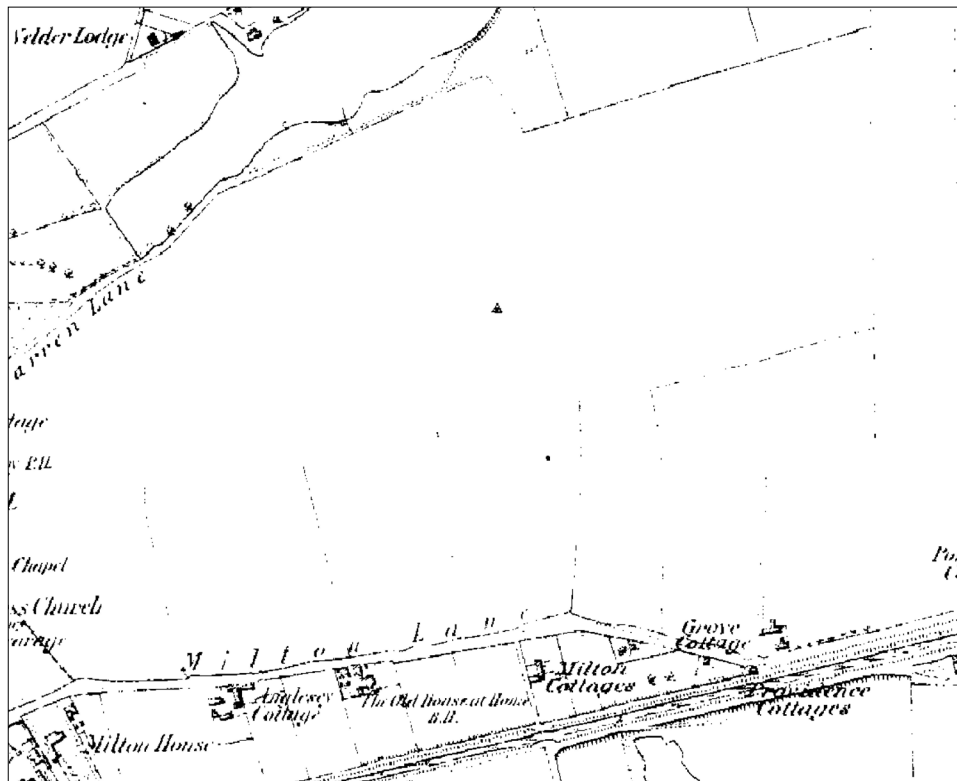
The wall was probably there when the hospital was built and it might have indicated the site boundary and 'may be' considered as curtilage but is not conclusive evidence.

The opinion of the Council Heritage Officer at the time was more nuanced and this is a rather crude interpretation. Not everything within the wall is to be considered curtilage listed. The historic fabric was of the time period associated with the hospital and not the date of the villas. Conversely, the Council's Conservation Officer was fully aware of the intention to demolish the villas in question and did not assert that the structures were curtilage listed or would require Listed Building Consent.

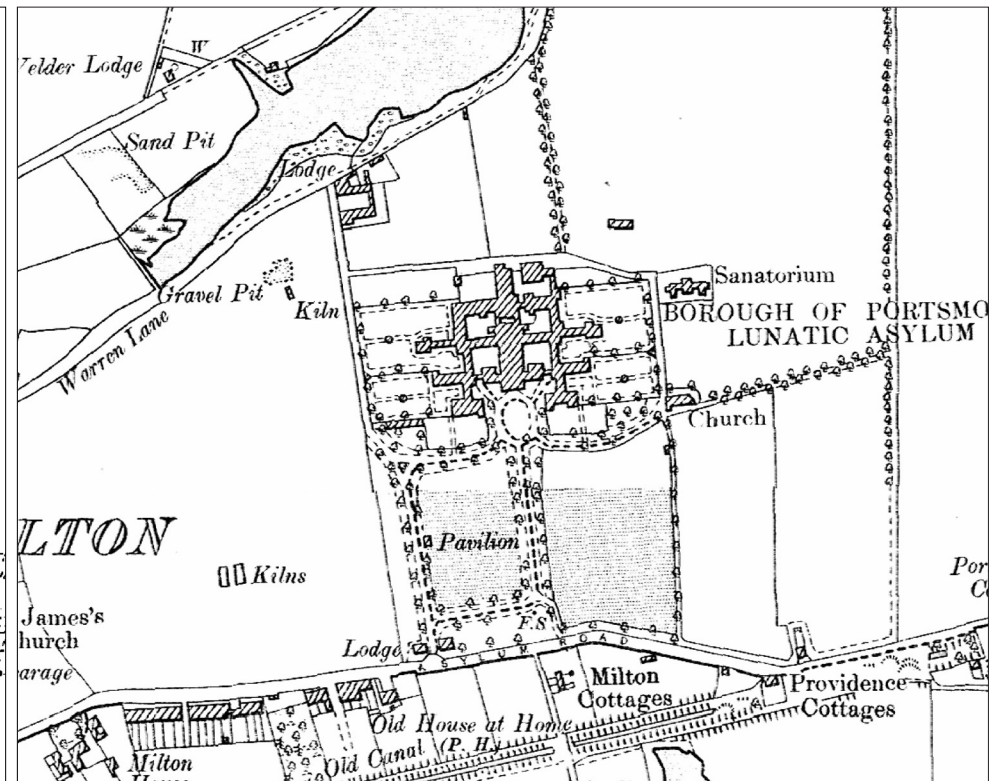
"Summary

The Edwardian date 1908 for the Villas is proven."

There is conflicting evidence, as noted in the HE assessment report and assertion cannot be made definitively.



1879 Ordinance Survey Map of the Site



1898 Ordinance Survey Map of the Site

*"The functional and physical relationship of "Fairoak House" and "The Beeches" to the hospital is unequivocal and remained so at Listing in 1998."*

The functional relationship by the time of 1988 listing would have been very much reduced (and it is unclear if such a relationship ever existed). The villas were operated independently by trusts separate to that of the main hospital with different care objectives and services. This is not the case. In terms of uses at those times, the villas operated independently.

*"Both the Hospital and the Villas were in the ownership of the NHS at the date of listing."*

NHS is operated by trusts with separate operational objectives. Several NHS Trusts have at various times been responsible providing services within the wider St James estate, and as of 1998 the 'main' St James Hospital, The Beeches and Fairoak were providing services under different Trusts and operating independently.

*"The only reasonable conclusion must be that these buildings are "Curtilage Listed".*

The cultural relationship of Fairoak + The Beeches to the Hospital has been severed over time. Their original purpose to provide alternative form of mental health care was overtaken by events.

Although under NHS ownership when listed, their use was not dependent on the hospital.

Unlike the chapel and its direct relationship with the hospital, the historic association of the villas with mental health care at St.James' Hospital has evolved and does not suggest that these buildings are curtilage listed.

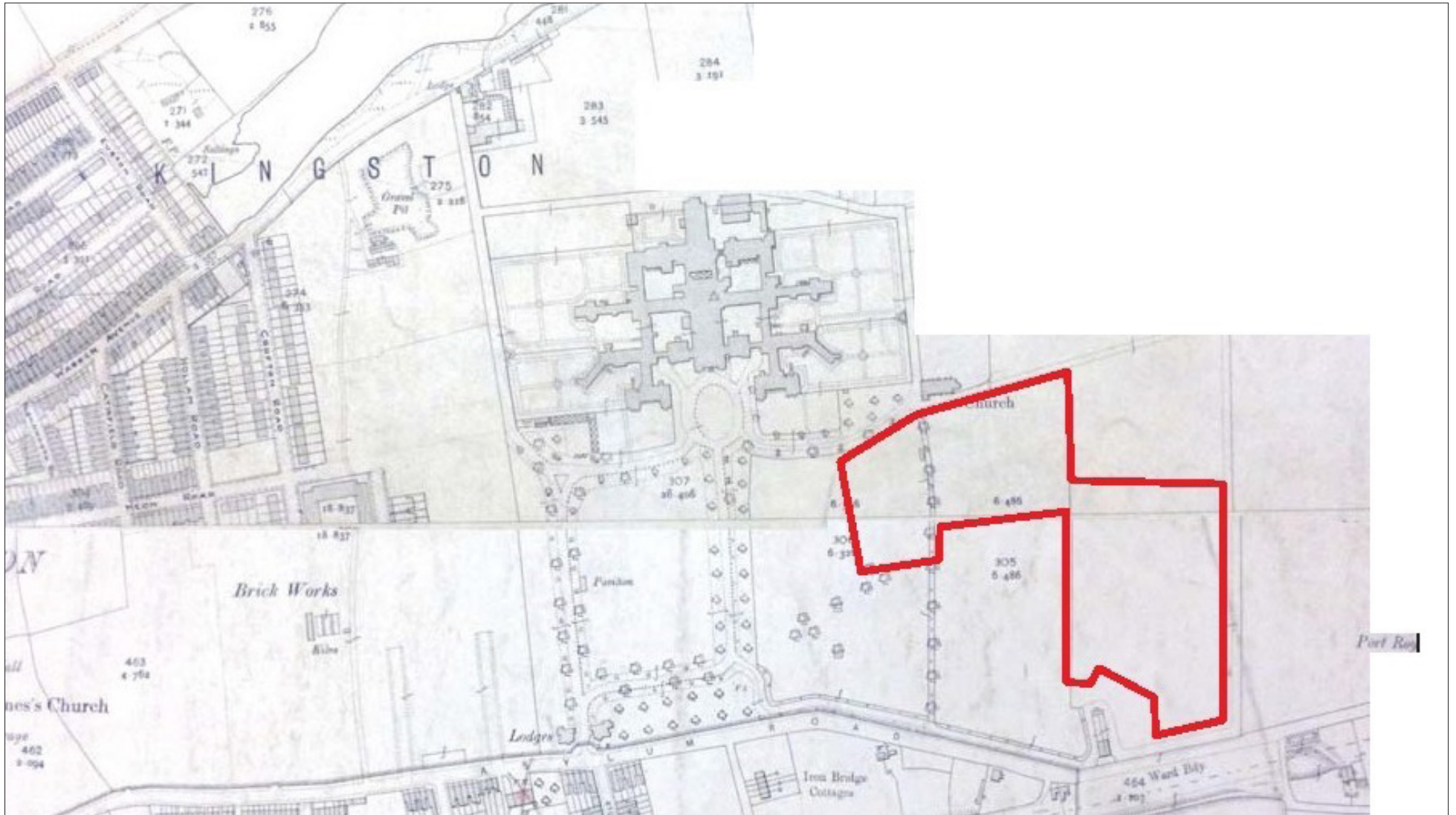
## Conclusion

These buildings were not part of the original historic planform but were much later additions to provide for a change in medical practice.

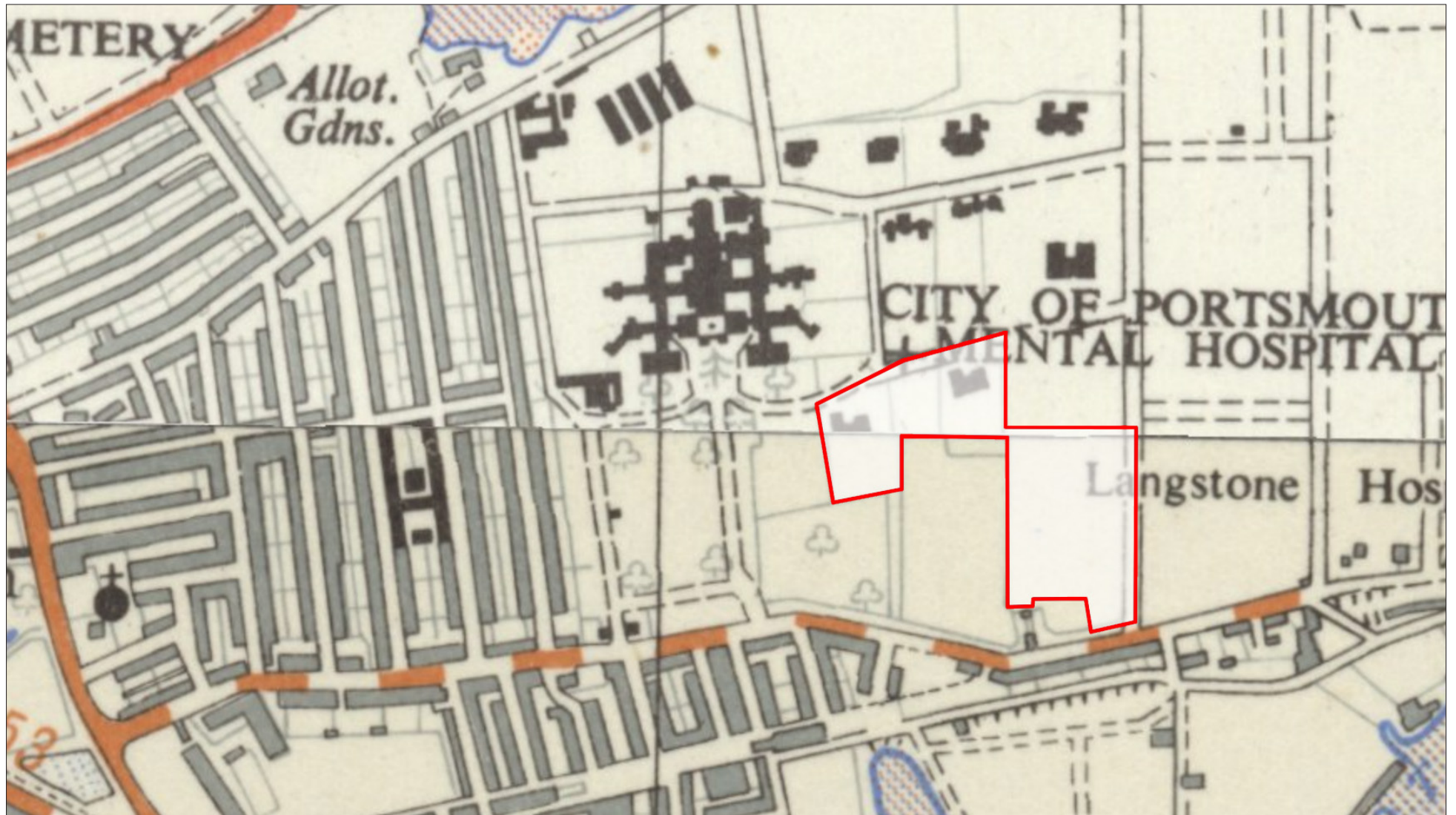
They have been considered for independent listing and rejected and were not included in the description of the historical when it was listed.

They are undesignated assets of limited significance, neither architecturally distinguished or historically important as innovative buildings of their type.

Potential association with designated heritage assets St. James Hospital and the Chapel has been assessed, the two Villas do not affect the setting or significance of either asset.



1910 Ordnance Survey Map of the Site



1932/33 Ordnance Survey Map of the Site

## Authorship

This report has been prepared by Sarah Morrison RIBA Conservation Architect at Feilden+Mawson LLP.

### National Heritage List for England (English Heritage)

- Listed Buildings
- Scheduled Monuments.

### Portsmouth History Centre

- Historic maps and plans of Portsmouth
- Published and unpublished documentary sources.

### Online Sources

- Including the British Geological Survey (BGS) Geology of Britain Viewer and local planning policy information.

### Documentary Sources

- The Archaeological Desk-Based Assessment written by Cotswold Archaeology
- Archaeology on St James's Hospital (Cotswold Archaeology 2014).
- English Hospitals 1660 - 1948 RCHME

BY EMAIL

**Attention: Eze Ekleo**

Head of Development Management (Planning  
and Economic Growth)  
Regeneration Directorate  
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PO1 2AY

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E michael.pocock@pinsentmasons.com

16 February 2021

Dear Sirs

**SJH - PHASE 1 APPLICATION 18/00288/OUT - CURTILAGE LISTING ISSUE**

We act on behalf of the Homes England in relation to the above matter.

Further to the advice which the Council received from Robert Walton QC, Homes England's advice from Peter Village QC and the contentions of the Milton Neighbourhood Planning Forum it is clear that the Council will need to come to a well reasoned opinion based on the evidence before it as to whether the Fairoak and Beeches villas ("**Villas**") can be considered to be 'curtilage listed'. This opinion will ultimately determine whether demolition of the Villas would require listed building consent.

Clearly if the Council did determine that the Villas were curtilage listed this would incur cost and delay to the programme for this project which will deliver much needed housing to the city.

Taking this into account, and to assist the Council in making a robust decision in relation to the issue of curtilage listing, Homes England has commissioned the enclosed report from Fielden and Mawson ("**Report**") which seeks to set out a definitive position on the status of the Villas in the context of the main hospital building and the chapel. The Report sets out a response to the statements made by Milton Neighbourhood Planning Forum, noting in particular that many of their key claims are not supported by evidence.

As the Counsels' Opinions confirm the key tests for considering whether a building can be considered to be part of the curtilage of a listed building (and thus subject to listed building consent requirements) are the physical layout of the subject building and the listed building, the function of the subject buildings alongside the listed building and the ownership position across the buildings.

The Report firmly establishes that:

- whilst the Villas, hospital buildings and chapel have all been owned by the NHS over time they have been owned by different parts of the NHS which have different functions and operational objectives;

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- the physical layout of the site, in particular the landscaping establishes that there is a clear physical separation both in actual and setting terms between the Villas and the hospital/chapel; and
- from the start of the use of the Villas they have taken on a role of performing different health functions to that carried out in the main hospital building and its associated chapel.

As such, it is clear that the Villas do not meet the tests for them to be considered as 'curtilage listed' to the main hospital building and chapel.

As the report notes the contentions of the Milton Neighbourhood Planning Forum to the contrary are lacking in evidence. Furthermore, the lack of conclusive proof as to when the Villas were actually built (rather than commissioned) does not negate any of the points expressed above.

In conclusion, the Council will need to consider the evidence for the respective positions put forward by Homes England and the Forum in reaching a view as to whether the Villas should be curtilage listed. Homes England's firm position, as evidenced by the Report, is that the Villas should not be curtilage listed.

If we can assist further please do not hesitate to contact us.

Yours faithfully

**Pinsent Masons LLP**

*sent electronically and so unsigned*

Copy to: Peter Wynn, Homes England

Enclosure(s): Fielden and Mawson Curtilage Listing Report





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# England and Wales Court of Appeal (Civil Division) Decisions

**You are here:** [BAILII](#) >> [Databases](#) >> [England and Wales Court of Appeal \(Civil Division\) Decisions](#) >> Blackbushe Airport Ltd v Hampshire County Council, R (On the Application of) & Ors [2021] EWCA Civ 398 (18 March 2021)  
 URL: <http://www.bailii.org/ew/cases/EWCA/Civ/2021/398.html>  
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**Neutral Citation Number: [2021] EWCA Civ 398**

Case No: C1/2020/0882

**IN THE COURT OF APPEAL (CIVIL DIVISION)  
 ON APPEAL FROM THE HIGH COURT OF JUSTICE  
 QUEEN'S BENCH DIVISION  
 ADMINISTRATIVE COURT (PLANNING COURT)  
 The Honourable Mr Justice Holgate  
[2020] EWHC 959 (Admin)**

Royal Courts of Justice  
 Strand, London, WC2A 2LL  
 18/03/2021

**Before:**

**LADY JUSTICE KING DBE  
 LADY JUSTICE ANDREWS DBE  
 and  
 LORD JUSTICE NUGEE**

**Between:**

**BLACKBUSHE AIRPORT LIMITED**

**Appellant**

**- and -**

**(1) THE QUEEN (on the application of HAMPSHIRE  
 COUNTY COUNCIL**

**(2) SECRETARY OF STATE FOR ENVIRONMENT,  
 FOOD AND RURAL AFFAIRS**

**Respondents**

**-and-**

**(1) THE OPEN SPACES SOCIETY**

**(2) PETER JOHN TIPTON**

**(3) DAVID EDWIN SIMPSON**

**(4) ADRIAN COLLETT**

**Interested Parties**

**Douglas Edwards QC and George Mackenzie (instructed by Burges Salmon LLP) for the Appellant  
George Laurence QC and Simon Adamyk (instructed by Hampshire County Council) for the First  
Respondent**

**Philip Petchey (instructed by Richard Buxton Solicitors) for the Open Spaces Society  
Ashley Bowes (instructed by Richard Buxton Solicitors) for Mr Peter Tipton**

**The Second Respondent and the Third and Fourth Interested Parties took no part in the appeal and  
were not represented.**

**Hearing dates: 23 and 24 February 2021**

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## HTML VERSION OF APPROVED JUDGMENT

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**Lady Justice Andrews:**

### **Introduction**

1. This case concerns approximately 115 acres of land ("the Application Land"), which was registered with the First Respondent, Hampshire County Council ("HCC") as common land under the Commons Registration Act 1965 ("the 1965 Act"). The key issue is whether the Application Land met the statutory criteria for deregistration under paragraph 6 of schedule 2 to the Commons Act 2006 ("the 2006 Act"). An Inspector appointed by the Second Respondent ("the Secretary of State") to determine the Appellant's application for deregistration decided that it did, and allowed the application. Holgate J quashed the Inspector's decision. In my judgment he was right to do so.
2. Section 22 of the 2006 Act, which gives effect to schedule 2, is entitled: "Non registration or mistaken registration under the 1965 Act." Paragraph 6 of schedule 2 is entitled: "Buildings registered as common land". The material provisions of that paragraph are as follows:

"(1) If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove that land from its register of common land.

(2) This paragraph applies to land where –

  - a) the land was provisionally registered as common land under section 4 of the 1965 Act;
  - b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;
  - c) the provisional registration became final; and
  - d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building."
  3. All four of the requirements in paragraph 6(2) must be satisfied in order for the land to be deregistered. If they are, and the application is made within the prescribed time limits, deregistration is mandatory.
  4. The issue turns on whether the Application Land, which forms the operational part of an airport, was "within the curtilage of a building" at and since the time when it was provisionally registered as common land. The building in question is a two-storey terminal building, with a footprint of about 360 m<sup>2</sup> and an overall floor area of about 760 m<sup>2</sup>, which serves as the airport's operational hub.
  5. If what is meant by "the curtilage of a building" is understood correctly, and all relevant factors are taken into account when determining whether the statutory requirements were satisfied in this case, the answer is no. This extensive area of operational airfield cannot properly be described as falling within the curtilage of the relatively small terminal building.

6. That common sense conclusion flows inexorably from the correct interpretation of the relevant provisions of the 2006 Act set out above, and their application to the facts. It is also consistent with the approach taken in the authorities in which the question of what falls "within the curtilage of a building" has been considered in other contexts, although none of them was directly concerned with this statute.
7. In deciding that the statutory criteria were met, the Inspector applied the wrong test by asking himself whether the land and building together "formed an integral part of the same unit" because he found that there was "functional equivalence" between them. That error is perhaps best demonstrated in paragraph 83 of his decision letter, where he described the operational area as "part and parcel *with* the building and an integral part of the same unit" instead of asking whether the land should be treated as if it were "part and parcel *of* the building". The difference is critical, and it led to the Inspector addressing the wrong question, namely, whether the land and building together fell within the curtilage of the *airport*, rather than whether the land fell within the curtilage of the building.

### **Factual background**

8. Blackbushe Airport, operated by the Appellant ("BAL") under a long lease, occupies part of a much larger site in rural Hampshire to the north of the A30, including part of Yateley Common, that was requisitioned during World War II and used as an RAF base. After the war, RAF Blackbushe was used by the Ministry of Civil Aviation until 1960 when the site was de-requisitioned.
9. In 1953, a terminal building with a control tower was constructed by the Ministry in what is now the south-eastern corner of the airfield. This building was subsequently enlarged on its eastern side. The whole of the terminal building was erected on common land, but its eastern extension was on land belonging to Yateley Parish Council, whereas the land on which the original terminal building was built was in private ownership.
10. The conditions of requisition required common land to be restored and buildings on the common removed when the land was de-requisitioned. Despite this, when this site was de-requisitioned, although much of the airport infrastructure was dismantled and removed, the terminal building and the three original runways remained. In 1961, the part of the site in private ownership was sold. The new owner re-opened the airfield for general aviation purposes in October 1962.
11. The part of the site belonging to Yateley Parish Council was sold to HCC in 1964. When HCC acquired that parcel of common land, the runways on the eastern part of the site ceased to be used. However, the eastern extension of the terminal building remained, and continued in service for over 30 years.
12. On 16 May 1967, despite being in operational use as part of an airport, the Application Land was provisionally registered as common land under the 1965 Act as part of Yateley Common (registered unit CL 24). That registration became final on 26 March 1975, following a public inquiry at which the then owner unsuccessfully contested the status of the Application Land. He then brought (and lost) a claim for judicial review. There is now no doubt that the land that was registered, including the Application Land, was subject to rights of common at all material times.
13. The terminal building, configured exactly as it was in 1960, was on the Application Land and in use both at the time of its provisional and final registration as common land. So too was a smaller building that had been erected in 1963 as a clubhouse for the members of an aviation club. This had been built on common land without obtaining the requisite consent of the relevant Minister. HCC took enforcement action under s.194 of the Law of Property Act 1925, but the County Court refused to make an order for its demolition. That building subsequently became the Bushe Café.
14. Over time, and following various changes in ownership, the operational part of the airport contracted. In 1953, when the terminal building was first erected, it occupied approximately 365 acres. In 1967 and 1975 it occupied around 224 acres, (and so was roughly double the size of the Application Land), but in 1985 both northern runways ceased to be operational. In 1996 the eastern part of the terminal building, on the land belonging to HCC, was demolished. The new owner of the Application Land refurbished the remainder of the building. The control tower to the west of the building was replaced.

The terminal building was thereby reduced to its original footprint, approximately one-third of its size at the time of registration. In 2015, some hangars to the north-west ceased to be used in connection with the airport.

15. Since then, the Application Land has covered almost all of what remains of the operational area, including the runway, taxiways, fuel storage depot, some car parking, the terminal building, and the Bushe Café. It is not disputed that the part of the terminal building that remains was present on the land at the time of provisional and final registration, and has been there ever since.

### **Procedural history**

16. It was against that background that on 1 November 2016, BAL made an application to HCC for the Application Land to be deregistered as common land. HCC referred the matter to the Secretary of State for determination under the Commons Registration (England) Regulations 2014. The Secretary of State appointed the Inspector, who held a public inquiry on 2 to 5 April 2019. He heard objections to the application from, among others, HCC; two local councillors, Mr Simpson and Mr Collett; Mr Peter Tipton (an individual with commoner's rights over Yateley Common); and the Open Spaces Society ("the OSS").
17. In a decision letter dated 12 June 2019, the Inspector held that the statutory requirements for the removal of the land from the register were satisfied and allowed BAL's application. HCC sought judicial review of that decision. BAL and all the objectors identified above were joined as interested parties, though Mr Simpson and Mr Collett have never taken an active part in the proceedings.
18. In a conspicuously thorough, considered and carefully reasoned judgment [2020] EWHC 959 (Admin); [2021] QB 89, Holgate J held that the Inspector had erred in law in two material respects. First, his conclusions were tainted by misdirecting himself on the question whether the Application Land was ancillary to the terminal building (a relevant, though not necessarily conclusive, factor). Secondly, he applied the wrong legal test by asking whether the land and building together formed part of a single unit or integral whole. The Judge therefore allowed the claim and quashed the decision.
19. The Judge himself granted BAL permission to appeal, on the basis that, irrespective of the merits, there was a compelling reason for the matter to be considered by this Court. Despite supporting BAL's case before the Judge, the Secretary of State did not seek permission to appeal, and has taken no further part in the proceedings.

### **An overview of the parties' submissions**

20. On behalf of BAL, Mr Edwards QC and Mr Mackenzie contended that the Inspector applied the correct legal test to determine curtilage, namely:

*"If land is sufficiently closely related to a building, such that together the land and the building form part and parcel of an integral whole or single unit, that is sufficient for the land to be comprised within the curtilage of the building."*

They submitted that this test (which Mr Edwards dubbed the "integral whole" test) is derived from the authorities, which are consistent when properly understood, and that the Judge fell into error in treating it as different from the test articulated by Buckley LJ in *Methuen-Campbell v Walters* [1979] 2 QB 525 ("*Methuen-Campbell*") namely, that the land must be:

*"so intimately connected with [the building] as to lead to the conclusion that the former forms part and parcel of the latter."*

21. BAL submitted in the alternative that if Holgate J was correct in identifying a divergence of approach between the test adopted in the planning cases, (or at least in those concerned with listed buildings), and the test adopted in other cases, it would be in accordance with the purpose of the 2006 Act for the Court to adopt the wider meaning of "curtilage".

22. HCC (represented by Mr Laurence QC and Mr Adamyk) and Mr Tipton (represented by Dr Bowes) supported the conclusion and the reasoning of the Judge, including his view that a different, wider test was adopted in the listed building cases and should be confined to that context.
23. As HCC pointed out, if the test propounded by BAL and adopted by the Inspector were the correct one, then the whole of the 365 acres used for operational purposes at the time when the terminal building was erected in 1953, and the whole of the 224 acres of land which was used for operational purposes at the time of registration, would have been treated as falling within the curtilage of the terminal building. Mr Laurence also submitted that, however one approached the concept of "curtilage", in the context of the 2006 Act there comes a point where the area of the claimed curtilage is simply too great to count as curtilage without in effect robbing the word of all proper meaning, and that point was plainly exceeded here.
24. The OSS, represented by Mr Petchey, also supported the Judge's conclusion that the requirements for deregistration were not met, but served a Respondent's Notice seeking to uphold that conclusion for additional or different reasons. Mr Petchey submitted that there were two plainly conflicting lines of authority at Court of Appeal level on the test to be applied. He urged us to grasp the nettle and decide between them.
25. For reasons that will appear, I do not consider that is a choice we have to make. The curtilage of a building is a single concept, and Mr Edwards is right that it does not have different meanings in different statutory contexts. There is in truth only one test, and that is the test articulated by Buckley LJ in *Methuen-Campbell*, but that is not the same as BAL's "integral whole" test. The question whether the test is satisfied in any given case will depend on the facts and circumstances of that case.
26. The ambit (or physical extent) of the curtilage of a building in any given case will be a question of fact and degree. Various factors may be helpful in resolving that question, including, where relevant, a consideration of the statutory consequences of a finding that land (or a building or other structure or object on it) falls within or outside of the curtilage of a building. In certain contexts, the Court may be slightly more generous in its application of the relevant factors to reach a particular result, bearing in mind the purposes of the governing statute; for example, when determining whether an ancillary structure falls within the curtilage of a listed building. But that does not mean that the concept of curtilage is different in listed building cases.

### The 2006 Act

27. When construing the provisions of an Act of Parliament, it is always a useful starting point to consider the history behind the statute and what purpose or purposes the relevant provisions were designed to serve. Holgate J addressed the background to the 2006 Act in some detail at [21] to [44] of his judgment. For the purposes of this judgment it is unnecessary to repeat that detailed account. No-one has taken issue with its accuracy. The following summary should suffice to highlight the aspects of importance.
28. The purpose of the 1965 Act was to create a definitive record, maintained by local authorities, of all commons, town or village greens, and rights of common then in existence. Registration (or non-registration) conclusively determined the status of the land in this regard, though the 1965 Act also made provision for subsequent changes to the status of land (e.g. by the extinguishment of rights of common over it).
29. The 1965 Act permitted registration of land over which rights of common existed irrespective of whether there was a building on the land, and irrespective of the nature of that building, the purpose which it served, or whether it was lawfully there. Thus land which was "covered by a building" or "within the curtilage of a building" was not excluded from registration.
30. That is not particularly surprising, as section 194 of the Law of Property Act 1925 prohibited the erection of any building or fence on land subject to rights of common, (or any other structure preventing or impeding public access to such land) without the consent of the Minister. In the light of that prohibition, when the 1965 Act came into effect, no-one would not have expected buildings or other significant structures to be present on land over which rights of common existed (apart perhaps from

small buildings serving the purposes of the common land). On the face of it, there was a fundamental incompatibility between land being subject to rights of common, and having a building on it.

31. The unusual situation which had arisen in this case was unlikely to have been considered. Apart from the café, the terminal and other structural impediments to public rights of access in the operational part of the airport which fell on common land were only there because they had been lawfully constructed after the land was requisitioned, and were not removed when they should have been. Whilst in practical terms the use of the Application Land meant that the public were precluded from exercising commoners' rights over it, they had never relinquished them.
32. The 1965 Act set a deadline of 2 January 1970 for making an application for the provisional registration of land then qualifying. If the land met the requirements for provisional registration, then the registration would be published and an opportunity would be given for objections to be raised. If they were raised within the prescribed deadline, a Commons Commissioner would hold a public inquiry, consider the objections, and decide whether to uphold them or, as in the case of the land at Blackbushe Airport, rule that the registration be made final.
33. Unfortunately, because there was no requirement that provisional registration be notified to individual landowners whose land might be affected, but only that it be more widely published, errors were made. Land which was not common land was registered as common land, often in circumstances in which its owners were unaware of the provisional registration until after it was too late to object. This included dwelling-houses or their gardens situated on or close to the boundaries of common land. Conversely, land which ought to have been registered as common land was omitted from the register. In some cases the land was rightly registered, but in the wrong category, e.g. a village green was registered as common land.
34. The first step towards redressing these errors came with the Common Land (Rectification of Registers) Act 1989, which gave a landowner three years in which to raise an objection to the inclusion of certain land in the register. However that statute was limited to dwelling-houses and "land ancillary to a dwelling-house" which was expressly defined as "a garden, private garage, or outbuildings used and enjoyed with the dwelling house". In order to qualify, the property had to have satisfied that description continuously since 1945.
35. In 2002, following a public consultation, the Government announced that wider legislation would be brought forward that would, among other things, remove from registers of common land and town or village greens, land which had been wrongly registered. This became the 2006 Act.
36. Holgate J described the function of the different paragraphs of schedule 2 at [31]. Paragraphs 2 and 3 are concerned with non-registration of land which should have been registered as common land or as a town or village green. Paragraph 4 addresses the special situation of waste land of a manor which had ceased to be connected with the manor, and for that reason was thought (erroneously) to be incapable of being registered as common land. Paragraph 5 concerns land that was incorrectly registered as common land when it should have been registered as a town or village green. Paragraphs 6 and 8 concern buildings registered as common land, and buildings registered as a town or village green. Paragraphs 7 and 9 concern "other land wrongly registered" as, respectively, common land or a town or village green.
37. As Holgate J pointed out at [32] and [33] of his judgment, there is a finite period of time within which action may be taken under schedule 2 to the 2006 Act to remove land from a register.
38. The 2006 Act makes separate provision (in section 16) for the owner of land that was registered as common land (or as a town or village green) to make an application to the Secretary of State for its deregistration in circumstances other than those covered by schedule 2. That section sets out some fairly onerous conditions, which, if the land is any larger than 200m<sup>2</sup>, must include a proposal for the provision of land to be registered as common land (or as a town or village green) in place of the deregistered land.

39. Whereas deregistration is mandatory if the requirements of the relevant paragraph of schedule 2 are met, deregistration under s.16 is a matter of discretion. The Secretary of State must consider the rights of commoners and other matters listed in that section, which specifically include important matters of public interest (including nature and landscape conservation, and the protection of archaeological remains and features of historic interest).
40. Counsel referred the Court to the explanatory notes to the 2006 Act, and to guidance issued by the Department for Environment, Food and Rural Affairs ("DEFRA") in December 2014, when the statutory provisions began to be applied outside the initial pilot areas. The relevant provisions of schedule 2 are addressed in paragraphs 126-128 of the explanatory notes. Paragraph 126 begins with the statement that paragraphs 6 to 9 of schedule 2 "make provision for the deregistration of certain land wrongly registered as common land or village green". The notes then go on to refer to the errors arising from the absence of any requirement in the 1965 Act to give individual notice of provisional registration to affected landowners, and to the limited opportunity for rectification provided by the 1989 Act.
41. Paragraph 128 says this about paragraph 6 of Schedule 2:

"Paragraph 6 deals with the removal of certain buildings from the register of common land. Some common land may have been registered so as to mistakenly include (typically) cottages or gardens on or abutting the common. The error may have gone unnoticed, or [it may be] that the Commons Commissioner felt unable to correct the error if no timely objection had been made. The paragraph enables the deregistration of common land registered under section 4 of the 1965 Act, which is covered by buildings or within the curtilage of buildings. The land must have been covered by buildings or have been within the curtilage of buildings at the time of the original provisional registration, and continuously up to the date of determination of the application of proposal. It is immaterial for the purposes of paragraph 6 whether the building was lawfully present on the land at the date of registration."

A footnote to that paragraph states:

"so this paragraph will not enable the deregistration of land where, for example, a garden has been extended onto, and encroached upon, a common after the date on which the common was provisionally registered."

That illustrates that paragraph 6 will apply to land within the curtilage of a building which encroaches on the common land, even though the building itself is outside the common land.

42. Schedule 2 of the 2006 Act is addressed in Part 7 of the DEFRA guidance. Paragraph 7.1.4 provides a possible explanation of why there is no reference in the body of the text to the land being "mistakenly" registered. It points to the practical difficulties of demonstrating that land was or was not properly registered over 40 years previously. Paragraphs 6 to 9 of schedule 2:

"therefore do not simply provide for a "retrial" of the registration of any land; instead, they ensure that certain registrations *may be treated as having been wrongly registered* if they meet the tests laid down in the 2006 Act." [Emphasis supplied].

43. Mr Petchey also sought to rely upon an extract from Hansard of 29 June 2006. It records the explanation given by the Minister, Barry Gardiner MP, for introducing certain amendments to schedule 2 including, among other matters, what became paragraph 6. We read it *de bene esse*, the Judge having refused to admit it into evidence on the basis that it did not meet the requirements of *Pepper v Hart* [1993] AC 593. In my view, it is unnecessary to embark upon consideration of its admissibility, because what the Minister said about the reasons for introducing provisions enabling the deregistration of buildings and the curtilage of buildings present before the land was registered, takes matters no further than the explanatory notes and the guidance.

44. It seems to me to be plain that the purpose of schedule 2 was to cure errors and omissions in the register, and that the particular purpose of paragraph 6 was to rectify the situation in which a building

(or land within its curtilage) which should not have been registered as common land under the 1965 Act was so registered, even if there had been an inquiry before the registration became final. Parliament's aim was to put right mistakes, not, as Mr Edwards submitted, to cure anomalies.

45. Despite this, Parliament deliberately chose to make it unnecessary for the applicant to prove that an error was made. The effect of this was that if a building (or land falling within its curtilage) met the requirements of paragraph 6, it would be treated as if it had been wrongly registered, even if that were not the case, and even if the landowner had taken the opportunity to object to registration and had (rightly) failed. That situation was unlikely to arise very often, although it did arise in the present case.
46. What Parliament plainly did not intend was that landowners should be able to use paragraph 6 of schedule 2 to remove large parcels of common land from the register, bypassing the stringent requirements of s.16.

### **Land within the curtilage of a building**

47. I turn to consider the language of the statute. I have already referred to the title of paragraph 6 of schedule 2: "Buildings registered as common land". The text refers to land "covered by a building" (which is self-explanatory) or land "within the curtilage of a building". The focus is therefore on the *building* which is deemed to have been wrongly registered as common land, and not the land, let alone some other unit of which the land and building together form an integral part. Therefore, simply looking at this as a matter of construction of the language used by Parliament, "functional equivalence" is irrelevant, as is the question whether the land and building together form part of some residential or industrial or operational unit. If a building is to be deregistered, the common land under or adjacent to it only qualifies for deregistration if and to the extent that it has a defined relationship with that building. It must be covered by the building or within that building's curtilage. However, Parliament chose not to adopt the language of the 1989 Act, which confined the other land to land that was *ancillary* to the building.
48. Since it is the building which is to be treated as wrongly registered, the inference can be drawn that the relationship of the land to the building must be sufficiently proximate that a reference to that building – in this case, the terminal building – could be treated, without artifice, as including the land as well. So, for example, a reference to "Keeper's Cottage" would naturally be taken to include a reference to the cottage garden. A reference to the terminal building at Blackbushe Airport would not be naturally understood as referring to the whole airport, or to 115 acres of operational land of which the terminal building occupies a very small part.
49. Looking at the matter from another perspective, in order to achieve the deregistration of the terminal building which is deemed by Parliament to have been wrongly registered as common land, whilst it would be reasonable and appropriate to include some of the surrounding land that might be referred to figuratively as "part and parcel of" the building, or "belonging to" the building, it is plainly unnecessary to deregister the whole of the rest of the operational area of the airport.
50. There are some words or expressions which are like an elephant; its essence is difficult to put into words, but you know it when you see it. "Curtilage" is a word of that nature. In *Barwick & Barwick v Kent County Council* (1992) 24 HLR 341, ("*Barwick*") Sir David Croom-Johnson made the following pertinent observation (at p.346) with which I respectfully agree:

"It is not possible to give a comprehensive definition of a curtilage. Indeed it would be most inadvisable. One can only describe a curtilage when one sees it and decides whether it was a curtilage, or not....."

51. In *Clymo v Shell-Mex & BP Ltd* (1963) 10 RRC 85 ("*Clymo*") at pp. 93 and 99, Upjohn LJ took a similar approach to the word "appurtenance." The dictionary definition of "appurtenance" denotes something belonging to another, or a minor property or right belonging to another more important property or right. In certain statutory contexts it has been treated as synonymous with land falling within the curtilage of a building. Upjohn LJ said:



"the word "appurtenance" is one of the oldest words in use in the history of English law and we would not attempt to define it in any way; whether land is properly described as an appurtenance to one or more buildings must depend very much on the particular facts and circumstances of each case, and it does not seem possible to try to lay down any tests to determine whether land ought to be regarded as an appurtenance to one or more buildings or as "other land" for the purposes of [section 22(1)(a) of the Rating and Valuation Act 1925 as amended]. Each case must be decided entirely on its own facts, and no doubt there may be in practice a number of difficult and borderline cases...

...the whole problem is a question of mixed fact and law but depends very largely on the facts. Provided a piece of land satisfies the concept of being an appurtenance, it is a question of fact and circumstance whether it is an appurtenance."

52. As Upjohn LJ said, there may be difficult and borderline cases. However, just as one can tell immediately that a giraffe is not an elephant, it is probably far easier to recognise that something is not within the curtilage of a building than it is to say how far the curtilage extends. The present case is a good illustration.
53. It is noteworthy that in none of the statutes in which the word "curtilage" or the expression "within the curtilage of" has been used, has Parliament attempted to define them. There is nothing in the 2006 Act itself containing a definition, or setting out the factors which assist in identifying the curtilage of a building for the purposes of that Act. Nor is there any case in which that question has been directly considered.
54. As Holgate J recognised in his judgment at [73] to [76], although "curtilage" is not a term of art, but is to be given its ordinary and natural meaning, its meaning is not completely provided by the dictionary. The concept has its origins in a small piece of land attached to a dwelling-house. Holgate J quoted the Oxford English Dictionary ("OED") definition:

"A small court, yard, garth or piece of ground attached to a dwelling-house, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwelling-house and its out-buildings."

That definition begs the question of what the law would regard as "forming one enclosure" with a dwelling-house, or what is the ambit of the "area" in question.

55. In any event, as the Judge pointed out, in the 2006 Act (as in other legislation in which the expression is used) the "building" whose curtilage is being considered does not have to be a dwelling-house. Moreover, as will be seen, although the size of the land will be a relevant consideration, the extent of the curtilage of a building may vary with the nature and size of the building. To refer to the area as "small" (or conversely "large") is not particularly helpful in a context where size is relative. What falls within the curtilage of a manor house, or a large industrial mill, or a factory, may not be the same as what falls within the curtilage of a dwelling house. What falls within the curtilage of a dwelling-house may depend on the size and configuration of the dwelling-house. Even so, proportionality, whilst relevant, may not be definitive; a small cottage will sometimes have a large garden, whereas a large townhouse may have a tiny terrace.

### **The authorities**

56. As they did in the Court below, Counsel referred to a plethora of cases decided in a wide variety of other contexts, including landlord and tenant cases relating to the acquisition of land under the Leasehold Reform Act 1967 and the Housing Act 1980; cases relating to listed building control under the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") and its predecessor; and planning cases concerned with more general issues of development control. In their oral submissions, however, they concentrated on six authorities, five decided in the Court of Appeal and one more recently by Lieven J in the Planning Court. In chronological order these are:

*Methuen-Campbell* (above);

*Attorney-General ex rel Sutcliffe v Calderdale BC* (1983) 46 P&CR 399 ("*Calderdale*");

*Dyer v Dorset County Council* [1989] 1 QB 346 ("*Dyer*");

*Barwick* (above);

*Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions* [2001] QB 59 ("*Skerritts*"); and

*Challenge Fencing Ltd v Secretary of State for Housing Communities and Local Government* [2019] EWHC 553 (Admin) ("*Challenge Fencing*").

57. *Methuen-Campbell* is the authority in which the concept of curtilage is most clearly explained, and its correctness has never been called into question; on the contrary, it has been followed in numerous subsequent cases. It was a case about leasehold enfranchisement under the Leasehold Reform Act 1967. The relevant provisions gave the tenant a right to acquire on fair terms the freehold or an extended lease of "the house and premises" where certain conditions were fulfilled. "Premises" were defined as "any garage, outhouse, garden, yard and appurtenances" which were let to the tenant with the house, and occupied and used for the purposes of the house or any part of it by the tenant or another occupant. The issue was whether a paddock which was let to the tenant with the house and its garden fell within that description. The size of the paddock was bigger than the house and garden put together.
58. The Court of Appeal decided that in this particular statute, the expression "appurtenances" meant land falling within the curtilage of the house, following the decision in *Trim v Sturminster Rural District Council* [1938] 2 KB 508, which had been approved by Upjohn LJ in *Clymo* (above). They rejected the argument that it extended to anything used and occupied with or to the benefit of the house (see the judgment of Goff LJ at p.535G-H).
59. Counsel for the tenant then sought to argue that in any event, the paddock fell within the curtilage of the house. He submitted that the paddock was "all part of the residential unit" and that therefore it should be considered to be part of the house. However, that submission was rejected. As Goff LJ observed at p.536E, the Act was not one dealing with residential units. It was giving people whose houses are held on long leases at a low rent security of tenure in their homes, and it specified what was meant by "house and premises". Having referred to the dictionary definition of curtilage at p.538E, he said that what is within the curtilage is a question of fact in each case, and that he could not feel that this "comparatively extensive" piece of pasture ought to be so regarded, particularly where it was clearly divided off physically from the house and garden at all material times.
60. In his concurring judgment, Roskill LJ said that the question whether the paddock could be said to be within the curtilage of the house was a mixed question of fact and law. The paddock was well apart from the house physically, though contiguous with the garden. Giving the word "curtilage" its ordinary meaning, he did not think that "by any possible legitimate construction" it could be extended so as to include the paddock which the tenant was seeking to enfranchise.
61. Buckley LJ said that the word "premises" must be interpreted in relation to the house in accordance with the definition contained in section 2(3) of the 1967 Act. Having rejected the view of the judge below that the paddock was "a parcel of the house" merely because it had been both let and occupied with it, he then said this (at pp. 543F-544G):

"What then is meant by the curtilage of the property? In my judgment it is not sufficient to constitute two pieces of land parts of one and the same curtilage that they should have been conveyed or demised together, for a single conveyance or lease can comprise more than one parcel of land, neither of which need be in any sense an appurtenance of the other or within the curtilage of the other. Nor is it sufficient that they have been occupied together. *Nor is the test whether the enjoyment of one is advantageous or convenient or necessary for the full enjoyment of the other.* A piece of land may fall clearly within the curtilage of a parcel conveyed with it without contributing in any significant way to the convenience or value of the rest of the parcel. On the other hand it may be very

advantageous or convenient to the owner of one parcel of land also to own an adjoining parcel, although it may be clear from the facts that the two parcels are entirely distinct pieces of property. *In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter.*

There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, *which on a reasonable view could only be regarded as part of the messuage*, and such small pieces of land would be held to fall within the curtilage of the messuage.<sup>[1]</sup> *This may extend to ancillary buildings, structures or areas such as outhouses, garage, driveway, garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or parcel of land as extending must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole.* [Emphasis supplied.]

62. Although the case was specifically concerned with a dwelling-house, this is as good an expression of the concept of curtilage as one is likely to find.
63. Mr Edwards focused upon the final sentence in the passage quoted, which he contended set out an "integral whole" test which was the same as the "part and parcel" test. However, that ignores the fact that Buckley LJ's test requires the land to be so intimately associated with the building (in this case a dwelling-house) to lead to the reasonable conclusion that the former is part and parcel *of the latter*. He went on to give specific examples of areas of land that, on a reasonable view, could *only* be regarded as part of the messuage, and other types of land or buildings which, depending on the circumstances, *might* be so regarded. That approach is not the same as treating the land and building together as forming part of a single unit, residential or otherwise. Buckley LJ agreed that the "residential unit" test should be rejected, see p. 347H.
64. On a proper reading of that passage, the conclusion that the land and building together constitute an integral whole is the consequence of applying the intimate association/part and parcel test articulated earlier, and not another way of articulating that test. It will be seen that that was the way in which it was understood by Nourse LJ in *Dyer*. The fact that the result of concluding that the land forms part and parcel of the building is that the land and building are to be treated in law as an integral whole (or as one parcel or messuage) does not mean that the converse is true. I respectfully agree with Holgate J's analysis at [88] and [89] of the judgment below, and with his view that the test propounded by BAL would have led to a very different outcome in *Methuen-Campbell*. Indeed it comes close to the "residential unit" test that the Court of Appeal unanimously rejected.
65. I have quoted the entirety of the relevant passage in Buckley LJ's judgment because the introductory paragraph illustrates that the test is not whether the terminal building could function without an operational airport, nor whether the Application Land was *necessary* for the functioning of the airport. Nor is the test whether the Application Land and the terminal building together form one part of an operational unit or whether they fall within a single enclosure. The question whether, by reason of the association between them, the law would treat them as if they formed one parcel, or as an integral whole, depends on the application of the "part and parcel" test to the facts of the particular case.
66. I do not accept Mr Edwards' criticism that the "part and parcel" test is unworkable in practice and linguistically unsound. Of course it does not mean that the yard or garden is literally to be regarded as part of the physical structure of the building. The expression is figurative and means that a reference to that building would be understood to include, or extend to, that other land. In *Caledonian Railway Co. v Turcan* [1898] AC 256 Lord Halsbury, referring to 232 square yards of land within the curtilage of a warehouse which provided the means of access to it, said the curtilage was "just as much part of the house as if it were a separate room in the house."

67. If the building is a dwelling-house, then in most cases a reference to the house without more would reasonably be understood to include its yard or garden, or a structure on the adjacent land such as a garage or garden shed. As My Lord, Nugee LJ, pointed out during the course of argument, it would not be linguistically inaccurate to say that somebody "came round to my house", if in fact they only came to the garden or to a garage at the end of the driveway. Matters would be different, of course, if the garage were located some distance from the house on a different plot of land, as the garages were in the case of *Barwick*.
68. There is no separate "conveyancing meaning" of curtilage, but the Court is not helped in ascertaining the curtilage in a given case by consideration of what conveyancers would understand by that term. The consequence of the close association between the building and the land within its curtilage is that on a conveyance of the building, there is no need for there to be separate identification of the land within its curtilage in order for that land to pass to the new owner. They are treated as one parcel of land. However, in *Methuen-Campbell* Buckley LJ explained the futility of seeking to ascertain what falls within the curtilage of a building from looking at a conveyance of a parcel of land comprising the building and its appurtenances (i.e. the messuage). As he said, that is to confuse cause with effect. The fact that the conveyance will pass everything within the curtilage to which the description of the property or land conveyed applies, does not help one to identify what falls within the curtilage in the first place.
69. The importance of focusing upon whether it is a specific building or something else (such as an institution) whose curtilage is to be ascertained was illustrated in a number of the subsequent cases in which the "part and parcel" test in *Methuen-Campbell* was adopted, including *Dyer* and *Barwick*, both of which were also concerned with a statutory right to buy leasehold property.
70. *Dyer* was a case about a house on the edge of the grounds of an agricultural college. The college comprised a manor house on a 100 acre estate, with extensive pleasure gardens, a park, and a mass of outbuildings including stables, a subsidiary manor house, and a lodge at the entrance to the park. The house was one of a number built for staff at the college. It was fenced off from the rest of the college grounds (though with pedestrian access to them) and located some distance from any of the college buildings.
71. The question whether the tenant had the right to buy the house under the relevant provisions of the Housing Act 1980 (as amended) turned on whether it was "within the curtilage of a building used for purposes other than housing". The Court of Appeal rejected an argument by the landowner that the "curtilage of the building" was the curtilage of the whole college as a single identifiable unit, extending to the boundaries of the college grounds and including the property occupied by the tenant. It was also contended, unsuccessfully, that the grounds were essential to the functioning of the college, and therefore logically the house should be treated as falling within the relevant curtilage. That argument was similar to the argument made by BAL, recorded in paragraph 80 of the Inspector's decision letter, that if there was "functional equivalence" in the sense that the Application Land and terminal building served each other's purposes in some necessary or reasonably useful way, this demonstrated that the land and the building formed an integral part of one unit.
72. The judge at first instance decided that irrespective of whether the relevant building was the manor house, or the manor house together with associated college buildings, the house was not within the curtilage of a building. He said that if the question had been whether it was within the curtilage of the college or institution, he would have reached the opposite conclusion. Donaldson LJ, having quoted the key passage in Buckley LJ's judgment in *Methuen-Campbell* and considered some of the earlier cases, agreed with that distinction. He observed that "curtilage seems always to involve some small and necessary extension to that to which the word is attached".
73. Mann LJ, in a short concurring judgment, also referred to the meaning of the term "curtilage" discussed in *Methuen-Campbell*. He said it appeared from that decision that the meaning of the word "curtilage" is constrained to a small area about a building. However, he then went on to say that the size of the area appears to be a question of fact and degree. He too pointed out that the relevant statute was only concerned with the ground within the curtilage of a building, and not within the grounds of an institution.

74. Nourse LJ explained the origins of the term "curtilage" and quoted the definition in the OED referred to earlier in this judgment. He explained that the need for physical enclosure of the area had disappeared in modern usage and then made two comments about the dictionary definition as it applies today. First, the kind of ground most usually attached to a dwelling-house is a garden. Secondly, it is permissible to refer to the curtilage of a building which is not a dwelling-house.
75. He then said that the authorities demonstrated that an area of land cannot properly be described as curtilage unless it forms part and parcel of the house or building which it contains or to which it is attached. That proposition, which he said was "consistent with the notion that the land is regarded by the law as forming one enclosure with the land or building," was most clearly and authoritatively stated in the passage quoted from the judgment of Buckley LJ in *Methuen-Campbell*. He added that while making every allowance for the fact that the size of the curtilage may vary somewhat with the size of the house and building, he was in no doubt that the 100 acre park on the edge of which Mr Dyer's house now stood could not possibly be said to form part and parcel of the manor house, let alone any of the other college buildings:
- "Indeed, a park of this size is altogether in excess of anything which could properly be described as the curtilage of a manor house, an area which no conveyancer would extend beyond that occupied by the house, the stables and other outbuildings, the gardens and the rough grass up to the ha-ha, if there was one."
76. A similar approach was taken in *Barwick*, which also concerned whether the right of a secured tenant to buy a property was excluded because it was within the curtilage of a building which was held mainly for purposes other than housing. In that case, the house was one of 10 originally built for the purpose of housing firemen working at a nearby fire station. The fire station was a large building with a large yard to the rear, with a row of garages at the back of the yard. A gate in the high brick wall at the southern end of the yard led onto a path, and from the path there were gates into each of the gardens of the houses. Some of the occupants of the houses rented the garages. They could only gain access to the garages through a gateway to the north of the yard, which itself was only accessible from the public highway. The fire station was within a clearly marked boundary wall.
77. The judge at first instance, having paid a site visit, said that the site was "in appearance a compact whole and functionally a single unit." Parker LJ, with whom Stocker LJ agreed, said he found it difficult to comprehend how the housing estate and the fire station with its yard could be seen as a single unit. He took the judge to mean that it could be seen that the fire station could operate functionally with the houses to carry out a fire service, but that was not the issue. The curtilage of the fire station comprised the yard in which ancillary buildings, namely the garages, were located. By no stretch of the imagination could the house be regarded as within the curtilage of the fire station *building*. It did not matter that the housing estate was no doubt of extreme convenience for the use of the fire station. Nor was it relevant that the houses were built as houses for firemen. They could have been built on the other side of the road and would have been equally convenient, but on no basis could they then have been described as being within the curtilage of the fire station [I interpolate, let alone the fire station building].
78. Having given his salutary warning against the dangers of seeking to give a comprehensive definition of "curtilage", Sir David Croom-Johnson said (at pp 346-347) that the argument in *Dyer* was that "curtilage" must be interpreted having regard to the type of building to which it is attaching:

"That was accepted by the Court of Appeal in that case, but the curtilage of a school may be different from the curtilage of a dwelling-house and probably will be. Or the curtilage of a large dwelling house may be different from the curtilage of a small one.

But what is included in curtilage is narrower than something which it is convenient to have for the use of the building. It begins by needing to be immediately adjacent to that building. It may or may not have erections on it like sheds or small buildings. But if there are such, their function must be such as to facilitate the occupation of the principal building and not simply a convenient adjunct to the purpose for which the principal building is used or enjoyed."

79. The decision in *Calderdale*, which was a case about listed building consent, was made after *Methuen-Campbell* and before *Dyer*, in which it was not cited. A large industrial mill was linked at its southernmost point by a bridge to the first in a group of terraced cottages which were originally constructed as millworkers' dwellings. No. 1 cottage, apart from its attic (which was only accessible from No. 3), appeared to have been designed to form an office annexed to the mill. The sole means of access to the remaining parts of that cottage was via the bridge from the mill. The mill was a listed building, but neither the terrace nor the individual cottages were listed separately. At the time that an urgent application was made to Skinner J for an injunction to restrain the demolition of the terrace, the mill and the terrace were in separate ownership and no-one was living in the cottages.
80. The relevant statutory provision at the time was section 54 (9) of the Town & Country Planning Act 1971 ("the 1971 Act"), which provided that:
- "In this Act 'listed building' means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and, for the purposes of the provisions of this Act relating to listed buildings and building preservation notices, any object or structure fixed to a building, or forming part of the land and comprised within the curtilage of the building, shall be treated as part of the building."
81. Skinner J held that (as was common ground before him) the terrace as a whole and each individual cottage was a "structure" for the purposes of that section, and that it formed part of the land. He regarded the two limbs of the statutory test as mutually exclusive, in that a structure was either fixed to the mill, or within the curtilage of the mill, and could not be both (this part of his judgment was reversed by the Court of Appeal). He therefore focused on the question whether the terrace was comprised within the curtilage of the mill.
82. Having referred to a number of cases that were cited to him on the meaning of "curtilage" within particular contexts (it is unclear whether these included *Methuen-Campbell*, which he did not mention) the judge set out the rival submissions of counsel. Counsel for the applicants submitted that "curtilage" in the context of an Act relating to listed buildings "embraces all that is within the boundaries of the site within which the listed building is situated." Counsel for the defendants submitted that boundaries were irrelevant, and that premises that were separately owned, occupied and rated from the mill could not be within its curtilage.
83. The judge preferred the former submission. He said that he had to ask himself, "from a planning rather than a strict conveyancing viewpoint", whether the buildings within the alleged curtilage formed a single residential or industrial unit and, in that instance, whether the mill and the terrace formed part of an integral whole. He said that on a strict conveyancing viewpoint, evasion of the Act would be easy to achieve. He was satisfied that the terrace lay within the curtilage of the mill, it was built within the boundaries of the mill and as an adjunct to it, and had it not been for the historical accident of the division of ownership in 1973 solely for administrative convenience, they would still have been in common ownership. Then, he said, no-one could have argued that they were not "within the same curtilage".
84. I agree with Holgate J that when Skinner J used the phrase "integral whole", he was using it in a different sense from Buckley LJ, and that it does seem clear that he was deliberately seeking to adopt a "planning" approach to the concept of curtilage that was distinct from, and wider than, what he dubbed the "conveyancing approach". That much emerges from the fact that he referred to a single residential or industrial unit, the test that was expressly rejected by the Court of Appeal in *Methuen-Campbell*. However, that does not really matter, because I do not share Holgate J's view that the Court of Appeal apparently endorsed Skinner J's approach. That approach was simply wrong, and contrary to authority. The Court of Appeal agreed with the result, but they adopted the orthodox approach.
85. When the case reached the Court of Appeal it was held that *both* limbs of the statutory test were satisfied. Stephenson LJ delivered the leading judgment, with which Ackner LJ and Sir Sebag Shaw agreed. In a passage on p.405 that needs to be treated with some caution (because the width of this part of his reasoning was disapproved in the subsequent decision of the House of Lords in *Debenhams Plc v Westminster City Council* [1987] AC 396 (*Debenhams*)), Stephenson LJ placed specific reliance on

the fact that the preservation of a listed building cannot be considered in isolation; the building has to be considered in its setting, as provided by what was then section 56(3) of the 1971 Act.

86. He explained that there may be objects or structures which would not naturally be regarded as part of a building or features of it, but which nevertheless are so closely related to it that they enhance it aesthetically and their removal would adversely affect it. If the building itself is to be preserved unless the Secretary of State consents to its demolition, then so too should those objects and structures be. That objective is achieved by requiring them to be treated as part of the listed building. Stephenson LJ said that this indicated a broad approach to the provisions of s.54(9), and a construction of it which would enable the Secretary of State to exercise the discretion to grant or withhold listed building consent over a wide rather than a narrow field.
87. So far as the first limb of the statutory requirements was concerned, Stephenson LJ held on the facts that the terrace was fixed to the mill "in the ordinary sense of those words" (p.406). That part of the decision can no longer be regarded as good law in the light of *Debenhams*, discussed below. He then went on to consider whether the terrace cottages were within the curtilage of the mill.
88. At the bottom of p.406, Stephenson LJ adumbrated what have become known as the three "Stephenson factors" that must be taken into account in determining whether a structure or object is within the curtilage of a listed building, namely (1) the physical layout of the listed building and the structure, (2) their ownership, past and present and (3) their function, past and present. He observed that where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building, or even some distance from it, into its curtilage. Thus when the terrace was built and the mill was worked by those who occupied the cottages and the millowner owned the cottages, "it would have been hard, if not impossible, to decide that the cottages were outside the curtilage of the mill". He then went on to consider whether the changes that had occurred since the mill and terrace were built meant that the terrace cottages fell outside the curtilage of the mill.
89. It was in this specific context that Stephenson LJ cited, in full, the key passage from Buckley LJ's judgment in *Methuen-Campbell* which I have already quoted. He said nothing to suggest that the "part and parcel" test was wrong. He merely commented that whilst Buckley LJ did not refer to Skinner J's "single unit," he did refer to his "integral whole" (without perhaps appreciating that Skinner J had used that phrase in a different sense). He also observed that Buckley LJ was dealing with a house and premises in common ownership (which, of course, was not the case in *Calderdale*).
90. Despite the ambiguous nature of his comment about Buckley LJ's reference to "integral whole", it seems clear to me that on a fair reading of his judgment, Stephenson LJ was not applying (let alone purporting to apply) any different test than that in *Methuen-Campbell*, or treating that case as distinguishable. He said nothing to suggest that he had failed to appreciate that Buckley LJ's conclusion that the land and building together formed an "integral whole" was the result of treating the land as part and parcel of the building after considering the relevant factors, rather than being a reformulation or paraphrase of the "part and parcel" test he had already propounded. In the passage following his quotation from Buckley LJ's judgment, Stephenson LJ was simply making the point that when a court is deciding whether that test is satisfied on the facts, consideration of the factors he had already identified, and of the particular statutory context in which the issue arises, may lead to different conclusions in different types of case.
91. At p.408 Stephenson LJ recorded the submission of counsel for the appellant that different buildings within different ownerships fall less easily within the same curtilage and that "this terrace is not, or at any rate is no longer, *so intimately associated with the mill as to form part and parcel of it*, at least without exaggerating the importance of their history and ignoring the differences in ownership and user which now exist." (Emphasis added). Counsel was clearly addressing the *Methuen-Campbell* test.
92. Counsel for the respondent responded by submitting that, because of the particular context of the preservation of listed buildings, and the need to avoid evasion of the mischief by what he termed "colourable transfers of title," more weight should be given to historical association and physical proximity than to ownership. He then contended that the curtilage of a listed building is an area of land

which contains objects or structures which "naturally form or formed with the listed building an integral whole" and that the boundaries of that area depended on the facts of the individual case. The substantially unchanged layout of the area including the terrace and the mill was the strongest indicator that the terrace was [still] within the curtilage of the mill.

93. Those submissions were focusing upon the closeness of the relationship between the structures, on the one hand, and the listed building, on the other. It was the structures, not the land upon which they were situated, which were said to "naturally form an integral whole" with the listed building. That focus is understandable in the context of a statute which, if it applied, required those structures to be treated as part of the listed building and subject to the same planning controls. What counsel was submitting was that because of the closeness of the relationship between them historically and geographically, the structures could, without artifice, be regarded as part of the mill and therefore as falling within its curtilage. That formulation of the legal argument was consistent with the test in *Methuen-Campbell*. Counsel was not propounding some different, wider, listed building test.
94. Stephenson LJ concluded, though not without doubt, at p.409, that the terrace had not been taken out of the curtilage by the changes that had taken place. He accepted that it was within the curtilage of the mill historically, when the terrace was originally constructed, and said that on the facts of that case the extent of the curtilage was not affected by the change in ownership and use of the cottages. The terrace "*remained so closely related physically and geographically to the mill as to constitute with it a single unit and to be comprised within its curtilage.*" (Emphasis added).
95. Stephenson LJ did not say that being a "single unit" was what determined what fell within the curtilage of the mill; rather, the description of the terrace as forming a "single unit" with the mill *and* as "falling within the curtilage" were both consequences of the continuation of the close physical and geographical relationship of the structure (the terrace) to the mill. He was rejecting the submission of counsel for the appellant as to the lack of a continuing "intimate association" and applying the test in *Methuen-Campbell* to the facts of that case, albeit with a degree of generosity because of the identified policy behind the statute. In other words, despite the changes in use and ownership, the terrace was still to be treated as part and parcel of the mill for the purposes of listed building consent.
96. *Calderdale* was considered by the House of Lords in *Debenhams*, which concerned an exemption from liability to rates that applied to a structure or object falling within the extended definition of a listed building in s.54(9) of the 1971 Act. The House of Lords considered the decision in *Calderdale* and by a majority (Lord Ackner dissenting) held that in the context of s.54, the word "structure" was intended to convey a limitation to such structures as are ancillary to the listed building itself. The specific examples given were the stable block of a mansion house, or the steading of a farmhouse either fixed to the main building or within its curtilage.
97. Lord Keith, with whom Lord Templeman, Lord Griffiths and Lord Mackay agreed, rejected a construction of the word "structure" in s.54(9) as embracing "a complete building not subordinate to the building of which it is to be treated as forming part". He did not accept the width of Stephenson LJ's reasoning in *Calderdale* about the importance of preserving the setting of the listed building. He pointed out at p.403E-F that if that was part of the purpose, Parliament would not have stopped at other buildings fixed to or within the curtilage of the listed building, but would have subjected buildings immediately adjoining the building but not fixed to it, or buildings immediately opposite, to the same planning controls.
98. A little later, Lord Keith gave examples of buildings that would attract the rating exemption (at p.405A-B). These included a (listed) building with a garden, yard, court or other land ordinarily used for the purposes of the building (classic examples of land falling within the curtilage and treated as part and parcel of the building for that reason); and a building with an ancillary structure such as a garage or outhouse which is either fixed to the main building or within its curtilage (which would fall to be treated as part of the building by virtue of s.54(9)). He went on to say that whilst he would not accept the width of the reasoning of Stephenson LJ in *Calderdale* he would not overrule the decision "because there was room for the view that the terrace of cottages was ancillary to the mill".



99. In his concurring speech, Lord Mackay said it was not a natural use of language to describe two adjoining houses in a terrace by saying that one is an object or structure fixed to the other. He went on to describe *Calderdale* at p.411C as "a very special case on its facts" but accepted that it was possible to treat the terrace and the mill, having regard to the history of the properties, as a single unit. Again, it is clear from that passage that Lord Mackay was treating the "single unit" as the conclusion that was reached after considering the relevant factors and applying them to the facts of that case, not as the test for determining whether the terrace fell within the curtilage of the mill.
100. Whilst the decision in *Debenhams* was not directly concerned with the question of the meaning of "within the curtilage of a building", the way in which that concept was understood by both Lord Keith and Lord Mackay is consistent with the "part and parcel" test in *Methuen-Campbell* (a case which was cited to the House of Lords, but not referred to in the speeches). There is nothing in *Debenhams* to suggest that the House of Lords thought the Court of Appeal in *Calderdale* were laying down some special test for curtilage or giving it an extended meaning in the listed building context. In fact, the approach taken to the statute by the House of Lords was to eschew a broad interpretation of s.54(9), and to adopt a meaning of "structure" that was different from and narrower than its normal meaning.
101. The next case is *Skerritts*, which was decided after *Calderdale*, *Dyer*, *Barwick* and *Debenhams*. The issue in that case was whether listed building consent was required for replacement of the windows in a stable block located 200 metres to the east of a large Grade II listed house, Grimsdyke, which was then being used as a hotel. By then the governing statute was the Listed Buildings Act, but the definition of "listed building" in section 1(5) of that Act was in very similar terms to s.54(9) of the 1971 Act. This provided that:
- "... any object or structure within the curtilage of the [listed] building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948, shall be treated as part of the building".
102. The judge had held that the planning inspector erred in law in failing to have regard to an alleged principle (which he said emanated from *Dyer*) that the curtilage of a listed building is confined to a small area around that building. The question on appeal was whether such a principle existed. The Court of Appeal decided that it did not, and that "smallness" was not inherent in the expression "curtilage". Whether something fell within the curtilage of a building was a question of fact and degree.
103. The leading judgment was given by Robert Walker LJ, who considered *Methuen-Campbell*, *Calderdale*, *Debenhams* and *Dyer*. He cited a large part of the passage in Buckley LJ's judgment in *Methuen-Campbell* without criticism, and without comment on the "part and parcel" test. He noted that Stephenson LJ in *Calderdale* had focused on Buckley LJ's reference to an "integral whole" rather than his reference to "small pieces of land". He pointed out, at p.65H, that in *Debenhams* Lord Keith did not criticise Stephenson LJ's view in *Calderdale* that an ancillary building might be within a main building's curtilage even though some way from it.
104. When considering *Dyer*, and Donaldson LJ's suggestion that "curtilage" involves "some small but necessary extension to that to which the word is attached", Robert Walker LJ correctly said that all three members of the Court regarded the issue as one of fact and degree. He also said they all appeared to have been influenced by the approach to disproprietary legislation taken in *Methuen-Campbell*.
105. It is slightly unclear to me how he formed that impression, as in *Dyer* the argument addressed to the Court on behalf of the landowner, based on the nature of the statutory right of compulsory purchase, was that they should adopt a *broader* approach and that "curtilage" in that context "must necessarily refer to a much larger area than would otherwise be the case". That argument was rejected. By contrast, in *Methuen-Campbell* the nature of the legislation appeared to have influenced Goff LJ (though only to a limited extent) in rejecting the wider interpretation of the statutory provisions advocated in that case by the tenant, the person who wanted to buy the paddock. In both cases, the rejection of the argument advanced by reason of the nature of the statutory right simply led to the Court of Appeal treating "curtilage" as bearing its normal meaning, rather than giving it some special or extended meaning. It did not result in the adoption of a more restrictive approach.

106. Whatever he may have thought about the supposed influence of the disproprietary nature of the statute on the approach taken by the Court of Appeal, Robert Walker LJ said in terms that the decision in *Dyer* was "plainly correct". He quoted with approval the passage in Nourse LJ's judgment to which I have referred in paragraph 75 above, thereby accepting that there are limits to the extent of the curtilage, and that in that case, the Court of Appeal had been right to decide that it did not include the park. However, he said the Court went further than was necessary to go in expressing the view that the curtilage of a building must always be small, or that the notion of smallness is inherent in the expression. As he correctly observed, the observations about smallness were not necessary to the decision.
107. At p.67 Robert Walker LJ pointed out that Nourse LJ had recognised in *Dyer* that in the case of a "principal mansion house", which is what Grimsdyke was built as, the stables and other outbuildings were likely to be included within its curtilage. He observed that the curtilage of a substantial listed building is "likely to extend to what are or have been, in terms of ownership and function, ancillary buildings", although he still accepted that "in the nature of things, the curtilage within which a mansion's satellite buildings are found is bound to be relatively limited." However, he said that the concept of smallness in that context was so completely relative as to be almost meaningless, and unhelpful as a criterion.
108. As Lieven J put it in *Challenge Fencing* at [29], the Court of Appeal in *Skerritts* made it clear that there is no test that a curtilage has to be small; but that does not mean that relative size is an irrelevant consideration. As she said, it may well be the case that a large house would more easily be found on the facts to have a curtilage that extended to outbuildings, than if the house were a small cottage. It was a relevant factor in *Challenge Fencing* itself that the building was small and the curtilage being claimed was extensive. It was also found to be plainly relevant that a number of other buildings on the site on which the building stood had been demolished, and would have had their own curtilages.
109. I can find nothing in *Skerritts* to support the suggestion that there is a wider or different approach to what is meant by "curtilage" in listed buildings cases or to support the test suggested by BAL. I agree with Holgate J's conclusion at [116] that there is nothing in the *ratio* of that case which detracts from or modifies the principles in *Methuen-Campbell*, *Dyer* or *Barwick*.
110. In any event, for the reasons already stated, I do not accept that the test in a listed building case is any different, although in order to be treated as if it were part of the listed building, a freestanding structure within the curtilage must also be ancillary to that building. *Calderdale* is simply an example of a case turning on its own special facts, in which the listed building context and a generous approach to the purpose of the statute probably tipped the balance in favour of a decision which resulted in the (temporary) preservation of the terrace. As Sir Sebg Shaw indicated in his judgment, the only practical impact of the decision was that the Secretary of State would have the final say on whether it was demolished.
111. The final case is the decision in *Challenge Fencing* which was a planning development control case, not one concerning a listed building. As Holgate J explained in his judgment at [117]-[120], the concept of "the curtilage of a dwellinghouse" or "the curtilage of a building" is used in the Town and Country Planning Act 1990 and other planning legislation to control development rights, and the statutory purposes of the Listed Buildings Act do not apply to development control under wider planning legislation.
112. The issue in *Challenge Fencing* was whether a large area of hardstanding, for which a certificate of lawful use or development was sought, was within the curtilage of an industrial warehouse. Lieven J held that the planning inspector had not erred in law in deciding that it was not. She considered the decisions in *Methuen-Campbell*, *Calderdale*, *Dyer* and *Skerritts* as well as some first instance decisions. Whilst she acknowledged at [10] that slightly varied considerations may be in play when considering the curtilage of an industrial building when compared with listed buildings, she drew no distinction between the general approach to be taken in a development control case and in a listed building case. That was entirely correct. As Mr Edwards submitted, it would be odd if there were a divergence of approach in principle, given that the Town and Country Planning Act 1971 originally contained the rules relating to listed buildings.

113. At [14] Lieven J referred to Nourse LJ in *Dyer* accepting the proposition drawn from the authorities that "an area of land cannot properly be described as a curtilage unless it forms part and parcel of the house or building which it contains or to which it is attached." Having correctly identified the test, she then extracted a number of further propositions from the authorities, which she listed at [18] before reiterating, at [21], that the determination of what is the curtilage is a question of fact and degree for the decision maker, taking into account the relevant considerations.
114. Holgate J said in the present case at [123] that the guidance in paragraph 18 of *Challenge Fencing*, although helpful, and sufficient for the purposes of that case, did not purport to be exhaustive on the approach to identifying a "curtilage," and it is important to read that decision as a whole. I would strongly endorse that observation. Just as it would be inadvisable to try and define "curtilage", there are obvious dangers in attempting to be too prescriptive about what factors are relevant to determining the curtilage in a given case, or in trying to create an exhaustive list of them. Reading her judgment as a whole, it is plain that Lieven J did not fall into that trap. Paragraph 18 does no more than helpfully identify some important propositions drawn from some of the earlier authorities.
115. What matters for present purposes is that (i) Lieven J approached the question on the basis that the "part and parcel" test adopted in *Dyer* but taken from *Methuen-Campbell* was correct; and (ii) she expressly acknowledged (at [31]) that, whilst the facts that the land and building were being used together and were closely related to each other were relevant considerations, there may be situations where the planning unit is different from (and almost certainly larger than) the curtilage of the building. The two concepts are not the same.
116. The conclusion to be drawn from the authorities is that they all illustrate different applications of the same test to the facts and circumstances of the specific cases. They demonstrate that the curtilage in a given case is a question of fact and degree. There is nothing in them which supports the test put forward by BAL; on the contrary, the approach of Buckley LJ in *Methuen-Campbell* has been adopted and followed in all the different statutory contexts in which the concept of "curtilage" has been considered, albeit perhaps with a slightly greater degree of latitude by the Court of Appeal in *Calderdale*. *Dyer*, *Barwick* and *Methuen-Campbell* itself would have been decided very differently if the test had been whether the land and building together formed part of some wider residential or industrial unit, or that there was "functional interdependence" between them, or (in the case of *Dyer*, at least) that one was necessary for the operation of the other.
117. Although none of the authorities is concerned with the 2006 Act, the approach taken in them to the concept of the "curtilage of a building" is consistent with the interpretation that I would have given to that expression in the 2006 Act as a matter of ordinary language. That approach is also compatible with redressing the mischief that paragraph 6 of schedule 2 was aimed at.

### **The Inspector's errors**

118. "Ancillary" means something which is subservient to, or subordinate to, or which provides essential support to the functioning of, something else. It was common ground that, although the land does not have to be ancillary to the building in order to fall within its curtilage, the answer to the question whether it is ancillary to the building is relevant and in some cases, may be highly relevant. This is a case in point. As Holgate J said, if that factor is taken into account the decision-maker must understand the concept correctly, and the notion of something being "ancillary" is meaningless unless it can be related to something else with a primary role.
119. The Inspector plainly fell into error in his approach by treating the land and the terminal building as ancillary to each other, for the reasons set out by Holgate J at [132]-[136] of his judgment. If the correct question were asked, namely, is the Application Land ancillary to the terminal building? the answer is plainly no. On the contrary, the terminal building is ancillary to the functioning of the airport, for the reasons given by the Judge. It was this mistake, and the findings made by the Inspector about "functional equivalence", which led to his adoption of the wrong test for identifying curtilage land.
120. No useful purpose was to be served by asking whether the Application Land and terminal building together formed part of a single functioning unit (i.e. the airport), but that is what the Inspector did,

and that is where he went wrong. Although at one point he did articulate it in his decision letter, the Inspector never applied the right test. Had he done so, it seems to me that it would have been impossible for him to have reached the conclusion that the whole of the operational area of the airfield was in any sense "part and parcel of" the terminal building.

121. I agree with Holgate J's explanation at [147] of why BAL's test cannot be correct. As he points out, if it were permissible to identify a curtilage simply by asking whether the building and land together formed a single unit with "functional equivalence", or were used for the same overall purpose, then their relative sizes and functions, the question whether the land is ancillary to the building, and indeed any historical connection between them, would diminish in significance and perhaps cease to be of any relevance at all.
122. Moreover, as the Judge said, the reasoning adopted by the Inspector could be replicated for a golf course or other open air recreational activity occupied with a club house. The building itself need not be on the common land, if the land within its curtilage is. Given the number of golf courses that are situated on common land, there is a real danger of the "integral whole" approach being used to obtain deregistration of substantial areas of common land without having to comply with the stringent requirements of s.16 of the 2006 Act.
123. Mr Edwards sought to distinguish a golf course on the basis that the relationship between the land and the building in such a case was not one of necessity, whereas with an airport it was; but there are two responses to that. First, *Methuen-Campbell* makes it clear that the test is not one of necessity. Secondly, whilst it may be possible to have a golf course without there being a club house, nevertheless, if there is a club house built next to a golf course, the adjacent course is what enables the building to function as a club house for members of the golf club. In those circumstances, and however large it may be, the club house is likely to be ancillary to the golf course, not vice versa. To my mind, there is no satisfactory answer to the golf course point, and it plainly was not Parliament's intention to enable owners of large tracts of common land used for recreational purposes to deregister that land without satisfying the requirements of s.16.

### **Conclusion**

124. Holgate J was right to hold that the phrase "the curtilage of a building" in the 2006 Act requires the land in question to form part and parcel of the building to which it is related. The correct question is whether the land falls within the curtilage of the *building*, and not whether the land together with the building fall within, or comprise, a unit devoted to the same or equivalent function or purpose, nor whether the building forms part and parcel of some unit which includes that land. He therefore correctly concluded that the Inspector's decision was fatally flawed by material errors of law.
125. For those reasons, I would dismiss this appeal. It only remains for me to express my gratitude to all counsel and to those instructing them for their industry and their helpful presentation of the arguments in this interesting case.

### **Lord Justice Nugee:**

126. I agree. I am grateful to Andrews LJ for her impressive and thorough analysis of the authorities, on which I do not wish to add anything except my respectful agreement, and for the explanation of the errors that the Inspector fell into and that Holgate J correctly identified.
127. In summary, the statutory language in paragraph 6 of schedule 2 to the Commons Act 2006 requires one to ask whether since the date of its provisional registration as common land the relevant land has at all times been, and still is, "within the curtilage of a building". That, applying the guidance given by Buckley LJ in *Methuen-Campbell*, means that one needs to ask whether the land is so intimately associated with the building as to lead to the conclusion that the land forms "part and parcel of the building". I agree that nothing in the later authorities has displaced this guidance, and here the Inspector duly cited it (along with other guidance) at paragraphs 50 and 54 of his decision letter where he discussed the authorities. However when he came to express his conclusion at paragraph 83 he found that the operational area of the airfield was "part and parcel with the building". As Andrews LJ says at paragraph 7 above, that small but significant change of language illustrates his error; Dr Bowes

in his short, cogent submissions for Mr Tipton put his finger on it when he said that the Inspector did not really answer the statutory question, namely whether the airfield was within the curtilage of the terminal building, but a different question, namely whether they together formed part of a single unit.

128. I add a few words on an aspect of statutory construction that the present case well illustrates. In the absence of any relevant statutory definition, the starting point is that Parliament is assumed to use words in their natural and ordinary meaning unless there is some reason to conclude otherwise. With ordinary English words in common usage that usually does not pose significant problems as we are all familiar with their ordinary meaning. This is so even if we would find it very difficult to produce a comprehensive definition: most words have a core meaning that is easily recognisable, although it is difficult to be sure quite how far it extends, and there may be real doubts as to borderline cases.
129. Thus for example we all know what a house is, and in most cases everyone would agree whether a building was a house or not; but there are cases where the answer is not so obvious, and it would be a struggle to produce a definition of a house that sought accurately to draw the line and enabled one to deal with all possible cases. If a Court is asked to decide if a building is a "house" for the purposes of some statutory provision, I do not think it is necessary for the Court to seek to define exhaustively what a house is, nor indeed would it usually be sensible for it to do so. This is because the Court is necessarily focused on the facts of the particular case before it, and cannot reasonably envisage what other cases might arise in the future. It is enough if the Court explains why the particular building before it does or does not qualify as a house for the purposes of the statutory provision in question. (And incidentally I agree that the Court in such a case can take into account the purposes of the relevant statutory provision in answering that question; that does not mean that "house" has a different meaning for different statutes, rather that quite how far that meaning extends in any particular case may be influenced by the context, including the purposes of the statute under consideration).
130. Curtilage however is not a word in everyday usage, at any rate outside the south-west where it appears it may still be in popular use (see the OED definition cited by Holgate J at [73] of his judgment). How then do we ascertain its natural and ordinary meaning? One method is to have recourse to dictionary definitions. But these, although of some help, often themselves give rise to further argument. In the present case, for example, the OED definition refers to land attached to a dwelling-house "forming one enclosure with it, or so regarded by the law", which begs more questions than it answers.
131. If we want to know what a word's ordinary meaning is, it is to my mind more helpful to ask how it is used in practice. This is after all what we do with everyday words. We do not know what the word house means because we have looked it up in the dictionary; we know what a house is because we have experience of how the word house is used. In the same way if we want to know what curtilage means, it is helpful to look at examples of how it has been used in practice. Such an exercise may not indicate the outer edges of its meaning with precision, but it does help to illustrate its central meaning.
132. Fortunately the extensive array of authorities cited to us on this appeal enables us to do this. We find for example that in the case of modest houses, the curtilage would not on the face of it extend to the whole of 10 acres of pasture land let with a cottage (*Trim v Sturminster RDC* [1938] 2 KB 508); that a field used for keeping cows was not part of a house (*Pulling v London, Chatham and Dover Railway Co* (1864) 3 De G J & S 661); and that paddocks have been held not to be part of the curtilage of houses in both *Methuen-Campbell* and *Burford v Secretary of State for Communities and Local Government* [2017] EWHC 1493 (Admin). On the other hand the curtilage does include a wall enclosing a recently expanded part of the garden (*Sumption v Greenwich LBC* [2007] EWHC 2776 (Admin)).
133. In grander houses, the curtilage would extend to "the house, the stables and other outbuildings, the gardens and the rough grass up to the ha-ha if there was one", but not to the 100 acre park surrounding a mansion house (*Dyer* at 358F-G per Nourse LJ); thus it would include a wall forming part of a ha-ha (*Watson-Smyth v Secretary of State for the Environment* (1992) 64 P&CR 156); and a stable block even some distance away from the main house (*Skerritts*); but not 64½ acres of a park, meadow land and pasture land (*Buck d. Whalley v Nurton* (1797) 1 B & P 53); nor a 650m long fence along the driveway (*Lowe v First Secretary of State* [2003] EWHC 537 (Admin)). Admittedly a devise of a mansion-house to the testator's wife was held to include three meadows let for grazing in *Leach v*

*Leach* [1878] WN 79, but in *Methuen-Campbell* at 543F Buckley LJ said that he did not think, unless there was some special context, that this very liberal construction adopted by Malins V-C was good law.

134. When one moves away from dwelling-houses we find that the purpose-built residence of a medical superintendent within the boundary of a lunatic asylum was within the curtilage of the asylum (*Jepson v Gribble* [1876] 1 Ex D 151); but firemen's houses outside the boundaries of the yard to a fire station were not within the curtilage of the fire station (*Barwick*). A courtyard and access to a warehouse and mill was part of the curtilage (*Caledonian Railway Co. v Turcan* [1898] AC 256); as was a piece of ground in front of a public house used for access (*Marson v London, Chatham and Dover Railway Co* (1868) LR 6 Eq 101); and two small open spaces in an oil depot (*Clymo*); but not a large hardstanding massively in excess of what was necessary for an undertaking in a modest building (*Challenge Fencing*). To these can be added *Calderdale*, which concerned a terraced row of houses physically linked to a mill by a bridge and within its boundaries, and which is extensively considered by Andrews LJ above.
135. A survey such as this is neither scientific nor comprehensive. Nor does it give any indication why in any particular case the Court decided as it did: that requires a consideration of the explanations given by the judge(s) in any particular case. Nor does it take account of the different statutory contexts in which the question may arise. Nor is it any substitute for a careful analysis of the question when it does arise. But that does not mean that it has no value. To my mind it gives a good idea of the concept of what it is for a piece of land to be within the curtilage of a building; it illustrates the natural and ordinary meaning of the word. I will not attempt to define it, but these are all examples of bits of land that go with a building, of "relatively limited" extent (*Skerritts*), that are "intimately associated" with it (*Methuen-Campbell*).
136. To repeat myself, the fact that we have a grasp of the central meaning of a word does not mean that we are able to define quite how far it extends with precision. But armed with this information, we can see that the relationship of the airfield to the terminal building in the present case bears very little resemblance to the cases where land has been held to be within the curtilage of a building, and although this cannot by itself determine the question, I do not find it surprising that the more detailed analysis undertaken by Andrews LJ demonstrates that Holgate J was entirely right to find that the airfield was not "within the curtilage of a building" as required by paragraph 6 of schedule 2 to the 2006 Act.
137. I agree that the appeal should be dismissed for the reasons that she gives.

**Lady Justice King:**

138. I agree with the judgments of My Lady and My Lord.

Note 1 As Holgate J explained at [75] of his judgment, "messuage" means the land occupied by a dwelling house and its appurtenances, or a dwelling-house together with its outbuildings and the adjacent land assigned to its use.

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