

PLANNING COMMITTEE

6 NOVEMBER 2019

1 PM EXECUTIVE MEETING ROOM,
3RD FLOOR, GUILDHALL

REPORT BY THE ASSISTANT DIRECTOR - PLANNING AND ECONOMIC GROWTH ON PLANNING APPLICATIONS

ADVERTISING AND THE CONSIDERATION OF PLANNING APPLICATIONS

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

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

REPORTING OF CONSULTATIONS

The observations of Consultees (including Amenity Bodies) will be included in the report by the Assistant Director - Planning and Economic Growth if they have been received when the report is prepared. However, unless there are special circumstances their comments will only be reported VERBALLY if objections are raised to the proposals under consideration

APPLICATION DATES

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

HUMAN RIGHTS ACT

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

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

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104 ELM GROVE SOUTHSEA PO5 1LP**CHANGE OF USE FROM RETAIL (CLASS A1) TO RESTAURANT/CAFE (CLASS A3) TO INCLUDE INSTALLATION OF EXTRACTION SYSTEM TO REAR****Application Submitted By:**

Mr Hersh Karadakh

On behalf of:

Mr Hersh Karadakh

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

The main issues for consideration are:

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

SITE, PROPOSAL AND RELEVANT PLANNING HISTORYSite and Surroundings

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

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

Proposal

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

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

Relevant Planning History

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

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

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

POLICY CONTEXT

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

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

CONSULTATIONS

Highways Engineer - No objection.

Environmental Health - No objection subject to conditions:

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

REPRESENTATIONS

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

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

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

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

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

COMMENT

Determining Issues;

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

Principle of development

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amenity

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

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

Parking

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

Other points raised in the objection not addressed.

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

Conclusion

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

RECOMMENDATION Refuse

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

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

PRO-ACTIVITY STATEMENT

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, the details of the application did not accord with pre-application advice and the application has been refused for the reasons outlined above.

02

19/01047/FUL

WARD: COSHAM

FLAT 1 82A HIGH STREET PORTSMOUTH PO6 3AJ

CHANGE OF USE FROM RESIDENTIAL (CLASS C3) TO RESIDENTIAL/HOUSE IN MULTIPLE OCCUPATION (CLASS C3/C4) MIXED USE.

Application Submitted By:

Mrs Carianne Wells
Thorns Young Ltd

On behalf of:

Mr Doe & Mr Allen

RDD: 4th July 2019

LDD: 30th September 2019

SUMMARY OF MAIN ISSUES

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

The main issues for consideration are:

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

SITE, PROPOSAL AND RELEVANT PLANNING HISTORY

Site and Surrounding Area

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

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

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

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

Proposal

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

Relevant Planning History

None

POLICY CONTEXT

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

CONSULTATIONS

Private Sector Housing

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

REPRESENTATIONS

None received.

COMMENT

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

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

The concentration/balance of such uses in the area

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

Policy PCS20 of the Portsmouth Plan states that applications for the change of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses, or where the development would not create an imbalance. The adopted Houses in Multiple Occupation SPD sets out how Policy PCS20 will be implemented and details how the City Council will apply this policy to all planning applications for HMO uses. The SPD states that a community will be considered to be imbalanced where more than 10% of residential properties within the area surrounding the application site (within a 50m radius) are already in HMO use.

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

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

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

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

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

Standard of Accommodation

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

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

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

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

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

Impact on neighbouring living conditions

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

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

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

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

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

Highways matters

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

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

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

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

Waste

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

Conclusion

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

RECOMMENDATION

Conditional Permission

Conditions

1) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: TQRQM19183094006450 and 82HIGH-19-1 Rev A.

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

The reasons for the conditions are:

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

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

PRO-ACTIVITY STATEMENT

In accordance with the National Planning Policy Framework the City Council has worked positively and pro-actively with the applicant through the application process, and with the submission of amendments an acceptable proposal has been achieved.