

PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held remotely on Tuesday 30 March 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
Lynne Stagg
Luke Stubbs
Claire Udy

Welcome

The chair welcomed everyone to the meeting and introductions were made.

29. Apologies (AI 1)

Councillor Chris Attwell gave apologies as he had to leave at 6.50pm and Councillor Donna Jones as she had to leave at 5.45pm; they both had other commitments.

30. Declaration of Members' Interests (AI 2)

Councillor Luke Stubbs declared a personal interest for agenda item no.7 Queen Alexandra Hospital as he knew someone who lived in one of the even-numbered properties in Boston Road so he would neither participate in discussion nor vote on this item.

RESOLVED that the minutes of the Planning Committee held on 23 February 2021 be approved as a correct record.

RESOLVED that the minutes of the Planning Committee held on 9 March 2021 be approved as a correct record.

33. Update on Previous Applications (AI 5)

The Head of Development Management advised that the council had not received any new appeal decisions but had received seven new appeals against decisions of the local planning authority which he detailed as follows:

- 52 Coverack Way, Port Solent - two storey side extension, extension of balcony, loft conversion and changes to car port
- 168-170 Fawcett Road, Southsea - change of use ground floor to purposes falling within A3 to class A3/A5
- 12 Blake Road, Drayton - construction of front extension and part two storey, part single storey rear extensions

- 143 Telephone Road, Southsea - change of use from purposes falling in a C4 HMO (House of Multiple Occupation) to a sui generis HMO (more than six persons)
- 62 Middle Street, Southsea - outline application for the construction of a four storey building comprising 21 student accommodation units and ground floor commercial units following demolition of existing buildings; this was a re-submission of a previous application that was refused
- 36 St David's Road, Southsea - proposed rear dormer for a dwelling in a conservation area
- 36 Pains Road, Southsea - change of use from purposes falling within a C4 HMO to a HMO for more than seven persons.

There were questions from members on 36 Pains Road and 12 Blake Road. The Head of Development Management said he would need to look up the reasons but would get back to members.

In response to a question the Head of Development Management advised that the local planning authority was not seeing a significant number of appeals due to non-determination.

34. St James Hospital, Locksway Road, Portsmouth, PO4 8HW - 18/00288/OUT (AI 6)

The Head of Development Management presented the report and drew attention to the Supplementary Matters list which reported that:

Committee Members' attention is drawn to the QC's latest opinion (attached at the end of these minutes) which forms part of the SMAT for this item and the report should be read in light of the updated opinion.

In terms of any amendment to the report, this would be limited to noting a minor change as follow:

Page 24, Heading 7, 1st paragraph, 1st sentence: "Case law establishes that to fall within the curtilage of a listed building for the purposes of s.1(5) of the 1990 Act, the alleged structure must form "part and parcel" with the listed building".

The Head of Development Management reminded members that the item relates to a single particular issue that is relevant to planning application 18/00288/OUT, namely whether two buildings, 'Fairoak' and 'the Beeches', are curtilage listed by association with the listed St James' Hospital building. The committee is not considering the whole planning application today so will not be granting or refusing planning permission.

The committee would consider only the curtilage listing aspect because it has procedural consequences for how the whole application will be assessed and brought to committee, i.e. with or without an application for listed building consent for the demolition of 'Fair Oak' and 'the Beeches' (together referred to as "the villas").

The council had not received a response from Homes England (the applicants) on further representation comments from Milton Neighbourhood Forum, despite chasing them for a response that day.

A written deputation from the Milton Neighbourhood Forum was read out by the Development Management Team Leader as part of the officer presentation.

The following Councillors made deputations: Ben Dowling, Darren Sanders, Jeanette Smith and Gerald Vernon-Jackson. Deputations are not included in the minutes but can be viewed on the livestream on the following link

[Agenda for Planning Committee on Tuesday, 30th March, 2021, 2.00 pm Portsmouth City Council](#)

Members' Questions

Decision making

In response to some members' concerns that they felt uncomfortable making such a decision as they were not sufficiently qualified or knowledgeable in legal matters, and that whatever decision they took could be challenged, the Legal Adviser advised that:

The judgement is a planning judgement but it also turns on matters of law. The onus is on the Committee to apply facts to the law and reach a decision. These are the legal tests to consider:

1. To determine if the villas are structures under s.1(5) of the Planning (Listed Buildings and Conservation Areas) 1990 Act and be satisfied a) their removal would have an adverse impact on the main St James Hospital (SJH) building which is listed and b) the villas are ancillary to the main building; the ancillary test prevents buildings which are not subordinate being included in the listing; even if a structure is attached it may not be ancillary;
2. To determine if the villas are part and parcel of SJH.
3. To have regard to the three Stephenson factors in determining curtilage - layout, ownership, function.

He advised that the committee has to give a "yes or no" answer to points 1a) and 1b) and then use the Stephenson factors to determine if the villas are part and parcel of SJH. Ownership is straightforward to determine although it can be changed easily. A key point is that the matter under consideration is a single item that concerns one narrow, binary legal question - are the villas curtilage listed or not? The Committee are not being asked to consider matters of policy. He acknowledged it is an unusual and complicated matter but if the committee went straight to determination of a full application it is one of many such questions that would have to be considered. It is prudent to resolve the matter now. If it was resolved that the villas were curtilage listed when the entire application was being determined in one sitting, and there was no supporting listing building consent, it would mean a considerable change to the heritage impact of the development. Statute states that the legal test must be met by any decision maker, either an officer under delegated authority or the Committee. It is in the committee's gift to say if they disagree with the officers' recommendation. It is also in their gift to defer but they have to give reasons and consider the length of the deferral. The committee have received plenty of evidence and a robust report based on QC counsel.

The Assistant Director of Planning & Economic Growth explained that in determining matters of lawfulness it is the planning authority who makes the decision and this can be either officers or the Committee. It is a common requirement to have to see

which is the more persuasive evidence based on the balance of probabilities when considering such matters. In this case members have to establish the facts and then make a judgement based on the tests as laid out in report and then determine if the villas are covered by the appropriate listing status. Without a scheme of delegation everything would have to go before the Committee. He emphasised that the Committee is making a planning judgement, not a legal judgement, based on the evidence before them, and that the scheme of delegation is not to insulate the planning authority against challenges. There is no difference in legal liability whether officers or the Committee make the decision. It is an application of judgement based on professional recommendations. The term "case officer" in Robert Walton QC's May 2020 report is interpreted as anyone exercising planning judgement.

The Assistant Director of Planning & Economic Growth, using his authority under the scheme of delegation, had requested the matter to go to the Committee as it is highly contentious. The Committee is obliged to come to a conclusion by considering whose evidence is more compelling and by balancing interrelated judgements.

If the villas are considered not to be curtilage listed then that will be factored into the application which would probably then be brought back to the Committee in the next couple of cycles. A precautionary six-week period could be taken in which the decision is reviewed and officers speak to stakeholders to see if there is any further action.

Officers will have to investigate more fully the costs of deferring a decision, for example, keeping the buildings operational or the site as a whole unused. The planning authority is not privy to the landowner's site maintenance costs but there are likely to be security costs. There was a short break from 3.40 to 3.50 pm while officers found out information on the last two points.

Listing

- The Committee and local planning authority do not have the authority to list or delist buildings; this is a matter for the Secretary of State and Historic England. However, where there is a listed building the question of curtilage listing will arise.
- Around mid-2018 the Milton Neighbourhood Planning Forum had contacted Historic England, who advised the villas were not worthy of listing in their own right. They were not asked to consider curtilage listing for the villas; they would not ordinarily do this.
- If the Committee resolve that the villas are considered as curtilage listed, Homes England could appeal if the local planning authority acts on the resolution or they could appeal to the Planning Inspectorate. They have the right to appeal to the Secretary of State. They can appeal as the matter has not been determined within the statutory timescale.
- Curtilage listing did not arise during the Forest Lodge application as no demolition was involved; the only building involved was not considered worth listing.
- If the Committee feels the villas should be curtilage listed they may need listed building consent if the applicant does not want to amend their scheme to keep them. If the scheme is amended there would be a longer delay before the application is determined.
- Officers would need to investigate why West Lodge was curtilage listed in 2016. Circumstances may have changed since then but in any case all applications

have to be considered their own merits. With the villas officers are satisfied with the evidence and opinions provided for members to make a decision.

Age and history of the villas

- The date the villas were built could make a difference to the Committee's decision; the date carries more credence if they were built before 1948. There is evidence about dates in both the heritage assessment from Cotswold Archaeology and the Milton Neighbourhood Forum's documentation, both of whom have carried out their own investigations. The Committee ultimately has to decide whose evidence they favour and to consider how significant, unique and rare the villas are in a national context. If they were built before World War I as opposed to the inter-war period then they may have greater national significance. Historic England would have considered this along with their architectural and historical value. Age can be included when considering the three Stephenson factors.
- Some members felt they did not have sufficient and authoritative evidence about the history of the villas and that the date they were built should be established before they made a decision. The lack of certainty is unhelpful but members have to consider the balance of probabilities and which evidence is more persuasive. Members are required to be finders of facts, as with certificates of lawfulness and enforcement, based on the information available to them. As part of applying the tests mentioned above they need to consider how the villas' use has changed. If members feel they have insufficient evidence then they cannot exercise their full judgement. However, the age factor alone is insufficient to outweigh the other tests; it does not alter the obligation to conclude the matter.
- It is not usually appropriate for the Committee to create more evidence. In the personal professional opinion of the Assistant Director of Planning & Economic Growth the villas' age is not determinative. It could be that the longer the villas were there and used the more ancillary they are but this has to be considered overall with the rest of the tests; the recommendation remains the same.
- If the villas are described as Edwardian they would have had to have been built between 1901 and 1910. The County Asylums website records them as being opened in 1908.
- There was discussion over whether four villas (Pink, King, Dickens, Brunel) had been built at the same time. Dickens and Brunel were the original names respectively for Fair oak and the Beeches. The photograph with the soldiers shows them standing in front of Pink and King; the central window is different to the one in Dickens and Brunel. It was unlikely that the bonding of bricks in Pink and King would be different to that of Dickens and Brunel if they were built at a different time. However, some features such as cornices and roof heights are similar. The first two were named after local figures whereas the latter two were named after national figures, which implies they might not have been built at the same time.
- In response to a question if officers had consulted the sources cited by the Forum, officers said they had not undertaken an independent assessment of the historical evidence. They have examined and reviewed the evidence from the applicant and the Forum, which is listed in Appendix 1.
- The matter of when and how the villas "ceased to be a single unit" with SJH (mentioned in Robert Walton QC's opinion in June 2019) has been resolved. The report referred to is one that went to the Committee in February 2018 which was re-written as officers were concerned that the curtilage issue had not been dealt

with adequately. In the recent Blackbushe court case it had been considered unhelpful to refer to units so phraseology had been simplified. The Committee's role now is to address whether the villas are part and parcel of SJH, not the integral unit.

Members' Comments

- Some members proposed deferring the matter in order to find out more about the history of the villas. They felt they needed clear evidence as to when the villas were built as otherwise they might make a decision that could be challenged and would ultimately be a cost to local tax payers. Officers said they could commission an independent historian though this would have budgetary implications and there is no guarantee third parties would agree; it still might not be clear when the villas were built.
- Some members felt they were not the best qualified people to make such a decision whereas others felt they had received plenty of evidence and deferral was inappropriate.
- The Legal Adviser advised that if members resolved to delegate the matter to officers it could be seen as agreeing that the villas are not curtilage listing as this is the officers' recommendation.

RESOLVED that the matter should not be deferred.

Councillor Jones left the meeting at 5.45pm. There was an adjournment from 5.45pm to 6.07pm so that officers could advise on wording for the motion for refusal.

RESOLVED to overturn the officers' recommendation that the Villas are not considered to be curtilage listed pursuant to s.1(5) of the 1990 Act for the following reasons:

In respect of whether the Villas are to be considered structures within the curtilage of the Listed Building of St James Hospital, as referenced in s.1(5) of the 1990 Act, the LPA considers that these buildings are so closely related to the hospital building in terms of the historic context of medical practice at the hospital that their removal would adversely affect its special interest, and they are ancillary to the main hospital building. As such they are considered structures for the purposes of the Act.

The physical layout of the Villas in association with the listed hospital is such that they are in such close proximity, and without fences or barriers separating them, to form part of the curtilage of that building.

Since their construction in 1908, until their recent disposal, the villas have been in the same ownership and fulfilling the same function; that being the ownership of the wider NHS, and for the shared purpose of delivering medical services that, in combination with the physical layout in such close proximity, and without fences or barriers separating them both historically and evident currently on site, that they are considered to be part and parcel of the St James Hospital building and within its curtilage.

35. Queen Alexandra Hospital, Cosham, Portsmouth, PO6 3LY - 21/00232/FUL (AI 7)

Councillor Stubbs left the meeting for the duration of this item due to his declared interest. Councillor Attwell had to leave the meeting at 6.50 pm during this item due to another commitment.

The Principal Planning Officer presented the report and drew attention to the Supplementary Matters:

PUBLIC REPRESENTATIONS

One representation has been received from a local resident, objecting to the proposal on the following grounds:

- a) Loss or privacy - concern about overlooking of their property, particularly from fourth floor level, due to the height and position of the car park;
- b) Light pollution - concern about increased light pollution, including to a bedroom window, with resulting impacts on health;
- c) Air pollution - increased visitor and patient parking would increase vehicles and in turn *increase air pollution, resulting in a negative impact on public health.*

Officer comments - An assessment of the impact of the development neighbouring on residents is included in the committee report. Please also refer to further comments regarding Air Quality within these supplementary matters.

FURTHER CONSULTEE COMMENTS

Highway Engineer comments

Members are advised that the committee report includes a summary of the Highway Engineers comments, the full text of which can be viewed online. The Highway Engineer has recommended refusal of the application, on the basis that insufficient information has been provided to assess the impact of increased vehicle movements on the local highway network.

Officer note - The Local Planning Authority considers that the concerns of the Highway Engineer can be addressed through an amendment to the wording of Condition 5, as follows:

Condition 5: (a) Prior to first use of the multi-storey car park hereby permitted, a Parking Mitigation Strategy shall be submitted to and approved in writing by the Local Planning Authority; (b) the Parking Mitigation Strategy shall thereafter be implemented in accordance with the approved details.

Construction management:

The Council's Highway Engineer and COLAS have reviewed the submitted Construction Management Plan and confirmed it is acceptable subject to ensuring the highway is returned to its original condition upon completion.

Officer note - An updated version of the Construction Management Plan has been submitted to address the above comment.

Public Health Officer comments

The application should consider broad public health implications in terms of promoting healthy behaviours and avoiding negative impacts on staff, patients and residents.

The justification for increased parking on the site is queried. The application has the potential to impact on air quality and this should be assessed through a detailed Air Quality Assessment.

The increased provision of parking may not support the ambition for encouraging greater levels of active and sustainable travel. A Green Travel Plan should be developed. It is noted that the proposal does not include new provision for secure public cycle storage facilities, which seems a missed opportunity. Provision of electric vehicle charging points is encouraging.

Accessibility from the car park to other hospital buildings should be ensured for those with limited mobility.

Officer comment - The applicants have provided a response to the public health comments, highlighting the longer term benefits of the wider plans to develop the hospital site, of which the car park is one element. The scheme has taken account of accessibility requirements and a Travel Plan would be secured by condition. An Air Quality Assessment has been submitted and reviewed as part of the application process.

Environmental Health Officer comments

Air Quality:

The Air Quality Report has been reviewed by the Environmental Health Officer, who has noted that the screening assessment demonstrates that the development would not expose the neighbouring residents, patients or visitors to levels of Nitrogen dioxide in excess of the national air quality objective.

Lighting:

The submitted Lighting Strategy has been reviewed. The diagrams illustrate that light spill will not extend beyond the boundary of the car park, and lights are to be controlled by solar and movement sensors. Due to the type of luminaries to be fitted, along with the movement sensors, it is unlikely that a loss of amenity will be caused by light pollution.

Noise:

The information provided within the Acoustic Report indicates that the predicted noise from cars entering and leaving the proposed car park will rise by 2.5dB. However, subject to mitigation measures, the car park will not have an impact upon nearby residential premises. A condition should be imposed requiring details of the noise barriers to be approved prior to installation.

Noise impacts from construction could be mitigated using quiet equipment and construction methods, secured through a Construction Management Plan.

Officer note - A Construction Phasing Plan was submitted with the application and will be secured via Condition 8. Condition 13 requires installation of the noise barriers as per the recommendation of the Acoustic Report. This condition can be amended to require details to be first agreed by the Local Planning Authority, as follows:

Condition 13 - Prior to installation of the noise mitigation panels to Levels 1, 2 and 3 (as per the recommendations of the approved Noise Impact Assessment, EAS Ltd, March 2021), details of the barriers shall first be submitted to and approved in writing by the Local Planning Authority. The barriers shall thereafter be installed in accordance with the approved details and thereafter retained.

Contaminated Land Officer comments

The submitted Desk Study and Preliminary Risk Assessment identifies potential contamination linkages in relation to groundwater beneath the site, and there are also likely to be hydrocarbons present. Although the car park end use is not likely to be affected by contamination, there is a potential risk to workers during construction. A Contamination Method Statement to include a risk assessment is required before commencement of the development, to be secured by condition.

Officer note - Conditions 3 and 4 are amended as follows:

Condition 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 detailed Contamination Method Statement, undertaken following the risk assessment approach in BS10175:2011+A2:2017 'Investigation of Potentially Contaminated Sites Code of Practice'. The report shall contain a conceptual model (diagram, plan, and network diagram) showing the potential contaminant linkages and locations of likely contamination as identified in historical reports. The report shall detail how these areas will be delineated during works and remediated by source-removal, or other appropriate technique, to avoid residual risk from contaminants and/or gases when the development hereby authorised is completed. It shall contain a watching brief to identify further areas during development. These further areas when identified should be notified to the LPA and remediated and then verified according to the Method Statement. The report 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.

b) The development shall be carried out in accordance with the agreed Contamination Method Statement.

Condition 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 above. The report shall demonstrate that each area of remediation undertaken has been implemented fully in accordance with the Contamination 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.

County Ecologist comments

The development would be sited on an existing car park, with the loss of eight semi-mature trees. The proposals are unlikely to affect protected species, with the exception of breeding birds. Any clearance of bird nesting habitat such as trees, should be carried out outside of bird nesting season. The development provides an excellent opportunity for ecological enhancement and it is recommended that bat and swift boxes are incorporated into the design.

Officer note - Condition 10 has been amended in line with the County Ecologist recommendations as follows:

Condition 10 - The multi-storey car park hereby approved shall incorporate a minimum of four bat access, egress or roosting features, and four built-in swift nest boxes, unless alternative features are first submitted to and approved in writing by the Local Planning Authority. The bat and bird boxes shall be installed in accordance with manufacturer's instructions and thereafter retained.

An informative would also be added to any decision to outline the legal requirements in relation to nesting birds.

Plans condition

Condition 2 has been updated to include reference to a Tree Protection Plan, ref. Arbtech TPP 01.

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

- Mr Ben Sawkins
- Mr Brian Kavanagh, agent

Deputations are not included in the minutes but can be viewed on the livestream on the following link <https://livestream.com/accounts/14063785/planning-30mar2021>

The Highways Officer explained why the Highways Authority had recommended refusal. The key issue was that in the period between construction of the car park and any future redevelopment of the Emergency Department (ED) there will be a significant increase in parking provision. This is compounded by a greater proportion of that being made available for patient and visitor spaces compared to staff. This would account for an extra 1,187 traffic movements a day, with about 120 of these during the peak time. Ordinarily the Highways Authority would require a traffic assessment of the impact on the junctions if there is more than 30 extra movements an hour. No assessment has been submitted in support of the application.

A potential option to resolve this would be to cap the number of spaces that could be operated on the site at a time to the same level as would be available upon completion of the ED should that happen. This would have the effect of stopping the short-term increase and avoid people becoming used to significant availability which would then decrease when the ED is built.

Members' Questions

In response to questions from members, officers explained that:

- There are proposals to plant around the edges of the car park. There is a wider screening strategy for the whole of the hospital which is being developed in conjunction with the council's landscape architects. Consideration was given to green walls but this was not considered feasible for maintenance reasons.
- The lighting strategy has been reviewed by the council's environmental health officers and they felt the measures put in place, including motion and timing sensors, would not adversely affect neighbouring properties.
- Eight semi-mature trees would be removed as part of the proposal. The trees would be replaced with other semi-mature trees. There is a condition that requires this to be in accordance with the landscape plan.
- The applicants would agree to a condition to enhance the landscaping along the western boundary of Harvey Road.

Members' Comments

Members felt it was important that Queen Alexandra Hospital has adequate parking for visitors and staff to support its redevelopment strategy. Members were concerned though with the number of increased traffic movements but noted that the council are working with two bus companies to develop a demand responsive bus service for staff, particularly those who work outside normal hours. Members hoped that the hospital would in future look at staff parking and costs. The proposed car park will be shielded by trees and the panelling up the western side was welcomed. Members also agreed to add an additional condition to enhance the landscaping along the western boundary of the site.

RESOLVED to grant conditional planning permission as set out in the officer's committee report and the Supplementary Matters report, with an additional condition added as follows:

(a) No construction works above the foundation / slab level shall take place until a scheme for enhanced boundary planting along the western boundary of Harvey Road, to include plant species, sizes and numbers, planting pit and preparation details, and maintenance plans, has been submitted to and approved in writing by the Local Planning Authority;

(b) The planting scheme shall be carried out in accordance with the approved details in the first planting season following first use of the car park or the completion of the development, whichever is the sooner;

(c) 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: To enhance landscaping and protect the amenity of neighbouring residents in accordance with Policies PCS13 and PCS23 of the Portsmouth Plan.

36. Fontenoy House, Grand Parade, Portsmouth, PO1 2NF - 20/00158/FUL (AI 8)

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

Additional comments regarding cycle parking and storage.

The Highway Authority do not raise concerns on highway capacity or safety grounds, but they do on lack of cycle parking.

As such, if the committee are minded to grant planning permission, an appropriately worded condition is being recommended to be imposed on the planning permission. This seeks to ensure that a scheme requiring adequate provision for cycle storage is submitted to, and approved in writing by the Local Planning Authority prior to occupation of the resulting flat and that the approved details are implemented in accordance with the approved details.

Additional representations:

4 further representations have been received, objecting to the proposal on the following grounds:

a) the proposal would detract from and dominate within the locality.

b) the proposal fails to contribute to the housing stock in the same way the previously approved did.

c) the design and materials would appear detrimental to the streetscene;

These issues have been addressed within the Committee Report. The recommendation remained unchanged.

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

- Mr Richard Bray
- Mr Andrew Spraggs
- Mr Jonathan Clapham

- Rev'd Canon Ian Woodward
- Mr Richard Blair
- Mr Russell Best
- Friends of Old Portsmouth
- Mr Anthony Knight
- Mr John Pike - agent
- Mr & Mrs Phillips - applicant

Deputations are not included in the minutes but can be viewed on the livestream on the following link <https://livestream.com/accounts/14063785/planning-30mar2021>

A further deputation was heard from Councillor Tom Wood.

Members' Questions

In response to questions from members, officers clarified that:

- The proposal was 0.6m higher than the application that was previously approved. This is for roof insulation purposes.
- The structure's footprint occupies the same amount of space all the way around as the previous application except for the east elevation which is closer to the neighbouring building.
- It would be good if two flats could be provided instead of one but the applicants cannot be mandated to provide two.
- The roof terrace will only be for the occupiers of the property.
- If members were minded to approve the application, a condition could be added to restrict the use of the flat roof as an amenity space.

Members' Comments

Some members felt that the proposal was overbearing and would adversely impact the street scene in this conservation area. The mass, scale, height and materials would adversely impact the street scene. Others felt that the applicants had taken on board the Committee's concerns although some felt that any extra height to the building is regrettable. The Planning Inspector had given permission for a one-storey extension to be added to Fontenoy House and an additional 60cm would not make much difference.

RESOLVED to refuse planning permission for the following reasons:

The proposed development is considered to be an overbearing and overly dominant feature atop the recipient building. As such, due to its proposed height and resultant increase in mass, scale and its height, materials and colours which are incongruous adversely impacting the street scene and the built environment in this heritage area (the Old Portsmouth Conservation Area), the development is contrary to the requirements of Policy PCS23 (Design and Conservation) of the Portsmouth Plan (2012) and the NPPF (2019).

37. St Helen's Pavilion, Eastern Parade, Southsea PO4 - 20/01209/FUL (AI 9)

The Principal Planning Officer presented the report and drew attention to the Supplementary Matters, which noted the following corrections in the committee report:

Paragraph 2.1 - Part of this paragraph mistakenly references the tennis court site to the west. To clarify, this application relates to the pavilion in the north-east corner of the cricket ground.

Paragraph 8.2 - The paragraph refers to an additional '4' in the description of the size of the extension. To clarify, the proposed extension would measure 4.6 square metres.

Condition 3 is amended as follows:

The development hereby permitted shall be constructed in accordance with the details of materials shown on plans ref. PCC-08D and PCC-09C, unless details of alternative materials are first submitted to and approved in writing by the Local Planning Authority.

A written deputation was read out as part of the officer presentation from Mr Rick Marston, applicant.

Deputations are not included in the minutes but can be viewed on the livestream on the following link

[Agenda for Planning Committee on Tuesday, 30th March, 2021, 2.00 pm Portsmouth City Council](#)

Members' Questions

In response to questions from members, officers clarified that the pavilion is fairly visible from the seafront and the white colour would make it more visually prominent. It is considered to be an acceptable design and will be much the same size and scale as the existing building.

Members' Comments

Members were happy with the proposal and noted that there were no objections to the proposal. They added that it was fantastic that the club are trying to get more women and girls into the sport.

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

The meeting concluded at 8:37pm.

Signed by the Chair of the meeting
Councillor David Fuller

QC's opinion regarding agenda item 6

1. This Opinion updates my previous Opinion dated 27th May 2020 in the light of the Court of Appeal's very recent decision in *R (Hampshire County Council) v Blackbushe Airport Ltd* [2021] EWCA Civ 398.

2. This update is necessary because Planning Committee is being asked to decide tomorrow (30th March 2021) whether the two villas are curtilage listed pursuant to s.1(5) of the Town and Country Planning (Listed Buildings & Conservation Areas) Act 1990:

"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 this Act—

(a) ...

(b) any object or 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".

3. As can be seen, there are two key questions. First, are the villas "structures"; and second, do the villas stand within the "curtilage" of the listed hospital building?

4. As I set out in my previous Opinion, the Courts have held that "structure" has a particular meaning in this context. The Committee will need to consider whether the villas are ancillary to the hospital building and so clearly related to it that its removal would adversely affect the interest of the listed building. The Court of Appeal's recent decision does not change this test.

4. The Court of Appeal has however clarified the test to be applied in deciding whether a particular piece of land falls within the curtilage of a listed building for the purposes of s.1(5) of the 1990 Act.

6. The correct test to be applied is whether the land is so intimately associated with the listed building as to lead to the conclusion that the land forms part and parcel of the listed building.

7. In the High Court's decision last year *Holgate J* had held that the test was whether the land and the building formed part of an "integral whole". He based his conclusion on what he understood the Court of Appeal had said in a previous case, *Attorney-General ex rel Sutcliffe v Calderdale BC* (1983) 46 P&CR 399. In its recent decision the Court of Appeal has held that this is not how the Court's decision in *Calderdale* should be read. My previous advice set out the position as it was in the light of *Holgate J*'s decision and is therefore now out of date in relation to this issue.

8. As set out in my previous Opinion, in deciding whether the villas do form part and parcel of the listed hospital building the Committee should take into account all relevant matters including (1) the physical layout of the listed building and the villas, (2) their ownership, past and present and (3) their function, past and present.

9. In conclusion, in making its decision as to whether the villas are curtilage listed the Committee will first need to decide whether the villas are “structures” for the purposes of s1(5) of the 1990 Act, i.e. whether they are ancillary to the hospital building and so clearly related to it that its removal would adversely affect the interest of the listed building. Second, the Committee will need to decide whether the villas stand within curtilage of the listed building, i.e. whether they form part and parcel of the listed building itself.

Robert Walton QC
Landmark Chambers
29th March 2021