

# **PLANNING COMMITTEE**

## **16 SEPTEMBER 2015**

**5 PM COUNCIL CHAMBERS,  
2ND FLOOR, GUILDHALL**

### **REPORT BY THE CITY DEVELOPMENT MANAGER 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 City Development Manager's report 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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**94 NAPIER ROAD SOUTHSEA PO5 2RB****CHANGE OF USE FROM DWELLING HOUSE (CLASS C3) TO PURPOSES FALLING WITHIN CLASS C3 (DWELLINGHOUSE) OR C4 (HOUSE IN MULTIPLE OCCUPATION)****Application Submitted By:**

Mr Joshua Stewart

**On behalf of:**

Mr Joshua Stewart

**RDD:** 1st June 2015**LDD:** 5th August 2015**SUMMARY OF MAIN ISSUES**

This application has been brought to Committee at the request of Councillor Donna Jones.

The determining issues for this application relate to the suitability of the proposed C3/C4 use within the existing community and its potential impact upon the living conditions of adjoining and neighbouring residents. Other considerations are whether the proposal complies with policy requirements relating to car and cycle parking.

**The Site**

This application relates to a two storey mid-terraced dwellinghouse located on the western side of Napier Road. The property comprises a combined sitting/dining room, kitchen and shower room at ground floor level and three bedrooms at first floor level. An existing lean-to is shown on the proposed floor plans to be used for the purposes of bike storage.

The site falls within the indicative area at risk of flooding (zones 2 and 3).

**The Proposal**

The lawful use of the property falls within Class C3 (dwellinghouse) of the Use Classes Order. This application seeks to change the use of this property from Class C3 (dwellinghouse) to purposes falling within Class C3 (dwellinghouse) or Class C4 (House in Multiple Occupation). Normally, a change of use between Class C3 and Class C4 would be classed as permitted development within the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). On the 1st November 2011 however, Portsmouth City Council implemented an Article 4 Direction relating to HMOs. As a result, planning permission is now required for a change of use between Class C3 (dwellinghouse) and Class C4 (House in Multiple Occupation) where between three and six unrelated people share at least a kitchen and/or bathroom.

## **Planning History**

No element of the planning history is considered relevant in the determination of this application.

## **POLICY CONTEXT**

The relevant policies within the Portsmouth Plan would include:  
PCS12 (Flood Risk), PCS17 (Transport), PCS20 (Houses in Multiple Occupation (HMOs)),  
PCS23 (Design and Conservation),

In addition to the above policies, the aims and objectives of the National Planning Policy Framework and the Houses in Multiple Occupation Supplementary Planning Document are relevant.

## **CONSULTATIONS**

**None**

## **REPRESENTATIONS**

14 letters of objection have been received on the following grounds:

- \* would place additional pressure on existing limited available parking
- \* alarmed at increase in number of HMO's in area - suggest the 10% threshold must be exceeded already
- \* general concern about the unkempt appearance of some HMO properties and the often noisy and unsociable nature of some of the occupants
- \* a HMO use would not be an appropriate use of a property surrounded by young families and small children

## **COMMENT**

The determining issues for this application relate to the suitability of the proposed C3/C4 use within the existing community and its potential impact upon the living conditions of adjoining and neighbouring residents. Other considerations are whether the proposal complies with policy requirements relating to car and cycle parking. Whilst the property lies within an indicative flood risk area it is not considered that the proposed change of use would render the property or its occupants any more vulnerable to tidal inundation than at present.

This application seeks permission to change the use of this property from purposes falling within Class C3 (dwellinghouse) to purposes falling within Class C3 (dwellinghouse) or Class C4 (House in Multiple Occupation). This would give the applicant greater flexibility to change between these two use classes.

Policy PCS20 of the Portsmouth Plan states that applications for changes 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 Houses in Multiple Occupation SPD provides further detail on how this policy will be implemented and how the City Council will apply this policy to all planning applications for HMO use.

Of the 88 properties located within a 50m radius of this property, 6 are currently in Class C4 HMO use. The use of this property for purposes falling within Class C4 would increase this to 7 out of 88 or 7.95%. This is below the 10% threshold set out in the Houses in Multiple Occupation SPD. The existing community is not currently imbalanced by a concentration of Class C4 HMO

uses and subsequently, the use of this property for C3/C4 purposes does not give rise to an imbalance of such uses.

With regards to the impact of the proposed use upon the living conditions of adjoining occupiers, the level of activity, including the demands placed on existing available on-street parking, associated with the use of any individual property as a Class C4 HMO is unlikely to be materially different to the use of a single household as a Class C3 dwellinghouse occupied by either a single family or other groups living as a single household. The Houses in Multiple Occupation SPD is supported by an assessment of the supply, demand and community impacts of shared housing in Portsmouth. Paragraphs 9.1-9.10 discuss the negative impacts upon local communities resulting from concentrations of Class C4 HMO uses. It is therefore considered that the use of this property for C3/C4 purposes does not have a detrimental impact upon the living conditions of local residents.

There is no off street parking provision at this property and none is proposed as part of this application however, this property is located within a short walk of local transport links, shops and services. The submitted proposed ground floor plans indicate the use of an existing enclosed lean-to at the rear of the property for cycle storage. This is considered adequate provision. A planning condition is recommended to ensure its retention for such purposes.

Storage for refuse and recyclable materials would remain unchanged.

## **RECOMMENDATION                      Conditional Permission**

### **Conditions**

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.
- 2) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Proposed Floor Plans (received 10/6/15)
- 3) Prior to the first occupation of the property as a Class C4 HMO, the cycle storage facilities shown on the Proposed Ground Floor Plan approved shall be made available and shall be retained thereafter for the use of occupiers of the property for that purpose.

### **The reasons for the conditions are:**

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To ensure that adequate cycle storage is provided for occupiers of this property in order to encourage an alternative use to the private car in accordance with policies PCS17 and PCS23 of The Portsmouth Plan.

### **1) PRO-ACTIVITY STATEMENT**

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

**NORTHERN PAVILION AND BOWLING GREEN ADJACENT TO EASTERN PARADE  
CANOE LAKE SOUTHSEA ESPLANADE**

**CHANGE OF USE FROM BOWLS CLUB TO DAY NURSERY; EXTERNAL ALTERATIONS TO PAVILION TO INCLUDE CONSTRUCTION OF FRONT AND SIDE EXTENSIONS, NEW PITCHED ROOF, VERANDA AND CLADDING; LANDSCAPING TO INCLUDE CANOPIES, PLAY EQUIPMENT AND RAISED PLANTERS; AND ASSOCIATED BOUNDARY TREATMENTS, REFUSE STORAGE FACILITIES AND ENTRANCE (RE-SUBMISSION OF 14/00414/FUL)**

**Application Submitted By:**

Building Plans & Estimating  
FAO Mr Robert Abbott

**On behalf of:**

Dysart Nursery  
FAO Mrs Samia McMinn

**RDD:** 14th July 2015

**LDD:** 9th October 2015

**SUMMARY OF MAIN ISSUES**

The key issue in this application is whether the changes from a previous similar scheme allowed at appeal are acceptable.

The main planning issues are whether the principle of the development is acceptable in the location proposed having regard to its designation as protected open space and previous leisure use, whether the development would be acceptable in design terms, whether it would preserve or enhance the character and appearance of the 'Seafront' Conservation Area and the setting of the 'Craneswater & Eastern Parade' Conservation Area, whether it would preserve the setting of Cumberland House which is listed for its special architectural or historic interest (Grade II) and Southsea Common which is included on the Register of Historic Parks and Gardens, whether it would have a significant adverse impact on the residential amenity of adjoining occupiers, whether it would be acceptable in highways terms and whether the proposal would result in an increased risk of flooding at the site.

**The Site and Surroundings**

This application relates to a former bowling club located to the south of Eastern Parade within part of the seafront commonly referred to as Canoe Lake. The site itself incorporates one of two former bowling greens (north), the former main pavilion and two triangular plots of ground that provide landscaping. The site is bounded by Eastern Parade to the north, allotment gardens and Cumberland House (Grade II Listed) to the west, a tree lined footpath and grass tennis courts to the east and recently completed tennis courts to the south.

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

The wider Canoe Lake area comprises a range of leisure uses and attractions including a boating lake, child play areas, a museum, model village, grass and hard surface tennis courts, basketball court, cricket club, 9-hole golf course, formal gardens and large open grassed areas popular for sporting and recreational activities. There are also a number of small tearooms and cafés. A mix of residential properties along Eastern Parade forms the backdrop to the seafront and marks the boundary between the open character of the coastline and denser residential development to the north. Generally the Canoe Lake area has a pleasant verdant character with an air of spaciousness provided by large areas of open space. This is however, reduced to the south and east of the application site where a mixture of hedges and fences divide the various recreational uses, and views towards the sea are obscured by the partially dismantled Lumps Fort.

## **The Proposal**

Planning permission is sought for the change of use from bowls club to a day nursery; external alterations to the pavilion to include the construction of front and side extensions, new pitched roof, veranda and cladding; landscaping to include canopies, play equipment and raised planters; and associated boundary treatments, refuse storage facilities and entrance.

A separate application is currently under consideration for land raising at the site which is associated with alterations and additions at the adjoining tennis court/café site. (15/00576/PLAREG).

## **Planning History**

A previous application for the change of use of the site from a bowls club to a day nursery, the construction of a single-storey side extension and refuse store, and the installation of a 1.8 metre high chain link boundary fence was refused by the Planning Committee on 15th July 2014 (ref.14/00414/FUL). The reason for refusal was as follows: 'In the opinion of the Local Planning Authority the proposed change of use to a day nursery and the construction of a single-storey side extension would result in a loss of protected open space which would compromise the overall integrity of the city's green infrastructure network. Furthermore, the use of the site as a day nursery would have a significant adverse impact on the amenity of the occupiers of adjoining and nearby properties in terms of increased noise and disturbance. The proposal is therefore contrary to policies PCS13 and PCS23 of the Portsmouth Plan and the aims and objectives of the National Planning Policy Framework'.

A subsequent appeal was allowed by the Planning Inspector on the 8th December 2014 (ref. APP/Z1775/A/14/2224520). A copy of the Inspector's appeal decision is attached for reference within Appendix 1. Work to implement this permission has already commenced.

## **POLICY CONTEXT**

In addition to the aims and objectives of the National Planning Policy Framework, the relevant policies within the Portsmouth Plan would include: PCS9 (The Seafront), PCS12 (Flood Risk), PCS13 (A Greener Portsmouth), PCS17 (Transport) and PCS23 (Design and Conservation). Saved policy DC21 of the Portsmouth City Local Plan 2001-2011, The Seafront Materplan Supplementary Planning document (SPD) and Conservation Area appraisals for the 'Seafront' and 'Craneswater & Eastern Parade' Conservation Areas would also be material to the determination of this application.



## **CONSULTATIONS**

### **Sport England**

Comments yet to be received at the time of writing.

### **Garden History Society**

Comments yet to be received at the time of writing.

### **Highways Engineer**

Comments yet to be received at the time of writing.

### **Contaminated Land Team**

Historic maps show the area as being MoD land until c.1923, and a site investigation for the Canoe Lake area identified some elevated concentrations of contaminants. However, following the submission of the results of indicative testing of soils at the site (Site Investigation Factual Report. Canoe Lake Leisure. August 2015 REC Ltd 1CO100066/P2R0), the Contaminated Land Team does not require further testing.

An informative relating to soils to be used in the raised planters and soft landscaping is suggested.

### **Environmental Health**

Comments yet to be received at the time of writing.

### **OFSTED - Office For Standards In Education**

Comments yet to be received at the time of writing.

### **Hampshire Garden Trust**

Comments yet to be received at the time of writing.

## **REPRESENTATIONS**

At the time of writing 5 letters of representation had been received from local residents. The objections can be summarised as follows: (a) The proposed use is not in keeping with the Canoe Lake area; (b) The site should be opened up to the public; (c) There are better locations for a nursery within the city; and (d) Work has already commenced at the site.

## **COMMENT**

The determining issues in this application are:

1. Principle of the proposed development;
2. Design, including impact on heritage assets;
3. Impact on residential amenity
4. Highways/Parking Implications;
5. Flood risk
6. Others including matters raised within representations

Planning permission is sought for the use of the application site as a day nursery which would include a number of alterations and additions to the pavilion building and the former bowling green itself. Given the similarities with the previous proposal (ref.14/00414/FUL) which was allowed on appeal, significant weight must be given to the decision of the Planning Inspector.

## **Principle of the proposed development**

Having regard to the previous decision of the Planning Inspector and the existing extant permission at the site, it is considered that the principle of the proposed use would be acceptable.

Whilst the proposed use of the site as a day nursery was not envisaged during the conception of the Seafront Masterplan SPD, it is considered that the proposal would not conflict with the wider vision for the seafront area and would ensure the long term use and maintenance of a site that is no longer required for recreational purposes.

## **Design, including impact on heritage assets**

Policy PCS23 of the Portsmouth Plan echoes the principles of good design set out within the NPPF requiring that new development should be of an excellent architectural quality; create public and private spaces that are clearly defined as well as being safe, vibrant and attractive; relate well to the geography and history of Portsmouth and protect and enhance the city's historic townscape and its cultural and national heritage.

When determining planning applications the Local Planning Authority (LPA) must also consider what impact the proposal would have on both designated and non-designated heritage assets. Section 66 of the Listed Buildings and Conservation Areas Act 1990 (as amended) places a duty on the LPA to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Furthermore, Section 72 of the Act requires that LPAs pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

The application site is situated within an area of the city that is covered by a number of statutory heritage designations including 'The Seafront' Conservation Area and Southsea Common which is included on the Register of Historic Parks and Gardens. It is also located adjacent to the 'Craneswater & Eastern Parade' Conservation Area and Cumberland House, a grade II listed building.

Due to the limited scale of the pavilion in relation to the wider site, the applicant considers that an enlargement of the building is necessary to make the proposed use economically viable. Therefore, as part of the conversion works, alterations and extensions are proposed to the main pavilion building. These differ slightly from those previously considered and approved by the Inspector comprising: the construction of front (west) and side (south) extensions, the construction of a new pitched roof across the entire building with an open veranda and balustrading along the western elevation; the installation of new windows and doors and the cladding of the building with cedar. This would give a similar appearance to the smaller pavilion that has recently been converted to a café on the adjoining site to the south.

The existing building comprises a simple single-storey flat roof building clad in dark horizontal timber panels. This lacks the traditional architectural qualities of a bowling pavilion that are evident at the adjoining sites (Greens Café & Grass Tennis Court Pavilion) and makes little contribution to the character and appearance of the 'The Seafront' Conservation Area, the setting of the 'Craneswater & Eastern Parade' Conservation Area or the setting of the adjoining Listed Building and Southsea Common.

Notwithstanding the increase in scale, it is considered that the incorporation of a new dual-pitched roof finished in slate, a veranda with white timber supports and balustrading, and new cedar cladding to the external elevations would significantly improve the external appearance of the building creating a structure more akin to a typical bowls pavilion and similar to those located at the adjoining sites. On that basis it is considered that the proposed alterations to the pavilion building would enhance the character and appearance of 'The Seafront' Conservation Area and

the setting of the 'Craneswater & Eastern Parade' Conservation Area, Cumberland House and Southsea Common.

In addition to similar boundary treatments proposed by the previous application (1.8m green chain link fence), permission is sought for a landscaping scheme containing a range of children's play equipment, canopies, raised beds and tree planting. These are all considered to be acceptable in visual terms and given their modest scale and siting, would maintain a good degree of visibility across the site and would not detract from its open character. These elements are considered to preserve character and appearance of 'The Seafront' Conservation Area and the setting of the 'Craneswater & Eastern Parade' Conservation Area, Cumberland House and Southsea Common.

As the proposal is seen to preserve the setting and character of the designated and non-designated heritage assets within the area, the requirements of paragraphs 132-134 of the NPPF, which seeks to address the significance of any harm caused by development, would not be applicable in this instance.

Notwithstanding the positive visual improvements highlighted above, the proposed extensions would result in the loss of approximately 58sq.m. of protected open space at the site, 28 sq.m. more than previously proposed and permitted. Policy PCS13 of the Portsmouth states that: 'The City Council will work collaboratively to protect, enhance and develop the green infrastructure network in the following ways: Refusing planning permission for proposals which would result in the net loss of existing areas of open space and those which would compromise the overall integrity of the green infrastructure network in the city, unless there are wider public benefits from the development which outweigh the harm'. The supporting text to this policy states: 'There is a great deal of pressure on Portsmouth's green infrastructure network from increasing population numbers to climate change and the need for new development sites. The city lacks suitable spaces to provide additional green infrastructure assets to absorb this pressure. Therefore the council's priority will be to focus resources on protecting, enhancing and linking together the existing network. There will be a presumption against any development involving the net loss of open space unless there are wider public benefits that outweigh the harm of this loss'.

In allowing the previous appeal the Inspector had regard to Policy PCS13 when considering the impact of a smaller extension to the building. He stated "The proposed development would involve minor extension works to the existing pavilion to infill an existing canopy and add an extension and refuse store. In the context of the size of the building and the nature of the alterations proposed, these would have little discernible impact on the openness of the site and would be seen as extremely modest alterations and additions. The building is well separated from other buildings in the area and is reasonably well screened further reducing any impact that the proposed extensions may have on the wider area".

Although the proposed extensions would be slightly larger than the previous "modest additions", they are still considered to be of a relatively modest scale in the context of the recipient building and would not have a significant impact on the openness of the site. Furthermore, it is considered that the presumption against the loss of protected open space would be outweighed by the public benefit associated with the provision of early years childcare places within an identified area of deficiency (Childcare Sufficiency Assessment 2011), and the significant improvements to the appearance of the pavilion building that will contribute to the character and appearance of the conservation areas and the setting of Southsea Common.

Once in use, the proposed day nursery would acquire the same permitted development rights as schools, college's universities and hospitals (Class M & N of Part 7 of Schedule 2 of the GPDO) that are generally located on much larger sites. This could allow relatively generous additions and alterations at the site significantly affecting its appearance and open character. On that basis, and having regard to the location of the site within a conservation area forming part of Southsea Common, and its designation as protected open space, it is considered necessary

and reasonable to impose a suitably worded planning condition removing permitted development rights at the site.

### **Impact on residential amenity**

A number of residential properties are located immediately to the north of the application site beyond Eastern Parade. The majority of these properties are flats located within purpose built blocks which include balconies to the southern elevation. Due to the scale of the application site, the degree of separation to the nearest residential property varies from 25 metres at its northern point to more than 80 metres at its southern point.

Having regard to the existing and previous uses at the site and the wider Canoe Lake area, it was previously considered that the use of the site as a day nursery for up to 49 children was unlikely to have a significant adverse impact on the amenity of the occupiers of adjoining properties in terms of increased comings and goings or noise and disturbance.

The City Council's Environmental Health Team previously highlighted that as a result of the physical size of the nursery (internal capacity) the number of children using the external play area would be limited. Therefore, noise and disturbance from outside play would be restricted and was unlikely to be detrimental to the amenity of local residents. It was highlighted that a number of nurseries operate across the city within close proximity of residential properties without significant impact to adjoining occupiers. Whilst this proposal would result in a modest increase in internal capacity, it is considered that this would not significantly change its potential impact.

Regard is also given to the decision of the Inspector and the existing extant planning permission at the site for a similar sized day nursery.

### **Highways/Parking Implications**

Many residential properties to the north benefit from off road parking facilities with additional unrestricted on-road parking provided along Eastern Parade and the adjoining side roads. In the absence of any parking restrictions or requirement for payment, these roads can be busy with visitors to the Canoe Lake area and the wider seafront, particularly at weekends and week days during summer months. However, it is considered that the area does not suffer from any significant parking issues that are common elsewhere within the city.

Notwithstanding the generally light traffic flows on the surrounding highway network which encourages walking and cycling, it is accepted that the proposal would result in a number of children arriving and leaving the site by car. Activity associated with the pick-up and drop-off of children at a nursery would generally be spread across a longer period when compared to that of a school, and will vary depending on parents working patterns. This would reduce the number of vehicles manoeuvring during at any given period, unlike a school where all pupils start and finish at the same time. Regard must also be given to the previous lawful use of the site as a bowling club where there was not only a demand for pick-up and drop-off, but also a requirement for long term parking spaces for members of the club throughout the day.

The previous similar application was considered by the City Council's Highways Engineer who concluded that for the reasons highlighted above, the proposal would not have a significant adverse impact on the surrounding highway network and would not significantly increase the demand for parking beyond that of previous lawful use. Given the proposed hours of operation the nursery would not affect resident and visitor parking facilities during the evening and weekends. Furthermore, and as highlighted above, having regard to the proximity of residential development within the surrounding area and the ease of access on foot, it cannot be assumed that all staff and children would arrive by car.

The City Council's Highways Engineer previously confirmed that accident analysis for the past 5-year period indicated no pedestrian injury accidents in the vicinity of the site. With ample on street car parking available in the surrounding area and general light trafficking; the Highway Authority did not foresee any highway safety issues with the development.

Regard in this respect is also given to the decision of the Inspector and the existing extant planning permission at the site for a similar sized day nursery.

### **Flood risk**

The application site is shown to be located within, but on the very edge, of the indicative flood plain (Flood Zones 2 & 3 of the Environment Agency's Flood Maps). However, the site is also located within the Southsea flood cell as identified in the Portsea Island Coastal Defence Strategy. This area is covered by the Interim Position between Portsmouth City Council and the Environment Agency for the provision of flood defences. This agreement assumes that the flood risk management infrastructure will be provided to at least the 1:200 year standard of protection by the time that it is required.

The proposal has been considered in line with paragraphs 100-108 of the NPPF which seeks to ensure that inappropriate development in areas at risk of flooding is avoided where possible by directing development away from areas at highest risk. Having regard to Policy PCS12 (Flood Risk) of the Portsmouth Plan, there is no requirement in this instance for the applicant to apply the sequential test, which would identify more suitable sites within areas of the city at lower risk of flooding. However, there is a requirement for the exception test to be met.

In this respect, it is accepted that the proposal would represent a more vulnerable use when compared to the previous 'sports and recreation' use. However, the wider sustainable benefits of the use have been identified and it is considered that the proposal would not result in an increased risk of flooding elsewhere. Safe/dry escape routes would also be available towards the south and east should a sudden flood event occur, which is considered unlikely. Improvements to flood risk infrastructure along the seafront has also been taken into consideration.

The application is also supported by a Flood Risk Assessment that seeks to demonstrate that the development and its occupiers would be safe from flooding. The conclusions of this assessment are considered to be reasonable and residual flood risk measures that can be taken at the site are appropriate. These residual measures include, sealed service ducts, location of electrical equipment above predicted flood levels and access to a flood warning services can be required through the inclusion of a suitably worded planning condition.

### **Other matters raised within representations**

A number of representations suggest that there are alternative more suitable locations for nurseries within the city. However, there is no requirement for a sequential test and therefore, the application must be determined on its own merits. This would be the case for all future applications within the area and any decision on this application would not set a precedent.

It is highlighted that construction work has already commenced at the site. The applicant has been advised that all works not covered by the existing extant planning permission are being carried out entirely at their own risk. The commencement of development should not however, form a material consideration of this application and would be addressed separately should permission be withheld.

## Conclusion

In conclusion, it is considered that the wider public benefits of the proposal in providing early years childcare places in an area of the city where there is an identified need and the significant visual improvements to the pavilion building would outweigh the presumption against the loss of protected open space and existing sports facilities at a site. The physical alterations and additions would be acceptable in design terms preserving the open character of the site and the contribution it makes to the conservation area and the wider seafront area and the setting of Cumberland House and Southsea Common. Having regard to the previous lawful use of the site for sports and recreational activities, it is considered that the proposal would not put significant additional pressure on the surrounding highway network or have a significant adverse impact on the amenity of the occupiers of adjoining and nearby properties. Based on the points above it is considered that the proposal would be in accordance with policies PCS9, PCS12, PCS13, PCS17 and PCS23 of the Portsmouth Plan and the aims and objectives of the NPPF and The Seafront Masterplan SPD.

**RECOMMENDATION - Delegated authority to grant Conditional Permission subject to no representation raising new material planning issues.**

## 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: Site Location Plan, Proposed Elevations & Roof Plan, Proposed External Play Areas Plan, Proposed External Play Areas Elevations, Proposed Bin Store Fencing and Proposed Elevation, Section & Plan (received 3/9/15).
- 2) Prior to the installation of the boundary fencing a scheme for the safeguarding of all trees, shrubs and hedges on and immediately adjoining the application site from damage as a result of proposed works in accordance with British Standard:5837 (2005) shall be submitted to the Local Planning Authority for approval in writing. The works shall then be carried out in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.
- 3) Notwithstanding the submitted information, a detailed schedule of materials and finishes to be used for all external surfaces of the development hereby permitted shall be submitted to the Local Planning Authority for approval in writing within one calendar month of the date of this decision. The development shall thereafter be carried out in accordance with the approved details.
- 4) The approved landscaping scheme shall be carried out in the first planting and seeding seasons following this decision. 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.
- 5) The boundary fence (including supporting structure) hereby permitted shall be colour treated in green or such other colour as may be agreed in writing with the Local Planning Authority and shall be permanently retained in that condition.
- 6) The day nursery hereby permitted shall, unless otherwise agreed in writing by the Local Planning Authority, incorporate the flood resilience measures set out within the submitted Flood Risk Assessment.
- 7) Prior to first use of the site as a day nursery, the refuse store and associated enclosure shall be provided in accordance with the approved details and shall thereafter be retained.

8) Notwithstanding the submitted details, the proposed bin store fencing shall be completed in cedar shiplap boarding to match the cladding to the main pavilion building unless otherwise agreed in writing with the Local Planning Authority.

9) The use of the site as a day nursery shall not take place other than between the hours of 0700 - 1830 Mondays - Fridays and not at all on Saturdays or Sundays.

10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking and or re-enacting that Order with or without modification) no building, structure or other alteration permitted by Class M or Class N of Part 7 of Schedule 2 or Class A of Part 2 of Schedule 2 of the Order shall be erected on the application site without the prior written permission of the Local Planning Authority obtained through the submission of a formal planning application.

11) The site shall be used for a day nursery and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

**The reasons for the conditions are:**

- 1) To ensure the development is implemented in accordance with the permission granted.
- 2) In order to protect the existing landscape features of amenity value from damage to health and stability (including root systems) and the character and appearance of the surrounding area, in the interests of amenity in accordance with policies PCS13 and PCS23 of the Portsmouth Plan.
- 3) In the interests of visual amenity having regard to the sites location within 'The Seafront' Conservation Area in accordance with policy PCS23 of the Portsmouth Plan.
- 4) To improve the appearance of in site in the interests of visual amenity having regard to the sites location within 'The Seafront' Conservation Area in accordance with policy PCS23 of the Portsmouth Plan.
- 5) In the interests of visual amenity having regard to the sites location within a conservation area in accordance with policy PCS23 of the Portsmouth Plan.
- 6) To minimise the risk from flooding in accordance with policy PCS12 of the Portsmouth Plan.
- 7) To ensure that adequate and visually acceptable provision is made for the storage of refuse and recyclable materials having regard to the location of the site within a conservation area in accordance with policies PCS15 and PCS23 of the Portsmouth Plan.
- 8) In the interests of residential amenity in accordance with policy PCS23 of the Portsmouth Plan.
- 9) In order to control any further alterations and additions having regard to the sites designation as protected open space and its location within the 'Seafront' Conservation Area in accordance with policies PCS13 and PCS23 of the Portsmouth Plan.
- 10) In order that the Local Planning Authority may exercise further control of potential impacts from the wide range of alternative uses within Class D1 by different patterns of activity, hours of operation, parking/servicing or noise and general disturbance, having regard to the character of

the locality and in the interests of the amenities of occupiers of nearby properties, to accord with policies PCS17 and PCS23 and the aims and objectives of the Seafront Masterplan SPD.

#### 1) 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 pre-application process to achieve an acceptable proposal without the need for further engagement.

2) NB This permission is granted in accordance with the provisions of Section 73 of the Town and Country Planning Act 1990, which makes provision for the retrospective granting of planning permission for development which has commenced and/or been completed.

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## Appeal Decision

Site visit made on 10 November 2014

**by Kenneth Stone Bsc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 December 2014

**Appeal Ref: APP/Z1775/A/14/2224520**

**Northern Pavilion and Bowling Green, adjacent to Eastern Parade,  
Southsea P04 9RA**

- ☐ The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- ☐ The appeal is made by Mrs Samia McMinn against the decision of Portsmouth City Council.
- ☐ The application Ref 14/00414/FUL, dated 10 April 2014, was refused by notice dated 15 July 2014.
- ☐ The development proposed is described as 'change of use from bowls club to day nursery and construction of single storey side extension, enclosure of veranda, construction of refuse store and installation of 1.8m high chain link boundary fence'.

### **Decision**

1. The appeal is allowed and planning permission is granted for the change of use from bowls club to day nursery and construction of single storey side extension, enclosure of veranda, construction of refuse store and installation of 1.8m high chain link boundary fence at Northern Pavilion and Bowling Green, adjacent to Eastern Parade, Southsea P04 9RA in accordance with the terms of the application, Ref 14/00414/FUL, dated 10 April 2014, subject to the conditions contained in the schedule at the end of this decision.

### **Procedural matters**

2. I have used the site address from the Council's decision notice which adds clarity to that of the description used by the appellant in the appeal forms. The original description of the site in the application form refers to a different location but the area the subject of the application is evident from the plans and details submitted with the application. I have also adopted the description of development from the Council's decision notice as this more accurately describes the works for which permission is sought. I have considered the appeal on this basis and reflected these points in my formal decision.

### **Main Issues**

3. The main issues in this appeal are the effect of the proposed development on

- ☐ open space provision in Portsmouth and the overall integrity of the City's green infrastructure network; and
- ☐ the living conditions of the occupiers of adjoining and nearby properties, with particular reference to noise and disturbance.

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### **Reasons**

4. The appeal site was previously occupied as a bowling green and club house located on the south side of Eastern Parade. It is set within a wider open space area used for a variety of formal and informal recreation uses running along the seafront which according to the Council is referred to as Canoe Lake. At the time of my visit the pavilion was vacant and the bowling green had been filled and levelled. I understand this was in connection with the implementation of a planning approval for the adjoining site where works to construct all weather tennis courts and an extension to a further pavilion were

also being undertaken.

#### *Open Space*

5. Policy PCS13 of Portsmouth City Council's The Portsmouth Plan: Portsmouth's Core Strategy (CS) seeks to protect, enhance and develop the Green Infrastructure network of the city by a series of specified actions including refusing planning permission for proposals which would result in the net loss of existing areas of open space unless there are wider public benefits from the development which outweigh the harm. The policy does not directly refer to public or private space or to the nature of the use of the space for recreational purposes. Indeed in the preceding paragraphs at paragraph 4.56 the table sets out examples of some of the Green Infrastructure assets and spaces in Portsmouth. This includes Southsea Common as an amenity green space and Canoe Lake as provision for children and teenagers. The list also includes reference to outdoor sports facilities, Parks and Gardens, natural and seminatural urban green spaces allotments and Churches and cemeteries. These are not all areas where the public has access to and are not all recreational facilities and the benefits of the Green Infrastructure as stated at paragraph 4.55 include, visual amenity and recreation space for residents and visual relief from the urban character of the city.

6. In the context of policy PCS13 the protection for the areas of open space cannot therefore be interpreted as affording protection to recreational or sporting facilities per se but to the open spaces that they provide along with other open spaces. In this regard the appeal site contributes to the wider open space of Canoe Lake and Southsea Common of which it forms a part which although providing recreational and sporting facilities also provides for relief to the built development of the city by virtue of its open character.

7. The proposed development would involve minor extension works to the existing pavilion to infill an existing canopy and add an extension and refuse store. In the context of the size of the building and the nature of the alterations proposed these would have little discernible impact on the openness of the site and would be seen as extremely modest alterations and additions. The building is well separated from other buildings in the area and is reasonably well screened further reducing any impact that the proposed extensions may have on the wider area.

8. The proposed open chain link fencing that would surround the former bowling green would maintain a reasonable degree of visibility through and across the site and would be similar to many of the recreational facilities in the immediate vicinity of the site which have similar means of enclosure. I noted similar fencing being erected on the adjoining tennis courts, surrounding land to the west of the appeal site and other pitches within the Southsea Common area.

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The fencing would also be set behind an existing landscaped boundary onto Eastern Parade which would further reduce its impact in the wider area.

9. The proposals would maintain the sense of openness and add planting to the area that would enhance the biodiversity value of the site and the visual softening that the site contributes to the surrounding area. It would thereby support and enhance the function of the site in its contribution to the Green Infrastructure of the City. The use of the site as a day nursery would not undermine the physical and visual contribution the site makes to that Green Infrastructure.

10. For the reasons given above I conclude that the proposed development would not result in material harm to the open space provision in Portsmouth and the overall integrity of the City's Green Infrastructure network. Consequently it

would not conflict with policy PCS13 of the CS which seeks to protect enhance and develop the City's Green Infrastructure.

*Living conditions*

11. The proposed development would allow for the use of the site for a day nursery for up to 49 children. Concerns have been expressed that the noise and disturbance that would arise from the use would be seriously detrimental to the living conditions of the occupiers of surrounding properties. The closest properties are those on the north side of eastern parade. For the most part those directly opposite the site are blocks of flats which face onto the Southsea Common area. This wider area contains a variety of recreational and sporting facilities. Including a boating lake, children's play area, tennis courts and basketball courts amongst the informal walking and other areas. This is likely to be a highly active and intensively used location where it would be reasonable to expect a degree of activity and the associated noise. It is not a quiet residential suburb where there may be a more reasonable expectation for a more tranquil location.

12. The hours of operation of the nursery have been confirmed by the appellant<sup>1</sup> as being from 7:00 am to 6:30pm Monday to Friday and this could be secured by condition. The suggested opening times would protect the weekends, later evening and early mornings and mean the premises would be operating during normal day time hours. Any noise and activity generated by the proposed use would therefore not be unduly intrusive.

13. For the reasons given above I conclude that the proposed development would not result in material harm to the living conditions of the occupiers of adjoining and nearby properties, with particular reference to noise and disturbance. Consequently it does not conflict with policy PCS23 which amongst other matters requires that developments protect and provide a good standard of living environment for neighbouring and local occupiers.

*Other matters*

14. The site lies within an area covered by a number of statutory heritage designations including The Seafront Conservation Area (TSCA) and the Southsea Common registered park and garden. It is adjacent to the Craneswater and Eastern Parade Conservation Area (CEPCA) and Cumberland House, a grade II listed building on Eastern Parade. The Council did not object

<sup>1</sup> Letter dated 30<sup>th</sup> May 2014 from Sam Brooks to Portsmouth City Council

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to the proposals based on its impact on these heritage assets and given my conclusions above I am satisfied that the proposed development would preserve the character and appearance of the TSCA and the setting of the adjoining CEPCA and would preserve the setting of Cumberland House and this section of Southsea Common.

15. A number of residents raised concerns about parking and highway safety. However, I agree with the conclusions of the Highway Authority and the Local Planning Authority that there would be adequate parking in the vicinity of the site. There are limited parking restrictions on this section of Eastern Parade other than double yellow lines at the junctions of adjoining roads.

16. A number of comments referred to other more appropriate locations for the proposed use however I am required to consider the proposals in front of me and whether any resultant harm arises or not, as I have done in this case.

17. My attention has been drawn to a potential fall back position that could be adopted by the appellant to Change the Use of the bowling pavilion to a registered nursery by exercising permitted development rights under the Town and Country Planning (General Permitted Development ) Order 1995, as amended. However these, rights require a prior approval process to be

undertaking before they can be utilized and no such approval is in place. It is not for me to consider such a matter in this case and I have therefore afforded this very little weight.

### **Conclusions and conditions**

18. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be allowed.

19. I have considered the suggested conditions provided by the Council in the context of the advice in the Planning Practice Guidance (PPG) and the wording of the suggested models of acceptable conditions in appendix A to Circular 11/95 'The use of conditions in planning permissions' which remains extant.

20. I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interests of proper planning as advised at paragraph 21a-022 of the PPG. Conditions to require investigation for the potential of contamination on the site given the site history and the sensitivity of the end user are appropriate. Conditions related to landscaping, materials for the building works and the colour of the fencing are required in the interests of the appearance of the development and the surrounding area. Conditions restricting the hours of operation and the future permitted development rights for the development are required in the interests of the amenity of the occupiers of surrounding properties and the character of the area. It is reasonable to incorporate flood resilience measures into the development given the sites location, and I have thereby imposed a condition in this regard.

***Kenneth Stone***

INSPECTOR

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SCHEDULE OF CONDITIONS FOR APPEAL REF: APP/Z1775/A/14/2224520

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers: 14.19993.100, 1993.102 Rev A, 14.1993.104 Rev-B and the fencing image received by the Local Planning Authority on 24. 04.2014.

3) Development shall not 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 site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the history of the site and in accordance with BS10175:2011 +A1 2013 – Investigation of potentially contaminated sites – code of practice; and unless otherwise agreed in writing by the Local Planning Authority,

b) A detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring.

Such scheme shall include nomination of a competent person to oversee the implementation of the works.

4) The development hereby permitted shall not be occupied/brought into use until there has been submitted to and approved in writing by the Local Planning Authority verification by the competent person approved under the provisions of condition 3(b) that any remediation scheme required and approved under the provisions of condition 3(b) has been implemented fully in accordance with the approved details (unless varied with the written consent of the Local Planning Authority in advance of

implementation). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise (but not be limited to):

- a) As built drawings of the implemented scheme;
- b) Photographs of the remediation works in progress; and
- c) Certificates demonstrating that imported and/or material left in situ is free of contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 3(b).

5) No development shall commence on site until a landscaping scheme including a scheme for safeguarding of all trees, shrubs and hedges on and immediately adjoining the application site from damage as a result of proposed works in accordance with British Standard 5837 (2005) has been submitted to and approved in writing by the Local Planning Authority. The landscaping and works for the safeguarding of trees, shrubs and hedges shall then be carried out in accordance with the approved scheme.

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6) The materials to be used in the construction of the external surfaces of the extensions and refuse store hereby permitted shall match those used in the existing building.

7) The boundary fence (including support structure) hereby permitted shall be colour treated in green or such other colour as may be agreed in writing by the Local Planning Authority and shall be permanently retained in that condition.

8) The day nursery hereby permitted shall, unless otherwise agreed in writing by the Local Planning Authority, incorporate the flood resilience measures set out within the submitted Flood Risk Assessment.

9) The use shall not take place other than between the hours of 0700 - 1830 Mondays – Fridays and not at all on Saturdays or Sundays.

10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no building, structure or other alteration permitted by Class A or Class B of Part 32 of Schedule 2 or Class A of part 2 of Schedule 2 of the Order shall be erected on the site.

11) The premises shall be used for a day nursery and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and reenacting that Order with or without modification).