

Decision maker:	Planning Committee
Subject:	15/00787/PAMOD Request to modify legal agreement attached to planning permission ref 11/00961/FUL relating to land at 61 Earlsdon Street Southsea
Report by:	Assistant Director of Culture & City Development
Wards affected:	St Thomas
Key decision:	No
Full Council decision:	No

1 Purpose

This relates to a request to modify a legal agreement, completed on 27 March 2012. The agreement secures planning obligations associated with planning permission for a halls of residence (ref 11/00961/FUL), which has been implemented. The agreement restricts the way the halls of residence are occupied to ensure that the property does not become permanent dwellings. The principal occupation of the halls of residence (35 study/bedrooms) for term-time accommodation for students would remain unchanged.

A clause of the agreement is sought to be modified. It presently limits occupation to students only and, as a consequence, during the period of the summer vacation the premises may be empty (in accordance with the current terms of the planning agreement). The owner/operators seek temporary accommodation for non-students outside of the academic year (for periods not exceeding 2 months in the case of any individual resident). For this reason, they are seeking to vary the agreement.

This matter was originally reported to the meeting held on 24 June 2015. The committee resolved that this modification request be deferred to enable the owner/operators to investigate working with the university regarding the use of their car parks. Also, following issues raised by adjoining occupiers the committee requested a report regarding compliance with the current planning permission, which is addressed in section 10 below.

The owner/operators have provided updated information addressing this case, as set out in a letter dated 6 April 2016 attached as an Appendix, leading now to this report.

2 Recommendations

That the legal agreement be varied (within three months of the date of the Committee's decision) so that during academic terms only students may occupy the accommodation (as now) and at all other times the accommodation must be used as temporary residential accommodation for periods not exceeding two months in the

case of any individual resident so occupying any of the accommodation at such times.

3 Background

The owners/operators of two sites for halls of residence branded 'Unilife' providing term-time accommodation at 61 Earlsdon Street and 10 St James's Street implemented permissions in March 2012 and December 2009 respectively. Both permissions were subject to legal agreements containing, amongst other things, clauses restricting the use and occupation in the halls of residence for no purpose other than as residential accommodation for students during their period of study.

In the adopted Student Halls of Residence Supplementary Planning Document the standard provisions seek to secure that "*During University of Portsmouth Academic Terms not to use nor permit or allow the use of any of the <insert> study/bedrooms in the Halls of Residence for any purpose other than as temporary residential accommodation for a Student during his or her period of study*".

The same 'Unilife' developer secured planning permission on 22 Middle Street for a proposed halls of residence (124 study/bedrooms) in July 2014. The development is restricted to use as specialist residential accommodation for students by legal agreement but includes provision for limited and temporary 'unrestricted' (non-student) occupation outside of term time.

The agent's accompanying letter includes the following comments: "*The ability to make student accommodation at Earlsdon Street available to provide temporary accommodation for non-students and use out of term time to support events such as conferences, seminars and a whole range of cultural attractions would (as at Middle Street) contribute to the wider local economy of the City and business community (through investment and spend), including leisure and tourism. This could include events hosted or operated by the University.*"

4 Assistant Director of Culture & City Development comments

This request to modify a legal agreement would be consistent with the Student Halls of Residence SPD and more recent decisions securing planning obligations for other students halls of residence; unrestricted use outside of term time, additional to the principal occupation as a halls of residence for students during the academic term, presents a more sustainable approach to development that avoids empty property and, as outlined by the agents above, some potential contribution to the local economy.

The agents have drawn attention to the fact that "The Council has previously supported and agreed to the use of Unilife student accommodation out of term time elsewhere in the City at Middle Street with no need to consider alternate car parking arrangements (in that case for 124 study bedrooms)." This is correct and the same provisions accepted for other halls of residence now being developed at 'Zurich House' (1000 study/bedrooms) and Greetham Street (836 study/bedrooms). The merits of allowing temporary short-stay accommodation outside of term time contributing to the local economy has been held to outweigh any impact on parking demand.

The agents comment that the UoP has a car park ('Uni House') 250m from No61 Earlsdon Street with spaces to park 56 cars (including 2 disabled bays). During the vacation period when the car park would have little or no UoP use, the car park would be available to occupiers of Unilife. The Earlsdon Street site also has secure storage for 25 cycles (in locker or rack).

5 Highways comments

The Highways Authority comment that the site falls within a highly sustainable location, where reliance on the private car is not necessary and having regard to permit controls there is no available on-street car parking (but ample cycle parking should this be required). The Highways team raise no objection to these premises being used outside of term time, although suggested an advisory: 'The web site and any information communicated to enquiries for the use of this accommodation includes information on the fact that there is no available car parking within the near vicinity of the site, and any cars would need to be parked in public car parks'.

6 Equality impact assessment (EIA)

The document is a consultation document and therefore there is no significant impact.

7 Legal services' comments

The statutory provisions of Section 106A (S106A) regulate the modification and discharge of planning agreements made pursuant to Section 106 Town and Country Planning Act, 1990 ("the Act"). An agreement may only be modified by deed undertaken in accordance with the provisions of S106A. The effect of the provisions is that where an agreement (which does not relate to affordable housing provision) has been completed for any period less than five years, it may only be modified by agreement with the local planning authority responsible for its enforcement. The consent of all parties against whom the modified agreement is enforceable is required.

Having been completed only in March 2012, the developer must refer to the Council in accordance with the statutory provisions which make the Council's decision in such a case the final decision (subject to the requirement to make the decision reasonably, or be susceptible to successful judicial review). In determining the issue before them, Members must take account of relevant considerations, disregard considerations that are not material and avoid making a decision which might be regarded as perverse (i.e. a decision that no decision-maker, rightly advised and being aware of all the relevant facts could reasonably be expected to make).

If the recommendation of the Assistant Director of Culture & City Development to modify the agreement is approved by Members, it will be necessary to prepare a Deed of Variation. It is not open to parties to an agreement to vary it by unilateral undertaking.

8 Finance comments

None.

9 Supplementary Matters reported in June 2015

Update sheets at the June 2014 meeting reported receipt of a letter from neighbouring occupiers of commercial premises (to the north) objecting, in summary, on the grounds of: safety; security; privacy; noise; parking/cycle parking; occupation density; inappropriate use; and, failure of 'Unilife' to comply with existing planning requirements.

The following comments were also reported on the update sheets: "The main agenda report explains that the principal use of the premises as a Halls of Residence, providing term-time accommodation for students, remains unchanged. It seeks temporary accommodation for non-students outside of the academic year (for periods not exceeding two months in the case of any individual resident). Whether an occupier is a student or tourist is not considered likely to alter the privacy or noise at the premises. The issue of car parking is addressed in the committee report. The nature/size of rooms for short-term visitor accommodation will inevitably be made clear by the owners in managing and marketing its availability. For the reasons set out in the report, this secondary use for leisure and tourism stays outside of term time is considered to offer some potential contribution to the local economy. The objector lists possible alternative occupiers as including the homeless, ex-offenders, asylum seekers and others recovering from substance misuse or mental illness. The owners of the Halls of Residence will wish to protect their investment in purpose-built student accommodation when marketing availability for short-term visitor accommodation.

The objection also raises private interest matters of boundary security, rights of way and a fire escape that have been taken up with the site owners of 61 Earlsdon Street; it also refers to non-compliance of existing planning requirements. Complaints concerning breaches in planning control have previously been investigated and resolved at this site. Consideration of the request to modify a legal agreement should be treated separately from other private interest matters."

10 Breaches of planning control

Complaints concerning breaches of planning control have previously been investigated at this site. A corner projecting feature was originally to be constructed in timber. Alternative treatment in a 'Trespa' (blue) finish cladding system was approved, as a non-material amendment (12/00811/NMA) in 2012. A simple render finish was carried out but was not considered a satisfactory design response. The 'Trespa' cladding was eventually completed to resolve the breach of planning control. In addition, a condition of the relevant planning permission imposed a requirement of windows to upper floors on the east elevation to be both obscure glazed and non-opening (at least 1.7m above internal finished floor levels). Non-compliance of condition 11 was resolved with the developer. Finally, condition 5 imposed a requirement for the approved cycle storage facilities to be provided before first occupation (and retained). Secure storage has been provided in a combination of lockers and racks for up to 25 cycles but does not accord with approved details; at 75% provision and in the absence of demand by occupiers (given the location of the halls of residence) action against non-compliance is not considered reasonable and necessary.

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Signed by:

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

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

Title of document	Location
<p>Student Halls of Residence SPD (October 2014) 15/00787/PAMOD - includes</p> <ul style="list-style-type: none">• Agent's letters dated 8 May 2015 & 6 April 2016• Copy of the S106 Agreement dated 27 March 2012	