
Site Address:	9 Frobisher Gardens, Emsworth, PO10 7AS		
Proposal:	Variation of Conditions 1 and 2 of 01/65327/003 to approve extractor system to suit range of foods and cooking processes undertaken at the premises.		
Application Type:	Variation/Relief of Condition		
Application No:	APP/22/00332	Expiry Date:	05/07/2022
Applicant:	Mr Cross Cross Cafe		
Agent:	Ms Butler Hazel Butler Architect	Case Officer:	Tina Pickup
Ward:	Emsworth		

Recommendation: **GRANT PERMISSION**

1 Site Description

- 1.1 The application site relates to an existing cafe operating from the ground floor of the Clock Tower, which is set well back off St Peters Square and is a partial reconstruction of St Peter's Chapel, (originally built in 1789). It is within Emsworth Town Centre (policy CS4) and Emsworth Conservation Area but is not a Listed Building, although noted as a building of local interest within the Emsworth Conservation Character Appraisal. The fore court area between the adjacent Methodist church and Treagust butchers provides outdoor seating for customers. The site is also within Chichester Harbour AONB.
- 1.2 The rear of the Clock Tower building is linked to a more modern development of three storey town houses known as Frobisher Gardens, which includes a dwelling linked to the north, set behind the butchers. It was a planning permission in March 1995 (94/54410/4 refers) that granted the reconstruction of the "Reeves" building to form a cafe or shop unit, with residential flat over, and construction of 13 dwellings with access off School Lane. The conditions on that permission originally controlled the use of the cafe and condition 4 restricted it to consumption on the premises only (ie no take away), with heating of food in a microwave only. If any other cooking processes were to be undertaken then condition 4 also required an adequate extraction/ventilation system to be installed, subject to approval of the LPA. Condition 5 also limited the hours of opening for customers to between 09.00 and 18.00 Mondays to Sundays.
- 1.3 In May 2001 condition 4 of 94/54410/4 was varied under 01/65327/003 to allow for the installation of an electric domestic cooker. The conditions imposed stipulated the range of foods sold to accord with a menu received in March 2001, and that the then submitted details of extraction equipment to discharge odours and fumes be installed and maintained.

- 1.4 The cafe changed hands in 2021 and the new owner upgraded the equipment within the kitchen, unaware of the previous conditions. Following initial complaint to Environmental Health that the new extractor vented to the most direct outside wall, to the north, and resulted in odours affecting the closest neighbour, Environmental Health investigated and required the extractor to be upgraded and re-routed. Planning Enforcement were also involved and as a result a retrospective Section 73 variation of condition application was made. However the original application sought to vary conditions 2,4 & 6 of 94/54410/004, which was incorrect as condition 2 and 6 were irrelevant to the issue, and condition 4 no longer has effect due to it already being varied by 01/65327/003. The application was therefore updated to correctly vary conditions 1 and 2 of 01/65327/003 to regularise the new menu and extractor.
- 1.5 Internally the kitchen is located within the north-west corner of the cafe and is partly open to the serving counter ie there is no dividing door. The kitchen is a small space, with no natural ventilation, and includes table top equipment of 4 hot plates, a convection oven, griddle and grill/toaster. Just outside the kitchen, adjacent the counter is a side door in the north elevation, leading to the former bin store that is used as a store cupboard. This is immediately adjacent the residential property, number 7. Within the customer seating area, there is a side sash window in the south elevation that opens onto a private pedestrian alley that links to Frobisher Gardens.
- 1.6 The extractor is now routed internally, as silver ducting at ceiling level, that goes through the cafe seating area and is vented through the corner small glazing window in the front facade. The new menu serves breakfasts and lunches, as well as cakes etc, i.e. a typical cafe for a light meal.

2 Relevant Planning History

94/54410/4 - Partial demolition of existing "Reeves" building and reconstruction to form cafe or shop unit with residential flat over, and construction of 13 residential units with associated parking and landscaping, all with vehicular access from School Lane. Permission 21/03/1995 with 28 conditions - the most relevant, condition 4:

*Notwithstanding the provisions of any Town & Country Planning use Classes Order, the cafe use hereby permitted shall be for the consumption of food and beverages on the premises only and shall not be for the provision of a hot food takeaway. Cooking on the premises shall be restricted to the preparation of hot beverages and the heating of food in a microwave oven unless agreed otherwise in writing with the LPA. If at any time other cooking processes are undertaken on the premises an adequate extraction/ventilation system shall be installed, including grease filters and odour neutralising plant, details of which shall be submitted to and approved in writing by the LPA prior to installation. **Reason** - To protect the amenities of the occupiers of adjacent residential properties.*

01/65327/002 - Application for installation of 1 wall mounted air conditioning unit on north elevation of existing cafe (retrospective), PERM,25/05/2001

01/65327/003 - Retrospective application for variation of condition 4 of planning permission 94/54410/4 to allow for installation of electric domestic cooker., PERM,25/05/2001

00/65327/001 - Variation of condition 4 of planning permission 94/54410/4 to allow for installation of electric domestic cooker (Retrospective application)., Withdrawn,13/02/2001

00/65327/000 - Retention of two air conditioning units to North elevation
(Re-advertisement), Withdrawn, 13/02/2001

3 Proposal

Variation of Conditions 1 and 2 of 01/65327/003 to approve extractor system to suit range of foods and cooking processes undertaken at the premises.

4 Policy Considerations

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

Havant Borough Local Plan (Core Strategy) March 2011

CS11	(Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS16	(High Quality Design)
CS4	()
DM10	(Pollution)
DM2	(Protection of Existing Community Facilities and Shops)
DM5	(Control of Class A3, A4 and A5 Food, Drink and Entertainment Uses)

Havant Borough Local Plan (Allocations) July 2014

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

Emsworth Neighbourhood Plan Post Examination Version 2020

ENP_H1	(Design & Heritage)
ENP_C2	(Retail, High Street & Food/Drink Uses)

Listed Building Grade: Not applicable.
Conservation Area: Emsworth

5 Statutory and Non Statutory Consultations

Conservation Officer

The site falls within the Emsworth Conservation Area. The majority of the works are contained internally and therefore, the impact on the conservation area is negligible. As such, no objections / concerns from a heritage perspective.

Environmental Health Manager

I have read the enclosed documentation provided by the applicant and can comment as follows:

I have no objection in principle to this application.

The extraction system, initially installed by the applicant, was upgraded earlier this year to include carbon filtration and additional attenuation, and was re-routed through to the front facade of the shop.

The current menu, includes certain meats and some seafoods such as salmon, prawns & mussels, and a variety of sandwiches, hot meals and so forth. The latest submission with regard to cooking methods and food preparation, employed in relation to said menu, suggests that the kitchen extraction system now in place should adequately cover the current menu and cooking methods.

The current menu that has been provided, and the stated cooking methods should be conditioned as such, to ensure any potential future occupants of this premises are limited to the aforementioned menu & cooking methods, without an approved variation planning application.

I would also ask that the following conditions be included in any favourable decision notice:

Condition 1:

The extraction and filtration equipment installed to suppress and disperse any fumes and/or odours produced by food preparation and cooking, shall be effectively operated for so long as the current use continues.

Reason:	To ensure that any unsatisfactory cooking odours outside the premises are minimised in the interests of the amenity of occupiers of nearby properties.
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Condition 2:

The extraction equipment installed in pursuance to Condition 1 above, shall be regularly maintained to ensure its continued satisfactory operation and the cooking process shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the Local Planning Authority and shall not be resumed until the system has been restored to full working order. Documentary evidence including receipts, invoices and copies of any service contracts in connection with the use and maintenance of the extraction equipment, shall be kept and made available for inspection at the premises by officers of the Local Planning Authority, to facilitate monitoring of compliance with this condition.

Reason:	To ensure that the use does not result in excessive cooking odours outside the premises and that the amenity of occupiers of nearby properties is protected.
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6 Community Involvement

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

Number of neighbour notification letters sent: 6

Number of site notices: 1

Statutory advertisement: 05/08/2022

Number of representations received: 2 2 letters of objection on original submission; 4 letters on updated details: 1 no objection and 3 from same author objecting

Comment	Officer Comment
<u>On original submission of incorrect conditions:</u>	
not clear to us from this planning application relating to the Cross Cafe what is being proposed.	Noted & agreed
letter and application do not seem to correspond so it is not clear what conditions they are looking to vary	Noted & agreed
As a result we can't give this proper consideration and comment further at this point. It is not possible to consider this application reasonably nor comment further until we have full details available. It would not be reasonable to grant such an application without all facts being available for review by all residents who might be impacted.	Noted
I have already raised some concerns with Environmental Health that the smells of cooking food (including fish) now coming from the cafe have an impact on the enjoyment of our house	See section 7
Also, I understand the new extraction system is already in place although planning permission has not yet been granted; this doesn't make any sense to me. Surely, planning permission being granted should be a pre-requisite of any upgrade work being carried out.	Yes, a retrospective application, which is assessed in the same way as if a proposed development
<u>On updated submission:</u>	
If this application relates to the updated extraction unit and new cooking facilities being installed we have no objection to these on the basis that any odour arising from the cooking passes through the extraction unit with carbon filters that are renewed regularly. We understand that the range of food offered or type of cooking is not being varied significantly from what was set out in the original planning permission.	Noted

I noted that Steven mentioned that he would not be frying for example. Given the change from the original approval of a microwave to this new cooking equipment impacts significantly the volume and range of cooking possible, it is good to see you are all considering carefully what should be in place to protect the neighbours, to match the intent of the prior planning approval that was in place to do the same. As discussed with the environmental team just after this new extraction unit was installed there is a strong cooking odour in our courtyard when the cafe's side door is left open (the cafe team use this door to get to their storage unit and bin) but we wish also to state that the current owners - Steven and Gemma, have been very diligent about shutting this door and they have not left it open.	See section 7 re intensification of use issues Noted - good management rather than a planning matter
unclear why there would be a need to vary the conditions of the previous application (01/65327/03) as they were put in place to protect the amenities of neighbouring properties and to ensure there is not unsatisfactory cooking odours outside the premises in the interests of occupiers of nearby properties. These conditions are still absolutely relevant (and probably more so today than previously) and should not be varied	Agreed - aim of current assessment is to continue to protect neighbouring amenity
application documents titled "Confirmation of Cooking Processes" does not, in fact, confirm any of the cooking processes in operation. It simply states that no frying is taking place; but it does not state what cooking processes are actually in place. how do we know that the cafe are not cooking foodstuffs in a pseudo-frying way (e.g., griddle?); that could technically be considered not to be frying but the outcome and resulting smells would be exactly the same.	Noted & agreed - further information requested

increasingly concerned about the cooking smells that we are now experiencing in Frobisher Gardens; have also noticed that the smells are significantly worse when the cafe opens their window (that leads to the alleyway beside the Methodist Church, and on to Frobisher Gardens). This raises a number of concerns for me; once the window is opened then the effectiveness of any extraction system would be compromised; ventilation system is supposed to discharge only to the front of the property; I do not understand the need for the window to be open. If this is an attempt to cool the inside of the cafe then it is misplaced because of the negative effect the cooking smells are now having on the amenities of neighbouring properties; reasonable for the Council to insist on some form of internal cooling or air-conditioning system being installed; Any form of approval to allow the upgrade to the ventilation system should impose a further condition that the window leading to the alley should remain closed at all times	Noted - see section 7 See section 7 re window opening
I have no problem with a new ventilation system being approved (although I do believe such approval should have been sought and given BEFORE the installation). However, I do have a problem with smells in Frobisher Gardens.	Noted
<u>Following updated Cooking Processes document:</u>	
smells relating to cooking are becoming stronger and more frequent in Frobisher Gardens, and the side window to the cafe remains open at all times during cafe opening hours; Cooking smells, that are not being picked up by the extraction system, emanate from this window and drift into Frobisher Gardens resulting in the offensive smells that we are experiencing and mean that the enjoyment of our home has been significantly (negatively) impacted;	see section 7

the smells are not from the customer servings of freshly cooked food - but rather cooking smells, which would indicate to me that <i>the extraction system is either not fit for purpose (even for current practices), or is not being utilised correctly.</i>	
updated document relating to cooking processes at Cross Kitchen and need to say that it has not reduced my concerns in any way. There is a very clear statement in the document that menu items are cooked by a variety of methods - including "sautéed". As you know, the definition of sauté is: "to fry food in a small amount of fat....." (i.e., not deep-frying). Therefore, it is not correct for the planning application to make a statement that "No frying or deep frying takes place within Cross Kitchen or ever has.....".	see section 7 re cooking processes
Another concern is the fact that there is a griddle in the kitchen - it makes no sense to me why it would be necessary to install a griddle if it was not to be used for cooking. This does not appear to be an economic method only to ".....keep sauces at safe temperatures....". It would appear only a matter of time before the griddle is used to cook food - and that, essentially, would become another form of frying	see section 7 re cooking processes
I am also concerned that, to my knowledge, Cross Kitchen only have permission for domestic cooking appliances. On reviewing the supplier details for the Silverlink 600 Griddle, it is clearly defined as "catering" equipment, with the supplier's website stating that the griddle is ".....perfect for cafes, pubs and restaurants.....".	see section 7 re definition of a domestic appliance
necessary for you to consider not only the protection of current residents, but also the protection of future residents who may be more permanently at home in Frobisher Gardens,	Noted & agreed

7 Planning Considerations

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development
- (ii) Impact upon residential amenity
- (iii) Impact upon the character and appearance of the area, including Conservation Area

(i) Principle of development - menu, cooking processes and domestic appliances

7.2 This is a Section 73 application and if approved, its granting effectively re-issues the permission it seeks to vary, and must repeat any relevant conditions unless they have been discharged. In this case the application is retrospective following Enforcement enquires and seeks to regularise the new extractor installed at the site as being suitable for the range of foods prepared at the site, which were previously covered by condition 1 and 2 of 01/65327/003. The reason for the conditions were to protect neighbouring amenity from odours, and the determination of this application should seek to maintain existing levels of amenity for neighbours, in accordance with policies CS16 and DM10.

7.3 This application must consider the impact of the proposed changes only, and does not need to re-consider the principle of the development or use, which already has planning permission by virtue of both 94/54410/4 and 01/65327/003. The lawful cafe use is a Class E use under the new Use Classes Order 2020.

7.4 Planning permission 01/65327/003 currently controls the cafe and the description of development approved in 2001 included a 'domestic cooker' (upgraded from the previously conditioned microwave only). Whether the new cooking equipment installed, including the oven, griddle and hot plates, can be considered 'domestic' or not has been considered in detail. All the equipment is run off single phase electricity ie they are plugged in via a standard 3 pin plug. As such they are moveable and could be run in any household. On this basis they are considered to still be 'domestic appliances' and remain appropriate.

7.5 The 2001 permission and menu is important to understanding how the site has been used for the last 20 years when it was "The Greenhouse Cafe". Examples of past menus provided clearly show that similar breakfasts, toasted sandwiches, jacket potatoes, cakes etc were on the menu - and notably both fried eggs and fried bread were previously available on the menu. The current menu is for a similar range of foods i.e. a typical light lunch from a cafe. The current menu has been updated and modernised, and does now include baked cheese, and some fish (mussels in white wine; prawns; cold smoked salmon). But overall the range of foods now on offer is considered to be sufficiently similar to the last 20 years for there not to have been any material change in the use of the site - it was and remains a cafe offering a similar range of light lunches/foods.

- 7.6 With respect to the cooking processes undertaken at the site, these obviously need to suit the menu and currently include baking/roasting/poaching/braising/boiling/sous-vide/toasting and sautéing. The overhead grill is used to warm plates and toast bread. The griddle is used as a holding system/hot plate/bain marie to keep sauces at the right temperature. The appropriateness and consequences of these processes, equipment and menu on neighbouring amenity will be considered below:

(ii) Impact upon residential amenity

- 7.7 The key issue in the determination of this application is whether the updated extractor is suitable to remove any odours associated with the menu and cooking processes, such that the surrounding levels of amenity are unaltered compared to the previous cafe, menu, extractor and cooking processes. The previous cafe menu included fried eggs and bread. There were no conditions previously applied that required any windows or doors to be closed. And notably, any Class E cafe opening in a former retail shop in a town centre would not need planning permission and as such the LPA would have no control over menus, cooking processes, extractors etc, which would all fall under Environmental Health only. Under current national planning regulations it is unusual to have such control over a cafe and any conditions should not be unnecessarily restrictive.
- 7.8 Policy CS16 does however require development to not cause unacceptable harm to the amenity of neighbours through smell, noise etc, and policy DM10 specifically refers to Pollution. This more detailed policy seeks to ensure any development that may cause pollution through noise, smell, smoke, fumes, gases, steam etc should only be permitted if the health and safety of users of the site, nearby occupiers and residents are not put at risk.
- 7.9 Environmental Health have confirmed that the extractor installed, with carbon filter and silencer, is suitable for all the cooking processes listed in the amended document and for the current menu and range of foods found in a cafe. Furthermore discussions with Environmental Health have confirmed that the extractor would be suitable to adequately mitigate any light frying in a frying pan, but not necessarily any deep fat frying. It is also noted that whilst the current chef uses the griddle as a warming plate only, that in fact the griddle could be used with oil for some light frying/sautéing. However Environmental Health have also confirmed that the extractor would still be appropriate if the griddle is used in this way. Overall the extractor, with carbon filter and silencer, is confirmed as being suitable for a cafe serving a range of breakfasts, lunches, cakes etc. It would however be necessary to re-assess its adequacy should the site become a restaurant serving a different range of foods, and so it remains appropriate to condition the range of foods available at the site.
- 7.10 Therefore the extractor is considered appropriate and suitable for the menu. However, despite its technical capabilities, one neighbour in Frobisher Gardens continues to complain about ongoing odours. The Environmental Health officer and the Planning Officer have been to site on more than one occasion and have never smelt any odours out in Frobisher Gardens itself. The only odour smelt has been of toast lingering in the covered passageway immediately west of the cafe, adjacent the Methodist church. This is adjacent the side window in the cafe where customers dine. It is acknowledged that this sash window is regularly open - in post Covid times it is essential for fresh air ventilation for customers. It is therefore considered that some limited odours may escape through this window from customers eating on the table next to the window.

Due to the internal layout, the kitchen is in the opposite corner of the cafe, and it is unlikely that any direct cooking odours are travelling across the cafe and out of the window, sufficient to cause any nuisance. It is much more likely that any odours are from plates of food at tables and as such are much more limited.

- 7.11 The third party also notes smells of fish, and whilst some fish is now on the menu, the salmon is cold, and the prawns and mussels are cooked in sauces and the extractor would remove any odours. Again it is considered that any fish odours are more likely to be from plates of served food rather than the cooking process.
- 7.12 The site is within a built up town centre, with other cafes and restaurants also cooking in close proximity. The adjacent butchers also cooks foods. The site has been in use as a similar cafe for over 20 years with no previous restrictions on the opening of the window. It is considered unreasonable to now restrict that window for occasional light odours from plates of food. It is considered that the continued use of the site as a cafe with updated menu and cooking processes would not result in any material harm to the amenity of neighbours - the new extractor is technically capable of removing any odours from the cooking processes. As a result the proposal is considered to comply with both policy CS16 and DM10.
- 7.13 With respect to the door on the north side, this is close to the counter and kitchen and kept closed because otherwise it would hinder staff movement. Access is required to the outside store and bins and the neighbour who is very close to this door has noted that all the time the door is kept closed then no smells are noted. Again it has never previously been conditioned that this door must remain closed, and is simply a matter of good management, and it is not considered necessary to now restrict its opening.
- 7.14 Other matters raised by third parties include the potential for an intensification of use through improved cooking facilities at the site. But the site is of limited size with the same space for tables and chairs (ie covers) as over the last 20 years. The physical restrictions of the site are such that any opportunity for any significant intensification of use would be very limited.
- 7.15 It should also be noted that Environmental Health have separate Environmental legislation that enables them to investigate and take any action necessary against any nuisance that is found to be a statutory nuisance. So should there be continued complaint in the future about odours then Environmental Health could investigate. The hours condition 5 of 94/54410/4 remains effective and relevant to the use of the site, and the current opening hours are within the permitted hours, with no breach.
- 7.16 As a section 73 application seeking to vary condition 1 (menu) and condition 2 (extractor) of 01/65327/003, it is considered that the new extractor is technically suitable for the modernised menu and as such these conditions can be varied and updated. The proposed development would not alter the living conditions or amenity of neighbouring residents, in accordance with policies CS16 and DM10. Condition 2 required the extractor to be maintained in full working order and that requirement would need to be repeated to ensure it remained effective and fit for purpose over time - as per the recommendation in the Environmental Health consultation response.

(iii) Impact upon the character and appearance of the area, including Conservation Area

- 7.17 The only external impact of the application is the provision of the vent in one of the small windows in the front facade of the cafe. This is virtually un-noticeable and hence has no adverse visual impact on the character of the building or wider area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area - and the proposal would preserve Emsworth Conservation Area.

8 Conclusion

- 8.1 This is a Section 73 application and its granting effectively re-issues the original permission and must repeat or amend accordingly the relevant conditions unless they have already been discharged. It is recommended to grant permission to vary and update conditions 1 (menu); and 2 (extractor) of 01/65327/003. The development has already commenced so the commencement time limit condition need not be repeated.

9 **RECOMMENDATION:**

That the Head of Planning be authorised to **GRANT PERMISSION** for application APP/22/00332 subject to the following conditions

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

Extraction ventilation system details - on Council's website dated 28 July 2022
Cross Kitchen Cooking equipment details - on Council's website dated 28 July 2022

Carbon pleated panel technical data sheet - on Council's website dated 28 July 2022

Current Cross Kitchen menu Examples which includes 3 pages of Breakfast, Lunch, and Cakes/Drinks - on Council's website dated 28 July 2022

Griddle details - on Council's website dated 26 August 2022

Cooking Processes Letter dated 24th August 2022 - on Council's website dated 26 August 2022

Reason: To ensure provision of a satisfactory development.

- 2 The range of foods sold at the premises shall be in accordance with the hereby approved menu examples "Current Cross Kitchen Menu Examples" held on the Council's website dated 28 July 2022. The hereby approved cooking processes shall be carried out in full accordance with the hereby approved Cooking Processes Letter held on the Council's website dated 26 August 2022 and in addition can include microwaving, light frying in a frying pan or griddle, but shall exclude any deep fat frying.

Reason - The extractor is considered adequate for the menu and cooking processes to protect the amenities of neighbouring properties, having due regard to policies DM10 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 3 The approved extraction and filtration equipment installed, with carbon filter and silencer, to suppress and disperse any fumes and/or odours produced by food preparation and cooking, in accordance with the hereby approved details held on the Council's website dated 28 July 2022, shall be effectively operated for so long as the cooking processes as approved take place at the premises. Any variation to the extraction equipment shall first be agreed in writing with the Local Planning Authority.

Reason - To mitigate any odours outside the premises, in the interests of the amenity of nearby properties, having due regard to policies DM10 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 4 The extraction equipment installed in accordance with condition 3 above, shall be kept in full working order in accordance with manufacturers guidance to ensure its continued satisfactory operation. The cooking processes reliant on the extractor to suppress and disperse odours and fumes, shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the Local Planning Authority, and shall not be resumed until the system has been restored to full working order. Documentary evidence including receipts, invoices and copies of any service contracts in connection with the use and maintenance of the extraction equipment, shall be kept and made available for inspection at the premises by officers of the Local Planning Authority, to facilitate monitoring of compliance with this condition.

Reason - to ensure effective operation of the extraction system in the interests of the amenity of occupiers of nearby properties, having due regard to policies DM10 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.