

FORMER ROYAL BRITISH LEGION, SIXTH AVENUE, PORTSMOUTH, PO6 3PD.

CONSTRUCTION OF 4 STOREY BUILDING, COMPRISING 23 NO. FLATS WITH ON SITE CAR PARKING AND BICYCLE STORAGE (FOLLOWING DEMOLITION OF EXISTING BUILDING)

LINK TO ONLINE DOCUMENTS:

[22/00226/FUL | Construction of 4 storey building, comprising 27no. flats with on site car parking and bicycle storage \(following demolition of existing building\) | Cosham Royal British Legion Sixth Avenue Portsmouth City Of Portsmouth PO6 3PD](#)

**Application Submitted By:**

Darryl Howells  
Darryl Howells Planning Consultancy

**On behalf of:**

Lawish One Ltd

**RDD:** 21<sup>st</sup> February 2022.

**LDD:** 23<sup>rd</sup> May 2022.

**REPORT BACK, 31<sup>st</sup> May 2023**

Members will recall this application being considered at the Planning Committee meeting of 22<sup>nd</sup> March. The application was recommended for approval by officers, but with a request to retain delegated powers to try and resolve the matter of Affordable Housing with the Applicant. The Committee raised no objection to the development but did decline the request about the process for Affordable Housing. It was determined that the matter would return to the Committee for its decision. The original Committee report is set out below.

Since the March Committee meeting, Natural England have provided a comment of no objection to the proposed mitigation for the Special Protection Areas (SPA).

**Affordable Housing:**

The NPPF considers a 15-20% profit (on Gross Development Value (GDV)) to be an acceptable return for a developer. The Applicant considered the development would not yield such a profit were Affordable Housing provision to be made.

The Applicant's submitted development finances were considered and adjusted by the Local Planning Authority's (LPA) financial advisor, who determined the scheme would yield 14.9% profit if a policy-compliant 7 Affordable Units were provided. Profit would be 17.5% with no Affordable Housing.

The submissions, however, under-calculated the Community Infrastructure Levy (CIL) due, and did not account for the costs of mitigation for the SPAs. Taking these matters in to account as well as the adjustments to costs and values provided by the LPA's financial advisor, the LPA considers the scheme's finances would be as follows:

**With 7 Affordable Units**

GDV	£3,956,669
Total costs	£3,595,295
= Profit	£361,374 (9.1%)

#### No Affordable Units

GDV	£4,269,500
Total costs	£3,750,508
= Profit	£518,992 (12.2%)

Planning Officers have corresponded and met with the Applicants. The Applicant does not agree with Officers' assertion that some degree of Affordable Housing can and should be provided, as the Applicant considers the scheme does not provide sufficient profit to do so. The Applicant, nevertheless, has made an offer of £25,000, which would be used towards Affordable Housing at another site(s). The Applicant noted the offer was contingent on the CIL being calculated as per the Council's website, the LPA has provided what it considers to be the correct CIL charge.

Officers note that the Applicant is apparently prepared to proceed with the development at a rate of profit lower than the NPPF suggested range, with or without Affordable Housing. The scheme, would nevertheless remain in healthy profit, even with full, policy-compliant Affordable Housing (7 units), with £361,374 profit (9.1%). The LPA's financial advisor notes how relatively small changes in sales values (increased) and/or in build costs (decreased) would significantly change scheme viability. The Advisor notes *"it is not the Affordable Housing that is making an otherwise viable development unviable, there seems little difference in scheme viability either with or without Affordable Housing"*. Your Officers conclude that the Applicant's offer is not good enough and the Council's Housing Officer concurs. Therefore, and regrettably, Officers recommend that the scheme should not be approved.

The amended Recommendation, for Refusal, is as per below. Given a Reason for Refusal on the matter of Affordable Housing, the mitigation for the Special Protection Areas cannot be achieved by way of a planning consent, and so that matter must form a second Reason for Refusal, also set out below.

#### **RECOMMENDATION:**

##### **Refuse:**

1. The development does not propose a satisfactory degree of Affordable Housing and so fails to comply with PCS19 of the Portsmouth Local Plan, and NPPF Chapter 5;
2. In the absence of a legal agreement to secure the necessary mitigation for the effects of the development on the Special Protection Areas (nitrates, and recreational bird disturbance), the development is contrary to PCS13 of the Portsmouth Local Plan and to the Conservation of Habitats and Species Regulations 2017 (as amended) and to the NPPF (paragraphs 11, 180-182).

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ORIGINAL REPORT, 22<sup>nd</sup> March 2023

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

- 1.1 This application is being presented to Planning Committee due to the number of objections received (from 18 addresses).
- 1.2 The main considerations are:
  - The principle of a residential development;

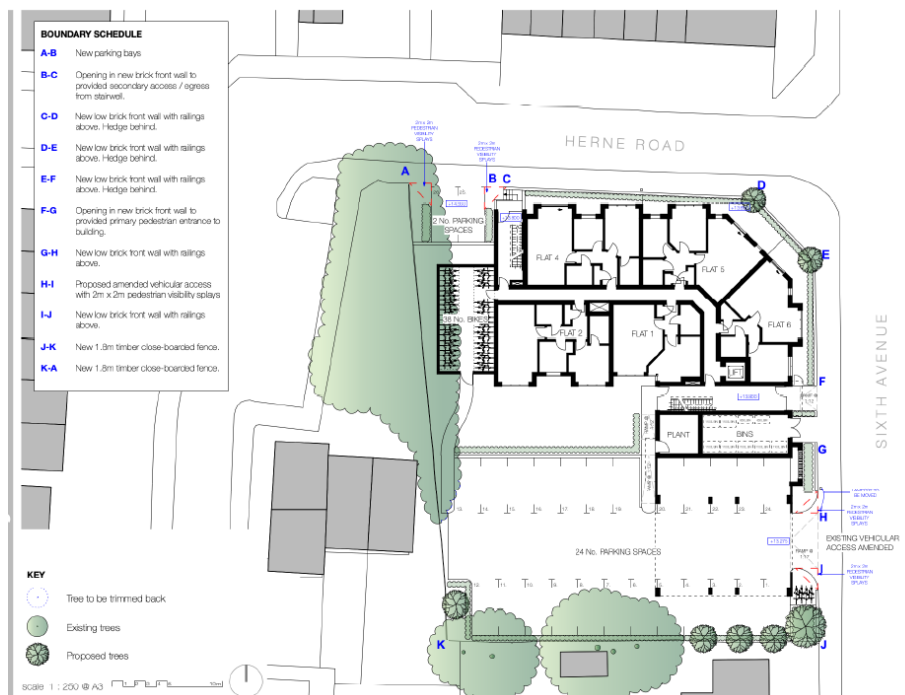
- Housing Mix & Affordable Housing;
- Design Consideration;
- Living Conditions for Future Occupants;
- Impact on Amenity of Adjoining
- Highways & Parking;
- Appropriate Assessment & Biodiversity
- Trees
- Flooding
- Ground Conditions & Pollution (Contaminated Land)

## **SITE AND SURROUNDINGS**

- 2.1 The Site is located at the junction of Sixth Avenue and Herne Road in Cosham. The site is roughly rectangular and is located in a predominantly residential area with Wymering Methodist Church opposite the site to the north east.
- 2.2 The site comprises the former Cosham branch of the Royal British Legion Social Club. The building is a single storey brick structure, rectangular in shape that measures approximately 531 sq.m. It has been disused for a number of years.
- 2.3 The surrounding residential development varies considerably from two storey terrace and semi-detached properties to 3 storey apartments which vary in their appearance and materials which gives the surrounding area a very mixed character. The land slopes up from south to north. Trees are located to the site's south and western boundaries, just outside the site on other parties' land. The site measures 0.05 hectare and is located 700m west of Cosham Town Centre, with Southampton Road and the Queen Alexandra Hospital nearby to the north.

## **PROPOSAL**

- 3.1 The development proposes the demolition of the existing building and the subsequent erection of a part 2, part 3 and part 4 storey building to provide for a total of 23 residential apartments together with associated courtyard parking accessed via an undercroft off Sixth Avenue, open space and landscaping.
- 3.2 The development would comprise a total of 8 one bedroom units and 15 two bedroom units together with 26 car parking spaces. There would be 38 secure bicycle parking spaces (and four visitor spaces).
- 3.3 The main parking area would be located off Sixth Avenue and would comprise a total of 24 parking spaces. To the north a further two parking spaces are proposed off Herne Road.
- 3.4 In addition, the apartments would be served by two areas of communal space, one to the rear of the block and one above the bicycle store. In addition, the top floor (3<sup>rd</sup> floor) flats would have their own private roof terraces.
- 3.5 The building would be constructed using lighter brick work with slate style render on the upper floor with a mixture of hedging and low wall with railings to the front of the site. The sloping topography of the site would entail a degree of regrading of the land which is set out below.
- 3.6 The images below show the Proposed Site Plan and East/Front elevation:



East Elevation  
Scale 1: 200 @ A3

## PLANNING CONSTRAINTS

4.1 The site is subject to the following key constraints

- Tree Preservation Order (TPO 156)
- Flood Zone 1 (Lowest Risk)

## POLICY CONTEXT

5.1 The planning policy framework for Portsmouth is currently provided by:

5.2 The Portsmouth Plan (The Portsmouth Core Strategy) adopted in January 2012.

5.3 Having regard to the location of this site and the nature of the proposal, the relevant policies within the Portsmouth Plan would include:

- PCS10 - Housing Delivery
- PCS12 - Flood Risk
- PCS13 - A Greener Portsmouth
- PCS15 - Sustainable Design and Construction

PCS17 - Transport  
PCS19 - Housing Mix, Size and the Provision of Affordable Homes  
PCS21 - Housing Density  
PCS23 - Design and Conservation

- 5.4 This framework is supplemented the following saved policies from the Portsmouth City Local Plan (2006).

Policy DC21 - Contaminated Land

- 5.5 Regard should also be had, albeit affording it very limited weight at this time, to the Draft Portsmouth Local Plan (September 2021).

- 5.6 Regard also has to be had to the following SPDs:

- Housing Standards.
- Updated Interim Nitrate mitigation strategy
- Planning Obligations
- Parking Standards and Transport Assessments
- Reducing Crime Through Design
- Solent Recreational Special Protection Area
- Sustainable Design and Construction

## STATUTORY DUTIES

- 6.1 The Local Planning Authority has statutory duties relating to the determination of the application which are set out in the following legislation:
- Section 70 of The Town and Country Planning Act 1990
  - Section 38(6) of The Planning and Compulsory Purchase Act 2004
  - The Equality Act 2010

## RELEVANT PLANNING HISTORY

- 7.1 The site has a short planning history dating back to the 1970's which relates to former use of the site as a social club. There is no history of apparent relevance to the current proposal.

## CONSULTATIONS

- 8.1 The consultee comments are summarised in the table below:

Highways Development Control	The Highway Authority had previously objected to the scheme, following the submission of additional information relating to pedestrian visibility splays they raise NO OBJECTION to the proposal subject to conditions regarding visibility splays.
Landscape Officer	The Officer has stated they would like to see more details on landscaping. Such details can reasonably be conditioned.
Contaminated Land Team	NO OBJECTION subject to conditions.
Ecology Adviser	Following the receipt of additional information NO OBJECTION is raised to the scheme subject to conditions to secure biodiversity enhancements.
Tree Officer	Following the receipt of an Arboricultural Impact Assessment the Officer has NO OBJECTION.

Drainage Team	NO OBJECTION subject to suitably worded conditions including existing drainage detail, porous paving and a proposed drainage scheme.
Designing Out Crime Officer	Guidance issued regarding access, boundary treatments and the provision of a 'defensible space'.
Highways (COLAS)	NO OBJECTION, subject to the developer contacting COLAS
Waste Reduction Officer	The officer has advised more space may be required for refuse and recycling storage.
Natural England	Further information required. Discussed below
Housing Enabling Officer	Affordable Housing matters are discussed below.
Hampshire Swifts	Hampshire Swifts recommend the installation of 8 swift boxes. Such biodiversity measures would be the subject of the Biodiversity Enhancement measures condition.

## REPRESENTATIONS

9.1 Objections have been received from 18 addresses in the vicinity of the site. These are concerned with:

- The height of the building proposed will overlook surrounding homes and gardens;
- The block of flats is out of keeping in terms of height and appearance and surrounding character
- The scheme represents an overdevelopment of the site;
- The scheme will impact the amount of light received by and outlook from surrounding properties;
- The development does not provide enough parking; this will exacerbate an already congested area;
- The areas parking is made worse with people, and staff, when using the surrounding roads to park when visiting the Queen Alexandra Hospital and Tesco superstore.
- The scheme would be contrary to former Cllr. Hockaday's road/pedestrian safety campaign, increased parking will further impact pedestrian safety.

## PLANNING CONSIDERATIONS / COMMENT

### Principle of the development

- 10.1 As set out in the NPPF (paragraph 2), *'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise'*. The National Planning Policy Framework must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.
- 10.2 Decisions must be taken in accordance with section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004. Section 70(2) of the Town and Country Planning Act 1990 requires the Committee to have regard to the provisions of the Development Plan, so far as material to the application; any local finance considerations, so far as material to the application; and

any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the Committee to make its determination in accordance with the Development Plan unless material planning considerations support a different decision being taken. Whilst third party representations are regarded as material planning considerations (as long as they raise town planning matters) the primary consideration, irrespective of the number of third-party representations received, remains the extent to which planning proposals comply with the Development Plan.

- 10.3 The site comprises the former club house building of the Cosham Branch of the British Legion that closed several years ago and therefore the site constitutes previously developed land. Policy PCS10 of the 2012 Portsmouth Plan states that the provision of additional housing in the city will be through, inter alia, the redevelopment of previously developed land.
- 10.4 Such an approach is consistent with the objectives of Section 11 of the NPPF, and in particular, paragraph 120(c) that states substantial weight should be given to the value of using suitable brownfield land for the provision of homes and other needs of a community.
- 10.5 While the former British Legion social club use ceased a number of years ago, the proposed residential development is, in principle, fully in accordance with the objectives of Policy PCS10 of the 2012 Portsmouth Plan.
- 10.6 Furthermore, and with regard to the principle of this development, the National Planning Policy Framework makes it clear that in order to support the Government's objective of significantly boosting the supply of homes, a sufficient amount and variety of land can come forward where needed (NPPF July 2021, paragraph 60).
- 10.7 The National Planning Policy Framework (NPPF) states that planning decisions should be based on a presumption in favour of sustainable development (paragraph 11). That presumption 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 182). Where a local planning authority cannot demonstrate a five year housing land supply of deliverable sites, the NPPF deems the adopted policies to be out of date and states that 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.
- 10.8 Currently, the Council can demonstrate 2.9 years supply of housing land. The starting point for determination of this application is therefore the fact that the authority cannot demonstrate a five year supply of housing. This development would provide 23 new dwellings to make a good contribution towards the City's housing needs, at a highly sustainable location in Cosham, with very good public transport (bus routes and train stations nearby), retail and services, employment, leisure, health facilities, etc.. These factors weigh in favour of the proposed development. The further, specific impacts of the proposal must still be considered as to whether the development is appropriate in detail, as set out below.

#### **Housing: Mix, density, affordable housing provision**

- 10.9 With regard to mix, current Policy PCS19 requires that '*developments should achieve a target of 40% family housing where appropriate*'. The development proposed only

provides for 1 and 2 bedroom units and as such does not provide any 3 bedroom units suitable for families and therefore the scheme would be contrary to this aspect of Policy PCS19. Officers consider the proposal, given the limited size of the site and nature of the surrounding area which includes several blocks of flats, the scheme represents an appropriate form of development in this case.

- 10.10 The NPPF requires sites of ten dwellings or larger should make provision for Affordable Housing, at 30% of the number of units. For this scheme that equates to 7 units (rounded up from 6.9).
- 10.11 The Housing Enabling Officer has stated that 30% of the units provided would need to be affordable units and that of that 30%, 70% would need to be social/affordable rent and 30% intermediate. The officer also stated that housing provided are often reluctant to take on mixed blocks and as such an off-site contribution would be acceptable in this case.
- 10.12 The Applicant has submitted a financial assessment that states the proposals cannot make the provision of affordable housing *and* remain viable for development, that is, taking into account reasonable profit. The NPPF sets out that a developer's expected profit may be 15-20% of GDV (Gross Development Value). The Applicant's position has been tested by the Council's independent financial consultant who, broadly, concurs that the scheme may struggle to provide Affordable Housing and make a reasonable profit.
- 10.13 The LPA's further analysis suggests that both a scheme with Affordable Housing, and a scheme without Affordable Housing, may not reach the reasonable profit level. While it is considered the application as a whole can be progressed positively to decision to the Committee meeting, Officers would respectfully request that further discussion, and if necessary, any negotiation, may take place with the Applicant, after the Committee resolution. That is because some reduction in Affordable Housing provision below policy-expected level may be appropriate. The discussions would be in order to finalise the *exact* level of Affordable Housing provided, if any, and the corresponding legal agreement contents.
- 10.14 **Design Considerations**
- 10.15 The National Planning Policy Framework (NPPF), Chapter 12, 'Achieving Well Designed Places', states that 'the creation of high quality beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve'. The NPPF is also supplemented by the National Design Guide (NDG).
- 10.16 Policy PCS23 (Design & Conservation) echoes the principles of good design set out within the NPPF requiring all new development to be well designed, seeking excellent architectural quality; public and private spaces that are clearly defined, as well as being safe, vibrant and attractive; relate to the geography and history of Portsmouth; is of an appropriate scale, density, layout, appearance and materials in relation to the particular context; create new views and juxtapositions that adds to the variety and texture of setting; and protection of amenity and provision of good standard of living environment for neighbouring and local occupiers as well as future residents/users of the development.
- 10.17 The surrounding area is mixed in character and comprises two storey houses and 3 storey apartment blocks as well as the Wymering Methodist Church which is a red brick building of a simple yet attractive traditionally designed pitched roof building. The area's buildings vary considerably in terms of their roof form with flat roof, pitched and gable roofs and their materials comprising red brick, render and pebble dash. The variety of the surrounding built form is what contributes to the character of the surrounding area.



- 10.18 The proposed apartment block comprises an L shaped building that is part 2, part 3 and part 4 stories and would be of a contemporary appearance with rendered construction with slate-clad recessed fourth floor.
- 10.19 The applicant had previously proposed the contemporary rendered appearance with additional contrasting window surrounds. The contrasting elements have been removed at the advice of Officers to ensure a more subtle appearance of the building. The revised rendered appearance with contrasting and recessed roof is considered to be more respectful of the surrounding built form that comprises a more traditional materials palette.
- 10.20 In terms of the size and scale of the proposal, Sixth Avenue comprises 2 storey dwellings that are approximately 7m in height to 3 storey apartment blocks that are approximately 11m in height. The increase in the height highlights the rising levels that increase from south to north with an approximate 6m increase in height from the southern end of Sixth Avenue to the north adjacent to the Southampton Road.
- 10.21 The building proposed rises from south to north to follow the existing topography. To the south the 2 storey element measures approximately 8m in height, marginally taller than the 7m high 2 storey property, no. 23 which together with the approximate 5.5m gap between the two structures would ensure an appropriate relationship. To the north the building measures approximately 11m that is similar to the apartment block to the north.
- 10.22 Regarding the building line, properties facing Sixth Avenue have a more defined building line which the proposal would continue further ensuring for an appropriate form of development. To the north where the scheme fronts Herne Road, there is a more varied building line with buildings having a varied set back of between 1.5 and 4m. The set back to the Herne Road frontage would measure between 1 and 3m which is considered appropriate.
- 10.23 In summary, the scheme proposes a part 2,3 and 4 storey apartment block that would use a simple materials palette that respects the surrounding varied character, would respect the established building lines to both Sixth Avenue and Herne Road and the scale would respect the height of the buildings to the south and north of the site. Together with conditions regarding materials and landscaping (discussed below) it is considered that the scheme represents a well designed proposal that accords with the overarching objectives of Policy PCS23 of the 2012 Portsmouth Plan.

### **Living Conditions for Future Occupiers**

- 10.24 As annotated on the submitted plans with the application, the proposed units meet or exceed the minimum gross internal floor areas as set out in Table 1 of the Technical Housing Standards - Nationally Described Space Standard<sup>1</sup>
- 10.25 In terms of the physical layout of the scheme, it is considered that the layout would ensure adequate light to each of the units proposed. In addition, the scheme proposes an area of outdoor space to the rear and a communal terrace above the cycle store. These two areas would provide for approximately 110 sq.m of communal outdoor space. This is in addition to the 3 units that have their own private terraces. It is considered that with the units themselves meeting or exceeding the minimum space standards, the appropriate layout and provision of outdoor space it is considered that future residents would have a good standard of residential amenity.

### **Impact on amenities of adjoining properties**

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<sup>1</sup> [Technical housing standards – nationally described space standard \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/612222/Technical_housing_standards_-_nationally_described_space_standard.pdf)



- 10.26 With regard to the impact of the proposed development on the amenities of existing residents, owing to the siting and relationship with surrounding residents there are two main areas that need to be assessed, these are the properties to the south, in particular no. 23 Sixth Avenue and no's 24 and 25 Glebefield Gardens to the west.
- 10.27 Regarding no. 23 to the south, no. 23 has a row of mature trees that extend along the length of the shared boundary that are outside of the applicant's control. Notwithstanding the trees, the southern wing of the proposed would only protrude beyond the rear elevation of no. 23 by approximately 2/3 metres would be approximately 5.5m from the flank elevation of no. 23. Such separation distances are appropriate and would ensure there is no material loss of light to the rear windows or dominance of the neighbour's rear garden. There is a side facing window to no. 23, observations on site would suggest this serves a stairwell, a non-habitable area. Any impact would not warrant a refusal on such grounds.
- 10.28 Regarding overlooking, then applicant has revised the first floor layout following advice from officers. The revision has relocated a bedroom window to the front elevation. Following the revision there are only two windows on the southern elevation which are both secondary sources of light. One of which serves bedroom 1 of Flat 12 while the other serves the living room. With both being secondary sources of light it is considered that they can both be of obscured glass there would be no loss of privacy.
- 10.29 Regarding the windows to the rear of the northern wing, these would be approximately 23m from the shared boundary with no. 23 and would not therefore result in a materially harmful impact to the privacy of no. 23.
- 10.30 With regard to the potential impact on the occupants of the terrace off Glebefield Gardens to the west of the site, there is only one side facing window, at first floor to no. 25. Observations on site show this to be a small obscure glazed window that would appear to serve a bathroom/en-suite. In conjunction with the 10m separation distance from the block proposed there would be no loss of light to these properties, or unreasonable dominating effect.
- 10.31 Regarding overlooking, the rear facing windows off the north wing would have a very, oblique angle of view towards the front windows on the Glebefield terrace that there would be no harmful loss of privacy. The development's rear, west-facing windows would be approximately 20m from the shared boundary with the Glebefield Garden properties.
- 10.32 The properties to the north and east off Herne Road and Sixth Avenue would have a front-to-front relationship with the development proposed. This would be across the public realm and would entail separation distances of between 17/18m to the east and approximately 16 m to the north. With such separation distances and the relationship between the buildings across the public realm it is considered that there is no unreasonable impact upon the amenities of these residents.
- 10.33 To conclude on this point, it is considered by virtue of the that the separation distances to surrounding properties, the positioning of windows and the oblique angles involved that the proposal would not have an undue impact on the amenities of the surrounding properties thereby according with the objectives of Policy PCS23 of the 2012 Portsmouth Plan

## **Highways and Parking**

- 10.34 Section 9 of the NPPF sets out an overarching objective of increasing sustainable modes of transport by ensuring development is located in the right place.
- 10.35 The site is located approximately 700m from the Cosham designated Retail Area that contains a range of everyday retail and other such needs. Furthermore, there are bus

stops within 150m of the site on the A3 Southampton Road and Cosham Railway station is approximately 1.1km walk from the site. With such services and public transport links being within an acceptable walking distance of the site it is considered that it is within a sustainable and accessible location that will encourage sustainable non-car modes of travel.

- 10.36 With regard to bicycle parking, the scheme proposes a total of 38 long stay spaces for residents which accords with the City Council's Parking & Transport SPD as does the provision of 4 short stay visitor bicycle space which also accords with the Parking SPD. The provision of an appropriate level of bicycle parking will encourage sustainable modes of transport thereby according with the broad objectives of Policy PCS17 of the 2012 Portsmouth Plan.
- 10.37 Regarding the level of car parking, the scheme would provide for a total of 26 spaces, 24 would be within the main car park accessed off Sixth Avenue via the undercroft access with two in a parking bay off Herne Road.
- 10.38 The Highways Authority have said this represents a shortfall of 8 parking spaces and that the site is not within an area of the City where lower parking standards would be accepted. Notwithstanding the comments in the applicants Transport Statement that claims car ownership levels have fallen, the Highways Authority notes the site is outside of an area where a reduction in parking provision would be supported and that the shortfall would be contrary to the Parking SPD. From the Local planning Authority's perspective, however, the site is, as noted above, considered to be in a sustainable and accessible location.
- 10.39 The Highways Authority have concluded that subject to the imposition of a condition regarding pedestrian visibility for a distance of 2m on either side of the access they would have no objection to the scheme on highways grounds.
- 10.40 Subject to the above visibility splay condition and a further condition ensuring the parking areas are laid out prior to first occupation the scheme is considered acceptable on highway grounds.

## **Appropriate Assessment and Biodiversity**

### *Appropriate Assessment*

- 10.41 Pursuant to the [Conservation of Habitats and Species Regulations 2017 \(as amended\)](#) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended), all plans and projects (including planning applications) which are not directly connected with, or necessary for, the conservation management of a habitat site, require consideration of whether the plan or project is likely to have significant effects on that site.
- 10.42 Where the potential for likely significant effects cannot be excluded, a [competent authority](#) must make an appropriate assessment of the implications of the plan or project for that site, in view of the site's conservation objectives. The competent authority may agree to the plan or project only after having ruled out adverse effects on the integrity of the habitat site. Where an adverse effect on the site's integrity cannot be ruled out, and where there are no alternative solutions, the plan or project can only proceed if there are imperative reasons of overriding public interest and if the necessary compensatory measures can be secured.
- 10.43 The LPA, as the competent authority in this case, upon successful recommendation by Committee, will require the necessary nitrate and bird aware mitigation in consultation with Natural England. The Applicant has agreed to make such mitigation, secured by

way of Section 106 Legal Agreement in conjunction with the Hampshire & Isle of Wight Wildlife Trust and there would be a further linking agreement with the LPA.

### *Biodiversity*

- 10.44 The overarching objective of Policy PCS13 of the 2012 Portsmouth Plan and Section 15 of the NPPF is to ensure planning preserves and enhances a sites biodiversity.
- 10.45 Regarding ecology, the County Council's Ecologist had initially requested a protected species survey prior to the grant of any permission. Following the submission of both an initial protected species survey and follow up emergence survey the Ecologist has raised no objection regarding protected species subject to an informative.
- 10.46 The site is of low ecological value and the County Council's Ecologist has stated that a biodiversity enhancement condition should be imposed on any permission requiring biodiversity enhancement measures be approved and implemented as approved.
- 10.47 Subject to such a biodiversity enhancement condition and the bat informative, and the Section 106 for nitrate and bird aware mitigation, the proposal is considered acceptable in ecological terms and accords with Policy PCS13 of the 2012 Portsmouth Plan and Section 15 of the NPPF.

### **Trees**

- 10.48 The surrounding trees are the subject of a Tree Preservation Order (TPO 156). The Tree officer had initially requested a comprehensive arboriculture impact assessment to be submitted. Following the receipt of the Arboricultural Report the Tree Officer raises no objections to the proposal.
- 10.49 it is considered necessary however, in the interests of tree preservation, to impose a condition ensuring the tree protection measures set out in the tree report are implemented prior to construction work commencing and retained until all construction works have been completed.

### **Flooding**

- 10.50 When determining planning applications, LPAs should ensure that flood risk is not increased elsewhere. The site is located in Flood Zone 1, areas at least risk of flooding. While no drainage information has been submitted with the application the Drainage Officer has stated that the information they would require regarding a Drainage Strategy, infiltration investigation, porous paving details and existing suite drainage assessment can be secured by way of an appropriate condition(s).
- 10.51 Subject to the imposition of such a condition it is considered that the proposal would accord with the objectives of Policy PCS12 of the 2012 Portsmouth Plan.

### **Ground Conditions and Pollution (Contaminated Land)**

- 10.52 The Contaminated land team have requested a two part condition that will ensure the necessary contamination surveys are compiled and submitted to the LPA and that a further remediation survey, if necessary, is submitted and that any works are undertaken in accordance with the reports submitted.
- 10.53 Due to the extensive groundworks that would be associated with such a development such conditions are considered appropriate.

### **CIL**

- 10.54 Portsmouth City Council introduced its Community Infrastructure Levy (CIL) charging schedule in April 2012. The CIL regulations require indexation to be applied to this rate annually using the RICS CIL Index and the 2023 basic rate is £167.15 per sqm. Most new development which creates over 99sqm of gross internal area or creates a new dwelling is potentially liable for the levy.
- 10.55 The applicant has stated in their application form that the use as a social club ceased several years ago the CIL charge would be on the complete apartment block proposed.

### **Human Rights and the Public Sector Equality Duty (PSED)**

- 10.56 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.
- 10.57 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relation between those who share a relevant protected characteristic and those who do not. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered that the officer's recommendation would breach the Council's obligations under the Equality Act 2010.

### **CONCLUSION AND PLANNING BALANCE**

- 11.1 There is no objection to the replacement of the discussed social club land use with a flatted development in a residential area, with good access to a town centre, public transport, hospital, shops, services and employment.
- 11.2 The development is of an appropriate scale, form and design, and would make a good townscape addition to the local area without unreasonable impact on neighbouring residents' amenities or nearby trees. Good living conditions for occupiers would be provided. The provision of 23 new dwellings is particularly welcomed.
- 11.3 As such, the proposals constitute Sustainable Development, they accord with the Local Plan and the NPPF, and planning permission should be granted subject to various conditions and legal agreement.

**RECOMMENDATION I** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to:

- (a) Receipt of 'no objection' from Natural England concerning the SPA Mitigation, and;
- (b) satisfactory completion of Legal Agreements necessary to secure the mitigation of the impact of the proposed residential development on Solent Special Protection Areas (recreational disturbance and nitrates), and the provision of any Affordable Housing deemed achievable by the LPA (with the possible inclusion of a Review Mechanism in the event that no Affordable Housing can be provided).

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

**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 six months of the date of this resolution.

## **Conditions**

### **1. Time Limit**

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.

### **2. Approved Plans**

Unless otherwise 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: 2125 01B; 2125 02B; 2125 03B; 2125 04C; 2125 05B; 2125 06B; 2125 07C; 2125 08C; 2125 09C & 2125 10C.

Reason: In the interest of good planning.

### **3. Contamination Surveys**

Prior to Demolition

3i) No demolition works shall occur 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) The developer must pre-screen the building for asbestos and confirm that asbestos is not present. Where one exists, the building's asbestos register must be obtained and unless asbestos is known to not be present an intrusive asbestos refurbishment and demolition survey conducted in accordance with HSG264. The mitigation scheme to control risks to future occupiers must be verified. The scheme must be written by a suitably qualified person and shall be submitted to and approved by the LPA prior to demolition.

b) A 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 building(s), land, and wider area. 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 with the sampling rationale for all proposed sample locations and depths being shown in the conceptual model (Phase 1 report).

Prior to Groundworks

(ii) No works (referring to ground works and/or amendment to the substructure) 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) the following in sequential order:

a) A 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 (Phase 2 report).

b) A 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 (Phase 3 report). 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 other offsite receptors

#### **4. Contamination Remediation (if necessary)**

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 (i)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(ii)b.

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 other offsite receptors

#### **5. External Materials and architectural details**

No development shall commence on site until details of the types and colours of external materials (including window and door recesses and the provision of a rear door canopy) to be used has been submitted to and approved by the Local Planning Authority in writing. The development shall be carried out in accordance with the approved details.

Reason: in the interests of good design and visual amenity pursuant to Policy PCS23 of the 2012 Portsmouth Plan

#### **6. Hard and Soft Landscaping/Materials**

Prior to the occupation of the building hereby approved details of the hard and soft landscaping details shall be submitted to and approved in writing by the Local planning Authority. The details shall then be implemented as approved. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping which shall specify species, planting sizes, spacing and numbers of trees/shrubs to be planted. The works approved shall be carried out in the first planting and seeding seasons following the occupation of the building(s). 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 similar size and species.

Reason: in the interests of good design and visual amenity pursuant to Policy PCS23 of the 2012 Portsmouth Plan

## **7. Highways - visibility splays**

Prior to first occupation a plan showing the pedestrian visibility splays shall be submitted to and approved in writing by the Local planning Authority showing the pedestrian visibility splays to/from the Herne Road car parking spaces. The visibility splays shall then be kept clear of all obstructions over 1m in height.

Reason: In the interests of highway safety pursuant to policy PCS17 of the 2012 Portsmouth Plan

## **8. Highways - parking**

The parking areas shown on the approved plans shall be laid out and permanently retained as such in accordance with the approved plans prior to the first occupation of the development hereby permitted.

Reason: In the interests of highway safety pursuant to policy PCS17 of the 2012 Portsmouth Plan

## **9. Drainage**

Prior to above ground works commencing a comprehensive Flood Risk & Surface Water Drainage Report shall be submitted to and approved in writing by the Local Planning Authority. The report shall include, but not limited to existing infiltration rates, areas of porous paving proposed and existing and proposed drainage methods. The details shall then be implemented as approved.

Reason: In the interests of flood risk and surface water drainage pursuant to Policy PCS12 of the 2012 Portsmouth Plan

## **10. Finished floor level plan/survey.**

Prior to any above ground works commencing a detailed topographical survey shall be submitted detailing existing and proposed ground floor levels for the approval in writing by the Local Planning Authority. The floor and ground levels of the building and site hereby approved shall then be laid out in accordance with the approved details.

Reason: in the interests of good design and residential amenity pursuant to Policy PCS23 of the 2012 Portsmouth Plan.

## **11. Ecology**

The construction and demolition phase shall be undertaken in accordance with the Ecological Appraisal (25 Sixth Avenue Ecology Appraisal, Cherry tree Ecology Ltd, 19<sup>th</sup> July 2022) unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of ecology and biodiversity pursuant to Policy PCS13 of the 2012 Portsmouth Plan.

## **12. Ecology**

Details of the biodiversity enhancement measures shall be submitted to and approved in writing by the Local Planning Authority. The details and measures shall be implemented prior to the first occupation of the building hereby approved and permanently retained thereafter.

Reason: In the interests of ecology and biodiversity pursuant to Policy PCS13 of the 2012 Portsmouth Plan.



### **13. Glazing**

The Flat 12 windows in the south elevation shall be of installed with obscure glass prior to first occupation and retained thereafter in accordance with details submitted to and approved by the Local Planning Authority in writing and shall be permanently maintained in that condition.

Reason: To protect the privacy of the adjoining property and to prevent overlooking in accordance with Policy PCS23 of the 2012 Portsmouth Plan

### **14. Refuse and Recycling**

The facilities to be provided for the storage of refuse and recyclable materials shall be constructed and completed before first occupied, or within such extended period as agreed in writing with the Local Planning Authority, and shall thereafter be retained for the continued use by the occupants of the building hereby approved for that storage at all times.

To ensure that adequate provision is made for the storage of refuse and recyclable materials in accordance with Policy PCS23 of the 2012 Portsmouth Plan

### **15. Tree protection measures**

The tree protection measures set out in the Arboricultural Report (Arboricultural Impact Assessment and Tree Protection Scheme, Hearne Arboriculture, 23<sup>rd</sup> June 2022 [JH/AIA/22/068]) shall be implemented prior to the commencement of development and permanently retained until the construction phase of the development is complete.

Reason: In the interests of tree protection and ecology pursuant to Policy PCS13 of the 2012 Portsmouth Plan.

### **16. Sustainable Construction**

Prior to the above ground works commencing a Sustainable Construction Plan (which shall include sustainable building and water efficiency measures) shall be submitted to and approved in writing by the Local Planning Authority. The measures shall then be implemented as approved.

Reason: In the interests of sustainability and environmental protection pursuant to Policy PCS15 of the 2012 Portsmouth Plan.

### **17. Boundary treatments**

Prior to first occupation of the building hereby approved all boundary treatment details shall be submitted to and approved in writing by the Local planning Authority. Such treatments shall include security and access gates to the undercroft car park access. The treatments shall be implemented as approved.

Reason: In the interests of good design and reducing crime and antisocial behaviour pursuant to Policy PCVS23 of the 2012 Portsmouth Plan.

**Bat Informative:** Bats and their roosts receive strict legal protection under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017. All work must stop immediately if bats, or evidence of bat presence (e.g. droppings, bat carcasses or insect remains), are encountered at any point during this development. Should this occur, further advice should be sought from Natural England and/or a professional ecologist.