



Appeal Decision

Inquiry Held on 22-24 March 2022

Site visit made on 29 March 2022

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2022

Appeal Ref: APP/Z1775/W/21/3287771

111 Havant Road, Drayton and Farlington, Portsmouth, PO6 2AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Churchill Retirement Living against the decision of Portsmouth City Council.
 - The application Ref 21/00684/FUL, dated 9 April 2021, was refused by notice dated 24 November 2021.
 - The development proposed is redevelopment of the existing site involving the construction of a 4 storey building to provide 54 retirement apartments (Use Class C3) with associated vehicle access from Havant Road, car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of the existing site involving the construction of a 4 storey building to provide 54 retirement apartments (Use Class C3) with associated vehicle access from Havant Road, car parking and landscaping at 111 Havant Road, Drayton and Farlington, Portsmouth, PO6 2AH in accordance with the terms of the application, Ref 21/00684/FUL, dated 9 April 2021, and the plans submitted with it, subject to the conditions included in the schedule to this decision.

Procedural Matters

2. I have included in the banner heading the description of proposed development taken from the Council's decision letter. Whilst this differs from that on application and appeal forms it provides a more succinct description of the proposed development.
3. Given the location of the proposed development in relation to the protected areas in the Solent Estuary, I reviewed the appeal proposal with regard to Regulation 5(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. On the basis of the evidence received, the proposed development does not require an Environmental Impact Assessment.
4. On 16 March a Written Ministerial Direction (WMD) introduced a revised approach to the assessment of nitrate pollution on the Solent estuary. This affected the required offsite contributions required to offset the level of nitrate pollution generated from the proposed scheme.
5. During the Inquiry I was presented with a Unilateral Undertaking and a Section 106 Agreement (S106A) by the appellant. The different planning obligations

reflected the dispute between the parties on the fourth main issue of the appeal regarding contributions towards affordable housing. Following the Inquiry, I received a completed S106A dated 21 April 2022.

6. The Council, despite signing the Agreement raised issues in respect of its enforceability and for this reason I decided to make its validity a main issue for this appeal following the Inquiry and consulted on the main parties. I return to this matter later in the decision.
7. At the commencement of the Inquiry, the appellant stated that an additional planting plan could be presented in evidence. Following representations from the Council I did not accept this as I considered that interested parties may be prejudiced given its late presentation.
8. During the Roundtable discussion on Character and Appearance the Council acknowledged that Policy PCS13 had been quoted in error in the first reason for refusal.

Main Issues

9. These are:
 - The effect of the proposal on the character and appearance of the area,
 - The effect of the proposal on the living conditions of future occupiers of the proposed scheme by reason of the quality of amenity space,
 - The effects of the proposal on nutrient levels and recreational impacts on the Solent estuary,
 - Whether or not the proposed development would make adequate provision for affordable housing, and
 - Whether or not the S106 Agreement (S106A) is valid.

Reasons

Character and appearance

10. The area immediately surrounding the appeal site is suburban in character with semi and detached 2 storey residential properties set in generous gardens.
11. There are several blocks of retirement flats along Havant Road which generally comprise 3 and 4 storeys. These include Carrick Court next to the appeal site. Despite these new developments, the area retains the essential components of low rise and low density development consistent with the Urban Characterisation study from 2011. This is reflected in the appellant's Design and Access study¹.
12. The appeal site is located on the inside of a slight bend on the northern side of Havant Road which lies several metres higher than development on its south side. The site's existing built form and use contrasts sharply with the area's prevailing character. This comprises single storey buildings used as a car showroom with ancillary workshops with an office located in what was a 2 storey dwelling (113 Havant Road). The appeal site also includes a detached dwelling located on the corner with Penarth Avenue (No 115 Havant Road). The

¹ CD 51

existing buildings are set back from the frontage which is used for the display of cars for sale.

13. The appeal scheme comprises a single block of 4 and 3 storeys with a ridge height of around 13metres although as the scheme involves the creation of a development platform to accommodate the slope across the site this results in an overall ridge height of around 15metres above the existing site level to Havant Road. The rear of the block would have 4 storeys throughout. The block would extend virtually the full extent of the site's frontage apart from its vehicular access located on its west side.
14. The scheme's design in the form of a single block is characteristic of retirement blocks recently developed in this area and I understand is required for operational reasons to facilitate access within the scheme. Both parties acknowledge that it would be prominent in the streetscene². However, central to this issue, is whether the proposed scheme amounts to an overdevelopment or an efficient use of this site through a design which reflects the exigencies of its immediate context.
15. The scheme is set forward by between 2-2.9metres of the building line of Carrick Court which is itself set forward of the prevailing line of detached residential properties to its west. The montages³ included with the appeal indicate that when viewed from the west the scheme would appear as a continuation of the built form established by Carrick Court.
16. From the east, the appeal scheme would be prominent in the streetscene. This was confirmed by my site visit and reflects the site's location on the inside of the road's bend, its height and projection beyond the prevailing building line of the detached residential properties to its east. The scheme's set back of around 5metres from its frontage to Havant Road would allow space for a landscaping scheme which would support the assimilation of the scheme into the streetscene when viewed from this direction. In turn this would allow for the provision of communal space on the frontage which would not disconnect elderly residents from the world around them as the Council suggests⁴.
17. Various measures have been included in the scheme's elevational treatment to reduce its impacts on the streetscene. These include recessed sections in the east and west 'wings' capped by shallow gables, the introduction of a central 3 storey element set back from the 2 wings which is marginally lower in height. Contrasting materials are included in the elevations and roof tiles provide additional contrast. For these reasons, I do not agree with the Council that the scheme has 'turned its back'⁵ to the public realm and fails to have an active frontage.
18. Along the appeal scheme's return frontage to Penarth Avenue the building would be reduced from 4 to 3 storeys to identify with the existing detached properties. The scheme would be set back from this frontage of similar depth to that of the detached properties along this avenue. It would not result in an issue of overlooking and loss of privacy to the properties opposite given the width of Penarth Avenue.

² Design Round table

³ Context Drawings Precedents

⁴ LPA Closing paragraph 11

⁵ Mr Peters PoE paragraph 3.7

19. There is sufficient variation in the elevational treatment along the frontage to Penarth Avenue through the incorporation of buff coloured brick contrasting with the commonly used red brick. Furthermore, the windows of the top floor would cut through the eaves profile and the roof of the northern section includes a hipped gable; a feature commonly found in the area.
20. The scaling down in height of the proposed scheme together with the separation distance from No.1 Penarth Avenue allows a satisfactory transition to the prevailing size and rhythm of the existing properties along this broad avenue.
21. Other details which provide interest in the elevations include tile hanging with scalloped tiles and projecting and Juliette balconies throughout the scheme.
22. Policy PCS23 is a composite policy comprising 15 distinct aspects of design. The Council clarified⁶ that the scheme was in conflict with PC23 points 1, 2, 3, 6 and 15. These matters cover require development to have design excellence, be vibrant and attractive, and that its scale, density, layout and appearance should reflect local context and that it should protect the standard of living environment for existing and future occupiers.
23. Whilst the appeal scheme would be prominent in the streetscene it would not be dominant given the overall width of Havant Road at this point. For this reason, a four storey scheme would be in keeping with the character of this part of Havant Road. It would be of sufficient scale and appearance to accord with the prevailing character of the surrounding area. Both its footprint and elevational treatment are sufficient to ensure that it would be of a scale, density and layout that would not adversely impact on the streetscene.
24. The detailing included in the scheme is sufficient to provide interest and to diffuse the elevations despite the length of the frontage. For these reasons, I conclude that the scheme would not adversely affect the character and appearance of the area and does not conflict with Policy PCS23.

Living Conditions – amenity space

25. The Council's principle concern on this issue relates to the quality of 3 communal amenity areas. These include the internal lounge, rear courtyard and amenity area adjacent to No.1 Penarth Avenue. Although a proportion of the flats have balconies both parties recognise the importance of such spaces to enable residents to meet and mix to reduce the potential for loneliness and isolation. This is particularly important for a scheme which contains a high proportion of single rooms.
26. Each of these spaces have a northerly aspect and would have limited sunlight. Landscaping would separate the courtyard and lounge area from the rear car park; this would be visually unappealing for residents. However, there would be only limited noise generated from the parking court given the number of vehicular movements anticipated by the scheme⁷.
27. I acknowledge that parts of the eastern areas of communal outdoor space within the scheme could be difficult to access for residents with mobility impairment. However, there are a range of other areas around the site which

⁶ Mr Peters evidence

⁷ Transport Assessment

would have a better aspect including those along the site's east and southern edges. The landscape strategy submitted with the appeal indicates how these could be developed in a way to create spaces for residents to socially interact. The set back from Havant Road of around 5metres would allow landscaping to create spaces of sufficient quality for resident's enjoyment.

28. Policy PCS23 points requires that a good standard of living is required in new development and that amenity space should be high quality, vibrant and attractive. Whilst I acknowledge the Council's concerns over the quality of some of the spaces, on balance there would be sufficient communal space around the building which could compensate for the shortcoming of the areas identified by the Council. For these reasons the scheme does not conflict with Policy PCS23.

The effects of the proposals on the Solent SPA

29. In 2018, the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage⁸ where the potential for likely significant effects is considered.
30. As a project progresses from inception through to implementation a series of decisions are required to be considered against the Habitats Regulations, (the Regulations) and where necessary an AA has to be taken for each decision. The responsibility of completing a further AA now falls to me as part of this appeal.
31. The Habitats Regulations⁹ (the Regulations) require that if likely significant effects on a European site cannot be excluded, permission may only be granted after having ascertained that it will not affect the integrity of the site either alone or in combination with other plans or projects. In completing an AA there should be no gaps in the considerations which inform the decision. If adverse effects on the integrity of the protected site cannot be excluded on the basis of objective scientific evidence then it must be assumed that they will occur.
32. The appeal site lies within 5.6km of the Portsmouth Harbour Special Protection Area (SPA) which is one of several SPAs within the Portsmouth Area based on the Solent which includes the estuaries of the rivers Itchen, Test and Beaulieu. The SPA is an internationally known wildlife site particularly important for hosting over wintering waders and wildfowl including 10% of the global population of Brent Geese.
33. These species are particularly vulnerable to disturbance from walkers and dog walkers which are the main forms of recreational activity in the area. The Council is a lead partner in the Solent Recreation Mitigation Partnership (SRMP) which have developed a package of measures¹⁰ to mitigate for planned development. These include a ranger team, education materials site specific visitor management and bird refuge projects and monitoring.
34. Natural England has indicated that it would have no objection to the appeal scheme subject to the inclusion of appropriate mitigation measures.

⁸ People Over Wind and Peter Sweetman v Collite Teoranta ECJ (2018) C-323/17

⁹ Conservation of Habitats and Species Regulations 2017

¹⁰ Bird Aware

35. The appeal scheme would together with its proximity to the SPA present an increased risk of disturbance to its qualifying features. As mitigation the S106A includes a capital contribution of £22,714.00 towards the measures included in the SRMP. The calculation of the capital sum is in line with the tariffs included in the SRMP.
36. Appropriate mitigation is required to address the higher levels of nitrates and phosphorous likely to be generated by the appeal scheme through waste water and surface run off. This would enter the waters of the Solent. Natural England are concerned that high levels cause eutrophication across the international protected sites. In the absence of a subregional strategy the Council has developed an interim strategy¹¹ following advice from Natural England.
37. Inquiry time was spent on the assessment following the WMD in March. Both of the main parties agree that mitigation could be provided through the Council's Credit Bank. Originally, the nitrates assessment calculation included 22.062kg/TN/yr. However, following the WMD the calculation of total nitrogen derived from the appeal scheme was revised to account for the appeal scheme's location as part of existing urban land. Accounting for both annual waste water load and the surface run off from the appeal scheme would result in a total of 28.34kg/TN/yr. This requires mitigation credits of £158,608.20 based on availability and indexing.
38. Having had regard to the amount of money committed through the S106A I am content that that the scheme would not adversely impact on the integrity of the European site and its relevant features. Moreover, there would be no conflict with Policy PCS19 which requires their protection.
39. The CIL compliance statement submitted by the Council demonstrates that the covenants included in the S106A are in line with Policy PCS13 which seeks the protection and enhancement of internationally protected sites including the Portsmouth SPA.
40. I am satisfied that the S106A complies with Section 122 of the CIL Regulations and Paragraph 57 of the National Planning Policy Framework (the Framework) which require planning obligations to be related to the requirements of development plan policies and are necessary, directly related and fairly and reasonably related in scale and kind to the proposed scheme.

Affordable housing

41. In advance of the appeal, the Council commissioned a viability report which determined that the scheme could not support affordable housing required by Policy PCS19. However, the Council still defended its final reason for refusal on the basis that the S106A should include a late stage review LSR to allow an opportunity to secure a contribution towards the provision of affordable housing if market conditions change.
42. The appellant disputes whether Policy PCS19 is sufficiently robust to require the insertion of a late stage review (LSR) into the S106A. It is clear from my reading of PCS19 the Council whilst seeking the maximum amount of affordable housing requires only the submission of a viability study to establish whether or not affordable housing could be provided. In this case the amount

¹¹ Interim Nutrient Neutral Mitigation Strategy CD35

- would be 17 units or equivalent contribution towards general needs housing given that there is only low demand for affordable retirement homes.
43. However following the application of the Council's space standards the commuted sum would be based on a pro-rata mix for proposed on site affordable provision which would equate to around 24 units. This would result in a requirement for a payment of around £1,299,000.
44. The Council, by commissioning its own report, has satisfied the policy requirement for independent advice. The report concludes that the scheme could not support affordable housing or off site contributions. There is no reference within the policy or its supporting text to a LRM.
45. Although the Council in its rebuttal statement highlights that PCS19 requires that developers would be expected to provide as much affordable housing as possible without affecting the viability of the scheme, this does not in my view represent a requirement for LSR.
46. Furthermore, in paragraph 9 of the PPG¹² it is clear that plans should set out where review mechanisms may be appropriate. PCS19 makes no reference to LSR's. Whilst the Council indicates¹³ that the PPG advises that there should be agreement over time on how policy compliance can be achieved over the life of a development this section has to be read with the reference to the policy requirement in the preceding paragraph.
47. Although the Council presented 2 recent planning agreements during the Inquiry which include such clauses, it admitted that the policy was not explicit on this point¹⁴.
48. On the basis of the evidence before me a LSR is not required for inclusion in the S106A by Policy PCS19. Accordingly given the wording of this policy, I conclude that the omission of a LSR in the S106A does not conflict with Policy PCS19.

Whether or not the S106 Agreement is valid

49. Whilst the S106A meets the substantive 'tests' included in both the CIL Regulations and the Framework, the Council has raised concerns over its enforceability. The S106A has been signed by both of the main parties, the car dealership, the mortgagors of 115 Havant Road, the Metro Bank (the first mortgagee) but not another building society as second mortgagee.
50. The Council has subsequently questioned the validity of the S106A given that it does not include the second mortgagee. Specifically, its concerns are that if the second mortgagee became in possession of the site of 115 Havant Road this could be sold free from the obligations included in the S106A.
51. The Council is concerned that there remains a possibility, however slight, that the area of 115 Havant Road which forms part of the appeal site would be free of the obligations included in the S106A if this is sold on to a third party before the development proceeds.

¹² Planning Practice Guidance ID: 10-009-20190509

¹³ Rebuttal paragraph 2.21

¹⁴ Mr Peters XX

52. The S106A includes a clause which would prevent the development commencing until the second mortgage has been discharged. On discharge the second mortgagee would no longer have any further interest in the land.
53. Having reviewed the S106A, I am satisfied that the inclusion of clauses in Schedule 1.3-1.4, Schedule 3, Schedule 4(1) and Schedule 4(2) would prevent the development commencing and or the dwellings being occupied without the mitigation being secured. I am satisfied that the S106A is valid.

Interested parties

54. Interested parties have expressed concerns over a range of issues which include the character and appearance of the area. I have taken these concerns into account in my findings on the first main issue to this decision.
55. Other concerns relate to the proximity of the appeal scheme to the rear of the neighbouring property on Penarth Avenue resulting in overlooking and a loss of privacy. The separation distance of its rear windows from the residential properties to the north are sufficient to prevent overlooking leading to a loss of privacy. I have included a requirement that the scheme's northern flank windows would be completed in obscure glazing. This would prevent overlooking from them.
56. The scheme includes 27 parking spaces which is below the Council's adopted standards. However, this is considered acceptable given the age of the residents of the proposed scheme. I consider that the amount of parking is acceptable given that the site is within walking distance of a broad range of shops and services in Drayton. Furthermore, Havant Road includes regular bus services to other local centres; a stop lies by the site and on the opposite side of the road.
57. I recognise that there are several retirement buildings along Havant Road. This reflects the needs of an ageing population in the area. Although an interested party stated that within several blocks units remain unsold, indicating a surplus of such accommodation and negating the need for the scheme before me, market considerations are not a material consideration in the determination of planning decisions and nor is the price of such units.
58. Finally, although concerns have been raised that the area needs more family housing the growth in retirement schemes reflects the demand for this form of accommodation from the residents of the wider area. The scheme would contribute to a balance in housing provision for a range of age groups.

Planning balance

59. Both parties acknowledge that the Council cannot demonstrate a five year supply of housing land. In these circumstances the development plan policies are deemed out of date and there is a presumption in favour of the development subject to the application of two balancing exercises.
60. The first in respect of Paragraph 11d(i) (footnote 7) of the Framework which requires consideration of the scheme against the policies in the Framework that protect assets of particular importance, in this case the Solent estuary.
61. Having had regard to the amount of money committed through the S106A towards the Bird Aware Scheme and nitrate neutrality, I am content that the

scheme would not adversely impact on the integrity of the European Site and its relevant features. There is, therefore, no clear reason to refuse permission in respect of this matter. I have found that the S106A is valid and enforceable.

62. The second balancing exercise is in respect of paragraph 11d(ii) and footnote 8 of the Framework. In these circumstances, the Framework states that the policies which are the most important for determining the application should be considered as out of date, and that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.
63. However, the fact that policies have to be considered as out of date does not mean that they carry no weight. To carry weight policies must be consistent with the Framework, as explained in Paragraph 219 which amongst, other things, explains that the closer that policies in the plan are to policies in the Framework, the greater weight that may be given to them. As such it is perfectly possible for policies which are deemed out of date for reason of an inadequate land supply to still carry significant weight.
64. It was not an issue between the parties that the most important policies, those identified in the Council's reasons for refusal, did not identify with those of the Framework.
65. Both parties give substantial weight to the contribution that the scheme would make to housing supply, specialist accommodation and the redevelopment of PDL¹⁵. The parties differ on the weight they accord to the extent it optimises the site's development and its location allowing access to services and differ markedly in the weight accorded to the economic and social benefits of the scheme.
66. I accord significant weight to the provision of additional housing and specialist accommodation especially given the Council's housing land supply position of 3.8 years. I also accord significant weight to the redevelopment of an existing site which lies in relative close proximity to shops and services.
67. The site was originally identified for housing by the Council in 2006 when the potential loss of employment was a consideration. I understand that there would be no loss of employment opportunities arising from its redevelopment given that the car dealership has secured new premises located on another site.
68. I find that the appeal scheme is in accordance with the adopted policies and that mitigation for the SPA through planning obligations could be secured. There is no basis in policy for the Council to request a LSR regarding contributions to affordable housing. The S106A is valid.
69. In reaching this decision I have taken account of the objections of the interested parties in respect of the design and massing of the scheme and the levels of parking. The scheme includes significant benefits which outweigh these objections and those of the Council.
70. For these reasons, the appeal is allowed and planning permission is granted.

¹⁵ Previously Developed Land as defined in the Glossary to the Framework

Conditions

71. I have considered the suggested conditions presented during the Inquiry and the advice included in the PPG¹⁶ and the Framework.
72. I have included a condition in respect of the plans on which my decision is based for reasons of certainty. I have imposed a condition requiring details of materials to be used in the scheme and surface treatment and landscaping in order to protect the character and appearance of the area. For the same reason I have included conditions regarding the details of the refuse and buggy store.
73. Given the commercial history of the site, as a precautionary measure, I have included several conditions regarding land contamination. These are required to protect the living conditions of future occupiers.
74. I have imposed conditions in respect of drainage to minimise the risk of flooding. I have also imposed a condition in respect of construction works and specifically piling to protect the living conditions of existing residents who live around the site. For the same reason I have included a condition regarding the requirement for obscure glazing in the scheme's northern flank elevation.
75. In advance of the Inquiry I received survey information about the presence of a day time roost of a Common Pipistrelle bat within the site. Following the submission of a Bat Emergence Return to Roost Survey Report, I am satisfied that this matter can be satisfactorily addressed by way of a planning condition. A scheme is required to deliver biodiversity enhancements across the site and for this reason, I have imposed a condition to this effect.
76. Finally, a condition is imposed restricting the occupation of the building hereby allowed, to persons within the age categories for which the scheme has been applied for.

Stephen Wilkinson

INSPECTOR

¹⁶ Planning Practice Guidance

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 10111DT-PLOC; 10111DT-P01; 10111DT-P02; 10111DT-P03; 10111DT-P04; 10111DT-P05; 10111DT-PL06; 10111DT-P07; 10111DT-P08; 10111DT-P09; 10111DT-P10; 10111DT-P11; 10111DT-P12.
- 3) Prior to above ground construction works, details of the external materials and finishes within the development hereby approved shall be provided in writing and approved by the local planning authority.
- 4) Before the development hereby is first occupied, facilities for the storage of buggies, refuse and recyclable materials shall be provided in accordance with drawings agreed by the local planning authority in advance and made available for use by the residents of the development hereby permitted, and
 - the facilities approved pursuant to the above shall thereafter be permanently retained for the stated purposes at all times.
- 5) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 6) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated

land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out [and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.
- 8) No drainage systems for the infiltration of surface water to the ground are permitted other than with the written consent of the local planning authority. Any proposals for such systems must be supported by an assessment of the risks to controlled waters.

The development shall be carried out in accordance with the approved details.

- 9) The use of piling another penetrative methods shall not be carried out by any other means other than in accordance with those methods and details which are to be submitted and approved in writing from the local planning authority.

The development shall be carried out in accordance with the approved details.

- 10) The building hereby permitted shall not be occupied until the windows on the development's northern flank elevation have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.

- 11) No development above foundation level shall commence on site until a schedule and samples of all surface treatments and finishes, hard landscaping and floorspace treatments around the site, including a detailed landscaping scheme for the external areas, which shall specify species, planting sizes, spacing and density/numbers of trees/shrubs to be planted, the phasing and timing of planting; a detailed scheme of ground preparation and maintenance for planting areas, and provision for its future maintenance has been submitted to and approved in writing by the local planning authority.

The works shall be carried out in the first planting and seeding season following the occupation of the development; and any trees or plants which, within a period of five years from the date of planting die, are

- removed or become seriously damaged or diseased shall be replaced in the next planting season with others of the same species, size and number as originally approved
- 12) The car parking spaces shown on the approved plans shall be surfaced, marked out and made available for use before the first occupation of the development and shall thereafter be retained for car parking purposes.
- 13) The development works hereby permitted shall not commence until the Construction Environmental Management Plan (CEMP) is provided to the council and approved in writing. The development shall accord with the CEMP and shall continue for as long as construction is taking place at the site, unless otherwise agreed in writing with the local planning authority.
- 14) Development shall proceed in accordance with the measures set out in Section 6.3, 'Mitigation of Effects on Roosting Bats' and Section 6.4 'Other Effects and Mitigation Measures' of the 'Bat Emergence Return to Roost Survey' report by Tetra Tech (July 2021), unless varied by a European Protected Species (EPS) licence issued by Natural England. Thereafter the replacement bat roost features shall be permanently maintained and retained in accordance with the approved details.
- 15) A detailed scheme of biodiversity enhancements to be incorporated into the development, particularly along the southern, eastern and north eastern boundaries of the site shall be submitted for written approval to the local planning authority. Development shall subsequently proceed in accordance with any such approved details.
- 16) At no time shall the development hereby approved, be occupied by persons other than:
- i) a person of aged 60 years or over
 - ii) a person aged 55 years or older living as part of a single household with a person identified in i), or
 - iii) a person aged 55 years or older who were living as part of a single household with the person identified in i) who has since died.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Howard Leithead QC	instructed by Ms Juliet Gill, Solicitor, Portsmouth City Council
He called	
Mr Christopher Peters	Principal Planner
MURP, MRTPI	
Ms Juliet Gill	Solicitor

FOR THE APPELLANT:

Mr Sasha White QC	
He called	
Mr Robert Jackson	Design Director of the South West Design Partnership, Planning Issues Ltd
BArch, March, RIBA, ARB	
Mr Matthew Shellum Dip TP(Hons), DIPTP, MRTPI	Planning Director and Head of Appeals, Planning Issues Ltd
Mr Matthew Price	Solicitor, Shoosmiths

INTERESTED PERSONS:

Ms Rainford	Local Resident
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Inquiry Documents

ID1	Appellant's openings
ID2	Council's openings
ID3	CIL compliance statement
ID4	Draft conditions
ID5	Nitrate calculations
ID6	Draft Unilateral Undertaking
ID7	Tetra Tech Bat emergence return to roost survey report July 2021
ID8	Annual Nutrient Budget – report by WYG
ID9	Note on Nitrate Mitigation Calculation
ID10	Draft Sn 106 Agreement from the Council with Review Mechanism
ID11	HELAA 2021
ID12	CIL requirements
ID13	Statement of Ms Rainford
ID14	Legal Agreement 142 Milton Road Southsea PO4 8PN
ID15	Legal Agreement 44-66 Palmerston Road PO5 3QG
ID16	Council rebuttal statement
ID17	Site visit detail
ID18	Council's closings
ID19	Appellant's closings