

# Public Document Pack



Monitoring Officer  
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## Agenda

Name of meeting	<b>PLANNING COMMITTEE</b>
Date	<b>TUESDAY 26 JULY 2022</b>
Time	<b>4.00 PM</b>
Venue	<b>COUNCIL CHAMBER, COUNTY HALL, NEWPORT, ISLE OF WIGHT</b>
Members of the Committee	<p>Cllrs J Medland (Chairman), W Drew (Vice-Chairman), D Adams, D Andre, G Brodie, V Churchman, C Critchison, C Jarman, M Oliver, M Price, C Quirk, P Spink</p> <p>G Alldred (IWALC)</p> <p>P Fuller (Cabinet Member for Planning and Enforcement)</p> <p>Democratic Services Officer: Marie Bartlett democratic.services@iow.gov.uk</p>

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1. **Minutes** (Pages 3 - 6)

To confirm as a true record the Minutes of the meeting held on 21 June 2022.

2. **Declarations of Interest**

To invite Members to declare any interest they might have in the matters on the agenda.



Details of this and other Council committee meetings can be viewed on the Isle of Wight Council's Committee [website](#). This information may be available in alternative formats on request. Please note the meeting will be audio recorded and the recording will be placed on the website (except any part of the meeting from which the press and public are excluded). Young people are welcome to attend Council meetings however parents/carers should be aware that the public gallery is not a supervised area.

3. **Public Question Time - 15 Minutes Maximum**

Questions are restricted to matters not on the agenda. Questions may be asked without notice but to guarantee a full reply at the meeting, a question must be put including the name and address of the questioner by delivery in writing or by electronic mail to Democratic Services at [democratic.services@iow.gov.uk](mailto:democratic.services@iow.gov.uk) no later than two clear working days before the start of the meeting. Normally, Planning Committee is held on a Tuesday, therefore the deadline for written questions will be Thursday, 21 July 2022.

4. **Report of the Strategic Manager for Planning and Infrastructure** (Pages 7 - 28)

Planning applications and related matters.

5. **Members' Question Time**

To guarantee a reply to a question, a question must be submitted in writing or by electronic mail to [democratic.services@iow.gov.uk](mailto:democratic.services@iow.gov.uk) no later than 4.00pm on Friday, 22 July 2022. A question may be asked at the meeting without prior notice but in these circumstances there is no guarantee that a full reply will be given at the meeting.

CHRISTOPHER POTTER  
Monitoring Officer  
Monday, 18 July 2022



## Minutes

Name of meeting	<b>PLANNING COMMITTEE</b>
Date and Time	<b>TUESDAY 21 JUNE 2022 COMMENCING AT 4.00 PM</b>
Venue	<b>COUNCIL CHAMBER, COUNTY HALL, NEWPORT, ISLE OF WIGHT</b>
Present	Cllrs J Medland (Chairman), W Drew (Vice-Chairman), G Brodie, V Churchman, C Critchison, C Jarman, M Lilley, M Oliver, M Price, C Quirk, P Spink
Co-opted	G Alldred (Non-Voting)
Also Present	Oliver Boulter, Ben Gard, Jodie Gibson, Alan Ransom, Stuart Van-Cuylenburg and Sarah Wilkinson
Apologies	Cllr D Adams

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### 1. **Minutes**

RESOLVED:

THAT the minutes of the meeting held on 26 April 2022 be approved.

### 2. **Declarations of Interest**

Councillor Warren Drew advised that he had not been in attendance at the Site Visit however he felt he was familiar with the sites and able to take part in the debate and vote on the applications under consideration.

Councillor Peter Spink declared an interest as he was a Member of CPRE, however he was one of many members and believed he was considering the application with an open mind.

### 3. **Public Question Time - 15 Minutes Maximum**

There were no public questions submitted.

### 4. **Report of the Strategic Manager for Planning and Infrastructure**

Consideration was given to items 1 - 2 of the report of the Strategic Manager for Planning and Infrastructure Delivery.

A schedule of additional representations received after the printing of the report were submitted at the beginning of the meeting and were drawn to the attention of the Councillors when considering the application. A note is made to that effect in the minutes.

**Application:**

20/01733/OUT

**Details:**

Outline for up to 50 residential dwellings (with details of access), creation of a new access off Puckpool Hill, and provision of public open space, landscaping and associated works (revised illustrative master plan, biodiversity net gain calculation, revised flood risk assessment, and response to Island Roads comments received) (readvertised application)

Land North of Woodland Close and Adjacent Cedar Lodge and Thornton Cottage, Puckpool Hill, Seaview.

**Site Visits:**

The site visit was carried out on Friday, 17 June 2022.

**Public Participants:**

Tom Langshaw (Objector)

Ed Allsop (Agent)

Patricia Redpath (on behalf of Nettlestone and Seaview Parish Council)

**Additional Representations:**

Additional letters of objection had been received by the Local Planning Authority since the report had been published which raised concerns already referred to in the report.

It was clarified that the rights of way improvements required a contribution to be used to improve the existing right of way to Appley Park, the Council would ensure trees were adequately protected.

An amendment to condition 14 was proposed to ensure it was sufficiently flexible to allow for biodiversity net gain proposals to be modified to reflect the development.

**Comment:**

Councillor Jarman read out a statement on behalf of Councillor Adams as local member.

Concern was raised regarding the road layout and access onto the proposed site, the Island Roads representative advised that the works being carried out exceeded the requirements for visibility splays.

The Committee asked if approved that the reserved matters application be brought back to the Committee, the Strategic Manager for Planning and Infrastructure Delivery confirmed that an application of this size would be considered by the Planning Committee.

Questions were asked regarding the traffic improvement scheme agreed on a neighbouring site, and the additional improvements contained in the proposed application, they were advised that the highway improvements secured by the other development were the same as those proposed in

this application, but that the contribution from this development towards improvement of the existing right of way from Puckpool Hill to Appley Park was an additional benefit of the application. It was clarified that these highway improvements would need to be secured for this application also as they are considered necessary to make the current application acceptable, concern was also raised regarding the proposed uncontrolled crossings.

The Committee questioned the comments made regarding the previous use of the field and if Sport England had been consulted on the application, Officers advised that Sport England would be consulted if the land had been used in the last five years, it was understood that the field had not been used for sporting activities in at least 20 years.

Advice was sought from Planning Officers regarding the proposed affordable housing on the site, and asked if they could include into the legal agreement the definition of what affordable housing was provided for example affordable rented or owned, they were informed that they could stipulate what affordable housing the developer was providing.

**Decision:**

The Committee had taken into consideration and agreed with the reasons for the recommendation as set out under the paragraph entitled Justification for Recommendation of the report and resolved:

**RESOLVED:**

THAT the application be approved subject to replacing the uncontrolled crossings with zebra crossings in the most suitable location, and the affordable housing to be 80% affordable rented and 20% affordable shared ownership.

As per report (Item 1)

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Prior to the three-hour point in the meeting, the chairman proposed that the meeting be extended for up to thirty minutes (to allow sufficient time for the remaining agenda items to be considered) under Part 4B(6) (Duration of meetings) of the Council's Constitution.

**RESOLVED:**

THAT the meeting be extended by up to thirty minutes.

**Application:**

22/00293/FUL

**Details:**

Change of use from commercial (former bank) to a dwelling

14 High Street, Sandown, Isle of Wight.

**Site Visits:**

The site visit was carried out on Friday, 17 June 2022.

**Comment:**

Councillor Debbie Andre spoke on behalf of Councillor Ian Ward as Local Councillor for the application.

The Committee asked for clarification of the use of the upper floors of the building and were advised that the submitted floor plans showed that they had been used as part of the commercial unit on the ground floor, a Prior notification application had been submitted to the Local Planning Authority in December 2021 for change of use from commercial to residential use, which was a further indicator that the building was commercial at that time.

Councillors questioned if there would be access for the property to use the ground floor as retail and continue to convert the upper floors into residential planning officers explained that there could be access to both using separate access points as neighbouring properties had converted upper floors to residential.

**Decision:**

The Committee had taken into consideration and agreed with the reasons for the recommendation as set out under the paragraph entitled Justification for Recommendation of the report

RESOLVED:

THAT the application be refused

As per report (Item 2)

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**5. Members' Question Time**

There were no Member questions.

CHAIRMAN

## ISLE OF WIGHT COUNCIL PLANNING COMMITTEE - TUESDAY, 26 JULY 2022

### REPORT OF THE STRATEGIC MANAGER FOR PLANNING AND INFRASTRUCTURE

#### WARNING

1. THE RECOMMENDATIONS CONTAINED IN THIS REPORT OTHER THAN PART 1 SCHEDULE AND DECISIONS ARE DISCLOSED FOR INFORMATION PURPOSES ONLY.
2. THE RECOMMENDATIONS WILL BE CONSIDERED ON THE DATE INDICATED ABOVE IN THE FIRST INSTANCE. (In some circumstances, consideration of an item may be deferred to a later meeting).
3. THE RECOMMENDATIONS MAY OR MAY NOT BE ACCEPTED BY THE PLANNING COMMITTEE AND MAY BE SUBJECT TO ALTERATION IN THE LIGHT OF FURTHER INFORMATION RECEIVED BY THE OFFICERS AND PRESENTED TO MEMBERS AT MEETINGS.
4. YOU ARE ADVISED TO CHECK WITH THE PLANNING DEPARTMENT (TEL: 821000) AS TO WHETHER OR NOT A DECISION HAS BEEN TAKEN ON ANY ITEM BEFORE YOU TAKE ANY ACTION ON ANY OF THE RECOMMENDATIONS CONTAINED IN THIS REPORT.
5. THE COUNCIL CANNOT ACCEPT ANY RESPONSIBILITY FOR THE CONSEQUENCES OF ANY ACTION TAKEN BY ANY PERSON ON ANY OF THE RECOMMENDATIONS.

#### Background Papers

The various documents, letters and other correspondence referred to in the Report in respect of each planning application or other item of business.

**Members are advised that every application on this report has been considered against a background of the implications of the Crime and Disorder Act 1998 and, where necessary, consultations have taken place with the Crime and Disorder Facilitator and Architectural Liaison Officer. Any responses received prior to publication are featured in the report under the heading Representations.**

**Members are advised that every application on this report has been considered against a background of the implications of the Human Rights Act 1998 and, following advice from the Head of Legal Services and Monitoring Officer, in recognition of a duty to give reasons for a decision, each report will include a section explaining and giving a justification for the recommendation.**

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## INDEX

1	22/00491/RVC	Parish: Newport & Carisbrooke Community Council	<b>Approval</b>
	Marks And Spencer Plc , Church Litten, Newport.	Ward: Newport Central	
	Variation of condition 11 on TCP/18797/G to allow alterations to delivery times to include earlier delivery time of 8am on Sundays and Bank Holidays		
2	21/00684/FUL	Parish: Shalfleet	
	Land at Lee Farm, Main Road, Wellow.	Ward: West Wight	<b>Approval</b>
	Demolition of barns and storage buildings; proposed construction of 16 dwellings and use of existing holiday bungalow as permanent dwelling; access road, garaging/car ports, parking and associated landscaping		

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**01 Reference Number:** 22/00491/RVC

**Description of application:** Variation of condition 11 on TCP/18797/G to allow alterations to delivery times to include earlier delivery time of 8am on Sundays and Bank Holidays

**Site Address:** Marks and Spencer Plc, Church Litten, Newport Isle of Wight PO30 1XL.

**Applicant:** Mrs Geraldine Graham on behalf of Marks and Spencer PLC

**This application is recommended for:** Conditional permission

**REASON FOR COMMITTEE CONSIDERATION**

It is considered that the application raises a balanced of policy issues.

**MAIN CONSIDERATIONS**

- Impact on the character of the area and neighbouring amenity.

**1. Location and Site Characteristics**

- 1.1 Marks and Spencer is a large retail store located within the Town Centre Boundary for Newport and within the Settlement Boundary and Key Regeneration Area Boundary of the Medina Valley.
- 1.2 The existing store is located on the corner of St. Georges Approach and Church Litten. Although the customer vehicular access is off Church Litten to the north west of the building itself, the servicing yard is accessed from the south off St. Georges Approach.
- 1.3 The area is characterised by a mix of uses with primarily commercial to the north and residential to the south.

**2 Details of Application**

- 2.1 The proposed application seeks a variation to the hours that the store is permitted to receive deliveries on Sundays and Bank Holidays.
- 2.2 The variation seeks to amend the current hours from 10:00 to 08:00 on these days, with the end time of 16:00 remaining the same. Monday - Saturday times would remain as currently approved (07:00 – 20:00). No other changes are proposed.

### 3 **Relevant History**

- 3.1 21/02066/RVC - Variation of condition controlling hours of operation - Refused 13<sup>th</sup> January 2022.
- 3.2 P/02575/07 - Variation of condition no. 11 on TCP/18797/G to enable deliveries between 0600 hours & 2000 hours except on Sundays & recognised Bank Holidays when it shall only take place between 0700 hours & 1600 hours from 01 December 2007 & 05 January 2008 - Refused December 2007.
- 3.3 Appeal T/APP/P21 14/A/99/1027700/P2 - to vary condition 11 of consent TCP/18797/G - Allowed November 1999. The allowed appeal permitted deliveries to take place between 07.00 and 20.00 weekdays and Saturdays and between 10.00 and 16.00 on Sundays and Bank Holidays. The appeal also allowed deliveries to take place between 06.00 and 20.00 weekdays and Saturdays and 07.00 and 16.00 on Sundays and Bank holidays during the period between 18<sup>th</sup> December and 1<sup>st</sup> January of any given year.
- 3.4 TCP/18797/G - Proposed retail store, car parking, landscaping and service yard with access off Medina Avenue, demolition of dwellings fronting Medina Avenue - Approved 1993.

### 4 **Development Plan Policy**

#### National Planning Policy Framework

- 4.1 The NPPF explains that the purpose of the planning system is to contribute to the achievement of sustainable development. It refers to three interdependent social, environmental and economic objectives, which need to be pursued in mutually supportive ways, so that opportunities can be taken to secure net gains across all of these different objectives.
- 4.2 Section 6 (Building a Strong Competitive Economy) states that Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.

#### Local Planning Policy

- 4.3 The Island Plan Core Strategy defines the application site as being within the Medina Valley Key Regeneration Area and within the defined settlement boundary for Newport. The site is also within the Newport Town Centre boundary. The following policies are relevant to this application:

SP3 - Economy  
DM2 - Design Quality for New Development  
DM8 - Economic Development

**5 Consultee and Third-Party Comments**

Internal Consultees

- 5.1 Island Roads raise no objection subject to no other changes being proposed in relation to the use of the service yard.
- 5.2 Environmental Health raise no objection to the amended hours, noise disturbance prior to the proposed delivery time should be kept to a minimum in order to protect residential amenity.

Parish/Town Council Comments

- 5.3 Newport and Carisbrooke Community Council have confirmed that they have no comments.
- 5.4 The Ward Councillor has objected to the proposal and requested that the application be discussed at Planning Committee, for the following reasons:
- It's been frequently recorded that current conditions are not adhered to with deliveries to the store, causing disturbance to residents that are close.

Third Party Representations

- 5.5 Two comments have been received from local residents, who have objected raising comments that can be summarised as follows:
- Marks and Spencer are regularly in breach of conditions, 6, 10 and 12 of the original consent
  - Service yard is located on Medina Avenue not on Church Litten as per the application
  - Conditions in place to protect annoyance and disturbances to neighbours
  - Very firmly within a residential location
  - Noise pollution
  - Early morning use of the delivery yard is noise pollution
  - Unacceptable degree of volume created by opening the gates
  - Reversing alarms and general lorry noise is unpleasant when they should be switched off
  - Environmental Health should be consulted
  - Whilst the unloading/loading bay is itself soundproofed getting vehicles into that position is always problematic as the open section of the delivery yard acts as an echo chamber
  - Sympathetic during lockdown but not now
  - It is clearly not required if the store management, systems and numbers of available staff were improved
  - Noisy preparative activity, in the goods in yard, already commences anything up to an hour and a half before the first lorry of the day arrives

- In theory, the yard would be open for business, on Sundays and Bank Holidays at 0630hrs
- Unlike most of our neighbours we have lived here in our family home since before M&S was even built in the early 90's and have direct, first-hand experience of all of the original negotiations that took place in respect of the goods inwards yard
- Nothing has changed to warrant further amendments to those original planning conditions
- Such applications have previously been refused by the LPA
- Ongoing safety concerns with deliveries and the highway
- Distance between the store and homes remain and therefore so should the conditions
- Service yard is not managed correctly

5.6 The Local Ward Member has requested a committee decision for the following reasons:

- Amendments to hours would be of strong local interest
- Concern over noise amenity and the arrival of lorries prior to approved times.

## 6 **Evaluation**

### Impact on the character of the area and neighbouring amenity

6.1 This application seeks to vary the hours of delivery for the Marks and Spencer store, which are regulated by a planning condition allowed on appeal (see history section above). The appeal allows the service yard to receive deliveries during the following hours:

- 07.00 and 20.00 weekdays and Saturdays
- 10.00 and 16.00 on Sundays and Bank Holidays

The appeal also allowed specific delivery times for the period between 18<sup>th</sup> December to 1<sup>st</sup> January each year:

- 06.00 and 20.00 weekdays and Saturdays
- 07.00 and 16.00 on Sundays and Bank Holidays

6.2 The Planning Authority recently determined planning application 21/02066/RVC, which sought to vary the permitted delivery times to allow deliveries to occur between 06.00 and 20.00 hours, weekdays and Saturdays and between 08.00 and 16.00 hours on Sundays and Bank Holidays. That application was refused due to concerns that the proposed delivery hours would cause a loss of amenity to nearby residents. At the time of this application, the Council's Environmental Health Officer raised concerns that the applicant's noise report did not appear to take account of the fact that traffic noise would be lower between the hours of 6-7am on weekdays, than it is between 7-8am and looked at average noise levels against background noise levels.

- 6.3 The proposals now focus on the delivery times for Sundays and Bank Holiday, seeking consent to allow deliveries to be accepted from 08:00, rather than 10:00. The application seeks no changes to delivery times on weekdays and Saturdays.
- 6.4 Officers would highlight that during the height of the pandemic Local Planning Authorities were instructed to under enforce delivery conditions, to deal with the challenges store were facing at the time with stock and staffing. This provision has now been lifted but a number of applications have been submitted since to retain these more relaxed hours.
- 6.5 In respect of this site specifically it is acknowledged by officers that, on the basis that the store does not open to members of the public until 10:00 on Sundays and Bank Holiday's, the current delivery timeframe does impose issues with produce being stocked in time for the store to open and this variation would allow for greater fluidity between delivery and opening times to support the ongoing functions of the store in relation to SP3 and DM8 of the Island Plan Core Strategy.
- 6.6 On consideration of the application, the Council's Environmental Health Officer has reviewed an addendum to the noise report and has not objected to the application but does acknowledge that local residents have raised objection in relation to noise disturbances and activity on site in relation to preparation of deliveries prior to the existing allowed time.
- 6.7 There is some concern locally that deliveries on occasions arrive early to the store (prior to 10:00 on Sundays) and that this can be up to 90 mins before the time allowed for deliveries under the current planning restrictions. However, these incidents have not resulted in breaches of the current conditions, as the vehicles have parked outside of the store, rather than be permitted to enter the delivery yard. Officers understand that the vehicles have been idling while waiting. The variation of this application would allow for the unloading and delivery of produce two hours prior to the current time, which while earlier, would allow the vehicles to be unloaded and to then leave the site in a timelier fashion.
- 6.8 The agent for the application confirms that they are working with the store to resolve amenity concerns and has advised that there would not be a need for lorries to arrive prior to 08:00, as the store would not be opening earlier and that this would allow for sufficient time to unload the goods in a more effective manner. Therefore, whilst some lorries have waited outside the premises prior to 10:00, allowing this variation would be unlikely that this would then occur at a further extended time prior to 08:00 which understandably has been raised as a concern by third parties.
- 6.9 Thus, although this proposal would allow an earlier delivery time, delivery vehicles would be generally booked on a ferry that would coincide with this delivery time, and although somewhat dependent to some degree on ferry times, given that this application relates to Sunday mornings, it is likely that ferry availability and the regularity of this varied timeframe would allow for the restrictions for deliveries to be met.
- 6.10 This proposed change is therefore considered relatively modest and may result in an improvement to the current situation, where vehicles idle outside of the store,

by reducing the amount of time vehicles are at the store. As such, on balance the variation would protect neighbouring amenity and the function of the store and thus meets the aims of Policies SP3, DM2 and DM8 of the Island Plan Core Strategy.

## **7 Conclusion**

- 7.1 The proposed variation of hours would be a modest change to the overall hours in respect of current deliveries to the store. The hours would allow for effective functioning of the store which has been in situ for a considerable period of time and positioned within an area of mixed-uses, which offers a number of commercial premises and thus would not alter the character of the area through this amendment and would therefore comply with policies DM2 (Design Quality for New Development) and DM8 (Economic Development).

## **8 Recommendation**

- 8.1 Conditional Approval.

## **9 Statement of Proactive Working**

### **9.1 ARTICLE 31 - WORKING WITH THE APPLICANT**

In accordance with paragraphs 38 of the NPPF, the Isle of Wight Council takes a positive approach to development proposals focused on solutions to secure sustainable developments that improve the economic, social and environmental conditions of the area. Where development proposals are considered to be sustainable, the Council aims to work proactively with applicants in the following way:

- The IWC offers a pre-application advice service
- Updates applicants/agents of any issues that may arise in the processing of their application and, where there is not a principle objection to the proposed development, suggest solutions where possible

The application was considered suitable as submitted and therefore no further discussions were carried out.

## **Conditions**

- 2 The use of the food retail shopping floor space within the retail store shall be restricted to maximum of 15,000 square (1393 square metres) only, to the satisfaction of the Local Planning Authority.

Reason: In the interests of the function of the town centre in accordance with DM9 (Town Centre) of the Island Plan Core Strategy.

- 6 The service yard off Medina Avenue shall remain in accordance with the plan approved as part of planning application: TCP/18797/G to allow for the



purposes of unloading and loading of delivery vehicles together, with adequate turning space for the manoeuvring of articulated lorries and such space shall be kept clear of all obstruction at all times.

Reason: In the interest of highway safety in accordance with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

- 10 The gates to the service yard shall be opened for direct access purposes only and all other times shall be kept closed.

Reason: In the interest of highway safety in accordance with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

- 11 The loading and unloading of delivery vehicles shall only take place between the following hours:

07.00 and 20.00 weekdays and Saturdays

08:00 and 16.00 on Sundays and Bank Holidays

(During the period 18 December to 01 January (inclusive) deliveries of goods to and the loading and unloading of vehicles in the service yard and loading/unloading bay shall not take place outside the hours of 06.00 and 20.00 weekdays and Saturdays or outside the hours of 07.00 and 16.00 on Sundays and Bank holidays)

Reason: To protect the amenities of neighbouring properties in accordance with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

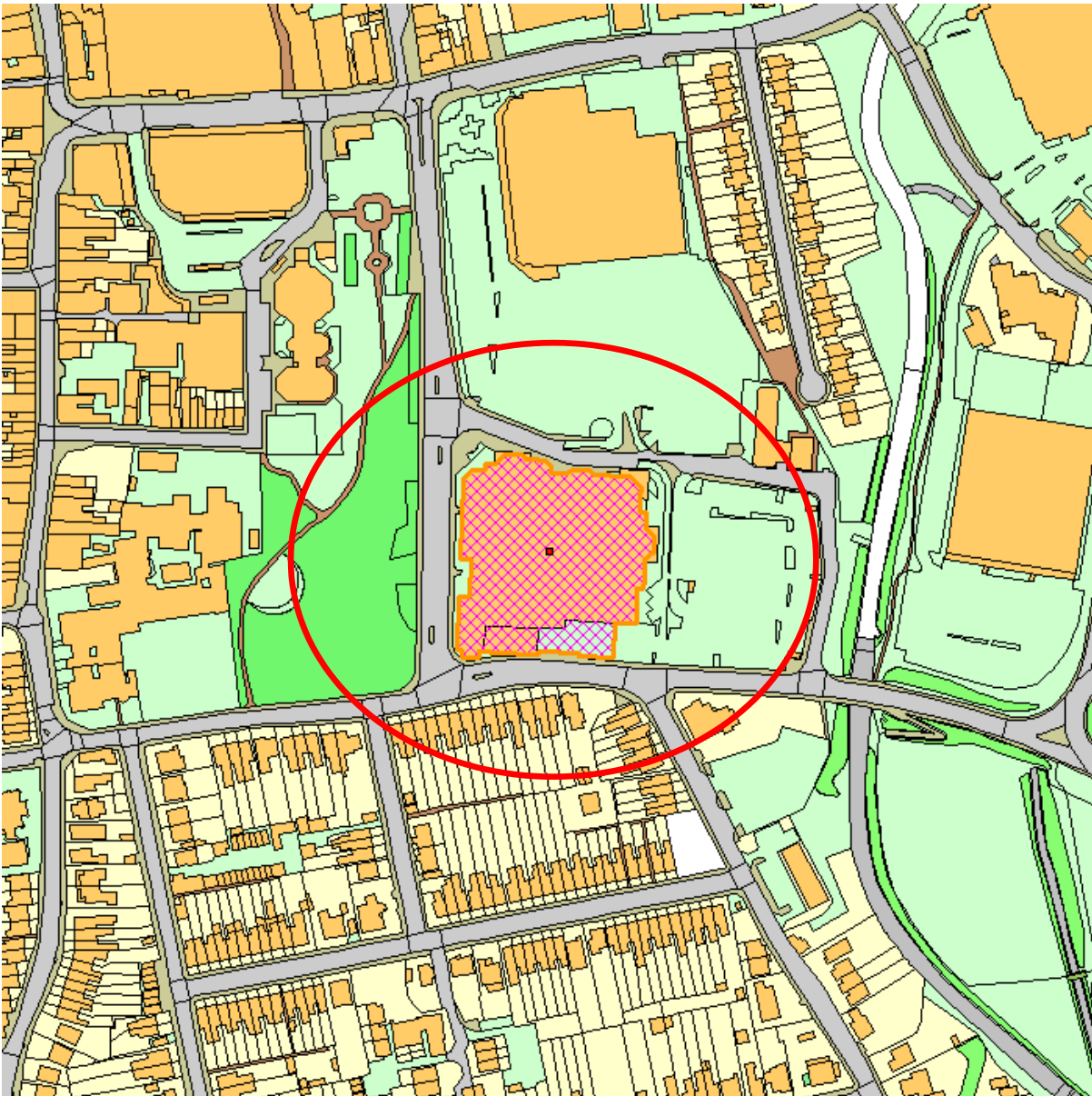
- 12 The service area on the Medina Avenue frontage shall not be used for outside storage purposes and shall be kept clear of all used crates, packing materials, boxes or waste etc at all times to the satisfaction of the Local Planning Authority.

Reason: To protect the amenities of neighbouring properties and the character of the area in accordance with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

- 13 No fixed plant or machinery shall operate on the site at any time so as to cause a noise level at the perimeter of the site which exceeds 35 dBA between 20:00 and 07:00 hours (noise levels to be measured in accordance with BS 4142) to the satisfaction of the Local Planning Authority.

Reason: To protect the amenities of neighbouring properties in accordance with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

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**02 Reference Number: 21/00684/FUL**

**Description of application:** Demolition of barns and storage buildings; proposed construction of 16 dwellings and use of existing holiday bungalow as permanent dwelling; access road, garaging/car ports, parking and associated landscaping

**Site Address:** Land at Lee Farm, Main Road, Wellow

**Applicant:** Mr and Mrs Steve Cowley

**This application is recommended for:** Conditional approval subject to the completion of a S.106 Legal Agreement

**REASON FOR COMMITTEE CONSIDERATION**

The planning application was previously referred to the Planning Committee for consideration on 1<sup>st</sup> March 2022. The original report can be viewed by following this link:

[21-00684-FUL Lee Farm Committee report](#)

The Planning Committee resolved to grant full planning permission for the development subject to conditions and a legal agreement. Since then and while the legal agreement has been negotiated, the applicant has sought to vary one of the terms of the agreement and provide an increased contribution in respect of off-site affordable housing provision. Given that the agreement reflects the resolution of the committee, this report provides members with an update on the proposed changes to the legal agreement and the options available.

This report will not repeat all of the main considerations for the application, as these were set out within the original committee report. Instead, this report focusses on the key areas of difference between the legal agreement supporting the committee's resolution and the approach now proposed by the applicant.

**MAIN CONSIDERATIONS**

- Planning history and preamble
- Progress and changes to the legal agreement

## **1. Evaluation**

### Planning history and preamble

1.1 Councillors will be aware that this planning application was considered by the Planning Committee on 1<sup>st</sup> March 2022, with the committee resolving to approve the development subject to planning conditions and the satisfactory completion of a legal agreement. The legal agreement is required to secure the following measures:

- A financial contribution towards the Bird Aware Solent mitigation strategy
- A requirement to construct or pay for the construction of a 1.75km section of the West Wight Greenway
- A financial contribution towards off-site affordable housing
- Clauses to secure post development appraisals of development costs and if returns exceed predicted values, for excess to be transferred to the Council to be spent on off-site affordable housing provision
- A requirement to install and suitably manage the agreed 'Bio-bubble' waste-water treatment plant
- A requirement to manage additional habitat enhancements for a period of at least 30 years, in order to achieve Biodiversity-Net Gain

1.2 The components of the planning application have not altered since it was considered by the Planning Committee, nor have there been changes to relevant planning policy guidance or the site itself. In addition, no further comments have been received at the time of writing this report and no changes are advised in respect of the recommended planning conditions. Therefore, this report simply seeks to address proposed changes to the legal agreement, which are discussed below.

### Progress and changes to the legal agreement

1.3 Since the Planning Committee decision in March officers have instructed the Council's Legal Services Team to draft the required legal agreement to secure the obligations outlined within paragraph 1.1 above. At the same time, the applicant has begun initial marketing with prospective Island developers, in order to deliver the approved housing once the planning consent has been issued.

1.4 As councillors will recall, the planning application was the subject of a viability appraisal due to the absence of on-site affordable housing provision, in lieu of providing the land and the delivery of a 1.75km section of the West Wight Greenway, a Council project to provide a right

of way between Newport and Freshwater utilising sections of the former railway line that previously connected Newport to Freshwater. The viability assessment outlined the standard costs associated with the proposed development, including the section of the Greenway to be constructed by the landowner, and then compared them with the likely returns for the approved housing. This comparison then leaves the residual value of the development (money left over once development costs have been deducted from returns), which in this case was to be used as a financial contribution towards affordable housing provision. The residual value for this development was predicted to be £27,120, which would be secured by the legal agreement.

- 1.5 The legal agreement also included a requirement for a post development appraisal of costs and returns, to ensure that the actual residual value was known, and whether this could result in the contribution being above the predicted value, depending on the costs and returns for the development.
- 1.6 The applicant's viability appraisal stated that the developer profit (a recognised cost of development) would be 17.5% of the Gross Development Value (GDV). However, through marketing the site, the applicant has gained feedback from prospective developers that developer profit within the industry is at minimum 20%, and that commercial lenders also set their criteria at a minimum value of 20%. The Government's Planning Practice Guidance states that developer profit should be between 15 to 20% of GDV, advising that lower returns may be more appropriate in consideration of delivery of affordable housing in circumstances where this guarantees an end sale at a known value and reduces risk. The Royal Town Planning Institute (RTPI) research paper Planning Risk and Development (2018) advises that 'a normal target would be about 20% of GDV.'
- 1.7 Lee Farm is a brownfield site that would not deliver on site affordable housing (given the committee's resolution), therefore increasing the likelihood of unknown costs associated with site clearance and potential changes to returns, which are based on open market values. In addition, officers are aware that global supply and demand issues, coupled with the increased cost of energy, raw materials and fuel have resulted in unstable costs for building materials.
- 1.8 The Royal Institution of Chartered Surveyors (RICS) advises that timber, steel sections and steel for reinforcement showed annual increases of 79.4%, 60.4% and 80% respectively in September 2021 (prior to the Russian-Ukraine war), also advising that bricks, tiles, cement and other related kilned materials have seen price increases of 24.4% over the same period, therefore increasing costs and risks associated with

development.

- 1.9 The applicants have written to officers explaining that the current requirement for a post development appraisal would undermine the sale of the site, given feedback given by prospective Island developers. The applicant has sought advice from a local estate agency and surveyors practise (Hose, Rhodes, Dickson) who have stated that *'There is a lot of uncertainty out there at the moment, so developers will only be looking at developments which present the least amount of risk. Complexity generally means more hassle and cost.'* The letter continues on to advise that *'Developers have always worked on a minimum of 20% profit and generally they are looking for more, the bigger the site gets and of course the associated risk.'*
- 1.10 The applicants have advised officers that in the interests of delivery and to provide certainty, they wish to provide a fixed financial contribution towards off-site affordable housing, that is not based on the viability report. A contribution of £80,000 towards affordable housing delivery is now proposed, which represents an increase of £52,880 over that previously presented to the committee. The applicants have confirmed that this would be reflected in the sale price for the land to a developer, rather than the residual value of the development thus removing potential viability risks associated with the post-development appraisal, increasing the likelihood for the development to go ahead and allowing the delivery of a substantial section of the West Wight Greenway.
- 1.11 Officers consider that the proposed change to the legal agreement would assist in de-risking the development. As this report notes, there are significant uncertainties regarding the cost of materials for development and given that the site is brownfield, there is the potential for further costs to be encountered, as the site is cleared and constructed. These risks threaten to risk the viability of the project particularly given the continued increase in the cost of raw materials and the related cost of processing them, which is then passed onto the purchaser.
- 1.12 The applicant's proposal to provide a greater contribution towards affordable housing in lieu of the post-development appraisal would give certainty to the Council in terms of the delivery of the development and provision of a significant section of the West Wight Greenway. The amount that has been proposed by the developer would provide a meaningful contribution that could be used by the Council to deliver affordable housing (including social housing) through initiatives such as shared purchase or adaptations to housing stock. Therefore, while the provision of a post-development appraisal would be removed from the legal agreement, officers consider that the proposed increased



contribution, which would considerably increase the level of mitigation in terms of affordable housing provision, would weigh further in favour in terms of the merits of the proposed development.

## **2. Options**

2.1 It is considered that the following options are available to Councillors:

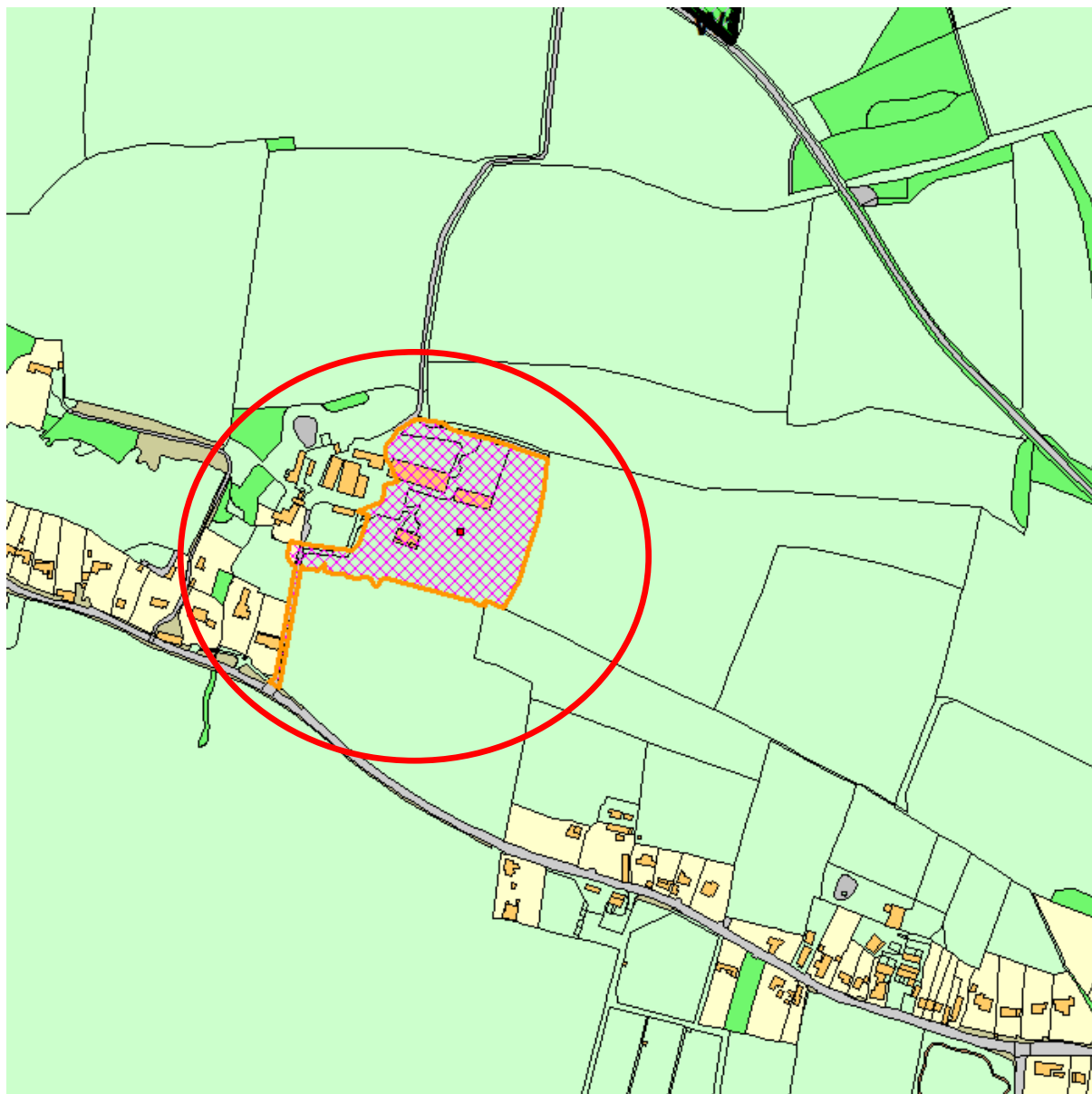
1. To agree the amended heads of terms to the legal agreement, to remove the clause stating: "Clauses to secure post development appraisals of development costs and if returns exceed predicted values, for excess to be transferred to the Council to be spent on off-site affordable housing provision".
2. To keep the terms of the agreement as previously agreed.
3. Reconsider the application in its entirety.

## **3. Conclusions and Recommendation**

3.1 The application is being brought back to committee due to proposed changes to the terms of the legal agreement set out in paragraph 8.1 of the original report and paragraph 1.1 above. It is the opinion of officers that no other material matters have changed to justify any other elements of the permission being reconsidered, so option 3 is not recommended.

3.2 The proposed amendments would secure an on-site contribution towards affordable of £80,000, an increase of £52,880 over that proposed when previously presented to committee. It would also improve the certainty of delivery of housing (on a previously developed site) and a significant section of the West Wight Greenway. Therefore option 1, rather than option 2 is recommended.

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