

Release of the obligations in the S106 Agreement.

- 3.2 The land to the west of No 61B runs alongside the dwelling and is currently classified as amenity land measuring 20m in width and 35m in length at the longest points of the site. The application seeks to change this use to residential curtilage land and incorporate the land into garden space, which it is currently being used as. A Deed of Release has been approved legally that releases the original S106 agreement and all obligations contained within it which originally contained one obligation regarding the use of the land.
- 3.3 A footpath runs along the north width of the land providing residents in No 63-69 Brook Gardens with access to their rear gardens. This is not part of the proposal and will therefore be retained with its existing use.

4 Policy Considerations

National Planning Policy Framework 2012

Havant Borough Local Plan (Core Strategy) March 2011

CS11	(Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS13	(Green Infrastructure)
CS16	(High Quality Design)
DM1	(Recreation and Open Space)
DM8	(Conservation, Protection and Enhancement of Existing Natural Features)

Havant Borough Local Plan (Allocations) July 2014

AL1	(Presumption in Favour of Sustainable Development)
AL2	(Urban Area Boundaries and Undeveloped Gaps between Settlements)

Havant Borough Design Guide Dec 2011

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Environment Agency Comment:

No adverse comment in regards to the application

Developer Services, Southern Water Comment:

Warning given of the site being in close proximity to a public sewer and advice provided on required distances that need to be maintained between both foul and water sewers when developing or planting trees.

Planning Officer Comment: An informative will be included with the decision referencing Southern Waters requirements.

Arboricultural Officer

The site has a group of mixed species early mature trees that offer significant public amenity to the local streetscene and are part of the fabric character of the area. The group also offers a good degree of biodiversity and ecological importance within the road.

However the trees are not good specimens of their kind and unfortunately do not meet the TEMPO criteria for a TPO. This does not in itself downgrade the importance of the

tree group locally though, it just means they are not scoring high enough within the TEMPO scoring to be defensible in a TPO.

Due to the risk to the trees and the impact on the street scene I would raise objection to the change of use / ownership of this land.

Legal Services Comment:

If the restriction imposed under the s106 agreement is no longer required for planning purposes then it is appropriate for the land to be released from it by a formal deed of release.

Harbour Conservancy Comment:

The Conservancy objects to the application, until such time that the fate of these trees is known. If the S106 is to be varied, then it should be made clear which trees would remain, with the varied agreement setting out that unless the retained trees become dead, dying or dangerous, it would be the applicant (and their successor in title)'s responsibility to maintain the trees in accordance with sound arboricultural practice, preferably quoting some British Standard number in this regard. The Conservancy would wish these options to be more fully explored and lodges a holding objection in the interim, with a view to the council also making a Tree Preservation Order to retain these trees.

Planning Officer Comment: The decision will be conditioned requiring a full Landscape Plan to be submitted and approved by the Local Planning Authority prior to the change of use being implemented.

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: 4

Number of site notices: 1

Statutory advertisement: Not applicable.

Number of representations received: 0

7 Planning Considerations

7.1 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) Impact upon the character of the area
- (iii) Impact upon residential amenity
- (iv) Deed of Release/S106
- (v) Trees

(i) Principle of development

7.2 The application site in this case is located within the urban area as defined by the Local Plan; in such locations further development is normally considered acceptable subject to the usual development control criteria. The open space to the side and rear of the property does not comprise of the Local Plans identified Local Green Spaces

and thus there is no specific protection given to the land under the related Local Plan policies. Nonetheless the impact of the loss of open space on the character of the area is a matter for consideration which is addressed below.

- 7.3 Before proceeding to consider the specific impacts of the change of use, however, it is necessary to recognise that the area of the site west of the dwelling's building line has been used as an extension of residential garden space by the residents of No 61B for many years and as such the land has the potential to be immune from any planning enforcement action.

(ii) Impact upon the character of the area

- 7.4 The area of land which comprises the application site holds a relatively prominent position at the western end of Brook Gardens, visible in views west and south along Brooke Gardens as well as from the public footpath to the north. The site contains a number of trees which contribute to the biodiversity of the road and create a verdant attractive appearance within Brook Gardens which would not want to be lost. The land as existing however does not have a specific function and was originally included within the S106 agreement in case access to the field behind No 61B was required, which it no longer will be. It is noted that although the land contributes to the visual amenity of the streetscene, it is not land that is open to the public and as such it does not have a specific function and use apart from this visual contribution.

- 7.5 The land is currently being used as an extension to the residents garden space and it is recognised that there could be a future intention to develop the site due to its size. Any future development would have the potential to impact the visual appearance of Brook Gardens. Therefore in order to protect the visual amenity of the land and the contribution it makes towards the biodiversity of the area a condition will be included with the decision which removes permitted development rights on the land to ensure that any development outside of the General Permitted Development Order 2015 Class A and E would require full planning permission so that the Local Planning Authority has the opportunity to evaluate any future development proposal in detail.

(iii) Impact upon residential amenity

- 7.6 The application site is not currently used by members of the public with the exception to the public footpath which runs along the north length of the land which is outside of the curtilage proposed for the change of use. As the pathway will remain unaffected as a result of the works and will have its current use maintained it is considered that the change of use in the land should not have any adverse impacts upon specific residential dwellings near the site and can be considered acceptable in this regard.

(iv) Deed of Release/S106

- 7.7 In 2002 a S106 was signed which contained one planning obligation requesting that the land west of 61B was maintained as amenity land and was not to be used as residential land for the residents. This was due to the fact that the land had intended to be used as a potential access route to the field behind and to the west of the site. However as the land to the side of the site is outside of the urban boundary it was confirmed that this access route did not need to be maintained. In order to permit the change of use a Deed of Release was applied for and approved by the legal team which ultimately removed the obligation from the original S106 and because it was the only obligation in the agreement, removed it completely.

(v) Trees

- 7.8 Consultations have been received from both the Harbour Conservancy and Arboricultural Officer stating that there are concerns over the potential loss of the trees once the change of use is permitted. It is acknowledged that the trees contribute towards the biodiversity of the area and the general appearance of the road providing a verdant visual aspect. Therefore in order to address the concerns raised any decision issued will have a condition requesting a landscape plan from the residents of No 61B be submitted and approved by the Local Planning Authority prior to any change of use proceeding on the land. The landscape plan should show the trees intended to be kept and if approved the trees on the land will have some level of protection which is considered to address the concerns raised by the consultees in this regard.

8 Conclusion

- 8.1 In conclusion the application is recommended for approval. Conditions are considered to be appropriate to ensure the visual aspect and character of the area remains un-changed with the trees contained in the land receiving some level of protection from the landscape plan which is to be submitted. Withdrawing permitted developments on the land for the erection of buildings and structures should also help the Local Planning Authority when assessing any future development at the site.

9 **RECOMMENDATION:**

That the Head of Planning be authorised to **GRANT PERMISSION** for application APP/16/01030 subject to the following conditions:-

- 1 The development must be begun not later than three years beginning with the date of this permission.
Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extensions, outbuildings or structures of any kind shall be erected within the area hatched black on the approved block plan Rev 2 licence number: 100019980 received 10.10.2016 without the prior approval of the Local Planning Authority.
Reason: In the interests of the character and appearance of the area and biodiversity and having due regard to policy CS11, CS16 and DM8 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
- 3 The change of use for the land of hereby permitted shall not commence until a landscaping plan has been submitted to and approved in writing by the Local Planning Authority. Such plan shall include details and specifications of the trees/shrubs present on the land including species, location and size specifying those which are intended to be retained or removed. Any trees or shrubs planted or retained in accordance with this condition which are removed, uprooted, destroyed, die or become severely damaged or become seriously diseased within 5 years of planting shall be replaced within the next

planting season by trees or shrubs of similar size and species to those originally required to be planted.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscape in the interests of the visual amenities of the area and biodiversity and having due regard to policies CS11, CS16 and DM8 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

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

Site/Block Plan Rev 02 Licence Number: 100019980 Received 10.10.16

Location Plan Rev 01 Licence Number: 100019980 Received 10.10.16

Reason: - To ensure provision of a satisfactory development.