

**TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED)**

**STATEMENT OF
HAVANT BOROUGH COUNCIL**

38-44 London Road, Purbrook, Hampshire

Local Planning Authority Reference:- APP/15/00896

Planning Inspectorate Reference:-

APP/X1735/W/16/3145929



APPEAL BY McCARTHY AND STONE AGAINST THE DECISION OF HAVANT BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR DEMOLITION AND REDEVELOPMENT TO FORM 42 RETIREMENT APARTMENTS FOR OLDER PERSONS INCLUDING COMMUNAL FACILITIES, PARKING PROVISION AND ASSOCIATED LANDSCAPING; AND 2NO. COMMERCIAL / RETAIL UNITS AT 38-44 LONDON ROAD, PURBROOK, HAMPSHIRE.

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1.0 THE APPEAL SITE AND ITS SURROUNDINGS

1.1 The site is located on the corner of London Road and Stakes Road and encompasses No's 38-44 London Road. It is located within the Purbook Local Centre (as defined in the adopted Havant Borough Local Plan (Allocations) 2014) and is adjacent to the St Johns Conservation Area. The site is 00.39ha in area. There is a slight downward slope in levels from the north to the south of the site. The site and its surroundings including policy designations are shown on the attached Plan 1.

1.2 At present, there are several land uses on the site including:

- A builder's merchant
- A car dealership
- A tyre workshop
- A specialised motorbike repair centre
- An MOT and repair centre.

All the businesses on site, apart from the builder's merchant, are located towards the south of the site and comprise industrial style units or cabins with ancillary parking. These businesses have access from London Road. The builder's merchant incorporates the part of the site to the north and east. This business has access from Stakes Road. There is a two-storey building of flint and brick construction which sits on the north west corner of the site. This forms the sales office for the builder's merchant and was formerly a vicarage associated with St Johns Church (a Grade 2 Listed Building) on the opposite side of London Road. All the businesses on site are currently in operation.

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

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

2.0 **PLANNING HISTORY**

As the site is made up of several small sites, an overview of the planning history is provided below.

2.1 **The Vicarage, Purbrook**

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

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

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

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

2.2 **London Road, Purbrook**

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

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

2.3 **Land at junction of Stakes Road and London Road**

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

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

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

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

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

The reason for refusal of this application was that it was felt the proposal would result in an overdevelopment of the site

74/15383/3 – Residential development by erection of 20 flats and 2No. shops. **Refused on 21/1/1974**

The reason for refusal of this application was that it was felt the proposal would result in an overdevelopment of the site

2.4 **38/42 London Road, Purbrook**

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

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

81/15383/7 – Continued use of land for display and sale of motor cars for a limited period only terminating 28/02/82. **Permitted 25/02/1981**

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

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

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

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

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

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

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

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

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

2.7 **42 London Road, Purbrook**

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

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

2.8 **44 London Road, Purbrook**

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

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

3.0 **THE APPLICATION**

- 3.1 The application the subject of this appeal was received as a valid submission on the 11th September 2015 and proposed the demolition of existing buildings and redevelopment of the entire site to form 42No. retirement apartments for older persons including communal facilities, parking provision and associated landscaping; and 2No. commercial/retail units. The apartments would be for residents aged 60 years or over, or for those over this age with a partner of at least 55 years of age. The units would comprise the following mix: 23 x 1no bed apartments and 19 x 2no. bed apartments. Internally the accommodation is laid out over three floors. The external layout would include two areas of landscaped, communal gardens, one being in the centre and the other along the western boundary. The retail units would be located on London Road and include a shop frontage. These would be serviced from an existing lay by located on London Road adjacent to the south of the main entrance. The total area of the retail units would be 162sqm.
- 3.2 The proposed building is designed as a 'U' shaped building comprising three wings. One wing which fronts London Road is a two -storey building, rising to a two ½ storey corner building, creating a landmark feature on the north west corner of the site. The scale then drops back down to two-storey part way along Stakes Road. The third wing extends back into the site, parallel with the western boundary. The frontage buildings have been designed as smaller components with ridge lines stepping down along London Road to reflect the level changes. The roofscape comprises a series of interconnected hips and gables, with chimneys and small traditional dormers. The approach to the design is traditional with details such as flint with brick, natural flint panels, lime render, red multi stock bricks, clay tiles, chimney stacks, timber windows, brick soldier courses and stone cills.
- 3.3 The main access from London Road would utilise the existing access into the site and would lead to the internal parking court. Since the determination of the application a plan indicating the removal of the gates has been submitted to the Local Planning Authority and further comments in relation to this are provided in paragraphs 6.26 and 6.32 of this statement. The development proposes 35

parking spaces. 31 of these would be located within the development and 4 would be located on the north boundary with access from Stakes Road.

3.4 The application is supported by a number of documents:

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

3.5 The Council's decision notice, issued on 11th December 2015, identified the following reasons for refusal:

- 1 *The proposed development would lead to the loss of existing employment uses on the site including Class B uses. These uses make a valuable contribution to the local economy providing employment and services to the community. In the Local Planning Authority's opinion it has not been satisfactorily demonstrated that the site is not fit for purpose or financially unviable for B use class employment, or other types of economic development, in particular it is not satisfied that a suitable comprehensive marketing exercise has been carried out. Therefore the proposal is contrary to policies CS2 and DM3 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.*
- 2 *In the absence of binding arrangements for the provision of on site affordable housing or alternatively an acceptable contribution in lieu of on site provision the proposal fails to make adequate provision for affordable housing in the interests of creating mixed communities and responding to housing need. Furthermore the financial contribution offered does not meet the assessed contribution requirement and in the absence of independent third party review and viability testing is considered unacceptable. As such the proposed development is contrary to Policy CS9 of the Havant Borough Local Plan (Core Strategy) 2011, the adopted Havant Borough Council Housing SPD July 2011 and the National Planning Policy Framework 2012.*
- 3 *The proposal, without completion of the appropriate binding arrangements to secure a contribution towards the Solent Recreation Mitigation Project, is contrary to the Council's Policy on contributions towards measures of mitigation adopted by the Local Planning Authority. These seek to ensure that the provision is made from new development towards mitigating against increasing recreational pressure on the Solent SPA. The development is therefore contrary to policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011 and Policy DM24 of the Havant Borough Local Plan (Allocations) 2014 and the National Planning Policy Framework 2012.*
- 4 *On the basis of the information provided and in the absence of binding arrangements necessary to secure the alterations to the surrounding highway*

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

4.0 PLANNING POLICIES

4.1 The Development Plan comprises the Havant Borough Local Plan (Core Strategy) 2011 and the Havant Borough Local Plan (Allocations) 2014.

4.2 The following policies of the Havant Borough Local Plan (Core Strategy) 2011 are considered to be particularly relevant to the determination of this appeal:

CS2 (Employment)
CS4 (Town, District and Local Centres)
CS9 (Housing)
CS11 (Protecting and Enhancing the Special Environment and Heritage of Havant Borough)

CS20 (Transport and Access Strategy)
CS21 (Developer Requirements)

DM3 (Protection of Existing Employment and Tourism Sites)
DM7 (Elderly and Specialist Housing Provision)
DM13 (Car and Cycle Parking on Residential Development)

4.3 The following policies of the Havant Borough Local Plan (Allocations) 2014 are also considered to be of relevance to the determination of this appeal:

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

4.4 Also of relevance to this appeal is the adopted Havant Borough Housing Supplementary Planning Document 2011, the Havant Borough Developer Contributions Guide (Updated 2016) and the Solent Recreation Mitigation Strategy 2014

4.5 More details in relation to the relevance of these policies will be provided in part 6 of this Statement and the Inspector has previously been provided with copies of the relevant policies, the Havant Borough Housing Supplementary Planning Document 2011 and the Havant Borough Developer Contributions Guide (updated 2016) have previously been forwarded to the Inspectorate.

5.0 CONSULTATIONS AND REPRESENTATIONS

5.1 The application which is the subject of this appeal was published in accordance with the Council's adopted publicity procedures, and neighbour notification letters were sent to 21no. addresses. In addition a site notice was posted. 31no. representations were received to the application.

5.2 The objections received can be summarised as follows:

i. The already approved licensed garden area on the west side of the Purbrook Centre, may result in noise and disturbance to potential future residents.

ii. The development would lead to a loss of local jobs, businesses and services which serve the local community.

iii. There is a lack of parking provided within the development which would have a knock on effect in the immediate locality

iv. The development would result in the loss of an important historic building - the Old Vicarage

v. The new access onto London Road would create traffic congestion and pose a risk to highway safety.

Copies of the third party objections have previously been forwarded to the Inspectorate.

- 5.3 Consultations were also carried out in respect of the original application, and consultation replies were received and are summarised below:

Building Control, (Fire Access Consultation):

No objections.

County Archaeologist:

No objections.

Conservation Officer:

Summary of response:

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

A critical element will be the choice of materials. The roofing materials and flintwork are particularly important aspects.

If minded to grant permission I advise the imposition of conditions relating to materials, joinery and other elements such as meter boxes and flues/ducts and informative.

County Ecologist:

Summary of response:

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

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

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

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

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

Economic Development - Retail and Town Centres:

Summary of full response:

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

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

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

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

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

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

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

Environmental Health:

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

Environmental Health (contamination):

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

Flood Risk - No adverse comment

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

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

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

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

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

can be provided.

Hampshire Fire & Rescue:

Building Regulations: Access for Firefighting:

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

Hampshire Act 1983 Section 12 - Access for Fire Service:

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

Development Engineer – Highways

Initial response:

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

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

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

Updated response:

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

Housing:

Summary of full response:

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

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

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

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

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

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

Waste Services Manager

No response received

Landscape Team

No landscape objection to the principle of development.

Conditions required to secure high quality materials, boundary enclosures and hard surfacing, soft landscaping and the prevention of Japanese Knotweed.

Parking bays 20 and 21 in the site sketches appear undersized. Car park tracking within the transport statement also appears very constrained – particularly given this location against the boundary retaining wall. I question the orientation of parking bay 7.

Crime Prevention -Major Apps

No response received

Local Lead Flood Authority HCC

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

- Confirmation of the existing drainage system - at present this is just 'assumed'.
- Infiltration tests should be carried out to discover if this method of surface water disposal is inappropriate, and the results provided.
- Evidence of the appropriate number of treatment stages in the surface water management train, as stated in CIRIA C69?
- Calculations comparing the existing surface water run off rate, in l/s for a 1 in 100 year flood event +30% for climate change, with the proposed development's surface water run off rate for the same event.
- Calculations to demonstrate the existing run off volume for a 1 in 100 year, 6 hour flood event and evidence showing that there will be adequate storage for the attenuation of this volume on site, and allowing discharge without increasing the run off rate or volume off site.

Officer Note -

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

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

Planning Policy

Summary of initial response:

Promoting Havant Borough's Economy

– Accords with the principle of Policy AL3 for Town, District and Local Centres

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

Housing

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

Parking Provision

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

Summary:

More evidence should be provided regarding why affordable housing cannot be provided on site and also to ascertain what the employment impact would be. CIL and SRMP contributions are required.

Further response following a meeting with the Planning Agent:

Following the above comments, further discussions and communication, including a face to face meeting, took place via the case officer with the appellants. This sought to expand on the concerns relating to loss of employment and also provided further information as a response to the appellants justification that the application should be permitted based on 5-year supply arguments.

Southern Water

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

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

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

Southern Water (SW).

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

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

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

Traffic Management Team:

We note the following:

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

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

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

To this end a further TRO maybe required (at a cost of £3000). Other points:

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

Arboriculturalist

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

6.0 PLANNING CONSIDERATIONS

- 6.1 Having regard to the relevant policies of the development plan and supplementary planning documents, and the reasons for refusal given in the Decision Notice dated 11th December 2015, it is considered that the main issues arising from this appeal are:

First issue:

The potential loss of the existing employment uses on the site including those falling within Class B and the consideration of whether it has satisfactorily been demonstrated that the site is not fit for purpose or financially unviable for B use class employment, or other types of economic development by means of a suitable comprehensive marketing exercise.

Second issue:

Whether the proposal would make adequate provision for affordable housing.

Third issue:

Whether the proposal would secure adequate measures of mitigation to offset the effects of increasing recreational pressure on the Solent SPA arising from the development.

Fourth issue:

Whether the proposal would result in harm to the amenity and safety of the users of the highway.

First issue:

- 6.2 Local Plan (Allocations) Policy AL1 of the adopted Allocations Plan advises that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF, with regards to development that improves the economic, social and environmental conditions in the area. The Council will seek to balance the three core elements of sustainable development in all its planning decisions. It will seek to meet the development needs of the area, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Planning applications that accord with the policies in the adopted local plan will be approved, unless material considerations indicate otherwise.
- 6.3 Local Plan (Allocations) Policy AL3 is concerned with town, district and local centres. The appeal site lies within a designated local centre as defined in the Havant Borough Council Local Plan Policies Map . Local Plan (Allocations) Policy AL3 does not allocate the site for a change of use (as suggested in the appellant's statement). This policy is a broad policy to support the continued viability and vitality of town and district centres. As the NPPF and Local Plans should be read as a whole, it does not overcome other more specific policies applying to this proposal, such as the loss of employment (Policy DM3). Further to this, although paragraph 2.12 of the Local Plan (Allocations) does not specifically mention B class or other specific employment uses it also does not exclude them and their importance. The list of main town centre uses is a 'such as' reference in supportive text of the Local Plan. It is therefore not an exhaustive list. The existing uses on the site are publicly accessible and will attract staff, customers and visitors to the centre; thereby contributing to the centre's vitality and viability.
- 6.4 There are currently five businesses in operation on the site including; a builder's merchant with a trade counter, an MOT garage, a tyre repair centre, a car sales business and forecourt and a motorbike repair centre. Four of these businesses are considered to fall within Class B of the Use Classes Order 1995 (as amended). The car sales business is sui generis. Policy DM3 of the Core Strategy seeks to protect existing employment sites within the Borough. It advises that the change of use or development of land or premises currently or last used for B use class employment purposes to non-B use class employment, will only be permitted where it has been demonstrated that the land or premises are not fit for purpose. Evidence for this must include a detailed and exhaustive marketing campaign, covering at least 12 months. No marketing evidence has been carried out and the businesses on the site are still in operation.
- 6.5 If approved, the development would result in the closure of five businesses currently in operation on the site. This would potentially result in the loss of over 15no. full time jobs. As no evidence has been provided with the application to show that the site has been marketed for a 12 month period, and with no other Class B business uses coming forward, the proposal is contrary to Policy DM3 of the Core Strategy. Policy DM3 advises that it is important for the borough to protect existing employment sites that are fit for purpose. Economic development must provide jobs, generate wealth or produce an economic output. Whilst the proposed development would create some level of employment and a degree of economic output (2no jobs within the residential development and then some within the retail unit), this would not equate to 15no. full time permanent jobs.
- 6.6 The appellant's statement disputes that the builder's merchant falls under Use Class B8 (Storage) and advises that it should be classed as sui generis. Further evidence is provided in the form of examples of relevant case law and interpretation of the planning history of the site to validate this fact. Whilst the Council accepts that in certain cases, where a builder's merchants with an ancillary use of sales to the public are included, are classed as sui generis, it still maintains that the Land Use Gazetteer defines the use class of a builder's merchants goods wholesale storage or distribution place as Class B8. Moreover, with the case of the builders merchants on the site, the

ratio of sales to the trade is significantly higher at 75%, than those to the general public.

- 6.7 Furthermore, even if it is concluded that based on the evidence provided that the builder's merchants is sui generis and does not fall within a Class B use, the builder's merchants is still an active employment site which provides a service to the local community. This is contrary to paragraph 5.1.13 of the appellant's statement which argues that not only is the builder's merchants sui generis, but that it is also not employment land. Although Policy criteria DM3.1 specifically safeguards B use classes namely offices, manufacturing and warehousing, Policy CS2.5 seeks to safeguard employment sites and allocations that are fit for purpose from development proposals for non-employment use.
- 6.8 As the supporting text to Policies CS2 and DM3 makes clear, the council does recognise that significant employment opportunities are provided by other forms of economic development. Economic development must provide jobs, generate wealth or produce an economic output. Therefore redevelopment of existing employment sites for other types of economic development will be considered only once it has been demonstrated through a vigorous and exhaustive marketing exercise that the site is not fit for purpose for B use employment purposes. This flexible approach will prioritise uses which enhance the borough's business offer or reduce barriers to employability such as childcare facilities. The proposed redevelopment should provide new full time equivalent jobs of a similar number and quality as those existing or previously existing on site.
- 6.9 No marketing exercise has been carried out in relation to the employment use of the site in line with Policy DM3. Whilst the proposed development would create some level of employment and a degree of economic output (2no jobs within the residential development and then some within the retail units), this would not equate to 15no. full time jobs which currently exist across the businesses on site.
- 6.10 The Council's Economic Development Officer has advised that this is a substantial piece of employment land, located in a sustainable area. Out of the five businesses on the site, four are in the motor trade. There are no existing sites in the Havant Borough area that will be able to accommodate these businesses due to the lack of availability and nature of their activity. The new developments will not take any motor trade businesses as stated by the agents handling the marketing for them. There is concern that local retailers and suppliers would also be severely impacted from the loss of trade, as the presence of such varied uses in the centre attract visitors and customers into the area. It would also significantly affect local residents and trades people who use these services. Although there is an outdated stigma attached to the motor trade they do provide a vital local service, as shown by the customer base to these businesses in particular. This is particularly important in the context of the residential developments in Waterlooville which will increase the housing stock by nearly three thousand with the attendant vehicles and the need for these services. The loss to the local community of these businesses will be significant.
- 6.11 As outlined in Paragraph 7 of the NPPF, there are three dimensions to sustainable development those being economic, social and environmental and these roles are mutually dependant. Paragraph 17.3 advises that planning should proactively drive and support economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Paragraph 19 advises that planning should operate to encourage and not act as a stimulant to economic growth. Therefore significant weight should be placed on the need to support economic growth through the planning system. The NPPF also advises in Paragraph 21.3 that local planning authorities should support existing business sectors, taking account of whether they are expanding or contracting and where possible identify and plan for new or emerging sectors likely to locate to their area.
- 6.12 The NPPF advises in Paragraph 22 that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. However, given that the site has five active businesses in situ and that there is no marketing evidence available to justify that it is not a viable site for these types of businesses, it is considered that there is a reasonable justification for this site being protected in the long term for employment purposes.
- 6.13 The detrimental impact to the 'economic role' through the loss of an active employment site is considered to outweigh any benefits derived from this proposal in terms of providing retirement accommodation. There are opportunities within the borough, on allocated residential development sites, to provide similar retirement accommodation without the significant detrimental impacts, in

economic terms, that this proposal would give rise to. Furthermore, any economic benefits associated with the proposal will be fleeting (i.e. the construction phase and small scale employment).

- 6.14 The proposal is therefore considered to directly conflict with policies CS2 and DM3 for the protection of existing employment, particularly important is the nature of the employment on this site and the lack of suitable alternatives. In terms of its overall impact upon the locality, therefore, it can be seen that in its broader context the development of the site in the manner proposed would not accord with the NPPF and Local Plan Policies DM3 and CS2.

Second issue

- 6.15 On the second issue – the provision of affordable housing – Paragraph 50 of the National Planning Policy Framework states that:

To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:

- plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes);*
- identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand; and where they have identified that affordable housing is needed,*
- set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.*

- 6.16 Policy CS9 of the Havant Borough Local Plan (Core Strategy) 2011 addresses the provision of affordable housing in the following terms:

2. Deliver on average 30-40% affordable housing on sites of 15 dwellings (gross) or more and secure a suitable contribution, or on-site provision, equivalent to on average 30-40% on smaller housing developments between 5 and 14 dwellings (gross), unless a lesser requirement has been transparently justified on viability grounds.

- 6.17 The Council's adopted Housing Supplementary Planning Document 2011 (forwarded with the Appeal Questionnaire) sets out at Page 21 that financial contributions can also apply in exceptional circumstances where on-site provision is not feasible.

- 6.18 A viability assessment and development appraisal were submitted as part of the application which concluded that financial viability was an issue for the scheme. A contribution towards the provision of affordable housing was proposed in lieu of on site provision. The amount offered was £32736. The Inspector will note from the consultation response of the Housing team summarised above that, given the format of the development and viability issues associated with it, the principle of a financial contribution in lieu of on-site provision is acceptable to the Council. However, the amount proposed is considered to fall significantly short of the figure of £985,929 generated by the calculator contained in the Council's adopted Housing SPD (2011).

- 6.19 There is a mechanism contained with Paragraph 6.17 of Policy CS9 of the Core Strategy which advises that when there is a need to validate the viability of developments to provide the necessary levels of affordable housing, an independent third party valuation exercise will be requested at the developer's cost. During the application stage, an agreement from the developer to proceed with this review was not forthcoming and the question therefore remained over the viability case. As such the application was refused on the grounds of failing to make adequate provision for affordable housing, contrary to Policy CS9 of the Core Strategy.

- 6.20 Following the determination of the application, a third-party review of the appellants' viability appraisal was undertaken by Dixon Searle Partnership. The conclusion of this review was that £424,524 is potentially available to be made as a contribution to affordable housing in lieu of on site provision. A copy of this review can be found at Appendix A. Further correspondence from the appellant's agent raised queries over the method which had been used to carry out this review and

reconfirmed that the amount available towards affordable housing is still £32,736. Taking this on-board, a further review was undertaken and it was concluded that £383,355 could be made available towards a contribution. So at the time of writing this statement, the Council still contend that the failure to make any binding arrangements to secure a suitable and proportionate contribution to affordable housing – when viability work has demonstrated that such a contribution is viable and achievable – would result in a clear conflict with the objectives of the NPPF, in terms of the failure to secure the social core principal of sustainable development and Local Plan Policy CS9, as supported by the Council's adopted Housing SPD 2011. A copy of the second independent review by Dixon Searle Partnership is attached at Appendix B.

Third Issue

- 6.21 With regard to the proposed development's impact on the Solent's Chichester and Langstone Harbours Special Protection Area (SPA) and the Portsmouth Harbour SPA, this development would increase the number of dwellings within the 5.6km zone identified as resulting in a significant effect through increasing recreational pressure on the SPAs. Natural England's advice with regard to all new housing development within this zone is that it is likely to have a significant effect on the SPA. The measures of mitigation adopted by the local planning authority at the end of June 2014 requires a payment of £174¹ per dwelling (plus monitoring and administration fees) to the Solent Recreation Mitigation Partnership – this is to secure accordance with Policy DM24 of the Havant Borough Local Plan (Allocations) 2014.

- 6.22 The principle of securing developer contributions is set by policy CS21 of the Local Plan (Core Strategy) 2011 which states that:

Development will be permitted if on-site and/or off-site infrastructure requirements are met. Where new or improved infrastructure is essential for planning permission to be granted the council will require the on-site or off site provision and/or contributions through planning obligations, agreements or tariffs in accordance with the relevant legislation for off-site provision. The need for contributions will depend on information and advice from infrastructure providers on the expected impacts of the development on all the infrastructure types.

- 6.23 Policy DM24 of the Local Plan (Allocations) 2014 states that:
Planning permission will be granted for residential developments that avoid or mitigate a likely significant effect on the SPAs, caused by recreational disturbance through the in-combination effect of net additional dwellings. This mitigation can be provided through:
a) *A financial contribution...*

Where these measures cannot be provided development proposals will be refused, unless the applicant can show, subject to meeting the tests of the Habitats Regulations, that there would not be an adverse effect on the integrity of the SPAs.

- 6.24 A S106 Agreement is presently in the process of being drawn up between the appellants and the Council to secure this payment, if this is successfully completed prior to the Hearing this issue will have been overcome.
- 6.25 Should, however, the S106 Agreement not progress for any reason, then the Council would contend that the failure to make any binding arrangements to secure mitigation measures to offset the impacts of additional recreational pressure on the SPA will be such that the scheme would be likely to lead to a significant effect on the SPA. As the development is not necessary for the management of the SPA it would not meet the provisions of the Conservation of Habitats and Species Regulations (2010 as amended) and it must be refused.

Fourth Issue:

- 6.26 The site currently has a vehicular access from Stakes Road into the builders merchants. There is

¹ This was £174 per net additional dwelling at the time of the refusal of planning permission however has now risen in line with inflation to £176 per net additional dwelling. However, it has been agreed that the amount charged would be £174 per dwelling and a legal agreement has been drawn up to secure a total amount based on this figure. Further information can be found at <https://www.portsmouth.gov.uk/ext/community-and-environment/environment/solent-recreation-mitigation-strategy.aspx>.

another vehicular and pedestrian access on London Road which serves the other businesses on the site. The proposal would close off the Stakes Road vehicular access and create a single access point from London Road, serving all the vehicular traffic to and from the site. At the time of the application, a pair of electronic gates was to be installed at the entrance/exit point to the site. However, following post decision negotiations, the agent has confirmed that these gates will not be included within the scheme and can be restricted via a planning condition. This would address the previous concern of a potential highway safety issue with vehicles backing up on London Road, due to the use of the gates which would have caused a delay of traffic being able to enter the site.

- 6.27 During the application, concern had been expressed by the Council's Development Engineer that the plans appeared to show modifications to the highway and that the transport statement paragraph 4.12 stated, " For the retail units either side of the access deliveries are proposed to take place using the existing loading bay to the south of the site. Whilst the existing loading bay will be shortened to accommodate the access it will still be sufficient (approx. 15m) to service the two small units." Submitted Drawing No. SE-2168-03-AC-002 D also appears to show alterations to the existing highway. If this modification to the highway is needed then the approval of the Highway Authority will be required and the construction will need to be carried out by means of a Section 278 Agreement. It is not clear from the submitted information whether this approval has been sought. Any loss of part of the existing service layby could be detrimental to the existing shops. As the information required by the Council's Development Engineer during the course of the application had not been provided, they advised that the application should include a reason for refusal on the grounds of insufficient information to prove there would not be a highway safety risk and amenity issue to users of the highway on London Road.
- 6.28 However since the determination of the application, a statement has been submitted to the Council which seeks to address this reason for refusal. It is now confirmed that no changes are to be made to the existing access on London Road, or the adjacent loading bay. This is shown in a plan submitted to the Council – Drawing No. SE-2168-03-AC-002 E. The Transport Statement has been amended at Paragraph 4.12 to reflect this. It is also confirmed that the access gates are removed from the scheme.
- 6.29 As it is unknown at this stage who the future occupants of the retail units would be, there is ambiguity over the future operational requirements of the use of the existing loading bay on London Road. To this end, the Council's Senior Traffic Engineer has advised that a Traffic Regulation Order (TRO) will be required in case the loading bay time need to be amended as a result of the occupants of the commercial units. The cost of a TRO is £3000 and this will need to be secured via a legal agreement.
- 6.30 With regards to the 4no. parking spaces on Stakes Road, further information in the form of a Highway Appeals Note and accompanying Swept Path Analysis Plan PBA Drawing Number: 047-0046-003 has been submitted to show that the proposed bays are still able to be used even with existing parking restrictions in place on this section of Stakes Road. It is still being considered by the Council as to whether or not these restrictions are required but this should be concluded prior to the appeal hearing.
- 6.31 If restrictions are required on Stakes Road, the provision of £3000 for the purpose of a TRO needs to be secured within a s106 agreement. This is in addition to the £3000 for a TRO to amend the existing loading bay. At the time of writing this appeal statement, no legal agreement has yet been drafted to the Council's knowledge.
- 6.32 If these amendments are acceptable to the Inspector and subject to a legal agreement being successfully completed prior to the hearing, the Council are of the view that the revised details are now satisfactory to address the fourth reason for refusal relating to highway matters and that the development would now meet the policy requirements of Policies CS16, CS20 and DM11 of the Havant Borough Local Plan (Core Strategy) 2011.

7.0 COMMENTS ON THE APPELLANTS GROUNDS OF APPEAL

- 7.1 It is considered that most of the matters raised by the appellant have been addressed in the Council's Statement of Case, however the following further comments are considered appropriate:
- (i) Paragraph 2.1 of the appellants' statement it refers to the appeal site as being in Wokingham. This is not correct.

- (ii) Para 2.2 of the appellant's statement advises that there are four business on the site. However, following a detailed site visit, the Council believes there to be five businesses on the site which are listed in Para 1.2 of the Council's Statement.
- (iii) Para 4.4 of the appellant's statement relating to the proposed scheme's compliance with the NPPF alludes to the fact that the site is an allocated housing site (bullet point 3 of 'Summary of NPPF' in Appellant Statement). The site is not an allocated housing site.
- (iv) Para 4.4 (bullet point 6 of 'Summary of NPPF') suggests that the Council do not have an up to date 5-year housing land supply. This relates firstly to whether the housing supply figures are based on Objectively Assessed Need (OAN) and secondly whether the delivery projections are overly optimistic.

The adopted Local Plan, including the housing requirement, is considered up to date. Although the Local Plan (Core Strategy) was adopted prior to the NPPF this matter was explored by the Inspector examining the post NPPF Local Plan (Allocations) in 2014 and found acceptable.

"After the publication of the NPPF in March 2012 the PUSH authorities approved the South Hampshire Strategy (SHS), which provides a sub-regional basis for the local authorities housing requirements.... The CS [Core Strategy] housing targets towards which the allocations in this Plan will contribute is consistent with the SHS and remains broadly accurate when tested against the "What Homes Where" toolkit. (Inspector's Report on The Examination into the post NPPF Havant Borough Local Plan (Allocations) (2014).

A 2016 housing need update has been underway and will be published shortly (possibly prior to the hearing date). This will update the OAN. However, it must be recognised that the OAN is the starting point. In his letter to the Planning Inspectorate (December 2014) Brandon Lewis (then Minister of State for Housing and Planning) clarified that *"The publication of a locally agreed assessment provides important new evidence and where appropriate will prompt councils to consider revising their housing requirements in their Local Plans.... However, the outcome of a Strategic Housing Market Assessment is untested and should not be seen as a proxy for a final housing requirement in Local Plans. It does not immediately or in itself invalidate housing numbers in existing Local Plans.*

A 5-year housing supply has been demonstrated and published in the 2015 Annual Monitoring Report (AMR) (published January 2016). Unfortunately the data used by the appellants is based on the 2014 AMR which limits any merit in addressing their specific points. However, the following summary points can be made:

- The 2014 AMR demonstrated a 5 year supply using the Sedgfield approach plus applying a 20% buffer. An equivalent of 7.7 years of housing supply was referred to in paragraph 5.11 of the 2014 AMR (not a 5% buffer or 6 years supply as stated in the Appellant's Sedgwick Associates Statement paragraph 2.3).
- A sudden growth in completion rates was predicted in 2014 and the appellants felt such a steep change was a highly optimistic assumption. However, the 2015 AMR has shown a rise of nearly 250% in completion rates between 2013/14 to 2014/15 (200 completions in 2014 vs 492 completions in 2015). So the housing projections made in 2014 was proven to be broadly accurate.
- The LPA have already made considerable steps in the past to boost completion rates of new dwellings. In particular a substantial number of urban extension sites allocated in 2014 have provided a notable boost to supply (as proven by the 250% rise in completions between 2014 and 2015).
- The 2015 AMR shows 5-year housing supply plus 39% buffer. This calculation has again used the stricter Sedgfield approach in addressing past shortfall.

Even had the Council been unable to demonstrate a 5-year housing land supply then the NPPF does not allow for a set aside of all policies. The NPPF (para 49) is clear that it is only policies on the "supply of housing" that would be considered out of date. The importance of the economic arm of sustainable development would remain relevant and

policy DM3 does not relate to the supply of housing. As such, it should continue to be applied regardless of housing supply position.

- (v) On the matter of local finance considerations, the Council would refer the Inspector to the Planning Practice Guidance on the matter. Paragraph: 011 Reference ID: 21b-011-20140612 states:

Whether or not a 'local finance consideration' is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other Government body. It is not considered that the prospect of New Homes Bonus has a direct bearing on the acceptability of the proposal the subject of this appeal.

8.0 CONCLUSIONS

- 8.1 In terms of sustainable development, the NPPF confirms that there are three dimensions: economic, social and environmental. It is considered in this case that significant harm would be caused to the economic and social dimensions of sustainable development – in terms of a proposed development which would result in the loss of jobs and an important employment site within the Borough. This, combined with the further social and environmental failings of the scheme in terms of the failure to secure binding arrangements for contributions towards affordable housing and mitigation measures to offset the impact of the development on the Chichester and Langstone Harbours SPA, are such as to outweigh the very limited economic benefits of the proposal. It can be clearly demonstrated that the development would conflict with a number of key policies in the Local Plan and there is not considered to be any compelling justification for a decision to the contrary.
- 8.2 The Inspector is therefore requested to **DISMISS** this appeal. Notwithstanding this should, however, the Inspector be minded to allow the appeal and grant permission for the proposal, the Council would request that the planning conditions set out in the separate submitted document are attached to any permission.

APPENDICES

- A 1st FVA review by Dixon Searle Partnership - dated 15/2/2016
B 2nd FVA review by Dixon Searle Partnership - dated 26/4/2016