

TOWN & COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

**APPEAL AGAINST THE DECISION OF HAVANT BOROUGH COUNCIL TO REFUSE THE GRANT OF FULL PLANNING PERMISSION FOR DEMOLITION OF THE SINGLE STOREY SHOP, TWO-STOREY OFFICE BUILDING AND ASSOCIATED OUTBUILDING AND THE BOATYARD. ERECTION OF 4NO. HOUSES (3X 3NO. BEDROOMS AND 1X 2NO. BEDROOMS) FRONTING ONTO QUEEN STREET AND ASSOCIATED PARKING AND ERECTION OF AN APARTMENT BUILDING (4 X 2NO BEDROOMS AND 1 X 3NO. BEDROOMS) FRONTING ONTO TO THE MILL POND WITH ASSOCIATED PARKING
AT DOLPHIN QUAY, QUEEN STREET, EMSWORTH, HANTS, PO10 7BJ**

LOCAL PLANNING AUTHORITY REFERENCE: APP/14/00510

Written Representations of Wilson House Developments Limited

12th Augsut 2014



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1.0 Introduction and Background

1.1 This planning appeal is submitted following the decision of Havant Borough Council, as Local Planning Authority (LPA), to refuse the grant of planning permission for the demolition of the existing buildings (which together comprise three principal structures - a large building, most recently used for the sale of antiques; a two storey office and; a concrete portal framed former boat workshop) and the construction of a terrace of 4 houses, fronting onto the south side of Queen Street, together with a block of 5 flats to the rear which face towards 'The Mill Pond.' The current antiques shop has been empty since 2010; the two storey brick office has been empty since early 2011, with the boat yard being vacated in summer 2012. The site is located within both the Emsworth Conservation Area and a Flood Zone 3 area, as identified by the Environment Agency.

1.2 During the past few years the appeal site has flooded on a regular basis following prolonged periods of heavy rain which have coincided with high tides. These circumstances have contributed, significantly, to the inability of the marketing agents to find new commercial tenants. Consequently, despite being marketed by a local agent, the current owners have been unsuccessful in finding new commercial tenants.

1.3 It is highly unlikely, given the sites propensity to flood, that new tenants will be found for the existing premises. It is apparent that the inability of prospective commercial tenants to obtain insurance combined with the disruption that is caused by flooding, is a significant deterrent. Given the lack of commercial interest the appellants consider that only financially viable option for the site a wholly residential redevelopment.

1.4 The proposed development was the subject of extensive pre-application consultation with both Officers of the LPA and with the local community and stakeholders. Whilst it was not possible to address all of the concerns expressed by all parties the proposals were modified significantly. As such, the resultant scheme is considered to represent a highly sustainable, well designed residential development within Emsworth. It is of particular note that the scheme would also integrate a number of flood mitigation measures, both on and off site, which would benefit the wider community at the eastern end of Queen Street.

1.5 The appellants contend that the LPA did not engage with the appellants agents, during the course of the consideration of the application, to discuss the process of dealing with a set of complex circumstances. Instead of discussing how issues regarding flood mitigation, affordable housing provision or Solent Disturbance Mitigation might be resolved the LPA refused the planning application within the 'statutory 8 week period' without entering into any constructive dialogue.

1.6 The planning application, now the subject of this appeal, was submitted on 13th May 2014. The application was validated by the LPA on 27th May 2014 and was eventually refused a grant of planning permission on 22nd July 2014. The application was refused by the LPA for the following reasons: -

1. The application site is within the Emsworth Conservation Area, it occupies an important and prominent location and forms an important part of the setting of several listed buildings in the vicinity

and is within the Chichester Harbour Area of Outstanding Natural Beauty (AONB). The proposal, by reason of its scale, mass and design is considered to be excessive and inadequately related to the scale, character and design of surrounding development. It would constitute an incongruous and strident form of development, out of keeping with its surroundings, which would seriously harm the appearance and character of the Conservation Area, the setting of listed buildings and the character of the AONB. The loss of space would also reduce important views which provide visual connection between King Street, including the setting of the former Flour Mill building to the north, and the Harbour. As such it is contrary to national and local planning policies for the area, in particular the National Planning Policy Framework 2012 and Policies CS11 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011. These policies are further amplified in English Heritage Guidance: The Setting of Heritage Assets (2011) and the adopted Supplementary Planning Document: Havant Borough Design Guide (2011) and the related Conservation Area Character Appraisal and Management plan for Emsworth (2010), also in the extant Practice Guidance to the former National Planning Policy Statement PPS5: 'Planning for the Historic Environment' and National Planning Practice Guidance (2014), including: 'Conserving and Enhancing the Historic Environment' and 'Natural Environment'.

2. On the basis of the information submitted, the Local Planning Authority is not satisfied that it has been demonstrated that the site is no longer fit or is unsuitable or financially unviable for employment uses and the use of a shop; the Authority is not satisfied that a suitable comprehensive marketing exercise has been carried. Therefore the proposal is contrary to policies DM2 and DM3 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
3. On the basis of the information submitted, the Local Planning Authority is not satisfied that clear arrangements and responsibilities would be in place to ensure that adequate defences against flood risk would be put in place as part of the proposed development. Therefore the proposal is contrary to policy CS15 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
4. In the absence of binding arrangements to secure a contribution towards the Solent Disturbance Mitigation project, the proposal would not ensure that provision is made for mitigation of significant effects of development upon nearby designated area for nature conservation: Special Protection Area (SPA). The proposal is therefore contrary to the policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011 and policy DM24 of the Havant Borough Local Plan (Allocations) Submission Document (2013) and the National Planning Policy Framework 2012.

5. In the absence of binding arrangements for the provision of 'affordable housing', the proposed development is contrary to policy CS9 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

1.7 This written statement of case seeks to demonstrate that the decision of the LPA to refuse planning permission is unreasonable and unjustified. Firstly, it is considered that the proposed design solution would not have an adverse impact upon Chichester Harbour Area of Outstanding Natural Beauty, the character or appearance of the Emsworth Conservation Area or the setting of adjacent listed buildings. Secondly, whilst it is acknowledged that the marketing report does not provide a response to all of the criteria set out in the Council's Core Strategy policies DM2 and DM3 it does provide a coherent justification as to why new commercial tenants have shown little interest in taking occupancy of a site that is prone to regular flooding. Thirdly, the proposal was submitted with a flood risk assessment which provided a strategy for improving flood defences at the eastern end of Queen Street. The appellants are currently finalising arrangements which will enable the delivery of these flood mitigation measures. The proposed flood mitigation measures will form part of a S106 planning obligation which will be binding on the sites developers. Fourthly, the appellants intend to make provision within the S106 planning obligation for the provision of an appropriate contribution towards the Solent Disturbance Mitigation project. Finally, the appellants accept that policy CS9 of the Council's Core Strategy requires the development to make provision for the delivery of affordable housing either on or off site. The appellants are currently in discussions with the LPA with regards to offsetting the required offsite affordable housing contribution against monies that will be used to carry out the proposed flood mitigation measures. The agreed package of measures will also form part of the S106 planning obligation.

1.8 Section 38(6) of the Planning and Compulsory Purchase Act, 2004 states *'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'* It is considered by the appellants that the LPA cannot demonstrate where the development proposal does not accord with the policies of Development Plan. It is the contention of the appellants that the appeal proposal would not cause demonstrable harm to interests of acknowledged importance.

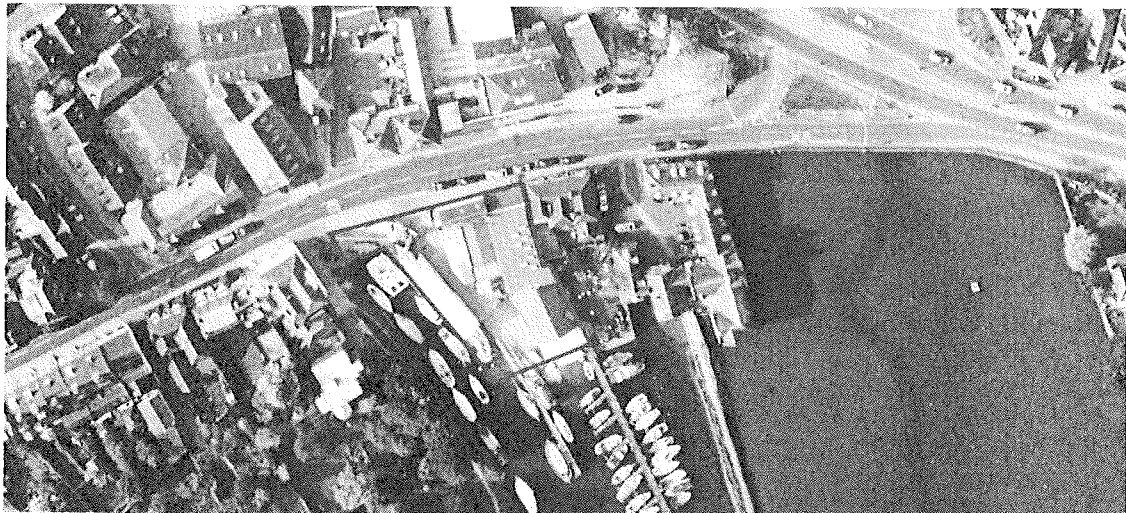
2.0 The Appeal Site and Its Surroundings

2.1 The appeal site comprises a complex of buildings originally used for the construction and repair of small boats. Building 1 (see image over page) is the largest unit and has been most recently used as an antiques centre. This is single storey at its Queen Street frontage, however, increases in height to the rear with a large vaulted ceiling. Building 2 is a two storey brick office building, located in a corner position. The 3rd building is situated to the rear of the two storey office and comprises a concrete portal framed structure which has been used for boat building and repair. This use has also utilised the external space surrounding the building on the harbour edge.

2.2 The site is located on the south side of Queen Street and to the north of moorings within the Mill Pond. Running adjacent to the sites eastern boundary is the Lord Raglan Public House which is a Grade II Listed Building, together with its beer garden to the rear.



2.3 Adjacent the site to the west is Dolphin House (29 Queen Street) also a Grade II listed building. Opposite the site on the north side of Queen Street is a petrol filling station/vehicle repair garage, a terrace of two storey houses and 'The Old Flour Mill' a four storey high, red brick Grade II listed building.



2.4 As has been stated the site falls within the boundaries of the Emsworth Conservation Area and is also an area considered to be at risk of flooding

(identified as Flood Zone 3). The site is not identified as falling within either a Primary or Secondary Shopping Frontage.

3.0 Relevant Planning History

3.1 Historically, the collection of buildings occupying the site were used in relation to timber boat construction and repair. In recent years a combination of factors have resulted in the demand for the use of the site as a boat yard to decline. Methods of boat construction have changed over time with less timber and more fibreglass boats being built. It is apparent that the existing buildings are neither large enough to accommodate many modern boats or suited to modern boat building techniques. Since the early 1990s the site has been used for a range of uses including A2 offices, and as an antique shop. The western part of the site operated as a timber boat yard until this also closed in 2012.

91/51798/003 Change of use from retail shop (class A1) to private car hire office

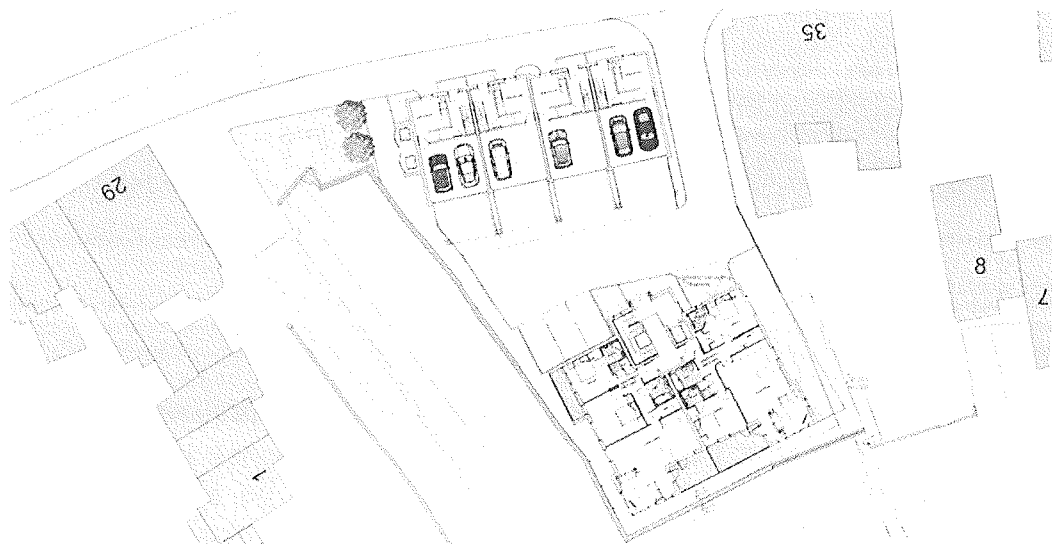
92/51798/004 Continued use of premises as yacht brokers (Class A2)

96/51798/005 Change of use from boatyard to retail (antiques and crafts) for a three year period – Temporary Permission for 3 Years issued 10th December 1996.

This permission was renewed in 1999 (99/51798/006), 2002 (02/51798/007) and 2005 (05/51798/008). The personal occupancy condition was removed from this last grant of permission.

4.0 The Appeal Proposal

4.1 The appeal proposal seeks a grant of planning permission for the demolition of the existing buildings and the construction of a terrace of 4 houses fronting onto Queen Street, together with an apartment building, accommodating 5 flats, on land to the rear facing the Mill Pond and River Ems. The proposal would also result in the upgrading of existing pontoons and their retention for



commercial rental purposes.

4.2 Additionally, it is proposed that the development will make provision, via a S106 planning obligation, of off-site flood defences which would help protect the wider area from flooding.

4.3 The proposed four houses would be arranged in a two/three storey high terrace that would front onto Queen Street. Access to a central parking court, located to the rear of the houses, would be via a drive that would be created between the east elevation of the terrace and the west side of the Lord Raglan PH. Each of the houses would be provided with garage car parking for two vehicles, together with 1 or 2 additional spaces in front of each garage. To the south of the terrace of houses would be a three storey high apartment block which would accommodate 5 flats. The parking and turning area located between the terrace and the apartment block would accommodate a further three car parking spaces. Additionally, undercroft car parking (and secure cycle storage) would be provided for 7 vehicles at basement level within the footprint of the apartment building.

4.4 The terrace of four houses is designed in a manner which reflects and complements the traditional architectural vernacular of existing buildings in Queen Street. The terrace would be 'stepped' in order to respond the change in scale of buildings along the Queen Street frontage between the 2 storey high Lord Raglan PH and the 4 storey 'Flour Mill'. The two houses next to the Lord Raglan PH have been designed with red stock facing brick, flint work with red brick detailing, timber sash windows and a hipped clay roof with lead clad dormers. The other two houses are of a traditional three storey height having been designed with red stock facing brick, red brick detailing, timber sash windows and a hipped clay roof. These were designed taking in characteristics of the Listed Flour Mill.

4.5 The five apartments facing the Mill Pond have been designed in a contemporary style, however, would be constructed with traditional materials using red stock facing brick, modern clad flint, protruding bays, off white render, grey windows and glass balconies with stainless steel handrails. All the balconies would be set back into the building to reduce the overall mass. Additionally, the third floor apartment has been set back in order to reduce a perception of mass. Anti-glare and solar glass will be used on south facing windows to reduce any glare and avoid overheating.

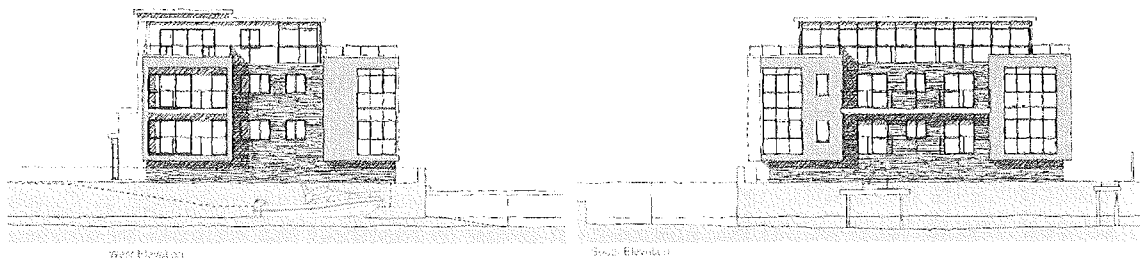
4.6 In order to ensure that the habitable accommodation was not at risk of flooding the finished ground floor level of both the houses and flats would be set at 4.8m AOD. A schedule of the proposed development is provided below.

4 Houses



- 2 no. 5 person 3 bed houses: (117.6sqm)
- 1 no. 5 person 3 bed house: (104.8sqm)
- 1 no. 4 person 2 bed house: (95.7sqm)

5 Apartments



- 2 no. 4 person 2 bed apartment: (96.7sqm)
- 2 no. 4 person 2 bed apartment: (103.3sqm)
- 1 no. 5 person 3 bed apartment: (111sqm)
- 25 car parking spaces [inc. 5 garages] refuse bins and cycle stores.

5.0 Planning Policy

National Planning Policy Guidance

National Planning Policy Framework, 2012

5.1 The National Planning Policy Framework (NPPF) was published by the Government on 27th March 2012. The Government states that 'At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking....' The document promotes planning principles which include making effective use of land, promoting mixed use developments that create more vibrant places, and encouraging multiple benefits from the use of land in urban and rural areas. Furthermore, the document requires Local Planning Authorities to approach development management decisions positively (i.e. to look for solutions rather than problems so that applications can be approved wherever it is practical to do so).

5.2 The NPPF states (at para.7) that there are '... three dimensions to sustainable development: economic, social and environmental. The economic role is described as 'contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying

and coordinating development requirements, including the provision of infrastructure; The social role requires planning to support '...strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.' The environmental role relates to the protection and enhancement of '...our natural, built and historic environment...'.

5.3 Amongst the Core Planning Principles described at paragraph 17 the NPPF states that planning should 'proactively drive and support sustainable economic development to deliver the homes... that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth.' A further planning objective is to '... take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs...'.

5.4 With regard to residential development, at para. 50, the NPPF states '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...and ... identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand...'.

5.5 Paragraph 57 of the NPPF deals with design. This paragraph states that '...It is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings...'. In respect of architectural design the NPPF comments (para. 60) that '...Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles...'.

5.6 Paragraph 61 refers to the connection between people and places. It states 'Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment...'.

5.7 With respect to flooding, the NPPF, at chapter 10, discusses 'Meeting the challenge of climate change, flooding and coastal change'. It is stated at paragraph 103: 'When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test...' Additionally, paragraphs 105 to 107 are also considered to be relevant. These state: -

'105. In coastal areas, local planning authorities should take account of the UK Marine Policy Statement and marine plans and apply Integrated

Coastal Zone Management across local authority and land/sea boundaries, ensuring integration of the terrestrial and marine planning regimes.

106. Local planning authorities should reduce risk from coastal change by avoiding inappropriate development in vulnerable areas or adding to the impacts of physical changes to the coast. They should identify as a Coastal Change Management Area any area likely to be affected by physical changes to the coast, and:

- be clear as to what development will be appropriate in such areas and in what circumstances; and
- make provision for development and infrastructure that needs to be relocated away from Coastal Change Management Areas.

107. When assessing applications, authorities should consider development in a Coastal Change Management Area appropriate where it is demonstrated that:

- it will be safe over its planned lifetime and will not have an unacceptable impact on coastal change;
- the character of the coast including designations is not compromised;
- the development provides wider sustainability benefits; and
- the development does not hinder the creation and maintenance of a continuous signed and managed route around the coast.'

5.8 Paragraph 132 of the NPPF advises that 'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation...' Paragraph 134 advises on the assessment of development that is considered to cause 'less than substantial harm' to a heritage asset. It is stated that '...Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use....'

5.9 Paragraph 196 of the Framework confirms that the NPPF is a material consideration in planning decisions. Paragraph 197 states, furthermore, that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.

Havant Borough Local Development Framework

5.10 The Havant Borough Core Strategy was formerly adopted on 1st March 2011. It is the principal document in the Council's Development Plan and sets out the spatial planning strategy for the area up to 2026. The relevant policies are as follows:

- | | |
|-----|--|
| CS4 | Town, District and Local Centres – encouragement of new comparison goods retail floorspace within identified centres; |
| CS6 | Regeneration of the Borough - Planning permission will be granted for development which positively contributes by type of use and design and by its comprehensive approach to the social, economic and/or physical regeneration of the whole borough...; |

- CS9 Housing – requires new residential development to provide a mix of dwelling types that ‘help meet local housing need...’ - 30-40% of units to be provided as affordable housing;
- CS11 Protecting and Enhancing the Special Environment and Heritage of Havant Borough – this policy seeks to protect and where appropriate enhance the borough’s statutory and nonstatutory heritage designations by appropriately managing development in or adjacent to conservation areas, listed buildings;
- CS14 Efficient use of Resources;
(requires residential development to meet Level 3 of the Code for Sustainable Homes)
- CS15 Flood and Coastal Erosion Risk
‘Development in areas at risk of flooding now and in the future as identified on the latest Environment Agency flood risk maps and Strategic Flood Risk Assessment climate change maps will only be permitted where:
1. It meets the sequential and exception test (where required) in relation to PPS25.
 2. The site is located in a low hazard area as defined in the Strategic Flood Risk Assessment.
 3. A site-specific flood risk assessment demonstrates that the development will be safe, including the access, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
 4. The scheme incorporates flood protection, flood resilience and resistance measures appropriate to the character and biodiversity of the area and the specific requirements of the site.
 5. Appropriate flood warning and evacuation plans are in place.
 6. New site drainage systems are designed taking account of events which exceed the normal design standard...’
- CS16 High Quality Design;
- CS20 Transport and Access Strategy;
- DM2 Protection of Existing Community Facilities and Shops
‘DM2 Protection of Existing Community Facilities and Shops
Development proposing the change of use or loss of any premises or land currently or last used as community services

and facilities, including local shops, will only be permitted where both the following criteria can be met:

1. It has been demonstrated, through an active marketing process that the premises or land are no longer viable for their authorised use or any other use which would provide a beneficial facility to the local community.
2. The facility is no longer required for a community use or that there is an easily accessible existing or new facility for the community it is intended to serve.'

DM3

Protection of Existing Employment and Tourism Sites

DM3 Protection of Existing Employment and Tourism Sites

1. 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 and financially unviable for B use class purposes. Where it is clearly demonstrated that the site is no longer suitable for B use class employment, other types of economic development should be considered in the first instance. These uses will be expected to provide employment opportunities of similar quality and quantity as those which previously existed. Only if another type of economic development cannot be found which provides similar quality and quantity of employment opportunity, will other uses then be considered.
2. The change of use or development of land or premises currently or last used for tourism purposes to non-tourism uses will only be permitted where it has been demonstrated that the land or premises are not fit for purpose and financially unviable for any tourism use.

For both employment and tourism sites this shall be demonstrated through an active and exhaustive marketing process covering at least 18 months for a major site and 12 months for all other sites.

In all cases the marketing process requires as a minimum:

- i) Confirmation by the marketing agent on headed company paper that the premises were appropriately and extensively marketed for the required length of time as set out by the council.
- ii) Dated photographs of marketing board/s of an appropriate quality, size, scale, location and number, during this time, on the premises.

- iii) An enquiry log, how it was followed up and why it was unsuccessful.
- iv) A copy of all advertisements in the local press and trade journals (should be at least four weeks' worth of advertisements spread across a six month period).
- v) Evidence of marketing via the internet required length of time as set out by the council.

DM12 Mitigating the Impacts of Travel;

DM13 Car and Cycle Parking on Residential Development.

5.11 The above policies are considered to be in general conformity with the NPPF and are, therefore, relevant to the determination of this appeal.

Havant Borough Local Plan (Allocations), Adopted 23rd July 2014

5.12 The Local Plan (Allocations) identifies sites for specific uses including, housing, employment, retail, recreation and green infrastructure up to 2026.

5.13 The following policies are considered to be relevant: -

AL1 Presumption in Favour of Sustainable Development

AL4 Coastal Change Management Areas

'Development proposals for new dwellings or conversion of existing buildings to residential use will not be permitted in the Coastal Change Management Areas (CCMAs)...'

5.14 The site does not fall within a CCMA. Supporting paragraph 2.17 states '...The NPPF states that CCMAs should be designated in any area likely to be affected by physical changes to the coast. CCMAs will not need to be defined where the Shoreline Management Plan (SMP) policy is to 'hold the line' or 'advance the line' for the whole period covered by the SMP. The SMP relevant to Havant Borough is the North Solent SMP, which was approved by the Environment Agency and published in 2011.'

DM20 Historic Assets

DM24 Recreational Disturbance to Special Protected Areas (SPAs) from Residential Development

DM25 Managing Flood Risk in Emsworth

'Planning permission will be granted for developments within the Emsworth urban area boundary that can demonstrate how post development runoff has been reduced by the greatest percentage rates and volumes that are possible in the context of cost, technical feasibility and viability. Extensions to existing houses and change of use are exempt from the requirements of this policy.

Planning permission will be granted for developments within the Emsworth urban area boundary of greater than 1 hectare and in Flood Zones 2 and 3 that are supported by onsite sustainable drainage systems.

New developments that fall within the Emsworth urban area boundary; and/or has an impact on the flood risk of the areas within the Emsworth urban area boundary may be required to make a contribution towards the Emsworth Flood Alleviation Scheme (FAS)'

6.0 Planning Considerations

6.1 The LPA refused a grant of planning permission for the proposed development on the basis that: -

1. The proposal, by reason of its scale, mass and design is considered to be excessive and inadequately related to the scale, character and design of surrounding development having an adverse impact upon the Emsworth Conservation Area, adjacent Listed Buildings and Chichester Harbour AONB.
2. The marketing exercise is not suitable to demonstrate that the site is no longer fit or is unsuitable or financially unviable for employment uses.
3. On the basis of the information submitted, the Local Planning Authority is not satisfied that clear arrangements and responsibilities would be in place to ensure that adequate defences against flood risk would be put in place as part of the proposed development.
4. In the absence of binding arrangements to secure a contribution towards the Solent Disturbance Mitigation project, the proposal would not ensure that provision is made for mitigation of significant effects of development upon nearby designated area for nature conservation: Special Protection Area (SPA).
5. In the absence of binding arrangements for the provision of 'affordable housing', the proposed development is contrary to Core Strategy policies.

6.2 Each of these matters will now be addressed in detail.

Scale, Mass Design – Impact upon the Surrounding Historic Environment and Townscape

6.3 As is described within the Design and Access Statement (which accompanied the planning application) the appellants entered into a lengthy pre-consultation exercise with the LPA, members of the local community and other stakeholders. Having considered feedback from this exercise the proposed devel-





opment was changed significantly. The Queen Street streetscene images provided above show both the pre-application and application proposals one above the other. The scale and mass of the frontage development has been reduced considerably allowing for the provision of wider gaps between the proposed terrace of 4 houses, and the Lord Raglan Public House to the east, and No.29 Queen Street, to the west. This amendment has considerably reduced the proximity of the development and, therefore, its impact upon the setting of the two adjacent listed buildings. The widening of the gaps also allows for improved views through the site to the harbour area beyond, or vice versa, from the harbour and surrounding public footpaths through to Queen Street. It is also argued most strongly that the revisions to the scheme reduced the perception of mass and bulk; the scale of the proposal was modified with changes to the roof design which allowed for a natural stepping of development along the Queen Street frontage.

6.4 A contextual analysis was undertaken by the schemes architects which provided a logical explanation as to how the 'pastiche' or traditional frontage element of the scheme responded to and reflected several elements of the local architectural vernacular. Consequently, the appellants contend most strongly that Queen Street element of the proposal changed and responded positively to take account of as many critical comments made by the Council's Officers and other third parties.

6.5 To the rear (south) of the terrace of four houses is proposed a part three / part 4 storey apartment block. This block is designed in a contemporary style which is considered to complement the appearance of the frontage building whilst also reflecting the height and scale of buildings within the vicinity of the site. It is accepted that the apartment building will be visible from Queen Street, however, much of it would be screened by the frontage development. When viewed from the east and south the building would appear as a stand-alone bespoke piece of modern architecture which would complement the surrounding historic development.

6.6 In order to address the concerns of the LPA the appellants have engaged, John Pike IHBC, MRTPI, a Conservation Consultant to respond to the Council's first reason for refusal. This statement should be read in conjunction with this grounds of appeal statement.

Given the foregoing it is argued most strongly that the appeal development is not "by reason of its scale, mass and design is considered to be excessive and inadequately related to the scale, character and design" to the Emsworth Conservation Area, adjacent Listed Buildings or Chichester Harbour AONB. As such the proposal is considered to be compliant with current planning guidance and policy, both National and Local.

Marketing Exercise

6.7 A marketing report was submitted with the planning application, now the subject of this appeal, by agents Borland and Borland. This report states that the current antiques shop has been empty since 2010; the two storey brick office has been empty since early 2011, with the boat yard being vacated in summer 2012 and the occupier moving to other premises within Chichester Harbour. It is believed that the previous boat yard occupiers went into administration.

6.8 The report demonstrates that, despite having actively marketed the site over the past few years, they have been unable to find new tenants. The main reason given by prospective occupiers is that they cannot obtain insurance due to the buildings being located within a Flood Zone 3 area. Borland and Borland note that the buildings have flooded on three occasions so far this year (2014). Whilst the report acknowledges that the take up of commercial property in Emsworth is relatively strong, regular flooding, the disruption caused by flooding and an inability to obtain anything but limited insurance cover appears to have discouraged interest. Additionally, the buildings are not considered to be fit for modern commercial purposes.

6.9 With regards to the reuse of the site as a boat yard the report comments that possible interested parties have been discouraged by both the small size of the site, which prevents the installation of a permanent crane to lift boats, and the tidal nature of Dolphin Cut which runs dry at low tide.

6.10 Additionally, page 7 of the marketing report notes that Borland and Borland have marketed the premises since 2010 both via boards and having distributed details to interested parties. There has been some interest in the Antiques Centre for its use as a restaurant, however, once prospective tenants / owners became aware of the flooding issues, their interest was quickly withdrawn.

6.11 The report states that no commercial developers considered the redevelopment of the site to be financially viable either as a refurbishment or as a rebuild. Again, the propensity of the site to flood has proven to be a barrier to the site being redeveloped for commercial purposes.

6.12 Policies DM2 and DM3 require that an adequate marketing exercise has been undertaken in order to demonstrate that a former shop, or Class B employment site, is no longer suitable for shopping, community or an employment purposes. Having reviewed the marketing report by Borland and Borland it is apparent that the sites location within Flood Zone 3 is the current barrier to bringing the site back into a commercial or employment use. Given that the site floods regularly insurance companies are understood only to be able to offer limited cover to prospective occupiers. The cost of refurbishing the existing buildings or redeveloping the site for commercial purposes is considered to be 'not a viable investment due to regular flooding issues.' It is also the case that modern boat building enterprises require, in most cases, larger premises with a permanent water frontage and improved boat lifting facilities. Consequently, the marketing report highlights the fact that there has been little interest in the use of the existing buildings for either similar or alternative commercial purposes.

6.13 It is also a fact that any redevelopment of the site for commercial purposes would have to mitigate flooding issues, address townscape and heritage considerations, and also be compatible with the surrounding mixed residential/commercial area.

6.14 The appeal site has been marketed since 2010 until the present date by Borland and Borland. The marketing agents were engaged by the sites owners and not the appellants. Consequently, the appellants are reliant upon the information that has been made available by Borland and Borland. The marketing information which the LPA require to be submitted via policies DM2 and DM3 is, understandably, very comprehensive. However, it also appears that the LPAs interpretation of these policies is inflexible. Had the site owners known, back in 2010, that they would have to provide the levels of detail required by policies DM2 and DM3 it is likely they would appointed additional agents so as to ensure that each of the criteria, of both policies, could be met. Unfortunately, the applicants, now appellants were reliant upon the data provided by the owners marketing agents.

6.15 The strict adherence and application of these policies by the LPA to resist the redevelopment of this site is considered to be unreasonable by the appellants. It is quite clear that one factor in particular (i.e. flooding and the inability to obtain adequate insurance cover) is dissuading businesses from leasing or purchasing the existing premises. It is considered highly unlikely, therefore, that this particular issue would be resolved by a wider marketing campaign than has already taken place. Nevertheless the appellants have instructed another specialist commercial agent to provide additional marketing of the site. It is expected that information obtained via these specialist consultants will confirm that already established by Borland and Borland.

6.16 The evidence presented by the Borland and Borland report indicates that a future commercial use of the site is unlikely to happen due mainly to flooding. Given the foregoing, it is considered that a marketing exercise has been undertaken which demonstrates that there is no longer a demand for the use of the site for commercial purposes. As such, the consideration of the redevelopment of this site for residential purposes is compliant with policies DM2 and DM3.

Flood Mitigation Measures

6.17 The LPA '... is not satisfied that clear arrangements and responsibilities would be in place to ensure that adequate defences against flood risk would be put in place as part of the proposed development...' The appellants submitted with the planning application a Flood Risk Assessment (FRA) which proposed a strategy for providing flood prevention measures at the eastern end of Queen Street. The mitigation proposed is outlined in detail at Appendix C of the FRA.

6.18 As a part of its consultation process the LPA consulted with the Eastern Solent Coastal Partnership. In a response dated 18th July 2014 the Partnership stated that they had 'no objection' to the proposal. Furthermore they commented:

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'...We consider that the proposal and associated improved sea wall designed to act as a flood defence structure (when linked to defences at either end), in combination with a financial contribution towards a wider scheme, offer a real opportunity to improve the flood and coastal erosion risk management assets and standard of protection that they offer to people and property within the locality.

We can also confirm that the coastal defence proposals are in line with the recommendation of Hold The Line – Improve, for this flood cell from the Portchester Castle to Emsworth Draft Coastal Flood and Erosion Risk Management Strategy. This Coastal Strategy has been approved and adopted by both Havant Borough Council and Chichester District Council which are both impacted by this flood cell. Through securing of contributions from this development it will also be possible to deliver a standard of protection over and above that proposed in the Coastal Strategy.

The Flood Risk Assessment (FRA) proposes a package of measures to manage risk to an acceptable level. The most significant of these is the construction of an onsite flood defence wall, and a financial contribution towards the off-site tidal flood defences that are required to address flood flow routes originating from outside the site boundary. Further measures are proposed to manage the residual risk of tidal flooding, and to manage the risk of flooding from other sources...'

6.19 The appellants, as a part of the appeal proposal, would undertake works to build a new sea wall within the application site. They also indicate a schedule of further works that would take place outside of the boundaries of the appeal site. These works would be secured via a financial contribution. This contribution would be made to the Eastern Solent Coastal Partnership (or another authorised body) who would administer the funding of coastal defence works in the area of the appeal site. It is envisaged that the Partnership would utilise the financial contribution either to fund works set out at Appendix C of the FRA or to implement any other such flood defence measures as they see fit within the vicinity of the site.

6.20 By submitting the planning application with the FRA the appellants have demonstrated that they are willing to engage with the LPA to establish a strategy that would ensure improved flood protection measures at the eastern end of Queen Street. The appellants are confused as to why the LPA chose not to engage with them at an early stage of the application process to discuss the delivery of the flood protection measures. It is of note that the LPA only received the response of the Eastern Solent Coastal Partnership 4 days before determining the application. Had this consultation been received earlier it is likely that the strategy of flood protection could have been put in place via a S106 Planning Obligation. The appellants are currently trying to enter into a dialogue with the LPA in order to provide a strategy of works together with a financial contribution that will help prevent flooding at the eastern end of Queens Street. A S106 Planning Obligation will, therefore, be submitted during the course of this appeal in order to deliver a raft of flood protection measures. As such, the appeal proposal is considered to be compliant with policy CS15 of the Havant Borough

Local Plan (Core Strategy) 2011, and the National Planning Policy Framework 2012. Additionally, the appellants are of the view that the proposed development is compliant with policy DM25 of the Havant Borough Local Plan (Allocations), which was adopted on 23rd July 2014 (i.e. a day after this planning application was refused by the LPA).

Solent Disturbance Mitigation

6.21 The planning application, now the subject of this appeal, was submitted at the end of May 2014. As such, at the time of submission the appellants were unaware of the need to make any financial contributions towards 'Disturbance Mitigation' for development close to Chichester Harbour. As from the 30th June 2014, the Council has sought financial contributions towards the Solent Disturbance Mitigation Project (SDMP). Natural England has advised the Council that a contribution of £172 per dwelling is required to mitigate against the effects of recreational disturbance on the Solent Special Protection Area (SPA). The LPA seeks to secure such contributions, for development of 1 or more dwellings, via Policy CS21 of the Local Plan (Core Strategy) 2011 and Policy DM24 of the Local Plan (Allocations), 23rd July 2014.

6.22 Again, the appellant considers that it was unreasonable of the LPA not to have advised them of the introduction of this 'charge' so that they could have ensured that the delivery of this financial contribution via an appropriately worded S106 Planning Obligation.

6.23 As has been stated, the appellants are currently preparing a S106 Planning Obligation which will ensure that a financial contribution is made towards the Solent Disturbance Mitigation Project on commencement of the development. Given the foregoing it is considered that the proposal is compliant with Policy CS21 of the Local Plan (Core Strategy) 2011 and Policy DM24 of the Local Plan (Allocations), 23rd July 2014.

Affordable Housing

6.24 The issue of affordable housing provision was not raised by Officers at the pre-application stage. However, the appellants were aware that they may need to deliver either onsite provision or make a financial contribution towards off site provision as is required by Local Plan policy CS9.

6.25 It was envisaged that Officers would consult with the Council's Housing Enabling Officer so as to advise them of what the off-site financial contribution would be. It is apparent, however, that the Council's Housing Enabling Officer was not consulted during the course of the consideration of the planning application. Consequently, the appellants do not know what the financial contribution would be and are in the process of making their own, separate enquires of the Council's Housing Service to clarify the amount of the off-site financial contribution.

6.26 At this stage the appellants are seeking further discussions with Officers of the Council to negotiate offsetting the affordable housing contribution against the financial contribution that will need to be made towards the provision of off-site flood protection measures. The agreed package of measures will form part of the S106 planning obligation. This planning obligation will be forwarded to the Planning Inspectorate in due course.

7.0 Conclusions

7.1 In conclusion the appellants argue that the development proposed: -

- Would not have an adverse impact upon Chichester Harbour Area of Outstanding Natural Beauty, the character or appearance of the Emsworth Conservation Area or the setting of adjacent listed buildings;
- The marketing of the site that has taken place since 2010 has established that potential commercial occupiers are unwilling to lease a site which has a high probability of flooding; it is unlikely that a wider marketing exercise, which the appellants have just commissioned, will attract greater interest given this fact;
- Will adequately address the matter of flood risk. It is apparent from the application consultation response from the Eastern Solent Coastal Partnership that it is possible to make a financial contribution towards the provision of flood prevention measures. As such, the requisite contribution will be made via a S106 Planning Obligation that is to be submitted with this appeal, and;
- Will ensure that a financial contribution of £1,548 will be secured via a S106 Planning Obligation towards the Solent Disturbance Mitigation Project.

7.2 As has been explained above the appellants are yet to establish what the affordable housing contribution is likely to be. The need to make such a contribution is yet to be determined. It is envisaged that negotiations with the LPA will result in the offsetting of the financial contribution for flood prevention against the contribution for affordable housing.

7.3 It is not considered, therefore, that the proposed development would "cause demonstrable harm to interests of acknowledged importance." It is respectfully requested that the Planning Inspector views the proposal favourably and allows this appeal.