



HEAD OF PLACE SERVICES REPORT TO THE PLANNING COMMITTEE OF 13 January 2021

1. INTRODUCTION

This agenda considers planning applications submitted to the Council, as the Local Planning Authority, for determination

2. STATUS OF OFFICER'S RECOMMENDATIONS AND COMMITTEE'S DECISIONS

All information, advice, and recommendations contained in this agenda are understood to be correct at the time of preparation, which is approximately two weeks in advance of the Committee meeting. Because of the time constraints, some reports may have been prepared before the final date for consultee responses or neighbour comment. Where a recommendation is either altered or substantially amended between preparing the report and the Committee meeting or where additional information has been received, a separate "Planning Addendum" paper will be circulated at the meeting to assist Councillors. This paper will be available to members of the public.

3. THE DEBATE AT THE MEETING

The Chairman of the Committee will introduce the item to be discussed. A Planning Officer will then give a short presentation and, if applicable, public speaking will take place (see below). The Committee will then debate the application with the starting point being the officer recommendation.

4. SITE VISITS

A Panel of Members visits some sites on the day before the Committee meeting. This can be useful to assess the effect of the proposal on matters that are not clear from the plans or from the report. The Panel does not discuss the application or receive representations although applicants and Town/Parish Councils are advised of the arrangements. These are not public meetings. A summary of what was viewed is given on the Planning Addendum.

5. THE COUNCIL'S APPROACH TO THE DETERMINATION OF PLANNING APPLICATIONS

When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework (NPPF).

It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area. This means that any discussions with applicants and developers at both pre-application and application stage will be positively framed as both parties work together to find solutions to problems. This does not necessarily mean that development that is unacceptable in principle or which causes harm to an interest of acknowledged importance, will be allowed.

The development plan is the starting point for decision making. Proposals that accord with the development plan will be approved without delay. Development that conflicts with the development plan will be refused unless other material considerations indicate otherwise.

Where there are no policies relevant to the application or relevant policies are out of date the Council will seek to grant permission unless material considerations indicate otherwise – taking into account whether:

- Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Local Plan taken as a whole; or
- Specific policies in the development plan indicate that development should be restricted.

Unsatisfactory applications will however, be refused without discussion where:

- The proposal is unacceptable in principle and there are no clear material considerations that indicate otherwise; or
- A completely new design would be needed to overcome objections; or
- Clear pre-application advice has been given, but the applicant has not followed that advice; or
- No pre-application advice has been sought.

6. PLANNING POLICY

The relevant development plans are: Hart Local Plan: Strategy and Sites 2032, the Saved policies of the Hart District Council Local Plan Replacement and First Alterations 1996 – 2006, Policy NRM6 South East Plan, Hampshire, Portsmouth, Southampton, New Forest National Park and South Downs National Park Minerals and Waste Local Plan 2013, Dogmersfield Neighbourhood Plan, Odiham and North Warnborough Neighbourhood Plan, Rotherwick Neighbourhood Plan, Winchfield Neighbourhood Plan, Fleet Neighbourhood Plan, Hartley Wintney Neighbourhood Plan, Hook Neighbourhood Plan.

Although not necessarily specifically referred to in the Committee report, the relevant development plan will have been used as a background document and the relevant policies taken into account in the preparation of the report on each item.

7. THE NATIONAL PLANNING POLICY FRAMEWORK AND PLANNING PRACTICE GUIDANCE

Government statements of planning policy are material considerations that must be taken into account in deciding planning applications. Where such statements indicate the weight that should be given to relevant considerations, decision-makers must have proper regard to them.

The Government has also published the Planning Practice Guidance which provides information on a number of topic areas. Again these comments, where applicable, are a material consideration which need to be given due weight.

8. OTHER MATERIAL CONSIDERATIONS

Material planning considerations must be genuine planning considerations, i.e. they must be related to the purpose of planning legislation, which is to regulate the development and use of land in the public interest. Relevant considerations will vary from circumstance to circumstance and from application to application.

Within or in the settings of Conservation Areas or where development affects a listed building or its setting there are a number of statutory tests that must be given great weight in the decision making process. In no case does this prevent development rather than particular emphasis should be given to the significance of the heritage asset.

The Council will base its decisions on planning applications on planning grounds alone. It will not use its planning powers to secure objectives achievable under non-planning legislation, such as the Building Regulations or the Water Industries Act . The grant of planning permission does not

remove the need for any other consents, nor does it imply that such consents will necessarily be forthcoming.

Matters that should not be taken into account are:

- loss of property value
- land and boundary disputes
- the impact of construction work
- need for development (save in certain defined circumstances)
- ownership of land or rights of way
- change to previous scheme
- or matters that are dealt with by other legislation, such as the Building Regulations (e.g. structural safety, fire risks, means of escape in the event of fire etc.). - The fact that a development may conflict with other legislation is not a reason to refuse planning permission or defer a decision. It is the applicant's responsibility to ensure compliance with all relevant legislation.
- loss of view
- matters covered by leases or covenants
- property maintenance issues
- the identity or personal characteristics of the applicant
- moral objections to development like public houses or betting shops
- competition between firms,

The Council will base its decisions on planning applications on planning grounds alone. It will not use its planning powers to secure objectives achievable under non-planning legislation, such as the Building Regulations or the Water Industries Act. The grant of planning permission does not remove the need for any other consents, nor does it imply that such consents will necessarily be forthcoming.

9. PLANNING CONDITIONS AND OBLIGATIONS

When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. Planning conditions should only be imposed where they are:

- necessary;
- relevant to planning and;
- to the development to be permitted;
- enforceable;
- precise and;
- reasonable in all other respects."

It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under. In such cases the Council will use a condition rather than seeking to deal with the matter by means of a planning obligation.

Planning obligations mitigate the impact of unacceptable development to make it acceptable in planning terms. Obligations should meet the tests that they are

- necessary to make the development acceptable in planning terms,
- directly related to the development, and
- fairly and reasonably related in scale and kind.

These tests are set out as statutory tests in the Community Infrastructure Levy Regulations 2010. There are also legal restrictions as to the number of planning obligations that can provide funds towards a particular item of infrastructure.

10. PLANNING APPEALS

If an application for planning permission is refused by the Council, or if it is granted with conditions, an appeal can be made to the Secretary of State against the decision, or the

conditions. Reasons for refusal must be

- Complete,
- Precise,
- Specific
- Relevant to the application, and
- Supported by substantiated evidence.

The Council is at risk of an award of costs against it if it behaves “unreasonably” with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
- Failure to produce evidence to substantiate each reason for refusal on appeal
- Vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis.
- Refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead
- Acting contrary to, or not following, well-established case law
- Persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
- Not determining similar cases in a consistent manner
- Failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances
- Refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage
- Imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the NPPF on planning conditions and obligations
- Requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the NPPF, on planning conditions and obligations
- Refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal
- Not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
- If the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn

Statutory consultees (and this includes Parish Council’s) play an important role in the planning system: local authorities often give significant weight to the technical advice of the key statutory consultees. Where the Council has relied on the advice of the statutory consultee in refusing an application, there is a clear expectation that the consultee in question will substantiate its advice at any appeal. Where the statutory consultee is a party to the appeal, they may be liable to an award of costs to or against them.

11. PROPRIETY

Members of the Planning Committee are obliged to represent the interests of the **whole** community in planning matters and not simply their individual Wards. When determining planning

applications they must take into account planning considerations only. This can include views expressed on relevant planning matters. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons.

12. PRIVATE INTERESTS

The planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases. It can be difficult to distinguish between public and private interests, but this may be necessary on occasion. The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings that ought to be protected in the public interest. Covenants or the maintenance/ protection of private property are therefore not material planning consideration.

13. OTHER LEGISLATION

Non-planning legislation may place statutory requirements on planning authorities, or may set out controls that need to be taken into account (for example, environmental legislation, or water resources legislation). The Council, in exercising its functions, also must have regard to the general requirements of other legislation, in particular:

- The Human Rights Act 1998,
- The Equality Act 2010.

14. PUBLIC SPEAKING

The Council has a public speaking scheme, which allows a representative of the relevant Parish Council, objectors and applicants to address the Planning Committee. Full details of the scheme are on the Council's website and are sent to all applicants and objectors where the scheme applies. Speaking is only available to those who have made representations within the relevant period or the applicant. It is not possible to arrange to speak to the Committee at the Committee meeting itself.

Speakers are limited to a total of three minutes each per item for the Parish Council, those speaking against the application and for the applicant/agent. Speakers are not permitted to ask questions of others or to join in the debate, although the Committee may ask questions of the speaker to clarify representations made or facts after they have spoken. For probity reasons associated with advance disclosure of information under the Access to Information Act, nobody will be allowed to circulate, show or display further material at, or just before, the Committee meeting.

15. LATE REPRESENTATIONS

To make sure that all documentation is placed in the public domain and to ensure that the Planning Committee, applicants, objectors, and any other party has had a proper opportunity to consider further or new representations no new additional information will be allowed to be submitted less than 48 hours before the Committee meeting, except where to correct an error of fact in the report. Copies of individual representations will not be circulated to Members.

16. INSPECTION OF DRAWINGS

All drawings are available for inspection on the internet at www.hart.gov.uk

Annex A to Planning Report

Contributions towards Community Infrastructure and Mitigation to the effects of Residential Development on European Sites

Introduction

In considering any development proposal it is necessary to consider whether it will have a planning impact. This may be an impact on policy, on the environment, amenity or the physical capacity of the infrastructure to accommodate the development, with the Council not seeking to rectify any deficiencies. This can often be addressed by the use of planning conditions.

Planning conditions cannot however be used to require payment of money (so a tariff based approach is ruled out) and any use of planning conditions will have to meet the 6 tests on the use of planning conditions as set out in the NPPF. This means that planning conditions should only be imposed where they are:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise and;
- Reasonable in all other respects.

Such a planning condition would require that the necessary infrastructure to be put in place in line with an agreed timetable. This may be facilitated by a “planning obligation” under section 106 of the Town and Country Planning Act, 1990 (as amended). A “planning obligation” may:

- Restrict the development or use of the land in any specified way;
- Require specified operations or activities to be carried out in, on, under or over the land;
- Require the land to be used in any specified way; or
- Require a sum or sums to be paid to the authority on a specified date or dates or periodically.

The Council’s Community Infrastructure Policy was agreed at Cabinet in December 2010 and sets out the Council’s overall approach towards the collection of contributions towards transport, education, leisure and open space, and the Thames Basins Heath SPA.

It stipulates that planning obligations would only be sought:

- On case by case basis, and
- Taking into account development viability,
- Where they meet the three policy test as set out in the National Planning Policy Frameworks (NPPF) as well as the CIL Regulations, and
- Where there are agreed projects that meet the criteria set out in the advice note issued by the Planning Inspectorate, and
- Where an agreed programme exists to implement the infrastructure.

The Council’s Cabinet has subsequently updated the list of projects on a number of occasions lastly at its meeting held on 7 August 2014.

Reference should also be made to the preface to the Committee report paper which sets out information on Government Policy.

This Annex sets out the Council’s policy position in respect of contributions and should be read in conjunction with the individual reports which will set out the justification for the contribution sought in each individual case.

Thames Basin Heaths Special Protection Area

Local Plan policy NBE3 relates to the Thames Basin Heaths Special Protection Area (SPA) and states that development which would adversely affect the nature conservation value of a site will only be permitted if it can be subject to conditions that will prevent damaging impacts on wildlife habitats or other natural features of importance on the site or if other material factors are sufficient to override the nature conservation interest. South East Plan policy NRM6 requires adequate measures to avoid or mitigate any potential adverse effects on the Thames Basin Special Protection Area (SPA).

The SPA is a network of heathland sites which are designated for their ability to provide a habitat for the internationally important bird species of woodlark, nightjar and Dartford warbler. The area is designated as a result of the Birds Directive and the European Habitats Directive and protected in the UK under the provisions set out in the Habitats Regulations. These bird species are particularly subject to disturbance from walkers, dog walkers and cat predation because they nest on or near the ground.

Natural England has indicated that it believes that within 5km of the SPA additional residential development in combination will have a significant effect on the SPA. Thus without mitigation any proposal is contrary to the Conservation of Habitats and Species Regulations 2010.

In April 2008 the Thames Basin Heaths Joint Strategic Partnership agreed a Thames Basin Heaths Delivery Framework to enable the delivery of housing in the vicinity of the SPA without that development having a significant effect on the SPA as a whole. The delivery framework is based on avoidance measures and the policy indicates that these measures can take the form of areas of open space known as Suitable Alternative Natural Greenspace (SANG). The policy also states that local authorities will collect developer contributions towards mitigation measures including the provision of SANGs land and joint contributions to the funding of Strategic Access Management and Monitoring (SAMM) the effects of mitigation measures across the SPA.

To allow the Council to conclude that a proposal will have no likely significant effect on the SPA there are likely to be two options. The first is to provide, lay out and ensure the maintenance of, in perpetuity, of a SANG. The physical provision of SANG is likely only to be suitable for schemes in excess of 60 dwellings due to the need to meet Natural England's guidelines for SANGs. The achievement of this is likely to be through the mechanism of a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended). The second is to enter into a land transaction for an appropriate financial sum with the Council to obtain a licence to utilise part of one of the Council's SANGs in mitigation. In addition a financial contribution will be sought towards SAMM. The sums the Council considers appropriate to mitigate the impacts of the development and how they are calculated, are set out in the policy.

In terms of the tests set out in the NPPF, a planning condition is necessary to make the development acceptable in planning terms by mitigating against the impact of an increase in population within 5km of the SPA. It relates both to planning (the protection of the SPA) and the development itself with the size of contribution sought relates to the population that will be likely to occupy the development. The wording of the condition will be precise, enforceable and the condition will be reasonable in all other respects.

It would be therefore be possible to conclude that the development will not have an adverse effect on the SPA and therefore complies with Local Plan policy NBE3, South East Plan policy NRM6 and the CIL Regulations.

Transport

Local Plan policy INF3 seeks to ensure that development is served effectively by public transport,

cycling or walking and that improvements made necessary by development are to be funded by that development. This relates not only to physical improvements required to permit development to take place (such as sight lines at an entrance to a site), but also to the wider network, seeking to allow development provided that it could be effectively served by public transport, cycling and walking.

The Hampshire Local Transport Plan (LTP) relates to the years 2011 - 2031 and makes reference to the North Hampshire Transport Strategy (NHTS) which covers the areas administered by Hart District Council, Rushmoor and Basingstoke and Deane Borough Councils and that part of the area of Test Valley Borough Council north of the A303.

Within the Fleet/Church Crookham/Elvetham Heath area the County Council has also adopted the Fleet Town Access Plan (FTAP) as a sub-programme of NHTS.

The Hampshire wide Local Transport Plan identifies a number of key themes:

- Supporting the economy through resilient highways;
- Management of traffic;
- The role of public transport;
- Quality of life and place;
- Transport and growth areas

Additional development brings with it additional multi-modal transport impacts. This is additional cars, cycles and use of public transport which has an incremental impact on the transport infrastructure. In line therefore with policy INF3 it is incumbent on developers to show how they intend the development to be served by public transport, cycling and walking. The provision of a contribution towards either NHTS or FTAP would provide that mitigation.

In terms of the policy tests in the NPPF the condition is necessary in that it will secure a scheme that will mitigate the effects of the development on the local transport infrastructure which relates to planning. The scale and kind of the contribution sought relates to the increase in transport activity. The details of the direct link between the schemes the contribution will fund and the development are set out in the Committee report. The wording of the condition will be precise, enforceable and the condition will be reasonable in all other respects.

Leisure

As part of living in a dwelling its residents will use the local leisure infrastructure to undertake recreation. The impact on infrastructure used for recreation is clearly a material planning consideration.

Some of this infrastructure is of a strategic, District-wide, nature while other is more local. At a local level the Council has determined that as a general rule the local infrastructure will be considered at the Parish level.

Even where infrastructure is of a District wide nature it is clear that the further from a development itself the less likely that the residents will use that infrastructure. Utilising visitor data, the Council has set “zones of influence” of the individual elements where it is known that residents visit and will have an impact.

In terms of the policy tests in the NPPF the condition will secure a scheme to mitigate the effects of the development on the leisure infrastructure, which, as set out above, relates to planning. The scale and kind of the contribution sought relates to the increase in leisure activity. The details of the direct link between the projects the scheme will be spent on and the development are set out in the Committee report. The wording of the condition will be precise, enforceable and the

condition will be reasonable in all other respects.

Without the necessary scheme in place additional development would exacerbate the existing deficiency in provision for leisure facilities within the vicinity of the site through an increase in population who would have access to the facilities. The nature of the scheme has been assessed through the Council's Leisure Strategy as being appropriate to mitigate these effects.

Education

Hampshire County Council has advised in their policy document Developers' Contributions towards Children's Services Facilities December 2011 where the availability of school places is particularly critical, contributions should be sought in relation to each individual dwelling. Hampshire County Council has confirmed that there are particular pressures on places at the primary and secondary schools in the Fleet/Church Crookham schools and Hook catchment areas, and in the catchment of the Robert Mays secondary school in Odiham where any increase in population will add to the demand beyond the available capacity. Full details of the issues are set out in the Community Infrastructure Policy.

In Fleet/Church Crookham, Hook and Odiham programmes for the provision of additional educational facilities are well advanced. The County Council considers it preferable to invest in existing schools where achievable in building terms and where agreement can be reached with the headteacher and governors of the schools involved.

Schools are ideally organised into classes of 30 pupils across the age range of the school to support curriculum delivery relevant to the pupil year group and to meet statutory class size regulations whereby no class can be larger than 30 for pupils aged 5 to 7. It is not practical, therefore, for schools to marginally increase their capacity, have larger than ideal class sizes, or create a budget deficit due to the need to employ an additional teacher for very small increases to pupil numbers.

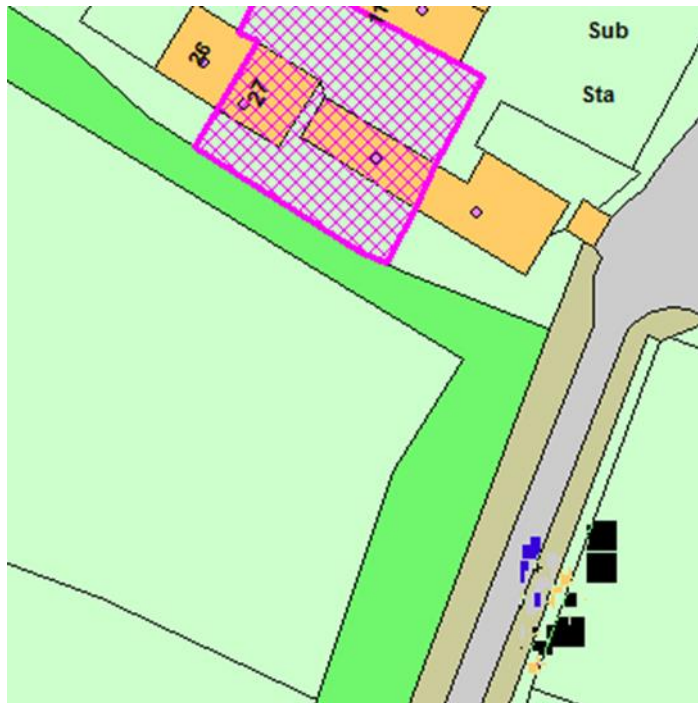
In terms of the policy tests in the NPPF the agreed scheme will mitigate the effects of the development on the education infrastructure, which as set out above relates to the proper planning of the area. The scale and kind of the contribution sought relates to the facilities being provided. The details of the direct link between the contribution and the development are set out above. The wording of the condition will be precise, enforceable and the condition will be reasonable in all other respects.

28 Finns Business Park Bowenhurst Lane Crondall Farnham GU10 5HP

Retention of a replacement dwelling (retrospective)

**COMMITTEE REPORT
ITEM NUMBER: 101**

APPLICATION NO.	20/01539/FUL
LOCATION	28 Finns Business Park Bowenhurst Lane Crondall Farnham GU10 5HP
PROPOSAL	Retention of a replacement dwelling (retrospective)
APPLICANT	Mr B. Finn Ms L. Walker
CONSULTATIONS EXPIRY	11 September 2020
APPLICATION EXPIRY	28 August 2020
PLANNING COMMITTEE WARD MEMBER	Cllr Chris Dorn
RECOMMENDATION	Refuse



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Please Note: Map is not to scale

BACKGROUND

This application is brought before the Planning Committee at the request of the Ward Councillors for the following reason:

“Key to this is that the re-built dwelling is almost **exactly** the same as that which was consented under permitted development and several adjacent examples remain”.

In 2016, Prior Approval for change of use of units 10, 11, 27 and 28 from business uses (Land Use Class B1) to residential use (Land Use Class C3) were considered permitted development. Following the change of use of unit 28, the owner/occupiers demolished the unit. This extinguished any permitted development rights for the change of use of the unit.

A building was then constructed and occupied for residential purposes without the benefit of the necessary planning permission. A retrospective planning application was submitted in January 2020 which was refused planning permission (ref:19/02844/FUL) in March 2020 for the following reasons:

1. The retention of a dwelling with a substandard internal floor area and a poor quality outdoor amenity space in a light industrial/business location with unneighbourly commercial uses adjoining it and overhead electricity power lines over the building would result in a poor environment and not high quality residential accommodation and amenity for its occupiers.
2. The retention of a dwelling among light industrial/business uses and adjoining unneighbourly commercial activities, in conjunction with other non-employment uses within Finns Business Park would contribute negatively to the long-term sustainable operation of this Locally Important Employment Site.

No appeal was lodged against the refusal; however, this application seeks to address the above refusal reasons and achieve retrospective planning permission. This application also seeks permission to construct and open porch/veranda and the retention of an unauthorised outbuilding which has been constructed within the private amenity area to the rear of the unauthorised dwelling.

THE SITE

The application site is located within Finns Business Park which is located near the village of Crondall. The business park is accessed off Farnham Road (A287) via a no-through road, Bowenhurst Lane. The application site is located close to the south-eastern corner of the Business Park.

The Business Park is designated as a Locally Important Employment Site (LIES) in the adopted Hart Local Plan (Strategy & Sites) 2032 and is subject to an Article 4 Direction which removes Permitted Development rights for conversion of business units into residential accommodation.

The access to the Business Park also provides access to other mainly commercial premises such as a construction company yard, a cesspool/sewage waste collection company, a crane rental business, a modest storage company, a golf centre and a restaurant. There are three dwellings accessed from Bowenhurst Lane.

The settlement boundary of Mill Lane is located approximately 215m South from the

application site. This settlement adjoins the northern side of Farnham Road (A287) and contains a BP petrol service station and car sale business. The above cluster of different buildings and uses are surrounded by open countryside.

PROPOSAL

Retrospective planning permission is sought for the construction of a new dwelling on the application site.

The building has a rectangular footprint and measured externally is 11m wide by 4.45m deep. It has been built with a shallow dual pitch roof at a maximum height of 3.5m and an eaves height of 2.8m, both measured from the lowest point of adjoining ground level.

The front elevation features three windows and the main entrance. The rear elevation has two small windows and a secondary door that provides access to a rear outdoor area.

As part of this proposal, retrospective planning permission is also sought to retain an outbuilding to the rear/side of the dwelling. It measures externally, 3.08m by 2.1m at a maximum height of 2.6m. The elevations feature no windows.

The area to the front of the building is used as car parking for two vehicles. At the rear of the building there is an outdoor amenity area measuring 10.85m by 4.85m. The application also proposes the installation of a canopy above the existing entrance door and a veranda covering an area of 2.25m by 0.65m.

RELEVANT PLANNING HISTORY

19/02844/FUL - Refused, 05.03.2020
Retention of a replacement dwelling (retrospective)

16/00471/PRIOR - Prior Approval Not required, 25.05.2016
Application for Prior Approval under Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 of Proposed Change of use from B1 to C3 - Units 10, 11, 27 and 28.

CONSULTEES RESPONSES

Hampshire County Council (Highways)

No objection

Crondall Parish Council

No objection.

- Conforms to NBE1 (Development in the Countryside) pursuant to (g), being a replacement dwelling (the pre-existing dwelling was lawful before its demolition).
- This dwelling is one of four in a defined part of the site.
- The dwelling meets the standard dwelling size.
- Dedicated outside space has been provided.

Drainage (Internal)

Concerns raised.

- Part of the site is an overflow route with flood depths up to 300mm.
- Applicant states surface water will be disposed via a soakaway, site is London Clay, so infiltration is unlikely to be possible.
- This site is in an indicative flood problem area as defined by Hart's Strategic Flood Risk Assessment.
- The building isn't in the main area of flooding on the business park, but it is on the edge of the surface water flooding extent. There is still a risk that the building may flood internally especially on the western side.
- The elevation drawings do not show how high the finished floor levels are, but it does suggest that these are above ground level.
- In 2015, floodwaters passed through the wall of units as well as coming through other openings.
- In a flooding event, residents would have to stay within the dwelling during a flood event as in a big flood event it would be unsafe to walk or drive through the flood waters. Other buildings on this site have had flood water pass through the walls.

Please confirm that it is technically possible to flood proof these walls to prevent internal property flooding. Without this confirmation we cannot be confident that internal flooding could be prevented.

Streetcare Officer (Internal)

No objection.

Environmental Health Officer (Internal)

Objection.

Environmental Health Officers (EHO) looked at the noise information submitted and objected based on the monitoring window in Jun 2020, lack of information about attenuating figures from glazed windows, potential noise exceedance levels at night and resulting suitability of the site for residential use.

The applicant provided a response to the above matters, which has been looked again by EHO, which in summary advises:

- The consultant has not assessed the impact of noise using the documented BS4142 methodology or at least has not reported it correctly so that third parties can make sense of the findings.
- The discussion in the emails does not centre on these issues but instead seems to have focused rather on absolute noise levels with reference to BS8233 and more generically, World Health Organisation (WHO).
- Where the residual sound level is found to be high; the consultant does not report residual sound levels. Where background sound levels and rating levels are low; the consultant does not report rating levels. As such no case is made for consideration of absolute levels using the advice within the standard. It is important to note, that absolute standards (as opposed to relative standards) would take no account of the degree to which the residential uses are impacted by noise of an industrial character; that is the source of the noise is not relevant only the total level.
- The BS4142 does not explicitly reference the specific absolute criteria set out in Table 4 of BS8233 used by the consultant. The later standard, specifically caution against using

these criteria for noise that has specific character. For example, these criteria are more usually used for steady unobtrusive noise sources such as distant traffic noise.

- Industrial noise generated close to residential uses typically will contain distinguishable character such as tonal and intermittent noises say from reversing beepers; impulsive noise from items being dropped or metal on metal impacts; plant and equipment noise. Residents are much less likely to tolerate noise of this type of character than noise at a similar level arising from distant road traffic.
- The original basis for Sugiura's conclusions that industrial activity was not impacted by the shutdown, are set out in his report (Section 4) as being solely based upon advice from the applicant commissioning the report and seeking to obtain planning consent. This is not a robust basis for making such an assumption.
- I would expect the consultant to make reasonable enquiries regarding the industrial activity that occurs and its variation before targeting a quantitative assessment. This should be set out in his report. One gets no sense of what noise emissions should be expected on these sites.
- There is no description of the activity levels actually observed on site during the monitoring period. Given the absence of such commentary, it seems likely that the consultant was not in attendance during the survey period and cannot attribute the measured levels to any particular industrial activity. As such, one cannot be sure what noise sources contributed to the measured levels or attempt any guess at how representative they might be of typical conditions.
- I expect that internal noise levels would be about 35dBA and 32dBA during the daytime and night-time's respectively. The later a small exceedance over the good standard referenced in BS8233. An understanding of the nature of the sound source; its location with reference to fenestration might allow a slightly more refined assessment, but I find none of this detail in the acoustic report.
- The consultant comments that the LAmax levels reported between 6:00 and 7:00 hours are attributable to a barking dog. It is uncertain how the consultant knows this. Has he been advised this was the case? Has he determined this by direct observation? Has he assessed source by captured audio records? Has he been able to count the number of events by recording audio for the whole period or using triggers on the instrument? One cannot be sure on any of these questions.
- I notice that this site seems to be characterised by a large number of 15 minute periods with high LAmax levels and this seems to commence around 03:00 hours for the whole morning and on a less frequent basis for the afternoon. I wonder whether this is characteristic of intermittent or impulsive industrial noise, the applicant's noisy dog or some other as yet undescribed source. This returns us to a central criticism; we do not know what noise sources were measured and are represented in graphs submitted.

NEIGHBOUR COMMENTS

It should be noted that the statutory requirements for publicity, as set out in the DMPO 2015 (as amended) are in this case the notification of the adjoining properties or the display of a site notice. In this case the adjoining properties/owners have been notified by post. The Council's SCI has now been amended so that we are only required to carry out the statutory

publicity requirements, thus in this case it was not necessary to display a site notice.

Neighbour letters were posted on 04.08.2020 giving interested parties 21 days to comment. At the time of writing the officer's report there had been two public representations received in support of the development and a request from a Ward Councillor to refer the application to Planning Committee. This referral request was supported by another Ward Councillor.

CONSIDERATIONS

Planning Policy.

Principle of Development.

Finns Business Park Viability- LIES designation and adjoining commercial uses.

Prior Approval and Conversion of the Unit

Design of the Development and Appearance of the Locality.

Quality of the Residential Accommodation.

Housing Land Supply and Delivery.

Impact on Adjoining Occupiers.

Thames Basin Heaths Special Protection Area.

Parking and Access.

Flooding.

Refuse.

Other Matters.

PLANNING POLICY

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

The relevant plan for Hart District is the Hart Local Plan: Strategy and Sites 2016-2032 (HLP32), the saved policies of the Hart District Local Plan (Replacement) 1996-2006 (HDLP06) and the South East Plan and the draft Crondall Neighbourhood Plan (DCNP). Adopted and saved policies are up-to-date and consistent with the NPPF (2019).

Hart Local Plan - Strategy and Sites 2016-2032 (HLP32)

SD1 - Sustainable Development

SS1 - Spatial Strategy and Distribution of Growth

H1 - Housing Mix - Market Housing

H6 - Internal Space Standards for New Homes

ED2 - Safeguarding Employment Sites

NBE2 - Landscape

NBE4 - Biodiversity

NBE5 - Managing Flood Risk

NBE9 - Design

NBE11 - Pollution

INF3 - Transport

Saved Policies of the Hart District Council Local Plan (Replacement) 1996 – 2006 (DLP06)

GEN 1 - General Policy for Development

Draft Crondall Neighbourhood Plan 2017-2032 (DCNP)

Policy 1 - Spatial Plan

Policy 2d - Thames Basing Heaths Special Protection Area

Policy 3 - Housing Design

Policy 6 - The Natural Environment

Other relevant material considerations

National Planning Policy Framework 2019 (NPPF)

Planning Practice Guidance (PPG)

Technical Housing Standards - nationally described space standard (DCLG 2015)

BRE Report - Site layout planning for daylight and sunlight: a guide to good practice (2011)

Parking Provision Interim Guidance (2008)

Employment Land Review (2016)

Strategic Housing Market Assessment 2016 (SHMA)

Hart Five Year Housing Land Supply Position Statement (1st April 2020)

ASSESSMENT

The starting point for the determination of any application is whether or not the proposal accords with the Development Plan; where a development is in accordance with the Development Plan it should be approved. However, if a development conflicts with the provisions of the Development Plan then it will be necessary to consider if there are any material considerations that indicate that planning permission should be granted. The assessment below is undertaken in accordance with this NPPF requirement.

PRINCIPLE OF DEVELOPMENT

The adopted HLP32 locates the site within a Business Park, which is designated as a Locally Important Employment Site (LIES). The DCNP also locates the site outside settlements within the neighbourhood plan area and the spatial strategy of the DCNP if of material weight and forms part of the Development Plan. The spatial strategy and distribution of growth is set out in Policy SS1 of the Plan which clearly states that development will be focused within defined settlement boundaries, on previously developed land in sustainable locations and on allocated sites as shown on the policies map.

Policy SS1 of the adopted HLP32 deals with spatial strategy and distribution of growth within Hart, and it clearly states:

'Development will be focused within:

- defined settlement boundaries;*
- previously developed land in sustainable locations; and*
- on allocated sites as shown on the Policies Map.'*

Taking into account the above location for development, this policy also makes provision for new homes for the plan period 2016-2032 through:

- Development completions and committed development since October 2017;*
- permitting further development/redevelopment within defined settlement policy boundaries (subject to other plan policies);*
- delivery of 1500 dwellings at Hartland Village;*

- *through Neighbourhood Plans; and*
- *permitting rural exception sites outside defined settlement policy boundaries that accord with adopted policies H3 and NBE1*

In this case, the site is located on previously developed land but in an unsustainable location as there are very limited facilities and pedestrian/cycling infrastructure in the locality of the site or the nearby settlement in general. Residents of the development would have to be fully dependent on private motor vehicles as a result of the distance involved to the closest large town/village with a suitable offer of goods/services for day to day living.

Furthermore, the Development Plan does recognise that exemptions to normal policies of restraint can be considered, in terms of housing provision, where reasonably necessary. The principal policies in this regard are policies H3 (Rural Exceptions Sites – Affordable Housing), H4 (Specialist Housing) and NBE1 (Development in Countryside - in specific circumstances). However, none of these are applicable policies to the development the subject of this application. In particular policy NBE1 clearly states that it only relates to:

‘Development proposals within the countryside’ and that being ‘the area outside settlement policy boundaries and designated Strategic and Locally Important Employment Sites, as defined by the Policies Map’. As the site located within a designated Locally Important Employment Site, policy NBE1 is not applicable.

Adopted policy ED2 is however relevant in this case as it provides a clear framework for development to occur within land designated for Employment purposes, such as the land subject to this retrospective planning application.

Policy ED2 provides for changes of use or redevelopment of land or buildings within LIES. However, they would only be supported if it can be demonstrated that:

a) there are no strong economic reasons to retain the employment use;

The applicants make no case that the land could not be retained in employment use or that there are unfavourable economic reasons to do so.

b) market signals indicate that the premises / site are unlikely to be utilised for employment use; or

The application does not contain any information demonstrating that market conditions for the employment uses/sector have prevented the use of the land for employment purposes. In fact, the information submitted in support of this application and discussed below, demonstrates that units within the Business Park have been in demand, as stated in the letter provided from the commercial property consultants Hollis Hockley.

c) the proposed use is of a similar character to employment uses in Use Classes B1, B2 and B8; or

The proposed development is not of a similar character to any employment use. A residential use is an incompatible land use to those land uses that should take place in this land designated as LIES.

d) the site is not appropriate for the continuation of its employment use due to a significant detriment to the environment or amenity of the area.

The applicants make no case that the land could not continue in employment use. It is noted that the building removed was shortly lived in and used as a dwelling, however the building was removed and therefore the benefits granted by the Prior Approval to use the building as a dwelling were extinguished with its demolition.

Therefore, this criterion remains relevant and the documentation before the Local Planning Authority that an employment use is not appropriate in this location or that an employment use would not be able to continue on the land.

The development therefore fails on all the above grounds.

The development does not conform to the relevant policies of the development plan that direct the provision of new housing in the District within settlements and sustainable locations. There are no housing policies in the HLP32 that allow housing in Employment Locations.

Furthermore, this submission is not accompanied either by any information demonstrating that a suitable employment use on the land or the building is not viable or that other factors would preclude the unit from finding an employment which would be appropriate to this location. Therefore it is clear the retention of the dwelling in this location is contrary in principle to the objectives of planning policies SS1 and ED2 of the HLP32 and policy 1 of the DCNP, which also directs development to sites within settlement boundaries of the Neighbourhood Area.

It is noted that the land and the unit standing on it would be capable of being used for an employment use. The fact that it is currently not the case is due to the applicant's own doing by constructing an unauthorised dwelling within the designated Employment Land.

VIABILITY OF FINNS BUSINESS PARK - LOCALLY IMPORTANT EMPLOYMENT SITE (LIES) AND ADJOINING COMMERCIAL SITE.

It has been established that policy ED2 of the adopted HLP32 seeks to safeguard employment land and premises.

It is noted the land subject to this application ceased to perform an employment function when the change of use to residential was implemented in 2016 however as previously mentioned the site is within the Business Park. Also because of the importance of the LIES through its /positive function and contribution to the local economy in the District, it is part of the employment sites where an Article 4 direction was imposed in 2018 to prevent further loss of employment land to residential uses through permitted development.

The applicant submitted a report titled 'Commercial Sustainability of Finns Business Park' produced by a commercial real estate company. The report states that they have carried out a number of open market transactions in the business park and that the residential properties within the Business Park were not deterred to proceed with the transactions.

This indicates that the market signals for employment uses have been strong and that the Business Park have been a sought-after location for business that want to establish in the District.

Dwellings in the business park do not contribute to the economic function of the employment site and in the long term would undermine its effective operation/function. The flexibility to accommodate suitable uses, which are difficult to provide elsewhere, would also be reduced. The supporting text of adopted policy ED2, makes it clear in this respect stating:

'These smaller employment sites provide important business locations and in some instances provide a location for valuable 'bad neighbour' activities... industrial process which may cause nuisance by reason of noise, vibration, smell and fumes'

The threat to the future viability of the LIES, therefore, is not whether or not interested future occupiers proceed with letting/purchasing transactions. It is mainly due to the fact that prospective occupiers of residential accommodation in unsuitable locations are more likely to raise pollution complaints about operations that take place around them when they are situated in inappropriate locations and surrounded by commercial uses, which then poses restrictions to the effective operation of commercial activities.

Therefore, officers are not persuaded the effective operation/function of the LIES would not be affected in the long term but the retention of the development. The subject dwelling within the LIES would only impact negatively on the long-term sustainable operation of the Locally Important Employment Site and would only compound the negative impacts from other non-employment uses in the LIES.

PRIOR APPROVAL AND CONVERSION OF THE UNIT

In this case the development must be assessed against the provisions of the Development Plan and a decision reached on the basis of prevailing policy, unless material considerations indicate an exception to policy should be made.

The applicants seek to justify the unauthorised dwelling by arguing that the previous building was converted into a dwelling. It is noted that the applicants obtained a Prior Approval (ref: 16/00471/PRIOR) for the conversion of the former office building on the land to residential.

However, the moment the former building was removed from the land, any permitted development rights associated with the Prior Approval were extinguished.

It appears that the applicants exercised their permitted development rights and occupied the building in July/August 2016. Then by September 2018 it became necessary to replace the roof as rainwater/damp was discovered. Rather than repair the building the applicants resolved to remove the converted building and rebuild the structure to achieve a clean environment for the family to occupy.

The narrative of the applicant confirms that the business unit was not fit for purpose when the conversion took place, despite any internal adaptation works that may have been undertaken.



Figure 1 -Subject building May 2016

The photograph shows the state of the business unit just prior to its conversion, depicting a worn timber structure building with bitumen roof sheets (uninsulated walls 10 cm in thickness - according to the Noise Report submitted). The submitted Planning Statement at page 7 shows a photograph similar to the above and a second photograph showing the building with similar roofing but the timber cladding and window frames painted.

The photograph above and the applicant's statements confirming the extent of water ingress and dampness problems were serious issues indicates that whilst the building was occupied, it was not in a suitable condition to provide habitable accommodation. The problems identified would appear to have been a long-term issue given the poor construction quality of the building.

It should be noted that the permitted development rights under Class O or any other Class of the Order that allow the changes of use of buildings into residential, assume that the building is capable of conversion to functioning as a dwelling for the long term. The rights under Class O do not preclude internal building operations which are necessary to convert the building, however it is not the intention of the permitted development right to allow conversion of a building into a dwelling if it is not fit for purpose. This appears to have been the case for the building removed from the land, given the statements of the applicant.

This has been well established by case law as part of conversions of buildings within Part 3 of the General Permitted Development Order (GPDO) (*Hibbitt, and Another v Secretary of State for Communities and Local Government, and Rushcliffe Borough Council* [2016] EWHC 2853 (Admin) (9 November 2016)).

The above case relates to a dismissed appeal where the works necessary to create a dwelling from the structure on site did not fall within the scope of what is permissible under permitted development rights granted by the GPDO. The reason being that the building was in such poor state of repair that the magnitude of the works required would result in a 'rebuild' or a 'fresh new building'.

Although the above High Court case relates to a conversion of a building under Class Q of Part 3 (agricultural buildings into dwelling houses), the ruling also extends to Classes M (retail, takeaways, and specified Sui-Generis uses to dwelling houses) and N (specified Sui-

Generis uses to dwelling houses).

As such the relevant principle laid out by the above High Court decision, which would also be applicable to the former building removed from the subject site, is that buildings authorised for conversion under Permitted Development Rights should be fit for purpose to satisfactorily accommodate a residential use in the long term.

It should be noted that the above GDPO Classes (M, N and Q) allow necessary external alterations to buildings, whereas Class O (office to residential) does not.

Hence, it only follows that it is particularly relevant that buildings for conversion under Class O should be fit for purpose as a whole and would only require internal alterations (e.g. partitions for a suitable residential layout) to make them habitable as no external works are permitted. However, the fact that the applicant decided to remove the original building from the site in its entirety shortly after its conversion confirms that it was a building not fit for purpose to live in.



Figure 2- Existing building on site.

Therefore, no consideration/weight can be given to the uninhabitable building removed. As a result of the demolition of the former building on site, there is no lawful residential use on the land. The background that led to the removal of the unit is not a material planning consideration and cannot be given any weight in the determination of this case either.

DESIGN OF THE DEVELOPMENT AND APPEARANCE OF THE LOCALITY

Adopted Policy NBE9 of the HLP32 and saved policy GEN1 of the HLP06 require that development is in keeping with the local character by virtue of design, massing, height, prominence, materials and landscaping. Also, policy 3 of the DCNP requires that development in the Neighbourhood Area demonstrates high design quality. All these local policies echo paragraphs from Section 12 of the NPPF.

In this instance the design is not outstanding or innovative. The current dwelling on site is simply a shed-like structure which reflects the utilitarian appearance of buildings in the Business Park. It is noted that this submission is comprised of better quality/colour plans depicting more details in the building (e.g. planting boxes hanging from the windows), proposing an entrance porch canopy and hard/soft landscaping plans, etc. All these details are intended to beautify the shed-like building and give a residential feeling to it and the immediate land surrounding it.

In terms of the integration of the subject dwelling with the appearance of the business park, the dwelling does not look significantly discordant due to its utilitarian appearance.

The impact of the dwelling to the locality beyond the compounds of the business park is limited due to the fact that the ground levels of the subject site are lower than those of Bowenhurst Lane, the modest scale of the building and the established landscaping separating the Lane and higher ground adjoining the site to the south. Thus, the dwelling would not have a disproportionate impact on the locality as it is located within the confines of the business park.

Hence, the shed-like dwelling's design/appearance has been improved because it is a new structure when compared to the old/worn building removed from the land, therefore no material conflicts are found with the objectives of policy NBE9 of the adopted HLP32, saved policy GEN1 of the HLP06 and those from policy 3 of the DCNP, nor the NPPF.

QUALITY OF THE RESIDENTIAL ACCOMMODATION

- Internal Floor Standards

The National Described Space Standards (NDSS) conforms with government aspirations to achieve better places to live. The NDSS standards have been adopted as part of the adopted HLP32 under planning policy H6.

An internal inspection to the dwelling was undertaken to corroborate the applicants' statements that the internal spaces are constructed to a good standard, which is not contested.

The plans submitted and measurements taken during the site inspection have confirmed that the gross internal area (GIA) of the dwelling is 44.40sqm. The effective double bedroom space width (without wardrobes/en-suite) was measured at 2.75m and the storage space is 1.54sqm.

The NDSS requires a minimum GIA of 50sqm, a minimum width of 2.75m for a double bedroom and internal storage of 0.72sqm. It is clear from the above that the dwelling is substandard as it falls short from the minimum GIA standards set by the Government, which is the most important element required for current residential accommodation. The GIA set in the NDSS is inclusive of storage and other ancillary spaces that are needed for a high-quality accommodation.

It is noted this submission infers that because there has been an outbuilding constructed (without planning permission) to the rear and is in daily use, the floor area of that structure should be added to the GIA of the dwelling and therefore meets the minimum standards set in the NDSS. The applicant has stated that nothing in the NDSS mentions that outbuildings cannot be included in the GIA of dwellings, which is incorrect.

The NDSS clearly states in point 8 of the 'Using the Space Standard' Section:

The Gross Internal Area of a dwelling is defined as the total floor space measured between the internal faces of perimeter walls that enclose the dwelling. This includes partitions, structural elements, cupboards, ducts, flights of stairs and voids above stairs.

The accompanying Note states that:

The internal face of a perimeter wall is the finished surface of the wall. For a detached house, the perimeter walls are the external walls that enclose the dwelling, and for other houses or apartments they are the external walls and party walls.

Thus, only the floorspace contained within the walls of the dwelling itself is the one relevant.

The outbuilding has a GIA of 5sqm which is almost the square meterage by which the substandard residential unit falls short of the minimum standard. The outbuilding accommodates facilities that should form an integral part of the building (kitchen cabinets and a washing machine) to suit current living standards of accommodation. To comply with the NDSS all essential living facilities should be accommodated as part of the residential unit itself.

The substandard size of the unit was a reason for refusal on the previous planning permission (ref: 19/02844/FUL) and it has not been addressed. The existing residential

accommodation remains substandard in size and does not meet the NODS standards adopted as part of the planning policy objectives for H6 of the HLP32.

The Council maintains the residential unit is substandard and does not provide practical/adequate facilities for comfortable daily living in the dwelling as required by the NOSS, regardless of internal finishes being of good quality or not. There are no compelling reasons provided by the applicant to justify the failure to meet objectives of planning policy H6 of the HLP32.

- Suitability of the area for residential accommodation

The rectangular area to the rear of the dwelling is laid out as an outdoor amenity area measuring 52sqm. The separation distance between the rear elevation of the building and the 1.5m high timber boundary fence to the rear is 4.85m. The outdoor space is screened by mature trees along the boundary with Bowenhurst Lane (on a higher ground level).

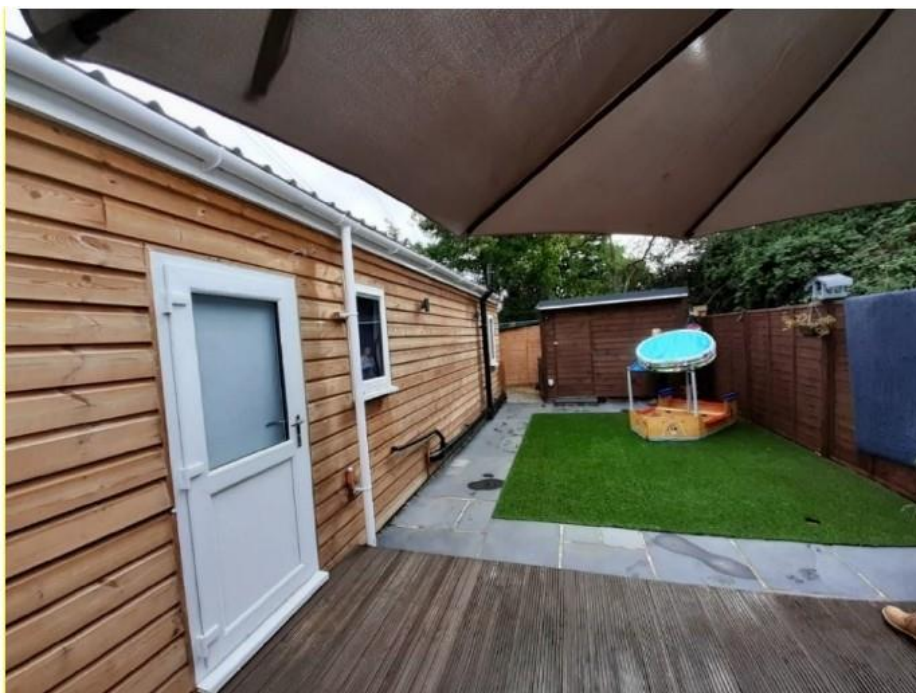


Figure 3 - Rear garden view towards Bowenhurst Lane.

There are adjoining commercial operations to the south of the site. This adjoining ground is substantially higher when compared to the site's ground levels. The adjoining commercial site has a metal fence as its boundary treatment which is higher than the dwelling itself by approximately 0.40m, reaching therefore an approximate total height of 3.9m when measured from the ground levels of the outdoor amenity area.

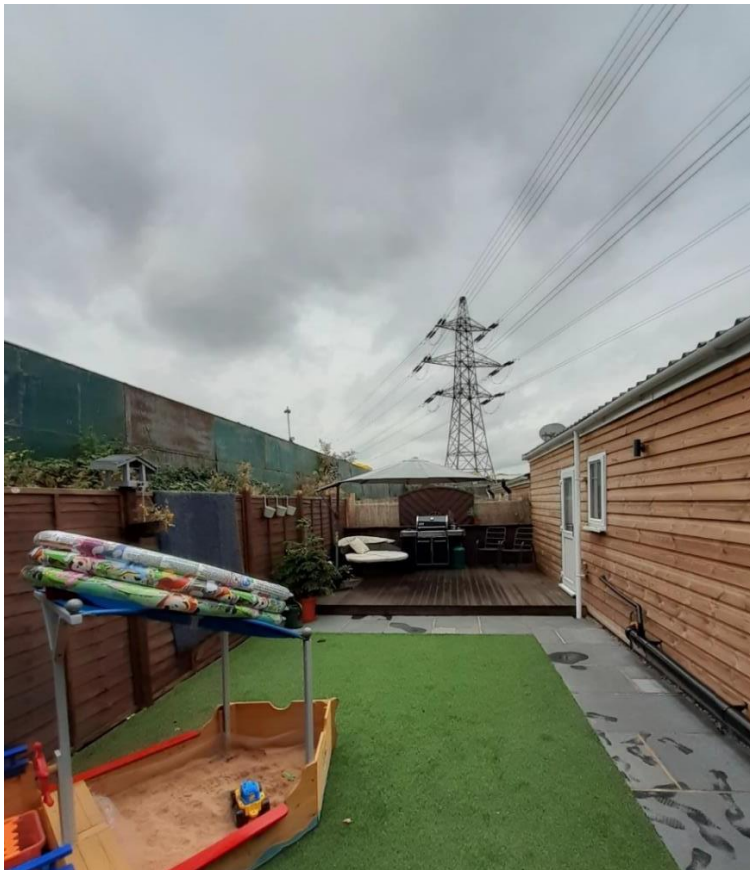


Figure 4 - Rear garden west facing view.

There is a gap with untidy vegetation in between the two boundaries, as there is watercourse passing between them. In addition to the harsh appearance of the metal fencing, there are overhead electricity lines passing obliquely almost above the dwelling with a pylon standing within the business park, 20m away from the outdoor amenity space. Thus, the environment surrounding the residential unit and its amenity space is not regarded to be of high quality for residential development regardless of the proposed landscaping that may be undertaken within the amenity space.

At the front of the dwelling, there is an area used for the parking of two vehicles. This submission proposes to undertake soft/hard landscaping works to enhance it. The parking spaces are visually separated from the car parking for the business units by a 1.8m high close boarded timber fence. Whilst the landscaping works proposed are noted, the site and the dwelling appear to be very much still part of the Business Park and fully dependent on it for access. However, the changes proposed would not materially alter the business/industrial like environment surrounding the application site.

It is noted that the previous poor-quality building converted and achieved through the change of use, was located among the same business/industrial environment officers experienced during the site inspection. The considerations for compliance of permitted development rights for the change of use of the building removed from the land did not require any assessment of housing quality and/or the surrounding environment. However, they are now a material consideration that are part of this assessment and the objectives of adopted policies and such an environment would not be considered a suitable location for new residential development.

This application is accompanied by a noise report that attempts to demonstrate that the surrounding environment does not have detrimental effects on the living conditions provided

by the residential unit and further responses from the applicant's noise consultant were received as a result of the original objections raised. However, there are some elements to note, as part of this noise assessment submitted.

The report refers to the commercial business adjoining the application site to the south as Hazelwood commercial storage. However, an inspection of the adjoining premises was undertaken and the business immediately adjoining the application site is a sewage waste disposal company. Several tankers park immediately behind the metal fencing that adjoins the rear garden of the unit.

The clerk of the company advised that they leave early (generally before 0700hrs) and return at different times of the afternoon/early evening. This is in contrast to the statements in the noise report that they leave at 0800hrs and return at 1600hrs and the noise readings contained in the report.

The other business adjoining the metal fence 20m west along the same boundary, is a construction company. Other businesses adjoining the construction company to the South site is a crane hire business and there is a storage business of minor scale located to the east of the crane business.





Figure 6 - Waste disposal business adjoining the subject site.

In terms of noise issues arising by the location of commercial operations adjoining the site to the South, in summary, the Environmental Health Officer (EHO) has raised an objection to the information submitted on the following grounds:

- Appropriate methodology was not used or not properly reported;
- there is no description of the activity levels actually observed on site during the monitoring period;
- One cannot be sure what noise sources contributed to the measured levels or attempt any guess at how representative they might be of typical conditions;
- Understanding of the nature of the sound sources, their location with reference to fenestration might allow a slightly more refined assessment, but none of this is detailed in the acoustic report.
- Comments that the LAmax levels reported between 6:00 and 7:00 hours are attributable to a barking dog. Has he been advised this was the case? Has he determined this by direct observation? Has he assessed source by captured audio records? Has he been able to count the number of events by recording audio for the whole period or using triggers on the instrument? One cannot be sure on any of these questions. It should also be noted that during the site inspection undertaken by Planning Officers, there was neither visible pets on site nor paraphernalia associated with pets inside or outside the dwelling.
- This site seems to be characterised by a large number of 15 minute periods with high LAmax levels and this seems to commence around 03:00 hours for the whole morning and on a less frequent basis for the afternoon. Central criticism is that it is not known what noise sources were measured and are represented in graphs submitted.

The noise report states the construction specification of the existing dwelling is timber framed insulated walls with a thickness of 0.14m, which include 12.5mm of soundproof plasterboard. However there appears to be no Building Control application on record about this construction to confirm these figures and materials used in order to inform the assessment of the suitability of the internal residential environment.

The location of a residential unit among unneighbourly industrial/business uses and the poor quality of the surrounding environment was a previous reason for refusal in respect of the previous planning application (ref: 19/02844/FUL) and has not been addressed as part of this planning application.

The immediate surrounding locality where the unit is located represents a poor environment for a residential use and associated external amenities. The character of the environment within the business park along with that of adjoining commercial sites is not conducive to achieve the high quality residential development envisaged by either the adopted planning policies of the HLP32 or the housing aspirations advanced by the NPPF.

HOUSING LAND SUPPLY AND DELIVERY

Paragraph 118 of the NPPF supports the development of underutilised land especially where this would help meet identified housing needs in areas of constrained land supply.

As previously stated, the adopted HLP32 directs the provision of new housing in the District within settlements and sustainable locations. The only policies that provide exceptions to provide housing outside these locations but under specific circumstances are policies H3 (Rural Exceptions Sites – Affordable Housing), H4 (Specialist Housing) and NBE1 (Development in Countryside) but none of these are applicable to this application. There are no adopted policies in the HLP32 that allow housing in Employment Locations.

In this instance the Council can demonstrate a healthy housing land supply of over 9 years, according to the latest figures contained in the Hart Five Year Housing Land Supply Position Statement (1st April 2020).

It should also be noted the Housing Delivery Test recently introduced by Central Government also illustrates that the District has a Housing Delivery Test measurement of 241% given a total housing requirement of 741 homes between 2016 and 2019 and a delivery of 1,787 homes over that same period.

The applicant has not contested any of the above in their submission.

IMPACT ON ADJOINING OCCUPIERS

There are no amenity impacts anticipated on neighbouring occupiers as a result of the dwelling constructed.

THAMES BASIN HEATHS SPECIAL PROTECTION AREA

Policies NBE3 and NBE4 of the adopted HLP32 seek to protect the Thames Basin Special Protection Area (SPA). Policy NRM6 of South East Plan policy NRM6 requires adequate measures to avoid or mitigate any potential adverse effects on the Thames Basin Special Protection Area (SPA).

The Habitats Regulations 2017 requires Local Planning Authorities (as the Competent Authority) to consider the potential impact that a development may have on a European Protected Site. In this case this relates to the Thames Basins Heaths Special Protection Area (TBHSPA).

The site falls within the 5 kilometre zone of influence to the SPA. The converted residential building removed addressed negative effects on the SPA at the time of conversion. However, since the building was removed from the land the SPA mitigation that was secured has also fallen away.

In this instance, the applicant has not mentioned in their submission anything about securing access to any SANG, proposed any SANG development as part of the scheme nor considered any other mitigation.

Given the lack of SANG for the retention of the development and the fact the applicant has not secured any SANG from a third party, the Council is unable to conclude that the proposal has not had a significant effect on the SPA. The second element of the mitigation required is a financial contribution towards the Strategic Access Management and Monitoring project (SAMM) and whilst this could be secured by way of a legal agreement no such agreement is in place.

The applicant has not demonstrated or provided information and/or evidence to enable the Council to undertake an Appropriate Assessment that would demonstrate that without the SANGs mitigation and a contribution towards SAMM the proposal would not have a significant effect on the SPA. There is no evidence of grounds of overriding public interest and the application fails the test of 'no alternative solutions' (Regulation 64).

In the absence of any appropriate mitigation, it is concluded that the scheme would fail to meet the requirements of the Habitats Regulations and that this development would, either on its own or in combination with other plans and projects have a detrimental impact on the nature conservation status of the Thames Basin Heaths SPA. Consequently, the application is unacceptable and contrary to adopted policy NBE3 of the HLP32, the NRM6 of the South East Plan and the NPPF in this regard and should be refused on this ground alone.

PARKING AND ACCESS

No concerns are raised in this respect from an operational perspective or in terms of parking numbers within the subject site.

FLOODING

The subject site is in a Flood Zone 1 location. However, part of the site is in a surface water overland flow route where flood depths can be up to 300mm and/or 900mm in parts of the Business Park. Finns Business Park has a history of flooding with several of the units flooding in 2007, August 2015 and again in August 2020. There are no Thames Water surface water sewers in the area and only a private foul sewer.

The main concern raised by the Drainage Officer is that the subject dwelling should be safe from internal flooding as the submission should have provided information that it is. Despite of a Flood Risk Assessment (FRA) being submitted as part of this application (the one used for the 2016 Prior Approval application); the Drainage Officer raised concerns about the residential use.

It has been acknowledged by the Drainage Officer that the subject unit is one of the units at lower risk, but it does not mean that it would not experience flooding in the future as a result of climate change. The Flood Map for Surface Water shows the maximum flood depths around the building itself to be about 300mm deep. The access to the site however can be flooded by between 300mm-900mm in places, although it would be expected that any flooding would be of short duration. The Drainage Officer has stated that residents would have to stay within the dwelling during a flooding event; especially in the case of a large flooding event, as it would be unsafe to walk or drive through the flood waters.

The Flood Risk Assessment (2016) submitted recommends flood resilient measures to be put on the property stating:

'The floor and lower walls in the proposed dwelling should be constructed as water damage resilient as a precautionary measure.'

In this respect, the Noise Report submitted states that the walls of the unit is timber construction. The timber walls of the dwelling are resting on an engineering brick base to deal with the sloping nature of the ground. However, at the highest (western end of the building) the base is approximately 300mm.

The Drainage Officer has stated that during other flood events, buildings in the business park have had flood water pass through their walls and there are therefore concerns of internal flooding potentially occurring as a result of future flood events, which is something also stated in the submitted Flood Risk information. The applicant is aware of the Drainage Officer concerns.

As it stands, there is no certainty that the unit has been built to flood proof standards and or evidence provided that this has been satisfactorily addressed, contrary to adopted policy NBE5 of the adopted HLP32, the NPPF and policy 6 of the DCNP.

REFUSE

No concerns are raised in this respect as there is enough space in the front of the dwelling to accommodate refuse/recycling wheelie bins.

OTHER MATTERS

The applicant has referred to in the submitted information that the retention of the building will provide a residential environment conducive to helping the applicant's wife manage her health issues. In the previous refused application, the applicant also made similar comments, mentioning:

- Health conditions of his wife;
- The arrival of a new family member;
- Physical and mental health implications for the applicant and wife a refusal of retrospective permission would cause;
- Likely future reliance from the Council to provide housing as they would become homeless;

Officers have considered the above comments. Whilst the predicament of the applicant is noted, the above elements would not constitute 'very special circumstances' to allow substandard housing in an unsuitable location. It should also be noted that the

application has been made on a permanent non-personal basis.

The Local Planning Authority, in some instances would consider the granting of a planning permission on a personal basis. However, the personal reasons expressed by the applicant would not result in a compelling reason to provide a dwelling in this industrial/business location. The internal inspection undertaken did not reveal any internal adaptations or any other specially installed or bespoke elements in the rooms, indicating the building is unique to the current occupiers. The interior arrangements are no different from a policy compliant residential building in a suitable location.

Paragraph 015 (ref: 21a-015-20140306) of the PPG advises in this respect, the following:

Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need. (officers' emphasis)

In this instance therefore it would be inappropriate to consider a personal planning permission.

The applicant also makes reference to the adjoining business unit no. 27 as currently being occupied by Council tenants. However, the Housing Section of the Council operates under a different legislative framework and criteria, which has nothing to do with planning legislation.

The applicant has also mentioned about other planning applications approved for existing units, however none of them are related to a new dwelling in this business park, and in any event each application is assessed in its own merits.

Therefore, the arguments made in support of the applicants' circumstances cannot be attributed any weight in the consideration of this application.

PLANNING BALANCE

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

Policies of the adopted HLP32 do not support the principle of housing in designated Employment Locations. The adopted HLP32 contains a clear spatial strategy to provide housing development for the plan period. The need for additional homes through windfall sites is therefore not acute within Hart District and although they are welcome to help the supply of housing, there is no overwhelming reason to accept substandard housing in unsuitable locations, such as that in this case.

Therefore, subsection d) of Paragraph 11 of the NPPF the 'tilted balance' does not apply as the HLP32 contains relevant housing policies which are in-date and consistent with the NPPF.

In terms of the benefits of this proposal, they are limited to:

- Limited provision of housing to the District stock with a residential unit of a size for which there is less demand in the District.
- Self-build unit (no evidence Building Control standards have been met)
- Limited economic benefits as a result of expenditure of the occupiers in the locality

The harm identified and discussed above is:

- The development is not within a settlement boundary or in a sustainable location but in a LIES and the development is contrary to the aims of adopted policies.
- There has been no information provided demonstrating that market conditions for industrial/business uses are unfavourable in this location or that the land of the building could not continue in employment uses.
- The long-term sustainable operation of the LIES would be affected by the retention of a dwelling as this would only compound to the negative impacts non-employment uses would have within the LIES.
- The environment within the LIES, where the dwelling and its external amenities are located, is of poor quality for residential accommodation, and in conjunction with adjoining unneighbourly commercial uses results in an unsuitable location to accommodate residential development.
- The residential unit constructed is substandard in size and fails to meet the adopted minimum residential internal residential standards from adopted policy H6.
- It has not been demonstrated that the dwelling would not be exempt of internal flooding risks resulting from future flooding events that may occur because of the timber construction of the walls and the recorded flood depths around the unit up to 300mm above ground level and in the absence of evidence to the contrary, this shortfall is added to the harms arising from the scheme.
- The development has neither secured access to any SANG, proposed any SANG development as part of the scheme nor consider any other mitigation. Given the lack of SANG in the proposal and the fact the applicant has not secured any SANG, the Council is unable to conclude that the proposal would not have a significant effect on the SPA.

Therefore, having consideration to the economic, housing and environmental objectives advanced by the NPPF which are a material planning consideration; the weight attributed to the housing provision in this case is significantly limited due to the fact that the Council has a healthy housing land supply.

Moreover, the Council has identified suitably located land for housing development for the next 9 years. Also, it is noted that the type of property subject to this application is of a size for which there is less demand in the District.

The benefits identified and the personal circumstances cited by the applicant, all referred to above would attract very limited weight in the planning consideration of the retention of the subject dwelling. Consequently, the site does not offer a suitable location for new housing development having regard to local and national spatial policies.

The planning process should be plan led and the weight to be applied to policies is at the discretion of the decision taker. In this case the Council considers the adopted planning policies of the HLP32 attract full weight and the harm that arises from the retention of substandard housing in this unsuitable location would conflict with the relevant policies of the adopted HLP32, the DCNP and the NPPF. The harm identified is not outweighed by the very limited benefits that would arise from the scheme.

CONCLUSION

This application must be determined in accordance with the policies of the development plan unless any material planning considerations indicate otherwise and it is therefore necessary to consider if there are any overriding public benefits that would result from the development that would outweigh the identified harm.

The adopted HLP32 sets out a clear spatial strategy for housing. Equally, the adopted Local Plan establishes a set of exemptions for residential development to occur outside settlements and/or sustainable locations.

This includes allowing affordable housing on rural exemption sites, for specialist housing or being of innovative design. Considering the evidence accompanying this application, none of the Council's housing policy preclusions would be relevant to this retrospective development and there are no in-principle housing policies within the HLP32 to allow housing in LIES.

The residential unit would add to the negative effects that non-employment uses would cause to the long-term effective operation/function of the LIES. It has also been demonstrated that adopted internal residential space standards are not met by the dwelling and the location of the site is in a poor environment for the provision of housing development.

The development would not be exempt from internal flooding as a result of future floods events and there has been no evidence submitted demonstrating otherwise. The dwelling would be likely to result in negative effects on the SPA, as there would be no mitigation in place for the subject residential development.

There is no pressing need to allow substandard residential development in unsuitable locations. The Council has a housing land supply to cover the District Housing needs for at least for the next 9 years. Notwithstanding, it is recognised that the housing land supply should not be regarded as a ceiling to preclude other sustainable development but this is not applicable in this case.

Paragraph 15 of the NPPF confirms the principle that planning should be genuinely plan-led and there are no other material planning consideration involved that indicate otherwise. The proposed development would conflict with policies in the adopted HLP32 and policies laid out in the Governments National Planning Policy Framework (NPPF). As such a refusal is warranted.

RECOMMENDATION - Refuse

REASONS FOR REFUSAL

1. The retention of a dwelling, with a substandard internal floor area outside settlement boundaries, in a site surrounded by unneighbourly industrial /business land uses and unsightly electricity infrastructure in close proximity, would all represent a poor-quality environment that is unsuitable and harmful to accommodate residential development, to the detriment of residential amenity. As such the retention of the dwelling in this location is contrary to policies SS1, ED2, H6 and NBE11 of the adopted Hart Local Plan (Strategy & Sites) 2016-2032, saved policy GEN1 of the Hart District Local Plan - Replacement (1996-2006), paragraph 127 and National Planning Policy Framework (2019) and policy 1 of the draft Crondall Neighbourhood Plan 2017-2032. The retention of a dwelling among light industrial/business uses and adjoining unneighbourly commercial activities, in conjunction with other non-employment uses within Finns Business Park would contribute negatively to the long-term sustainable operation of this Locally Important Employment Site, contrary policy ED2 of the adopted Hart Local Plan (Strategy & Sites) 2016-2032 and paragraph 80 of the National Planning Policy Framework (2019).
2. In the absence of any information to the contrary, the dwelling would be at risk of internal flooding from future flooding events as a result of its timber construction and recorded flooding levels of 300mm above the ground immediately surrounding it. As such the retention of the dwelling is contrary to policy NBE5 of the adopted Hart Local Plan and Sites 2016-2032, paragraph 155 of the National Planning Policy Framework (2019) and policy 6 of the draft Crondall Neighbourhood Plan 2017-2032.
3. The site is located within 5km of the Site of Special Scientific Interest (SSSI) which forms part of the Thames Basin Heaths Special Protection Area (SPA). In the absence of any evidence that the test of no alternatives under the Conservation of Habitats and Species Regulations 2017 can be satisfied, or evidence that there are grounds of overriding public interest, the proposed development, either alone or in combination with other plans or projects, would be likely to have a significant adverse effect on the SPA. As such the proposal is contrary to adopted policy NBE3 of the Hart Local Plan: Strategy and Sites 2016-2032, saved policy NRM6 of the South East Plan, and paragraph 176 and 177 of the National Planning Policy Framework (2019).

INFORMATIVES

The Council works positively and proactively on development proposals to deliver sustainable development in accordance with the NPPF. In this instance, the proposed development was deemed to be unacceptable in many respects (for the number of reasons above) and therefore no further additional information was required/ requested; nor could the scheme have been amended to address the Council's specific concerns without significantly changing the nature of the proposal. The development was therefore determined on the basis of the information provided.