

Havant Borough Council
Planning Department
Public Service Plaza
Civic Centre Road
Havant
Hampshire
PO9 2AX

FAO Selina Donophy Case Officer

28th October 2022

Dear Ms Donophy,

Your Reference: APP/22/00965

Site Address: 2 Bembridge Drive, Hayling Island, PO11 9LU

Proposed Addition of new second floor with balconies to first and second floor, three storey front extension, new double garage and general remodelling

I act on behalf [redacted text]. I also act for [redacted text].

I am instructed to object to the application referred to above. My client's wish to register their strong objections to the application proposals which do not deliver a high quality, well-designed, residential development required by Policy CS 16 of the Havant Borough Core Strategy (HBCS). For these reasons, they request that planning permission for the application proposals should be refused.

In summary, they object to the application proposal because,

1. It does not comply with National and Local Planning Policy.
2. It is a poor quality design.
3. It will result in loss of residential amenity and privacy.

4. If approved it would undermine a consistent approach to planning decision making in Bembridge Drive and in particular the stance Havant BC Planning Department took in respect of the consideration of the planning application for my client's house [redacted text]

5. My client's have a Legitimate Expectation that the Local Planning Authority will take a consistent approach and act fairly in their assessment of similar and comparable development proposals.

RELEVANT PLANNING LEGAL PRINCIPLES and CASE LAW

Section 70 of the Town and Country Planning Act 1990 ("TCPA") requires that when dealing with an application for planning permission, the local planning authority must have regard to the provisions of the development plan.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that: "[i]f regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts [which includes the TCPA] the determination must be made in accordance with the plan unless material considerations indicate otherwise." (emphasis added)

Paragraph 47 of the National Planning Policy Framework ("NPPF") reiterates this point in stating that "planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise."

Further, paragraph 16 of the NPPF requires that "plans should [...] (d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals." (emphasis added)

The interpretation of planning policy is ultimately a task for the court, reading the policy sensibly and in its full context (as per Lord Reed in *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 at [18] and [19]). Accordingly, the meaning of the policies in a plan is not something a planning authority is entitled to determine from time to time as it pleases; on the contrary, policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context (as per Lord Reed in *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 at [18]).

Furthermore, when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed policies. The supporting text is relevant to the interpretation of policy but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy (*R (Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567 at [16], applied by the Court of Appeal in *Fox Land & Property Ltd v Secretary of State for Communities and Local Government* [2015] EWCA Civ 298 at [24] – [26] and in *Chichester DC v Secretary of State for Housing, Communities and Local Government* [2019] EWCA Civ 1640 at [31]).

Finally, while in general there is a generous margin of appreciation afforded to a planning authority in the determination of planning applications, a decision maker will restrict his freedom of movement by establishing a legitimate expectation that he will apply it in a certain way (*The Queen on the Application of Campaign to Protect Rural England v Herefordshire Council v Withers Fruit Farm Limited* [2019] EWHC 3458 (Admin) at [26]).

A claim to a legitimate expectation can be based upon a promise (or representation) made by a public authority provided that the promise was "clear, unambiguous and devoid of relevant qualification" (*R v Inland Revenue Commissioners ex parte MFK Underwriting Agents Limited* [1990] 1 WLR 1545, 1569; *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No.2)* [2009] 1 AC 453 at [60]). In considering whether representations are "clear, unambiguous and devoid of relevant qualification", the question is how, on a fair reading of the promise, it would have been reasonably understood by those to whom it was made (*R (Association of British Civilian Internees: Far East Region) v Secretary of State for Defence* [2003] QB 1397, per Dyson LJ, at [56], and *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2009] 1 AC 453 at [60]).

To rely on a representation, the claimant must show the representation was made directly to them, that they fall within a class of persons entitled to rely upon it, or that it was reasonable for them to rely upon it without more (*Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629, 638 ; *R v Jockey Club ex parte RAM Racecourses Limited* [1993] 2 All ER 225 at 236h-i).

THE APPLICATION

Approval is sought for the following:

Addition of new second floor with balconies to first and second floor, three storey front extension, new double garage and general remodelling

The Design and Access Statement (DAS) consists of one page and there is no proper explanation of the design rationale. It merely states,

Design and Access Statement for Addition of new second floor with Balconies to first and second floor three storey front extension new double garage and general remodelling at 2 Bembridge Drive Hayling Island PO11 9LU

Background

The property sits on the corner of the entrance to Bembridge drive and has a recently extended and refurbished 3 storey property to the east, an existing three storey block of retail and flats to the north, open beach front to the west and the beach / sea to the south. It has some previous planning history as below.

8/2/2022 Prior approval application APP/22/00084 for addition of two extra storeys

REFUSED

11/3/1993 Balcony extension APP 93/58139

APPROVED

26/7/1985 Alterations, extension, and double garage to the front APP 18724

APPROVED

The property is somewhat plain and very boxy in its current form. It offers two stories with a very large viewing platform / balcony at 2nd floor level which is fully accessible with 1.1m parapet wall around the outside.

Proposal.

The design aims to create an additional floor and to modernise / enhance the building, utilizing updated form, modern materials and floor to ceiling glazing.

The palette of materials is specified to match as closely as possible with its newly refurbished neighbour to the east utilising white silicone render, timber effect vertical cladding, umbra grey windows and doors and dark grey roofing membrane.

The height of the proposed building will match that of its neighbours and will fully utilise the buildings position and sea / beach views. The additional floor has been significantly stepped in on the western and eastern elevations to follow the pitched roof form of its neighbour and care has been taken to have no windows in the east elevation and to provide 1.7m frosted glass screening to ensure the balconies do not overlook the neighbouring buildings windows.

It is not clear if this application has been subject to a request for pre- application advice from the local planning authority? There is no reference to this in the DAS. If it has been subject to pre-application advice this should be disclosed by the applicant and the Council, so that residents can understand the context of how the design of this proposal evolved and developed.



1 3D View 1 1
1:1



2 3D View 2 1
1:1



3 3D View 3 1
1:1



4 3D View 4 1
1:1

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2 Bembridge Dve HI
Existing

Site Views

Project number	Project Number	A105
Date	Issue Date	
Drawn by	Author	1:1
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03/03/2022 14:05:03



1 3D View 1 9
1:1



2 3D View 2 1
1:1



3 3D View 3 6
1:1



4 3D View 4 3
1:1

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Proposed V7

Site Views

Project number	Project Number	
Date	Issue Date	A115
Drawn by	Author	
Paper size	A3 (Print 100% no borders)	Scale 1:1

06/10/2023 17:21:42

THE PLANNING CONSIDERATIONS

The first consideration is impact on the amenity of adjoining premises, including overlooking, privacy and the loss of light.

The 3D images that accompany the application, included above, demonstrate the impact of the proposal [redacted text] and how overbearing the proposal would be. The windows and balconies within the rear elevation look directly into the rear garden of the neighbouring house. The side terrace looks in to the *Velux* windows of the first and second floor of [redacted text] and would result in overlooking, loss of privacy and loss of light and overshadowing in the living room and bedroom in this part of the house.



Looking Southeast towards the site. The proposal fails to turn the corner and is over dominant in the street scene and out of character with the area. Photo 1.



Looking Northeast from the footpath leading to the beach towards 2 Bembridge Drive and the flats opposite. The impact of the proposal is clear. Photo 2.



Looking East from the footpath to the beach with [redacted text] with the dark roof. Photo 3.



Looking North from the beach the impact of the proposal would be overbearing and over dominant [redacted text]. Photo 4.



Looking South from Bembridge Drive. The design of the proposal would appear clumsy and awkward in the street scene with in incoherent design out of character with the area. Photo 5.



The view from Flat 10 looking south. The proposed design will be overbearing to the occupiers of Flat 10, result in overlooking, loss of privacy and loss of outlook. Photo 6.

OVERLOOKING

This proposal which will be three storeys in height will result in overlooking [redacted text] and the flats opposite. The rear garden of 4 Bembridge Drive will suffer severe overlooking from the proposed first and second floor balconies, second floor terrace and windows with views looking directly into the living room and a bedroom and the garden of [redacted text]. There is considerable potential for these areas to be used for entertaining and outdoor social events. Indeed, the appearance of the first and second floors is more akin to an hotel or restaurant terrace and does not appear domestic or residential in character or design.

The wrapround terrace on the second floor is over dominant and intrusive. It will result an unacceptable loss of residential amenity and privacy to the occupiers of [redacted text] and will result in views through the existing *Velux* windows.

The occupants of [redacted text] will also suffer from “*perceived overlooking*’ when enjoying and using their garden. The proposal is unacceptable with regard to the overbearing impact it would have upon the garden of [redacted text] which would be exacerbated by the perceived loss of privacy. The proposal is therefore contrary to Policy CS 16 of the Havant Borough Core Strategy (HBCS).

LOSS of PRIVACY

The design of the proposal will result in loss of privacy to the occupiers of [redacted text] and will impact unacceptably on the use and enjoyment of their garden. The three storey building with terraces accessed from large, glazed doors would loom over their garden and be an over dominant presence.

It should also be noted that the first-floor bedroom at [redacted text] is reliant on light it receives from the skylight window serving the room.



The existing view from the first floor lounge will be blocked by the proposal resulting in substantial loss of light and the outlook will be reduced to a solid brick wall. Photo 7



The current view from the second floor bedroom currently the outlook is the sky but would change to the proposed roof resulting in loss of light, a poor outlook and loss of privacy as persons using the balcony could look straight through the *Velux* windows in to the bedroom.

Photo 8

The second consideration relates to the external appearance of the dwellinghouse, including the design and architectural features of the proposed elevations.

THE PROPOSED ELEVATION OF THE DWELLINGHOUSE

The proposed elevations of the dwellinghouse with the additional storey are not a thing of beauty, as can be seen from the proposed elevations above.

The proposed design is extremely unattractive and is not a cohesive piece of architecture.

This is poor design and conflicts with guidance in the National Planning Policy Framework (NPPF) also referred to as “*the Framework*”.

The proposal would be unattractive when viewed from neighbouring properties, the street, the beach, and immediate locality. The poor quality design does not contribute to improving the appearance of the area and will be detrimental to the character and appearance of the area due to its poor and incoherent design. These comments apply equally to the side elevations and the rear elevation which will be viewed from the beach.

CONFLICT WITH NATIONAL AND LOCAL PLANNING POLICY

National Planning Policy Framework

The design of the proposal conflicts with paragraph 130 of the framework which states,

130. Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit; “

Paragraph 134 goes on to state,

“

134. Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design⁵², taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:

- 1. a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or*
- 2. b) outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.*

⁵² Contained in the National Design Guide and National Model Design Code. “

Local Plan Policy

The proposal is also in conflict with the policies in the Havant Borough Core Strategy March 2011 and in particular Policy CS16,

Policy CS16 High Quality Design

Planning permission will be granted for development that is designed to a high standard, which helps to create places where people want to live, work and relax. All development should demonstrate that its design:

1. Responds to, draws inspiration from and respects local context and:

- a) Identifies and responds positively to existing features of natural, historic or local character within or close to the proposed development site;

- b) Integrates with existing local landscape features, promotes wildlife and

biodiversity and/or applies characteristics of the local area into the design of a scheme wherever possible to create variety and interest;

- c) Uses the characteristics of the locality to help inform the design of the new development including heights, massing, existing buildings lines, plot widths and depths, materials and proportions of windows and doors.

- d) Is well connected to and integrates with the immediate local area and the wider area by linking to existing pedestrian and cycle routes and encouraging people to use public transport where possible; and

- e) The development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.

The proposal also conflicts with the Havant Borough Council Borough Design Guide Supplementary Planning Document December 2011.

The proposed additional three storey building is not well designed and conflicts with National Planning Guidance in the NPPF. The proposal also conflicts with Local Planning Policy, in particular Policy CS 16 of the Havant Borough Core Strategy March 2011 and the Supplementary Planning Document Havant Borough Council Borough Design Guide December 2011 which is a material consideration. These policy objections support refusal of the application.

CONSISTENCY IN PLANNING DECISION MAKING - CASE LAW

Consistency in decision making when determining planning applications is important. It is well established case law that previous planning decisions are capable of being material considerations, meaning that they may need to be taken into account by those determining subsequent applications for permission.

The reasoning behind this was explained by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137: "One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency [...]. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system."

Two decisions in the High Court have emphasised the importance of consistency in planning decisions and the need for clear reasons to be given where inconsistencies arise.

The first case, *R (Midcounties Co-Operative Limited) v Forest of Dean District Council* [2017] EWHC 2050, involved a challenge by the Co-Op of the granting of planning permission for an Aldi store on a site outside the town centre.

The application was approved at a full council meeting despite the planning officer's report recommending refusal. One of the Co-Op's grounds of challenge was that the council had failed to have regard to the importance of consistency in decision-making as

it had refused to grant Aldi permission for a near-identical development on the same site the previous year due to adverse retail impacts on the town centre. The Co-Op also alleged that if the council had given consideration to its earlier decision, there had been a failure to give reasons as to why it had now reached a different decision and granted planning permission.

Planning permission was quashed by the court after it held that the council had made clearly inconsistent decisions and had failed to provide adequate reasons for doing so. By failing to reference, let alone address, the previous refusal decision, the council had not explained how the previous concerns relating to adverse retail impacts had been addressed and allayed in the subsequent application.

Singh J confirmed (at paragraph 107) that: "Although the authorities demonstrate that a local planning authority is not bound by its earlier decision, nevertheless it is required to have regard to the importance of consistency in decision-making."

In essence, it was open to the council to reach a different decision but only if it had "grappled with the earlier reason for refusal based on retail impact and harm to the viability of the town centre".

The case emphasised that, in circumstances in which an earlier decision is a material consideration in the context of a current application, a decision-maker must provide clear reasons for any departure from their original position.

In a second case, *Baroness Cumberlege v Secretary of State for Communities & Local Government [2017] EWHC 2057*, planning permission granted by the Secretary of State for a housing development was quashed after he had failed to take into account a decision taken by his own department a mere 10 weeks earlier.

The High Court held that the Secretary of State's decision that a planning policy was out-of-date, and thus could be given less weight, was completely inconsistent with the decision of his own department, which was that the policy was up-to-date.

Howell QC stated (at paragraph 100) that: "There is a public interest in securing reasonably consistency in the exercise of administrative discretions that may mean that it is unreasonable for a decision-maker not to take into account other decisions that may bear in some respect on the decision to be made. There is no exhaustive list of the matters in respect of which a previous decision may be relevant. That must inevitably depend on the circumstances."

The earlier decision was not so different that it could reasonably be ignored. Any reasonable decision-maker would have considered it and decided whether they agreed with the reasoning given for regarding the policy as being up-to-date and whether the reasons were equally applicable to the present case. Again, they would also have provided reasons for any departure from the previous decision. Permission has been granted for the secretary of state to appeal the decision in the Court of Appeal.

These two court decisions emphasise the need for consistency in planning decision making, especially when assessing similar developments. This is not so onerous so as to mean all previous decisions must be considered. However, it is clear that there are instances where decisions are so similar that to fail to take them into account would be nothing but unreasonable.

The assessment and consideration of the planning applications for the redevelopment of 4 Bembridge Drive are material considerations to the determination of this application.

Appendix 1 includes plans from the various application submissions made by my clients and the rigorous detail that the Planning Officer gave to them between 2019 and 2021. The plans demonstrate how the design evolved through various iterations to the current built form that officers could support, having originally been opposed and criticised by the Local Planning Authority. It should be noted that features originally proposed such as walk out balconies and terraces were not found to be acceptable and the same approach must be followed in respect of this application. The as built design on page 1 should be compared with the original submission on page 4, which included walk out balconies which the planning officer opposed.

WITHOUT PREJUDICE COMMENTS ON THE CURRENT APPLICATION

1. The proposal needs to take on board design features incorporated in the design of [redacted text] including a pitched roof and recessed balconies.
2. A S106 Planning Obligation preventing the conversion of the building into flats should be entered into.
3. The existing building is too close to the boundary [redacted text] and the opportunity should be taken to reduce the footprint of a new property at 2 Bembridge Drive as part of the consideration of the redevelopment of the property.

SUMMARY AND CONCLUSIONS

The proposal for a three storey dwelling at 2 Bembridge Drive conflicts with National and Local Planning policy.

The proposal will result in unacceptable impact on the amenity of adjoining properties [readctedtext] Bembridge Drive. There will be unacceptable overlooking, loss of privacy and loss of light which will cause serious harm to the occupiers of neighbouring properties.

The proposed external appearance of the building with three storeys is a poor design and results in an unattractive building out of character with the area. The incoherent design of the building fails the tests in the NPPF regarding well designed developments. In accordance with the NPPF advice poorly designed proposals should be refused.

It is clear from the floorplans that ultimately this application is an attempt to establish eight apartments, as the internal staircase would allow self-contained flats to be established. This is planning by stealth, and it appears that the application is attempting to establish a fallback position where approval of this application would be used to justify a planning application to create forflats.

The proposal will therefore be harmful to,

- i. the residential amenity and privacy of surrounding dwellings due to overlooking.
- ii. the character of the area and street scene due to a poorly designed building.
- iii. result in loss of light to 4 Bembridge Drive.

The application should be refused as there are significant and substantial material planning objections to the application. The adverse impact of the proposal significantly and demonstrably outweighs any benefits.

It is respectfully requested that the application is refused for the reasons set out above.

For all the reasons set out in this letter, it is clear that planning permission cannot be granted for the proposal in its current format.

It is requested that these representations are taken into account in Havant BC consideration of the application. I would be grateful to be notified if additional information is submitted by the applicant and if the application is to be presented to a Planning Committee we would wish to attend.

Finally, please can you acknowledge receipt of these representations by return email.

Yours faithfully

[Redacted text]

Andrew Burgess BA Hons MRTPI FRSA
Managing Director

cc

[Redacted text]