

HAVANT BOROUGH COUNCIL

Town & Country Planning Act 1990

Consultation on Planning Application

MEMORANDUM

From:	Environmental Health	To:	Development Control
Our Ref:	CONS/19/00367	Your Ref:	APP/19/00211
EH Case Officer Extn:	44 6677	Date:	13 March 2019
DC Case Officer:	Bee Crawford		
DC Case Officer Extn:	44 6514		
Application Number:	APP/19/00211		
Site Address:	37 Creek Road, Hayling Island, PO11 9QZ		
Proposed Development:	Conversion to form 1 bedroom flat with associated parking.		

I attach a copy of the above application that has been received under the Town and Country Planning Acts. Any views you should wish to make should be returned to me no later than 21/03/2019.

Observations / Comments:

Please note, I was unaware of this application when making comments under APP/19/00198, and the scheme proposed under 19/00211 makes clear that the applicant considers that the current consented use for no.37 is A5.

I note that no soil quality data or ground assessment is included with this application. As such, the advice provided previously under APP/18/01239 & APP/19/00198 remains valid, and is unchanged. It may be helpful to further expand on the rationale for those comments (which for completeness, I will reproduce at the foot of this response).

Contamination Risks

The premises of #37 is within approximately 5m of fuel tanks associated with the retail sale of petroleum at the adjacent site. The closest tanks are the newest, dating from the late 1960's to early 1970's, and are believed to be of single skin, steel construction. Current status is unknown, but the inspection chamber covers are still visible on the forecourt of number 35. This type of tank is vulnerable to leaks arising from corrosion, and chronic leaks can amount to significant contamination without representing sufficient product loss as for the operator to identify a problem (there have been local examples at operational sites where tanks pass pressure tests, but leaks were evident, and tank skin breaches were latterly confirmed by radiography).

The closest available (BGS) borehole record taken in similar mapped stratigraphy shows a succession of thin layers of drift of varying proportions of silt, clay, sand and gravel. There is significant variability in the descriptions given for drift locally, but records note that upon completion standing water levels in boreholes may be very close to ground levels. If groundwater is tidally influenced, it may be brackish, and may represent an elevated risk to long-term tank integrity. Associated landuses include potential sources of VOC, BTEX compounds, and Xylene in particular.

Being Light non-aqueous liquids (LNAPL) the potential for shallow groundwater within a porous strata is a risk factor for sensitive landuses, such as ground-floor residential.

The plans omit private garden areas, and realistically the street frontage is likely to always be given over to hard-standing. Critical pathways for this (these) development(s) may therefore characterised by indoor & outdoor inhalation, and penetration of potable water supply pipework (as a vector for exposure by ingestion) only, and solid-phase pathways can largely be discounted.

The risks to potable supply differs for residential accommodation (compared with commercial) in that more sensitive receptors may be frequently present (infants and children), that activities are likely to be regularly undertaken which would not occur at a workplace (e.g. consumption of food prepared at the premises, bathing/washing), and in that the same persons are exposed on a daily basis for a significant period (e.g. infant, during a formative / developmental period). A resident may obtain a substantial % of their drinking water from home, as opposed to staff & customers which will be consume water from the premises on a more transient basis.

Planning Considerations

The decision we need to make is to determine whether sufficient information has been submitted to determine that a general residential use class is an acceptable use of this land, having regard to all relevant local and national policy (para's.178-180 NPPF & DM17), or if not, whether it is reasonable and proportionate to require that information be obtained (and action be secured-) to ensure that C3 use is- (or can be made to be-) an acceptable use of this land.

It is my understanding that Local Planning Authorities should not grant consent subject to conditions that might materially threaten the deliverability of a development (e.g. by imposing requirements foreseeably likely to impose onerous cost, damaging economic viability). To do so would be to grant consent for a development that cannot economically be made acceptable in planning terms, and such a decision is vulnerable to challenge on the basis that it would constitute an irrational (Wednesbury unreasonable-) planning decision.

Were this development a comprehensive redevelopment of land, I would not hesitate in determining that soil conditions need to be investigated, contamination risk be assessed, and where unacceptable risks exist - contamination be remediated (or risks otherwise mitigated). Where the development quantum is sufficient to support a worst-case assessment / remediation scenario, it is rational to determine that the development can be made acceptable by use of planning conditions. However, where the quantum of development is small (as in this case), this decision is less clear.

A 'worst case' scenario is that a mix of VOC compounds & petroleum hydrocarbons are present within the soils underlying the building at #37, at shallow depth & in concentrations significant in respect of the key relevant pathways. This would necessitate a risk mitigation strategy to protect future occupants.

The applicant is not responsible for contamination arising on third-party land, but is responsible (NPPF para. 179) for ensuring that it does not result in a development that harms future occupants (so being unacceptable in planning terms). In this way, and under the above scenario, mitigation would likely consist of retro-fitted VOC-resistant vapour barrier, sealed service penetrations, and barrier pipe for potable supply. Such provisions are difficult to reliably retrofit & verify, and may or may not be feasible for the construction of the existing building (e.g. may involve replacement of a suspended floor slab with block & beam, or cast-in-situ slab).

At this stage, it is unclear whether the cost of obtaining an appropriate contamination assessment, and implementing a scheme of mitigation (as outlined above, for a worst-case scenario) would be prohibitive for this scheme.

What is clear is that C3 use at this site without the support of empirical soil quality information is unacceptable on the basis of the theoretical risk posed by the adjacent potential sources of contamination. It would be an acceptable use if;

- a) empirical data is available to quantify that risk, and shows it to be either negligible, or acceptable, or;
- b) a remedial scheme can be designed & implemented which makes a quantified risk acceptable.

Conclusion

Given the small quantum of development, I would conclude that the collection of empirical data (soil samples) is required to support a planning determination, and that it is not reasonable to defer this to a condition of consent. It follows that in the absence of this information, the recommendation should be for refusal (or withdrawal pending collection & submission of a suitable assessment, undertaken by competent persons).

Previous advice / Consultation response (APP/18/01239).

"[...]As regards contamination, the statement provided on the application form has no basis, other than to say that the applicant is not aware of any obvious visual or olfactory evidence of significant contamination. This is not the same as there existing no risk.

The submitted plan clearly identifies a 'garage' on contemporary mapping, and as such I thought it prudent to undertake a search of available records. This search has identified several factors which suggest non-trivial risk:

- Fuel storage tanks & dispensing pumps pre-dating 1975 were formerly present within 25m of the property. Documents indicate that the tanks are likely remain in situ. No reference is made in the planning archive to the installation of the tanks or pump island, and it is therefore possible that the tanks pre-date the first T&CP Act.*
- A 6000 gallon fuel storage tank is located within 10m of the property, dating from approximately 1975. The tank appears to be a 3 compartment tank, corresponding to 3 separate dispensing pumps (present within around 15m of the property), so I would expect leaded petroleum & Diesel Fuels, and possibly either a premium (high-octane) petroleum or kerosene in the smallest compartment. Lead, Toluene, MTBE, Naphtha, and general hydrocarbons (C5-C35) might be expected to be likely to be present.*
- The adjacent garage (vehicle servicing & repair) use has evolved over the course of it's history, with a number of phases of development and alterations dating from before 1949 to at least 1976. This use remains to date.*
- A 1963 application refers to the addition of a spray shop & paint mixing room. Documents refer to 'cellulose'. The building is shown on subsequent plans (1975) as existing, so the 1963 approval is assumed to have been proceeded with. Cellulose thinner (Xylenes) might be expected to be present, alongside other light fraction hydrocarbon solvents, VOC, and traditional metallic paint pigments (Cu, Zn, Pb, Cr, Co). Position is ca. 45m from the property.*
- There are several references to the use of soakaway drainage (at least 3 no. separate soakaways), one of which serving the paint shop, and present 'at least 10 feet' from the building. Use of soakaway drainage at a site where there is a risk of both surface spillage of liquid contaminants (fuels, oils, solvents, paints) and where particulate contaminants are being released (e.g. sanding residues connected with preparation of*

surfaces for painting) represents a risk of a rapid transport vector with bypasses site hardstanding, and introduces contaminants directly to soils &/or groundwater.

- Some plans suggest private drainage lines cross the property boundary between no. 35 & no.37 creek road, also representing a risk of preferential migration of any contamination present on the garage site, to the application site.
- The application site has a similar history of frequent alterations, use- & replacement- of temporary buildings. This sort of history increases risk of pathways to interior spaces, and could potentially hamper efforts to provide vapour barriers (for example).
- The only specific reference to pollution (potential contamination) that I have found in relation to the application site is an anecdotal reference to an enforcement notice dating from around 1949 for the clean up of an accumulation of waste associated with the adjacent commercial garage, but apparently deposited on/at the application site. Given the nature of the adjacent business, that waste could have conceivably included items likely to have leaked / leached.
- Groundwater is known to be shallow in this area, and the geology is permeable (river terrace silty-sands over wittering formation (sands). The Groundwater may be tidally influenced, and considering all the factors, migration of contaminants from the point of release is considered both likely, and likely to be occurring within zones (at depths) relevant to human health.

From the above, I would regard there to be a reasonably high risk of presence of contaminants of concern within the soils at the application site and within the immediate vicinity.

The proposals do not make provision for areas of private soft landscaping, but plans to appear to show that the frontage is to be divided and subject to boundary treatment to create private 'yard' areas. No detail is provided on ground cover.

Were this a redevelopment (demolition & rebuild), I would require a full intrusive site investigation to quantify the risks, and mitigate them if necessary.

The question here is whether the Change of Use to unrestricted C3 is acceptable (where presumably, C3 PDR would be available) accounting for the contamination risk. Given:

- the indoor inhalation pathway risk, the potential for contaminants (PAH/VOC) to penetrate water supply pipework (chronic ingestion risk),
- the potential for volatile contaminants (<C8, naphtha, Xylenes, VOC) to enter the property, and,
- the possibility of future owners / occupants introducing planting beds, or soft ground cover around the building in future;

I would have to conclude that the LPA would not be complying with NPPF Para 178 without requiring further information from that applicant regarding contamination risk & mitigation. Given the results of above research, it seems unlikely that desk based sources of information will be sufficient to dismiss the risk (or determine that the risk is acceptable), and so I would expect that empirical results from an intrusive investigation would be necessary to support a positive determination.

Given the small quantum of development, and especially in light of the applicant wishing to explore reducing quantum to a single unit following the query raised in respect of the existing A5 use class; I am not sure that it would be rational to grant consent subject to conditions. The cost of investigation and effective implementation of risk mitigation may be disproportionate to the scale of development, and may therefore prejudice delivery.

In accordance with NPPF 178 c), I would anticipate the results of a site investigation as being necessary in order to accompany an application.

On the basis of the above, I would conclude that prior notification is required, and should be refused. "

Mr. Jonathan Driver
Environmental Control Officer