

Recommendation: **GRANT PERMISSION**

APP/16/00921 - Demolition of the single storey shop, two-storey office building and

associated outbuildings. Erection of 4No. houses (3x 3No. bedrooms and 1x 2No. bedrooms) fronting onto Queen Street and associated parking and erection of 2No. detached dwellings (4No. bedrooms) fronting onto to the Mill Pond with associated parking and access from Queen Street. (13.12.18). Request to discharge condition No.s 3,4,6,10 and 13. (31.01.19). Request to discharge condition No. 7 (25.02.19). Request to discharge condition No. 5 (20.3.19). Request to discharge condition nos 15 and 17 (12.7.19)., PERM,13/12/2018

This permission included a S106 Agreement dated 10th December 2018. This included clauses in relation to the area of land adjacent to the sea wall gate including the seating area stating:

4.1 Within six months of the date of Commencement of Development details and proposals of all of the permissive paths and unadopted rights of way to be provided across that part of the Land edged blue on Plan 2 shall be submitted to the Council and the Council's approval obtained thereto provided that if the Council fails to give Notice of approval within one month of such submission the details and proposals as submitted shall (provided that the Owner has submitted all the details as required under this clause) be deemed to have been approved

4.2 To ensure that all such permissive paths and unadopted rights of way approved under paragraph 4.1 above are provided prior to first Occupation of any Dwelling and remain open and accessible to the public in perpetuity unless adopted by Hampshire County Council as highway authority .

It is not considered that this application would restrict rights across this land and would provide access to the harbourside.

APP/19/00826 - Application to modify S106 agreement (dated 10.12.2018) to remove the affordable housing contribution. Modification refused 19th December 2019

APP/19/01044 - Erection of small free standing toilet facility for harbour users - Current application

3 Proposal

Application of non-material change to Planning Permission APP/16/00921 relating to locally reducing seawall adjacent to seating area to allow for a 2.4m wide flood gate to serve a potential future slipway and 2no. trees within raised planting bed to be omitted as they are not able to be relocated without clashing with the culvert to the left of the site.

4 Policy Considerations

National Planning Policy Framework
Havant Borough Council Borough Design Guide SPD December 2011
Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011

CS11 (Protecting and Enhancing the Special Environment and Heritage of Havant Borough)

CS15 (Flood and Coastal Erosion)

CS16 (High Quality Design)

Havant Borough Local Plan (Allocations) July 2014

DM20 (Historic Assets)
DM25 (Managing Flood Risk in Emsworth)
AL1 (Presumption in Favour of Sustainable Development)
AL3 (Town, District and Local Centres)

Listed Building Grade: Not applicable.
Conservation Area: Emsworth

5 Statutory and Non Statutory Consultations

Conservation Officer:

Senior Conservation Officer - No Objection - 28/10/19

Site

Dolphin Quay is a former boatyard which is now under construction to be redeveloped into a residential development of 6no. houses. It is located within the Emsworth Conservation Area and surrounded by a number of listed buildings.

Proposal

Application of non-material change to Planning Permission APP/16/00921 relating to locally reducing seawall adjacent to seating area to allow for a 2.4m wide flood gate to serve a potential future slipway and 2no. trees within raised planting bed to be omitted as they are not able to be relocated without clashing with the culvert to the left of the site.

Legislative and Policy Context

Given the location within a conservation area, Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is relevant which requires planning authorities, when considering whether to grant planning permission for development which affects a Conservation Area, to have special regard to the desirability of preserving or enhancing the character and appearance of that area.

Assessment

From an amenity perspective, the loss of 2no. trees from the landscaping plan is unfortunate. However, on balance the provision of a flood gate is an overall benefit to the local community. Overall it is considered that the flood gate would not result in harm to the designated heritage asset, that being the conservation area in this instance and the proposal would accord with the relevant national and local planning policy with regards to designated heritage assets.

Environment Agency

Environment Agency Position

We have no objection to the proposed non-material alteration.

Advice to Applicant/LPA

The Environment Agency understand that this application has been made on the basis that a potential further development application is likely to be submitted, which will need to undertake alterations once the wall has been built.

On the basis that the flood wall and ancillary works benefit from an approved Flood Risk Activity Permit (FRAP) a variation order to the FRAP will need be undertaken to cover the material amendment, or otherwise a new FRAP application will need to be submitted. At such a time the Environment Agency will require details as to whom will ultimately be responsible for the said floodgate operation, future maintenance and ownership.

Landscape Team HBC

Application of non-material change to Planning Permission APP/16/00921 relating to locally reducing seawall adjacent to seating area to allow for a 2.4m wide flood gate to serve a potential future slipway and 2no. trees within raised planting bed to be omitted as they are not able to be relocated without clashing with the culvert to the left of the site.

From a landscape perspective we have the following comments:

- The omission of the street trees is deemed to be detrimental to the soft landscaping scheme. We recommend a planter with bench seating to retain both the seating and the soft landscaping in the streetscape. With a plethora of products available there will be an appropriate option to accommodate the proposed location.

Officer comment: *The proposals retain bench seating; however no planter is proposed and the application falls to be determined on that basis.*

Engineer/Drainage

No comments received

Whilst this Non-Material Amendment application is not subject to the usual publicity for a planning application, given the sites sensitivity a number of neighbouring properties were notified of the application.

Number of neighbour notification letters sent: 25

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 1 objection 1 support

Comment	Officer Comment
I object to his planned change on the basis that a slipway did not exist at this site prior to the current development and should not be included at this stage. I believe that the provision of a slipway at the site has the potential to	Concerns noted, however the provision of a new slipway is likely to require a separate planning permission in its own right.

cause congestion and accident risk on Queen Street owing to the slipway users reversing boat trailers into the slipway. Needless to say there will also be an increase in noise levels and fumes from boat engines. In addition I believe that there is a risk that the flood gate may be left open at times leading to an increased risk of flooding on Queen Street.	
Furthermore the application to remove two trees from the original design, purely to accommodate the slipway, will have a negative effect on the appearance of the site.	See part 6
My view is that we should keep the trees and abandon the slipway and flood gate. It is also a concern to me that the developers of the site have already assumed that approval will be given for this plan as they have built the flood defence wall with a gap for the flood gates even though no permission has been given for this change.	Any work undertaken in advance of permission is at the applicants own risk.
I am glad this change is going ahead as I and others have been working with the developer to get this amendment for the floodgate and hopefully a new public slipway idc.	Noted

6 Planning Considerations

- 6.1 As detailed in paragraph 3.1 above, this application has been submitted under Section 96A of the Town and Country Planning Act which allows a local planning authority to make a change to any planning permission if they are satisfied that the change is not material. The Government has advised that the requirements for design and access statements, publicity and consultation, and to take reasonable steps to identify unknown owners, would have applied to the original application if relevant. Therefore, those requirements do not apply to this type of application. The Government have advised that Local Planning Authorities must have regard to the effect of the change when determining where the proposal is a 'non-material' amendment.
- 6.2 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:
- (i) Principle of development
 - (ii) Appropriateness of design and impact on the character of the area AONB and Conservation Area

- (iii) Effect on neighbouring properties
- (iv) Flood risk

(i) Principle of development

- 6.3 The application site is located within the defined urban area, therefore development is considered acceptable in principle subject to development control criteria. In this case, the proposal is for a non-material alteration to the previously approved scheme planning application reference APP/19/00865. The alterations relate to the sea wall and adjacent amenity area. The implications are considered below.

(ii) Appropriateness of design and impact on the character of the area

- 6.4 The alterations to the sea wall relate to the provision of a flood gate in a section of sea wall to the western side of the wider Dolphin Quay site adjacent to a public seating area. This would be a stainless steel gate of the same height as the adjacent wall. This is considered acceptable in terms of its appearance.
- 6.5 The proposal would retain public seating in the area to the north of the gate/wall adjacent to Queens Street. It would, however, result in the removal of some planting. This is to allow a route to the gate. The provision of planting above the Culvert is understood to not be possible as access is required to this area. Concerns regarding the loss of planting were raised by the Council's Landscape Officer as set out above. The agent has provided the following comments in response:

Further to our conversation yesterday please note the trees are already within a planter, we cannot relocate the planter as this will be located directly over the culvert and southern water sewer, which would impede access for statutory authorities. The trees in this location would also block the views to the Flour Mill which was a requirement to be retained by the conservation consultant during the planning process.

Our original location moved the trees to be clear of the culvert and had a raised planter to avoid roots extending down too far and also retained the views to the Flour Mill. To provide the access to the slip way flood gate requested by third parties we have nowhere else to relocate these that would not cause knock on effects. Previously there were no trees on site and there is only one tree located street frontage for the whole of Queen Street so whilst this would have been a nice addition we do not feel we are creating any detrimental effect to the street scape by not providing these. We are still providing the seating which also is currently not available on site so feel that we are still improving the setting for the locals to enjoy and providing an area to enjoy the views out across the Mill Pond.

- 6.6 Overall, given the difficulties in providing the alternatively sited planting and the desire to provide access to the quayside, it is considered that on balance the loss of the planting would not override the provision of the sea gate.

- 6.7 In relation to the impact on the Conservation Area, the Council's Conservation Officer has commented that:

From an amenity perspective, the loss of 2no. trees from the landscaping plan is unfortunate. However, on balance the provision of a flood gate is an overall benefit to the local community. Overall it is considered that the flood gate would not result in harm to the designated heritage asset, that being the conservation area in this instance and the proposal would accord with the relevant national and local planning

policy with regards to designated heritage assets.

- 6.8 In relation to the impact on the AONB, it is not considered that the proposal would be harmful to the character and appearance of the area.

(iii) Effect on neighbouring properties

- 6.9 In relation to neighbouring properties, there are residential properties to the west and north and future residents to the east. The area is relatively busy with commercial and residential uses and boat related activity. It is not considered that the additional access to the harbourside provided by the sea gate alone would result in an unacceptable impact on nearby residential properties by reason of noise or activity. Any future proposals for a more formal slipway arrangement in this area would be likely to require a separate planning permission in its own right, at which time amenity issues would be considered further.

- 6.10 The proposed changes are relatively modest and it is considered they are unlikely to lead to an adverse impact to the neighbouring properties and can therefore be considered as non-material.

(iv) Flood risk

- 6.11 In relation to flood risk it is noted that the Environment Agency has raised no objection to the proposed sea gate. It is not considered that a refusal on flood risk grounds could be substantiated. An informative in relation to the possible need to vary the Flood Risk Activity Permit as advised by the EA is recommended.

7 Conclusion

- 7.1 Overall, the proposed alterations to the sea wall for the provision of a flood gate and omission of planting are not considered to result in a material change to the extant planning permission and the changes are recommended for approval.

8 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT PERMISSION** for application APP/19/00865 subject to the following condition:

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Flood Defence Wall Layout Drawing No. 18-3130-121 C4 received 17th December 2019

Soft Landscaping Plan Drawing No. 27958-PD140 rev C

Boundary Treatments and Hard Landscaping 27958-PD150B

Reason: - To ensure provision of a satisfactory development.