

3.1 Application under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 as amended for change of use from class B1(a) office use to C3 residential use for 4No. flats subject to prior approval covering flooding, highways, transport issues, contamination and impact of noise from

commercial premises.

The submitted plans indicate that access to the new dwellings would be taken from the existing entrance, this giving access to a common hallway at ground and first floors with 2No. 1-bed flats on each floor. A range of communal rooms would be accessible from the hallway also, to be used for ancillary bin storage, cycle storage and home office purposes.

The site layout plan indicates that car parking provision would exist within the communal parking area to the south of the building, which would also incorporate waste collection facilities.

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

CS16 (High Quality Design)
CS20 (Transport and Access Strategy)
DM13 (Car and Cycle Parking on Residential Development)

Havant Borough Local Plan (Allocations) July 2014

DM17 (Contaminated Land)
DM18 (Protecting New Development from Pollution)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Environmental Health Manager - Contamination issues

See Appendix A

Environmental Health Manager - Noise issues

I have studied the noise assessment submitted as additional to that submitted in 2017, and other documentation related to this prior notification application and can advise as follows:

In the January 2018 noise impact assessment, I note that in addition to the measured noise levels previously submitted in the June 2017 report being used, a further monitoring point has been added at the gateway between units 1 and 2 and submitted as Table A3.2 insert.

I can only find one reference to the roller shutter door on the Eastern facade of unit 2 being open for 5 minutes but no indication of whether any loud noise levels were emanating from within during the open period. I did a site visit on the 17th August 2018 and during the approximate 20 minutes I was on site, the roller shutter door was fully open at Innova Engineering and the noise emanating from within said premises from

machinery being operated, was particularly loud within 15 to 20 metres from the source. My concern in this instance is that I am advised that this business may and could operate 24 hours per day, and especially during warmer periods of weather, as witnessed, the roller shutter door could be open for long periods of time. I note that no assessment has been submitted in line with BS4142:2014 guidance and methodology, and related to the commercial / industrial sites to the west and south.

The noise assessment does not quantify railway noise adequately. The assessment of railway noise should follow the guidance in Calculation of Railway Noise in terms of gathering measured noise data and analysing the noise impact of railway noise on the proposed development. That should also include information such as number of trains passing east and west bound, those that stop and those that pass straight through, types of trains e.g. passenger or freight, number of coaches / carriages and so forth. I note there is also no clarification of any potential impact from station tannoy announcements, if they occur or not.

Whilst this and the previous noise report, seek to assess internal noise levels in habitable rooms in accordance with the requirements of BS8233:2014 in relation to external noise impact in a residential property, I see no reference as to whether any outdoor amenity areas are proposed to be provided for potential future residents, and what the expected noise levels would be in such areas and what mitigation measures would be required to ensure these could be used for such a purpose.

Based on the above, I would suggest that the findings and recommendations of this noise impact assessment be considered incomplete in that it cannot be concluded that the impact of noise from both the adjacent railway station and lines, and the adjacent commercial premises, will not have a significant adverse impact on the intended residential occupants.

As such I would raise objection to this application.

Highways Engineer, Development Engineer

The redline should include a route to the adopted highway and notice should be served on anyone with a legal interest in the private road

The road leading from north street to Emsworth Station is not adopted Highway.

Natural England Government Team

No response received.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 6

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 1

Comment	Officer Comment
I strongly object to the proposed loss of an employment site. This building is part of the Station Approach Industrial Estate and is shown on the Local Plan as an employment site. The other units in Station Approach are occupied. When Unit 3 was put on the market last year it was quickly acquired by Racquet Depot, a local firm who were seeking larger premises. There is a strong demand for industrial premises and this property should be marketed for a minimum of one year as being suitable for B1/2/8 use as well as retail use, subject to planning permission. We are seeing a huge increase in housing in Emsworth but no new jobs are being created. This site if configured for office accommodation it could employ up to 50 people. Turning this building into 4 flats will do nothing to meet any housing targets but will create a dangerous precedent for other employment sites.	The principle of the change of use is allowed by the permitted development rights laid out under the Town and Country Planning (General Permitted Development) Order 2015. Only the prior approval criteria can be considered in determining this application

7 **Planning Considerations**

- 7.1 The change of use of the premises proposed is the subject of recent changes to the General Permitted Development Order (GPDO) which have given a general permitted development right for such changes to take place with only a 'prior approval' process to go through. Consequently the principle of the change of use is considered acceptable. Having regard to the relevant conditions of the GPDO it is considered that the main issues arising from this application are:

- (i) Transport and highways impacts of development
- (ii) Contamination risk on the site
- (iii) Flooding risks on the site
- (iv) Impacts of noise from commercial premises on the intended occupiers of the development

- (i) Transport and highways impacts

- 7.2 The existing parking and access arrangements on the site would not be altered as part of the proposal. There are communal car parking areas located within close proximity of the building, albeit shared with the commercial units further to the east. In terms of car parking demand, the use of the building for 4 1-bed flats would result in a significant reduction in parking demand in relation to the Council's adopted car parking standards. Furthermore the site is located in a relatively accessible and sustainable location adjacent the Emsworth Railway Station, and makes appropriate provision for

cycle storage.

The Development Engineer has raised no concerns and having regard to the above considerations there are no concerns over transport and highway issues arising from the proposals.

(ii) Contamination risk

7.3 Comments from the Environmental Health officer and subsequent communication with the applicant's agent are documented in Appendix A. From this it can be seen that there is a reasonable prospect of the building lying on or adjacent to contaminated land by reason of the following factors:

- (a) its proximity to a rail station and railway land with the potential to handle contaminating materials;
- (b) the siting of the building on land formerly used as a goods handling area and goods shed, and also railway siding line, again with the potential to handle contaminating materials
- (c) its proximity to a former builders yard and works
- (d) its proximity to an embankment constructed of material of unknown provenance.

It is recognised that the form of development proposed is relatively low risk, as the proposal amounts to a conversion of the building only with no private garden areas to be created and no children likely to reside in the flats given their 1-bed nature. Nonetheless the Environmental Health officer confirms that vapour pathways may be important given the likely contaminants, and background/baseline exposures could be elevated as a result of emissions from the adjacent railway land. Furthermore there is a risk that the structure of the building itself may represent a higher risk of vapour ingress.

These considerations point to the need for a precautionary approach to be taken in relation to the site; paragraphs 178 and 179 of the National Planning Policy Framework stating in this regard:

178 Planning policies and decisions should ensure that:

a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);

b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and

c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.

179 Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

In the present case, no empirical soil quality analysis has been undertaken in connection with the application to assess the suitability of the land or building for

residential use. The applicant's agent was advised of the concerns in this regard in the course of the application and further comments were received and submitted to the Environmental Health Officer. A subsequent response was received from the Environmental and forwarded to the agent on 24/08/2108 and although receipt was acknowledged, at the time this report was being written no further comments had been received. See Appendix A. That being the case, and on the basis of the information available to the Local Planning Authority, it is considered that there is a reasonable prospect of the site comprising contaminated land and as such, as set out under Part 3, W (10) (c) of the Order (Procedure for applications for prior approval under Part 3), this prior approval application should be refused.

(iii) Flood risk

7.4 The site is not within either Flood Zones 2 or 3 and as such there are no flood risks concerns associated with the proposal.

(iv) Impacts of noise from commercial premises on the intended occupiers of the development

7.5 Having regard to the site context, it is considered that there are two discrete elements which together impact upon the potential for noise from commercial premises on the intended occupiers of the development - firstly, the adjacent railway; and secondly the employment premises to the south and west of the site.

With regard to the impacts of railway noise/vibration, the noise assessment does not quantify railway noise adequately. The assessment of railway noise should follow the guidance in Calculation of Railway Noise in terms of gathering measured noise data and analysing the noise impact of railway noise on the proposed development. This should also include information such as number of trains passing east and west bound, those that stop and those that pass straight through, types of trains e.g. passenger or freight, number of coaches / carriages and so forth. There is also no clarification of any potential impact from station tannoy announcements, if they occur or not.

A noise impact assessment has been submitted with the application regarding the adjacent commercial / industrial premises to the west and south of the site. However, no information has been submitted in line with BS4142:2014 guidance and methodology to assess the noise environment appropriately and works of mitigation explored.

As with the contamination issues, these considerations point to the need for a precautionary approach to be taken in relation to the site; paragraph 180 of the National Planning Policy Framework stating in this regard:

180. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life⁶⁰;

b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and

c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

The Explanatory Note to the Noise Policy Statement for England sets out that 'significant adverse effects' are likely to be different for different noise sources, for different receptors and at different times. The partial nature of the noise impact assessment submitted with the application - both in terms of scope and duration of measurements - seriously undermines the ability to reach a conclusion that the impacts of noise from commercial premises on the intended occupiers of the development will not cause a significant adverse impact.

8 Conclusion

- 8.1 The proposed change of use, the principle of which is granted by the Town and Country Planning (General Permitted Development Order) 2015 as amended, is considered acceptable in terms of its transport and highways impacts and flood risks. However, in the absence of an empirical soil quality analysis in connection with the application to assess the suitability of the land or building for residential use, there is a reasonable prospect of the site comprising contaminated land and as such, as set out under Part 3, W (10) (c) of the Order (Procedure for applications for prior approval under Part 3), this prior approval application should be refused - this approach is supported by paragraphs 178, 179 and 180 of the NPPF and Policy DM17 of the Havant Borough Local Plan (Allocations) 2014. Furthermore the partial nature of the noise impact assessment submitted with the application - both in terms of scope and duration of measurements - seriously undermines the ability to reach a conclusion that the impacts of noise from commercial premises on the intended occupiers of the development will not cause a significant adverse impact. A precautionary approach is considered appropriate in relation to these issues, having regard to the policies set out in the National Planning Policy Framework and Policy DM18 of the Havant Borough Local Plan (Allocations) 2014, and as such this prior approval application is recommended for refusal.
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9 RECOMMENDATION:

That the Head of Planning has determined that Prior Approval is Required and Refused for the application APP/18/00715 for the following reasons

There is a reasonable prospect of the building the subject of this application lying on or adjacent to contaminated land by reason of the following factors:

- (a) its proximity to a rail station and railway land with the potential to handle contaminating materials;
- (b) the siting of the building on land formerly used as a goods handling area and goods shed, and also railway siding line, again with the potential to handle contaminating materials;
- (c) its proximity to a former builders yard and works; and
- (d) its proximity to an embankment constructed of material of unknown provenance.

Vapour pathways may be important given the likely contaminants, and there is a risk that the structure of the building itself may represent a higher risk of vapour ingress upon completion of the proposed conversion.

No empirical soil quality analysis has been undertaken in connection with the application to assess the suitability of the land or building for residential use, given these environmental constraints. That being the case, and on the basis of the information available to the Local Planning Authority, it is considered that there is a reasonable prospect of the site comprising contaminated land and as such, as set out under Part 3, W (10) (c) of the Town and Country Planning (General Permitted Development) Order 2015 as amended (Procedure for applications for prior approval under Part 3), and supplemented by Paragraphs 178 and 179 of the National Planning Policy Framework 2018 and Policy DM17 of the Havant Borough Local Plan (Allocations) 2014, this prior approval application should be refused.

A noise impact assessment has been submitted with the application regarding the adjacent commercial / industrial premises to the west and south of the site, however the assessment has not been submitted in line with BS4142:2014 guidance and methodology. Furthermore, the noise assessment does not quantify railway noise adequately. The assessment of railway noise should follow the guidance in Calculation of Railway Noise in terms of gathering measured noise data and analysing the noise impact of railway noise on the proposed development.

The findings and recommendations of the noise impact assessment are therefore considered incomplete both in terms of the scope and duration of assessment, and on the basis of the information available it cannot be concluded that the impacts of noise from commercial premises on the intended occupiers of the development will not cause a significant adverse impact on the intended occupiers of the development. The proposal as submitted would therefore conflict with the policies set out under paragraph 180 of the National Planning Policy Framework 2018 and Policy DM18 of the Havant Borough Local Plan (Allocations) 2014.

APPENDIX A

Environmental Control Officer - Contamination issues - comments and subsequent email correspondence from agent

I note that the applicant has responded to the previous refusal, providing an updated noise & vibration assessment, and a 'land contamination site investigation report' (Ref: CU2508/TSBP).

I have reviewed the latter, and will be addressing it's conclusions in the comments below.

Contamination Assessment

The submitted assessment report follows an environmental desk study and preliminary risk assessment (EDS & pRA) also undertaken by Apple Environmental Ltd.). It is implicit that this preceding document informed the design of the assessment & testing work presented in the land contamination site investigation (P2SI) report, but the EDS & pRA has not to my knowledge been submitted to Havant Borough Council for review. Similarly, Environmental Health was not consulted on the scope of the submitted report.

The P2S1 report acknowledges that it's scope is limited. For clarity, whilst titled a 'land contamination assessment', the content might more accurately be described as an 'indoor air quality report'. This does speak to the correctly identified principle exposure pathway insofar as a baseline risk for the existing building, but I would caution against 'over-application' of the results to the conceptual model for the site.

The report does not present any intrusive work, and therefore provided no empirical information relating to the nature, appearance, character, or chemical composition of material underlying the building. Inferences cannot be drawn as to the likely risks arising from modification of the building in connection with the proposal.

I would also caution that several risks within the tabulated conceptual site model are dismissed under the rationale that 'if a significant impact had occurred, it would have been plainly evident by now' (referring to the age of the building, being ca. 1990).

With particular reference to groundwater impact, I would disagree that an impact which could be deemed to be significant would necessarily be self evident - e.g. a plume of contamination moving with groundwater could take many years to traverse the -60m or so to the nearest residential property at Victoria Road - this may not be detected until it reaches the footprint of the building; but it doesn't mean that conceptually speaking, a source at the subject site isn't directly linked to a migrating plume of contamination likely to cause harm in future if that source is allowed to remain.

Similarly with harm to the building fabric, attack of foundations could have resulted in significant weakening which has not manifested in structural movement or failure to date, but which may have made such a failure substantially more likely to occur than it would be in the absence of contaminants which contribute to an aggressive environment for concrete. Perhaps more critically for human health, the report does not attempt to answer the question of whether or not the water supply has been-, or is likely to be- compromised by volatile contaminants capable of penetrating a standard MDPE water main. The exposure risk from tainted water at a commercial premises is substantially less than it would be at a residential dwelling where that water represents the primary source for consumption, cooking, and bathing. Tainted water capable of

causing harm to health would not necessarily be characterised by a substantial discolouration, malodour or taste.

The above points notwithstanding, the principle limitation of the report is that it provides no information on the presence or otherwise of contaminants within soils beneath the building, or in the immediate vicinity. As regards the sampling data presented, I am mindful that the volume of the present building is large relative to the volume of the proposed residential units - it is open plan, and at this point unclear whether ground & first floors are readily contiguous airspaces, or functionally separate (as the residential units would be).

There are also uncertainties in factors which might have substantially influenced the results obtained; hampering confident interpretation of results and limiting the validity of inferences that can be made.

As an example, the level of permanent ventilation within the existing structure is not stated, nor was its degree of structural air-tightness, the degree to which the ground floor space could be considered to be functionally contiguous with first floor space, nor was either the physical volume or temperature of the space (influencing the rate of accumulation & exposure due to air changes and volumetric dilution, and the rate of ingress due to thermal stack effect). Conceptually, the current configuration and the 'risk-relevant' residential configuration are quite different, and in particular, the factors listed above are likely to differ substantially between the two building use scenarios.

Pressure conditions at the time of measurement were suitable to identify any actively gassing material (where positive pressure is created within containing strata), but are not regarded as representing 'worst case' conditions (e.g. sharply falling atmospheric pressure, tending to lead to a 'pulse' of gas or vapour from confining strata). Continuous monitoring usually shows this exposure model (generally little ingress, with pulses of exposure driven by changes in atmospheric pressure) to be much more likely than a 'slow & steady' ingress - especially in relation to vac, and where gas sources are characterised by variable made ground deposits or biodegradation of contaminants in soils.

Report Conclusions

I note that (largely for the reasons outlined above) the conclusions of the report are heavily caveated, being explicitly limited to a conceptual end point (residential occupation) being achieved without compromising or modifying the existing concrete slab, and without introducing any areas of soft landscaping. Implicitly, the report assumes a transition to the risk-relevant exposure scenario without materially affecting the characteristics of the internal space to which the monitoring results are directly applicable.

The report acknowledges the potential presence of a contamination source within material underlying the building and the hard-standing in the immediate vicinity, and its conclusions rely upon this source not being disturbed, and the activation of potential pathways of exposure being avoided.

I do agree that the <LOD results for gas and vapour within the existing building interior does not demonstrate an active indoor inhalation pollutant linkage exists presently, under a baseline assumption that the use of the existing building transfers from B1a >C3 without any material physical construction works.

I am however unconvinced that it is reasonable to assume that the required caveats will apply in practice, and I note that no detail is provided on construction precautions to be applied in order to ensure that the slab is not compromised by either the installation of domestic services, or the affixing of partitioning systems.

The results submitted are not inconsistent with a cold, well ventilated building overlying a vac containing soil with low rates of degradation of organic components in fill, where pathways could be characterised by atmospheric-pressure-driven 'pulse' flows. I acknowledge that the results are similarly consistent with an uncontaminated site. The issue is whether we have sufficient information to discern one from the other.

Application status

I am mindful of the status of this application type, and am unclear on the scope and extent to which the local and national policy provisions apply to their full extent under the PN process - for example, as application is limited to change of use & internal works, is the scope of consideration of contamination limited to the risk to the development itself (Le. future occupiers only), or (as would be the case for a comprehensive development) could the scope be taken to be '...risks to all receptors that may be affected, including those off-site'.

I am similarly mindful that the NPPF standard is that upon completion of development, the land should not be capable of being determined as contaminated land within the meaning of Part 2A of the Environmental Protection Act 1990, and sufficient information should be presented to determine whether this standard is reasonably likely to be met. It is in principle possible under this regime for a site to be determined as a direct result of a realised risk at a nearby contamination sensitive location (Le. the risk need not apply at the 'source' site - in this case, at the 'application site').

I do note that the condition I recommended under APP/17/00938 omits the wording 'including those off-site', and I would consider that the lack of opportunity for accessing any contamination that may be found to be present within the footprint of the building to weigh against the reasonableness of requiring a proactive remedial approach be taken on the basis of a conceptual future risk.

It is similarly unclear as to the conceptual timescale over which a judgement against the NPPF standard should account - for example, would a permitted C3 use under this application type allow associated permitted development (comprising the creation of soft landscaping areas) in future? If so, the site could in principle / conceptually become capable of being determined as Part 2 A land in future under the landuse which the LPA is currently considering the 'in principle acceptability' of, under this application. I would normally consider the timescale to be the 'anticipated lifespan of the consented buildings', and under this definition, the contamination assessment should account for (frame it's risk assessment as-) the most contamination sensitive scenario that falls within the consent being sought.

Summary and Conclusions

- The report does not identify any gaseous or vapour phase contaminants at measurable concentrations within the internal space of the existing building, and in this way presents favourable results.
- Spot measurements taken over a short period, under stable atmospheric conditions are unlikely to capture worst case conditions.

- There are differences between the 'as measured' and 'risk relevant' building configurations likely to directly affect exposure pathways, such that <LOD results under the measurement conditions could in principle have been obtained even where an unacceptable risk to the proposed development exists.
- The report does not provide any information to indicate whether contamination exists within soils at the site at all. For this reason, it is not possible to accurately infer likely risks arising from penetration of the concrete slab (or other pathway creation), the future failure of the seal between the concrete slab and the soil, or indeed the chemical penetration of water supply pipework in place, whether arising during conversion or in future.
- Results presented are consistent with an uncontaminated site, but could also have been obtained at a contaminated site where unacceptable residual risks exist. The results presented are not sufficiently robust as to permit discernment between these potential scenario's.

Were I consulted on the 'scope of works for phase 2 investigation' [to address an HBC imposed planning of the wording recommended under APP/17/00938], I would have rejected the strategy of 'indoor air sampling as a standalone line of evidence', and would have strongly recommended the physical inspection and sampling of soils within the footprint of the building. I would also have strongly encouraged the screening of soils arising (from beneath the slab) and the trail holes themselves, in preference to the measurement of concentrations within the internal air space.

Whether this is sufficient grounds to reject the application (especially where no contaminants were detected) is ultimately a planning decision. I would be inclined, however, to conclude that insufficient information has been submitted to demonstrate the suitability of the site for the proposed conversion.

It is possible that the conclusions of the previous consultation (APP/17/00938) remain valid - that prior approval would be required for the proposed development on grounds of contamination risk, and support for consent would only be possible if it were made subject to robust conditions relating to the physical investigation of soils (and if necessary, mitigation of contamination risks).

Mr. Jonathan Driver
Environmental Control Officer

Response from Adrian Whittle, Apple Environmental, 21/08/18.

We have been asked to forward a reply to the comments made by the EHO regarding the recent land contamination assessment undertaken. In as much as I fully see the argument put forward by the officer I do not believe that our report underestimates the degree of risk in this instance.

The key element of the EHO response was that the air sampling undertaken within the building for the presence of volatiles does not adequately address the vapour/gaseous pathway; as identified by the CSM. More specifically the comments make reference firstly to the fact that the characteristics of the existing layout (i.e. an open-plan commercial building) bear little relation to the proposed residential layout (i.e. individual rooms and associated small spaces), secondly that any existing internal atmospheric

ventilation was not considered, and thirdly that the monitoring was not undertaken during or immediately after a period of rapid atmospheric pressure drop. The response also states that the most appropriate method of determining whether or not there is a concern from gases or volatiles would be to undertake an intrusive investigation.

In my opinion, although I would agree that an intrusive investigation is a far better means of determining the presence of ground contamination, the existing pathway linkage regarding vapour or gaseous entry into the building was not deemed to be a strong one. Our CSM conclusions were reached firstly on the basis that there was to be no ground-working at the site; hence no direct exposure to the soil, secondly on the basis that there would seem to be no point in threatening the integrity of the existing concrete flooring by excavating into it - as it would appear to be doing its job very well (i.e. preventing any contamination beneath from entering the building), and thirdly that the gas/vapour pathway could be adequately dealt with by means of direct air measurement. With further regard to the latter, (and in addressing two of the aforementioned EHO concerns) I can confirm that the building had been closed for some weeks with no internal ventilation, hence the air within it had been static for some time. Secondly not only did we take measurements within the open plan area, but we also measured within all accessible enclosed areas such as WC cubicles and under-sink areas. In all instances the detectors were placed at floor level against any apparent join in the slab, or, where services enter/exit the building. The weather at the time of undertaking these measurements had seen a fall in pressure; however I will admit that this was not a rapid fall. Despite this, the air temperature within the building was high (as was the external temperature) thereby presumably promoting the volatility and buoyancy of any organic compounds in the soil beneath the slab. Overall therefore, I felt that the findings from the air monitoring were entirely valid in this instance.

The EHO also had concerns over our comment regarding the fact that we would have expected any 'significant' soil contamination - if present - to have manifested itself by now. We felt that this was a justifiable comment. The current office building has been in place there for almost 30 years, and it appears to be in good structural order. I am presuming that a structural survey of the existing building has been, or will be, made and therefore this should confirm the suitability of the building for refurbishment and the ground for stability. I would also be very much surprised to hear that any main services had been installed underground in areas where they may have been subject to chemical attack, as this too should be evident by now.

Overall there, in as much that I fully agree that there is much to be learned from intrusive investigation, there appears to be little to be gained in this instance from doing so; moreover it could potentially create a new contaminant pathway, and introduce a risk that isn't currently there.

**Further comments from Jonathan Driver, Environmental Control Officer,
23/08/18.**

I completely understand the position of the consultant. We are talking at this point about a theoretical risk, as we've no empirical soil quality information to go on. I do not dispute the points put forward *per-se*, but would highlight that the focus of the response has been on temperature, volume, and ventilation, and not construction disturbance associated with the development (e.g. fixing internal partitions, installing new services on ground floor, etc.).

On temperature, I was referring to thermal stack effects – drawing vapour and gasses

into a building through positive heating and ventilation (not simply referring to ambient temperature and effect liberation of volatiles – though this is equally relevant). These effects are difficult to predict, but are likely to be quite different to the current configuration of the building.

On the effects of contamination being evident by now (due to the duration of occupancy of the site by the building) – I would accept the conceptual argument for a source which has always been present in an unconfined form at the site. It does not follow however that the same conclusion would be reasonable in respect of a contaminant source migrating from elsewhere that may have only reached the site very recently. The building, and its occupants may need to be protected from such a source, and this is embodied within the standards under the NPPF. An off-site source is conceptually feasible given the history of the site in the vicinity of the proposed development. This serves to highlight the value of obtaining empirical data relating to the soil, to any groundwater encountered, and to gas / vapour concentrations in the unsaturated vadose zone.

I appreciate that the CSM conclusions were undertaken on the basis of there being no groundworks. In the sense of the laying of foundations and new services to the building, I would accept this – it is less clear whether servicing the new units internally would involve the installation of any services within the slab. I had posed the question as to whether this was sufficient as to meet the requirements of the NPPF (which are relevant even assuming that the proposals included no requirement for any below ground work at all).

I would normally interpret the NPPF requirement to refer to a benchmark of 'all possible use & activity that is not restricted by planning condition or other means which falls within the proposed use, for the anticipated design-life of the development'. In this way it is not necessarily just the specific scheme on the table now that we must consider, but also the scope of any alterations which may fall within the change of use being applied for; if these cannot be restricted for the purpose of maintaining a barrier to exposure, in a pollutant linkage which is at this stage entirely theoretical. Havant BC as LPA needs to make a rational planning decision in this respect (or risk being liable for future problems arising that the planning system should have avoided). Part 2A statutory guidance is very clear on the expectation that the planning system will appropriately address contamination, and the NPPF requires that the site not be capable of meeting the part 2A definition of contaminated land upon completion of the development.

The investigation information and CSM submitted to date leaves open an 'upon completion of development' CSM scenario which fails to meet the minimum standard of protection required by the NPPF, in that we can't reasonably assess the construction impact in the absence of any empirical knowledge of the soil quality. I accept that the site could be low risk, or even clean – however national policy requires that the site be demonstrated to be suitable for its intended use, whether or not that theoretical risk is borne out by an investigation or not.

We have two options as an approach to meeting those requirements;

- 1) we assume a risk exists, and i) require the applicant submits a construction method statement which demonstrates how the partitions and services are to be installed / fixed / secured and sealed in order to leave the integrity of the existing slab in tact as is today; and ii) give consideration to the removal of permitted development rights which might, without further need for permission / consent of-

- or opportunity for the scrutiny by- the local authority, threaten to materially alter the conceptual risk 'status quo', or;
- 2) we conclude that the applicant has not undertaken sufficient assessment to facilitate the LPA in making a rational decision as to the whether the development meets the requirements of para. 178 of the revised NPPF, and that intrusive work is necessary in order to inform the determination.

Arguably, the former is unnecessarily onerous, and amounts to a scheme of risk mitigation which may or may not be justified, and may hold up delivery of the development, post determination, and would in all likelihood (in order to have confidence in it) require validation / verification to the same standard as if a significant risk were known to exist. Addressing the latter would allow the site to be properly assessed, and would remove the ambiguity associated with the presence of an unaddressed potential source, and would also avoid the situation where a disproportionate investigative / remedial burden might be placed upon relatively minor future development – e.g. creation of soft landscaping or a small private garden area.

Obviously I would favour taking the latter approach. I am not sure that I am swayed by the argument that a physical investigation would compromise a functional vapour barrier; if a risk is shown to exist, it would be reasonable to conclude that an engineered barrier is necessary in any event in order to ensure surety protection for the design-life of the building , and if no risk is identified the breach of the concrete is immaterial in either risk- or structural- terms.

If there is significant resistance to physical disturbance of the concrete slab (and you are minded to agree that it is unreasonable to require it), then it could be agreed to assess the general quality of soils around the exterior of the building to inform base assumptions for the character of 'within footprint' soils, providing context to the indoor air monitoring already undertaken. This at least would provide a basis to inform the assumptions, and whilst leaving some residual uncertainty, I think could be accepted.

I don't think that there is in reality a big disagreement – the applicant accepts that there is a theoretical risk associated with the site, and that intrusive investigation is the best way to characterise the risk. Equally, I agree that it is entirely feasible that the site could prove to pose a negligible risk.

It is a planning decision as to whether it is accepted that sufficient information has been submitted in order to make a rational determination – but in making a determination the council is accepting some risk. I would defend my initial comments on the basis of the above, and I would favour pursuing a physical investigation and justifying requirements (or the lack of them) rationally on the basis of factual information. Other policy interpretations may be argued – but if we take a different approach, we should at least be clear on why we are accepting the information we are accepting when we have the tools to require a more robust process.

These comments were forwarded to the agent on 24/08/18 and although receipt was acknowledged, at the time this report was being written no further comments had been received.

- 1 There is a reasonable prospect of the building the subject of this application lying on or adjacent to contaminated land by reason of the following factors:
 - (a) its proximity to a rail station and railway land with the potential to handle contaminating materials;
 - (b) the siting of the building on land formerly used as a goods handling area and goods shed, and also railway siding line, again with the potential to handle contaminating materials;
 - (c) its proximity to a former builders yard and works; and
 - (d) its proximity to an embankment constructed of material of unknown provenance.

Vapour pathways may be important given the likely contaminants, and there is a risk that the structure of the building itself may represent a higher risk of vapour ingress upon completion of the proposed conversion.

No empirical soil quality analysis has been undertaken in connection with the application to assess the suitability of the land or building for residential use, given these environmental constraints. That being the case, and on the basis of the information available to the Local Planning Authority, it is considered that there is a reasonable prospect of the site comprising contaminated land and as such, as set out under Part 3, W (10) (c) of the Town and Country Planning (General Permitted Development) Order 2015 as amended (Procedure for applications for prior approval under Part 3), and supplemented by Paragraphs 178 and 179 of the National Planning Policy Framework 2018 and Policy DM17 of the Havant Borough Local Plan (Allocations) 2014, this prior approval application should be refused.

- 2 A noise impact assessment has been submitted with the application regarding the adjacent commercial / industrial premises to the west and south of the site, however the assessment has not been submitted in line with BS4142:2014 guidance and methodology. Furthermore, the noise assessment does not quantify railway noise adequately. The assessment of railway noise should follow the guidance in Calculation of Railway Noise in terms of gathering measured noise data and analysing the noise impact of railway noise on the proposed development.

The findings and recommendations of the noise impact assessment are therefore considered incomplete both in terms of the scope and duration of assessment, and on the basis of the information available it cannot be concluded that the impacts of noise from commercial premises on the intended occupiers of the development will not cause a significant adverse impact on the intended occupiers of the development. The proposal as submitted would therefore conflict with the policies set out under paragraph 180 of the National Planning Policy Framework 2018 and Policy DM18 of the Havant Borough Local Plan (Allocations) 2014.