

CS17	(Concentration and Distribution of Development within the Urban Areas)
CS20	(Transport and Access Strategy)
CS4	()
CS9	(Housing)
DM8	(Conservation, Protection and Enhancement of Existing Natural Features)

Havant Borough Local Plan (Allocations) July 2014

AL1	(Presumption in Favour of Sustainable Development)
DM24	(Recreational Disturbance to Special Protected Areas (SPAs) from Residential Development)
AL3	(Town, District and Local Centres)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Building Control, Havant Borough Council

There is insufficient information to be able to properly comment. The following is noted

1) It should be ensured that adequate escape under Requirement B1 and adequate access for the fire service under Requirement B5 is provided to the new floors.

2) The unprotected area of the wall, formed by windows, on the boundary with 77 London Road does not appear to comply with the guidance for Requirement B4

Community Infrastructure, Planning Policy & Urban Design

CIL Liable: <http://www.havant.gov.uk/community-infrastructure-levy-charging-schedule>.

CIL Forms 1: Additional Information and 2: Assumption of Liability have not been submitted. These can be submitted prior to decision, or we will require a CIL Form 5: Notice of Chargeable Development if prior approval is granted.

Additionally, pending a response from Natural England on the 'HRA', instructions should be passed by the Case Officer to the CI Team to:

(a) Issue the Solent Recreation Mitigation Strategy Unilateral Undertaking, based on the additional dwelling and its respective number of bedrooms. See <http://www.havant.gov.uk/unilateralundertaking-solent-recreation-mitigation-strategy>.

b) Issue the Nutrient Neutrality Unilateral Undertaking. See <https://www.havant.gov.uk/nitrogen-developers>

As this is a prior approval application, payment in respect of SRMS and Nutrient Neutrality is required up front before commencement. However, we strongly recommend the applicant settles this amount prior to the decision being made. If a prior approval is implemented without having met the obligations under the Habitat Regulations, there will be a breach of planning control.

Councillor Gwen Robinson

No comments received.

Councillor Mike Sceal

No comments received.

Councillor Peter Wade

No comments received.

Environment Agency

No comments received.

Environmental Health Manager, Community Group

No comments received.

Hampshire Highways

The Highway Authority have reviewed the information submitted and are satisfied that the proposals would not cause a detrimental impact on the wider highway network.

The applicant should be made aware that the final decision regarding parking arrangements is with Havant Borough Council as the Local Parking Authority. The applicant should secure confirmation with HBC about whether the proposed parking provision will be acceptable or not.

Having regard to the above, the Highway Authority would not provide any objections to the above application.

Natural England Government Team

No comments received.

Portsmouth Water Company

The Portsmouth Water Catchment Management Team have reviewed this application and have no subsequent adverse comments to make in regard to this development from a groundwater quality protection perspective. This is due to the developments nature and location within SPZ1c of the groundwater catchment.

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: 23

Number of site notices: 1_

Statutory advertisement: Not applicable.

Number of representations received: 0

7 Preliminary Matters

- 7.1 Paragraph 3 (1) 'Permitted development' of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states:

"Subject to the provisions of this Order and regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017, planning permission is hereby granted for the classes of development described as permitted development in Schedule 2."

- 7.2 The Conservation of Habitats and Species Regulations 2017 were amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 7.3 Whilst no mitigation has been submitted as part of this application for prior approval, it is not a criterion to be considered at this stage. However, in order to comply with Regulation 63 of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 the proposal would require a Habitats Regulations Assessment (HRA), including Appropriate Assessment (AA) as the proposal is likely to have a significant effect on several Solent European Sites due to both the increase in recreation and the decrease in water quality that would result from the proposed development as a result of the additional residential flats. As such, if prior approval were granted any works could not begin until such time as the applicant receives written notification (approval of the local planning authority) having carried out such assessments as the competent authority.
- 7.4 Furthermore, paragraph 3 (2) 'Permitted development' states:
- "Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2."*
- 7.5 Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), permits development of new dwellinghouses on detached buildings in commercial or mixed use. Class AA (1) allows development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building subject to a number of criteria.
- 7.6 As detailed within the GPDO, development under Class AA is permitted subject to a condition that before the beginning of the development, the developer must apply to the Local Planning Authority for prior approval. The Local Planning Authority may refuse the application where it considers that the proposal does not comply with the limitations or restrictions that are applicable to such permitted development.
- 7.7 The developer must apply to the Local Planning Authority for prior approval as to –
- (a) transport and highways impacts of the development;
 - (b) air traffic and defence asset impacts of the development;
 - (c) contamination risks in relation to the building;
 - (d) flooding risks in relation to the building;
 - (e) the external appearance of the building, including—
 - (i) the design and architectural features of –
 - (aa) the principal elevation; and
 - (bb) any side elevation that fronts a highway; and
 - (ii) the impact of any works under sub-paragraph (1)(c) or (d) of Class AA;
 - (f) the provision of adequate natural light in all habitable rooms of the new dwellinghouses;
 - (g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light;
 - (h) impacts of noise from any commercial premises on the intended occupiers of the

new dwellinghouses;

(i) impacts of the introduction of, or an increase in, a residential use of premises in the area on the carrying on of any trade, business or other use of land in the area;

(j) whether, because of the siting of the building, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15th March 2012¹⁹⁰ issued by the Secretary of State, and

(k) where the existing building is 18 metres or more in height, the fire safety of the external wall construction of the existing building.

7.8 The provisions of the GPDO require the Local Planning Authority to assess the development proposals solely on the basis of the limited number of considerations set out above.

7.9 Development Plan Policies and the National Planning Policy Framework 2021 can be considered relevant to prior approval cases insofar as they relate to the development and prior approval matters.

7.10 In addition to the above, there are a number of criteria that need to be complied with which are set out within the GPDO in which the applicant has addressed in the Planning Statement accompanying the application.

8 Planning Considerations

(a) transport and highways impacts of the development

8.1 As noted above, the Highway Authority have reviewed the information submitted and are satisfied that the proposals would not cause a detrimental impact on the wider highway network and raise no highway objections.

8.2 Furthermore, the Highway Authority advise that the final decision regarding parking arrangements is with Havant Borough Council as the Local Planning Authority.

8.3 The applicant advises that the existing rear parking area hosts at least 14 vehicles and that the existing vehicular access would be used.

8.4 It should be noted that the existing car park does not have any demarcation, so the capacity of the car parking area is difficult to assess. Assuming that the car parking area can accommodate at least 14 vehicles, as the applicant states, the requirement for additional parking provision needs to be assessed.

8.5 No information has been provided regarding the existing ground floor layout nor the existing first and second floors that are in residential use. However, details of the additional floors for residential flats have been provided. In terms of the type of accommodation both these floors would have 3 x 1 bedroom and 1 x 2 bedroom flats. This would require a provision of 4.4 spaces. Assuming that the first and second floors are similar then this equates to 8.8 spaces. Calculations of the new flat sizes have been provided and based on these a rough estimate of 9 spaces for the ground floor would be required. The total of which, in the absence of information to the contrary, is approximately 18 spaces that would be required to serve both existing and the proposed development.

8.6 As noted above, the applicant advises there is an existing capacity of 14 spaces so it

would appear that the parking provision would fall short of the Council's parking standards. However, the site is located within a town centre location with good access to services and shops, including public transport and is therefore considered a sustainable location where any possible small shortfall of parking provision is considered acceptable.

(b) air traffic and defence asset impacts of the development

- 8.7 Not applicable in this instance as whilst the height of the building would increase, it would not be so significant to interfere with any air traffic or defence asset.

(c) contamination risks in relation to the building

- 8.8 The proposals relate to building upwards the existing building and, as such, no ground works are involved, albeit there would inevitably be building works. However, due to the age of the building, there may be asbestos present but that would be a matter for the applicant to investigate and deal with in an acceptable safe manner.

(d) flooding risks in relation to the building

- 8.9 The building is situated within Flood Zone 1 and it is not considered that there would be any increase in flood risk as a result of the development. Surface water generated would be a matter to be considered, however, it is not proposed to extend the building outwards and the surface water generated would not be materially different than the existing.

(e) the external appearance of the building, including—

(i) the design and architectural features of –

(aa) the principal elevation; and _

(bb) any side elevation that fronts a highway

- 8.10 The applicant's planning statement makes reference to an appeal decision for a site in London, wherein, the appeal Inspector stated, inter alia, that *"The wording in the context of paragraph AA.2(1)(e), in my view, suggests a relatively narrow assessment as to the external appearance of the proposal itself, including the design and architectural features, rather than its effect on the wider area."*
- 8.11 Notwithstanding the above, there has been a High Court judgement (Cab Housing Ltd v SSLUHC [2022]) about the scope of the prior approval matters in relation to impact on the amenity of any adjoining premises and also the external appearance which is not limited to the impact of that appearance of the subject property itself but also it can include the impact of that appearance on neighbouring premises and the locality. Whilst this judgement was in relation to Part 1 Class AA, it is considered that such a judgement and interpretation of the regulations also supports such an interpretation for the purposes of Part 20 Class AA, among others.
- 8.12 The additional two storeys to the building have been designed to match the existing building. However, the proposed development would result in a five storey building, which would be significant in terms of height, size, scale and massing. The proposed development would result in a significant change to the existing characteristics of this part of London Road/Chapel Road introducing a much more developed built form that would be out of keeping with the prevailing character of the locality and would be detrimental to the visual amenities of the street scene. In addition, in terms of its

juxtaposition with the adjacent building to the north east (No.77), which is a two storey building, this would be dominated by the new five storey structure.

- 8.13 It is considered that the proposal would be of excessive size, scale, height and massing, which would result in an incongruous and over dominant appearance out of keeping with the general form and scale of development in the locality. As such, the proposal would unacceptably harm the character and appearance of the area and would therefore conflict with Policy CS16 of the Local Plan (Core Strategy), the Design Guidance SPD and the National Planning Policy Framework 2021.

(ii) the impact of any works under sub-paragraph (1)(c) or (d) of Class AA

- 8.14 Sub-paragraph (1)(c) states:

Works for the construction of appropriate safe access and egress from the new dwellinghouses and existing premises in the building, including means of escape from fire via additional external doors or external staircases.

- 8.15 It was observed that the existing building does have an external fire escape, however, this has effectively been neutralised in that it is apparent that the door openings at first and second floor leading onto the fire escape have been bricked up and the lower section of staircase to the ground has been removed.

- 8.16 The proposals do not include any additional external means of escape from the new floors and therefore, whilst the comments of Building Control in this regard are noted, it is not a requirement of prior approval to provide such details and only the impacts of such provision would be a matter for consideration under prior approval.

- 8.17 Sub-paragraph (1)(d) states:

Works for the construction of storage, waste or other ancillary facilities reasonably necessary to support the new dwellinghouses.

- 8.18 In this regard, the applicant has stated that the refuse and cycle stores would be located to the rear of the building within the curtilage of the site and these are shown on the block and location plan and it is considered that such works could be carried out without resulting in any adverse impacts to the locality.

(f) the provision of adequate natural light in all habitable rooms of the new dwellinghouses

- 8.19 The proposed apartments would all be served by windows and therefore would be provided adequate natural light in all habitable rooms of the new dwellinghouses.

(g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light

- 8.20 The proposed development would be directly above the existing flats within the building and would not result in any adverse impact on the amenity of the existing building. Given the relationship and degree of separation from neighbouring properties it is not considered that the development would have a significant adverse impact on the amenities of neighbouring premises by reason of overlooking, loss of privacy or loss of light.

(h) impacts of noise from any commercial premises on the intended occupiers of the

new dwellinghouses

- 8.21 The site is within a town centre location which comprises a mix of commercial and residential properties above shops and businesses. There is also a bar and restaurant adjacent known as Number 73. Whilst it is acknowledged that there will inevitably be some noise generated from adjacent businesses due to the nature of being within a commercial/retail town centre this would be expected and not of sufficient magnitude to adversely impact on future residents.

(i) impacts of the introduction of, or an increase in, a residential use of premises in the area on the carrying on of any trade, business or other use of land in the area

- 8.22 The introduction of additional residential units is not considered to adversely impact upon the carrying out of trade, business or other use of land in the area.

(j) whether, because of the siting of the building, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15th March 2012¹⁹⁰ issued by the Secretary of State

- 8.23 Not applicable in this instance.

(k) where the existing building is 18 metres or more in height, the fire safety of the external wall construction of the existing building

- 8.24 The application details state that the existing building has a height of 9.2m and therefore, for the purposes of prior notification, this information is not required. However, the comments of Building Control are noted in this respect in that the unprotected area of the wall, formed by windows, on the boundary with 77 London Road does not appear to comply with the guidance for Requirement B4.

9 Conclusion

- 9.1 The proposal would be of excessive size, scale, height and massing, which would result in an incongruous and over dominant appearance out of keeping with the general form and scale of development in the locality. As such, the proposal would unacceptably harm the character and appearance of the area and would therefore conflict with Policy CS16 of the Local Plan (Core Strategy), the Design Guidance SPD and the National Planning Policy Framework 2021.

10 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE PRIOR APPROVAL** for application APP/22/00164 for the following reasons:

- 1 The proposal would be of excessive size, scale, height and massing, which would result in an incongruous and over dominant appearance out of keeping with the general form and scale of development in the locality. As such, the proposal would unacceptably harm the character and appearance of the area and would therefore conflict with Policy CS16 of the Local Plan (Core Strategy), the Design Guidance SPD and the National Planning Policy

Framework 2021.