

Recommendation:

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)
CS20 (Transport and Access Strategy)
CS4 (
DM13 (Car and Cycle Parking on Residential Development)
DM2 (Protection of Existing Community Facilities and Shops)

Havant Borough Local Plan (Allocations) July 2014

DM17 (Contaminated Land)
DM20 (Historic Assets)
DM18 (Protecting New Development from Pollution)

Submission Version Havant Local Plan

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

5 Statutory and Non Statutory Consultations

Conservation Officer

Assessment:

The proposal is to now convert the existing shop units into residential as it has not been possible to let these for retail use, due to declining demand. This part of the conservation area has changed in character to that of mixed use residential /commercial rather than predominantly commercial with the loss of some shops and public houses.

The proposed conversion would not require any changes to the exterior façade and as such, it is not considered that any harm would occur to the character of the conservation area.

Overall the proposal would meet the test of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and no objection is raised on heritage grounds to the application.

Conclusion – No objection

Councillor Imogen Payter

No comment

Councillor J Branson - St Faiths

No comment

Councillor T Pike - St Faith's

I am concerned about the above application, and don't understand why it is a prior approval rather than a planning permission - presumably a rule has changed that I don't understand.

I wish to object to changing the North Street frontage from a town centre use, as I did for app APP/19/00807, and I believe the same features apply to this new application. I see nothing in the submitted documents that suggest that a different outcome should apply for this application.

Case Officer comment : The prior approval application Class MA has since been discussed with Councillor Pike - for this prior approval application the criteria is limited and the vitality of the town centre does not form part of this criteria.

Environmental Health Manager, Community Group

Notwithstanding the qualified objections of others; the context of this development is essentially identical to the related prior application (APP/18/00787, 40 North St.). As such the advice is the same as that given previously, for the same reasons. Reproduced below for ease of reference (blue text).

It is recommended that the informative (blue text, italics) be placed on any decision notice that the Development Management service is minded to grant/recommend in respect of this notification. The purpose of this is to ensure that the developer is aware that liability rests with the developer for contaminants which ought to have been identified during the development, where these contaminants subsequently prove capable of causing significant harm to future occupants. Given the form of development, this applies in particular to contaminants identifiable by olfactory means (by odour; solvents, fuels etc.) which may impact indoor air quality.

I am not recommending a proactive investigation of soil conditions for the following reasons;

- the proposals involve modification of the building, and not a substantial or wholesale replacement, and;
- there is no specific known / expected potentially contaminating feature within the development redline or it's immediate vicinity (e.g. a specific storage tank or potentially contaminating business use).

[Previous Comments, '] The building has a long history of commercial use spanning a period probably exceeding 120 years. No specific information is provided as to the nature of that prior use, nor the prior use of buildings or land in the immediate vicinity, which may affect land quality at the plot of 40 North Street. No information is presented to qualify the statement given at 4.5 in depth (i.e. beyond last known, or recent uses - or to describe the nature of the structure or proposed construction relative to exposure pathways, in the event that contamination were to be assumed to be present. No factual information is provided to facilitate the Council in drawing a conclusion in respect of contamination risk, and so it could be argued that the application documents are contrary to NPPF paragraph 178 c) [* para 183 NPPF 2021].

I do however note the comments from Environmental Health for a similar development site at East St., Havant. That consultation acknowledged both the possibility of materially contaminating landuses in buildings of this type & scale, and the likelihood of retail use at prominent locations such as this town centre corner plot. Whilst it may be reasonable to conclude that retail uses are generally very low risk, it must also be recognised that below ground fuel storage for retail sale has been identified at similar Havant Town Centre 'terraced-glazed shopfront' type properties (South St.), and with this in mind I am a little wary of the proximity of this site to the

former permanent agricultural Markets where there may well have been a market for fuel (petroleum or kerosene), or other potentially contaminating preparations (for precautionary treatment of pests for example).

In the East Street case, Environmental Health acknowledged that residual uncertainty remained as regards the commercial history of the site, but equally recognised that there was no specific reason to suspect that significant contamination was likely to be present.

In its conclusions, Environmental Health was reliant upon para 179 of the NPPF [* para 184 NPPF 2021], in recommending an informative to make clear that the developer would retain liability for any active pollutant linkages which remain following completion of development, where the developer might reasonably have known or suspected that contamination might affect future occupants (this would form a key consideration in the event that a need arises to consider the site under the Council's Part 2A duties (EPA 1990) in future - e.g in response to a complaint from a resident about ill health or visual / olfactory evidence of contaminants.

In interests of consistency, it is considered that the adopt same approach should be adopted for this development. Suggested wording is reproduced below:

"It is the responsibility of the developer to ensure that upon completion, the development is safe & suitable for its intended future use. There remains uncertainty with respect to the commercial history of this site, and it is possible that former activities could represent potentially contaminating landuses. Contamination may become apparent during the course of development, for example during the installation of new below ground services, or when accessing enclosed service ducts, cavities or voids. In the event that any discoloured soils or groundwater, oily sheens, fuel or solvent odours, or deposits / inclusions comprising fibrous or other obvious waste materials be encountered during works, construction should cease in that area of the site until an appropriate assessment of the nature and extent of the suspected contamination has been undertaken. Building Control should be notified immediately in the event that visual or olfactory evidence of suspected contamination is identified. Environmental Health should be notified of the nature of the contamination, and how that contamination is to be dealt with"

[‘ previous comments end]

Natural England

DESIGNATED HABITATS SITES – NO OBJECTION SUBJECT TO SECURING APPROPRIATE MITIGATION

This advice should be taken as Natural England's formal **representation on appropriate assessment** given under regulation 63(3) of the Conservation of Habitats and Species Regulations 2017 (as amended). You are entitled to have regard to this representation.

With regard to European Sites, Natural England does not object to the granting of this permission subject to the advice given below.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions. Your authority has measures in place to manage potential impacts through

contributions to an agreed strategic solution which we consider to be ecologically sound. Natural England is of the view that if these measures, including contributions to them, are implemented, they will be effective and reliable in preventing harmful effects on the Habitats Site(s) for the duration of the proposed development.

This advice is provided on the basis that all mitigation measures will be secured as planning conditions or obligations by your authority to ensure their strict and timely implementation for the full duration of the development. Your authority should be assured that proposed financial contribution rates are proportionate to the identified effects of the proposed development, suitably precautionary,

and in line with the Retail Price Index, where relevant. Provided that your authority is assured and satisfied that the budget calculations are suitably precautionary and accurately reflect the proposal, then Natural England raise no concerns with regard to the nutrient budget. We recommend a condition that secures the water use of 110 litres per person per day.

Please note in future cases where the necessary avoidance and mitigation measures are limited to collecting a funding contribution that is in line with an agreed strategic approach for the mitigation of impacts on Habitats Sites then, provided no other adverse impacts are identified by your authority's appropriate assessment, your authority may be assured that Natural England agrees that the Appropriate Assessment can conclude that there will be no adverse effect on the integrity of the Habitats Sites. In such cases Natural England will not require a Regulation 63 appropriate assessment consultation. However please note it is strongly advised you as competent authority seek your own legal opinion on whether to consult under these circumstances.

For any queries regarding this letter, for new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Officer Comment: The requirements for contributions must be addressed prior to the commencement of development.

Community Infrastructure, Planning Policy & Urban Design

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

As this is a prior approval application, payment in respect of SRMS and Nutrient Neutrality is required 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

Nutrient Team, Planning Policy

I can confirm there is sufficient capacity within the Council's strategic mitigation scheme.

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: 30

Number of site notices: 1

Statutory advertisement: Not applicable.

Number of representations received: 5

Comment	Officer Comment
I am writing on behalf of Havant Civic Society to object to this application. When the original changes to this building were made (APP/18/00568, APP/18/00787 & APP/18/00784), the address was 40 North Street. That it is now referred to as Northlea, Prince George St, makes us suspicious. Who approved this change? Our belief is that this is a deliberate attempt to muddy the waters regarding the location of the building. At the time of writing, there are no residential properties at ground floor level in North St. When there was last an attempt to create one, in respect of the former Six Bells pub, there were various objections, including from ourselves and Councillor Pike, which in turn led to the application being withdrawn. The application appears to have been submitted as a change of use under Class G but we feel that there is a case to be made for the building to come under Class M, where such a change of use is not allowed in Conservation Areas. The planning statement gives no detail about "the continued efforts over 3 years to find a commercial user for the shop units". We have been made aware of at least one offer that was made, although declined. During his communication with the applicant's estate agents, our informant was advised that the auction guide price for unit 1 was £90,000. What is not clear, is whether the units actually went to	Noted. The planning history relating to the building has been considered. The planning application at the Six Bells pub (30 North Street) was a full change of use planning application and not a prior approval application as this application is. The application at 7 and 8 Northlea is a prior approval application and is therefore considered under different criteria. The application has been submitted under Class MA which is a new type of prior approval introduced in August 2021. There is no marketing required for this type of prior approval - only 3 months vacancy is required.

auction and is a point that HBC should investigate by contacting (redacted) . If they didn't, then that is surely one avenue that should have been explored. Furthermore, the market for retail properties will have been decimated by the effects of Covid 19 over the last 18 months, meaning that, in practice, the properties have only effectively had 18 months exposure to a normal market. We are also critical of the way that these two shop units were created out of the former Trentham Gallery. It can be seen from the Street View image of 2018 below, that the gallery had large plate glass windows to the front and side, ideal for a retail outlet. The reconfiguration completely did away with the large windows on the southern elevation, as well as amending the design of the North St bay window, to produce two units that were more domestic than commercial in appearance and thus lacking appeal as retail units. Our impression that the applicants were never serious about retaining the ground floor as retail space, is reinforced by this quote from their planning agent in 2019 "Having previously got permission to change the workshop at the rear of this property we have now started on the shops at the front. The first step is to get the upper floor into ancillary use, thus allowing the clients to use Class G to gain two further flats in due course. Planner: Keith Oliver". Source: https://www.tpexpert.org/wpos_portfolio/40-north-street-havant-2/ We would urge that this application be declined.	Please see above. This was approved under a different planning application. Noted however this isn't a relevant planning consideration for this particular application .
My comments particularly relate to the ground floor fronting onto North Street. My concern is that this would be better used as a commercial property owing to its proximity to the station and town centre. Other fronts in the parade are used for commerce and it would be a pity to lose this use of the older building for this purpose in a conservation area.	Concern is noted however there are set considerations for this prior approval application type and this is not a consideration.

I also understand an offer was made for use of this property under current arrangements, which was rejected. This does not conform with the information given by the applicant. I wish the property to retain its current use.	
Comment: The premises are ideal for a small business or voluntary organisation due to the location in North St near the station. The premises are too small to be viable living quarters. The vendors claim not to have been able to sell the property, but at least one offer has been made and rejected.	Noted however this isn't a relevant planning consideration for this particular application . National space standards have been met.
It gives a poor impression of the town if one of the first things visitors see is what is very obviously a small shop converted into a tiny flat. Paragraph 4.2 of the "Planning Statement" says "The units have been vacant and marketed for 3 years with no offers having been received." That is untrue. My intention, had my offer been accepted, was to invest in the premises and let them to a local voluntary community organisation of which I am a member, for use as a shop, office and meeting room. However, it seems that this was never going to be possible. On the web-site of the owner's planning advisors, there is an item, dated 2 January 2019, which says: "Having previously got permission to change the workshop at the rear of this property we have now started on the shops at the front. The first step is to get the upper floor into ancillary use, thus allowing the clients to use Class G to gain two further flats in due course." https://www.tpexpert.org/wpos_portfolio/40-north-street-havant-2/ It is clear that the owners never had any intention of allowing the ground floor units to be sold as commercial units and that they	Noted however this isn't a relevant planning consideration for this particular application . Noted however marketing isn't required for this application type as stated in the GPDO.

calculated that they would make more profit if they deliberately failed to sell them and then applied for a change of use to residential. I've no idea of the legality of that strategy, but it seems rather dishonest.	
It would appear that there is a willing buyer for this property who would be willing to maintain this property in its current use. Since it is within a conservation area would it be more appropriate to maintain the property in its current use rather than grant permission for a change of use? "3.12.7. It is acknowledged that the best way to maintain any building is to keep it in an appropriate use. 3.12.8. Despite continued efforts over 3 years to find a commercial user for the shop units, such efforts have proved abortive, reflecting the move of the town centre away from this end of North Street towards West Street and Solent Road. 3.12.9. Residential accommodation can be provided without any external changes other than those already approved, and as such, given the use of the remainder of the building and adjoining properties, would appear the most appropriate and viable use." The statement in the application would appear not to be entirely true and should therefore give cause for its refusal. Would it be more appropriate for the Council to seek an independent valuation of the property under its current use and require the present owner to offer it for sale at the assessed value? If no sufficient offer is made within a stipulated period it then might be appropriate to grant the application. .	Comments noted, however, marketing information is not relevant to this prior approval application.

7 Planning Considerations

7.1 The change of use of the premises proposed is the subject of recent changes to the General Permitted Development Order (GPDO) which have given a general permitted development right for such changes to take place subject to a 'prior approval' process to go through. Consequently the principle of the change of use is considered acceptable.

7.2 Class MA of the GPDO sets a number of criteria for such applications (MA.1.) These

criteria for such proposals and development is not permitted under certain circumstances - these are listed and commented on in relation to this application in 7.4 below:

7.3 Having regard to the relevant conditions of the GPDO it is considered that the main issues arising from this application are:

- (a) transport impacts of the development, particularly to ensure safe site access;
 - (b) contamination risks in relation to the building;
 - (c) flooding risks in relation to the building;
 - (d) impacts of noise from commercial premises on the intended occupiers of the development;
 - (e)where—
 - (i) the building is located in a conservation area, and
 - (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;
 - (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- Sections (g), (h) and (i) do not apply to this proposal.

Other matters

7.4 Under Class MA the General Permitted Development Order (GPDO) (Part 3 of Schedule 2) also states that the premises should be vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval- this is understood that the premises has been vacant for this time period. The building has been in use Class E use for at least 2 years prior to the date of submission. The cumulative floor space changing use would not exceed 1500m². The building (or land on which it sits) does not form part of a site of special scientific interest, a listed building or its curtilage, a scheduled monument or its curtilage, a safety hazard area, a military explosives area The building is not within an area of outstanding natural beauty (AONB), an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981, the Broads, a National Park or a World Heritage Site. These requirements are understood to have been met.

Transport Impacts .

7.5 This proposal is for 2, 1 no bedroom flats and therefore 1 parking space per flat would be expected however in this case no specific allocation for these spaces has been provided. Despite this, it is stated in the Planning Statement that 2 off street parking spaces could be provided. The application site is located within a sustainable town centre location , sited under 100 metres from Havant train station with Havant bus station to the south west as well as local amenities, with Market Parade shops within close proximity as well as Havant High Street and shopping centre. The parking standards advise that minimal parking provision can be accepted in this Havant Town Centre location. Given the above, the parking is deemed to be acceptable.

Contamination risks

- 7.6 Contamination is not anticipated on site .The Environmental Health Officer has been consulted in this regard and has recommended an informative be attached to the decision.

Flood risks

- 7.7 Flood zones 2 and 3 are located to rear but are not within the site boundary, therefore there are no flood risk concerns raised.

Noise amenity issues from nearby commercial premises

- 7.8 The site is positioned within the urban area where a certain level of noise is expected. There are not judged to be any substantial nearby noise pollutants impacting living conditions of future occupiers of the proposed flats from nearby commercial premises.

Impact on the Conservation Area .

- 7.9 This application site is located within the St Faiths Conservation Area and Havant's Conservation Officer has been consulted in this regard. The Conservation Officer, in their response notes the changing character of the immediate area from commercial to mixed use residential. There are no alterations proposed to the exterior facade and the Conservation Area subsequently upholds no objection to the proposal. Given that the site is not within a primary or secondary frontage it is not considered that the sustainability of the Conservation Area would be unduly impacted.

Natural light to rooms

- 7.10 All habitable rooms would be supplied by natural light.

Other matters .

- 7.11 Under the Habitat Regulations the proposal results in new dwellings, for which avoidance and mitigation measures must be secured to protect the habitats and species of the Borough's European sites prior to implementation. With respect to development undertaken by the GPDO, the Conservation of Habitats and Species Regulations (2017, as amended) (hereafter referred to as the Habitats Regulations) sets out at Regulation 75 that it is a condition that development that is likely to have a significant affect on a European site must not be begun until the developer has received written notification of the approval of the LPA under Regulation 77 of the same regulations. For the avoidance of doubt, this report is not the approval under Regulation 77 of the Habitats Regulations. In this instance the site lies within 5.6km of the Solent SPA where additional recreational pressure is likely to have a significant effect. Appropriate mitigation is possible through a financial contribution towards to the Solent Recreation Mitigation Strategy and in relation to nutrients before development commences - it is noted a payment of £2789.70 has been received to cover these requirements.
- 7.12 The application has also been assessed under Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) (The Habitats Regulations). The proposal would lead to two additional units of accommodation, which would be likely to lead to a significant effect (as described in Regulation 61(1) (a) of the Habitats Regulations) on the Chichester and Langstone Harbours Special Protection Areas (SPA) and Solent Maritime Special Area of Conservation (SAC) which are European

sites. The development is not necessary for the management of the European sites

The Council has conducted a Habitats Regulations Assessment (HRA), including Appropriate Assessment (AA), of the proposed development under Regulation 63 of the Conservation of Habitats and Species Regulations 2017. The Council's assessment as competent Authority under those regulations is included in the case file. The screening under Regulation 63(1)(a) found that there was likely to be a significant effect on several European Sites due to both the increase in recreation and the decrease in water quality that would be a result of the proposed development.

The planning application was then subject to Appropriate Assessment under Regulation 63. This included two packages of avoidance and mitigation. The first is a package of measures based on the suggested scale of mitigation in the Solent Recreation Mitigation Strategy. The second is a package of measures based on the Position Statement on Nutrient Neutral Development. The application submission indicated a willingness to enter into a legal agreement to secure the mitigation packages, and the contributions and deeds in respect to both requirements have now been received.

The Appropriate Assessment concluded that this is sufficient to remove the significant effect on the SPAs which would otherwise have been likely to occur. The HRA was subject to consultation with Natural England as the appropriate nature conservation body under Regulation 63(3) who have confirmed that they agree with the findings of the assessment. As such, given the securing of appropriate mitigation packages, and subject to condition being attached to secure that the additional dwellings shall not be occupied until the Building Regulations Optional requirement of a maximum water use of 110 Litres per person per day, the proposal is considered to be acceptable having regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy CS11 of the HBC (CS) 2011, Policy DM24 of the HBC LP (Allocations) and emerging policies E14, EX1 and E12.

8 Conclusion

- 8.1 The proposed change of use is supported by the current GPDO and the NPPF, and there are considered to be no adverse impacts relating to flooding, transport, contamination, noise and light amenity and impact on the conservation area arising from the proposal. Prior Approval is therefore required and granted subject to relevant conditions and informatives.

9 RECOMMENDATION:

That the Head of Planning be authorised to for application APP/21/00866
subject to the following conditions

- 1 The development must be completed within a period of three years starting with the prior approval date.
Reason: To comply with the conditions contained within The Town and Country Planning (General Permitted Development) (England) Order 2015 Part 3 MA.2.

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

Elevations uploaded on the 12.08.2021

Location Plan Drawing No. 100

Proposed ground floor plan Drawing no. 103

Planning Statement Town Planning Expert uploaded on the 12.08.2021

Reason: - To ensure provision of a satisfactory development.

- 3 The development hereby permitted shall not be occupied until:

- (a) A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the Local Planning Authority; and
- (b) All measures necessary to meet the approved water efficiency calculation have been installed.

Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011, and Policy E14, EX1 and E12 of the Pre-Submission Havant Borough Local Plan.

- 4 At all times following occupation of the development hereby approved, all measures necessary to meet the approved water efficiency calculation shall be maintained so as to ensure that no more than 110 litres per person per day shall be consumed in the development in perpetuity.

Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local

planning authority to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011, and Policy E14, EX1 and E12 of the Pre-Submission Havant Borough Local Plan.