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23rd January 2024

Planning Inspectorate
The Square
Temple Quay House
Bristol
BS1 6PN

Appeal ref no: APP/X1735/W/23/3328946
LPA ref no: APP/22/01194

Dear Mr. Jonathan Alden

APPEAL BY: Mr. Brian Long
SITE ADDRESS: Land adjacent to 27 Emsworth Road, Havant, PO9 2SN.

APPELLANT'S FINAL COMMENTS

Please find the Appellant's final comments in respect of the above planning appeal.

Comments on Council's Statement of Case

The comments below are made in relation to the Council's Statement of Case.

At paragraph 8.2 of its Appeal Statement the Council argues that the proposed development would result in a cramped and congested layout because it has a large footprint in relation to the size of the site, and that it would offer limited outdoor amenity space. Both of the proposed apartments have ~eight sqm of private amenity space in the form of a balcony and courtyard, the Council acknowledges

that it has not adopted minimum space standards for private amenity space and so the Appellant is puzzled by the suggestion that the outdoor amenity space is 'limited' when the Council has offered no metric by which to judge this. On the contrary, the Appellant's Appeal Statement draws attention to the London Plan – a robust strategic planning policy document, applicable to 32 separate local planning authorities, examined by independent Planning Inspector – which sets a minimum space standard of five sqm for one- and two-bedroom flats. Whilst the London Plan clearly does not apply to development proposals in Havant, in the absence of locally adopted standards for private amenity space means applicants must use their best judgement when designing outdoor amenity spaces, and in this context the Appellant has provided more than would be mandated across the whole of London.

With regards to the suggestion that the proposed development has a large footprint relative to the size of the site, there is no dispute between the two parties that the proposal occupies almost all of the site with built form. However, the Council fails to explain why this is problematic, whereas the Appellant has explained in detail that the proposal provides everything expected of modern residential developments (cycle storage, refuse storage, private outdoor amenity space, compliance with Nationally Described Space Standards, etc.). The Council's objection to the Appellant developing the site appears to be based on nothing more than Officer preference, rather than any planning policy requirements.

At paragraph 8.2 of its Appeal Statement the Council argues that: "the scheme would offer poor living conditions to the future occupiers of the studio flats, especially at ground floor level which would be partly overshadowed by the first floor balcony." For the reasons outlined throughout our Appeal Statement and these Final Comments, we strongly disagree with the allegation that the residents of the proposed apartments would experience substandard living conditions. In specific regard to the ground floor courtyard, it should be noted that; it is commonplace across a great many flatted developments for balconies (and terraces at ground floor) to be placed one above the other, resulting at times in some degree of overshadowing, but clearly this overshadowing will be mitigated by the position of the sun in the sky which will not always be directly overhead. Furthermore, the proposal includes a post-and-rail fence (not close boarded timber) bounding the ground floor terrace to enable

light to penetrate the boundary treatment and to allow outlook (over an existing communal – not private – amenity area serving Bernard Powell House). Balconies regularly feature balustrades of varying sizes and materials, indeed the apartment proposed at first floor features a balustrade comprised of metal railings (detail to be secured by planning condition). If the Inspector is so-minded, a planning conditions securing a similar balustrade for the ground floor apartment could be secured using a planning condition which reads: “Notwithstanding the boundary treatment proposed for the ground floor apartment, details shall be submitted to and approved by the Council for the provision of a one metre tall metal balustrade bounding the ground floor courtyard”.

At paragraph 8.3 the Council argues that because the proposed development is located outside of the defined Town Centre boundary “adequate amenity space should be provided”. In our view, the proposed development provides a good amount and standard of private amenity space for what will invariably be single-occupancy dwellings. Notwithstanding this, it is worth noting that the Appeal site is located ~100 metres from the Town Centre boundary (see image one below), and as a result benefits from an excellent access to services and amenities. The Appellant’s Appeal Statement outlines the range of services including public outdoor amenity spaces accessible within walking distance of the Appeal site, including Havant Park and Skatepark (900 metres), The Avenue Lawn Tennis Club (500 metres), and Langstone / Emsworth Harbour and Beach (1,100 metres), and so even if the Appellant accepted the notion that the proposed development underprovides private amenity space (which we refute in the strongest terms) there is clearly ample provision of public amenity space readily accessible to occupants of the proposed apartments. So the Council’s argument that ‘because the proposed development is outside of the defined Town Centre boundary it must provide adequate amenity space’ is both inaccurate, because adequate amenity space is provided and even if it weren’t, residents will have excellent access to services and outdoor amenity spaces.

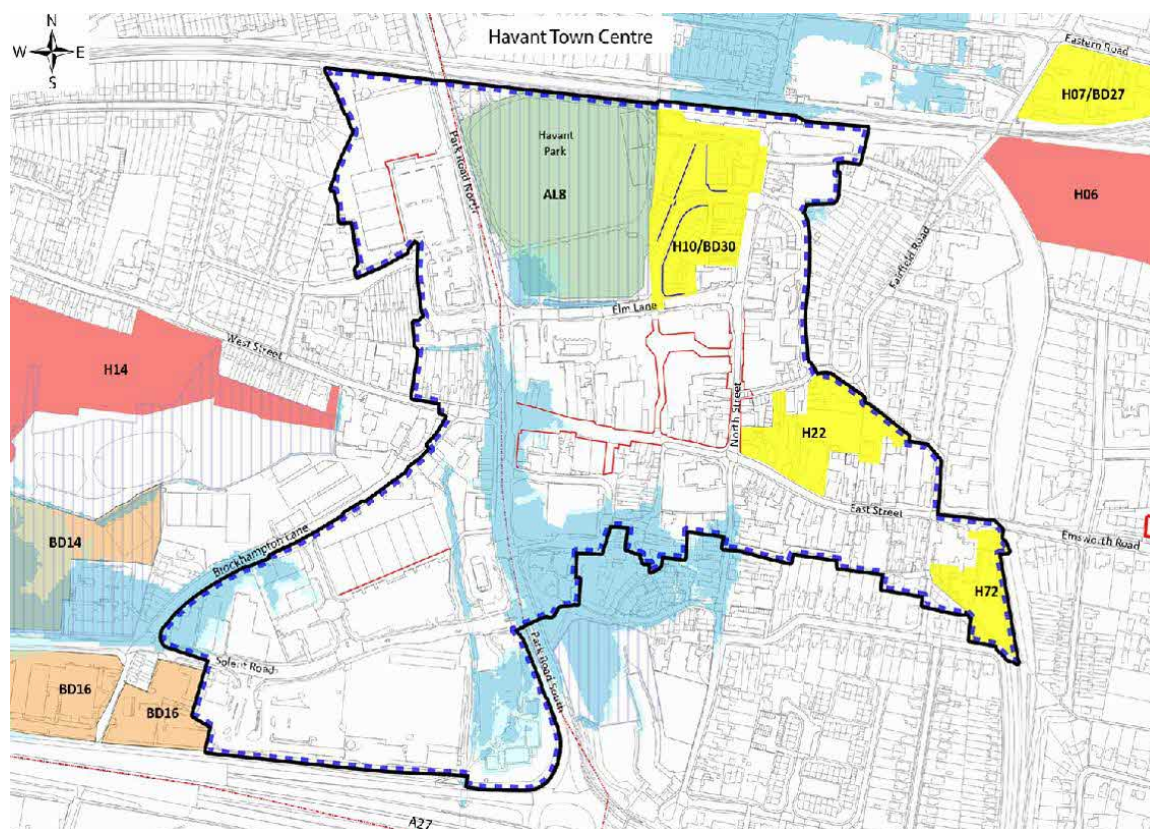


Image 1 Map showing the distance between Havant Town Centre (Black line) and the Site (Red line).

The Council argues that the planning permission at 44 – 54 West Street (ref no: APP/10/00992) is not relevant because a) it is located within the defined Town Centre and so ‘higher densities are permissible’ and b) because it was permitted prior to the adoption of the Core Strategy and Design Guide SPD, therefore different policy considerations would have applied. Firstly, the Appellant is puzzled as to why the Council is conflating density with the provision of outdoor amenity space (in this case balconies). High density schemes are perfectly capable of providing balconies, indeed the first iteration of the 44 – 54 West Street permission included balconies, it was only under the Non Material Amendment (ref no: APP/17/01358) that the balconies were removed. The Appeal scheme, the Appellant accepts, is high density but still provides ample private amenity space, again proving the premise upon which the Council’s argument is based to be a folly; There is nothing within either policy CS16 or the Design Guide SPD which states that ‘in the defined Town Centre applicants needn’t

provide adequate provide amenity space’ and so the Council’s argument that higher density development should be allowed to under-provide private amenity space is illogical. Secondly, the 44 – 54 West Street permission included balconies when it was permitted in 2011 and these were removed under the Non Material Amendment in 2017, i.e. after the adoption of the Core Strategy and Design Guide SPD, so clearly both of these documents would have been material considerations in the determination of the Non Material Amendment. Notwithstanding this, as we have already pointed out, the Core Strategy does not mandate minimum space standards for private amenity space and even if it did, the Council permitted 44 – 54 West Street to be constructed with no private outdoor amenity space. The Council’s implicit admission that it perceives development in the Town Centre to be immune from providing adequate private amenity space is both concerning and illogical.

The Council draws the Inspector’s attention to a dismissed appeal at 57 London Road, Waterlooville (PINS ref no: APP/X1735/W/22/3299101, the “Waterlooville Appeal”), which it argues shares similarities with the current Appeal proposals. The Appellant has reviewed the Waterlooville Appeal and would comment as follows: Firstly, the Council at paragraph 8.5 of its Appeal Statement comments: “[The Waterlooville Appeal] would have an adverse effect on the character of the area and also the lack of any private garden amenity area and poor outlook from habitable rooms would result in unacceptable living conditions for the future occupants/owners of the proposed dwellings”.

It is important to note that the Waterlooville Appeal differs from the current Appeal in that it proposed the erection of a pair of one-bedroom semidetached houses, leading the Inspector to comment: “The proposed units would have no private outdoor garden space. Both would have a balcony at first floor level which would allow occupiers to sit outside in a relatively sheltered space. This would be similar to the balconies to the first floor accommodation above some of the commercial premises. The difference however is that these are flats rather than houses, where there are different expectations as to the size and nature of the outdoor space associated with them.” Clearly the current Appeal is materially very different to the Waterlooville Appeal because we are proposing the erection of a two storey building comprising two studio apartments, both with private outdoor amenity

spaces, where the expectations with regards to private amenity space will clearly be very different to that of the semidetached houses proposed under the Waterlooville Appeal.

Furthermore, the Waterlooville Appeal is distinguishable from the current Appeal proposals because (by virtue of them being houses, rather than studio apartments) the two houses proposed under the Waterlooville Appeal are split into individual bedrooms, bathrooms and living room / kitchens. The main, and only, bedrooms proposed under the Waterlooville Appeal are located on the ground floor and the only window serving these bedrooms is located directly adjacent to the site boundary which is bounded by a 1.8 metre tall fence completely obstructing any daylight / outlook these windows would have otherwise received. This is once again materially very different from the current Appeal because the Appellant is proposing studio apartments (with all of the living functions, save for the bathroom, carried out in one open-plan living space) which enjoy both a northern and southern aspect. To the north, the proposed apartments will have views across the verdant gardens of the properties located on Oaklands Road and to the south the proposed apartments will receive the daylight that naturally occurs for southerly-facing windows – meaning that the open plan living space will enjoy both a pleasant outlook and adequate natural light, something which cannot be said for the Waterlooville Appeal.

At paragraph 8.7 of its Appeal Statement the Council summarises its views on the perceived overdevelopment of the site by stating: “the proposed development would result in an overdevelopment of the site, which is limited in size offering unacceptable amenity space for the future occupiers”. The Council has failed to explain why it perceives the proposed development to constitute an overdevelopment of the site, save for suggesting that the size of private amenity space is substandard. For the reasons outlined above, the proposed eight sqm balconies comply with policy CS16 and the Design Guide SPD insofar as neither of these documents mandates a minimum size requirement for balconies / terraces, and notwithstanding this lack of a minimum standard eight sqm is considerably larger than the minimum standards contained in other well-regarded adopted Planning Policies such as those contained within the London Plan. The occupiers of the proposed apartments also benefit from easy access to all of the services available within Havant Town Centre

and various outdoor public amenities / leisure facilities. The proposed development provides everything expect of modern residential developments and does not therefore constitute an overdevelopment of the site, rather it makes a highly efficient use of a highly sustainable brownfield in accordance with paragraph 128 of the NPPF (December 2023).

At paragraph 8.8 of its Appeal Statement the Council grossly misrepresents the Appellant's arguments, stating: "in Appellant's [sic] Appeal Statement it argues that just because the proposed building is partially obscured by the advertisement board it does not mean it will appear incongruous or inappropriate". This is categorically not what the Appellant is arguing, rather we have pointed out that the proposed two storey, well-proportioned building, with a pitched roof and contemporary finishes / detailing, will nestle comfortably into the street in spite of the advertisement hoarding, not 'because of' as the Council implies. The Council does little to elaborate on why it believes locating the proposed development behind the advertisement hoarding would result in an inappropriate or incongruous form of development, when the Appellant has demonstrated the contrary to be true; the proposed building is, as the Council accepts, a well-designed building and will infill an uncharacteristic gap in the street scene. The proposed building will moreover bridge the gap between the 1960s flatted development to the west with the historic public house to the east, and improve the roofscape by inserting a pitched roof between the two existing buildings.

The Council argues that the example of Grove House, 4 Emsworth House having its façade obscured by a tall hedgerow is not relevant because a) the Council has no control over hedgerows within residential curtilages and b) because hedgerows provide green infrastructure. But this is to misunderstand the point the Appellant is making; the Appellant is not proposing to discuss the relative merits of hedgerows as boundary treatments, or indeed the jurisdiction of the Local Planning Authority over hedgerows, we were simply pointing out that there are examples in the immediate locality of dwellings with facades that are screened by tall intervening obstructions (in the case of Grove House, its hedgerow) and so it is factually incorrect for the Council to argue that a building with its façade obscured by a tall obstruction is incongruous / inappropriate. Similarly, the properties at 31 and 31a Emsworth Road have tall boundary walls along their frontages, which serve to obscure

the facades of the respective host properties to varying degrees, the point being that residential properties often have their facades obscured by visual obstructions, be that an advertisement hoarding or boundary treatment the end result is the same.

At paragraph 8.9 of its Appeal Statement, the Council argues on the one hand that the existing site would not be perceived as an unattractive addition to the street scene because it is screened from view by the advertisement hoarding, but on the other hand that the proposed development would be perceived as inappropriate / incongruous despite being located behind the hoarding. We disagree with this statement, because as the Council acknowledges, the Appeal site is visible to varying degrees dependent on where the viewer is standing / approaching from. The Appeal site in its current form is visible in the street scene and in the Appellant's view represents an unkempt and unattractive piece of brownfield land, and an uncharacteristic gap in what is an otherwise built up frontage. The proposed development will insert a well-designed, contemporary building into this gap and in turn enhance the immediate street scene.

At paragraph 8.12 of its Appeal Statement the Council argues that: "In terms of the shadow studies provided it can be interpreted that between the times of 12-3 pm in spring and autumn there would be some overshadowing to the front windows of the proposed apartment. This is considered to be prime time for natural light which would not be achieved. Despite being dual aspect due to the windows to the rear being north facing they are not considered to receive adequate natural light to be given sufficient material consideration". Firstly, the Council has misinterpreted the shadow analysis drawings provided by the Appellant at Application stage; the only time when any overshadowing of the front window occurs is at 12:00 in the autumn (when some amount of overshadowing is to be expected due to the English weather anyway), and even then this is only a partial overshadowing of the front window and this overshadowing does not occur in the 15:00 drawing and so it can be concluded that at some point between 12:00 – 15:00 this partial overshadowing dissipates and plentiful natural light is received by the front window. Furthermore, the Council provides no empirical basis upon which it bases the assertion that '12:00 – 15:00 is prime time for natural light' – why does the Council value natural light during these hours over that received in the morning or late afternoon

when arguably the residents of the proposed dwellings are more likely to be at home in the morning / late afternoon.

The Council also seems to be confusing direct sunlight with ambient daylight when disregarding the value of the north-facing, full height windows. There is no dispute that the northerly facing windows will likely not receive much in the way of direct sunlight due to the position of the sun in the sky, but these windows will however receive ambient daylight. Being full height windows, they will flood the proposed dwellings with ambient daylight and in turn compensate for any partial overshadowing of the front window between the hours of 12:00 – 15:00 in autumn. That said, the shadow analysis drawings clearly demonstrate that for the majority of the day, in both springtime and in the autumn, the front window will receive ample direct sunlight. The fact that the proposed dwellings are dual aspect open-plan studio apartments also maximises the potential for daylight into the main living space, but virtue of the absence of any internal partitions.

For the reasons outlined in our Appeal Statement, we disagree with the notion that the residents of the proposed dwellings will suffer from poor outlook. The proposed apartments are dual aspect and benefit from angled bay windows, which direct the eyeline away from the hoarding and towards the gap between the hoarding and the public house.

Tilted Balance

The starting point when considering the titled balance is to confirm that in the Appellant's view, the tilted balance needn't apply to the proposed development in order for it to be deemed permissible. In our view, the Appeal proposes a highly efficient redevelopment of a sustainably located brownfield site.

The Council disagrees that the titled balance applies to the Appeal because in its view the provision of two new dwellings results in a 'very modest' contribution to the housing supply, in turn the Council argues that the "adverse impacts of the proposal outlined above significantly and demonstrably

outweigh the benefits”. The Appellant would argue that this is a gross underestimation of the benefits of the proposed development; the Council can currently demonstrate just 1.81 Years Housing Land Supply – one of the worst performing Local Planning Authorities in the country – and we would argue this makes the delivery of new housing urgent. The Council has also failed the Housing Delivery Test in the years 2020 (72%) and 2021 (74%) (per the Housing Delivery Action Plan, March 2022) and so the presumption in favour of sustainable development clearly applies across the Borough.

Furthermore, the argument that the proposed development ‘only makes a very modest contribution towards housing supply’ does not hold water when you look at the bigger picture. The Council could argue that all windfall and infill housing sites make a modest supply to housing stock, but if added together the provision of infill housing will inevitably amount to a significant proportion of the Council’s supply (especially considering it is failing to deliver on allocated sites). In light of this, the application of the tilted balance and the contribution of the Appeal proposals towards local housing stock is far more important than the Council admits.

Against the backdrop of a chronic under-delivery of new housing, the Council should be ascribing considerable weight to the provision of new dwellings. Furthermore, and as is argued through the Appellant’s Appeal Statement and these Final Comments, the proposed development will: a) not result in an overdevelopment of the site, and indeed will make highly efficient use of a sustainable brownfield site whilst providing generous private amenity space; b) will enhance the street scene by redeveloping an unkept and unattractive piece of brownfield land, infilling an uncharacteristic gap in the street frontage, in spite of the advertisement hoarding; and c) will provide adequate natural light and outlook to the residents of the proposed apartments.

Consequently, the Appellant would argue that notwithstanding the application of the tilted balance the proposed development should have been permitted at the local level, however when factoring in the woeful under provision of housing across Havant the application of the tilted balance provides further clear and convincing reason to grant planning permission for the Appeal.

The Appellant welcomes the Council's confirmation that the fourth reason for refusal, which related to the impact of the proposed development on 'European Sites' has been withdrawn, as a result of the Appellant entering into a Unilateral Undertaking and making the financial contributions required to mitigate said impacts.

Comments on Third Party Representations

The comments below are made in respect of the Third Party Representations (the "Reps") received in respect of the Appeal. Where these Reps repeat issues that have already been resolved between the Appellant and the Council, we do not offer any further commentary.

Mr. Beken refers to noise generated by the public house, however the Council has already suggested planning conditions which requires the submission of a noise survey and the implementation of a programme of noise mitigatory measures to the proposed dwellings. Mr. Beken also refers to sustainable drainage, and the Appellant would be content for a further planning condition, requiring the submission of a detailed drainage strategy, be appended to any planning permission. Notwithstanding this, the Appellant is not aware of any particular flood risk or drainage issues which cover the Appeal site.

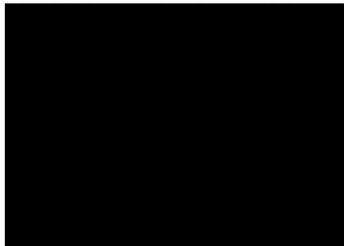
With regards to Councillor Harris' Representation, it is disappointing to see an elected Member on the one hand acknowledge there is a need for smaller accommodation to be built with the Havant area but on the other hand to obstruct the development of such units because of an ill-conceived view of the impact of the advertisement hoarding.

Comments on Suggested Planning Conditions

The Appellant has no objections to the Council's suggested planning conditions.

If you have any queries, please do not hesitate to contact me directly on 01243 697707 or jake@cpcplanningconsultants.co.uk

Yours sincerely



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Director

CPC

Cc. Mr. Brian Long; Havant Borough Council.