DATED **2016**

(1) **BATTMAN BROS. LIMITED**

(2) **MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED**

TO

HAVANT BOROUGH COUNCIL

Planning obligation by Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 relating to the Land at 44 London Road, Purbrook PO7 5LJ

Lester Aldridge LLP
Solicitors
Real Estate Team
Alleyn House
Carlton Crescent
Southampton
Hampshire
SO15 2EU

Tel: 02380 827400
Fax: 02380 827410
E mail: enquiries@la-law.com
Ref: RBA.MCC.33.1676

THIS DEED is made the day of 2016

BY

(1) **BATTMAN BROS LIMITED** : incorporated and registered in England and Wales with company number 00448693) whose registered office is at 6 Burrill Avenue, Cosham, Portsmouth PO6 2JW

("Owner")

(2) **MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED** : incorporated and registered in England and Wales with company number 06622231 whose registered office is at 4th Floor, 100 Holdenhurst Road, Bournemouth, BH8 8AQ

("Developer")

TO

HAVANT BOROUGH COUNCIL : of Public Service Plaza, Civic Centre Road, Havant PO9 2AX

("Council")

BACKGROUND

(1) The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Land is located and the local planning authority by whom the planning obligations in this Deed are enforceable.

(2) The Owner is the freehold owner with title absolute of the Land which is registered at the Land Registry under title number SH18885 subject to the Leases and shown for the purposes of identification edged red on Plan 1

(3) The Developer has entered into an option to purchase the Land

(4) The Owner and the Developer have agreed to enter into this Deed in favour of the Council in order to secure the planning obligations contained in this Deed.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

In this Deed:

1.1 the following words and expressions shall have the following meanings unless otherwise stated:

General Definitions

"Act"		means the Town and Country Planning Act 1990 (as amended).
"Appeal"	:	means the appeal against the refusal of the Planning Application submitted to the Secretary of State and allocated reference number [ ]
"Commencement of Development"	:	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out pursuant to the Planning Permission granted in respect of the Planning Application other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and Commence Development and Commenced Development shall be construed accordingly.
"Decision Letter"	:	means a letter issued by either the Secretary of State or an Inspector determining the Appeal.
"Deed"	:	means this document, including the schedules.
"Development"	:	means the development of the Land in the form of redevelopment to form 42 No. retirement apartments for older persons including communal facilities, parking provision and associated landscaping; and 2 No. commercial/retail units
"Dwelling"	:	means any dwelling (including a house flat or maisonette) constructed pursuant to the Planning Permission.
"General Index"	:	means the BCIS General Building Cost Index of the Royal Institution of Chartered Surveyors and if the basis of computation of the index shall change any official reconciliation between the two bases of

computation shall be binding upon the parties hereto and shall be applied in adjusting the application of the index hereto. In the absence of any such official reconciliation such adjustments shall be made to the figures of the index as to make it correspond as nearly as possible to the previous method of computation and such adjusted figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published).

"Index Linked" : increased in accordance with the following formula:

Amount payable = the Recreational Mitigation Contribution x (A/B) where:

A = the figure for the General Index for the month two months before the Specified Date.

B = the figure for the General Index for the month two months before the date of this Deed.

$\frac{A}{B}$ is equal to or greater than 1.

"Inspector" : means a planning inspector appointed by the Secretary of State to consider the Appeal under delegated powers.

"Interest" : means interest at the rate of 4% above the Bank of England base rate applicable at the Specified Date which shall be calculated on a day to day basis.

"Land" : means the land at Prewetts Mill, Worthing Road, Horsham, RH12 1ST and shown for the purposes of identification edged red on the Plan.

"Leases" : means both:

- the lease of that part of the Land shown edged yellow and numbered 4 on Plan 2 dated 20 June 2007 and made between the Owner and SIG Trading Limited and registered at the Land Registry with title number SH24207; and
- the lease of that part of the Land shown edged yellow and numbered 3

on Plan 2 dated 7 March 2007 and made between the Owner and Nicholas Craig and registered at the Land Registry with title number SH23441

"Occupation" and "Occupied"	:	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing and Occupy shall be construed accordingly.
"Planning Application"	:	means the application for full permission submitted to the Council for the Development and allocated reference number APP/15/00896.
"Planning Permission"	:	means any planning permission for the Development subject to conditions to be granted by the Secretary of State or an appointed Inspector pursuant to the Appeal.
"Plan 1"	:	means the plan attached to this Deed and labelled "Plan 1".
"Plan 2"	:	means the plan attached to this Deed and labelled "Plan 2".
"Recreational Disturbance Mitigation Contribution"	:	The sum of £7,693.40 (Seven Thousand Six Hundred and Ninety-Three Pounds and Forty Pence) Index Linked towards the cost of the Council providing procuring facilitating and monitoring measures to mitigate the impact of residential development on protected habitats in the Solent area
"Specified Date"	:	means the date upon which an obligation arising under this Deed is due to be performed.
"Working Day"	:	means any day from Monday to Friday (inclusive) that is not Christmas Day, Good Friday or a statutory Bank Holiday.

2. CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.2 Clause headings shall not affect the interpretation of this Deed.

2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

2.6 An obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.

2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.8 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.

2.9 The headings and contents list are for reference only and shall not affect construction.

3. THE PLANNING OBLIGATIONS

3.1 This Deed constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3.2 The obligations set out in Schedule 1 of this Deed constitute planning obligations for the purpose of section 106 of the Act and the planning obligations are to be discharged by the Owner and are enforceable against them and any person deriving title from them (subject to clause 5.1 and 5.2).

3.3 This Deed shall come into effect upon the grant of the Planning Permission with the exception of the obligations contained in clause 4 and within Schedule 1 which shall not come into effect until the Commencement of Development and clause 11 which shall come into effect on the date of this Deed.

4. COVENANTS TO THE COUNCIL

Subject to clause 5, the Owner covenants with the Council:

4.1 to observe and perform the covenants and obligations on their part contained within Schedule 1; and

4.2 not to Commence Development until the Leases have been surrendered or otherwise terminated and evidence of the same has been supplied to the Council

5. ENFORCEABILITY

The obligations imposed on the Owner at clause 4 is conditional upon the following:

5.1 The Council not seeking to enforce any breach of a covenant, restriction or obligation contained in this Deed against any person after such person has parted with its interest in the Land except in respect of any breach subsisting prior to parting with such interest and neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute the retention of an interest for the purposes of this clause

5.2 The Council not seeking to enforce any provision of this Deed against

5.2.1 the owner-occupier, tenant or mortgagee of a Dwelling or the retail/commercial units to be constructed pursuant to the Planning Permission; or

5.2.2 a statutory undertaker (within the meaning of section 262 of the Act) who acquires any interest in the Land.

5.3 The Council repaying upon the written request of the paying party any portion of the Recreational Disturbance Mitigation Contribution which remains unspent after 10 years from receipt including accrued interest

5.4 The obligations in this Deed ceasing to have effect if prior to the Commencement of Development the Planning Permission:

5.4.1 expires;

5.4.2 is varied or revoked other than at the request of the Owner; or

5.4.3 is quashed or otherwise withdrawn

6. DEVELOPER'S CONSENT

The Developer consents to the completion of this Deed and declares that its interest in the Land shall be bound by the terms of this Deed PROVIDED THAT the Developer shall not be personally liable for any breach of the obligations unless or until the Developer is registered at the Land Registry as the registered proprietor of a freehold interest in the Land.

7. FUTURE PERMISSIONS

Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

8. MISCELLANEOUS

8.1 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

8.2 this Deed is enforceable by the Council.

8.3 The Owner hereby consents to the registration of this Deed as a Local Land Charge

8.4 If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

9. CHANGE OF OWNERSHIP

The Owner covenants to give the Council written notice within 10 days of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan save for the transfer of any individual Dwelling.

10. LEGAL CHALLENGE

10.1 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:

10.1.1. until such time as such proceedings or challenge including any appeal have finally been resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the grant of the Planning Permission unless the Planning Permission has been Commenced;

10.1.2. if following the conclusion of such proceedings or challenge the Planning Permission is quashed then this Deed will cease to have any further effect as from the date upon which the Planning Permission is quashed

10.1.3. Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are

concluded" (or cognate expressions are used), the following provisions have application:

14.1.3.1 Proceedings by way of judicial review are concluded:

(a) when permission to apply for judicial review has been refused and no further application may be made; or

(b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

(c) when any appeal is finally determined.

14.1.3.2 Proceedings under section 288 of the Act or in respect of any other legal challenge are concluded:

(a) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

(b) when any appeal is finally determined.

11. THIRD PARTY RIGHTS

No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

12. SEVERANCE

Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable, then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

13. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

14. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

15. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed as a deed on the day and the year first before written.

SCHEDULE 1 – COVENANTS BY THE OWNER

The Owner covenants with the Council as follows –

1. RECREATIONAL DISTURBANCE MITIGATION CONTRIBUTION

1.1 Prior to the Commencement of the Development to pay the Recreational Disturbance Mitigation Contribution to the Council

1.2 Not to Commence the Development until the whole of the Recreational Disturbance Mitigation Contribution has been paid to the Council.

EXECUTED as a deed by **BATTMAN BROS. LIMITED** acting by one director in the presence of)
)
)
)
)

.....

Director

.....

Witness Name:

Witness Address:

Witness Occupation:

EXECUTED as a deed by **MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED** acting by one director in the presence of)
)
)
)

.....

.....

Witness Name:

Witness Address:

Witness Occupation:

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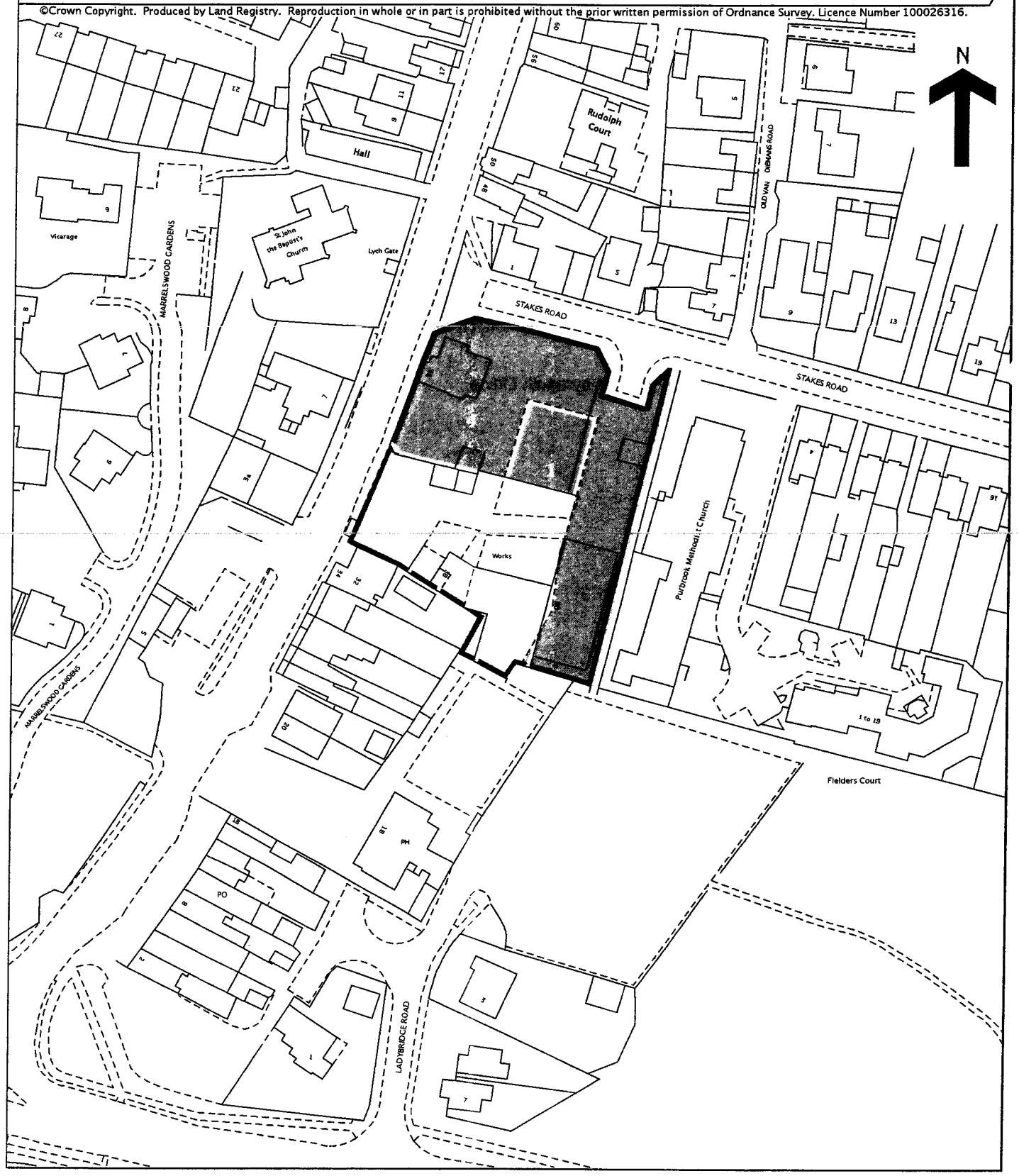
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This title is dealt with by the Land Registry, Weymouth Office .

Land Registry Official copy of title plan

Title number **SH18885**
Ordnance Survey map reference **SU6707NW**
Scale **1:1250**
Administrative area **Hampshire : Havant**

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McCarthy & Stone
Proposed Retirement Living,
38-44 London Road,
Purbrook, Hampshire

Location Plan

1:1250 @ A3
July 2015

SE-2168-03-AC-001

design bdb

Church Barn, Milton Manor Farm, Ashford Road, Canterbury, Kent, CT4 7PP
t: 01227 456599 www.bdb-design.co.uk

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Land Registry

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Title number SH18885 **Edition date 04.06.2015**

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- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by Land Registry, Weymouth Office.

A: Property Register

This register describes the land and estate comprised in the title.

HAMPSHIRE : HAVANT

1 (27.05.2005) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being 44 London Road, Purbrook, Waterlooville (PO7 5LJ).

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

1 (27.05.2005) PROPRIETOR: BATTMAN BROS. LIMITED (Co. Regn. No. 00448693) of 6 Burrill Avenue, Portsmouth PO6 2JW.

2 (10.03.2014) The proprietor's address for service has been changed.

3 (06.05.2014) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by Garry Cherrett of 28 Badger Close, Four Marks, Alton, Hants GU34 5MB or his Conveyancer care of Coffin Mew, 1000 Lakeside, Western Road, North Harbour, Portsmouth PO6 3EN or his personal representatives and by Jason Gadsby of The Bolthole, 11 Durley Chine Road South, Bournemouth BH2 5JT or his conveyancer care of Coffin Mew, 1000 Lakeside, Western Road, North Harbour, portsmouth PO6 3EN or his personal representatives.

C: Charges Register

This register contains any charges and other matters that affect the land.

1 (27.05.2005) A Conveyance of the land tinted blue on the title plan and other land dated 6 December 1954 made between (1) The Reverend Albert Henry Maber (Vendor) (2) The Church Commissioners for England and (3) Battman Brothers Limited (Purchaser) contains restrictive covenants and

C: Charges Register continued

reservations.

NOTE: Copy filed.

2 (22.03.2007) The parts of the land affected thereby are subject to the leases set out in the schedule of leases hereto.
The leases grant and reserve easements as therein mentioned.

3 (30.05.2007) Deed dated 25 May 2007 made between (1) Battman Bros Limited and (2) Nicholas John Craig supplemental to the registered Lease dated 7 March 2007 referred to in the Schedule of Notices of Leases.

¬Copy filed under SH23441.

4 (17.02.2014) UNILATERAL NOTICE in respect of an option to purchase contained in an agreement dated 14 February 2014 made between (1) Battman Bros Limited and (2) Southern Land (Hampshire) Limited.

5 (04.06.2014) BENEFICIARY: McCARTHY & STONE RETIREMENT LIFESTYLES LIMITED (Co. Regn. No. 06622231) of Fourth Floor, 100 Holdenhurst Road, Bournemouth, Dorset BH8 8AQ.

Schedule of notices of leases

1	19.04.2007 edged and numbered 3 in yellow	land and building at 38A London Road	07.03.2007 10 years from 27.12.2006	SH23441 NSE
2	26.07.2007 edged and numbered 4 in yellow	44 London Road	20.06.2007 10 years from 11.1.2007	SH24207

End of register

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Land Registry

Official copy of register of title

Title number SH24207 **Edition date 26.07.2007**

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- Issued on 12 Feb 2016.
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- This title is dealt with by Land Registry, Weymouth Office.

A: Property Register

This register describes the land and estate comprised in the title. Except as mentioned below, the title includes any legal easements granted by the registered lease but is subject to any rights that it reserves, so far as those easements and rights exist and benefit or affect the registered land.

HAMPSHIRE : HAVANT

1 (26.07.2007) The Leasehold land shown edged with red on the plan of the above Title filed at the Registry and being 44 London Road, Purbrook, (PO7 5LJ).

2 (26.07.2007) Short particulars of the lease(s) (or under-lease(s)) under which the land is held:
Date : 20 June 2007
Term : 10 years from 11 January 2007
Parties : (1) Battman Bros. Limited
(2) SIG Trading Limited

3 (26.07.2007) The title includes any legal easements referred to in clause LR11.1 of the registered lease but is subject to any rights that are granted or reserved by the lease and affect the registered land.

4 (26.07.2007) There are excepted from the effect of registration all estates, rights, interests, powers and remedies arising upon, or by reason of, any dealing made in breach of the prohibition or restriction against dealings therewith inter vivos contained in the Lease.

5 (26.07.2007) The landlord's title is registered.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

1 (26.07.2007) PROPRIETOR: SIG TRADING LIMITED (Co.Regn.No. 1451007) of Hillsborough Works, Langsett Road, Sheffield, South Yorkshire, S6 2LW.

Title number SH24207

C: Charges Register

This register contains any charges and other matters that affect the land.

1 (26.07.2007) A Conveyance of the freehold estate in the land in this title and other land dated 6 December 1954 made between (1) The Reverend Albert Henry Maber (Vendor) (2) The Church Commissioners for England and (3) Battman Brothers Limited (Purchaser) contains restrictive covenants and reservations.

NOTE:-Copy filed SH18885.

End of register

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Title number SH23441 **Edition date 30.05.2007**

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A: Property Register

This register describes the land and estate comprised in the title. Except as mentioned below, the title includes any legal easements granted by the registered lease but is subject to any rights that it reserves, so far as those easements and rights exist and benefit or affect the registered land.

HAMPSHIRE : HAVANT

1 (19.04.2007) The Leasehold land shown edged with red on the plan of the above Title filed at the Registry and being Land and buildings at 38A London Road, (PO7 5LJ).

2 (19.04.2007) Short particulars of the lease(s) (or under-lease(s)) under which the land is held:
Date : 7 March 2007
Term : 10 years from 27 December 2006
Parties : (1) Battman Bros. Limited
(2) Nicholas Craig

3 (19.04.2007) The title includes any legal easements referred to in clause LR11.1 of the registered lease but is subject to any rights that are granted or reserved by the lease and affect the registered land.

4 (19.04.2007) There are excepted from the effect of registration all estates, rights, interests, powers and remedies arising upon, or by reason of, any dealing made in breach of the prohibition or restriction against dealings therewith inter vivos contained in the Lease.

5 (19.04.2007) The landlord's title is registered.

6 (30.05.2007) Deed dated 25 May 2007 made between (1) Battman Bros Limited and (2) Nicholas John Craig supplemental to the registered Lease dated 7 March 2007.

¬Copy filed under SH23441.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

Title number SH23441

B: Proprietorship Register continued

1 (19.04.2007) PROPRIETOR: NICHOLAS LEIGH JOHN CRAIG of 2 Lily Avenue, Waterlooville, Hampshire PO7 5BQ.

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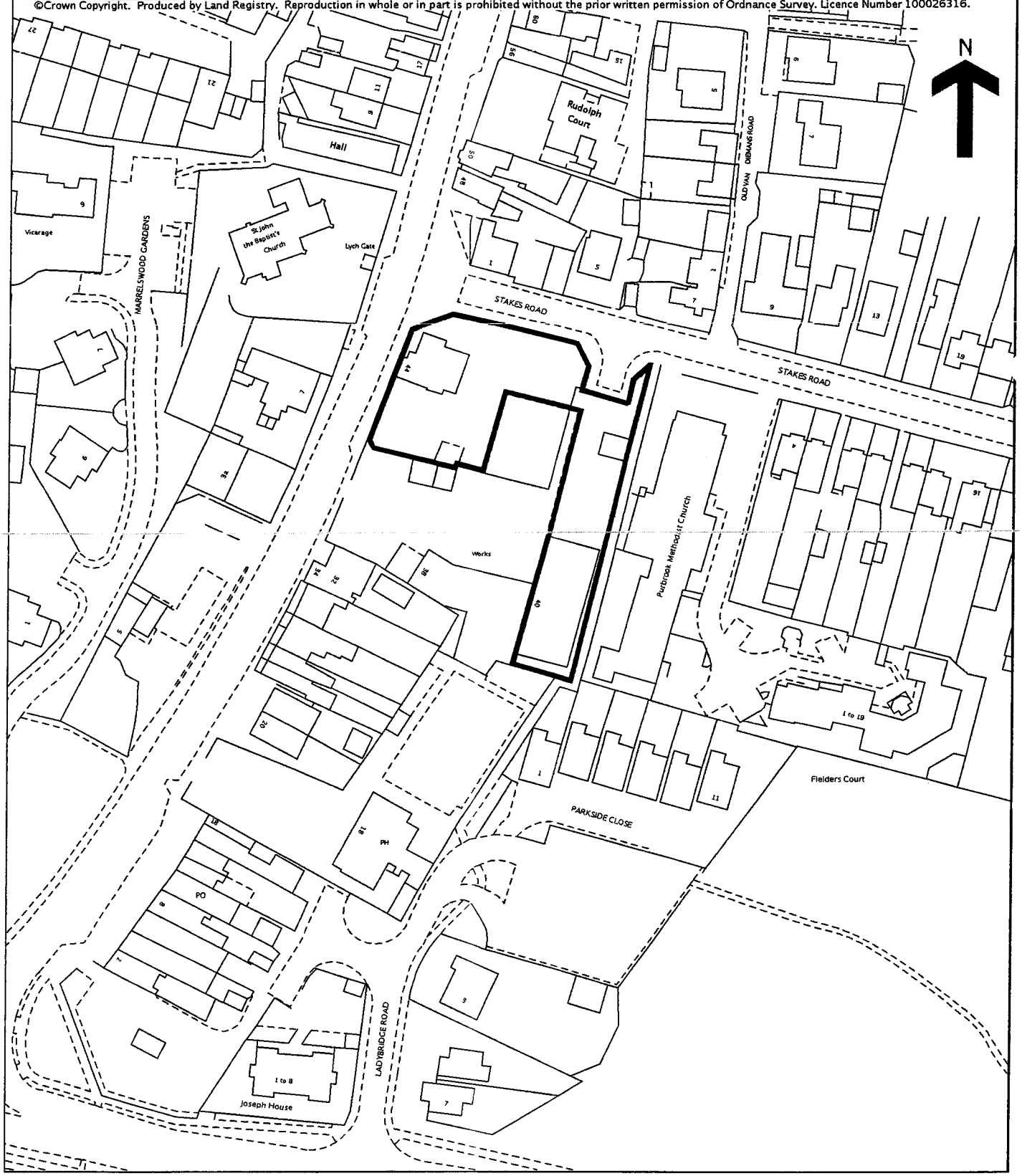
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Land Registry Official copy of title plan

Title number **SH24207**
Ordnance Survey map reference **SU6707NW**
Scale **1:1250**
Administrative area **Hampshire : Havant**

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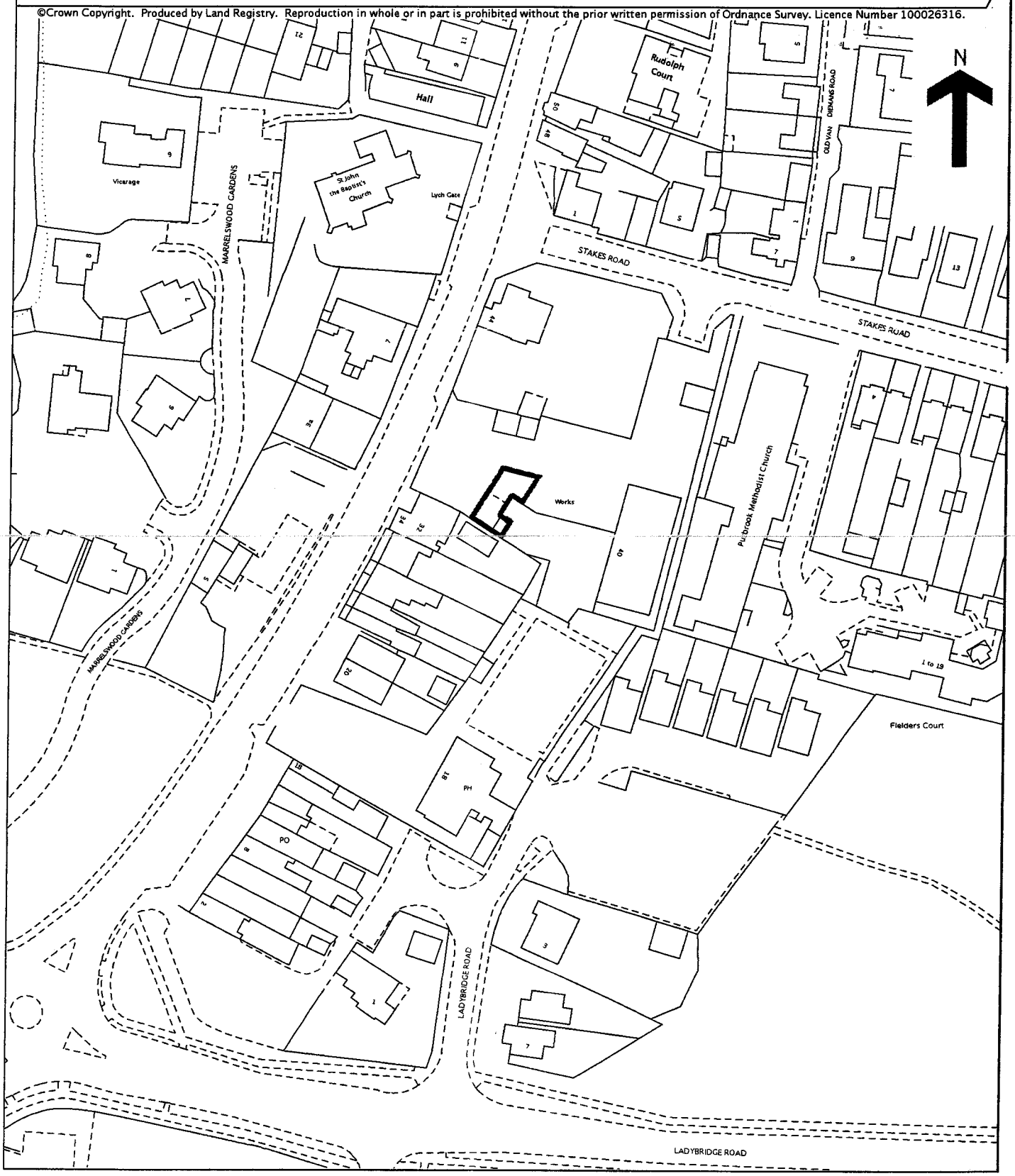
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Administrative area **Hampshire : Havant**

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SECTION 78 APPEAL BY

McCARTHY & STONE RETIREMENT LIFESTYLES LTD

SITE AT:

38-44 LONDON ROAD

PURBROOK

WATERLOOVILLE PO7 5LJ

STATEMENT

BY THE

PLANNING BUREAU LTD

APPEAL BY McCARTHY & STONE RETIREMENT LIFESTYLES LTD AGAINST THE REFUSAL OF HAVANT BOROUGH COUNCIL TO REFUSE PLANNING PERMISSION FOR THE DEMOLITION OF EXISTING BUILDINGS AND REDEVELOPMENT TO FORM 42 No RETIREMENT APARTMENTS FOR OLDER PERSONS INCLUDING COMMUNAL FACILITIES, PARKING PROVISON AND ASSOCIATED LANDSCAPING; AND 2 No COMMERCIAL UNITS

SITE AT:

38-44 LONDON ROAD

PURBROOK

WATERLOOVILLE

PO7 5LJ

PINS REF: APP/X1735/W/16/3145929

LPA REF: APP/15/00896

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6. CONSIDERATION OF REFUSAL REASON 2
7. CONSIDERATION OF REFSAL REASON 3
8. CONSIDERATION OF REFUSAL REASON 4
9. CONCLUSION TO THE APPELLANT'S CASE

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2. Adverts Relating to Purbrook Builder's Merchants
3. Development Plan Policy Review Table
4. Planning History relation to 15838/12
5. Planning History relating to 98/6890/0
6. Appeal Decision Unit 2 Solent Road Industrial Estate, Havant – APP/X1735/A/07/2038464/NWF
7. Appeal Decision Spring Vale Depot, Spring Vale Industrial Estate, Cwmbran – Reference No. APP35-8
8. Appeal Decision appendix Percy Place, Hammersmith & Fulham reference no. T/APP/C/88/H5390/24/P6.
9. Inspector's Report regarding the Havant Borough Local Plan (Allocations) 2014.
10. Extract from A Better Life & Appendix B

SUPPORTING STATEMENTS

Statement by David Beardmore on Design and Heritage Matters

Statement by Paul Sedgewick on the 5 Year Housing Land Supply Position

Statement by Paul Basham Associates Regarding Highway Matters

Statement by Alder King on Development Viability Issues

Statement by Alder King Regarding Employment Land Issues

1.0 INTRODUCTION

1.1 My name is Gian Bendinelli, I am a Member of the Royal Town Planning Institute and hold the position of Principal Planning Associate with The Planning Bureau. The Planning Bureau is a practice of Town Planners and Architects, who have been appointed by McCarthy & Stone Retirement Lifestyles Limited to provide professional planning evidence in support of the Appeal the subject of this Inquiry.

1.2 My company has acted as Agent on behalf of McCarthy & Stone in submitting and pursuing the planning application the subject of this Appeal.

1.3 I have over 30 years experience of planning and development matters, including appointments with Local Authorities. I have been responsible for advising the Appellant on planning matters throughout the UK for over thirteen years.

1.4 This statement should be read together with the **Statement of Common Ground.** The Appellant at the time of exchange of evidence has also prepared **Core Documents** including extracts of **Relevant Policies (P),** the **History of Negotiations (H)** and the **Core Drawings (D).** It is hoped that by the opening of the Hearing/Inquiry these will be agreed between the principal parties.

1.5 My Overview Statement considers the following aspects of the case as set out below:

- A brief description of the Appeal proposal
- Site History and the Appeal Proposal
- Relevant National and Development Plan Considerations
- Consideration of Refusal Reason 1 – Employment Land
- Consideration of Refusal Reason 2 – Affordable Housing
- Consideration of Refusal Reason 3 – SPA Mitigation
- Refusal Reason 4 – Highway Safety/Access
- Consideration of Material Planning Benefits of the Proposed Scheme; and
- Conclusion.

1.6 This Overview Statement is supported by more detailed Supporting Statements which form an integral part of the appellant's case. The statements are as follows:

- Statement by David Beardmore on Design and Heritage Matters
- Statement by Paul Sedgewick on the 5 Year Housing Land Supply Position
- Statement by Paul Basham Associates Regarding Highway Safety/Access

- Statement by Alder King on Development Viability Issues
- Statement by Alder King Regarding Employment Land Issues

1.7 A Planning Statement and a Design and Access Statement were submitted with the application. To avoid duplication of evidence, reference will be made to these supporting documents where appropriate.

1.8 In terms of the proposed development, the evidence will demonstrate that the proposed development accords with the relevant policies of the adopted Development Plan, the NPPF and indeed that there are other material considerations in favour of the Appeal proposal.

1.9 **Accordingly, with due regard to Section 38(6) of the 2004 Act, planning permission should be granted.**

2.0 THE APPEAL PROPOSAL

2.1 The appeal site is located within Wokingham and falls within the settlement boundaries of Purbrook and within the defined Local Centre.

2.2 The site is presently occupied by a motor garage, a tyre fitting service and a small car sales business. The respective parties are agreed that the first two business fall within Class B2 of the Use Classes Order and that the car sales constitutes a sui generis use. In addition there is a builder's merchant. The appellant considers that this is a sui generis use whereas the LPA considers that it is a use falling within Class B2 of the Use Classes Order.

2.3 To the north and south of the site are a mix of commercial and residential properties, broadly to the east are residential dwellings. To the west on the opposite side of London Road lies St John's Church, the former National School. Both buildings are Listed and lie within Purbrook Conservation Area. There are also two locally listed buildings close to the two listed buildings.

2.4 A full description of the general context of the site, the townscape character of the area and the design solution advocated for the site are set out in the Design, Access and Sustainability Statement and in the Heritage Statement, which are both reinforced by Mr Beardmore's evidence. No issues regarding the content of the DAS or of the Heritage Statement have ever been raised by the LPA.

2.5 The appellant's proposal is to demolish the existing buildings on site and to erect a block of retirement apartments with communal areas, car parking. The occupation of the apartments would be age restricted (60 years of age and/or a spouse or partner who has attained a minim age of 55 years). In reality, typically occupiers on entry are in their mid 70s. A greater level of detail as to the nature and character of retirement accommodation is set out in the Planning Statement which accompanied the application. In addition, the scheme also includes two commercial/retail units fronting London Road

3.0 PLANNING HISTORY OF THE SITE

3.1 The constituent parts of the appeal site have been the subject of a number of planning applications. These are detailed in the Planning officer's Report at paragraphs 2 to 2.8. Given the historic nature of most of the applications e.g. 74/15384/2 relating to the refusal of a refused residential scheme, it is considered that they have no real relevance to the current Development Plan and the NPPF.

3.2 However, notwithstanding the above comment, there are three applications which do have some bearing on Refusal Reason No 1 – Employment. The relevant applications are 83/15383/12 and 98/628900/000 to which I will refer in more detail later in my statement.

3.3 With regards to the current appeal, the application subject of this Appeal (LPA Ref: APP/15/00896) was submitted to the LPA in August 2015. However there were a number of errors and the application was not validated by the LPA.

3.4 Revised details were submitted in late August and the application was formally validated in September 2015. The planning application and this appeal therefore refers to those drawings and documents which comprised the validated application.

3.5 Post submission there was an exchange of correspondence between the parties on a number of issues but ultimately the application was refused under Delegated Powers for the followings reasons:

1. **The proposed development would lead to the loss of existing employment uses on the site including Class B uses. These uses make a valuable contribution to the local economy providing employment and services to the community. In the Local Planning Authorities opinion it has not been satisfactorily demonstrated that the site is not fit for purpose or financially unviable for B use class employment, or other types of economic development, in particular it is not satisfied that a suitable comprehensive marketing exercise has been carried out. Therefore the proposal is contrary to policies CS2 and DM3 of the Havant Borough Local Plan (Core Strategy) 2012 and the National Planning Policy Framework 2012.**

2. **In the absence of binding arrangements for the provision of on-site affordable housing or alternatively an acceptable contribution in lieu of on-site provision the proposal fails to make adequate provision for affordable housing in the interest of creating mixed communities and responding to housing need. Furthermore the financial contribution offered does not meet the assessed contribution requirement and in the absence of independent third-party review and viability**

testing is considered unacceptable. As such the proposed developments country to policy CS9 of the Havant Borough Local Plan (Core Strategy) 2012, the adopted Havant Borough Council Housing SPD July 2011 and the National Planning Policy Framework 2012.

3. **The proposal, without completion of the appropriate binding arrangements to secure a contribution towards the Solent Recreation Mitigation Project, is contrary to the Council's Policy on contributions towards measures of mitigation adopted by the Local Planning Authority. These seek to ensure that the provision is made from new development towards mitigating against increasing recreational pressure on the Solent S.P.A. The development is therefore contrary to policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2012 and Policy DM24 of the Havant Borough Local Plan (Allocations) 2014 and the National Planning Policy Framework 2012.**

4. **On the basis of the information provided and the absence of binding arrangements necessary to secure the alterations the surrounding highway network as anticipated in the submitted Transport Assessment and shown on the proposed plans, it has not been adequately demonstrated that the access works associated with the London Road access and the parking spaces on Stakes Road would not result in harm to the amenity and safety of road users of the highway. The proposal is therefore contrary to policies CS16, CS20 and DM1 of the Havant Borough Local Plan (Core Strategy) 2012, the adopted Havant Borough Council Housing SPD July 2011 and the National Planning Policy Framework 2012.**

3.6 The Planning Officer's Report and the Refusal Notice are attached at **APPENDIX 1.**

4.0 NATIONAL AND DEVELOPMENT PLAN CONSIDERATIONS

4.1 **Introduction:** In assessing the acceptability of the Appeal scheme in planning terms, it is appropriate to briefly review National and local planning considerations insofar as they give guidance as to the principle of development and the nature and extent of the built form that is appropriate for the Appeal site.

4.2 The **Planning Statement** submitted with the application provides an overview of national and local planning policy in Section 5 of that document but the key issues are reiterated below.

4.3 **National Planning Policy Framework (NPPF):** In relation to this Appeal, the following sections of the NPPF are particularly material:

- **Paragraph 7** – sets out the component parts that constitute 'sustainable development', namely economic, social and environmental. Paragraph 5.7 of the **Planning Statement** sets out how the proposed development performs the three roles and can be identified as a 'sustainable' development.

- **Paragraph 14** – *'the presumption in favour of sustainable development'.* For decision makers, this means approving development proposals that accord with the development plan without delay, and where a development plan or relevant policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. This is given added force in cases where a 5 year housing land supply cannot be demonstrated.

- **Paragraph 17** – lists the core land use planning principles that should underpin decision-taking. These include a proactive approach and support for *'sustainable economic development to deliver homes.... that the country needs'*

- **Paragraph 22** – identifies that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.

- **Paragraph 47** – sets out the planning objective *'to boost significantly the supply of housing'.* This is recognition of the level of need for new housing across the country against the recent dwindling trend of housing supply. Paragraph 47 also requires local

planning authorities to identify a deliverable 5 year supply of housing sites against their housing requirements with an additional 5% buffer (or 20% where there has been persistent under-delivery). In order to achieve the required housing supply, LPAs need to have the relevant evidence base in order to ensure that the local plan meets the full, objectively assessed need for market and affordable housing.

- **Paragraph 49** – Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing.

- **Paragraph 50** – identifies that local planning authorities should plan for a mix of housing based on current and future demographic and market trends and the needs of different groups in the community such as older people. There is a clear identified need for specialist housing as identified in the Planning Statement at paragraphs 4.2-4.10,, a position clearly supported in the Core Strategy as identified in paragraphs 4.11-4.13 of the Planning Statement. There is acceptance and recognition of the ageing population and the need to respond to it particularly by private sector provision.

- With respect to affordable housing it advises that where there is an identified need, local planning authorities should set policies for meeting this need which should be sufficiently flexible to take account of changing market conditions.

- **Paragraphs 59-66** deal with matters of design. The thrust of the guidance is that LPAs should avoid unnecessary prescription or detail or impose particular styles or tastes. Paragraph 61 also makes the point that although visual appearance is important, that securing a high quality and inclusive design goes beyond such considerations and that planning decisions need to address the connection between people and places and the integration of new development into its environment.

- **Paragraph 60** seeks to ensure that decisions should not attempt to seek to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is however proper to seek to promote or reinforce local distinctiveness. The scheme, as supported by the accompanying Design and Access statement, takes the opportunities available to improve the character and quality of the area and the way it functions.

- **Paragraph 63** states **"in determining applications, great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area"**. Conversely Paragraph 64 advises *"permission should be*

refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions".

- **Paragraph 65** states that LPA should not refuse permission for buildings or infrastructure which promotes high levels of sustainability because of concerns about incompatibility with an existing townscape if these concerns have been mitigated by good design.

- **Paragraph 66** adds that applicants are expected to work closely with those directly affected by their proposals and to evolve designs which take account of the views of the local community. Proposals which demonstrate this should be looked on more favourably.

- **Paragraph 111** encourages the use of previously developed land provided that it is not of high environmental value.

- **Section 12** entitled **Conserving and Enhancing the Historic Environment**. Paragraph 128 states that *"in determining applications, Local Planning Authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The local details should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interests, Local Planning Authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation".*

- Similarly paragraph 129 of the NPPF indicates that *"Local Planning Authorities should identify and assess the particular significance of any Heritage Asset that may be affected by a proposal (including by development affecting the setting of a Heritage Asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal of a Heritage Asset, to avoid or minimise conflict between the Heritage Asset's conservation and any aspect of the proposal".*

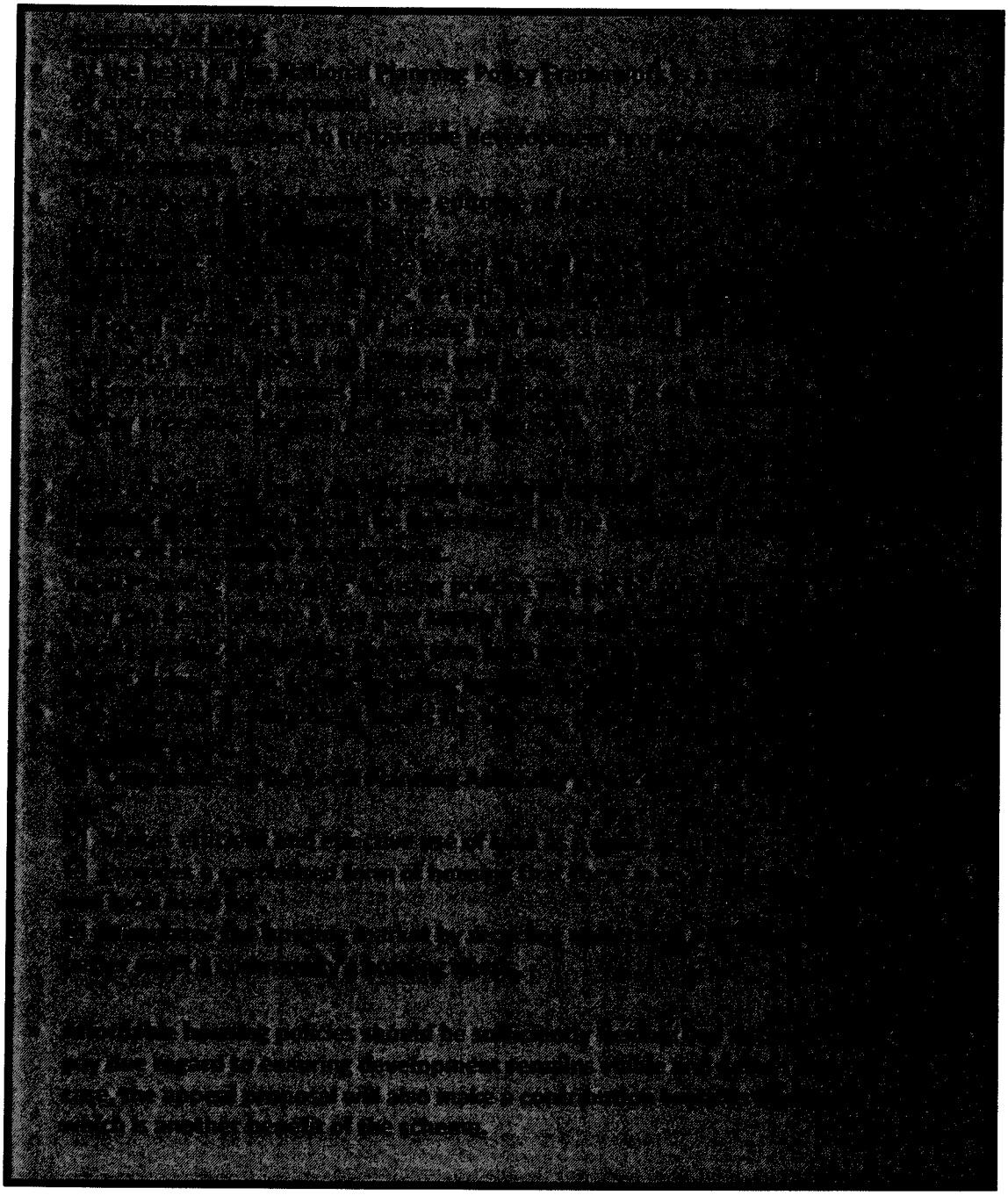
- With regards to the NPPF, the test that has to be applied requires a comparison of the relative merits of the before and after situation and if harmful, whether the resultant development would be likely to cause any harm to *'a designated heritage asset'* and observe whether this would constitute *'substantial or less than substantial harm'* to it. The NPPF dos not over ride but seeks to supplement the statutory rests set out in Section 66 of the Act as to *"have special regard"* to the setting of listed buildings and

Section 72 which requires that *'special attention' to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas*".

- Paragraph 137 – goes on to state that "*Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.*"

- **Paragraph 173** – advises that pursuing sustainable development requires careful attention to viability and costs in plan making and decision taking. To ensure viability, the costs of any requirements likely to be applied to development should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.

4.4 The table below summarizes those points and identifies the proposed scheme's compliance with the NPPF.



4.5 **National Planning Policy Guidance (NPPG):** The National Planning Policy Guidance (NPPG) was published "on line" on the 4th March 2014. It provides planning policy guidance on a number of planning topics and replaces previous planning guidance which has been revoked by a written ministerial statement. It is considered that the following sections are of particular relevance to this appeal.

4.6 Housing and Economic Development Needs Assessment. In respect to the delivery of housing to meet the needs of older people the NPPG states:

*'The need to provide housing for older people is **critical** given the projected increase in the number of households aged 65 and over accounts for over half of the new households (Department for Communities and Local Government Household Projections 2013). **Plan makers will need to consider the size, location and quality of dwellings needed in the future for older people in order to allow them to move. This could free up houses that are under occupied.** The age profile of the population can be drawn from Census data. Projections of population and households by age group should also be used. The future need for older persons housing broken down by tenure and type (e.g. sheltered, enhanced sheltered, extra care, registered care) should be assessed and can be obtained from a number of online tool kits provided by the sector.'* (my emphasis).

4.7 Viability and Decision Taking. The NPPG reiterates the NPPF position that proposed developments should not be subject to such a scale of obligations and policy burdens that their ability to be developed is threatened. It emphasizes the guidance of the NPPF applies to decision taking on individual sites. On a site by site basis the NPPG advises:

'In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.' (Paragraph: 001 Reference ID: 10-001-20140306).

4.8 The NPPG calls for an evidence based assessment of development viability requiring judgment based on relevant available facts, such as an understanding of the costs and value of development in a local area, and an understanding of how the market operates (Paragraph: 004Reference ID: 10-004-20140306).

4.9 A definition of 'viable' is provided under the section 'viability and decision taking' and states that a development is viable if *the value generated by its development exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken.* (Paragraph: 016 Reference ID: 10-016-20140306).

4.10 It advises that viability assessment in decision-taking should be based on current costs and values. (Paragraph: 017 Reference ID: 10-017-20140306) It specifically identifies that with older persons housing the scheme format and projected sales rate may be a factor in assessing viability. (Paragraph: 018 Reference ID: 10-018-20140306).

4.11 The NPPG states that local planning authorities should be flexible in seeking planning obligations, particularly affordable housing provision, and should not be sought without regard to individual scheme viability. (Paragraph: 019 Reference ID: 10-019-20140306).

4.12 The NPPG provides guidance on individual inputs that go into a viability appraisal. On costs it states that a viability appraisal should include all development costs including build costs, abnormal costs, infrastructure costs, cumulative policy costs and planning obligations, finance costs and professional, sales and legal costs. (Paragraph 22 Reference ID: 10-022-20140306).

4.13 In respect to building costs it references the Building Cost Information Service as a suitable database. On infrastructure costs it references connections to utilities, and decentralized energy networks which is of a particular relevance to this scheme. On policy costs it specifically references the cost of planning standards such as levels of sustainable construction and the cost of Community Infrastructure Levy which in his case is approximately £222,600.

4.14 In respect to land values the guidance states that land or site value should:

(i) reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;

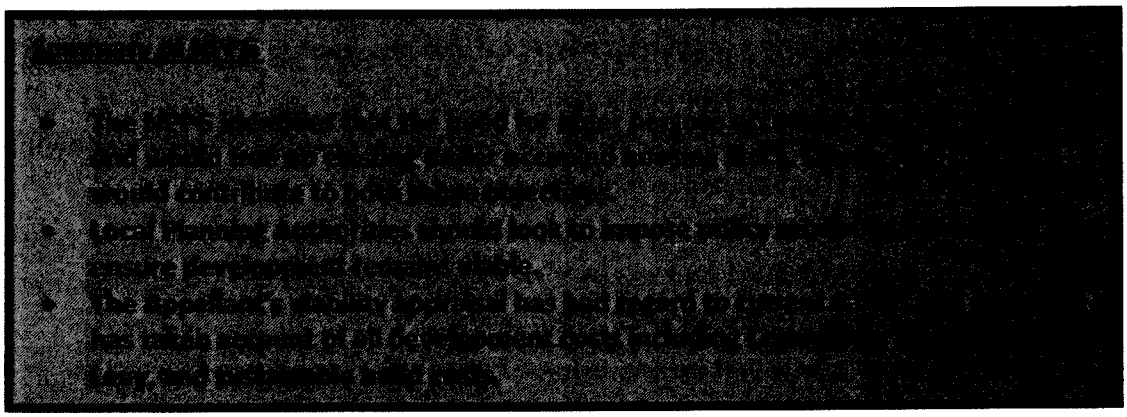
(ii) provide a competitive return to willing developers and land owners;

(iii) be informed by comparable, market-based evidence wherever possible.

(Paragraph: 023 Reference ID: 10-023-20140306)

4.15 In regard to 'competitive returns' the NPPG reiterates the NPPF in that a viability assessment should consider "*competitive returns to a willing landowner and willing developer to enable the development to be deliverable.*" What may constitute a 'competitive return' will vary significantly depending upon the individual circumstances of the scheme. (Paragraph: 024 Reference ID: 10-024-20140306)

4.16 The table below summarises those points and identifies the proposed schemes compliance with the NPPG.



4.17 **Introduction to Development Plan Policy.** At the outset it must be stated that the Development Plan comprises of the **Havant Borough Core Strategy 2011 and the Havant Borough Local Plan (Allocations) 2014.**

4.18 An overview of various **Core Strategy 2011** policies formed part of the submitted Planning Statement, however, it has since been noted that a number of policies were inadvertently omitted as was reference to the **Havant Borough Local Plan (Allocation) July 2014.** Therefore in order to provide clarity, the Planning Statement policy review table has been updated and is set out at **APPENDIX 2.**

4.19 It should be noted that whilst Refusal Reason No 1 alleges a breach of Core Strategy Policies CS2 and DM3, it does not address the inherent conflict or tension between these policies and Policy AL3 Havant Borough Local Plan (Allocation) July 2014 which has allocated the appeal site and its surroundings to appropriate town centre uses. This aspect will be further discussed in Section 5 of this statement with respect to Refusal Reason 1.

4.20 Having reviewed the Development Plan it is considered that there is overall compliance with the policies. Where there is an apparent conflict having regard to the stated reasons for refusal, additional commentary will be provided within the body of the statement relating to each refusal reason.

4.21 The submitted evidence on behalf of the Appellant will demonstrate that there is support for the Appeal proposal which would:

(i) **Result in the redevelopment of previously developed land in a manner which optimises the use of the site;**
(ii) **Result in the redevelopment of previously developed land to which there is no in principle objection to redevelopment not related to Class B uses;**
(iii) **Achieve an economic, efficient and effective use within an urban area whilst respecting environmental planning aims and objectives;**
(iv) **Produce a development of quality enhancing the character of the area including the neighboring Conservation Area and the setting of Listed Buildings whilst respecting neighbouring properties;**
(v) **Help to make better use of the existing housing stock thereby helping to reduce pressure for housing in more sensitive locations;**
(vi) **Aids in the renewal of housing stock in the locality thus aiding the achievement of urban renewal and mixed and balanced communities and thus meeting the objectives of paragraph 47 of the NPPF;**
(vii) **Provide a safe and secure living environment for the intended elderly occupants without prejudice to the amenities of neighbours;**

(viii) **Help to reduce reliance on the private motor car;**

(ix) **Provide a contribution towards meeting a need for accommodation for the elderly; and**

(x) **Provide a financial contribution towards affordable housing.**

5.0 CONSIDERATION OF REFUSAL REASON No 1

The proposed development would lead to the loss of existing employment uses on the site including Class B uses. These uses make a valuable contribution to the local economy providing employment and services to the community. In the Local Planning Authorities opinion it has not been satisfactorily demonstrated that the site is not fit for purpose or financially unviable for B use class employment, or other types of economic development, in particular it is not satisfied that a suitable comprehensive marketing exercise has been carried out. Therefore the proposal is contrary to policies CS2 and DM3 of the Havant Borough Local Plan (Core Strategy) 2012 and the National Planning Policy Framework 2012.

5.1.0 GENERAL OVERVIEW

5.1.1 **Introduction:** The refusal reason identifies that the proposed development would be contrary to policies **CS2 and DM3 of the Havant Borough Local Plan (Core Strategy) 2012 and the NPPF.**

5.1.2 It is recognised that at first glance that there is an apparent conflict with the two policies, namely that in respect of **policy CS2 Employment**, the proposed redevelopment would conflict with criteria 5 which states:

> **"safe-guard existing employment sites and allocations that are fit for purpose from development proposals for non-employment uses".**

5.1.3 And perceived conflict in respect of **policy DM3 Protection of Existing Employment and Tourist Sites** which under criteria 1 states:

> **"the change of use or development of land or premises currently or last used for B Use Class employment purposes to non-B Use Class employment will only be permitted where it has been demonstrated that or premises are not fit for purpose and financially unviable for B Use Class purposes. Where it is clearly demonstrated that the site is no longer suitable for B Use Class employment, other types of economic development should be considered in the first instance. These uses will be expected to provide employment opportunities of similar quality and quantity as those which previously existed. Only if another type of economic development cannot be found which provides similar quality and quantity of employment opportunity, will other uses be considered".**

5.1.4 The policy for both tourism and employment uses, requires a 12 month marketing period to demonstrate that such are no longer required.

5.1.5 However in considering both policies it is considered that the LPA has not paid sufficient attention to the tension between two parts of the Development Plan (**Core Strategy and the Local Plan (Allocations) 2014**) the policies allegedly breached nor to the material considerations which weigh in favour of the proposal and as such militate against the aforementioned policies. Such material considerations need to be weighed in the balance as required under Section 38(6) of the Act.

5.1.6 It is agreed by both parties that the car sales constitutes a sui generis use and as such is not covered by the planning policies referred to in the refusal reason.

5.1.7 The only uses which are considered by both parties to fall within class B2 of the Use Classes Order relates to the garage and the tyre fitting service. The respective areas for the garage is 346.8 sqm and for the tyre fitting centre 36.50 sqm; a total of 393.30 sqm.

5.1.8 There is however disagreement as to whether the builder's merchant, whose buildings cover an area of 701 sqm, is a sui generis use or as contended by the LPA that it falls within Class B8 of the Use Classes Order.

5.1.9 Essentially if the LPA is correct in its position, the scheme would result in a loss of about 1094sqm of Class B floorspace. If the Appellant is correct the loss would amount to 393sqm. The differences in the floor space designation are not critical to the Appellant's case in the context of the overall availability and allocation of employment land (as well as various other material considerations).

5.1.10 The basis of the LPA's view as to why it considers that the builders merchant to fall within Class B8 Use storage and distribution, is set out in the e-mail dated 10th December which states" *Our Economic Development Officer has obtained information from the builders merchant to confirm that the larger percentage of sales are to the trade (approximately 75%), so my view is that the use leans more towards Class B8 than sui generis. But I do take on board your comments".*

5.1.11 It is considered that LPA's view that the builder's merchant falls within Class B8 is incorrect for a number of reasons as are discussed below.

5.1.12 **The Current Use:** Attached at **APPENDIX 3** is an advert relating to Purbrook Builders Merchants Ltd at 38-44 London Road, Purbrook, PO7 5LJ. The telephone number given is 02392258344 which also corresponds with SIG Roofing, the trading name of the firm currently operating from this part of the appeal site. The current users of the site are in no doubt that they are a builder's merchant.

5.1.13 Although the Appellant considers that there are other more significant factors militating in favour of the appeal proposal, it is nonetheless contended that the quantity of employment land is limited, and more so if the builder's merchant is not employment land.

5.1.14 **Builder's Merchant's Site Planning History:** In the first instance and attached as part of **APPENDIX 4** is planning application 15838/12 dating from 1983 which is also referred to in paragraph 2.5 of the Planning Officer's report.

5.1.15 Unfortunately the quality of the document is relatively poor but the key points which are relevant is the application form where the location of the development is described as a builders merchant, but more importantly is the decision notice dated the 28th April 1983.

5.1.16 Condition no. 3 of the Notice is of relevance as this states *"the premises shall be used only for storage in connection with builders merchants only and for no other purpose whatsoever (including any other purpose in class X of the schedule to the Town & Country Planning (Use Classes) Order 1972".*

5.1.17 Clearly if the use of the site was deemed by the LPA to fall within Class X (now B8) of the Use Classes Order, there would have been no need for the planning condition. Rather, its imposition indicates that the builders merchant was not considered to fall within Class X (now B8).

5.1.18 In 1998 PA 98/62890/000 was submitted to change the use from a Builder's Merchants office and front sales counter to a Day Nursery. The application was refused in April 1998 (see **APPENDIX 5**).

5.1.19 Again given the description, it is clear that there is a distinction in the view of the LPAs between a builder's merchant and a use which may fall within class B8 of the Use Classes Order.

5.1.20 **Relevant Appeal Cases:** An appeal was submitted in respect of Unit 2 Solent Road Industrial Estate, Havant (reference no. APP/X1735/A/07/2038464/NWF) against the Council's refusal for **"the demolition of existing vacant warehouse (B8) and the construction of a builders merchant with associated yard area (sui generis) or for any other purpose within Classes B1, B2 and B8".** The appeal and decision notice were submitted to the LPA via an e-mail dated 9th November 2015.

5.1.21 The decision letter, which is attached at **APPENDIX 6** at paragraph 8 states: *"The appellant seeks a "flexible" planning permission which would embrace any B1, B2 or B8 use in addition (and as an alternative) to a (sui generis) timber and builder's merchant. The Council has*

processed the application on that basis. The Council processed the application on this basis However, the application drawings specifically show internal and external yard layouts which would reflect the Jewson "business model" given a site and building of the size and type proposed..."

5.1.22 Although the appeal proposal was primarily concerned regarding the extent of the trade counter, the appeal has some important points. First the LPA accepted and recognised that there is a difference between the Class B Uses and a sui generis use such as a builder's merchant.

5.1.23 In paragraph 15 the Inspector states *"from all the evidence in this case, I take the view that the customer sales area would indeed be ancillary to the main sui generis use of the unit as a timber and builders merchant, even though it would exceed 200sqm referred to by the Council. It would represent about 16% of the total covered floor area. It seems to me that the normal Jewson modus operandi would obtain here, whereby only a very small proportion of the total turnover would comprise the retail sale (author's emphasis) of basically small and portable DIY items to visiting members of the public. The vast majority of turnover on the site as a whole would be generated by trade items, mostly delivered rather than collected by the trade customer or the public".*

5.1.24 Paragraph 18 goes on to conclude *"I have concluded conditions relating to maintenance of the customer sales area as an ancillary part of the main use (in the case of the timber and builders merchants). If the building were not to be occupied by Jewsons or other timber and builders merchants, I have assumed that any B1, B2 or B8 Use (or a combination of the same) would not include such an area for retail sales to visiting members of the public...".*

5.1.25 The above decision and not least given the commentary set out in the LPAs email of 10th December 2015 which states that the percentage of sales at the builder's merchants account for 75% of sales and as such the use falls within Class B8. Conversely it must be the case that 25% of sales are not to the "trade". This is a larger proportion than set out in the Inspector's decision letter in paragraph 15.

5.1.26 If the Inspector had considered a builder's merchants and Classes B1/B2/B8 to be interchangeable, the distinctions made in paragraphs 15 and 18 would not have been made.

5.1.27 Spring Vale Depot, Spring Vale Industrial Estate, Cwmbran – (Reference No. APP35-8). This decision letter was submitted to the LPA as part of the e-mail dated 10th December 2015 but for ease of reference is attached at **APPENDIX 7**.

5.1.28 The appeal concerned the alleged breach of planning control from a builder's yard and offices to trade builder's merchants. The Council required that the use cease as a trade builder's merchant and that it be restored to its former use as a builder's yard and offices.

5.1.29 The salient points of the appeal can be found at paragraph 6 which states *"... although the primary purpose of the Appellant company is stated to be the supply of builders materials to the parent company, it is clear that it also supplies such materials to other local traders and contractors. Those independent traders and contractors also visit the premises to purchase and collect building materials and it is not denied that visiting members of the public would not be turned away should they to chose to purchase materials, tools and equipment from the site" (Author's emphasis).*

5.1.30 Paragraph 8 goes on to state *"in my opinion there has, by fact and degree, been a significant and material change from the original storage and office use of the appeal site which was that of a single company storing materials for its own use in the building and decorating trade with goods for their customers being supplied by other suppliers, to that of the present use by two companies and involving the sale and supply of materials, tools and equipment to a number of local traders and contractors who now visit the premises to purchase, order or collect goods, a service to which the general public is not denied access if they so wish" (Author's emphasis)*

5.1.31 Paragraph 9 goes on to state *"I do not consider that the present use can be regarded as falling within the Class B8 Storage and Distribution Class, as recognised by the Use Classes Order 1987 because of the not insignificant element of trade or retail sales of materials, tools and equipment, which apparently was not present in such proportions in the original use. Neither can the present use be regarded as a shop within Class A1. The Use is in my opinion sui generis and does not fall within any particular class specified in the Use Classes Order 1987..." (author's emphasis)*

5.1.32 Also relevant is an appeal Percy Place, Hammersmith & Fulham reference no. T/APP/C/88/H5390/24/P6. This was copied to the LPA on 10th December 2015 but is attached at **APPENDIX 8** for ease of reference.

5.1.33 The Council in this case alleged as set out in Paragraph 2(b) of the appeal notice that *"the breach of planning control alleged in the Notice is the carrying out of development by the making of a material change of use, that is, the implicit retail use of the land, namely the storage of building materials in connection with the business of a builder's merchant"* (i.e. essentially that the use was no longer a builder's yard with associated storage etc).

5.1.34 The Appellant's in that case were seeking to establish that there was no breach of planning control and that the use as a builder's merchant's fell within the authorised use of the site.

5.1.35 The Inspector at paragraph 40 states *"... in my judgement, it would be reasonable to conclude that the use prior to 1974 and from then to 1986 would fall within Class X, now Class B8 of the 1987 Use Classes Order. Even if some materials were held solely at the appeal yard, the picture which emerges is that it was primarily used as a back up facility to the main yard with materials being transferred across as required; the fact remains that the sales in connection with the builders merchants business was made at 158. A builder's merchant, involving as it does, the primary purpose of selling materials to the building trade, does not fall within Class B8; nor in my view does it come within Class A1; rather it is use sui generis"*. (Author's emphasis).

5.1.36 Paragraph 41 goes on to state *"I do not regard your client's business as a builder's merchant has been a use equivalent to that of the scaffolding contractors previously occupying the site. It seems to me that the main use of the yard in connection with the scaffolding business was for the storage of equipment to be used elsewhere primarily by the contract and hire. The business of the builder's merchant is essentially geared to the selling to the construction industry and on that account, in my judgement is distinguishable from the former use ...".* (Author's emphasis)

5.1.37 The above appeal decisions identify that the sale of building merchandise/goods to the "trade" are such that an operational use dos not fall within Class B but is rather a sui generis use. In respect of the current appeal, not only are there trade sales but there are also sales to the public. The split in sales is particularly significant in the light of the comments made at paragraph 15 of the appeal case relating to Percy Place, Fulham where only some 5% was to non-trade customers.

5.1.38 From observations of the site in operation, vans which are normally associated with the building trade visit the site, collect goods and depart. It would not be unreasonable to assume that such sales and collections may in fact form part of the 75% of trade sales identified by the LPA. This only serves to emphasise that the nature and extent of the builder's merchant business is such that it is a sui generis use.

5.1.39 **Consideration of the Town & Country Planning (General Permitted Development) (England) Order 2015:** Although a peripheral point, should the Local Planning Authority be correct that the builder's merchant's falls within Class B8 of the Use Classes Order, then obviously, it can avail itself of the permitted development rights under Part 3 Class P of the GDPO 2015 for conversion to a residential use.

5.1.40 Whilst the outbuildings may be more difficult to covert, this is not the case with regards to the principal building fronting London Road which would readily convert back to a residential use.

5.2.0 OTHER MATERIAL FACTORS IN FAVOUR OF THE APPEAL PROPOSAL

5.2.1 **Consideration of Policy AL3 Town, District and Local Centres:** This policy designation within the **Havant Borough Local Plan (Allocations) 2014** identifies the various town and local centres. The appeal site falls within the defined centre of Purbrook. It is relevant for two particular reasons.

5.2.2 The first reason is because the policy states that planning permission will be granted for development proposals that:

> **1) main town centre uses in the town, district and local centres as defined on the policies map, and so contribute to their vitality and viability.**

5.2.3 The policy covers other criteria but none which are directly relevant to this appeal.

5.2.4 Paragraph 2.12 goes on explain that *"main town centre uses such as shops, restaurants, hotels, offices, arts and community facilities should be located in town, district and local centres. The boundaries of all these centres are shown on the policies map and Appendix 5 of this plan"*.

5.2.5 Paragraph 2.11 states *"town, district and local centres lie at the heart of local communities and it is therefore important to promote and protect their vitality and viability..."*.

5.2.6 The entire appeal site is included within **Policy AL3**. As such, the policy accepts and recognises that all of the existing uses would be lost should a development proposal come forward for a variety of non-employment uses. As such, Core Strategy **policies CS2 and DM3** need to be considered in the light of **AL3** as there is a conflict between the two documents which form part of the Development Plan.

5.2.7 With this aspect in mind attached at **APPENDIX 9** are extracts from the Inspector's Report regarding the **Havant Borough Local Plan (Allocations) 2014.**

5.2.8 The Inspector does not comment on existing uses or how they may be impacted should the allocation(s) be made. What is a tacit acceptance is that existing uses may be displaced.

5.2.9 The LPA's position contrasts significantly with **Policy AL3** in that it wishes to safeguard the existing employment on the appeal site whilst at the same time also allocating it for non-employment uses.

5.2.10 The LPA's position is inconsistent and in this respect paragraph 28 of the Inspector's report is helpful in that the widening of the Havant town centre to include an area of employment land was discounted on the basis that the LPA differentiated between "retail" and "employment". Consequently in this particular case, it must have made a similar distinction and accepted that there could be an in principle loss of the existing uses from the appeal site (to non employment uses such as retail and other uses).

5.2.11 With regard to the above comments, it must be the case that the application of policies CS2 and DM3 need to be applied at the very least with some degree of flexibility, not least in view of paragraph 22 of the NPPF which states:

"Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities."

5.2.12 In this case policy AL3 has allocated the site for an alternative use, market signals indicate a need for housing including specialist accommodation such as this. In addition as will be discussed elsewhere the LPA cannot demonstrate a 5 year housing land supply and there is an adequate supply of employment sites.

5.2.13 The second aspect of the policy relevant to this appeal is that the proposal does in fact include two commercial/retail units and as such there is compliance with **AL3.** This is another material benefit and material consideration in favour of the appeal proposal.

5.2.14 The above position is in fact accepted in the Planning Report which under the heading **Promoting Havant Borough's Economy** amongst various points states:

- Accords with the principle of policy AL3 for town, district and local centres.
- The inclusion of two commercial units fronting London Road will have a positive impact on the local centre and support the vitality and viability.
- The site is currently in use by a number of established sui generis uses including car sales and builders merchant.

5.2.15 It is the view of the Appellant therefore that even if there is some minor conflict with policies **CS2 and DM3**, the LPA has accepted as a matter of principle that under **Policy AL3** all of the existing employment uses can removed. It is therefore somewhat contradictory to object to the loss of the existing businesses.

5.2.16 **Consideration of Design and the Heritage Assets:** Another material factor in favour of the appeal proposal, as is in fact is noted at paragraph 7.12 of the Officer's Planning Report is the relationship of the site to the St. John's Conservation Area and the nearby Grade II Listed Buildings.

5.2.17 Although the Officer's Report states that the proposal would enhance the setting of the Conservation Area and the overall street scene by providing a high quality design, paragraphs 8.1 and 8.2 of the report conclude that this is insufficient to override policy DM3 of the Core Strategy. The proposal does however accord with Policy DM20 of the Allocations Local Plan 2014.

5.2.18 It is considered that the balance of the arguments on this issue alone weigh heavily in favour of the appeal proposal and how it should be considered with regard to **policies CS2 and policy DM3 of the Core Strategy.**

5.2.19 A detailed Heritage Statement accompanied the application and this is further augmented by the Statement by David Beardmore. His statement explains the duty and requirement of the Local Planning Authority and of the decision maker to have regard to the setting of Listed Buildings as well as the statutory duty in relation to Conservation Areas.

5.2.20 Mr Beardmore has augmented his initial report in the accompanying Supporting Statement in which he considers the relationship to the designated heritage assets (Conservation Area and Listed Buildings) as well as the wider townscape.

5.2.21 This identifies no harm to the Conservation Area and with regards to the Listed Buildings *"Overall and on balance the impact is likely to be neutral or moderately positive and will satisfy the statutory duty of section 66 of the 1990 Planning Act to have 'special regard' to the setting of listed buildings when determining applications for new development".* A similarly positive conclusion is reached with reference to the wider townscape and the application of Core Strategy Policy CS11.

5.2.22 The Planning Officer Report at paragraph 7.12 does not deal directly with the Listed buildings but as far as the Conservation Area it states *"Given its proximity to the conservation area, the proposed development has been designed with this as a major consideration and makes use of a traditional building form and high quality materials and detailing. It is considered that overall the development would enhance the setting of the conservation area and overall streetscene by providing a high quality design".*

5.2.23 In my view give the negative relationship of the site, with no specific restrictions on how materials or cars can be stored, it is considered that the proposed development would clearly result in a positive enhancement to the site and in turn the Conservation Area and the overall setting of listed St Johns Church. These are factors which clearly militate in favour of the appeal proposal and should be given considerable weight.

5.2.24 **Meeting a National and Local Housing Need:** The appeal proposal, as detailed in the Planning Statement at pages 9-12 would meet an identified housing need by the provision of specialist accommodation for older persons.

5.2.25 This essential need is recognised by the Council in its Core Strategy and indeed the concluding sentence to paragraph 8.1 of the Planning Officer's Report states *"furthermore, the proposal would result in providing well needed housing including the provision of elderly housing. As such, on many levels, the proposal accords with local planning policies"*.

5.2.26 The need is further recognised in the Draft Statement of Common Ground. Clearly therefore, this is another important benefit of the development which militates in its favour.

5.2.27 **Meeting a 5-year Housing Land Supply:** Paragraphs 47-50 of the NPPF requires local planning authorities to be able to demonstrate a 5 year supply of deliverable sites for residential development. In addition a further buffer of 20% provision of land is required where there has been under performance in the delivery of housing. The NPPG similarly addressed the issue of meeting a housing need

5.2.28 The relevant paragraphs on meeting housing are set out in paragraphs 47-50. What the NPPF and the NPPG set out are that:

- An objectively assessed need should be based on a Strategic Housing Market Assessment
- The starting point should be demographic projections
- Employment forecasts/past trends should be taken into account and
- Market signals should be taken into account.

5.2.29 A failure to be able to demonstrate such a level of supply will deem the local planning authority's policies regarding housing supply to be out of date.

5.2.30 This issue was first addressed by the Appellant in a submission on 27th October 2015. The LPA was advised that on further assessment of its 5 year housing land position that it did not appear to have an Objectively Assessed Need. In this context, three decisions were forward to the Council and which can be found in the correspondence submitted with the appeal:

- City and District Council of St Albans v R (on the application of Huston Properties and SSCLG (2013) EWCA Civ 2019;
- Gallagher Homes v Solihull MBC (2014) EWCH 1213 and
- Gladman Developments v Cotswold District Council 2014

5.2.31 A further more detailed submission was made on 9th November 2015. The submitted report from Paul Sedgewick identified and augmented the initial assessment that the Council could not meet is 5 year housing land supply. This issue was not considered prior to refusing the application.

5.2.32 In subsequent correspondence on the 20th January 2016 the LPA advised that they could meet their 5 year housing land supply, stating *"The OAN is set out in the published PUSH SHMA. Projection 2 (Midpoint of 2011 based and 2008 based headship) is recommended by the consultants as the most reasonable projections to use in the conclusions."*

5.2.33 However, this position is not consistent with the requirements of the NPPF in that it does not constitute an Objectively Assessed Need (OAN) and is not even a starting point for OAN which should be based on the 2012 household projections.

5.2.34 The issue of the 5 year housing land supply is fully detailed in the Supporting Statement by Paul Sedgewick, but the essence of the case is that the LPA cannot demonstrate OAN.

5.2.35 The LPAs current position is contrary to the submitted evidence at both appeal and in the Courts that the NPPF requires OAN; there cannot be reliance on earlier housing figures, in this case those draw from the South East Plan.

5.2.36 This matter raises a fundamental point in that paragraph 14 of the NPPF is fully engaged. Paragraph 14 states:

14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

For plan-making this means that:

- *local planning authorities should positively seek opportunities to meet the development needs of their area;*
- *Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless: – any adverse impacts of doing so would significantly and demonstrably*

outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or – specific policies in this Framework indicate development should be restricted (9)

For decision-taking this means: (10)

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*

– any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

– specific policies in this Framework indicate development should be restricted.(9)

NB footnotes 6 and 9 do not apply in this case

5.2.37 As such, the full provisions of paragraph 14 of the NPPF in favour of the proposed development are applicable. Even if there was some limited conflict with respect to Core Policies CS2 and DM3, the fact that there was no consideration of this issue is such that the LPA decision did not fully consider the planning balance. If it had done so any alleged breach would have to be placed in the context of the engagement of paragraph 14 of the NPPF as well as policy LF1 Presumption of Sustainable Development.

5.2.38 In my view applying paragraph 14 is such that no harm would result even if there was some limited breach of policies CS2 and DM3.

5.2.39 **Availability of Employment Land:** The accompanying Supporting Statement by Alder King establishes that there is a range of available employment industrial premises across Havant which totals over 3,000 sqm.

5.2.40 The above also needs to be considered against the backdrop of an additional allocation of over 6,000 sqm of employment land and the availability of Class B1/B2/B8 premises in the Borough. Furthermore, industrial premises stock within the Borough, as assessed by the Council within the Employment Land Review (2012) and Annual Monitoring Report (2015), stands at over 640,000 sqm.

5.2.41 Indeed in view of the comments of paragraph 22 of the NPPF, it is evident that the loss of employment on this site (notwithstanding the conflict between the two parts of the Development Plan) is not critical to the economic wellbeing of the Borough.

5.3.0 CONCLUSIONS

5.3.1 The Appellant's case is clear. Firstly it contends that there is conflict between the two documents which constitute the Development Plan. A reading of the two documents reveal

the tension between the policies CS2/DM3 and AL3 as clearly the policies cannot be taken in isolation of each other.

5.3.2 Notwithstanding the above point, even if it was the case that there was some limited breach of policies CS2 and DM3, there are a number of material considerations which weigh in favour of the proposal. The material benefits are set out above of which the full engagement of paragraph 14 of the NPPF is a particularly significant and material consideration.

5.3.3 The application of paragraph 14 of the NPPF together with the other material factors discussed in support of the Appellant's case weigh in favour of the proposal which should be determined with due weight to Section 38 (6) of the Act.

6.0 CONSIDERATION OF REFUSAL REASON No 2

In the absence of binding arrangements for the provision of on-site affordable housing or alternatively an acceptable contribution in lieu of on-site provision the proposal fails to make adequate provision for affordable housing in the interest of creating mixed communities and responding to housing need. Furthermore the financial contribution offered does not meet the assessed contribution requirement and in the absence of independent third-party review and viability testing is considered unacceptable. As such the proposed developments country to policy CS9 of the Havant Borough Local Plan (Core Strategy) 2012, the adopted Havant Borough Council Housing SPD July 2011 and the National Planning Policy Framework 2012.

6.1 With regards to the refusal reason, the level of contribution is reliant on the viability of the proposed development. In this respect, Alder King, having made the appropriate allowance for CIL of £222,637.00 concluded that there would be a surplus of £32,736 towards other Section 106 contributions.

6.2 A brief statement from Alder King is attached but this issue is presently under discussion with the LPA and it may be the case that the matter is resolved to the mutual satisfaction of the parties.

7.0 CONSIDERATION OF DEEMED REFUSAL REASON No 3

The proposal, without completion of the appropriate binding arrangements to secure a contribution towards the Solent Recreation Mitigation Project, is contrary to the Council's Policy on contributions towards measures of mitigation adopted by the Local Planning Authority. These seek to ensure that the provision is made from new development towards mitigating against increasing recreational pressure on the Solent S.P.A. The development is therefore contrary to policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2012 and Policy DM24 of the Havant Borough Local Plan (Allocations) 2014 and the National Planning Policy Framework 2012.

7.1 The Appellant acknowledges the point made in the refusal reason and confirms that it will pay the required contribution towards the Solent Recreation and Mitigation Strategy.

7.2 A Unilateral Undertaking will be presented prior to the Hearing. As such, the parties are agreed that should this take place, refusal reason no. 3 would be overcome.

8.0 CONSIDERATION OF DEEMED REFUSAL REASON No 4

On the basis of the information provided and the absence of binding arrangements necessary to secure the alterations the surrounding highway network as anticipated in the submitted Transport Assessment and shown on the proposed plans, it has not been adequately demonstrated that the access works associated with the London Road access and the parking spaces on Stakes Road would not result in harm to the amenity and safety of road users of the highway. The proposal is therefore contrary to policies CS16, CS20 and DM1 of the Havant Borough Local Plan (Core Strategy) 2012, the adopted Havant Borough Council Housing SPD July 2011 and the National Planning Policy Framework 2012.

8.1 The LPAs position is largely based on a misunderstanding of the submitted information. This matter has since been discussed and clarified between the parties.

9.0 CONCLUSION OF THE APPELLANT'S CASE

9.1 **Introduction:** With regards to the stated refusal reasons, there are clearly material considerations which support the appeal proposal but which were not fully considered by the LPA prior to determining the application.

9.2 **NPPF - Presumption in Favour of Sustainable Development:** The NPPF places at its heart the presumption in favour of sustainable development. Sustainable development is identified by the NPPF has having three component parts (economic, social and environmental) that need to be read as a whole.

9.3 For the reasons given above, paragraph 14 of the NPPF apply. In such circumstances planning permission should be granted unless *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when as assessed against the policies in this Framework as a whole..."*

9.4 **NPPF - Economic Growth:** The NPPF identifies the planning system as having a key role in building a strong and competitive economy. The provision of specialised accommodation for the elderly would also provide other benefits to the community and local economy as a whole. If approved, the development once fully occupied, is likely to accommodate some 41/42 residents who, given their age, are likely to use the shopping and other facilities of the nearby local shops on a regular basis.

9.5 Research undertaken by ORB in respect of private sector sheltered housing confirms the above. In their document "A Better Life" (**Appendix D** of the **Planning Statement**) published in October 2003, detailed consideration was given to the benefit of developments for the elderly upon local amenities. Chapter 4 of the Report on page 27 identifies the following:

> *"Private sheltered housing schemes play a vital part in the life of local communities. The propensity of older people to spend locally is high, assuming there is access to local shops which ordinary housing cannot guarantee."*

9.6 Annexe B of the Report which is now attached at **APPENDIX 10** sets out the economic benefit that a private sheltered housing scheme can bring to a town, and identifies that a scheme of 55 residents generates a spend in local shops of £610,000 per annum, and when compared to a conventional housing development some £2.3 million more in local spending over the lifetime of the scheme.

9.7 The scheme itself would employ 1 or 2 persons in the long term, whilst the redevelopment of the site is likely to see local jobs generated through the construction of the scheme. On

average McCarthy & Stone employ circa 60 local companies connected with the construction professions in building their proposed schemes, with anticipation that this would create local work for in the region of 120 people.

9.8 There is also the provision of 2 commercial units which would add to the offer within Purbrook also create a degree of employment.

9.9 **NPPF - Social Benefits:** The proposed development meets a current and future local housing need. It is demonstrated to provide health benefits to its occupants and enables older people to remain part of the community. This is both socially and culturally important for local communities. Further commentary on these benefits are set out in the Planning Statement. The local need is recognised by the LPA.

9.10 **NPPF Environmental Benefits:** The proposed development makes efficient and effective use of a previously developed site, helping the Council meet its 5 year housing land supply requirement as detailed in this statement and in the Supporting Statement by Paul Sedgewick.

9.11 The development would be appropriately landscaped, it would remove a non-conforming use, remediate the site and would be constructed to meet Lifetime Homes and the latest Building Regulation requirements which in terms of its energy needs would be equivalent to Level 4 of the Code for Sustainable Development.

9.12 Furthermore, the redevelopment of the site would improve the setting of the nearby Listed Buildings and of the Conservation Area.

9.13 It is considered the proposed development complies fully with the requirements of sustainable development set out by the NPPF.

9.14 **Financial Benefits:** Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. A local finance consideration is defined as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown, or sums that a relevant authority has received, or will or could receive as a result of the proposed development.

9.15 In addition to the CIL and affordable housing contribution, the proposed scheme would also receive a New Homes Bonus over a six year period.

9.16 These are not an insignificant sums and as such considerable weight can be given to it as

material planning consideration that weighs heavily in favour of the proposed scheme. This is clearly a matter which is pertinent and relevant and should form part of any balanced consideration.

9.17 **Conclusion:** Although there could be some minor conflict with Policies CS2 and DM3 of the Havant Borough Core Strategy 2011, these policies themselves are in conflict with policy LF3 of the Havant Allocations Local Polices 2014 which also forms part of the Development Plan. The degree of noncompliance with CS2 and DM3 is far outweighed by the very real benefits of the development proposal and its overall compliance with the Development Plan as a whole.

9.18 The Appeal scheme is clearly compliant with the NPPF and aims of the Development Plan policies which seek to optimise residential development within existing urban areas including the provision of small units of accommodation including accommodation for the elderly who are an acknowledged growing section of the population.

9.19 It is considered that the Appeal proposal meets the fundamental aspects of Development Plan and national policy aspirations to create balance and sustainable communities, particularly where such land is located in existing urban areas and provides opportunity for housing for small households, such as the elderly, for which there is a need.

9.20 In addition, it should also be noted that there is uncontested compliance with the following **Development Plan policies; Havant Borough Core Strategy policies CS1, CS4,CS6,CS7,CS8, CS11, CS14, CS16, CS17, CS21, DM7, DM11, DM13, AL1 and the Havant Borough Allocations Local Plan policies AL1, AL3, DM17, DM20.**

9.21 As commented at the outset in support of the planning application, and having considered the reason for refusal and the various documents and policy aims, there is support for the Appeal proposal which would:

(i) Result in the redevelopment of previously developed land in a manner which optimises the use of the site;

(ii) Result in the redevelopment of previously developed land to which there is no in principle objection to redevelopment;

(iii) Achieve an economic, efficient and effective use within an urban area whilst respecting environmental planning aims and objectives;

(iv) Produce a development of quality enhancing the character of the area whilst respecting neighbouring properties;

(v) Help to make better use of the existing housing stock thereby helping to reduce pressure for housing in more sensitive locations;

(vi) Aids in the renewal of housing stock in the locality thus aiding the achievement

of urban renewal and mixed and balanced communities and thus meeting the objectives of paragraph 47 of the NPPF;

(vii) Provide a safe and secure living environment for the intended elderly occupants without prejudice to the amenities of neighbours;

(viii) Help to reduce reliance on the private motor car;

(ix) Provide a contribution towards meeting a need for accommodation for the elderly; and

(x) Provide a financial contribution towards affordable housing.

9.22 Even if it was the case that there was some limited breach of policies CS2 and DM3, there are material considerations which weigh in favour of the proposal. The material benefits are set out above of which the full engagement of paragraph 14 of the NPPF is clearly a significant material consideration.

9.23 The application of paragraph 14 of the NPPF together with the other material factors discussed in support of the Appellant's case are clearly material considerations which although not considered by the Council, need to be afforded weight in any balanced consideration as indeed required under Section 38 (6) of the Town & Country Planning Act. **Accordingly, it is respectfully requested that the Appeal be allowed.**

APPENDIX 1

1-1

Havant BOROUGH COUNCIL

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To:
Mr Matt Shellum
The Planning Bureau Ltd
2 Genesis Business Park
Albert Drive
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For: McCarthy & Stone Retirement Lifestyles Ltd.

The Town and Country Planning (Development Management Procedure) (England) Order 2015
Refusal of Planning Permission

Application Number: APP/15/00896
Site Address: Land at, 38-44 London Road, Purbrook, Waterlooville
Proposal: Demolition of existing buildings and redevelopment to form 42No. retirement apartments for older persons including communal facilities, parking provision and associated landscaping; and 2No. commercial/retail units.

Further to your application received on 14 August 2015, which was valid from 11 September 2015, Havant Borough Council, as Local Planning Authority, **Refuses Planning Permission** for the above proposal.

The reasons for the Council's decision to refuse planning permission are:

1 The proposed development would lead to the loss of existing employment uses on the site including Class B uses. These uses make a valuable contribution to the local economy providing employment and services to the community. In the Local Planning Authorities opinion it has not been satisfactorily demonstrated that the site is not fit for purpose or financially unviable for B use class employment, or other types of economic development, in particular it is not satisfied that a suitable comprehensive marketing exercise has been carried out. Therefore the proposal is contrary to policies CS2 and DM3 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

2 In the absence of binding arrangements for the provision of on site affordable housing or alternatively an acceptable contribution in lieu of on site provision the proposal fails to make adequate provision for affordable housing in the interests of creating mixed communities and responding to housing need. Furthermore the financial contribution offered does not meet the assessed contribution requirement and in the absence of independent third party review and viability testing is considered unacceptable. As such the proposed development is contrary to Policy CS9 of the Havant Borough Local Plan (Core Strategy) 2011, the adopted Havant Borough Council Housing SPD July 2011 and the National Planning Policy Framework 2012.

Our Ref: APP/15/00896

3 The proposal, without completion of the appropriate binding arrangements to secure a contribution towards the Solent Recreation Mitigation Project, is contrary to the Council's Policy on contributions towards measures of mitigation adopted by the Local Planning Authority. These seek to ensure that the provision is made from new development towards mitigating against increasing recreational pressure on the Solent SPA. The development is therefore contrary to policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011 and Policy DM24 of the Havant Borough Local Plan (Allocations) 2014 and the National Planning Policy Framework 2012.

4 On the basis of the information provided and in the absence of binding arrangements necessary to secure the alterations to the surrounding highway network as anticipated in the submitted Transport Assessment and shown on the proposed plans, it has not been adequately demonstrated that the access and highway works associated with the London Road access and the parking spaces on Stakes Road would not result in harm to the amenity and safety of users of the highway. The proposal is therefore contrary to the policies CS16, CS20 and DM11 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

In coming to its decision the Council considered plans and other documents submitted with regard to your application and the relevant policies of the Havant Borough Local Plan and other planning policy documents including the National Planning Policy Framework 2012.

Other Important Information:

(1) This notice only relates to the decision of Havant Borough Council as Local Planning Authority under the Town and Country Planning Acts. It does not relate to any other application that may be required under the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.

(2) Your attention is drawn to the attached information regarding firstly your right to appeal to the Planning Inspectorate. if you are aggrieved by the Council's decision, and secondly the rights of an owner to, in certain circumstances serve a purchase notice on the Council. See www.planningportal.gov.uk/pcs

(3) In accordance with paragraphs 186 and 187 of the NPPF Havant Borough Council (HBC) takes a positive and proactive approach and works with applicants/agents on development proposals in a manner focused on solutions by:

- Offering a pre-application advice service, and
- Updating you of any issues that may arise in the processing of your application and where possible suggesting solutions, and,

In this instance:

- You were updated about issues after the initial site visit,
- The proposal was found to be unacceptable for the reasons set out in the Decision Notice.

(4) The applicant is advised that if this application had been acceptable in all other respects, the scheme would be liable to the Community Infrastructure Levy Schedule which became a material planning consideration on 1st August 2013. Therefore, if this decision is appealed and subsequently granted planning permission at appeal, this scheme will be liable to pay the Council's CIL upon commencement of development.

Andrew Biltcliffe

Andrew Biltcliffe
Executive Planning Service Manager

11 December 2015

Site Address:	Land at, 38-44 London Road, Purbrook, Waterlooville		
Proposal:	Demolition of existing buildings and redevelopment to form 42No. retirement apartments for older persons including communal facilities, parking provision and associated landscaping; and 2No. commercial/retail units.		
Application No:	APP/15/00896	Expiry Date:	11/12/2015
Applicant:	McCarthy & Stone Retirement Lifestyles Ltd.	Team:	Team 1
Agent:	Mr Matt Shellum The Planning Bureau Ltd	Case Officer:	Rachael McMurray
Ward:	Purbrook		

Recommendation: **REFUSE PERMISSION**

1 Site Description

1.1 The site is located on the corner of London Road and Stakes Road within the Purbook Local centre (as defined in the adopted Havant Borough Local Plan (Allocations) and adjacent to the St Johns Conservation Area and encompasses No's 38-44 London Road. The site is 00.39ha in area. There is a slight downward slope in levels from the north to the south of the site.

1.2 At present, there are several land uses on the site including a builder's merchant, a car dealership, a tyre workshop, a specialised motorbike repair centre and an MOT and repair centre. All the businesses apart from the builder's merchant are located towards the south of the site and comprise industrial style units or cabins. These business have access from London Road. The builder's merchants incorporates the largest part of the site to the north. This business has access from Stakes Road. There is a two-storey building of flint and brick construction which sits on the north west corner of the site. This forms the sales office for the builder's merchant and was formerly a vicarage associated with the church on the opposite side of London Road. All the businesses on site are currently in operation.

1.3 The west boundary with London Road comprises a low level flint brickwork wall and the flank elevation of the old vicarage building. There is also a bus shelter located adjacent to the London Road vehicle entrance to the site. Turning the corner, the north boundary is marked by a 1.5m high brick wall with a vehicular access into the builder's merchants. The western boundary comprises a brick wall which forms the boundary with a footpath which extends along the western boundary down onto Parkside Close at the rear of the site. The southern boundary is formed by the rear elevations of the buildings onsite.

1.4 To the east of the site lies the Purbrook Methodist Church and Purbrook Centre. Development to the north of the site includes shops and residential properties. Development to the west includes the listed St Johns Church and church yard which are situated within the St Johns conservation area. The boundary is marked by an attractive low level flint wall. South of this is another flint work building in operation as a nursery and south of this is a small industrial unit. To the south of the site is a row of local shops, then a terrace of properties and then another row of shops, all of which are included in the boundary of the designated local centre.

2 Planning History

As the site is made up of several small sites, an overview of the planning history is provided below. No development proposals for residential development on the scale proposed have been made on the site.

2.1 The Vicarage, Purbrook

53/02586 – For the use of The Vicarage as a furniture depository for a limited period only terminating 31/10/56. **Permitted 16/11/1953**

53/02586/1 – Outline for the use of land as a haulage contractors yard and the ultimate development and use of the land for the erection of shops. **Permitted 16/11/1953**

54/03131 – Outline for the use of part of the garden of The Vicarage for the erection of an office building. **Permitted 13/08/1954**

55/03504 – For the change of use of part of The Old Vicarage into offices. **Permitted 06/04/1955**

2.2 London Road, Purbrook

53/02221 – For the use of land for the erection of an office. **Permitted 18/05/1953**

53/02500 – For the erection of offices. **Permitted 13/08/1953**

2.3 Land at junction of Stakes Road and London Road

58/04041/1 – Outline for the use of land since edged green on the deposited plan for the erection of four shops only on the Trunk Road frontage and a block of garage at the rear of the site. **Permitted 26/08/1958**

58/04041/2 – For use of land since edged blue on the deposited plan for the erection of shops. **Refused 26/08/1958**

63/15383 – The erection of a furniture warehouse. **Permitted 30/05/1963**

69/15383/1 – The re-building of workshops. **Permitted 02/05/1969**

74/15383/2 – Residential development. **Refused 21/01/1974**

74/15383/3 – Residential development by erection of 20 flats and 2No. shops. **Refused 21/01/1974**

2.4 38/42 London Road, Purbrook

79/15383/4 – Car Sales area. **Refused 15/10/1979**

79/15383/5 – Use of land for display and sale of motor cars for a limited period only terminating 28/02/81. **Permitted 11/03/1980**

81/15383/7 – Continued use of land for display and sale of motor cars for a limited

period only terminating 28/02/82. **Permitted 25/02/1981**

81/15383/8 – Continued use of land for display and sale of motor cars. **Withdrawn 25/11/1981**

81/15383/9 – Continued use of land for display of sale of motor cars for a limited period only terminating 31/01/84. **Permitted 11/01/1982**

82/15383/10 – Continuing use of land for display and sale of motor cars not expiring before 31st January 1985 for a limited period only terminating 31/01/85. **Permitted 13/04/1982**

85/15383/13 – Continued use of land for display and sale of motor cars terminating 31/03/88. **Permitted 21/03/1985**

87/15383/14 – Renewal of permission for use of land for display and sale of motor cars for a limited period only terminating 31/12/92. **Permitted 05/08/1987**

2.5 **38/44 London Road, Purbrook**

83/15383/12 – Storage building. **Permitted 24/06/1983**

2.6 **39/42 London Road, Purbrook**

80/15383/6 – Single storey office extension. **Permitted 06/10/1980**

2.7 **42 London Road, Purbrook**

64/00197 – For the display of the advertisement. **Refused 22/09/1964**

92/57898/000 -Continued use for display and sale of motor vehicles. **Permitted 13/01/1993**

2.8 **44 London Road, Purbrook**

98/62890/000 – Change of use from a Builders Merchants Office and front sales counter to a day nursery. **Refused 27/04/1998**

03/62890/001- Retention of 4No. static externally illuminated shop fascia signs to front and side elevations. **Split Decision 24/07/2003**

3 Proposal

3.1 Demolition of existing buildings and redevelopment of the entire site to form 42No. retirement apartments for older persons including communal facilities, parking provision and associated landscaping; and 2No. commercial/retail units totalling 162sqm. The apartments are to be for people aged 60 years or over, or for those over this age with a partner of at least 55 years of age. The units would comprise the following mix: 23 x 1no bed apartments and 19 x 2no. bed apartments. Internally the accommodation is laid out over three floors. The external layout would include two areas of landscaped, communal gardens, one being in the centre and the other along the western boundary. The retail units would be located on London Road and include a shop frontage. These would be serviced from an existing lay by located on London

Road adjacent to the main entrance.

3.2 The proposed building is designed as a 'U' shaped building comprising three wings. One wing which fronts London Road is a two -storey building , rising to a two and a half storey corner building, creating a landmark feature on the north west corner of the site. The scale then drops back down to two-storey part way along Stakes Road. The third wing extends back into the site, parallel with the western boundary. The frontage buildings have been designed as smaller components with ridge lines stepping down along London Road to reflect the level changes. The roofscape comprises a series of interconnected hips and gables, with chimneys and small traditonal dormers. The approach to the design is traditonal with details such as flint with brick, natural flint panels, lime render, red multi stock bricks, clay tiles, chimney stacks, timber windows, brick soldier courses and stone cills.

3.3 The main access from London Road will be undercroft with automated gates set back from the road,. This leads to the internal parking court. The development proposes 35 parking spaces. 31 of these would be located within the development and 4 would be located on the north boundary with access from Stakes Road.

3.4 The application is supported by a number of documents:

Statement of Community Involvement
Phase 1 Ecology Report
Flood Risk Analysis
Energy Statement
Bat Survey
Arboricultrual Report & Tree Constraints Plan
Acoustic Report
Planning Statement
Design and Access Statement
Asbestos Survey
Transport Statement
TOPO Survey
Site Investigation Report
Drainage Assessment
Heritage Statement
Financial Viability
Archaeology report
Construction Method Statement
Japanese Knotweed Initial report
Landscaping Plan

4 Policy Considerations

National Planning Policy Framework

Havant Borough Local Plan (Core Strategy) March 2011

CS11	(Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS14	(Efficient Use of Resources)
CS16	(High Quality Design)
CS17	(Concentration and Distribution of Development within the Urban Areas)
CS20	(Transport and Access Strategy)
CS21	(Developer Requirements)

CS9	(Housing)
DM10	(Pollution)
DM11	(Planning for More Sustainable Travel)
DM13	(Car and Cycle Parking on Residential Development)
DM14	(Car and Cycle Parking on Development (excluding residential))
DM3	(Protection of Existing Employment and Tourism Sites)
DM7	(Elderly and Specialist Housing Provision)

Havant Borough Local Plan (Allocations) July 2014

DM20	(Historic Assets)
AL1	(Presumption in Favour of Sustainable Development)
AL3	(Town, District and Local Centres)

Havant Borough Council Housing SPD
Havant Borough Council Developer Contributions SPD

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Building Control, (Fire Access Consultation):

No objections

County Archaeologist:

No objection raised or condtions suggested

County Ecologist:

Summary of response:

Based on the Bat Survey submitted with the application, it is evident that these surveys recorded the presence of a small roost of common pipistrelle bats (3 individuals) within the existing office building in the north-west corner of the site. This is likely to constitute a small non-breeding roost of this common and widespread species. Bats are a protected species under UK and EU law.

Where developments affect EPS, permission can be granted unless the development is likely to result in a breach of the EU Directive underpinning the Habitats Regulations and is unlikely to be granted an EPS licence from Natural England to allow the development to proceed under a derogation from the law.

An EPS licence can only be granted if the development proposal is able to meet three tests:

1. the consented operation must be for 'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'; (Regulation 53(2)(e))

2. there must be 'no satisfactory alternative' (Regulation 53(9)(a)); and

3. the action authorised 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range' (Regulation 53(9)(b)).

I am content that the proposed bat mitigation, compensation and enhancement measures are appropriate and that these should ensure that impacts to the roosts are minimised. I see no reason why the third test is not met and why the applicant would not be granted a European Protected Species Mitigation (EPSM) licence from Natural England. It is down to the case officer to assess the proposal against the other two tests. If you are minded to grant permission can I suggest that all bat mitigation, compensation and enhancement measures are secured by condition.

Officer note: Tests 1 and 2 are considered in Section 7 of this report

Economic Development:

Summary of full response:

This is a substantial piece of employment land in an area with very little stock. Out of the five businesses on the site 3 are in the motor trade. There are in excess of fifteen full time employees on the site supporting over four thousand local residents and tradesmen according to the information they have provided.

There are no existing sites in the Havant Borough area that will be able to accommodate these businesses. This is due to lack of availability and due to the nature of their activity. The new developments will not take any motor trade businesses as stated by the agents handling the marketing for them.

The true economic impact is far greater than just the fifteen employees on the site as the local retailers and suppliers would also be severely impacted from the loss of trade. It would also significantly affect local residents and trades people who use these services.

One of the businesses supports all the local small garages with an MOT facility for cars and motorbikes. It has employed two apprentices and is closely engaged with the local schools and colleges to provide work experience, something critical to the employability of young people.

Although there is an outdated stigma attached to the motor trade they do provide a vital local service, as shown by the customer base to these businesses in particular. This is particularly important in the context of the residential developments in Waterlooville which will increase the housing stock by nearly three thousand with the attendant vehicles and the need for these services. The loss to the local community of these businesses will be significant.

This application is contrary to our policies CS4 and AL3, as it will not provide any new vitality. The proposed two retail units will be in competition with existing businesses that are providing the essential needs for the immediate area, the Waterlooville retail centre along with the ASDA and Sainsbury supports any large purchases. Therefore the viability of these will be questionable.

This also conflicts with policy CS2 and DM3 for the protection of existing employment, particularly important is in the nature of the employment on this site and the lack of suitable alternatives.

Environmental Health:

Agree with findings of acoustic report. Recomodations to be implemented in full as per the acoustic report dated May 2015 and prepared by Parsons Brinckerhoff.

Environmental Health (contamination):

Energy Statement - no noise or local air pollution issues as a result of strategy

Flood Risk - No adverse comment

Drainage Strategy - No adverse comment. A condition should be included for surface water layout to be agreed prior to commencement.

Asbestos Survey - Very little (if any) sampling been carried out as part of the 2012 survey. A pre-demolition asbestos survey should be undertaken. The safe removal of asbestos should be secured via condition.

Transport Assessment (Air Quality) - an on street parking survey should be undertaken to confirm capacity to accommodate anticipated new vehicle trips related to the retail units.

Site Investigation report - conclusions of desk study are broadly agreed. However, if this scheme were to gain consent (based upon report recommendations), the applicant would still need to submit further details (listed in the full response).

Usual contamination conditions should be included if consent is granted. Further wording of these can be provided.

Hampshire Fire & Rescue:

One of my inspectors has considered the information provided and the following comments are made:

Building Regulations: Access for Firefighting:

Access and facilities for Fire Service Appliances and Firefighters should be in accordance with Approved Document B5 of the current Building Regulations.

Hampshire Act 1983 Section 12 - Access for Fire Service:

Access to the proposed site should be in accordance with Hampshire Act 1983 Sect, 12 (Access to buildings within the site will be dealt with as part of the building regulations application at a later stage). Access roads to the site should be in accordance with Approved Document B5 of the current Building Regulations.

Development Engineer - Highways:

Inital response:

If this modification to the highway in terms of the London Road access and the adjacent layby (as per the Tasnport Statement) is needed, then the approval of the Highway Authority will be required and the construction will need to be carried out by means of a Section 278 Agreement, I would suggest that the developer contacts Hampshire County Council section 278 section to reach a preliminary approval of the modification of the Highway. Any loss of part of the existing service layby could be controversial to the existing shops.

The parking standard seem reasonable for such a development (with a minimum age condition) but the old/ current parking standards and the new proposed HB C parking documents do not have standards for this type of development.

The 4 car parking spaces taking access onto Stakes Hill Road will require a TRO or at vehicle protection line and I would suggest that these spaces are allocated to the adjacent four units. The access to the mobility store seems rather difficult and there should be some long term cycle storage. Short stay parking is required for visitors and staff and these could be provided in the public area at the end of Stakes Road cul-de-sac.

Updated response:

As the required information has not been provided, the application should be refused on the ground of insufficent information to prove there would not be a highway saftey risk and amentiy issue to users of the highway.

Housing:

Summary of full response:

This proposal would normally need to comply with Core Strategy policy CS9. 2 and provide 30-40% affordable housing on-site; this would equate to a minimum of 13 units. Demand for affordable housing remains high in the borough; as at 24/09/2015 there were 279 applicants registered with HHC specifically requiring sheltered accommodation.

I would agree that a financial contribution in lieu of onsite sheltered affordable accommodation would be acceptable.

However, the Financial Viability Assessment includes an offer of only £32,736 as a financial contribution in lieu of onsite affordable housing provision. This amount falls significantly short of the figure that we would expect using our calculator as described in the Havant Borough Council Housing SPD July 2011. The calculator has returned the sum of £985,929 using the average GIA of the apartments as stated above and the expected sales values as stated by the applicant.

I have reviewed the viability paperwork submitted and believe that certain inputs could be revised in order to support an improved financial contribution offer, and for this reason I would suggest that we instruct a third party to provide an independent assessment at the applicants expense.

As the proposed scheme is designed for residents over 60 (although in the case of a couple one can be as young as 55 providing that the other is 60 or over) I am disappointed that the applicants do not appear to have considered the possibility of shared ownership sheltered apartments within the block.

The submission does not appear to include a schedule that details the exact GIA for each apartment.

Waste Services Manager:

No response received

Landscape Team:

No landscape objection to the principle of development.

Conditons required to secure high quality materials, boundary enclosures and hardscurfacing, soft landscaping and Japanese Knotweed

Parking bays 20 and 21 in the site sketches appear undersized. Car park tracking within the transport statement also appears very constrained – particularly given this location against the boundary retaining wall.

I question the orientation of parking bay 7.

Crime Prevention:

No response received

Local Lead Flood Authority HCC:

Works in relation to ordinary watercourses:

If the proposals include works to an ordinary watercourse, under the Land drainage Act 1991, as amended by the Flood and Water Management Act 2010, prior consent of the Lead Local Flood Authority is required for this work. This consent is required as a separate permission to planning. Information on consenting can be found at the following link

http://www3.hants.gov.uklflooding/hampshireflooding/watercourses.htm

It is strongly recommended that this information is reviewed before Land Drainage consent application is made.

Surface Water Drainage:

We require further information/clarification on the proposals in order to provide

a response:

. Confirmation of the existing drainage system - at present this is just 'assumed'.

. Infiltration tests should be carried out to discover if this method of surface water

disposal is inappropriate, and the results provided.

. Evidence of the appropriate number of treatment stages in the surface water management train, as stated in CIRIA C69?

. Calculations comparing the existing surface water run off rate, in l/s for a 1 in 100 year flood event +30% for climate change, with the proposed development's surface water run off rate for the same event.

. Calculations to demonstrate the existing run off volume for a 1 in 100 year, 6 hour flood event and evidence showing that there will be adequate storage for the attenuation of this volume on site, and allowing discharge without increasing the run off rate or volume off site.

Officer Note -

The agent queried whether the infiltration tests had to be carried out prior to the determination of the application or could these be secured by condition. This was posed to the consultee and they provided the following response:

A planning conditon would be acceptable. Further information as listed above is still required.

Planning Policy:

Summary of response:

The proposal lies within the urban area and is consistent with policy CS17 which seeks to concentrate new housing within the five urban areas, including Waterlooville. The policy also prioritises the use of previously developed land. The principle of development is therefore acceptable.

Promoting Havant Borough's Economy

- Accords with the principle of Policy AL3 for Town, District and Local Centres
- The inclusion of two commercial units fronting London Road will have a positive impact on the Local Centre and support the vitality and viability.
- Units are very small and it raises concerns about their let ability.
- Evidence should be provided to show that they are able to be let or show that similar size units have been a success in other schemes.
- Policies CS2, Employment, of the Core Strategy and DM3 Protection of Existing Employment and Tourism Sites both seek to protect employment sites.
- The site is currently in use by a number of established sui generis uses including car sales and builders merchant. Whilst the planning statement states that the proposal will create jobs for around 120 people, these are linked to the construction process and therefore temporary in nature. In the long term the scheme will only employ 1 or 2 persons.
- There is no indication of how many people the retail units are likely to employ.
- No information relating to the existing employment levels. Further evidence should be provided.

Housing

- Proposal accords with Policy CS9.6 and DM7
- Policy CS9(2) requires the provision of affordable housing. At 30% this would equate to 12.6 dwellings.
- The applicant has not submitted evidence to demonstrate that on site provision is not appropriate or possible (for practical and viability grounds).
- However, taking into account viability they have suggested a financial contribution of £32,736 in lieu of on site affordable housing provision (and to allow the scheme to remain viable).
- In accordance with the supportive text to Policy CS9 this viability assessment should be 3rd party tested at the developer's expense.
- Should this viability assessment subsequently be found correct (following 3rd party check) then the proposed financial contribution in lieu would be acceptable as long as it can also be demonstrated that proving affordable housing on site is neither practical nor viable.

Parking Provision

The proposed scheme falls below the requirements set out in the Havant Borough Residential Parking and Cycle Provision SPD. However, the applicant has provided evidence that the level of parking proposed is sufficient due to the site's sustainable location and also based on their experience at similar sites. I would suggest that this is reasonable. However, there is no parking provision serving the two retail/commercial units.

CIL and SRMP required.

Southern Water:

The exact position of the public sewers must be determined on site by the applicant before the layout of the proposed development is finalised. Please note:

No development or new tree planting should be located within 3m either side of the centreline of the public sewer and all existing infrastructure should be protected during the course of construction works. No new soakaways should be located within 5m of the a public sewer.

Should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site. The applicant is advised to discuss the matter further with Southern Water (SW).

Initial investigations indicate that SW can provide foul sewerage disposal to service the proposed development. Southern Water requires a formal application for a connection to the public sewer to be made by the applicant or developer.

If the application receives planning approval, the following informative should be attached to any consent:

'A formal application for connection to the public sewerage system is required in order service this development, please contact SW'.

Traffic Management Team:

We note the following:

- Paragraph 4.12 of the Transport Statement states that the existing loading bay to the south of the development access on London Road will require shortening to accommodate the amended access.
- 4 parking spaces are to be accessed via Stakes Road which will require amendment to the existing no waiting at any time restrictions in Stakes Road to provide unrestricted access to the newly created parking spaces.

Traffic Management Team request that provision is made for a sum of no less than £3000 be set aside to allow the amendment to the TROs be processed at the required time, to be invoiced to the developer on receipt of a TRO Application Form (available from the Traffic Management Team upon request).

As the 2 proposed retail units have no on-site parking and at the time of submitting these comments, the occupants of these retail units are not known, the Traffic Management Team will monitor the use of the loading bay to the south of the development as it may be that the length or time limits to the bay may need amending further to suit the needs of the businesses/residents and visitors to the area.

To this end a further TRO maybe required (as a cost of £3000).

Other points:

- No allocated visitor parking spaces. Will visitors and tradesmen be free to use any remaining spaces that are not allocated to a specific resident or has any consideration been given to clearly marking visitor parking bays within the site
- The Traffic Management Team does not permit any development signage to be erected due to the location of the site but may permit lorry routing signs to the development if the developer wishes to submit an application (any lorries would be expected to access the site via Stakes Road and not London Road).

Arboriculturalist:

No response was sought as there are no significant trees on site.

Conservation Officer:

Summary of response:

Supports the application.

The loss of the former Vicarage is a negative aspect of the scheme. The loss of the building needs to be balanced against the possible benefits the scheme achieves, through the positive enhancement of the street frontage, by reinstating the required enclosure and removing the unsightly gap.

A critical element will be the choice of materials. The roofing materials and flintwork

are particularly important aspects.

If minded to grant permission I advise the imposition of conditions relating to materials, joinery and other elements such as meter boxes and flues/ducts and informative NB the informative needs to be tweaked to include the relevant condition numbers.:-

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: 21

Number of site notices: 2

Statutory advertisement: Not applicable.

Number of representations received: 31

A total of 31no. objections have been received against the planning application. A summary of the points raised in these representations is provided below:

i. The already approved license garden area on the west side of the Purbrook Centre, may result in noise and disturbance to potential future residents.
ii. The development would lead to a loss of local jobs, businesses and services which serve the local community.
iii. There is a lack of parking provided within the development which would have a knock on effect in the immediate locality
iv. The development would result in the loss of an important historic building - the Old Vicarage
v. The new access onto London Road would create traffic congestion and pose a risk to highway safety

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) Loss of Class B uses
(iii) Impact upon the character of the area
(iv) Impact upon residential amenity
(v) Highway and parking considerations
(vi) Developer contributions and legal agreement
(vii) Ecology
(viii) Other Issues

(i) Principle of development

7.2 The application site is situated within an urban area where further development is considered acceptable subject to the usual development control criteria. The site lies within the designated Purbrook Local Centre. Policy AL3 of the adopted Allocations Plan requires any development to contribute to the vitality and viability of the local centre. In this regard the proposal along with residential development, provides 2no retail units, with shop frontages facing onto London Road. With respect to housing, the proposal will contribute towards meeting the borough's housing requirement of 6,300 new dwellings between 2006 and 2026 in accordance with policy CS9(1). It will also provide accommodation for the ageing population in accordance with policies DM7 (Elderly and Specialist Housing) and policy CS9(6) of the Core Strategy. The proposal is loated in a sustainable location and provides on-site amenity space to meet the needs of future more elderly occupiers.

7.3 Policy AL1 of the adopted Allocations Plan advises that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF (improves the economic, social and environmental conditions in the area). Planning applications that accord with the policies in the adopted local plan will be approved, unless materials considerations indicate otherwise. The location of the proposed development is in a sustainable area with access to amenities in the form of public transport, health provision and retail opportunities and so in principle is considered to be a suitable location for retirement accommodation.

7.4 However, there are currently five businesses in operation on the site including; a builder's merchant and trade counter, an MOT garage, a tyre repair centre, a car sales business and forecourt and a motorbike repair centre. Four of these businesses are considered to fall within Class B of the use class order 1995 (as amended). The car sales business is sui generis. This is a material consideration for the planning application. Policy DM3 of the local plan seeks to protect existing employment sites within the Borough and advises that the change of use or development of land or premises currently or last used for B use class employment purposes to non-B use class employment will only be permitted where it has been demonstrated that the land premises are not fit for purpose. Evidence for this must include a detailed and exhaustive marketing campaign, covering at least 12 months. No marketing evidence has been carried out and the businesses on the site are still in operation. The impacts of this are discussed in further detail in the next section.

7.5 Policy CS9(2) of the Core Strategy requires the provision of affordable housing and at 30% this would equate to 13no. units. The applicant has submitted information to suggest on site provision is not appropriate on viability grounds. They have carried out a financial viability assessment (FVA) and based on the outcome of this, have proposed a sum of money in lieu of the provision of affordable housing. With respect to this aspect the Housing Development Officer has raised queries with the FVA and advises that the current offer of £32736 is significantly less than the mount generated by the formula provided in the adopted Developer Contributions SPD - £985,929. The Housing Manager has advised that a independent third party review is required. However, agreement to proceed with this review has not been forthcoming from the applicant. The proposal is therefore contrary to Policy CS9 in the absence of the provision of on site affordable housing or a contribution secured in lieu of the provision.

(ii) Loss of Class B uses

7.6 If approved, the development would result in the closure of five businesses currently in operation on the site. This would potentially result in the loss of over 15no. full time jobs. As no evidence has been provided with the application to show that the site has been marketed for a 12 month period, with no other Class B use business uses coming forward, the proposal is contrary to Policy DM3 of the local plan. Although one of the business on the site is not Class B use, the other four are considered to fall within the Class B use categories. Policy DM3 advises that it is important for the borough to protect existing employment sites that are fit for purpose. Economic development must provide jobs, generate wealth or produce an economic output. Whilst the proposed development would create some level of employment and a degree of economic output (2no jobs within the residential development and then some within the retail unit), it is unlikely that this would equate to 15no. full time jobs.

7.7 The Council's Economic Development Officer has advised that this is a substantial piece of employment land, located in a sustainable area, in an area with very little stock. Out of the five businesses on the site, three are in the motor trade. There are no existing sites in the Havant Borough area that will be able to accommodate these businesses due to the lack of availability and nature of their activity. The new developments will not take any motor trade businesses as stated by the agents handling the marketing for them. There is concern that local retailers and suppliers would also be severely impacted from the loss of trade. It would also significantly affect local residents and trades people who use these services. Although there is an outdated stigma attached to the motor trade they do provide a vital local service, as shown by the customer base to these businesses in particular. This is particularly important in the context of the residential developments in Waterlooville which will increase the housing stock by nearly three thousand with the attendant vehicles and the need for these services. The loss to the local community of these businesses will be significant.

7.8 The proposal is considered to directly conflict with policies CS2 and DM3 for the protection of existing employment, particularly important is in the nature of the employment on this site and the lack of suitable alternatives.

(iii) Impact on the character of the area

7.9 Other than the old vicarage, the buildings on the site do not contribute in architectural terms to the visual amenity, or character of the streetscene (London Road and Stakes Hill Road) or the adjacent conservation area. The loss of the old vicarage building is regrettable however, the application has been assessed by the Council's Conservation Officer (CO) who has advised that the building is not worthy of statutory listing and therefore immunity from demotion. The CO advises that the loss of building must be measured against the potential benefits of the overall scene.

7.10 The depth of the blocks necessitates a false roof with intervening area of flat roof. This is not ideal, but the proposed scale and massing is otherwise satisfactory, well considered and supported by good quality elevations and perspectives. When read in elevation, the amount of roof viewed is generally suitably convincing. As a piece of townscape it knits in well with the largely domestic scale of the adjoining development. The form, scale rhythm and articulation of the elevations works well in breaking down the mass of the building. Overall the development results in a positive street frontage and therefore accords with Policy CS16 of the local plan.

7.11 The inclusion of shop units which continues the present small shopping commercial frontage, are in keeping with the mixed use of the area and depending on the future occupation of the units, will contribute to the vibrancy of this local commercial centre. This accords to some extent with Policy AL3 of the Allocations Plan.

7.12 Whilst the site is not within the boundary of the St Johns Conservation Area, it sits adjacent to it and the London Road frontage is opposite St Johns Church which is a grade II listed building and the adjoining church yard. St Johns Church and its associated buildings and boundary treatments, are characterised by attractive flint work and include a low flint wall which extends along London Road. There are other buildings of historic character along each side of the road which reflects the historical character of the immediate locality. Given its proximity to the conservation area, the proposed development has been designed with this as a major consideration and makes use of a traditonal building form and high quality materials and detailing. It is considered that overall the development would enhance the setting of the conservation area and overall streescene by providing a high quality design. The proposal therefore accords with Policy CS11 of the local plan.

(iv) Impact upon residential amenity

7.13 Concern has been raised by the owners of the Purbrook Centre with regards to the potential impact of the centre on future occupiers of apartments in the wing which face onto the Centre. The Purbrook Centre has a late night licensed garden area on the eastern elevation for private functions and they are concerned that complaints of noise and disturbance may arise.

7.14 The eastern elevation does contain several windows. However, these serve either a corridor with the entrance to the apartments being set off this corridor, or bathroom windows. There are no close by windows on the south elevation. Overall it is considered that as there are no windows servicing primary rooms in the south or east elevation which would directly overlook the garden area of the Purbrook Centre, then it would be difficult to justify a reason for refusal on these grounds. Furthermore, any potential future residents should be aware of the location of the Purbrook centre and make an informed decision on whether to commit to the unit.

7.15 All other nearby residential development is considered to be far enough in distance so as not be adversely affected by the proposed development either visually or in terms of activity generated by the site.

(v) Highway and Parking considerations

7.16 The sheltered apartment scheme is provided with 35no. car parking spaces which equates to a parking space ratio of 0.83 per flat. This is greater than the one space per 4 units (0.25 per unit) which was the historic standard previously used for similar forms of developments within Havant that have a minimum age condition. This standard is not however referred to in the adopted parking standards as expressed in the Residential Parking SPD. Under those standards the provision falls just short of the general parking standard of 0.9 spaces for 1 bed flats and 1.3 spaces for 2 bed flats when spaces are unallocated; in respect of parking for sheltered housing in particular the standard varies between 1 space per unit (general) down to a maximum of 0.5 spaces per unit in Havant town centre. Concern has been raised with regard to the lack of parking provision and concern that the parking will occur on adjoining streets and exacerbate parking issues. However, the applicant advises that similar schemes have been accepted with lower parking provision and that given the

alternative public transport links immediately adjacent to the site, it would be unreasonable to refuse the application on these grounds. The Council's Highways Engineer (HE) has advised that the parking standard seem reasonable for such a development (with a minimum age condition).

7.17 The site is currently accessible from Stakes Hill Road and London Road to both vehicles and pedestrians. The proposal would close off the Stakes Hill Road vehicle access and create a larger access point from London Road, serving all the vehicular traffic to and from the site. A pair of electronic gates would be installed at the entrance/exit point to the site. Concern has been raised that the intensification of this access onto London Road will result in traffic congestion, resulting in a risk to highway safety. London Road forms part of the old A3 and is a major route from Waterlooville to Portsmouth and the M27, traffic is heavy along this section of the road. This congestion would be magnified by the use of the gates which would result in a delay in traffic being able to enter the site. Due to the positioning of a bus stop close to the existing access, the visibility splay is not the most clear.

7.18 Concern has been expressed by the HE that although the existing access and the proposed access to London Road appear to be in the same position, the transport statement paragraph 4.12 states, " For the retail units either side of the access deliveries are proposed to take place using the existing loading bay to the south of the site. Whilst the existing loading bay will be shortened to accommodate the access it will still be sufficient (approx. 15m) to service the two small units." If this modification to the highway is needed then the approval of the Highway Authority will be required and the construction will need to be carried out by means of a Section 278 Agreement. It is not clear from the submitted information whether this approval has been sought. Any loss of part of the existing service layby could be controversial to the existing shops. As the information required by the HE has not been provided, they have advised that the application should be include a reason for refusal on the grounds of insufficient information to prove there would not be a highway safety risk and amenity issue to users of the highway.

7.19 Use of the existing layby would also require an amendment to the existing TRO. A sum of no less than £3000 should be set aside to allow the amendment to the TRO be processed at the required time. The Traffic Management Team will monitor the use of the loading bay, as it may be that the length or time limits to the bay may need amending further to suit the needs of the businesses/residents and visitors to the area.

7.20 The 4no. car parking spaces taking access onto Stakes Hill Road will also require an amendment to the existing TRO, also at the cost of no less than £3000 to the developer. The HE has advised that these spaces should be allocated to the adjacent four units. The access to the mobility store seems rather difficult and there should be some long term cycle storage. Short stay parking is required for visitors and staff and these could be provided in the public area at the end of Stakes Road cul-de- sac.

7.21 It is not clear from the information submitted whether visitors and tradesmen would be free to use any remaining spaces that are not allocated to a specific resident, or if any consideration been given to clearly marking visitor parking bays within the site? Whilst on-street parking is available along London Road, these are predominantly used for visitors to the local shops to ensure the economic viability of these shops.

(vi) Developer contirbutions and legal agreement

7.22 The application would be liable for the Community Infrastructure Levy, as well as requiring payments towards the SRMP and the provision of affordable housing or a contribution in lieu and be required to enter into a s106 agreement to secure the these contributions (not CIL). However, the s106 has not been entered into following early concerns over the application and the subsequent recommendation to refuse.

(vii) Ecology

7.23 With regard to the impact on the Solent Special Protection Area, this development would increase the number of dwellings within the 5.6km zone identified as significant in potentially increasing recreational pressure on the Solent SPA. Natural England's advice with regard to all new housing development within this zone is that it is likely to have a significant effect on the SPA. The measures of mitigation adopted by the LPA at the end of June 2014 requires a payment of £174 per dwelling to the Solent Recreation Mitigation Partnership (SRMP) – this is to secure accordance with Policy DM24 of the Allocations Plan 2014. As discussed above, this payment has not been secured prior to the determination of the application and therefore the proposal is contrary to Policy DM24 and Policy CS21 (Developer Contributions) of the local plan.

7.24 A Bat Survey has been submitted as part of the application. The County Ecologist advises that the survey records a small roost of pipistrelle bats within the existing office building on the NW corner of the site (the old vicarage). As such, the development would affect bats which are a protected species under EU law. If unmitigated, the development has potential to result in harm to individual bats and result in impacts to the favourable conservation status of bats species locally. In order for an EPS license to be granted, a development proposal must be able to meet three tests:

- the consented operation must be for 'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment; (Regulation 53(2)(e))
- there must be 'no satisfactory alternative (Regulation 53(9)(a)); and
- the action authorised 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range' (Regulation 53(9)(b)).

The County Ecologist is content that the proposed bat mitigation measures are appropriate and should ensure impact is minimised, therefore the third test set above is met. It can be argued that the proposed development would provide specialist housing for elderly people thus preserving public health to some extent. With regards to the second test, it could be considered that this is the most suitable location for the development given its size and sustainable location for the purpose of the elderly residents. The mitigation measures can be secured by planning condition.

(viii) Other matters

7.25 Given the former industrial use of the site, several reports investigating potential contamination have been submitted for consideration. These have been examined by the Council's Environmental Health Officer and overall they have not raised an

objection subject to further data gathering, conditions and drainage proposals.

7.26 In terms of drainage, Hampshire County Council Lead Local Flood Authority has been consulted. They have advised that further information is required which is detailed in their consulted response in Section 5 of this report. The agent queried whether the required infiltration tests could be carried out via a planning condition. The HCC Flood Authority have advised that this information is necessary to make a full assessment however, they would not object to a planning condition. A response to the other queries raised has not been submitted at the time of the determination of the application.

8 Conclusion

8.1 The location of the proposed development is in a sustainable area with access to amenities in the form of public transport, health provision and retail opportunities and so in principle is considered to be a suitable location for retirement accommodation. It would provide two new retail units, contributing to the vitality of the local centre. It would also replace unsightly forms of building development and infill a gap in the streestcene with a high quality, attractive building form. This would enhance and improve the setting of the adjacent conservation area. Furthermore, the proposal would result in providing well needed housing including the provision of elderly housing. As such on many levels, the proposal accords with local planning policies.

8.2 However, the proposal is directly contrary to Policy DM3 of the local plan by proposing the loss of Class B use businesses with no evidence to suggest that these are unviable. It is also contrary to Policy CS9 by failing to provide either affordable housing units on site or by agreeing to a third party review of the FVA and proposed contribution submitted with the application. It is also contrary to Policy DM24 by failing to secure the provision of a financial contribution towards the SRMP. Overall therefore the application is recommended for refusal on these grounds.

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9 RECOMMENDATION:

That the Executive Head of Planning and Built Environment be authorised to **REFUSE PERMISSION** for application APP/15/00896 for the following reasons:

1 The proposed development would lead to the loss of existing employment uses on the site including Class B uses. These uses make a valuable contribution to the local economy providing employment and services to the community. In the Local Planning Authorities opinion it has not been satisfactorily demonstrated that the site is not fit for purpose or financially unviable for B use class employment, or other types of economic development, in particular it is not satisfied that a suitable comprehensive marketing exercise has been carried out. Therefore the proposal is contrary to policies CS2 and DM3 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

2 In the absence of binding arrangements for the provision of on site affordable housing or alternatively an acceptable contribution in lieu of on site provision the proposal fails to make adequate provision for affordable housing in the

interests of creating mixed communities and responding to housing need. Furthermore the financial contribution offered does not meet the assessed contribution requirement and in the absence of independent third party review and viability testing is considered unacceptable. As such the proposed development is contrary to Policy CS9 of the Havant Borough Local Plan (Core Strategy) 2011, the adopted Havant Borough Council Housing SPD July 2011 and the National Planning Policy Framework 2012.

3 The proposal, without completion of the appropriate binding arrangements to secure a contribution towards the Solent Recreation Mitigation Project, is contrary to the Council's Policy on contributions towards measures of mitigation adopted by the Local Planning Authority. These seek to ensure that the provision is made from new development towards mitigating against increasing recreational pressure on the Solent SPA. The development is therefore contrary to policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011 and Policy DM24 of the Havant Borough Local Plan (Allocations) 2014 and the National Planning Policy Framework 2012.

4 On the basis of the information provided and in the absence of binding arrangements necessary to secure the alterations to the surrounding highway network as anticipated in the submitted Transport Assessment and shown on the proposed plans, it has not been adequately demonstrated that the access and highway works associated with the London Road access and the parking spaces on Stakes Road would not result in harm to the amenity and safety of users of the highway. The proposal is therefore contrary to the policies CS16, CS20 and DM11 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

APPENDIX Z

DEVELOPMENT PLAN REVIEW TABLE

CORE STRATEGY (2011)		
CS1 Health and Wellbeing		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
Planning permission will be granted for various developments which broadly supports the health and wellbeing of the community, for example the provision of children's play space, cycle facilities, and protection of available community facilities. (Author's summary)	Achieved	The proposal will meet a specific housing need. The health benefits for residents and on the public purse are well established and explained in **Section 7 and Appendices D and E of the submitted Planning Statement.**
CS2 Employment		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
The policy identifies that it will seek to flexibly provide 163,000 m² of new employment for space between 2006-2026. In order to achieve this that planning permission will be granted for development that prioritise the use of previously developed land; the town centre locations; safeguard existing employment sites and allocations that are fit for purpose from non unemployment uses. (Author's summary)	Addressed	The policy is addressed as part of the appellant's case in respect of Refusal Reason 1. The policy needs to be considered with due regard to all material considerations as required under Sec 38 (6) of the Act.
Policy CS3— Skills and Employability		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
Planning permission will be granted for development proposals that raise skill	Achieved	McCarthy & Stone utilise local subcontractors for various aspects of the construction phase, typically this can be

levels and increase employability. (Author's summary)		up to 30 firms depending on the nature of the construction and design requirements. In addition the proposed scheme has a retained house manager on a full time basis which will be recruited from the local area.

Policy CS4 – Town, District and Local Centres

POLICY	RESPONSE	EVIDENTIAL JUSTIFICATION
Planning permission will be granted for appropriate town centre development proposals that (i) promote and enhance identified centres, including local centres, of which Purbrook is identified as a local centre. (ii) retain and enhance local markets. (iii) support small and independent businesses. (iv) encourage high quality, mixed-use development in designated centres that retain active ground floor frontages. (Author's summary)	Achieved	The proposal is a high quality mixed use development that has regard to its context and has looked to support the existing centre of Purbrook. The proposal includes two commercial units increasing the active frontage to London Road and enhancing the local centre of Purbrook. Arguably the greatest support for the local centre will be from the residents themselves who will rely on and support the local independent businesses along London Road. More is provided on the benefits of retirement housing schemes to the local economy in **Section 7.0 of the submitted Planning statement of the on Material Planning Benefits.**

Policy CS6—Regeneration of the Borough

POLICY	RESPONSE	EVIDENTIAL JUSTIFICATION
Planning permission will be granted for development which positively contributes by type of use and design and by its comprehensive approach to the social, economic and/or physical	Achieved	The proposed development proposes the comprehensive redevelopment of an available brownfield site in the centre of Purbrook. The proposal as a mixed use development including a priority local

regeneration of the whole Borough. (Author's summary)		housing need provides social and economic benefits to Purbrook.
		The proposal as a mixed use development including a priority local housing need provides social and economic benefits to Purbrook. The design positively responds to the townscape context of Purbrook, in particular the character of the neighbouring Conservation Area. The application looks to redevelop a site which currently does not positively contribute to the character of the area or the Conservation Area. The proposed scheme provides a comprehensive redevelopment of the site and through its design and use complies fully with the objectives of Policy CS6 and the NPPF's objectives for sustainable development.

Policy CS7— Community Support and Inclusion		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
Planning permission will be granted for development that; (i) Has been informed and shaped by community and local stakeholder involvement; (iii) Provides services for older people. (Author's summary)	Achieved	McCarthy & Stone have carried out a co-ordinated engagement with the local community and stakeholders leading up to the application, and has developed the scheme with community comments and will continue to do so through out the planning application process where relevant to do so. The proposed scheme complies with Policy CS7 in respect to the provision of services for older people specifically through its proposal for specialised accommodation to meet an identified

		local housing need (and CS9 and DM7). The supporting text to the policy identifies that housing constitutes a service to an older person.
Policy CS8 –Community Safety		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
The policy identifies that planning permission will be granted for development proposals that ingrain community safety into development process from the beginning, provides opportunities for natural surveillance and maximise the amount of defensible space controlled or perceived to be controlled by a resident. (Author's summary)	Achieved	The proposal has been designed with the principles of Secured by Design in mind to ensure the safety and security of residents.
Policy CS9 – Housing		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
Planning permission will be granted for housing proposals that will: (i) Contribute to achieving a net total of 6,300 new dwellings between 2006 and 2026. (ii) Deliver on average 30-40% affordable housing on sites of 15 dwellings or more and secure a suitable contribution, or on site provision, equivalent to on average 30-40% on smaller housing developments between 5 and 14 dwellings, unless a lesser requirement has been transparently justified on viability grounds	Achieved	The proposal will provide 42 dwellings towards the Council's overall housing target of 6300 dwellings during the plan period. The scheme complies with Policy CS9 in the provision of accommodation for the ageing population in a sustainable location within the local centre of Purbrook. In respect to affordable housing provision the application is supported by a financial viability assessment demonstrating the level of affordable housing provision that the scheme could viably delivered. In that regard the proposal complies with Policy CS9 in

(vi) Provide accommodation for the ageing population in sustainable locations, taking account of the need to provide for a variety of care needs and flexibility to accommodate differing requirements of ageing care. (Author's summary)		terms of overall housing provision, delivery of specialised units of older persons accommodation and contribution towards affordable housing.
Policy CS11— Protecting and Enhancing the Special Environment and Heritage of Havant Borough		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
Planning permission will be granted for development that protects and where appropriate enhances the borough's statutory and non statutory heritage designations by appropriately managing development in or adjacent to conservation areas. (Author's summary)	Achieved	The application does not contained any statutorily listed buildings or non statutorily locally listed buildings, it is however adjacent to the Purbrook Conservation Area. It is considered that the current site in its current use and appearance has a negative impact on the setting of the Conservation Area. Unquestionably, the proposed development having had regard to the character of Purbrook in its design would maintain and would enhance the setting of the designated conservation area and the nearby Listed Buildings.
Policy CS14 – Efficient Use of Resources		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
Planning permission will be granted for development that meets Level 3 for Code for Sustainable Homes. (Author's summary)	Achieved	Whilst the policy predates the recent Government announcement that Code for Sustainable Homes is to be subsumed within buildings regulations which in its energy requirements is equivalent to Level 4 of the Code for Sustainable Homes.
CS15 Flood and Coastal Erosion Risk		

POLICY	RESPONSE	EVIDENTIAL JUSTIFICATION
The policy seeks to ensure that new development proposals do not increase the risk of flooding and all development proposals will be required to ensure that there is no net increase in surface water run-off. Drainage should be by way of sustainable drainage systems unless such are inappropriate. (Author's summary)	Addressed	The scheme is supported by a drainage strategy which indicates that the development in comparison to the existing situation would improve the drainage of the site. This is a matter which ca be more fully dealt with ci a planning condition.
Policy CS16 — High Quality Design		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
Planning permission will be granted for development that is designed to a high standard, which creates places where people want to live, work and relax. All development should demonstrate that its design responds to , draws inspiration from and respects local context and; (i) identifies and responds positively to existing features of natural, historic or local character within or close to the proposed development; (ii) uses the characteristics of the locality to help inform the design of new development including heights, massing, existing building lines, plot widths and depths, materials and proportions of windows and doors; (iii) The development does not cause unacceptable harm to the amenity of neighbours through smell, loss of privacy, outlook, noise and overlooking.	Achieved	The proposed design has had due regard to its context and has taken inspiration in its form, materials and detailing to the historic character of this part of Purbrook which includes the Conservation Area and nearby Listed Buildings. The **Design and Access Statement** and the **Heritage Statement** provide further explanation. This is now augment by the Supporting Statement by David Beardmore. The proposal provides sufficient distances to neighbouring residential properties along London Road and Parkside Close, and as such there are no issues of overlooking or loss of privacy. The proposal is for a mixed use development in a local centre which is considered a sustainable location for such a proposal.

Maximises opportunities for mixed use developments, particularly in town and district centres. (Author's summary)		

Policy CS17 – Concentration and Distribution of Development within the Urban Area

POLICY	RESPONSE	EVIDENTIAL JUSTIFICATION
Development will be permitted that makes the most effective use of land in the Borough by granting planning permission that; (i) Concentrates land within the 5 urban areas; (ii) Prioritises development on previously developed land. (Author's summary)	Achieved	The redevelopment of the application site complies fully with Policy CS17 being a previously developed site within an existing urban area. The proposed scheme looks to make the most effective use of a brownfield site commensurate with its environmental context for specialised accommodation for older persons.

Policy CS20 — Transport and Access Strategy

POLICY	RESPONSE	EVIDENTIAL JUSTIFICATION
Development will be permitted that is consistent with and contributes to the implementation of the 'reduce, manage, and invest' strategy and does not increase congestion and promotes better use of existing transport networks. (Author's summary)	Achieved	The proposed development will reduce the level of congestion using the London Road through a nature of development that has a low trip generation that would below the existing users on site. In addition residents of retirement living schemes have a greater degree of flexibility over the time they make journeys. Those still utilising cars are not having to make the peak time rush hour journey that much of the local community have to make. In addition this demographic are high users of public transport and the position of the bus stop outside of the site is likely to lead to less car use.

Policy CS21 – Developer Requirements		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
Development will be permitted if on site and/or off site infrastructure requirements are met. Where new or improved infrastructure is essential for planning permission to be granted the council will require the on-site or off site provision and/or contributions through planning obligations, agreements or tariffs in accordance with the relevant legislation for off-site provision. (Author's summary)	Achieved	The Core Strategy Policy is out of date with the CIL regulations removing the collection of tariff style contributions from April 2015. In any event the Council's adoption of the Community Infrastructure Levy supersedes this policy. The CIL payment for this proposed development is approximately £222,637.00

Policy DM3—Protection of Existing Employment and Tourism Sites		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
The change of use or development of land or premises currently or last used for B use class employment purposes to non-B use class employment will only be permitted where it has been demonstrated that the land or premises are not fit for purpose and financially unviable for B use class purposes. (Author's summary)	Addressed	There are a mix of uses on site not all of which are covered by the policy. This issue is covered in more substantive detail in response to Refusal reason 1.

Policy DM7 — Elderly and Specialist Housing Provision		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
Within the defined urban areas development specific to the requirements of the elderly, people with disabilities or other forms of specialised supported housing provision	Achieved	The site is located in an ideal position for specialised accommodation for older people having a range of services and facilities on the doorstep, and fronting a public transport corridor.

will only be permitted provided that the following relevant criteria are met: 1) appropriate levels of amenity space and outlook, 2) Setting for the building is provided which is in keeping with the surrounding area, 3) Would not result in a concentration of such uses in one of the five areas of the borough. (Author's summary)		The scheme has been designed to ensure a good quality amenity space to meet the needs of residents. Further commentary on amenity space provision is provided in Section 6.0 of the Planning Statement. The building as identified in the design and access statement has been specifically designed with the context and character of Purbrook in mind, and would positively contribute to the streetscene. As identified in earlier sections there is a pressing need both nationally and locally for further accommodation for older persons, and this site provides a rare opportunity in a suitable location for this form of accommodation.
DM11 Planning for More Sustainable Travel.		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
The policy identifies that opportunity will take opportunities for the integration of sustainable travel modes and the availability of non-motorised modes. The policy includes seeking safe and secure parking and turning facilities and reducing informal opportunities for parking in the area surrounding the development. (Author's summary)	Achieved/Addressed	The proposal addresses this matter the submitted Transport Statement. Discussions will however be held with the LPA and the Highway Authority to clarify any areas of misunderstanding in the hope of reaching agreement in respect of Refusal Reason 4.
Policy DM13 – Car and Cycle Parking on Residential Development		

POLICY	RESPONSE	EVIDENTIAL JUSTIFICATION
Residential development will only be permitted where it provides car parking and cycle storage in accordance with the standards set out in the residential car parking and cycle provision supplementary planning document. (Author's summary)	Achieved	The Council have an adopted SPD (2010) on parking provision with residential development which requires 1 space per unit for older person's accommodation. This level of parking is considered to be excessive in the applicant's extensive experience of older person's accommodation and given alternative public transport links immediately adjacent the site. Further information on parking provision is provided within the **Transport Statement** that accompanies the application. The LPA have accepted the proposed level of parking.

HAVANT BOROUGH LOCAL PLAN (ALLOCATIONS) JULY 2014

Policy AL1 Presumption in Favour of Sustainable Development.

POLICY	RESPONSE	EVIDENTIAL JUSTIFICATION
This is a model policy provided by the planning Inspectorate for inclusion in all plans to insure that they positively reflect the NPPF presumption in favour of sustainable development. The model policy was added to by the LPA to provide further clarity and states: **Where there are no policies relevant to the application all relevant policies are out of date at the time of making the decision, then the council will grant permission unless material considerations indicate otherwise, taking into account whether:**	Address/Achieved	The proposed development, as demonstrated in response to the stated refusal reasons is considered to accord with the aims and objectives of the NPPF and having regard to the Development Plan and relevant material considerations.

1. **Any adverse impact of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or** 2. **Specific policies in the NPPF indicate that the development should be restricted** *Paragraph explanatory paragraph 2.03 states that "the council will seek to balance the three core elements of sustainable development – environmental, social and economic issues – in all its planning decisions"* (Author's summary)		

Policy AL3 Town, District and Local Centres.		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
The policy states that: Planning permission will be granted for the development proposals that: 1. **Provide main town centre uses in the town, district local centres is defined on the policies map, and so contribute to their vitality and viability.** 2. **Promote and enhance the prime shopping areas of the town and district centres.** 3. **Retain at least 25% of the units in an unbroken run of primary frontage as defined on the Policies Map and in retail (A1)use.**	Addressed/Achieved	The proposed development includes 2 commercial units and as such the proposal would adders the aims of the policy. The policy is also of relevance having regard to refusal reason 1 regarding the loss of employment and the purported conflict with Core Strategy Policies CS2 and DM3 of the Core Strategy. Further clarification is provided in the case set out in response to Refusal Reason 1.

4. **Retain at least 25% of the units in an unbroken run of secondary frontages as defined on the Policies Map in retail (A1) use.** 5. **Generate pedestrian activity within the primary shopping area by being open during the day to visiting members of the public.** 6. **Provide a shopfront within the primary shopping area with a well designed and appropriate display window.** **Exceptions the parts (3) and (4) may be made to allow a change of use to no retail if more than 25% of the units in the unbroken run frontages.** Paragraph 2.12 gives examples of main town centre uses as shops, restaurants, hotels, offices, arts and community facilities. (Author's summary)		

Policy DM17 Contaminated Land and Policy DM 18 Protecting New Developments from Pollution		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
The policies identify that permission will be granted where appropriate investigations of potential risks or undertaking and such risks are mitigated. (Author's summary)	Addressed	The application was accompanied by a Site Investigation Report. It identifies that there are no reasons why development should not take place. The site will be fully remediated.

Policy DM 20 Historic Assets		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
The Policy states that **"Planning permission will be granted for development that conserves and enhances the historic assets of Havant".** (Author's summary)	Achieved	As set out in the Heritage Statement, the proposal would have a beneficial impact on the setting of the nearby Listed Buildings and of the Conservation Area. The issues ae also addressed in Mr Beardmore's Statement.
Policy DM24 Recreational Disturbance to Special Protected Areas from Residential Development		
POLICY	**RESPONSE**	**EVIDENTIAL JUSTIFICATION**
The policy identifies that the new developments will be required to mitigate their impact on the SPA and that such mitigation can included a financial contribution towards a mitigation strategy. (Author's summary)	Addressed	The appellant will submit a Unilateral Statement for a payment of £7,673.40 towards the Solent Recreation Mitigation Project.

APPENDIX 3

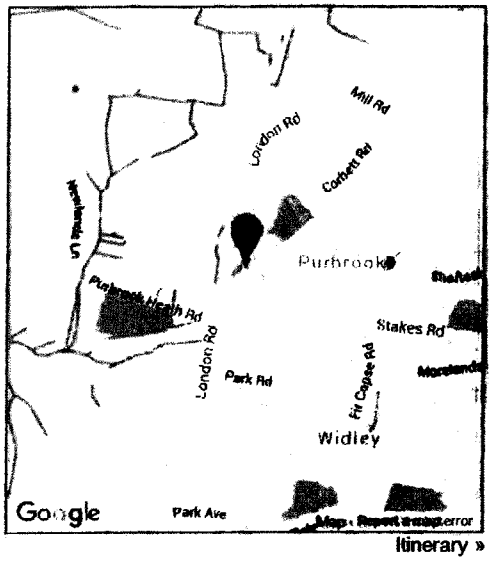
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BUSINESS DIRECTORY
SOUTH EAST

Purbrook Builders Merchants Ltd.

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Website: Information not available
Division: **Builders Merchants**



Itinerary »

Update information

Company Description:

Information not available.


At what age can you retire?
If you have a £250,000 portfolio, download the "15-Minute Retirement Plan" written by *Forbes* columnist and money manager Ken Fisher's firm. Don't miss it!
Click Here to Download Your Guide!
FISHER INVESTMENTS UK™

Hover to expand

Get directions

From:

To: 38-44 London Road, Waterlooville, Waterlooville

Get Directions

More information about **Purbrook Builders Merchants Ltd.**
Listed under the category: Builders Merchants. Located in **Waterlooville, South East** United Kingdom. Contact a representative of **Purbrook Builders Merchants Ltd.** at **02392258344.**

(023) 9225 8344

Opening Hours

Monday - Friday **08:00hs. - 19:00hs.**

Reviews, comments and ratings

There isn't any review for this company. Be the first to leave us your review!.

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Virgin Computers Ltd. , **Address: 14 London Road, Waterlooville**
Purbrook Garage Services , **Address: 40a London Road, Waterlooville**
Bee Jays Hair Fashion , **Address: 34 London Road, Waterlooville**
The Woodman Public House , **Address: 18 London Road, Waterlooville**
Tuckers Pharmacy , **Address: 4 London Road, Waterlooville**

3-2

Sig Roofing Supplies Roofing Waterlooville

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Name:
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Be the first to write a review.

Keywords Sig Roofing Supplies

Sig Roofing Supplies

APPENDIX 4

Form 8.

HAMPSHIRE

BOROUGH OF HAVANT

TOWN AND COUNTRY PLANNING ACT, 1971

DOX: 90

To:— Mr. Graham Williams,
c/o Mr. B. Cupping,
56 Alameda Way,
PURBROOK,
Hants.

Reference No.: 15383/12

HAVANT BOROUGH COUNCIL
ADMINISTRATIVE & LEGAL DEPARTMENT
28 JUN 1983
FP/SP/TP

In pursuance of their powers under the above-mentioned Act the Council, as the local planning authority, hereby PERMIT

storage building (as amended by plans received 20th June, 1983). Purbrook Builders Merchants, 38-44 London Road, Purbrook.

in accordance with your application received on **28th April, 1983,** and the plans and particulars submitted in connection therewith and subject also to due compliance with the conditions specified hereunder:—

1. The development hereby permitted must be begun within a period of five years beginning with the date on which this permission is granted.

2. **Details of all external facing and roofing materials shall be submitted to, and approved by, the Local Planning Authority before development commences.**

3. **The premises shall be used only for storage in connection with builders merchants only and for no other purpose whatsoever (including any other purpose in Class X of the schedule to the Town and Country Planning (Use Classes) Order 1972).**

4. **The development hereby permitted shall not be brought into use until areas for the parking, loading and unloading of vehicles in accordance with a scheme to be agreed by the Local Planning Authority shall have been provided and the areas shall be surfaced and subsequently retained and kept available at all times for these purposes to the satisfaction of the Local Planning Authority.**

5. **Notwithstanding the provisions of any Town and Country Planning General Development Order no access other than that shown on the approved plan shall be formed to the site.**

...continued

The reasons for the conditions above are:—

1. To comply with Section 41 of the Town and Country Planning Act, 1971.
2. **To ensure that the external appearance of the buildings is satisfactory.**
3. **In order to provide well planned development.**
4 & 5. **In the interests of highway safety.**
6. **To ensure that the development is completed satisfactorily in all respects.**

N.B.—See notes overleaf.

Civic Offices,
Civic Centre Road,
Havant, PO9 2AX.
Telephone: Havant (0705) 474174.

DEPUTY Director of Technical Services.

Date 24 JUN 1983

All enquiries relating to this permission should be made of the Planning Officer, Civic Offices, Civic Centre Road, Havant, PO9 2AX. Tel.: Havant 474174.

O	C

5/78.

P.T.O.

4 of 2

NOTIFICATION

(1) If the applicant is aggrieved by the decision of the local planning authority to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 36 of the Town and Country Planning Act, 1971, within six months of receipt of this notice. Appeals must be made on a form which is obtainable from the Department of the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ. The Secretary of State has the power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the local planning authority was based on a direction given by him. (The statutory requirements are those set out in Section 36(7) of the Town and Country Planning Act, 1971, namely Sections 29(1), 30(1), 67 and 74 of the Act).

(2) In cases where a Government Department has expressed views on the proposals which are incorporated in the reasons for the imposition of conditions and the applicant wishes to lodge an appeal against such decision then a representative from that Government Department will attend any Planning Inquiry and be available to give evidence if the appellant asks for the presence of such a witness at the Inquiry. In such cases the appellant should notify the Council at the address given on the front of this form without delay. The representative would not be liable to cross-examination on questions of Ministerial policy but only on matters of fact and expert opinion.

(3) If permission to develop the land is granted subject to conditions whether by the local Planning Authority or by the Secretary of the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council of the district in which the land is situated a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act, 1971.

(4) In certain circumstances, a claim may be made against the local planning authority for compensation where permission is granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 169 of the Town and Country Planning Act, 1971.

(5) The applicant is recommended to retain this form with the title deeds of the property.

IMPORTANT

Any failure to adhere to the details of the plans hereby approved or to comply with any conditions detailed in this notice constitutes a contravention of the provisions of the Town and Country Planning Act, 1971, in respect of which enforcement action may be taken.

If it is desired to depart in any way from the approved proposals, you should consult the Council at the address overleaf before carrying out the development.

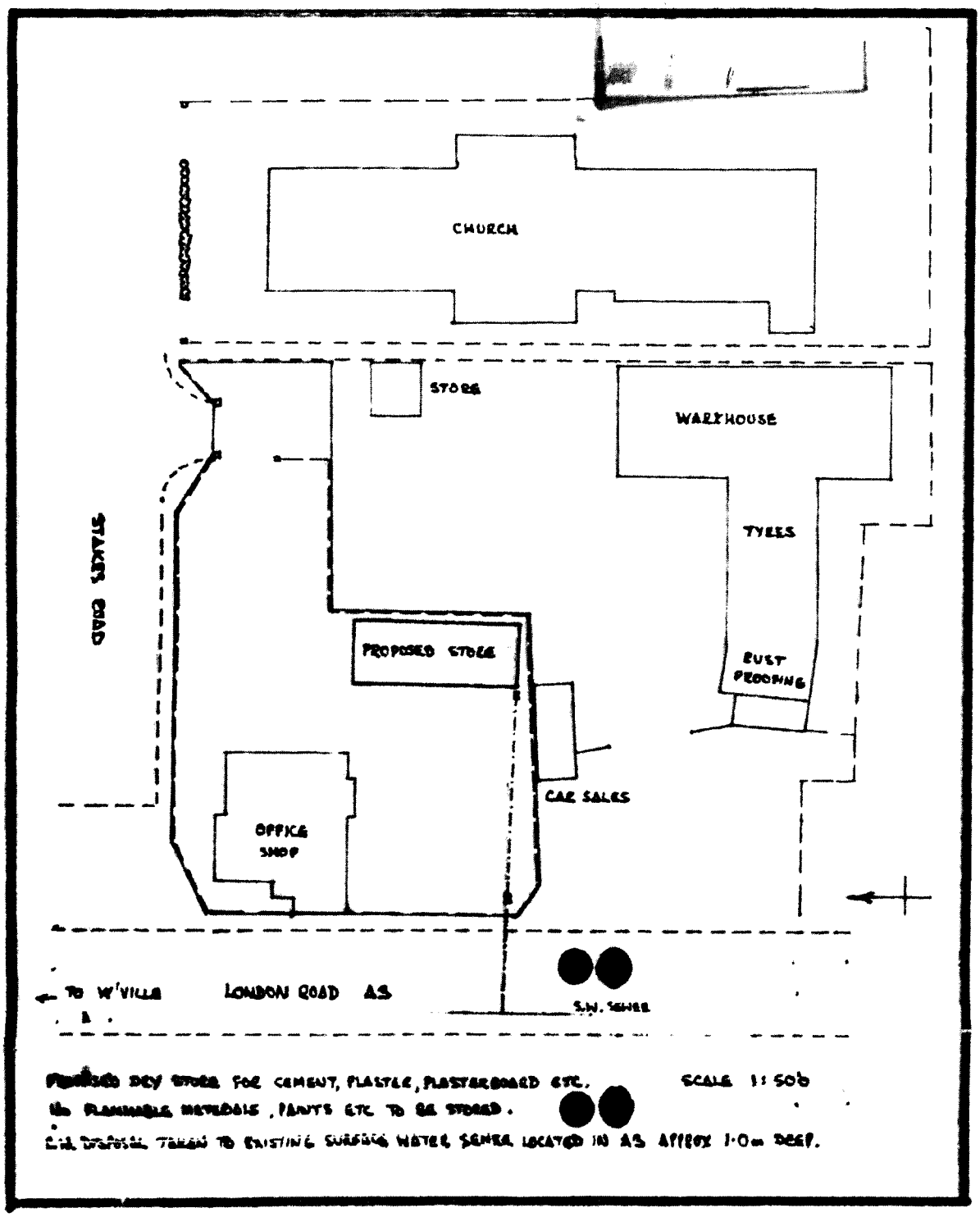
NOTES (1) This permission does not purport to convey any approval or consent which may be required under the Town and Country Planning Act, 1971, otherwise than under Section 29—34 and where by virtue of Section 55 the permission operates as a "listed building consent", or which may be required under any other Acts, including any Byelaws, Orders or Regulations made under such other Acts.

(2) Developers are reminded that the grant of planning permission does not entitle them to obstruct a right of way and that, if it is necessary to stop up or divert a right of way in order to enable the development to be carried out, they should apply without delay:—

(a) in the case of a footpath or bridleway, for an Authority under Section 210 of the Town and Country Planning Act, 1971;

(b) in any other case to the Secretary of State for the Environment for an Order under Section 209 of the Town and Country Planning Act, 1971;

(3) Attention is drawn to the provisions of Section 43 of the Hampshire County Council Act, 1972, relating to access for the Fire Brigade. A copy of the Section can be obtained at the local planning office


CHURCH
STORE
WAREHOUSE
TYRES
DUST PRESSING
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OFFICE SHOP
OAD STAKES
TO W'VILLE
LONDON ROAD A5
S.W. SEWER
SCALE 1:500

4-3

APPENDIX E

5-1

[redacted]

1. Return to Search Page >> | 2. Search Results >> | 3. Planning Application Detail

Details of Planning Application - 98/62890/000

Anyone can object to, support or comment on a planning application by following this link to the **Comment on Planning Proposals** page.

Application Details Documents

Application registered	Consultation period	Awaiting decision	Decided	Appeal	Appeal decided

Application Number:	98/62890/000
Application Type:	Change of Use
Date Received:	26/01/1998
Registration Date:	27/01/1998
Consultation Start Date:	27/01/1998
Earliest Decision Date:	26/02/1998
Target Date for Decision:	24/03/1998
Location:	Battmans Of Purbrook, 44 London Road, Purbrook, Waterlooville, Hampshire, PO7 5LJ
Ward:	Purbrook
Statutory Class:	All Other Minor Developments
Proposal:	Change of use from a Builders Merchants Office and front sales counter to a day nursery.
Plan Number:	No Plan Number
Case Officer:	Alison Potts
Case Officer Tel:	9244 6523
Status:	Decided
Agent:	Kanavan & Wingfield
	2 Portland Road
	Waterlooville
	Hants
	PO7 7TN
Applicant:	Mr I Clover
	44 The Ridgeway
	Downend
	Fareham
	Hants
	PO168RE
Press Date:	No date
Site Notice Date:	29/01/1998
Officer Site Visit Date:	No date
Committee Site Visit Date:	No date
Committee Meeting Date:	No date
Decision Level:	
Date Decision Made:	No date
Date Decision Despatched:	27/04/1998
Decision:	Refuse perm/consent / refuse lawfulness
Conditions or Reasons:	There are no conditions
Informative notes:	There are no informative notes
Appeal Received Date:	This case has no appeals against it
Appeal Conditions:	There are no Appeal Conditions

Return to Search Page Top of Page

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5 – 2

HAMPSHIRE

PLANNING APPLICATION

APPL. NO.: 98/62890

FEE:

REG. DATE:

FORM 1.

REFUSE

PLEASE READ THE ACCOMPANYING NOTES AND COMPLETE THE FORM BY TYPING OR BLOCK LETTERS

A1 APPLICANT. Name & Address

Mr I Clover, 44 The Ridgeway (State Mr. Mrs., Miss etc.)

Downend, Fareham, Hampshire

Post Code: PO16 8RE Tel. No.: 01329 - 221359

A2 AGENT. Name & Address

Kanavan and Wingfield

2, Portland Road, Waterlooville, Hampshire Post Code: PO7 7TN

Tel. No.: 01705 263687 Contact Name: Mr. Kanavan

A3 APPLICATION SITE. Address & Location

44, London Road, Purbrook, Hants

A4 PROPOSALS. Brief Description

Change of Use from a Builders Merchant's Offices and Front Sales Counter to a Day Nursery

B1 TYPE OF APPLICATION

Is this a full application for alteration/addition to an existing single dwelling? XYES / NO

If **YES** only answer questions coded ▲ If **NO** continue at B2

B2 Please tick appropriate box(es):—

A	Full Permission for New Works / Operations Change of Use	[X]	■
B	Outline Permission	[ ]	×
C	Approval of Reserved Matters	[ ]	+
D	Relief from Conditions of Previous Permission	[ ]	

PLEASE ANSWER OTHER QUESTIONS CODED AS SYMBOL

State number and date of previous permission and condition number. Please complete C1, C13 & D1.

E	Renewal of a Temporary Permission	[ ]

State number of Temporary permission and expiry date. Please complete C1, C13 & D1.

B3 Has the development already started? YES / NO

C1 INTEREST IN LAND. Please tick appropriate box ■ × ▲

Freehold Owner [ ] Lessee [ ] Prospective purchaser [ ]

Other (please specify): Prospective Lessee

Does the applicant own or control any adjoining land? XYES / NO

C2 SITE AREA ■ × +

(1 hectare = 2.471 acres)

The area of the application site is 0.07 hectares (2 decimal places)

(3/93)

5-3

C3 OUTLINE APPLICATION X Please tick to show which matters, if any, are to be considered.

External appearance ☐ Siting ☐ Design ☐
Means of access ☐ Landscaping ☐

C4 RESERVED MATTERS + Please tick one or more boxes to show which matters are included in this application.

Ref. No. of Outline Permission .....

External appearance ☐ Siting ☐ Design ☐
Means of access ☐ Landscaping ☐

C5 VEHICLE PARKING ■ X +

How many garages/parking spaces to be provided?

Lorries: ..... Cars: 11

C6 DEMOLITION ■ X

Is any building or part of a building to be demolished? YES / NO

C7 USE OF LAND / BUILDINGS ■

Please state existing use. If the property is vacant, state last known use and when it became vacant:

Builders Merchant's Offices and Front Sales Counter

C8 DWELLING UNITS ▲ ■ X +

Please state number:
Existing on site: None
Intended on completion: None

C9 DRAINAGE ■ X +

How is it proposed to dispose of:
Surface Water: As existing
Foul sewage: As existing

C10 ACCESS TO HIGHWAY ▲ ■ X

Is there to be a new access to a highway? Vehicles YES / NO Pedestrians YES / NO
Is an existing access to be altered? Vehicles YES / NO Pedestrians YES / NO

C11 TREES ▲ ■ X +

Is it proposed to fell any trees? YES/NO or remove hedgerows? YES/NO

C12 MATERIALS ▲ ■ +

Please state materials to be used for:—

External Walls: As existing Colour: .....

Roofing: As existing Colour: .....

C13 PLANS & DOCUMENTS ENCLOSED ▲ ■ X +

Plans / Drawings (including location plan) Five copies each of drawings numbered 1355/1 and 2A

Ownership Certificate: Certificate A: YES / NO Certificate B: YES / NO; Other: N/A
Part II form (Commercial development): YES/NO
Part III form (Agricultural development): YES/NO
Part IV form (Minerals extraction): YES/NO

D1 I APPLY FOR PERMISSION / APPROVAL IN ACCORDANCE WITH THE PARTICULARS ABOVE AND THE PLANS ENCLOSED

I enclose the fee of £190 cheque / cash / Postal Order

Note: Data Protection Act 1984: Information supplied will be computerised and used for planning purposes.

Signed: for Kenavan & Wingfield Applicant / Agent. Date 21st Jan. 1998

5-4

98/62890

Form 2

Town and Country Planning (General Development Procedure) Order

B.O.R. INITIALS

CERTIFICATE UNDER ARTICLE 7

This Certificate relates to proposed development at (a) 44 London Road, Purbrook

* COMPLETE BOTH SECTIONS 1 and 2 - delete as applicable.

I certify that:

SECTION 1

~~**Certificate A**~~

*1. On the day 21 days before the ~~date of the accompanying~~ application nobody, except the applicant, was the owner (b) of any part of the land to which the application relates.

OR

Certificate B

1. I have/The applicant has given the requisite notice to everyone else who, on the day 21 days before the date of the accompanying application*, was an owner (b) of any part of the land to which the application* relates, as listed below.

Owner's name (b)	Address at which notice was served	Date on which notice was served
C/o Mr D Battman	65 Stakes Road Purbrook	21/1/98

AND

SECTION 2

Agricultural Holdings Certificate

*2. None of the land to which the application relates is, or is part of, an agricultural holding.

OR

~~*2. I have/The applicant has* given the requisite notice to every person other than my/him/her* self who, on the day 21 days before the date of the application,~~ was a tenant of an agricultural holding on all or part of the land to which the application relates, as follows:

Agricultural tenant's name (c)	Address at which notice was served	Date on which notice was served

Signed ..... for Kenavan & Wingfield .....

*On behalf of ..... Mr I Clover .....

Date ..... 21st January 1998 .....

(a) please give the application site address.

(b) "owner" means a person having a freehold interest or a leasehold interest the unexpired term of which is not less than 7 years. Unless you are the sole freehold owner of all the land included in the application, you should complete Certificate B and serve notice on all other owners.

If you do not know the name and address of the owners of the land, please consult the local Planning Office for further advice.

(c) If you are the sole agricultural tenant enter "not applicable".

It is an offence to knowingly or recklessly complete a false or misleading Article 7 Certificate.

Havant
BOROUGH COUNCIL

Head of Planning and Development
Derek Kingaby ARICS Dip.TP MRTPI

Planning and
Development
Civic Offices
HAVANT
Hampshire PO9 2AX
Tel 01705 474174

TOWN AND COUNTRY PLANNING ACT 1990

To:
Mr I Clover
Kanavan & Wingfield
2 Portland Road
Waterlooville
Hants
PO7 7TN

Ref No: 98/62890

REFUSAL OF PLANNING PERMISSION

Site Address : 44 London Road, Purbrook, Waterlooville

Proposed Development : Change of use from a Builders Merchants Office and front sales counter to a day nursery

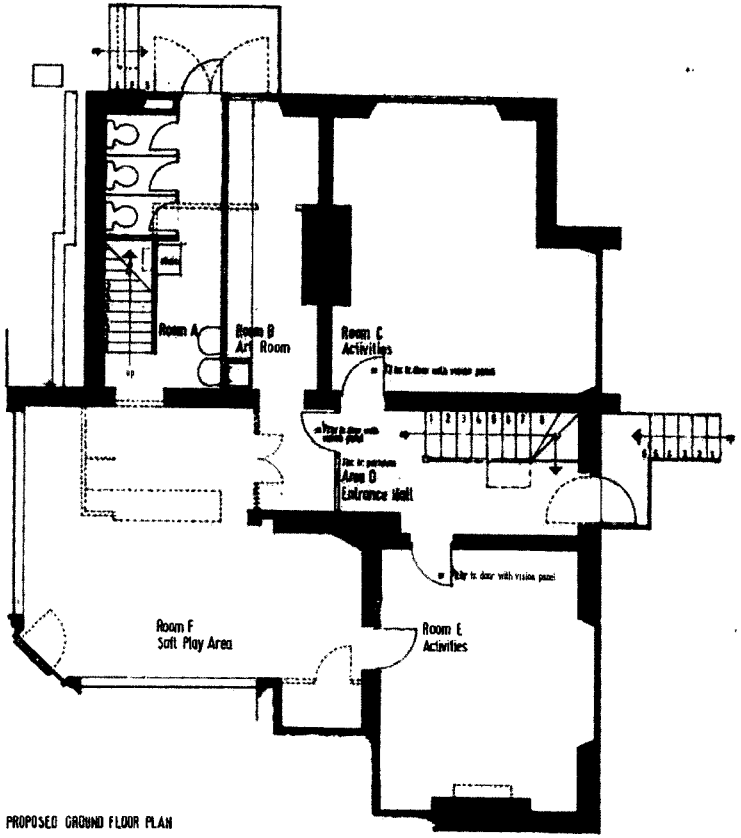
In pursuance of its powers under the above mentioned Act the Council, as the Local Planning Authority, hereby **REFUSE PERMISSION** for the above development in accordance with the application, plans and other particulars submitted with your application received on 26th January 1998, as amended by plans received on 23rd March 1998 and as supplemented by additional information received 23rd March 1998, for the following reason:-

1 Having regard to the number of children to be accommodated at the premises, the limited parking and turning available and the buildings' location at the end of a cul-de-sac, the change of use would result in traffic congestion within Stakes Road and indiscriminate parking on London Road to the detriment of the safety of road users.

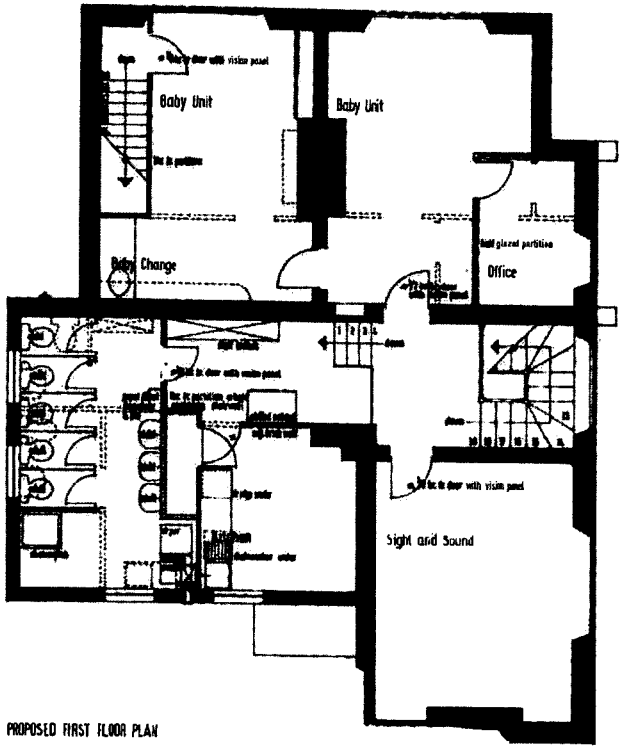
J Bastelar
for

Head of Planning and Development

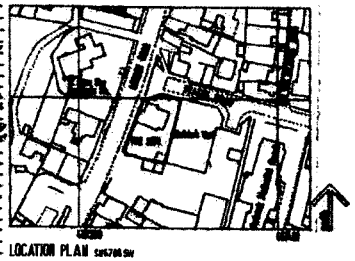
Date: 27 April 1998



PROPOSED GROUND FLOOR PLAN



PROPOSED FIRST FLOOR PLAN



LOCATION PLAN

PROPOSED DAY NURSERY

AT

98/62890

44, LONDON ROAD : PURBROOK : HANTS.

STATUTORY CONSENT DRAWING

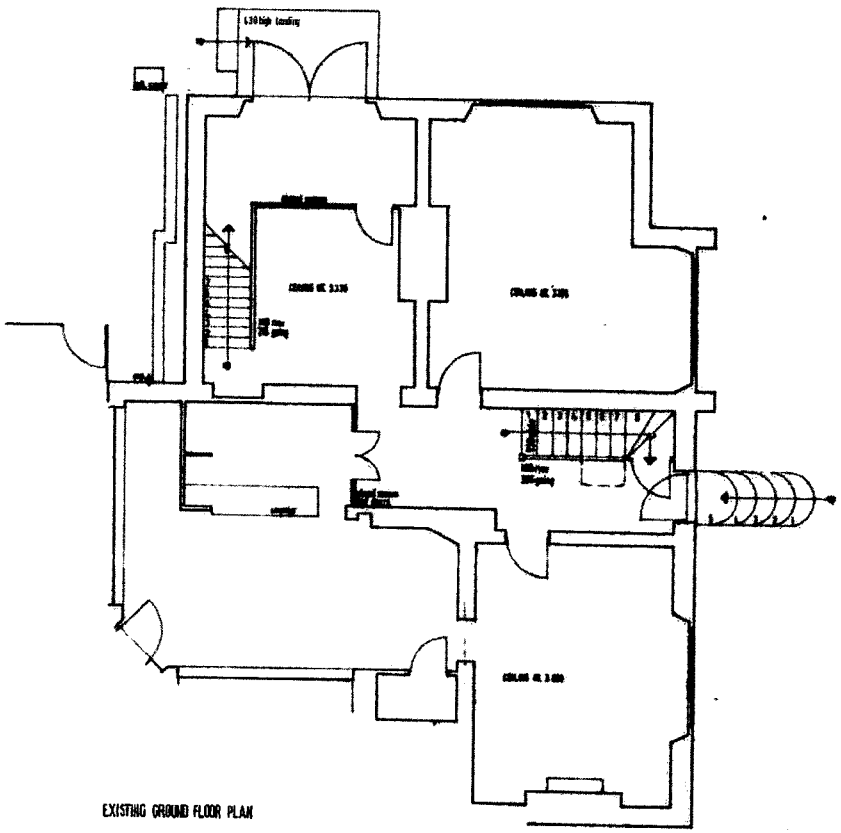
1356-2A

Reeves & Wingfield

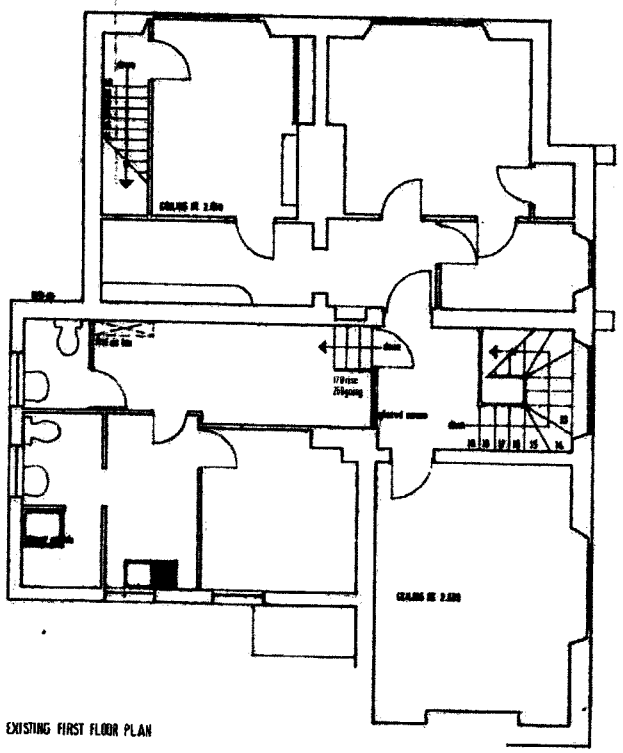
CHARTERED ARCHITECTS :

2 Portland Mews, Waterlooville, Portsmouth, Hampshire. PO7 7TH

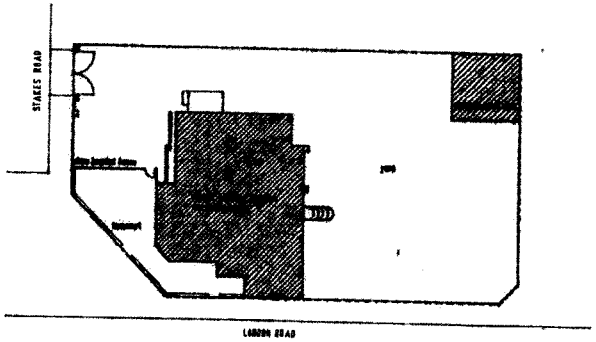
PARTIALLY SUPERSEDED



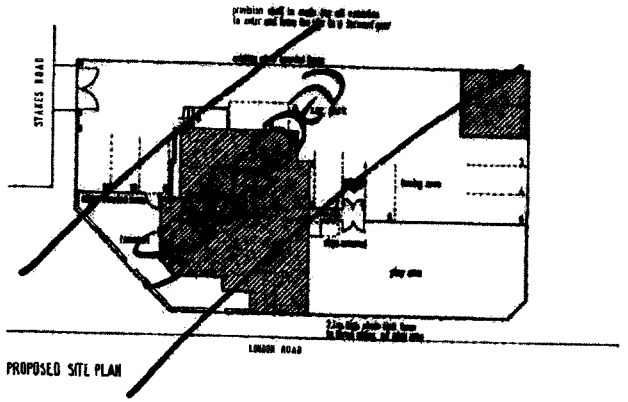
EXISTING GROUND FLOOR PLAN



EXISTING FIRST FLOOR PLAN



EXISTING SITE PLAN



PROPOSED SITE PLAN

98/62890/FUL

PROPOSED DAY NURSERY

AT

44, LONDON ROAD · PURBROOK · HANTS.

STADUTORY CONSENT DRAWING

1355/1

Keeuven & Wingfield

CHARTERED ARCHITECTS : BUILDING SURVEYORS

2 Portland Road, Waterlooville, Portsmouth, Hampshire. PO7 7TE Tel: [01705] 253907 Fax: [01705] 240571

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APPENDIX G

APP DEC NO

6-1

The Planning Inspectorate

Room: 3/04
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line: 0117-372-8824
Switchboard: 0117-372-8000
Fax No: 0117-372-8443
GTN: 1371-8824
http://www.planning-inspectorate.gov.uk

Mrs J Lever
Havant Borough Council
Planning & Development
Civic Offices
Havant
PO9 2AX

HAVANT BOROUGH COUNCIL
09 JAN 2008
RECEIVED

Your Ref: 06/54408/004
Our Ref: APP/X1735/A/07/2038464/NWF
Date: 8 January 2008

Dear Mrs Lever

Town and Country Planning Act 1990
Appeal by Insight Foundation Property Ltd
Site at Unit 2 Solent Road Industrial Estate, Havant, PO9 1JH

I enclose a copy of our Inspector's decision on the above appeal.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: complaints@pins.gsi.gov.uk

Yours sincerely

Kevin Plummer

COVERDL1

6-2

Appeal Decision

Hearing held on 5 December 2007
Site visit made on 4 December 2007

by P E Dobsen MA (Oxon) DipTP MRTPI FRGS

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
8 January 2008

Appeal Ref: APP/X1735/A/07/2038464
Unit 2, Solent Road Industrial Estate, Havant PO9 1JH

- 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 Insight Foundation Property Limited against the decision of Havant Borough Council.
- The application Ref 06/54408/004, dated 25 August 2006, was refused by notice dated 1 December 2006.
- The development proposed is "the demolition of existing vacant warehouse (B8) and the construction of a builders merchant with associated yard area (sui generis) or for any other purpose within use classes B1, B2 and B8".

Decision

1. I allow the appeal, and grant planning permission for the demolition of the existing vacant warehouse (B8) and the construction of a timber and builders merchant with associated yard area (sui generis) or for any other purpose within use classes B1, B2 and B8; at Unit 2, Solent Road, Havant in accordance with the terms of the application, Ref 06/54408/004, dated 25 August 2006, and the plans submitted with it (as amended), subject to the following conditions:

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

   2) The building hereby permitted shall be used for a timber and builders merchant or for purposes within classes B1, B2 or B8 of the Town and Country Planning (Use Classes) Order 1987, or any amendment thereto, and any sales of DIY retail items direct to the public shall be ancillary to the main use as a timber and builders merchant.

   3) Customers, other than trade customers, of the timber and builders merchant shall not access any area of the building other than that marked SCA on the application plan 52126-003 rev H. That area shall not exceed 260 sq.m. (net).

   4) The goods sold within the timber and builders merchant shall comprise comparison goods appropriate for use as building materials and DIY products.

   5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local

planning authority. Development shall be carried out in accordance with the approved details.

6) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; HGV, other commercial vehicle and car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg. refuse or other storage units, signs, lighting etc); proposed and existing functional services above and below ground (eg. drainage, power, communications cables, pipelines etc. indicating lines, manholes, supports etc.);

7) The development shall not be brought into use until space for the loading, unloading and parking of vehicles has been provided within the site, surfaced and marked out in accordance with the approved details. Such areas shall thereafter be retained and used solely for those purposes.

8) The existing access to the south-east corner of the site shall be stopped up and abandoned before the development is brought into use.

9) Development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved in writing by the local planning authority

10) The above scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the water/groundwater environment when the site is developed.

11) Development shall not begin until the measures approved in the scheme have been implemented.

12) No development approved by this planning permission shall be commenced until a scheme for the method of working and construction has been submitted to and approved in writing by the local planning authority.

Procedural and related matters

2. At the hearing the parties agreed that the description of development should specify "a timber and builders merchant" (etc.) and I have used that fuller term in my decision above. Much of the evidence was based on the assumption that the intended and most likely prospective occupier for the completed development was Jewsons, a nationally known timber and builders merchant.

3. Shortly before the hearing, the appellant submitted a signed and completed Section 106 unilateral undertaking, concerning the payment of monies towards transport infrastructure improvements in the vicinity of the site [Doc 5]. The Council agreed that this would satisfy its policies in this regard, and would in effect remove its previous objection as stated in the 3rd reason for refusal in its decision notice.

6-4

4. The appellant's evidence included a phase 1 contamination report which had led to the formal withdrawal of an objection by The Environment Agency on the grounds of possible pollution risk to controlled waters. The main parties agreed, as I do, that any further investigation of this matter could best be dealt with by planning conditions (and thereby obviate the Council's 2nd reason for refusal).

Main issue

5. With the above points in mind, I consider that there is only one issue outstanding in the appeal. This is whether the proposed 260 sq.m. customer sales area, shown on the application plans, would not be ancillary to the main use, but would represent a substantial and potentially separate retail unit, which could undermine the shopping vitality and viability of Havant town centre.

Reasons

6. The appeal site, some 0.5 ha. in size, is located on the south side of Solent Road, near the western end of the long-established Solent Road Industrial Estate. This lies adjacent to the north of the A27 Havant by-pass, and outside (to the south west) of Havant town centre as defined in the development plan. In shopping terms, the site is an out-of-centre location (as defined in PPS 6).

7. It is occupied by substantial, outdated and somewhat dilapidated buildings, up to 3 storeys in height, which were constructed in the 1960s and last used for warehousing. There are also parking, circulation and outside storage areas etc. The site has been vacant and unused for about 3 years.

8. The appellant seeks a "flexible" planning permission which would embrace any B1, B2 or B8 use in addition (and as an alternative) to a (sui-generis) timber and builders merchant. The Council has processed the application on that basis. However, the application drawings specifically show internal and external yard layouts which would reflect the Jewsons "business model", given a site and building of the size and type proposed.

9. There is no planning objection to the demolition of the existing buildings, nor to the external design of the proposed new building, which, it is agreed, would make full and effective use of a vacant site, and of previously developed land. The local highways authority is satisfied that all matters of traffic generation, circulation and parking would be satisfactory, and is content with the completed S106 obligation [Doc 5] re transport infrastructure contributions. The site is some distance from the nearest residential properties on the north side of Solent Road, and the proposals do not raise any issues of residential amenity.

10. The Council has no objection in principle to a timber and builders merchant on this site, nor to the alternative employment uses proposed, all of which it accepts would be wholly appropriate in this established industrial estate, parts of which, including the appeal site, are in obvious need of modernisation. However, it is concerned that the proposed 260 sq.m. customer sales area, which would be located within (at the eastern end of) the new building, is too large to be considered ancillary, and in functional terms could operate as a separate and independent retail unit - but in an inappropriate out-of-centre

6-5

location. This, it says, might draw retail trade away from Havant town centre, or, at least, would represent a lost opportunity for the strengthening of the town centre's shopping function.

11. At the hearing, the appellant pointed out that during negotiations on the application the Council had no objection to a 200 sq. m. customer sales area within the building. The Council acknowledged this, and explained that this notional floorspace limit was derived from the advice in para. 3.29 of PPS 6 (Planning for Town Centres). However, it accepted that this is not a town centre site, nor is the application one for an extension to existing development, which is the subject of that PPS 6 advice.

12. The Council added that for many years it had operated a rule of thumb in development control whereby any trade counters - analogous to the customer sales area in the present application - should not exceed 10 per cent of gross floorspace proposed. This had been generally accepted by businesses and had "worked well". In its view, the proposed customer sales area in this case would be of a size and potential function which would be contrary to policies TC3 and TC4 of the adopted (2005) Havant District Wide Local Plan. (Shopping policies in the Hampshire county structure plan cited in the decision notice had not been saved, and were no longer extant).

13. I note that at the appeal stage the appellant submitted a retail impact study which dealt with the characteristics of Havant's shopping centres and the trading patterns of individual stores (including DIY stores). For its part, the Council described recent developments on the edge of Havant town centre, including a recently built Tesco store not far from the appeal site, and a new retail park adjacent to the north of that. However, notwithstanding that evidence to the hearing, I consider that the main point before me is more narrowly-based, and is as stated in my para. 5 above.

14. On this, both parties referred to PPS 6 para. 3.30, which deals with ancillary uses. Inter alia, this advises that whether a "shop" is ancillary to another form of development will be a matter of judgement for the decision maker. It goes on the list the factors which might be involved in this assessment. The Council accepts that there is no published absolute or relative floorspace limit on what might be deemed ancillary in a given case, whether in PPS 6 or in development plan policies. From para 3.30, I have noted in particular the advice that local planning authorities should ensure that the retail element is limited in scale and genuinely ancillary to the main development, which are both matters controllable by the effective use of conditions.

15. From all the evidence in this case, I take the view that the customer sales area would indeed be ancillary to the main sui-generis use of the unit as a timber and builders merchant, even though it would exceed the 200 sq.m. referred to by the Council. It would represent about 16 per cent of the total covered floor area. It seems to me that the normal Jewsons *modus operandi* would obtain here, whereby only a very small proportion of total turnover would comprise the retail sale of basically small and portable DIY items to visiting members of the public. The vast majority of turnover on the site as a whole would be generated by trade items, mostly delivered rather than collected by trade customers or the public. In its day to day operations, the customer sales area would be very much an integral and inseparable part of the overall unit, most

of which would be devoted to bulky materials storage. It would not operate independently of it - and that is a matter which could be secured by planning conditions (agreed by the parties), as recommended in PPS 6. The proposal's 9 parking spaces set aside for the public is a very modest level of provision, which reinforces my view that this would be a *bona fide* ancillary use.

16. It follows from the PPS 6 advice that this element of the application proposal, being ancillary to the main use, need not be subject to a needs test, nor to the testing of sequential alternative sites. In any event, from the evidence I heard I am far from persuaded that the sale of small DIY items from this area would have any significant or harmful impact upon the retail function of Havant (or any other) town centre as a whole, or upon any individual retailer within it. In my opinion, the application would not be contrary to any extant development plan policies.

17. Given the absence of any other unresolved objections, I have decided to allow the appeal and grant conditional planning permission.

18. I have included conditions relating to the maintenance of the customer sales area as an ancillary part of the main use (in the case of the timber and builders merchants). If the building were not to be occupied by Jewsons or another timber and builders merchant, I have assumed that any B1, B2 or B8 use (or combination of the same) would not include such an area for retail sales to visiting members of the public. I have drafted the conditions accordingly. I have adapted the other agreed conditions for the sake of closer compliance with the model conditions in Circular 11/95.

19. I have considered all the other matters raised in evidence, but there are none which alter or outweigh my conclusions on the main outstanding issue in the appeal.

Paul Dobsen

INSPECTOR

6-7.

APPEARANCES

FOR THE APPELLANT:

Mr S Fidgett BSc DipTP MRTPI	Alliance Planning

FOR THE LOCAL PLANNING AUTHORITY:

Mrs S Smith BA MRTPI	Senior planner, development control section
Mr B Bateman DipTP MRTPI	Policy planner, policy and urban design section

DOCUMENTS

1 Persons present at the hearing
2 Letter of notification of hearing
3 Adopted Local Plan policies TC3 and TC4
4 Correspondence tabled by the Council re saved/unsaved Structure Plan policies
5 Completed S106 Unilateral Undertaking, submitted by the appellant

PLANS

A The application plans, as amended (listed in the appellant's file dated February 2007)

6-8

Havant
BOROUGH COUNCIL

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To:
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Wharf House
Wharf Road
Guildford
Surrey
GU1 4RP

For: Insight Foundation Property Ltd

THE TOWN AND COUNTRY PLANNING ACT 1990
Refusal of Planning Permission

Application Number: 06/54408/004
Site Address: 2 Solent Road, Havant, PO9 1JH
Proposal: Application for the demolition of existing vacant warehouse (B8) and the construction of a builder's merchant with associated yard area (Sui Generis) or for any other purpose within use classes B1, B2 and B8.

Further to your application received on 30 August 2006, which was valid from 01 September 2006, Havant Borough Council, as Local Planning Authority, **Refuses Planning Permission** for the above proposal.

The reasons for the Council's decision to refuse planning permission are:

1 The proposed builders' merchants includes an inappropriately located retail unit which will be built in a builders merchants in an out-of-centre location. Having regard to the guidance set out in PPS6 and the provisions of policies S1 and S4 of the Hampshire County Structure Plan 1996-2011 (Review) and TC3 and TC4 of the Havant Borough District Wide Local Plan 1996-2011, it has not been demonstrated that there is a proven need for the type of floorspace proposed and that there are no other better sequentially located sites capable of accommodating the floorspace proposed.

2 The proposal has not provided adequate information to demonstrate that the risk of pollution to controlled waters is acceptable. It has not, therefore, met the requirements of policies E1 of the Hampshire County Structure Plan 1996-2011 (Review) and PC1 of the Havant Borough District Wide Local Plan 1996-2011.

Our Ref: 06/54408/004

3. The proposal is contrary to policies T4 and T5 of the Hampshire County Structure Plan 1996-2011 (Review) which, in accordance with PPG 13, seeks to secure an appropriate balance between individual use of the motor car and a more sustainable transportation system. The development proposed would continue to place unfettered reliance upon use of the motor car without contributing to local improvements, which will promote alternative modes of travel.

In coming to its decision the Council considered plans and other documents submitted with your application, as amended by amended plans received on 10 November 2006 and as supplemented by additional letters received on 10 November 2006.

Other Important Information:

(1) This notice only relates to the decision of Havant Borough Council as Local Planning Authority under the Town and Country Planning Acts. It does not relate to any other application that may be required under the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6573.

(2) Your attention is drawn to the attached information regarding firstly your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision, and secondly the rights of an owner to, in certain circumstances serve a purchase notice on the Council.

Mrs J A Batchelor
Head of Planning and Development

01 December 2006

Our Ref: 06/54408/004

APPENDIX 7

7-1

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Yr Arolygwyr Cynllunio
Asiantaeth Weithredol yn Adran yr Amgylchedd a'r Swyddfa Gymreig

Y Swyddfa Gymreig, Parc Cathays, Caerdydd, CF1 3NQ

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The Planning Inspectorate
An Executive Agency in the Department of the Environment and the Welsh Office

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Direct Line 0222 825670
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Council ref: EN70

Mr D J Prosser BSc DipTP MRTPI
Planning and Development Consultant
6 Rose Court
Ty-Canol
CWMBRAN
Gwent NP44 6JH

CS
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X
e SLOAN

Eich cyf/Your ref
APP. DK.
Ein cyf/Our ref
APP 35-8
Dyddiad/Date 10 . . 92

Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY D AND K BUILDERS MERCHANTS LIMITED
LAND AND BUILDINGS AT SPRINGVALE DEPOT, SPRINGVALE INDUSTRIAL ESTATE, CWMBRAN.

1. As you know, I have been appointed by the Secretary of State for Wales to determine your client's appeal against an enforcement notice issued by the Torfaen Borough Council concerning the above mentioned land and buildings. I held an inquiry into the appeal on 1 December 1992. At the inquiry an application was made on behalf of your client for an award of costs against Torfaen Borough Council. This is the subject of a separate letter.

THE NOTICE

2. (1) The date of the notice is 22 April 1992.

(2) The breach of planning control alleged in the notice is the making of a material change of use of the said land and buildings from builders yard and offices to trade builders merchants, within a period of four years before the issue of the notice, without the grant of planning permission required in that behalf.

(3) The requirements of the notice are as follows :-
(i) Cease using the premises as a trade builders merchants.
(ii) Restore the premises to its former use (ie builders yard and offices).

(4) The period for compliance with the notice is 56 days.

THE ALLEGATION IN THE NOTICE

3. At the opening of the inquiry, the Borough Council requested that the allegation in the enforcement notice be corrected to relate to a breach of planning control after the end of 1963, and not within the period of four years before the date of issue of the notice, as specified in Paragraph 1 to the notice. Your client raised no objection to the request and I will therefore exercise my powers under Section 176 of the 1990 Act to correct that drafting error.

GROUNDS OF APPEAL

4. Your client's appeal is proceeding on grounds (a), (c), and (g) as set out in Section 174(2) of the 1990 Act, as amended by the Planning and Compensation Act 1991, that is to say :-

(a) that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted;

(c) that the matters stated in the notice, if they occurred, do not constitute a breach of planning control; and

(g) that any period specified in the notice in accordance with Section 173(9) falls short of what should be reasonably allowed.

THE LEGAL CONSIDERATIONS

5. On ground (c), the history of the appeal site indicates that a company known as D and K Builders and Decorators entered into a lease with Torfaen Borough Council on 30 November 1987 to occupy the appeal premises which comprise a flat roofed single storey building with ancillary yardspace on the Springvale Industrial Estate. In Spring 1990 the Appellant Company, known as D and K Builders Merchants Limited, was set up purportedly as an ancillary to the parent company.

6. It would appear that over the years that single parent company had used a number of suppliers to supply the goods required by their customers. The business was expanding and the company was still supplying goods to their customers through the agency of other suppliers. It seems that it was for that reason that D and K Builders Merchants was established with the primary purpose of supplying materials not only to the parent company and their contract customers, but also with the opportunity of supplying local traders and contractors with builders materials. Although the primary purpose of the Appellant Company is stated to be the supply of builders materials to the parent company, it is clear that it also supplies such materials to other local traders and contractors. Those independent traders and contractors also visit the premises to purchase and collect building materials and it is not denied that visiting members of the public would not be turned away should they choose to purchase materials, tools and equipment from the site.

7. The appeal building has been internally divided to provide separate office and storage space for the 2 companies and there is a central counter area where customers can order or purchase materials, tools and equipment. The internal and external storage areas are well stocked with a wide variety of materials, tools and equipment associated with the building and decorating trade. In my view neither company appears to be ancillary to the other and they each seem to have separate and distinct business functions.

8. In my opinion there has, by fact and degree, been a significant and material change from the original storage and office use of the appeal site, which was that of a single company storing materials for its own use in the building and decorating trade with goods for their customers being supplied by other suppliers, to that of the present use by 2 companies and involving the sale and supply of materials, tools and equipment to a number of local traders and contractors who now visit the premises to purchase, order or collect goods, a service to which the general public is not denied access if they so wish.

9. I do not consider that the present use can be regarded as falling within the Class B8 storage and distribution class, as recognised by the Use Classes Order 1987 because of the not insignificant element of trade or retail sales of materials, tools and equipment, which apparently was not present in such proportions in the

original use. Neither can the present use be regarded as a shop within Class A1. The use is in my opinion sui generis and does not fall within any particular class specified in the Use Classes Order 1987. Such a use does not have to be listed in Article 3(6) of the Order to be considered as having no class specified in the Schedule to the Order because that list includes certain uses but does not exclude other uses which fall outside the categories listed in the various classes. I am therefore drawn to the conclusion that the matters stated in the enforcement notice have occurred and they do constitute a breach of planning control. Your client's appeal under ground (c) accordingly fails.

THE PLANNING CONSIDERATIONS

10. Turning to the appeal under ground (a), it appears to me that the main issue is whether adequate provision can be made within the curtilage of the appeal site to meet the operational and non-operational parking needs which have been generated by the uses to which the appeal site is now being put.

11. It was revealed at the inquiry that your client's business known as D and K Builders Merchants Limited comprised a staff of a manager, a secretary/receptionist, a driver, 2 yardmen/drivers and a trainee, being 6 in total. The other business known as D and K Builders and Decorators comprised a staff of a manager, a secretary and 7 other employees, being 9 in total. Many staff of both companies were mainly engaged in work away from the site, leaving usually about 6 or so persons at the site itself. The number of customers visiting the site each day varied with as many as up to 25 but averaging about 8 to 10 per day, usually in the morning. Space for about 2 vehicles is already available in front of the office and store building and there is a large public car park available on Springvale Industrial Estate within short walking distance of the appeal site.

12. Bearing in mind the operational car parking required to meet the needs of the staff of the 2 businesses established at the appeal site, and taking account of the non-operational parking needs which are generated by visiting customers, I am of the opinion that there is a need to provide additional off-street parking facilities within the curtilage of the appeal site. This is necessary to avoid any unwarranted problems of traffic congestion on the industrial estate road along the site frontage and to reduce the undesirable impact of on-street parking which already occurs along parts of the roads known as Woodside Way and Springvale. I appreciate that not all the existing traffic problems can be attributed to the businesses being conducted at the appeal site but, as I observed on my site inspection, they do contribute to them. I appreciate that there is a public car park relatively close to the appeal site but customers wishing to purchase or collect building materials, tools and equipment are likely to endeavour to park either within the confined yardspace or along the appeal site frontage.

13. Two applications for a change of use from builders yard and offices to a trade builders merchants have been refused on 25 September 1990 and 29 January 1991, respectively. Both refusals related mainly to the lack of adequate operational and non-operational parking facilities, as did the reasons for serving the enforcement notice. The latter planning application included a plan showing the 2 existing car spaces in front of the office/store building with space for a third, and with a proposal for 4 additional spaces which would be created by moving back the fence line in front of the adjoining yardspace. However those additional 4 car spaces lay half way within the yardspace and half way over the adjoining walkway and it was proposed to place a dropped kerb along that section of the estate road. The Borough Council stated that those proposed parking spaces were disregarded because they were for the most part on land which was not within the ownership or control of your client.

14. At the inquiry, consideration was given to the possibility of moving the fence line in front of the yardspace even further back so that the 4 proposed additional car parking spaces could be accommodated totally within the curtilage of the appeal site. Your client reluctantly agreed to this because it would mean a further loss of storage space within the yardspace. However it seems to me, from my site observations, that any loss of storage space caused by the setting back of the front fence line could be satisfactorily catered for by a re-organisation of the existing storage use of the yardspace. I am of the opinion that the additional car parking space that would be created by the revised parking proposal that was canvassed at the inquiry would satisfactorily overcome the planning objections to the continued use of the appeal site as a trade builders merchants. Your client's appeal under ground (a) therefore succeeds and I intend to quash the enforcement notice. Ground (g) does not now fall for consideration.

15. I have taken into account all the other matters raised at the inquiry but they do not outweigh the considerations that have led me to my decision.

FORMAL DECISION

16. For the above reasons, and in exercise of the powers transferred to me, I hereby direct that Paragraph 1 of the enforcement notice be corrected by the deletion of the words "within the period of four years before the date of issue of this notice" and the substitution therefor of the words "after the end of 1963". Subject thereto I allow your client's appeal and direct that the enforcement notice be quashed. I grant planning permission for the continuation of the use of land and buildings at Springvale Depot, Springvale Industrial Estate, Cwmbran, as a trade builders merchants on the application deemed to have been made under Section 177(5) of the 1990 Act subject to the condition that within a period of 3 months from the date of this letter provision shall be made within the curtilage of the site for 4 vehicle parking spaces in accordance with the details shown on Plan D & K 1 submitted at the inquiry.

17. This decision letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

18. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Sir
Your obedient Servant

G Sloan.

G SLOAN ARICS MQB
Inspector

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3. In response, the Borough Solicitor for Torfaen Borough Council stated that he had not sought an adjournment of the inquiry even though the proof of evidence on behalf of the Appellant had only been produced at the inquiry itself and was out of time. It was a lengthy proof of 7 pages and it would have been open to the Borough Council to seek an adjournment with costs. Instead the Borough Council had co-operated and dealt with the matter despite the professional foul. The only thing that had been added to the Borough Council's Statement of Case was the detail of the qualifications and experience of their planning witness. There were reasonable grounds for enforcement action. Although the last planning application had been accompanied by a letter which said it was on a "without prejudice" basis, that had no meaning unless a planning permission was granted and the Borough Council could equally have said that such a permission would be "without prejudice". The planning applications were for a change of use. The proof of evidence on behalf of the Appellant indicated in Paragraphs 4.2 and 4.3 that there had been a material change of use and it could not be argued now that there had not been a material change of use. The question of correspondence with the Borough Council was a matter to be dealt with in the presentation of case rather that as part of a costs application. The reasons for serving the enforcement notice against a material change of use related to a lack of operational and non-operational parking facilities. The matter was highlighted by the Inspector's questions about the number of staff employed and the number of vehicles visiting the site. Originally there was only one company at the site and now there were two businesses involving a material change of use. The Borough Council had behaved reasonably throughout the proceedings and at the inquiry they had co-operated with the Appellant. Neither side had been prejudiced by the discussion on suggested planning conditions. If a planning application had been submitted on the basis of the parking facilities canvassed at the inquiry it might have perhaps never have been necessary to require an appeal. The costs application failed to reach the criteria on unreasonable behaviour outlined in Welsh Office Circular 5/87. The Borough Council resisted the application and made no counter application even though there had been a late service of the proof of evidence on behalf of the Appellant.

4. The application for costs falls to be determined in accordance with the advice contained in Welsh Office Circular 5/87 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who have behaved unreasonably.

5. I consider that the lack of satisfactory operational and non-operational parking facilities to serve the business activities which had been generated by the present use of the appeal site, and the effect that this had on highway conditions in the immediate locality of the site, were reasonable grounds for the issue of the enforcement notice. The notice stemmed from 2 earlier refusals of planning permission where the same considerations were taken into account. The planning applications specified a change of use from the authorised use as a builders yard and offices to a trade builders merchants and evidence of traffic generation and on-street parking generated by that use is very apparent from site observations. Although an attempt had been made to overcome the planning objections by the provision of additional parking facilities in the second planning application, it is clear that the proposal as submitted to the Borough Council was not acceptable because it involved the use of some land which was not in the ownership or control of your client. The resolution of that problem only came about as a result of a revision of the parking proposals which was canvassed at the inquiry itself. Despite the fact that the evidence to be presented on behalf of your client was not submitted until the morning of the inquiry, the Borough Council were prepared to deal with the submissions. In my opinion the Borough Council had not acted unreasonably in taking enforcement action against the unauthorised activity which is taking place at the appeal site and your client did not incur any unnecessary expense in having to resort to a public inquiry in order to resolve the matters in dispute. I therefore conclude that the application on behalf of your client for an award of costs is not justified.

FORMAL DECISION

6. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application on behalf of your client for an award of costs against Torfaen Borough Council.

I am Sir
Your obedient Servant

G Sloan.

G SLOAN ARICS MQB
Inspector

APPEARANCES

FOR THE APPELLANT

Mr D J Prosser BSc DipTP MRTPI	- Planning and Development Consultant, 6 Rose Court, Ty-Canol, Cwmbran, Gwent.
He called :-	
Mr K H Jarman	- D and K Builders Merchants.

FOR THE PLANNING AUTHORITY

Mr C Tindall	- Borough Solicitor, Torfaen Borough Council.
He called :-	
Mr J C N Yell BA(Hons) MRTPI	- Principal Development Services Officer, Torfaen Borough Council.

DOCUMENTS

Document 1 - List of persons present at the inquiry.

Document 2 - Copy of inquiry notice and list of persons notified.

Document 3 - Dossier of correspondence submitted on behalf of the Appellant.

Document 4 - Copy of Planning Refusal dated 25 September 1990.

Document 5 - Copy of Planning Refusal dated 29 January 1991.

PLANS

Plan A - 1/1,250 Scale Enforcement Notice Plan.

Plan B - 1/10,000 Scale Location Plan.

Plan C - 1/200 Scale Plan submitted at the inquiry (Plan D & K 1).

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Mr D J Prosser DipTP MRTPI
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Eich cyf/Your ref
APP. DK
Ein cyf/Our ref
APP 35-8
Dyddiad/Date
10 DEC 1992

Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATION FOR COSTS ON BEHALF OF D AND K BUILDERS MERCHANTS LIMITED

1. I refer to the application on behalf of your client for an award of costs against Torfaen Borough Council which was made at the inquiry held at the Meeting Room, Gwent House, Town Centre, Cwmbran, on 1 December 1992. The inquiry was in connection with your client's appeal against an enforcement notice issued on 22 April 1992 by the Torfaen Borough Council concerning land and buildings at Springvale Depot, Springvale Industrial Estate, Cwmbran. A copy of my appeal decision is enclosed.

2. In support of your client's application, you submitted that Paragraph 14 of Welsh Office Circular 5/87 dealt with the unreasonable issue of an enforcement notice. There was a need to consider whether there were reasonable grounds and an adequacy of reasons for enforcement action in the circumstances of this case. There had been a lack of attempts by the Borough Council to check the purpose of the activity at the appeal site with a view as to whether there had been a material change of use. Little or no attempt had been made to establish the circumstances for the activity at the appeal site. Since November 1990, efforts had been made to put the Appellant's case to the Borough Council to avoid enforcement action and the resultant appeal. Letters to the Borough Council had not been responded to. The only response had been from the Economic Development Department in respect of the lease held by the Appellant from the Borough Council rather than any response from the Planning Department. Paragraph 16 of the Circular stated that if the Planning Authority had refused a request to discuss a conditional planning permission, or had refused to provide reasonable information, then an award of costs may be made if the appeal might otherwise have been avoided. There had been no material change of use at the site and there was no reason for enforcement action. Paragraph 7 of the Circular emphasised that reasons for refusal should be complete, precise, specific and relevant to the application. The enforcement notice repeated the reasons for refusal of earlier planning applications. No evidence had been presented at the inquiry to substantiate the reasons for the enforcement action. There was no evidence of any increase in traffic causing congestion to warrant the refusals or the enforcement notice. The Borough Council had changed its approach by firstly considering enforcement action, then deciding to deal with the situation through it's lease to the Appellant, and finally resorting to enforcement action. On no occasion had there been any formal response to correspondence relating to the planning applications in 1990 and the attempts to avoid the unnecessary appeal. In fairness an award of costs should be granted to the Appellant.

3. In response, the Borough Solicitor for Torfaen Borough Council stated that he had not sought an adjournment of the inquiry even though the proof of evidence on behalf of the Appellant had only been produced at the inquiry itself and was out of time. It was a lengthy proof of 7 pages and it would have been open to the Borough Council to seek an adjournment with costs. Instead the Borough Council had co-operated and dealt with the matter despite the professional foul. The only thing that had been added to the Borough Council's Statement of Case was the detail of the qualifications and experience of their planning witness. There were reasonable grounds for enforcement action. Although the last planning application had been accompanied by a letter which said it was on a "without prejudice" basis, that had no meaning unless a planning permission was granted and the Borough Council could equally have said that such a permission would be "without prejudice". The planning applications were for a change of use. The proof of evidence on behalf of the Appellant indicated in Paragraphs 4.2 and 4.3 that there had been a material change of use and it could not be argued now that there had not been a material change of use. The question of correspondence with the Borough Council was a matter to be dealt with in the presentation of case rather that as part of a costs application. The reasons for serving the enforcement notice against a material change of use related to a lack of operational and non-operational parking facilities. The matter was highlighted by the Inspector's questions about the number of staff employed and the number of vehicles visiting the site. Originally there was only one company at the site and now there were two businesses involving a material change of use. The Borough Council had behaved reasonably throughout the proceedings and at the inquiry they had co-operated with the Appellant. Neither side had been prejudiced by the discussion on suggested planning conditions. If a planning application had been submitted on the basis of the parking facilities canvassed at the inquiry it might have perhaps never have been necessary to require an appeal. The costs application failed to reach the criteria on unreasonable behaviour outlined in Welsh Office Circular 5/87. The Borough Council resisted the application and made no counter application even though there had been a late service of the proof of evidence on behalf of the Appellant.

4. The application for costs falls to be determined in accordance with the advice contained in Welsh Office Circular 5/87 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who have behaved unreasonably.

5. I consider that the lack of satisfactory operational and non-operational parking facilities to serve the business activities which had been generated by the present use of the appeal site, and the effect that this had on highway conditions in the immediate locality of the site, were reasonable grounds for the issue of the enforcement notice. The notice stemmed from 2 earlier refusals of planning permission where the same considerations were taken into account. The planning applications specified a change of use from the authorised use as a builders yard and offices to a trade builders merchants and evidence of traffic generation and on-street parking generated by that use is very apparent from site observations. Although an attempt had been made to overcome the planning objections by the provision of additional parking facilities in the second planning application, it is clear that the proposal as submitted to the Borough Council was not acceptable because it involved the use of some land which was not in the ownership or control of your client. The resolution of that problem only came about as a result of a revision of the parking proposals which was canvassed at the inquiry itself. Despite the fact that the evidence to be presented on behalf of your client was not submitted until the morning of the inquiry, the Borough Council were prepared to deal with the submissions. In my opinion the Borough Council had not acted unreasonably in taking enforcement action against the unauthorised activity which is taking place at the appeal site and your client did not incur any unnecessary expense in having to resort to a public inquiry in order to resolve the matters in dispute. I therefore conclude that the application on behalf of your client for an award of costs is not justified.

FORMAL DECISION

6. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application on behalf of your client for an award of costs against Torfaen Borough Council.

I am Sir
Your obedient Servant

G Sloan.

G SLOAN ARICS MQB
Inspector

APPENDIX C

8-1

Planning Inspectorate
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Your reference
MNG SAL BEVAN
Our reference
T/APP/C/88/H5390/24/P6
Date H5390/A/87/67612(HC)/P6

-1 AUG 88

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 37 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEALS BY BEVAN BUILDERS MERCHANTS LIMITED
LAND AND BUILDINGS AT PERCY PLACE AND REAR OF 145-159 PERCY ROAD, W12

1. I have been appointed by the Secretary of State for the Environment to determine your clients' appeals. The appeals are against an enforcement notice issued by the Hammersmith and Fulham London Borough Council and against the failure of the Council to determine a planning application within the prescribed period. The latter appeal falls to me to determine following the quashing of an earlier decision by order of the High Court. I opened an inquiry into the appeals on 7 March. Following an adjournment granted at the behest of the Borough Council, the inquiry resumed on 23, 24 and 25 May. I had visited the site on 7 March; a further inspection was made on 26 May.

2. a. The date of the notice is 19 April 1988.

b. The breach of planning control alleged in the notice is the carrying out of development by the making of a material change of use, that is the implicit retail use of the land, namely the storage of building materials in connection with the business of a builders merchant.

c. The notice requires the cessation of the implicit retail use of the land in connection with the business of a builders merchant.

d. The period for compliance with the notice is 28 days.

e. The appeal was made on the grounds set out in Section 88(2)(a), (b), (c), (e), (g) and (h) of the 1971 Act as amended.

3. The development for which planning permission was sought is the retention of a portakabin, a storage racking structure, a single storey lean-to in conjunction with the storage of building materials and related offices in connection with the business of a builders merchants.

4. The evidence was taken on oath.

THE NOTICE

5. Consideration was given at the inquiry to the terms of the notice. The council indicated that it was issued following the receipt of Mr Gibb's decision and prior

to the hearing in the High Court. The inclusion of the words "implicit retail use" follows from the terminology adopted by Mr Gibbs. The notice could be varied however where appropriate by substituting "the use of the land for sales in connection with the business of a builders merchants". Your clients accepted that the wording of the notice could be varied without injustice. The notice will accordingly be varied along the lines agreed.

THE SITE AND SURROUNDINGS

6. The notice relates to an elongated yard which on its eastern side is bordered by the rear gardens of houses Nos 145-159 Percy Road. On its southern and western sides the yard is bounded by the gardens of residential properties on Vespan Road and Keith Grove. For the most part the boundaries of the yard with surrounding gardens are defined by a 1 m high brick wall. Vehicular access to the yard is from Percy Road, between Nos 143 and 145. The access, which is about 4 m wide between metal gates which are set about 10 m back from Percy Road, widens to about 6 m where it approaches the south end of the yard where there is a portakabin. Along most of the western side of the yard is a racking structure about 3 m in height for the storage of timber; it is open to the yard and clad on its west side by dark green metal sheeting. Inside the rear gardens on this side of the yard are a number of trees. Across the northern end of the yard is a single storey lean-to used for the covered storage of small items of timber, including doors. The eastern side of the yard is used for the open storage of timber to a height of around 2 m. At the north end, timber in lengths up to 6 m is stacked on end.

7. Through the single storey lean-to a door gives access to a 2-storey mews known as 1-8 Percy Place, used as stores and reception at ground floor and as your clients' headquarters offices above. Across a small yard, a single storey building is used as a store. Access to this yard is via a 2.5 m wide arch between Nos 163-165. The buildings at Percy Place are included within the site to which your clients' planning application relates. Northwards are a newsagents, a minicab office and then shops on the Uxbridge Road; a public house stands on the opposite corner of Percy Road. Your clients' main yard lies on the eastern side of Percy Road to the rear of Nos 134-160; access to the yard is between Nos 156-158. At this end of the yard there is a sales building; the yard itself is mainly open storage of items such as bricks, blocks, sand, pipes, tiles, etc and with some covered storage of timber and board. Hours of business are shown as Monday-Friday 8 am-5 pm; Saturday 8 am 12 noon; lunch 12.30-1.30. Percy Road is about 9 m wide with 2.5 m footpaths; significant parking takes place on both sides of the road.

SITE HISTORY

8. The Council's records and your client's knowledge are agreed that after the second world war, the yard and 1-8 Percy Place were used for storage and office purposes in connection with the business of scaffolding contractors. An Established Use Certificate issued in 1972 confirms the use of the whole site for the purposes of storage of scaffolding plant and materials, and cradles, and as offices in connection with the business of scaffolding contractors. In 1975, planning permission was granted to your clients for alterations to elevations at 1-8 Percy Place in connection with the use of the premises as stores and offices for a builders merchants. Planning permission was granted in 1981 for replacement of the single storey buildings on the north side of Percy Place by a 2-storey storage building with ancillary offices in connection with the use of the site as a builders merchants. An application to renew that permission was made before expiry but remains undetermined. Your clients' appeals in respect of, first, the refusal of

permission for the retention of a portakabin, a storage racking structure and a single storey lean-to and the use of land for retail sales of timber and related products and, second, the failure to determine an application for the retention of a portakabin, a storage racking structure and a single storey lean-to in connection with the storage of building materials and related offices in connection with the business of builders merchants were the subject of a public inquiry in January 1988.

LEGAL ISSUES

9. The Council rely heavily upon the findings in the decision letter of Mr Gibbs, the Inspector who determined your clients' 2 appeals in February 1988. Particularly, it is argued that, by virtue of the judgement in the Court of Appeal, Thrassyvoulou v Secretary of State for the Environment and another (AER 1988, 2 All ER 781-801) the principle of issue estoppel applies to 3 matters raised at the inquiry before me, namely the planning unit, the established use of the site, and whether a material change of use is involved. Arising from the evidence given at the last inquiry, these matters have already been determined in the decision previously given. Although these considerations were raised in the Notice of Motion before the deputy judge Mr Malcolm Spence QC in the High Court, the judgement to quash the decision on the second appeal was taken on the basis of a single substituted motion to which the Council were not party. In the Council's view there is no substance in the ground on which the decision was quashed as it is evident that the matter of racking etc cannot be divorced from sales from the site.

10. Relying upon the principles cited by Diplock L J in Fidelitas Shipping Company Limited v V/O Exportchleb, the Council maintain that issue estoppel is binding upon both parties, being the same parties to both sets of proceedings. On the question of the planning unit there is clearly an identity of issue then and now; the matter has been decided; it is not open to me following the second inquiry to redetermine it. The Thrassyvoulou judgement indicates that issue estoppel is not prevented from being applied to proceedings under Section 88 of the Act. As to the established use of the site, that matter is constrained by the previous findings, by Section 94(7) of the Act itself and the terms of the certificate issued for the site, and by virtue of the case Broxbourne BC v Secretary of State for the Environment which makes clear that a certificate shall be conclusive for the purposes of an appeal against an enforcement notice. Evidence as to sales was given at the last inquiry; it is not open to your clients to relitigate, on more evidence, as to the nature of the activities. The previous decision found that a material change of use was involved. It is therefore not open for that matter to be raised again.

11. Your clients do not accept the contentions regarding issue estoppel. Looking at the Thrassyvoulou case in its entirety, the key to the judgement is that a determination of an established use gives a right to the owner which cannot be challenged, thereby precluding successive enforcement actions where use rights have already been established. The estoppel applying against a planning authority cannot be translated the other way. The judgement cannot mean that any successive owner is bound by a decision based on a different context and evidence. While it is acknowledged that evidence as to sales was given by Mr Bevan at the previous inquiry and that contrary evidence was provided by Mr Fardon, your clients are now faced with an enforcement notice. Faced with the liability of criminal proceedings your clients are entitled to bring more evidence to support their contentions. Relying upon Rockhold Limited v Secretary of State for the Environment and South Oxon DC, it is right that the appointed Inspector should be free to determine an appeal unfettered by any previous decision.

12. As to the Council's complaint that they were not forwarned of the substitution of the Notice of Motion, you explained that this arose at the initiative of the Deputy Judge. All that your clients were seeking to argue was that the second appeal was concerned with the retention of structures only and did not concern the use of the land. In the light of the terms upon which that decision was quashed, it is right that matters pertaining to the established and lawful use of the land should now be considered. The Established Use Certificate granted in 1972 gave the then owner a defence against any action contemplated against the use specified. The certificate however does not preclude the current owner from demonstrating that the use of the land included elements not referred to in the Certificate. Irrespective of the certificate, there is no bar in a Section 88 appeal to establishing what use of land existed before the beginning of 1964. On the basis of the past use and your clients' present use of the land, it is open to them to maintain that there has been no material change of use.

13. As to the planning unit, your clients submit that at the last inquiry it was their case that their sites on both sides of Percy Road comprised one planning unit. Contrary to what is suggested by the Council, it was not an issue then as to whether the planning unit should be something smaller. For the purposes of these appeals, your clients maintain that the planning unit is properly to be regarded as comprising the buildings at Percy Place and the yard to the rear of 145-159 Percy Road. The Thrassyvoulou case does not prevent the bringing forward of evidence to advance that contention in the current proceedings.

14. I acknowledge the force of the Council's submissions upon the question of issue estoppel which were persuasively advanced at the inquiry. While the 3 matters at issue were the subject of evidence and conclusions by the previous Inspector, my opinion is however that it is important to distinguish between those cases which arose from Sections 36 and 37 of the Act and the present situation where an appeal under Section 88 is involved and a criminal sanction may be entailed. In the light of the evidence it was proper that the previous Inspector should express a view upon the particular matters cited. However, bearing in mind the grounds of appeal in respect of the enforcement notice, in which a key issue is whether a material change of use is involved here, then in my judgement your clients' appeal requires that that and related matters be addressed in the light of the evidence now being put forward. At the last inquiry, evidence as to the past use of the land was given by one witness only for your clients and the Council. Both parties have now brought forward further witnesses; in my opinion it is right that account should be taken of this further evidence in determining the current appeals. While conclusions were drawn by the previous Inspector I do not consider, for the reasons given, that your clients are estopped from pursuing a case in respect of the 3 particular matters in question, nor that I am estopped from reaching my own view, having regard to the material now before me.

THE CASE FOR THE APPELLANTS

15. Bevan Builders Merchants Limited is a family business, begun in 1933 from the premises at 158 Percy Road. The business has essentially been the same throughout, that is supplying materials to the building trade; only about 5% of the business is "non-trade". The premises on the west side of Percy Road were acquired in 1974. The combined sites now employ about 20 staff with 11 in the head office at Percy Place. About 80% of turnover is to trade customers who collect their purchases; 20% of sales are delivered by the company.

16. You cite the case, Burdle and Williams v SSE and New Forest RDC (1972, 3 AER 240), as authority for the proposition that the unit of occupation is the

presumptive planning unit. Prior to your clients' acquisition, the land comprising the yard and the buildings at Percy Place was occupied as a single entity by a series of scaffolding companies. From around 1939 to the mid 1960's the site was occupied by Cradlescaff Limited for its business of scaffolding contracting, hire and sales. The business was sold to Norstel, Templewood and Hawkesley Limited who continued in occupation until 1972, when ownership was transferred to Palmers Scaffolding Limited. Mr Bevan pointed out that the offices and stores at Percy Place were always connected by pedestrian accesses to the yard and that there was a free flow of people between the building and yard for the purposes of the respective businesses carried out on the land as a whole. The land has, moreover, at all times been treated as one single unit by the local Rating Authority. Of particular significance to consideration of the planning unit is the fact that the whole site was regarded as one entity in the Established Use Certificate granted in 1972. Subsequent planning applications submitted by your clients have included the entirety of the land.

17. The use of the land prior to your clients' acquisition included the 3 elements of scaffolding contracting, hire and sales. Witnesses attested to there being doors connecting the stores/offices with the yard and to there being a site hut in the yard for supervision purposes. Mr Bevan indicates that the yard was used for the storage of larger scaffolding items, with smaller items and fittings kept in the store. In a statement, Mr Hutchings says that Palmers Scaffolding's 3 trading activities were carried out at the site between 1972 and 1974; moreover he has no doubt that Norstel Scaffolding sold fittings and other scaffolding equipment during their ownership of the premises. Across the 3 yards operated by Palmers Scaffolding, Mr Hutchings indicated that the contract erection side comprised about 80% of the business, the hire element 16% and sales 4%; he cannot say with certainty what percentages would have applied to Percy Place. Mr Bostel, who was employed to boost Palmers' trading, was of the opinion that at 1974 when the site was sold, the proportions of the business were of the order of 75% contracting, 15% hire and 10% sales. The sale of scaffolding to builders had been a continuing trend which had first begun in the 1950s. Mr Powell recalls hiring equipment such as scaffold boards and acroprops from the site, and remembers buying some ladder brackets from Norstel. Mr Ross stated that Cradlescaff used to distinguish between scaffolding equipment for hire and sale by means of colour coding. When hiring equipment, orders were placed in the office and items loaded in the yard. In about 1963, he acquired his own builders yard and from then on proceeded to buy scaffolding equipment from Cradlescaff; once he had completed his stock, items were replenished as required.

18. Mr Bevan and all the witnesses called on his behalf maintain that throughout the years of occupation by the various scaffolding companies, the gates to Percy Road were always kept open during the working day. The scaffolding contractors lorries would come and go from the site; Mr Bostel indicated that it was normal for loading to take place in the afternoon for delivery early the next day. On average there might be about 7 or 8 customers calling daily at the site. Mr Bevan remembers that Palmers Scaffolding used to garage their 10 ton lorry at the site. The site was therefore generally busy as would have been apparent to anyone living in the vicinity. You submitted that there is no real difference between the hiring or selling of scaffolding equipment, alluding to the fact that many shops which hire goods are nonetheless regarded as shops. Whether scaffolding was hired or sold, the fact remains that there has been activity at the site arising from the company's own vehicles and those of customers.

19. The appeal site was acquired by your clients because of pressure upon their yard at 158 Percy Road and the need for more space to accommodate the increasing range of materials required to be stocked; further office space was also needed to

administer the business. The latter activity was transferred to Percy Place following the grant of a planning permission for alterations to the buildings "in connection with the use of the premises as stores and offices for a business merchants". From 1974 until 1986, the yard was used for the storage of "heavy side" goods without complaint. Indeed some materials, such as fencing panels, posts and gates, stone walling, selected bricks to name a few examples were stored exclusively in this yard; other items were exclusively stored at Percy Place. As a consequence, company and suppliers' vehicles, together with those of customers would deliver and collect materials from the site. The yard was therefore not solely a back up store to the main yard at 158. If a customer was loading up at the latter, then a fork lift truck would be sent over to collect items; there was accordingly between 1974-86 a regular if infrequent flow of forklift traffic between the 2 yards. Alternatively a customer might load at the site itself. Payment for goods, or signature for later billing was done at 158; the accounts were administered from Percy Place.

20. When used for "heavy side" goods, materials were delivered either banded or palletised and handled by forklift trucks. Because of the size of vehicles and difficulties of access due to on-street parking, unloading not uncommonly took place from Percy Road. About 10-12 deliveries would occur weekly; there would normally be about 5 daily deliveries from the site by the company's vehicles. Because of the difficulties being experienced with delivery lorries, the company realised it was necessary to take steps to improve their operations. Therefore during the middle of 1986 the company rationalised their storage by concentrating "heavy side" stock at 158 where the access is wider; since timber is lighter and is generally delivered on smaller vehicles it seemed logical to locate all timber and related products at the appeal site. Deliveries on 1/2 days per week could then be made and unloaded on site.

21. Existing structures at the yard were accordingly demolished. The portakabin was installed for use as offices, sales point and to hold smaller related items ancillary to the timber sales. In the company's view, the re-organisation has resulted in a significant environmental improvement for adjacent residents. The yard now handles material which is cleaner and quieter than formerly was the case. The appearance of the yard has been greatly improved by the covered storage racking and the business is screened from gardens to the west. Traffic to and from 158 by forklift truck is reduced; traffic by large delivery vehicles has been reduced; smaller customers' vehicles are quieter and less obtrusive; unloading of deliveries can now take place on site and not from Percy Road. Although the company seek to sell different materials from the site to those previously on offer, they are products ordinarily available in any builders merchants. At the time that the works of renovation and improvement to the site were carried out it was not thought that permission was required as the facilities were for use in connection with a continuing business. The portakabin was in use as a sales office for but 3 days at the most before, at the request of the Council, that facility for customers was stopped. As a consequence, while customers can inspect and choose timber etc at the yard, the goods have to be transferred to 158 for loading and completion of purchase.

22. In quashing the previous Inspector's decision, the deputy judge accepted the submission that all that was intended by that application was retention of the portakabin, storage racking structure and single storey lean-to for the purposes of the existing use and that the proposal should not be construed as proposing to introduce sales on to the site. Bearing in mind that the Council themselves have no objection to the structures themselves then permission should be given for their retention and use for lawful purposes. The use to which the site is currently being

put is lawful in that it is a use consistent with the user of the site for many years. Use for the storage and sale of building products is entirely consistent with the use contemplated by the Established Use Certificate of 1972. The fact that the Certificate does not specifically state that sales from the site are authorised does not mean that sales are unauthorised; in that sales have taken place on the site, as witnesses have contended, then that activity is lawful.

23. It is maintained indeed that no material change of use is involved. Whether the sales are retail or wholesale is of no real import; the fact is that the sales are to the building trade. As a conventional builders merchants the business is the nearest equivalent to a scaffolding contractor in that both supply to the building industry. In essence, the trades are not materially different; there is no difference between a scaffolding contractors with some sales and a builders merchants. Differences in impact on the neighbourhood do not derive from differences in the 2 trades but from differences in practice within each trade. These differences can range from obtrusive and noisy, ie the scaffolding activity and in your clients' case the use of the side loading vehicle, to the unobtrusive as apparently was the case for 12 years before 1986. If nonetheless it is concluded that the company's practices on the site since 1986 do amount to a material change of use then, bearing in mind the advice in Circulars concerning business activity and the Council's own policies relating to employment, permission should be granted with appropriate conditions.

24. In response to the various objections raised, your clients deny that retention of timber sales at the site would generate increased traffic thereby exacerbating on-street parking and congestion. It is maintained that increased turnover has been achieved by widening the range of products on offer rather than by any substantive increase in customers; indeed since the re-organisation there has been no increase in traffic attending either of the yards. It is pointed out moreover that re-organisation of the materials in stock would have taken place in any event; insofar as this might have attracted additional traffic, it would have done so anyway. The fact that the portakabin is not being used as a sales office, as requested by the Council, has made no difference to the traffic attracted to the yard. The present situation does however create more vehicular activity and handling than would be necessary if sales were fully handled at the yard in that the side loader has to transport timber across to the main yard for loading on to customers vehicles. Furthermore, the improvements to the yard enable all but a few large vehicles to unload on-site. It should be borne in mind that, besides residents' cars which are parked on Percy Road, there are a number of other businesses in the vicinity including a minicab operator.

25. It is not accepted that retention of the portakabin as a sales office would intensify activity at the yard. Traffic coming to the yard would tend to be smaller vehicles. Any noise pollution arising from the storage and sale of timber must be less than when the yard was used by the scaffolding contractors and for "heavy side" products. No mechanical saws or other machinery is used and therefore no dust is caused by the handling of timber. Having investigated an electrically operated side loader, it has been found insufficient for the purpose. The intention is therefore to replace the present diesel side loader with a similarly powered, but smaller vehicle having the same lifting capacity. As to the yard itself, this could be improved by erecting covered racking on the eastern side thus screening activity from neighbouring properties. Additional screening would be considered in conjunction with the Council.

THE CASE FOR THE COUNCIL

26. The Council argued at the previous inquiry and still maintain that the yard is a separate planning unit which excludes the approved offices at Percy Place. In this, they were supported by Mr Gibbs decision; it was on this basis that the enforcement notice plan relates solely to the yard. Following the grant of permission for the offices in 1975, an application in 1977 indicated that the yard was used for the storage of building materials only. The approved drawings in the permission given in 1981 in connection with the use of the site as builders merchants relates solely to Percy Place and does not include the yard which was only shown on the survey drawing.

27. The base point for the Council's position is the Established Use Certificate. In making the statutory declaration in support of the application, it is reasonable to assume that Mr Dixson would have sought a certificate in the widest terms available; he made no reference to sales from the site. That would be consistent with the evidence of Messrs Hutchings and Bostel; if sales did occur, then they were at a very low level which at best would have been ancillary to the main operation of a scaffolding contractor for which purpose the yard was used for storage.

28. In reviewing Mr Gibbs decisions on the company's 2 appeals in the High Court, Mr Malcolm Spence QC concluded that the first application plainly would introduce retail sales on to the site and was capable of being rejected for the reasons given by the Inspector. On the basis of the substituted Notice of Motion in respect of the second application, it is clear that the court considered it to be solely for retention of the buildings and structures in connection with the established use for storage of builders materials and not for use as builders merchants which by definition involves sales. The Council indicated at the last inquiry that they were not opposed to the retention of the structures per se in that they were not damaging to amenity nor were incompatible with the established use of the site. However, it is clear, having been confirmed by Mr Bevan at this inquiry, that the structures and portakabin are intended to facilitate the sale of timber in connection with the business of a builders merchants, which is the use which is presently being made of the site. This use is materially different from the established use and therefore planning permission is required.

29. In rebuttal of the claim that sales took place on the site prior to acquisition by Bevan's reliance is placed upon statutory declarations and evidence give by several of local residents and 2 members of the police force. All are consistent in their recollections of the manner of usage of the site by the previous occupiers. Typical of the evidence given is that of Mr Pine who maintains that to the best of his knowledge and belief no sales took place at the site. During the time that the land was occupied by the scaffolding firms the level of activity was relatively low; lorries would come and go on an infrequent basis and the gates to Percy Road would normally be kept shut except when necessary to allow the passage of lorries. The recollection of other witnesses is also firm that the gates to the site were generally kept shut.

30. Both Mr Fardon and Mr Weetch make the point that prior to 1986 the yard was used by the company in a manner which they term as "dead storage". Materials at the yard were stored as an overflow to the main yard with stocks being transferred to replenish No 158 when required. There were few visits to the site and the gates were generally kept closed; Mr Fardon maintains that no-one was employed at the site. Both he and Mr Weetch acknowledged that from 1980 onwards activity at the site began to increase; in Mr Fardon's mind, however, the use remained solely as storage. The transformation came about with the use of the land as a timber yard in 1986.

31. In respect of the application now falling to be redetermined the Council resolved in December 1987 to oppose the development for 3 reasons, namely traffic generation; activity, general disturbance and nuisance to residents; and loss of privacy. First, the current use generates more traffic on Percy Road than would a storage use as materials are transported to the main yard, interfering with traffic flow on Percy Road. As the current arrangements enable the company to offer a wider range of goods than if the site were used solely for storage, then this must be more attractive to customers with the effect of contributing to on-street parking and congestion on the road. Second, the increased level of activity in the yard detracts from the amenities of adjoining residents. The side loading vehicle in particular gives rise to excessive levels of noise and vibration. Fumes from this vehicle and other lorries visiting the yard also penetrate the nearby dwellings. The increased level of activity, as compared with a storage use, also results in a loss of privacy to neighbouring occupiers.

32. In his statutory declaration Mr Fardon, who was unable to attend the inquiry due to illness, complains that the current use is particularly detrimental to his amenities. Delivery of timber occurs on large lorries about 2 or 3 times per week. While customers sometimes load at the site, the majority of purchases are taken out of the yard by means of the side loader. The noise and vibration from the frequent trips of the vehicle are a serious problem as is also the emission of diesel fumes. When lorries are unloaded on site or in the road, the procedure is awkward, prolonged and noisy because of the lack of manoeuvring space for the side loader. In his view, a serious traffic problem is caused in Percy Road as a consequence of Bevan's operations; this would be exacerbated if a full retail use were to be allowed. Mr Weetch comments that the stretch of Percy Road between the main yard and the appeal site is effectively used as an extension of the company's premises with delivery lorries parked waiting to go in or be unloaded from the street. Combined with customer traffic, this causes congestion which would be worsened if sales are permitted on the site. Lorries servicing the yard generally reverse in as there is no manoeuvring space inside. Because unloading takes place with the side loader at the south end of the yard, his house is particularly subject to noise and vibration. Mr Bardell stated that lorries waiting in Percy Road cause snarl-ups as double parking is a common occurrence; there is a record of incidents where parked cars have been struck by delivery vehicles. His greatest concern, however, is the side loader as his property is affected by it both to the front and rear.

THE CASE FOR INTERESTED PERSONS

33. Letters of representation from occupiers in the vicinity have a common concern at the effects of noise and congestion arising from the operation of the site as a timber yard. As to those who spoke at the inquiry the view is commonly held that while the yard was used for "heavy side" storage, the gates were generally kept shut other than at times when materials were being transferred on forklift trucks to the main yard. Mr Davis, who is a builder, questions whether in fact timber was sold by the company prior to 1986 as he had been unable to acquire any for his purposes. Mr Born draws attention to the fact that the sign at the entrance to No 158 makes no reference to timber. In their view, what has occurred is not a widening of the range but the introduction of new product lines for the building industry. Mr Davis echoes the views of many at the difficulties caused by delivery vehicles negotiating the access. Ms Thompson indicates that at times Percy Road is to all intents and purposes used as part of the company's yard in order to effect deliveries. Mrs Weetch maintains that there has been a serious deterioration in the quality of life for residents as the business has expanded. In her own case, her garden can no longer be used with pleasure during working hours because of the operation of the

side loader. Lorries waiting at and using the access and being unloaded cause particular disturbance. If a sales use is allowed then additional disturbance will arise from more customers and vehicles visiting the yard and creating further congestion; the loss of privacy in the rear main bedroom would be made worse. Mrs Vig complains that her flat and that of her neighbour above are badly affected by noise and fumes from the side loader.

CONCLUSIONS

34. I propose to consider first of all the appeals made on grounds (b), (c) and (e). The initial matter to be resolved is whether or not there has been a breach of planning control involving a material change in the use of the land; determination of this issue entails consideration of the planning unit and the history of usage of the land. Having reviewed the evidence before me, which is more extensive than was available to the previous Inspector, I find that I do not dissent from the earlier conclusions as to the appropriate planning unit nor differ in the view that planning permission is required for the use which your clients have sought to use the land.

35. The argument that your clients' premises on either side of Percy Road comprise separate planning units having been resolved, the issue remaining is whether on the Council's submission the yard to the rear of 145-159 Percy Road is a separate planning unit from 1-8 Percy Place or whether, as you contend, the yard is one planning unit with the offices. On the evidence before me, it would be reasonable to take the view that when occupied by the series of scaffolding firms the yard and building were comprised in one planning unit for the purposes of a scaffolding contractor, the yard being used essentially for open storage with administration conducted at Percy Place. This conclusion would be consistent with the terms of the Established Use Certificate, and the terminology of the Statutory Declaration describing the use as a scaffolding storage depot and offices.

36. I am not convinced that the 1975 planning permission for the refurbishment of 1-8 Percy Place as offices and stores resulted in a new chapter in the planning history of the site or in a new planning unit. The building and yard continued to be occupied together by your clients. Whilst the permission for operational development acknowledged the use as offices and stores, within the building, in connection with your clients' business, it could not have granted planning permission for any change of use of the planning unit as a whole. In any event, an enforcement notice does not have to be directed at the planning unit as a whole (Hawkey v SSE, 1971, 22 P & CR 610). I see no reason therefore to criticise the notice on this basis.

37. The evidence as to the former use of the yard is conflicting. If I may first of all consider the question of the gates, I find it difficult to conceive that residents' recollections on this matter would not be so strongly and unshakenly maintained if the statements which they made were not valid. Having weighed the information before me I consider it reasonable to conclude that for most of the time the gates were kept closed; this would follow logically from what seems to have been a fairly low-key use of the yard primarily for the storage of scaffolding.

38. The evidence suggests to me that the primary use of the land before the end of 1963, ie when Cradlescaff were in occupation was for the storage of scaffolding and cradles in connection with the business of scaffolding contractors. On the basis of the submissions of the various witnesses, the evidence as to whether sales took place is directly opposed. Such evidence as I have from Mr Ross would indicate that, as far as any purchases which he made are concerned, these occurred after

1963. Allowing for the possibility that some purchases did take place, these would have been on an infrequent basis to any individual builder bearing in mind the long-lasting nature of the items; indeed, in answer to a question from me, Mr Powell indicated that he might have purchased items on but a half dozen occasions throughout his builders' business. The only documentary evidence available is the Established Use Certificate of 1972; in my judgement this has to be given considerable weight. That certificate includes no reference to sales nor significantly in my view does the statutory declaration upon which the determination was based. In my opinion considerable reliance should be placed on that certificate as indicating the long-standing use of the yard prior to your clients' acquisition.

39. Even if some sales did occur, the level of such activity was extremely low, ie about 4% only of the total business of Palmers Scaffolding at around 1972. This in my view comprised a 'de minimis' activity which did not constitute a readily distinguishable use of the land. While sales may have risen to 10% by 1974, this activity remained insignificant in terms of the totality of the business. Even if hiring were taken into account with sales, a proposition which I do not accept, then the main business activity nonetheless continued to be that of scaffolding contractors for which purpose the yard was used for storage.

40. Your clients' use of the yard purely for storage would not entail a material change in the use of the land. Although the yard may have been used to a different intensity for "heavy side" storage than had been the case previously, as Paragraph 9 of Circular 13/87 points out intensification within a class of the Use Classes Order would not constitute development unless the effect of intensification is to take the use outside that class altogether. In my judgement, it would be reasonable to conclude that the use prior to 1974 and from then to 1986 would fall within Class X, now Class B8 of the 1987 Use Classes Order. Even if some materials were held solely at the appeal yard, the picture which emerges is that it was primarily used as a back up facility to the main yard with materials being transferred across as required; the fact remains that sales in connection with the builders merchants business were made at 158. A builders merchants, involving as it does the primary purpose of selling materials to the building trade, does not fall within Class B8; nor in my view does it come within Class A1; rather it is a use sui generis.

41. I do not regard your clients' business as builders merchants as being a use equivalent to that of the scaffolding contractors previously occupying the site. It seems to me that the main use of the yard in connection with the scaffolding businesses was for the storage of equipment to be used elsewhere primarily by contract and hire. The business of a builders merchants is essentially geared to selling to the construction industry and on that account in my judgement is distinguishable from the former use. Since the middle of 1986, the main function of the yard has been as a holding area for the sale of timber and related products. There is no suggestion that materials are stored as a reserve to timber sales at 158. The evidence is incontravertible that timber sales have been introduced on to the land as from that date. That some items such as fencing panels may have been held on the land previously does not deflect me from the view that the nature of use of the site materially changed in the period before the issuing of the enforcement notice. Despite what has been said elsewhere the proper conclusion to be drawn is that the buildings and portakabin were installed at the yard specifically to facilitate its use for the sale of timber and with the intention that customers should come to the yard in order to make their purchases. On the evidence I am therefore satisfied that there has been a material change of use, as alleged in the agreed revised terms of the notice, and that it has occurred since the end of 1963; the appeals on grounds (b), (c) and (e) accordingly fail.

42. Considering planning merits, that is the appeal on ground (a) and the deemed application, the matter to be determined is whether it would be reasonable for the use of the land for the sale of timber and related products to continue; the issues remain the same as defined by my predecessor namely the effect upon residential amenity and traffic congestion in the vicinity.

43. The conclusions on these matters by the previous Inspector are set out fully in Paragraph 8 of his decision letter. In the High Court, the learned judge concluded that the introduction of retail sales on to the site was capable of rejection for the reasons given by the Inspector. As I have concluded that a material change of use is involved here and that what is before me is the introduction of a sales use, as opposed to storage which was the pre-existing use, then the objections found by the previous Inspector in my judgement remain valid. My appraisal of the evidence and assessment arising from my viewing of the site and the locality lead me to conclusions which are consistent with those previously expressed.

44. Three main considerations bear upon my decision; these are activity, including disturbance from noise and fumes; the effect upon privacy; and the implications regarding congestion on Percy Road. As to the first of these considerations, it seems to me that the restricted nature of the access and yard renders delivery and unloading of timber an exercise which is not easily executed. The use of a side loading vehicle is necessary in order to carry out the operation and to handle timber in the yard. That the side loader is cause for complaint on the part of residents is easily understood. It is a particularly noisy vehicle both in its movement and when raising and lowering timber. Having been into 3 dwellings in the vicinity of the yard with the machine in operation, I am satisfied that severe detriment is caused to neighbouring residents by virtue of the noise and disturbance generated by it. Not only are gardens affected but the noise also penetrates the dwellings themselves to a marked degree. Discomfort is also caused by the emission of diesel fumes.

45. The particular type of vehicle employed for unloading and servicing the yard is not capable of control by planning condition. The practicalities of operating an electrically powered vehicle are uncertain. The alternative new diesel side loader demonstrated at my visit was not materially different in terms of its noise generation. I therefore see no merit in agreeing to a temporary condition in respect of that vehicle in order that its effects can be assessed. It is clear to me that this vehicle would not overcome the demonstrable harm to the environment of residents occasioned by the use of a side loading vehicle necessary to the functioning of the timber yard. I realise that if customers were permitted to complete their purchases at the site then some diminution of noise disturbance would follow as a consequence of the reduction in transferring timber to 158 by means of the side loader. While that would be of some benefit to residents, against that has to be set the increased activity arising from builders vehicles coming to the yard and loading up with timber. In view of the limitations of the yard from the point of view of parking and manoeuvring space, it seems highly likely that occasions would arise where loading would take place on the road in the vicinity of the entrance, thereby widening the area from which potential disturbance could arise apart from adding to the already difficult parking situation in the street and the congestion which already occurs.

46. The fact that the east side of the yard is adjoined by the rear gardens of dwellings Nos 145-159 means that the presence of builders acquiring timber would materially affect the privacy of those properties. Because of the difference in levels, not only would the gardens suffer from overlooking, but at least to the extent of ground floor rooms there would also be loss of privacy at the rear of the dwellings themselves. Having seen the situation myself, I can also understand why

the first floor privacy of No 141 Percy Road is compromised by the presence of the sales portakabin and the presence of customers in the vicinity. Although it would be possible to provide screening to the rear gardens, in order to be effective the screening would need to be of the order of 2 m height; taking account of the difference in ground levels, the effect would be to make the gardens somewhat claustrophobic. The gain of screening, however, would not off-set the effects of increased activity at the yard as a consequence of the sales use.

47. My visits to the locality lend credence to the contention of residents that congestion already occurs as a consequence of your clients' yard on the eastern side of Percy Road. On the morning of my inspection, 2 incidents occurred which seem to typify the situation. In the first, a delivery lorry had to wait outside the yard, causing backing up of other traffic, because of lack of space within the yard. Shortly afterwards, a builders van was unable to enter the site because its way was blocked by the lorry. A little later, the van had to back out of the site in order to allow a car to exit. Later still, the lorry itself had to reverse out in to Percy Road, with some difficulty due to parked vehicles including a builders van, again stopping traffic flow. The fact that timber lorries serving the appeal site normally have to reverse in seems to me likely to give rise to more disruption in view of the problems of negotiating a narrow access and with the prevalence of parked cars on both sides of the road. With the possibility of a cross-flow of builders vehicles from one yard to another in order to make different purchases or, as is equally likely, parking in the street in order to load with goods from both yards then the potential for increased congestion in the stretch of Percy Road between both accesses would be heightened considerably by continuation of timber sales from the appeal site.

48. In my judgement therefore substantial harm to the locality would be caused by allowing the use to remain. Furthermore the problems caused could not be effectively controlled by the imposition of conditions. The condition suggested by the Council - which you understandably oppose - that there should be no sales from the site would clearly negate the grant of a permission and would therefore be quite unacceptable in terms of Circular 1/85.

49. In the light of the above, my conclusion is that the appeal on ground (a) should not be allowed. As to the Section 37 appeal, as it is evident that the structures and building in question are necessary for the use of the yard for timber sales then it is reasonable to conclude that planning permission should not be given for their retention, even though I acknowledge that visually the site's appearance may have been improved by them.

50. Turning to grounds (g) and (h), I have already expressed the view that the imposition of conditions would not be likely to render the use acceptable. Cessation of the sales use, as required by the notice, is in my judgement therefore a reasonable requirement in the light of the clear objections to it; the appeal on ground (g) fails. As to the final ground, I accept that the 28 day period may be insufficient to permit re-arrangement of the business; the appeal therefore succeeds to the extent that the period for compliance will be varied to 3 months.

51. All other matters have been taken into account but I find none which outweigh those considerations which have led to my decision.

FORMAL DECISION

52. For the above reasons and in exercise of the powers transferred to me, (i) I hereby direct that:-

a. Schedule 2 of the notice be varied by the deletion of the original words and substitution of "the use of the land for sales in connection with the business of a builders merchants";

b. Schedule 3 of the notice be varied by the deletion of the original words and substitution of "cease the use of the land for sales in connection with the business of a builders merchants";

c. the period for compliance with the notice be varied to 3 months.

Subject thereto, I dismiss the appeal, uphold the notice and refuse to grant planning permission on the application deemed to have been made under Section 88B(3) of the 1971 Act as amended.

ii. I hereby dismiss the appeal under Section 37 of the Act.

RIGHT OF APPEAL AGAINST DECISION

53. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant

Brian G Meardon

B G MEARDON BA DipTP MRTPI
Inspector

ENC

8-15

T/APP/C/88/H5390/24/P6
T/APP/H5390/A/87/67612(HC)/P6

APPEARANCES

FOR THE APPELLANTS

Mr H Sales	- of Counsel, instructed by L O Glenister and Sons, Television House, 269 Field End Road, Eastcote, Ruislip, Middlesex HA4 9LS.

He called:

Mr F J Bevan	- Managing Director, Bevan Builders Merchants Limited.
Mr D Bostel	- Admiral Scaffolding Company, Burnt Ash Road, London SE12.
Mr T C Powell	- 4 Rusthall Avenue, Chiswick, London W4.
Mr A B Ross	- 182 Horn Lane, London W3.
Mr C Rose	- 82 Cottimore Avenue, Walton upon Thames, Surrey.
Mr J Walsh	- 189 Davies Road, Fulham, London SW6.
Mr D Bevan	- Sales Manager, Bevan Buildings, Merchants Limited.
Mr A Bevan	- Buying and Marketing Manager, Bevan Builders Merchants Limited.
Mr D Hutchings Not called but statement submitted	- 2 Salcot Road, Winchester, Hants.

FOR THE COUNCIL

Mr J Male	- of Counsel, instructed by the Director of Legal Services, Hammersmith and Fulham Borough Council.

He called:

Mr J P Renselar DipTP MRTPI	- Assistant Area Planning Officer.
PC M Eaton	- Hammersmith Police Station.
Mr R J Weetch	- 141 Percy Road, London W12.

Mr W P Bardell		- 153 Percy Road, London W12.
Mr H H Pine		- 14 Marlborough Close, Cranham, Upminster, Essex.
Mrs L M Moses		- 113 Blanmerle Road, New Eltham, London SE9.
Mr J Pardon	not called but Statutory Declarations submitted	- 143 Percy Road, London W12.
Mrs J Baker		- 105 Uxbridge Road, London W12.
PC R D Collison		- Shepherds Bush Police Station.

INTERESTED PERSONS

Ms S Thompson	- 140 Percy Road, London W12.
Mrs A Vig	- 145A Percy Road, London W12.
Mr R Davis	- 144 Percy Road, London W12.
Mrs P Weetch	- 141 Percy Road, London W12.
Mr S Born	- 140 Percy Road, London W12.

DOCUMENTS

Document 1	- Lists of persons present at the inquiry.
Document 2	- Notice of inquiry and list of persons notified.
Document 3	- Bundle of letters of representation.
Document 4(1-26)	- Indexed bundle of documents attached to Mr F S Bevan's proof.
Document 5	- Notice of Motion and decision of Mr Malcolm Spence QC, sitting as Deputy Judge, Queens Bench Division.
Document 6	- Transcript of High Court Proceedings.
Document 7	- Statutory Declaration of DDLA Dixson in connection with Certificate of Established Use, 1972.
Document 8	- District Plan, Hammersmith and Fulham Borough Council.
Document 9	- Borough Local Plan, Deposited Alterations and Modifications 1988.
Document 10	- Letter from Glenister and Sons to Council, 16 May 1989.
Document 11	- Indexed bundle of documents submitted with Council's statement.

DOCUMENTS CONT'D

Document 12	- Record of vehicle deliveries and customer activity at the site, made by Mr Fardon.
Document 13	- Copy of planning permission, minicab office, 167A Percy Road.
Document 14	- Conditions suggested, without prejudice, by Council.
Document 15	- Monomart Warehouses Limited v SSE and others, 34 P&CR, 305.
Document 16	- Thrassyvoulou v SSE and another, 1988 2 All ER, 781.
Document 17	- Broxbourne BC v SSE and others 1979 2 All ER, 13.
Document 18	- Rockhold Limited v SSE and South Oxon DC, 1986, JPEL, 130.

PLANS

Plan A(i)-)ii)	- Application Plans.
Plan B	- Enforcement Notice Plan.
Plan C	- Land owned by Bevan Builders Merchants Limited.
Plan D	- Plans 670/1/1 and 670/1/2 from application ref 618/75.
Plan E	- Plan 1050/1/1 from application ref 203/77.
Plan F	- Plans 175/01, 02, 03, 04 and application form and re application ref 81/10/00583/05.

PHOTOGRAPHS

Photos in folio 1-7	- Appeal site before and after change from "heavy side" goods to timber, put in by appellants.
Photo 8	- Photograph of site used as scaffolding yard, put in by Mr Pine.

APPENDIX

9-1

The Planning Inspectorate

Report to Havant Borough Council

by Sue Turner

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

Date: 7th July 2014

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)
SECTION 20

REPORT ON THE EXAMINATION INTO HAVANT BOROUGH
LOCAL PLAN (ALLOCATIONS)

Document submitted for examination on 20 December 2013

Examination hearings held between 29 April and 1 May 2014

File Ref: PINS/X1735/429/6

(HCC) and the Solent Local Enterprise Partnership, commissioned a Strategic Housing Market Assessment (SHMA) to help assess housing need through to 2036. This was published in March 2014 and will inform a forthcoming review of the PUSH Spatial Strategy.

7. Other work through PUSH has assessed infrastructure needs and the Council has worked with Hampshire County Council (HCC), West Sussex County Council, the Environment Agency (EA), water authorities and neighbouring local authorities on cross boundary infrastructure such as wastewater, transport and education. Matters such as flood risk, coastal change, shoreline management and climate change have been addressed through collaborative working with a range of bodies which includes the EA, HCC, the Solent Coastal Partnership, Southern Water and local interest groups. The Council has worked in collaboration with other Hampshire local authorities to assess the need for Gypsy and Traveller pitches and has co-operated with Natural England, the Isle of Wight Local Nature Partnership and Chichester Harbour Conservancy in work to conserve the landscape and the natural environment.

8. It is clear that the Council has worked collaboratively with neighbouring authorities and with other bodies to ensure that the Plan is effective in addressing cross boundary and strategic matters. On this basis I am satisfied that the Duty to Co-Operate has been met.

Assessment of Soundness

Background

9. The Havant Borough Local Plan (Core Strategy) was adopted in March 2011 and is referred to as the Core Strategy (CS). This Plan, the Local Plan (Allocations) seeks to deliver the vision for growth that is set out in the CS. It does not seek to reassess any strategic issues, such as overall housing or employment needs and the two documents are intended to be read together to form the Havant Borough Local Plan.

Main Issues

10. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified six main issues upon which the soundness of the Plan depends.

Issue 1 – Is the Plan consistent with national policy in the NPPF and with the overall objectives of the Havant CS?

Overview

11. The Plan sets out eight strategic policies which seek to deliver the CS vision and complement the CS strategic policies. It allocates sites in the five distinct areas of the borough that are identified in the CS and takes forward the spatial distribution of development established in the CS. Finally, it includes nine development management policies, DM17 – DM25, which continue the range of policies (DM1 – DM16) in the CS. It covers the period from 2013 to 2026 and thus aligns with the CS plan period.

CS5:Tourism and the NPPF and there is no need to repeat or cross reference to these other documents.

24. Subject to the changes referred to above I am satisfied that the Policy is clear and effective.

Policy AL3: Town, District and Local Centres

25. Policy AL3 sits alongside Policy CS4 and, through the Policies Map, defines the boundaries of all town district and local centres, superseding the boundaries in saved policy TC1 of the Havant Borough District-Wide Local Plan. In particular it introduces changes to Havant Town Centre Boundary to include Havant Retail Park and the retail expansion north of Solent Road. It is argued that inclusion of these areas will draw the focus away from the historic town centre and that insufficient support is provided to the Meridian centre.

26. The Council acknowledges that the permissions for retail uses at Solent Road have had an impact on the historic core of the town centre. However it draws attention to public realm links that it has put in place to enhance routes between the new retail areas and the historic centre. It also argues that the retail parks draw in more visitors to the area and benefit the whole of the town centre, including the historic core. Furthermore data on vacancy rates in Havant Town Centre in February 2014 show a decrease in vacancy rates compared to those reported in the 2010 Annual Monitoring Review (AMR). Based on the retail and economic development evidence as a whole, the close physical relationship between the historic core and retail parks and the improvements to public realm links I am satisfied that the proposed Havant Town Centre boundary is justified.

27. The Plan's approach to retail development is based on the Town Centres, Retail and Leisure Study which informed preparation of the CS and dates from 2009. However the Council has continued to update this analysis through monitoring national retail trends as well as recording and publishing Borough vacancy rates and market information in a monthly newsletter. Table 3.3 of the Plan sets out retail provision across the borough but does not include the most recent retail scheme north of Solent Road, for which planning permission was granted in June 2013. The table has a base date of April 2013 but this is not stated in the Plan. To ensure accuracy and avoid confusion about retail provision change **MM8** should be made to clarify the base date of Table 3.3.

28. It has been argued that it would be logical to include the former ICTS site on the south of Solent Road within Havant Town Centre boundary. This site has extant planning permission for B class uses and some trade counter uses. It is clear that the decision to retain this area for industrial uses dates from early consultation during preparation of the Plan. The 2011 document "What do you want from your Town, District and Local centres? A Consultation Draft" explains that exclusion of the ICTS site is based on balancing the limited need for new retail floorspace identified in the CS with the risk of extending the town centre boundary too widely. This evidence, together with concerns that extending the Town Centre boundary further west would put further pressure on the historic core, supports the Havant town centre boundary that is defined through Policy AL3.

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Policy AL3: Town, District and Local Centres

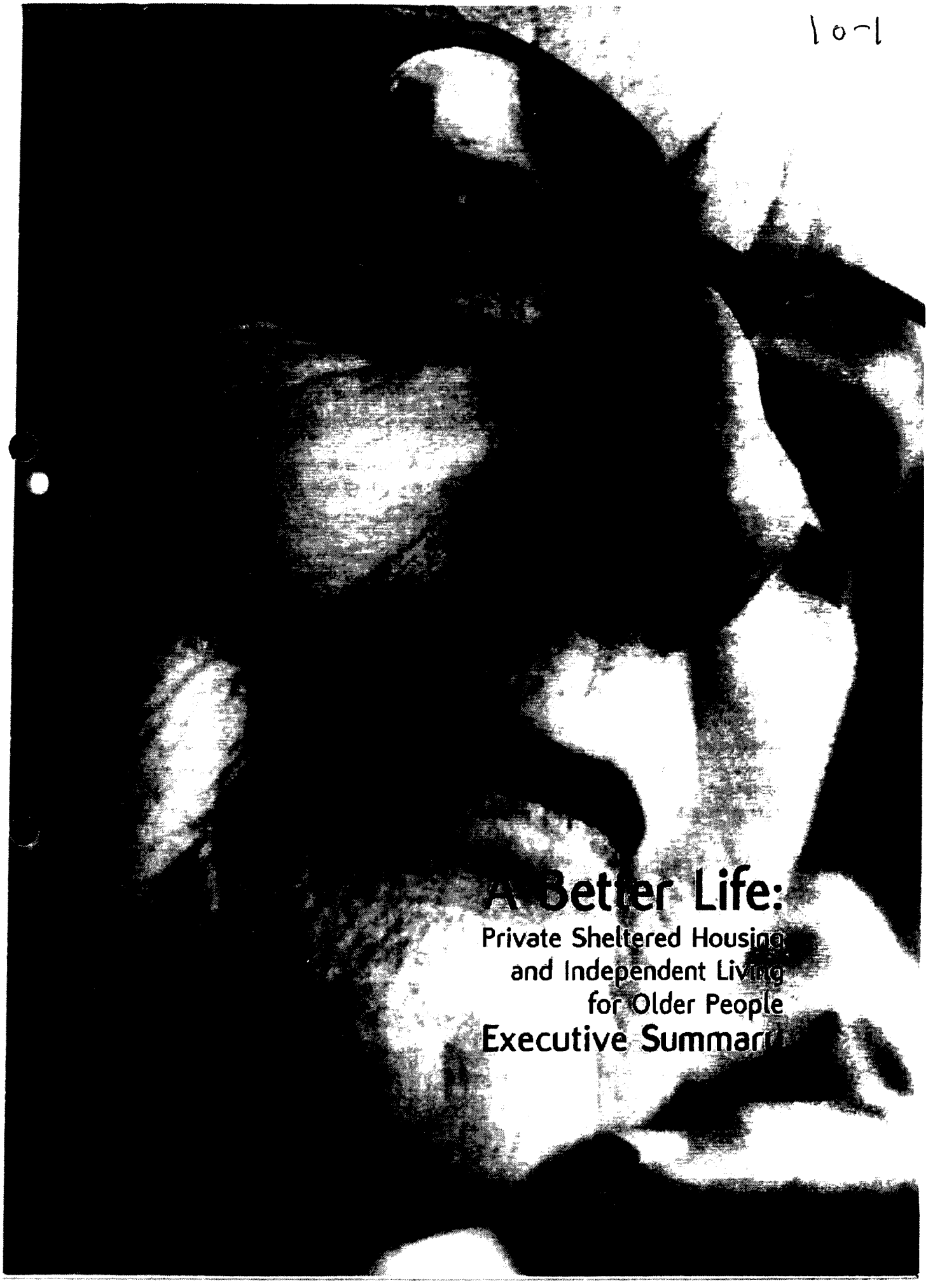
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APPENDIX



A Better Life:

Private Sheltered Housing and Independent Living for Older People

Executive Summary

Executive Summary

The Reality of Private Sheltered Housing

This report sets out the findings of one of the largest studies into sheltered housing in the United Kingdom. It represents and examines the opinions of over 1,500 current and prospective residents of private sheltered housing – their priorities, levels of independence, health, happiness and contribution to their local community and the wider economy.

It aims to contribute to the wider debate on the needs and wellbeing of older people, ensuring appropriate housing choice and, in particular, the importance of housing in delivering a good quality of life.

Additionally, the report dispels many myths about private sheltered housing that seem to have been allowed to grow in the past.

To summarise the key findings that emerge from this report:

01 THERE IS A SHORTAGE OF PRIVATE SHELTERED HOUSING IN THE UK

- 39% of prospective residents have had to look further afield to find suitable accommodation as there was not enough in their area;
- 81% of prospective residents believe there should be more private sheltered housing in their area;
- If the rate of demand and provision remain at their current levels, there is likely to be a shortage of around 62,500 private sheltered housing units by 2020.

02 PRIVATE SHELTERED HOUSING HELPS OLDER PEOPLE ENGAGE WITH THE LOCAL COMMUNITY

- 39% of current residents live a more active life in private sheltered housing than they did before they moved there;
- 76% of current residents feel that they are a member of the local community;
- 92% of current residents have contact with friends/family on a regular basis.

03 PRIVATE SHELTERED HOUSING PROMOTES INDEPENDENT LIVING

- Since moving into private sheltered housing, 58% of residents have become less dependent on their children;
- 59% of residents have a more independent lifestyle in private sheltered housing than they did in their previous homes;
- 61% of prospective residents strongly believe that moving to private sheltered housing will help them maintain their independence;
- 83% of current residents believe that living in private sheltered housing helps maintain independence.

04 PRIVATE SHELTERED HOUSING IS A HOME FOR LIFE

- 66% of prospective residents strongly believe that moving into private sheltered housing will enable them to avoid the need to move into assisted living accommodation;
- 66% of current residents believe they will live longer in private sheltered housing;
- 86% of current residents believe that their home is a home for life.

05 "STAY PUT AND ADAPT" IS NOT THE BEST SOLUTION FOR MANY OLDER PEOPLE

- 29% of prospective residents spend more time on their own than they would like to;
- 32% of current residents highlight companionship as the greatest advantage of private sheltered housing;
- 66% of current residents enjoy their lifestyle more living in private sheltered housing than they did in their previous home;
- 78% of prospective residents strongly believe moving into private sheltered housing will increase their security;
- 84% of current residents moved into private sheltered housing to have better access to local shops and facilities. 81% did so to have supervision by a house manager. 60% did so in order to rid themselves of unwanted responsibilities.

06 LOCAL ECONOMIES BENEFIT SIGNIFICANTLY FROM PRIVATE SHELTERED HOUSING SCHEMES

- One in three current residents walk to the local shops each day;
- 45% of current residents buy the bulk of their shopping within one mile of their private sheltered housing scheme, with 65% travelling no further than two miles;
- 62% of private sheltered housing residents prefer to shop in local centres rather than major town centres;
- Each week, a typical private sheltered housing scheme generates £11,735 in resident spending (£610,000 per year), generating an additional £1,750 per week (£92,000 per year) in local spending compared to what would have been generated in a conventional high density housing scheme (deadweight). Over the lifetime of a scheme, this equates to around £2.3 million more in local spending than would have been generated by a conventional scheme.

07 PRIVATE SHELTERED HOUSING SCHEMES ALLEVIATE PRESSURES ON THE NHS

- Only 21% of current residents have received inpatient medical care in the last 12 months. Amongst this group, the average number of nights of inpatient care is 7.4, under half the average for the national population aged 75+. This saves the NHS £2,598 per resident recieving inpatient care per year;
- The average number of visits per annum to a GP by current residents is 4.2 compared to 6 visits amongst the national population aged 75+;
- 41% of residents confirm that their health has improved since moving into private sheltered housing;
- 55% of current residents class their health as very good/ good.

08 PRIVATE SHELTERED HOUSING SCHEMES INCREASE THE AVAILABILITY OF ORDINARY LOCAL HOUSING STOCK

- 23% of those moving into private sheltered housing sell their previous homes to families;
- 43% of those moving into private sheltered housing sell to couples;
- 45% of current residents moved within five miles of their previous homes;
- 85% of those who purchase private sheltered housing flats will downsize from houses to do so.

09 PRIVATE SHELTERED HOUSING OFFERS SUFFICIENT SPACE AND HIGH STANDARD SPECIFICATIONS FOR OLDER PEOPLE

- 71% of prospective residents believe that they do not need to live in a house as big as the one they currently live in;
- 71% of current residents moved to private sheltered housing to meet their specific design and mobility needs.

10 PRIVATE SHELTERED HOUSING TRANSFORMS THE QUALITY OF LIFE OF ITS RESIDENTS

- 64% of current residents feel their sense of wellbeing has improved since they moved into private sheltered housing;
- 78% of current residents believe that private sheltered housing helps to alleviate their worries and anxieties;
- 88% of current residents believe that private sheltered housing helps to improve their personal security. 53% of current residents cite personal security as the biggest advantage of private sheltered housing;
- 92% of current residents would recommend private sheltered housing and their way of life to their friends.

Annex B Economic Assessment

A Report for ORB
Residential Economic Impact Assessment
By Roger Tym & Partners

Introduction

ORB employed the services of Roger Tym & Partners, a firm of development economists and planners, to estimate the economic impact of a typical McCarthy & Stone scheme on the local economy. Roger Tym & Partners have an established track record in estimating the economic impacts of commercial and housing schemes. The brief required a short study based on research acquired from an ORB survey of McCarthy & Stone residents, with reliance to a large extent on existing material and on the professional judgments of the consultants to estimate economic benefits.

The principal requirement was to consider economic benefits through:

- The *Local Income Effect* from additional expenditure generated in the local economy; and
- *Public Sector Cost Savings* from economies in the provision of health and social services by bringing people with similar needs (i.e. over 65 age group, into one location and providing suitable living accommodation).

Local Income Effect

The benefits of the typical McCarthy & Stone development scheme will be realised through additional expenditure generated in the local economy. This expenditure by residents will lead to increased income in the local area followed by the multiplier effects of successive rounds of expenditure. We assume that this expenditure will be a net increase spending in the locality because more than half (54 per cent) of the residents will have moved from 6 or more miles away; and in any event those dwellings vacated by McCarthy & Stone residents will typically be filled by larger and younger households whose expenditure is unlikely to be less than that of their predecessors.

Resident Spending in a McCarthy & Stone Scheme

To derive at an estimate of Income Effect, we look at the additional income brought into an area through the spending profile of McCarthy & Stone residents. Average spend of the study group is based on household expenditure figures from ORB's survey of McCarthy & Stone residents, shown in Table 1.

Table 1: Average weekly McCarthy & Stone household expenditure

	(£), 2003 Prices
Sample No.	1,000
No. of Responses	724
	60.37
	12.67
Food and non-alcoholic drinks	
Alcoholic drink	4.72
Tobacco	.23
Clothing and footwear	13.02
Household goods	
Household services	14.05
Personal goods and services	
Motoring	
Fares and other travel costs	7.60
Leisure goods	
Leisure services	
Miscellaneous	14.87
Total household expenditure	250.00
Average weekly expenditure per person	203.40

Table 1 shows that the average McCarthy & Stone resident household will spend £250 per week.

We use the weekly spend figure per person to aggregate the spend generated by a typical McCarthy & Stone scheme. Such a scheme is usually located close to a town or local centre for ease of access by elderly residents. The land area coverage of a typical scheme is 0.4 hectares (1 acre), providing around 45 retirement apartments and housing around 55 residents; together with a house manager's apartment. On the basis of these calculations, the typical McCarthy & Stone scheme generates a weekly spend of £11,250 by the residents. In addition, the manager's household expenditure, assuming a two person household, is £485 per week,[17] bringing the weekly total to £11,735.

[17] Based on ONS Family Expenditure Survey figures for non-retired households with one man and one woman.

Resident Spending from a Conventional Housing Scheme

To assess the additionality of this spend (i.e. the difference from what would have happened in the absence of the McCarthy & Stone scheme), we compare it with the spending generated by a conventional housing scheme on a site of 0.4 hectares. We set out a conventional scheme based on Government guidance to form a benchmark against which the local income benefits of a McCarthy & Stone scheme can be identified.

In its Planning Policy Guidance for Housing (PPG3), 2000, the Government sets out that planning authorities should encourage no fewer than 30 dwellings per hectare for housing developments, and encourage densities of between 30 and 50 dwellings per hectare. Given that most McCarthy & Stone schemes are on the edge of town centres it is likely that higher densities will be required by the planning authorities. For the counterfactual comparison we therefore take the Government's higher average figure of 50 dwellings per hectare (i.e. 20 dwellings on a site of 0.4 hectares). We assume that each dwelling houses one household of 2.4 people based on the average size of a household in England & Wales (Census 2001).

To estimate the average spending generated in a conventional scheme, we use the information from the Family Expenditure Survey (FES) for the financial year April 2000 to March 2001.[38] This estimates an average weekly household expenditure of £390. It ranged from £130 a week in the lowest of the ten income groups to £850 a week in the highest. The average size of household was 2.4 persons, which is consistent with the finding in the 2001 Census.

FES expenditure figures are based on the April 2000 to March 2001 period, while the McCarthy & Stone survey figures are in current prices (i.e. 2003). We therefore factor up the FES results by an annual growth of 2.2 per cent over two years, which is equivalent to the Retail Price Index (RPI) annual rate of change between July 2001 and July 2003. This gives an average household spend in 2003 of £403 (£168 per person).

With a conventional scheme of 20 houses on a typical McCarthy & Stone site, assuming 20 households, this provides a total weekly spend of £8,060, and £420,000 per year. The alternative McCarthy & Stone scheme of 45 apartments, housing around 55 residents and house manager (two person household), is estimated to produce a weekly spend of £11,735 (£610,000 per year).

McCarthy & Stone sites have a myriad of previous uses but we felt it was appropriate to use a conventional housing scheme with the highest level of density for comparison. This is likely to provide the highest local economic benefit of the typical alternative uses on McCarthy & Stone sites. Other typical uses include edge of town centre employment uses such as car showrooms, petrol stations, public houses and sometimes light industry. The benefits to the local economy of these former uses are largely derived through local jobs and these jobs result in some local spend. However, given the low employment density associated with these uses, they are only likely to generate around two to three jobs and very low aggregate spend. Also, the nature of their products (the supply of cars, petrol, etc.) is likely to result in very high to complete leakage of spending on suppliers.

McCarthy & Stone Resident Spending v. Counterfactual Spending

A typical lifetime of a new housing scheme is commonly estimated at 60 years for accounting purposes. To assess the total impact in terms of spending we multiply the spending over the lifetime of a housing scheme in Table 2, and then adjust this to present values. Present value measures the value of a future pound (i.e. the benefits) set by a discount rate. Without discounting, the assessment process is distorted. As we do not know the future value of a pound today we rely on the annual discount rate of 3.5 per cent set by the Government in its Green Book (the Government's set Guidance for Economic Appraisal of development projects).

[38] The FES is a survey of a random sample of private households in the United Kingdom carried out by the Office for National Statistics (ONS). It provides a wealth of information about household expenditure and household income. In 2000-01 6, 637 households took part in the FES. The response rate was 59% in Great Britain and 56% in Northern Ireland.

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Table 2: Additionality of Spending over the Lifetime of a MS Scheme (£)

	MS Scheme (A)	Conventional Scheme (B)	Additionality (A-B)
Annual spending of residents	610,300	420,000	190,300
Spending over lifetime of scheme	36,616,600	25,200,000	11,416,600
Present value of spending over lifetime of scheme	15,757,000	10,844,00	4,913,000

As illustrated in Table 2, the total present value of additional spending over the lifetime of a McCarthy & Stone scheme is likely to be around £5 million above the counterfactual, conventional housing scheme.

Quantifying Local Economic Benefits

The local income impact derives from two sources:

- Resident spending – spending by residents to the benefit of the local economy.
- Induced effects – the multiplier effect of successive rounds of expenditure. This depends on assumptions about leakage from the local area, taxation rates and the propensity to consume.

Local benefit is secured through reducing the level of leakage associated with the goods and commodities on which residents spend their money. Leakage is the proportion of spending which benefits those outside of the study area. In other words, we want to know how much of a McCarthy & Stone resident's spending is spent in the local area and not outside.

To estimate the local benefit of a McCarthy & Stone scheme against a conventional scheme we firstly look at the breakdown of the weekly spend by commodity and service types to establish how much might be retained in the local economy. We disaggregate spending by the FES classification, shown in Table 3, and judge the level of local leakage associated with each commodity/ service. We base this on differing levels of leakage[35] in calculating economic impact of expenditure within a typical local authority area. We consider that defining the local economy in terms of the local authority area is appropriate in this case.

[35] English Partnerships, Additionally: A Full Guide (July 2002)

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Leakage	Description	Leakage Factor
None	All of the spending goes to local business and people living in the local area	0%
Low	The majority of the spending goes to local businesses and people	25%
Medium	A reasonably high proportion of the spending will be retained within the area	50%
High	Many of the benifits will go to people living outside the area of benefit	75%
Very high	A significant proportion of those benefiting live outside of the area of benefit	90%
Total	All of the benefits go to businesses and people living outside of the area of benefit	100%

Table 3: Local Leakage of Spending by Commodities

Commodities/ Services	Leakage	Leakage Factor
Housing (e.g. mortgage, council tax)	Very High	90%
Fuel and power	Very High	90%
Food and non-alcoholic drinks	Low	25%
Alcoholic drinks	High	75%
Tobacco	High	75%
Clothing & footwear	Medium	50%
Household goods (e.g. toilet paper, furniture)	Medium	50%
Household services (e.g. Contents insurance, personal cleaner, home help)	Low	25%
Personal goods & services (e.g. jewellery, toiletries, medicines, hairdressing)	Low	25%
Motoring (e.g. car purchase, repairs, petrol, tax etc.)	Very High	90%
Fares and other travel costs (e.g. bus, rail, taxi, aeroplane, coach)	Medium	50%
Leisure goods (e.g. books, magazines, toys, newspapers etc.)	Medium	50%
Leisure services (e.g. cinema, shows, bingo, holiday etc.)	Medium	50%
Miscellaneous/ other expenditure	Medium	50%

On the basis of the assumed leakage associated with spending on different commodity/ services in Table 3, we estimate the direct impact in the local economy in Table 4. This shows an estimated 40 per cent of total spending by McCarthy & Stone residents to be injected into a local economy. A conventional scheme results in a marginally higher (41 per cent) proportion.

Table 4 shows no significant difference between the two schemes in terms of proportion of resident spending in the local economy based on assumptions given to spending type. However, McCarthy & Stone residents as a group are less likely to own a car and more likely to spend in the immediate local area.

The McCarthy & Stone residents' survey shows 62 per cent prefer to shop in a local centre compared with 19 per cent in a major town centre and just 10 per cent in an out of town retail park; 84 per cent consider the walking distance to shops and local facilities to be important in choosing their accommodation; and 65 per cent walk to the local shops at least every other day (34 per cent visit daily). These statistics indicate a high propensity to spend in the local centre closest to the scheme. While it is difficult to ascertain what the pattern would be for an average household in a conventional scheme, the likelihood is that more money is spent outside this area owing to higher probabilities of residents working elsewhere and having access to a car.

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Table 4: Retained Weekly Resident Spending by Scheme

	Before Leakage		After Leakage	
	McCarthy & Stone Scheme	Conventional Scheme	McCarthy & Stone Scheme	Conventional Scheme
Total Weekly Expenditure (£)	11,600	8,100	4,600	3,300
% of Spend Retained			40%	41%

Table 5: Total Weekly Impact of Resident Spending by Scheme

	Factor	MS Scheme (£)	Conventional Scheme (£)
Total spend		11,700	8,100
Local Spend	40%/41%	4,700	3,300
Local spending multiplier	1.3	1,400	1,000
Total local spend		6,100	4,300

Having obtained a reasonable estimate of direct spending, we are able to look at the additional impact through the expenditure multiplier in the local economy. The multiplier effect measures further economic activity, or in the case of a residential development, further spending associated with additional local income and local supplier purchases. The additional spend is generated by local shops, suppliers, services, etc., further along the supply chain. For example, purchase of a haircut provides income to the barber, some of which he will then go on to spend in the locality.

In Government guidance on assessing regeneration projects,[40] local authority area multipliers are shown to range from 1.21 to 1.38 depending on the type of project intervention (no example is given for a residential scheme). Studies have been undertaken elsewhere which attempt to calculate multiplier levels in local areas, however, there remains a paucity of information on spending multipliers from residential schemes. The closest assessment is visitor spend as this will be spending brought into a local area albeit through a different conduit: that of tourism. Stephen Wanhill's[41] study of different multiplier techniques found that income multipliers for UK cities and towns ranged between 1.19 to 1.40 in seven studies he looked at, with a mean multiplier value of 1.28. Research by RTP[42] on the impact of visitor spending in Brighton & Hove district found an income multiplier of 1.38 in the local economy.

The multiplier will differ for each local authority, so while we are unable to provide a specific multiplier we assume a conservative figure of 1.3, based on the evidence set out above. So for every £1 spent locally there is an additional 30 pence injected into in the local economy from further rounds of spending.

Applying this multiplier to the direct spending derived above, we are able to estimate the total impact on local economies from a McCarthy & Stone scheme compared with a conventional scheme in Table 5.

Local Benefits from McCarthy & Stone Resident Spending v. Counterfactual Spending

The annual income a McCarthy & Stone scheme will inject into a local economy additional to what might have happened, ie the counterfactual, is estimated to be around £1,750 per week (£92,000 per year). However, it is also appropriate to examine the total impact over the lifetime of a scheme. In Figure 1 we compare the local impact over a 60 year period, the average life of a standard built modern home, which is discounted to present value. This shows a McCarthy & Stone scheme impact to be £8 million, which is £2.3 million above what a conventional scheme is likely to deliver.

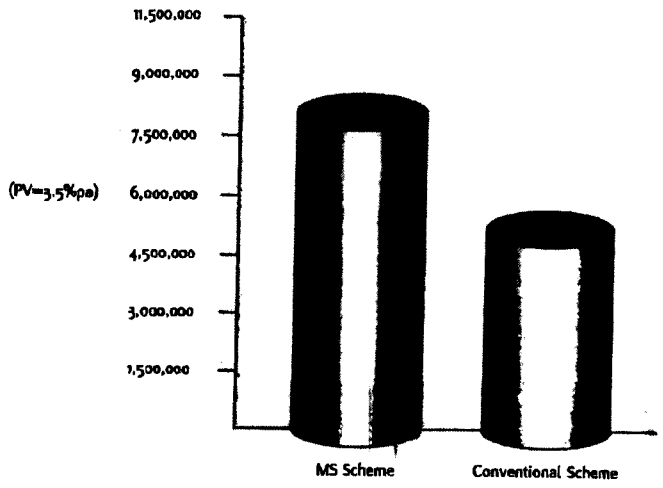
[40] The ODPM, Draft 3R (Draft Final, April 2003) and EGRUP (1995) Documents

[41] Stephen Wanhill, The Measurement of Tourist Income Multipliers, Tourism Management, 15(4), pp281-283

[42] Roger Tym & Partners, Economic Impact Assessment of the Brighton Centre (2002)

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Figure 1. Lifetime Local Spending Impacts of Schemes (£ Present Value)



Public Sector Cost Savings

Introduction

An additional impact of a McCarthy & Stone scheme is the savings in public sector service delivery costs to the residents. Generally, the need for health and social care services increases with age, as does the burden on public services to meet this need. There will be time and cost savings for doctors, health care assistants, etc., where needs are concentrated in a smaller geographical area. In addition, residents of McCarthy & Stone developments are likely to move into residential care later than residents of non-specialised dwellings. And if admitted to hospital they have a greater chance of earlier release from hospital or temporary care, thereby freeing up space and reducing delays for other patients.

The difficulty is in identifying what the likely savings are from a typical McCarthy & Stone scheme. We therefore refer to research that looks into the economic savings and benefits from developments of schemes like McCarthy & Stone's to illustrate potential economic benefits.

Research into Costs Savings

A Pieda (1997)[43] report found that if homes were adapted so more people would be able to cope with the tasks of daily living in their own home, then more people might not need to move into specialist housing, or would delay such a move. Specialist housing costs may well fall on the spending of local health authorities.

The study sought to quantify this based on annual cost savings that accrue from a delayed move into residential care. Figures used in the report are taken from the Personal Social Services Unit at the University of Kent for 1994/5; however, we have obtained updated figures for 2000/01, which are shown in Table 6.

Table 6: Average Care Costs for Elderly People, 2000/01

Provider	Costs per person per week (£)
Private	303
Voluntary	296
Local Authority	471

Source: PSSRU, Unit Costs of Health and Social Care, 2001

[43] Pieda PLC, A Cost Benefit Analysis of Lifetime Homes (1997)