

**Application Number: 16/11048** Full Planning Permission

**Site:** 39 SALISBURY ROAD, TOTTON SO40 3HX

**Development:** Block of 10 flats; cycle store; landscaping; parking; access

**Applicant:** Redlane Ltd

**Target Date:** 01/11/2016

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**1 REASON FOR COMMITTEE CONSIDERATION**

Contrary to Policy CS15 (Affordable housing contribution from developments)

**2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS**

Built-up area

**3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES**

**Core Strategy**

Objectives

1. Special qualities, local distinctiveness and a high quality living environment
3. Housing
6. Towns, villages and built environment quality

Policies

CS2: Design quality

CS15: Affordable housing contribution requirements from developments

CS20: Town, district, village and local centres

CS24: Transport considerations

CS25: Developers contributions

**Local Plan Part 2 Sites and Development Management Development Plan Document**

DM2: Nature conservation, biodiversity and geodiversity

DM3: Mitigation of impacts on European nature conservation sites

DM16: Within town centres, outside Primary Shopping Areas and Secondary Shopping Frontages

TOT15: Totton town centre opportunity sites

**4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE**

Section 38 Development Plan

Planning and Compulsory Purchase Act 2004

National Planning Policy Framework

## **5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS**

SPD - Housing Design, Density and Character  
SPG - Totton Town Centre - Urban Design Framework  
SPD - Mitigation Strategy for European Sites  
SPD - Parking Standards

## **6 RELEVANT PLANNING HISTORY**

6.1 Erect 6 flats (02/75466) - refused 2/10/02

6.2 1 block of 5 flats; 1 terrace of 3 houses (12/98500) - refused 17/9/12

## **7 PARISH / TOWN COUNCIL COMMENTS**

Totton & Eling Town Council: recommends refusal:- proposal contravenes policy as the residential use is not in accordance with Local Plan allocation; building would be out of character in terms of its design and mass; the block would be dominant and overbearing to neighbouring properties with overlooking likely; disappointed to see protected tree removed without a valid reason for doing so.

## **8 COUNCILLOR COMMENTS**

None

## **9 CONSULTEE COMMENTS**

9.1 Hampshire County Council Highway Engineer:- No objection subject to conditions on parking / cycle storage.

9.2 Hampshire County Council (surface water drainage):- There is no information relating to surface water drainage

9.3 Southern Water:- No objection subject to condition

9.4 Southern Gas:- Advise of site's proximity to gas main

9.5 Ecologist:- Objects - ecological impact of removing trees has not been adequately assessed.

9.6 Tree Officer:- Objects - detrimental impact on protected trees; insufficient tree information; insufficient mitigation for tree loss.

## **10 REPRESENTATIONS RECEIVED**

10.1 5 letters of objection from adjacent / nearby properties:- overlooking resulting in loss of privacy; loss of neighbours' light; overdevelopment of the plot; building would be of a scale and design that would be out of keeping with neighbouring properties; lack of adequate on-site parking; dangerous access; adverse impact on bats; concerns about Japanese Knotweed; adverse impact on protected trees; poor outlook for some of proposed flats.

## **11 CRIME & DISORDER IMPLICATIONS**

No relevant considerations

## **12 LOCAL FINANCE CONSIDERATIONS**

If this development is granted permission and the dwellings built, the Council will receive £11,520 in each of the following six years from the dwellings' completion, and as a result, a total of £69,120 in government grant under the New Homes Bonus will be received.

From the 6 April 2015 New Forest District Council began charging the Community Infrastructure Levy (CIL) on new residential developments.

Based on the information provided at the time of this report this development has a CIL liability of £64,956.62.

Tables setting out all contributions are at the end of this report.

## **13 WORKING WITH THE APPLICANT/AGENT**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council take a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome.

This is achieved by

- Strongly encouraging those proposing development to use the very thorough pre application advice service the Council provides.
- Working together with applicants/agents to ensure planning applications are registered as expeditiously as possible.
- Advising agents/applicants early on in the processing of an application (through the release of a Parish Briefing Note) as to the key issues relevant to the application.
- Updating applicants/agents of issues that arise in the processing of their applications through the availability of comments received on the web or by direct contact when relevant.
- Working together with applicants/agents to closely manage the planning application process to allow an opportunity to negotiate and accept amendments on applications (particularly those that best support the Core Strategy Objectives) when this can be done without compromising government performance requirements.
- Advising applicants/agents as soon as possible as to concerns that cannot be dealt with during the processing of an application allowing for a timely withdrawal and re-submission or decision based on the scheme as originally submitted if this is what the applicant/agent requires.
- When necessary discussing with applicants/agents proposed conditions especially those that would restrict the use of commercial properties or land when this can be done without compromising government performance requirements.

In this case, the application proposals were not the subject of pre-application discussions. The proposal gives rise to significant objections, which cannot reasonably be addressed through negotiation as part of this planning application.

## 14 ASSESSMENT

- 14.1 The application site is a vacant site on the edge of Totton Town Centre that fronts onto Salisbury Road. The site has not been occupied for many years. The former buildings on the site have been demolished and the site is now mainly an area of rough vegetation, partly enclosed by hoardings. The site is bounded by the access to one of the town's main car parks on its northern side and this car park also wraps around the rear, western, side of the site. The site is therefore bounded by the public realm on 3 sides. To the south side of the site at 37 Salisbury Road is a 2-storey building which is used as a drop-in centre. To the north side of the car park access road at 41-43 Salisbury Road is a pair of semi-detached bungalows. There are currently some large advertising hoardings on the front boundary of the site. One of the key features of the site are 3 mature trees. There is an oak tree on the front northern corner of the site and a poplar tree on the northern boundary of the site. There is also a blue cedar tree which partly overhangs the site which is located in the neighbouring garden at 37 Salisbury Road. All 3 trees are protected with a Tree Preservation Order.
- 14.2 There have been previous applications to develop this site for residential purposes, the most recent of which was an application for 8 dwellings consisting of 5 flats in a frontage building facing Salisbury Road and a terrace of 3 dwellings facing the public car park to the rear. The application was refused in 2012 by members of the Planning Development Control Committee who felt the proposal was an overdevelopment of the site. Specifically, members felt the development at the front of the site would have been too close to the site's front and side boundaries, and they felt the development as a whole would have had a cramped appearance.
- 14.3 The application that has now been submitted is a very different proposal to the scheme that was refused planning permission in 2012. The application is for a single 3-storey building that would contain 10 flats. A separate cycle store is proposed to the building's south side. A vehicular access is proposed onto the car park access road and this would serve 9 on-site car parking spaces.
- 14.4 Policy TOT15 of the Local Plan Part 2 identifies 37-39 Salisbury Road as a Town Centre Opportunity Site, which should be developed primarily for office / community purposes. The residential development that is proposed would not accord with this policy. Nor would the proposed development accord with Policy DM16 of the Local Plan Part 2 which indicates that residential development should not take place on the ground floor of Town Centre Opportunity Sites.
- 14.5 In a supporting planning statement, the applicant's agent recognises that the proposal is contrary to policy, but argues that development of the site for a community use is unlikely given the range of facilities already available in Totton Town Centre. The applicant's agent also feels a community use would not be viable. With respect to an office use, it is argued that the supply of such premises exceeds current demand, noting that there are vacant units nearby, and therefore it is not felt it would be viable to pursue an office development. The arguments put forward by the applicant are not substantiated in any meaningful way. It is of note that there has been no apparent marketing of the premises for the uses sought under policy, and in the absence of a meaningful marketing

exercise or indeed any expert evidence, it is not felt there would be any justification to permit a wholly residential development, contrary to policy.

- 14.6 There is a clear opportunity to provide a well designed new building on the application site. However, the building that is proposed would not be well designed or contextually appropriate. With its 3-storey scale and significant mass, the proposed building would appear excessively large and dominant alongside adjacent buildings, noting that the adjacent town centre buildings to the south of the site are of a mainly 2-storey scale. The scale and depth of the building would appear particularly incongruous alongside the 2-storey domestic scale building at 37 Salisbury Road. The building would also be poorly proportioned and rather unattractive. The projecting 2-storey element with roof terrace over at the eastern end of the site would result in a rather weak and unsympathetic elevation fronting onto Salisbury Road, while the undercutting of the building at the western end of the site would also result in a weak facade. The efforts to articulate and break up the building's mass would appear rather awkward, whilst the alignment of windows and their detailed positions and designs would emphasise the building's poor proportions. Overall, the proposed building would not be a positive addition to the townscape, but would instead appear intrusive and discordant in its setting to the detriment of the character and appearance of the area.
- 14.7 The proposed development would result in the removal of a Lombardy Poplar tree which is protected by a Tree Preservation Order. The tree makes a positive contribution to the visual amenities of the area and its loss would be detrimental to the character and appearance of the area. The proposed layout would not allow for replacement tree planting that would enable the loss of this tree to be mitigated. The proposed development would also be likely to have an impact on the root system of a protected oak tree on the frontage of the site and a protected cedar tree growing to the front of 37 Salisbury Road. It is also likely that lateral branches of both trees would need to be significantly pruned, and there are additional concerns that the cedar tree would cause shading of some of the proposed flats leading to potential future pressures to have this tree removed. Therefore, the green amenity and landscape character afforded by the existing mature trees is likely to be significantly compromised by this proposal. It is not felt that the scheme would deliver townscape or design benefits to outweigh the actual and potential future loss of these protected trees.
- 14.8 The proposed development would include a number of upper floor windows and balconies that would look out towards 41 Salisbury Road (which is not accurately shown on the submitted plans). The balconies would be only about 10 metres away from the rear garden area of 41 Salisbury Road. Given this proximity, and given the number of windows and balconies facing 41 Salisbury Road, it is felt this property would be unacceptably overlooked to the detriment of the privacy of the occupants of this property. The proposed development would also result in some overlooking of the rear garden of 37 Salisbury Road. Although this property is not in residential use, it is apparent that the rear garden of 37 Salisbury Road is actively used by the existing site users who value the privacy that this garden area provides. The development would appear rather intrusive from the rear garden of 37 Salisbury Road, and with the upper floor windows creating a perception of overlooking it is felt the amenities of the occupants of 37 Salisbury Road would be unacceptably affected.

- 14.9 The level of on-site car parking is below the level of car parking that is recommended in the Council's Supplementary Planning Document on parking. However, in view of the site's sustainable town centre location, the Highway Authority are satisfied that the shortfall in parking will not have any adverse impact on users of the local highway network. The Highway Authority have no objection to the access arrangements.
- 14.10 The Ecologist advises that there has been no ecological assessment of the poplar tree that is to be removed, particularly in terms of its capacity to provide a habitat for protected bat species. Without such an assessment, it cannot be safely concluded that the proposed development would have no adverse impact on protected species. In this respect, the proposal would therefore be inconsistent with both local plan and national planning policies.
- 14.11 In accordance with the Habitat Regulations 2010 an assessment has been carried out of the likely significant effects associated with the recreational impacts of the residential development provided for in the Local Plan on both the New Forest and the Solent European Nature Conservation Sites. It has been concluded that likely significant adverse effects cannot be ruled out without appropriate mitigation projects being secured. In the event that planning permission were to be granted for the proposed development, a condition would be required that would prevent the development from proceeding until the applicant has secured appropriate mitigation, either by agreeing to fund the Council's Mitigation Projects or otherwise providing mitigation to an equivalent standard. The full habitat mitigation contribution that would be required in this case would be £26,500.
- 14.12 Based on the requirements of Core Strategy Policy CS15, the proposed development is one that should secure 4 on-site affordable housing units. However, on 28th November 2014 the Government issued planning guidance setting out the specific circumstances in which contributions for affordable housing and tariff style planning obligations (section 106 agreements) should not be sought from small scale and self-build development. This guidance has been reissued following the order of the Court of Appeal dated 13<sup>th</sup> May 2016 (*West Berkshire District Council and Another v The Secretary of State for Communities and Local Government*). The planning guidance specifies the circumstances in which contributions should not be sought as follows:

*"Contributions should not be sought from developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1,000 sqm;*

*In designated rural areas, local planning authorities may choose to apply a lower threshold of 5 units or less...;*

*Affordable housing and tariff style contributions should not be sought from any development consisting only of the construction of a residential annex or extension to an existing house"*

This national guidance is at odds with Policy CS15 of the Council's Core Strategy which requires many small scale housing developments including the current application proposals to make affordable housing provision.

- 14.13 The presumption in favour of the development plan remains, in that the decision should be taken in accordance with the plan unless material considerations indicate otherwise. The new guidance is a material consideration which post-dates the adoption of the Local Plan. It is for the Council to decide which should prevail in the determination of a planning application. However, the Secretary of State, through his Inspectors, can be anticipated to give greater weight to the Government's national guidance unless there are reasons to make an exception.
- 14.14 While the need for affordable housing in this District is pressing, this in itself is unlikely to be considered by the Secretary of State as sufficient reason for the Council to apply its own development plan policy rather than applying national policy. Therefore, it is recommended that no affordable housing or tariff style contributions are sought from this development, in accordance with national Planning Practice Guidance, contrary to the provisions of Policy CS15 of the Core Strategy.
- 14.15 Although there is a lack of information on drainage, it is considered that drainage matters could be adequately addressed by condition were the planning application otherwise acceptable.
- 14.16 Overall, the proposed development would be inconsistent with Local Plan policies and objectives. The proposed development would be contrary to a site specific policy that identifies this site as a town centre opportunity site. In addition, the development would be poorly designed and detrimental to the character and appearance of the area. The development would also have an unjustified adverse impact on protected trees and would be detrimental to residential amenities and ecological interests. As such, the application is recommended for refusal.
- 14.17 In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that this recommendation, if agreed, may interfere with the rights and freedoms of the applicant to develop the land in the way proposed, the objections to the planning application are serious ones and cannot be overcome by the imposition of conditions. The public interest and the rights and freedoms of neighbouring property owners can only be safeguarded by the refusal of permission.

## Section 106 Contributions Summary Table

Proposal:			
Type of Contribution	NFDC Policy Requirement	Developer Proposed Provision	Difference
<b>Affordable Housing</b>			
No. of Affordable dwellings	4	0	-4
Financial Contribution	0	0	0
<b>Habitats Mitigation</b>			
Financial Contribution	£26,500		

Type	Proposed Floorspace (sq/m)	Existing Floorspace (sq/m)	Net Floorspace (sq/m)	Chargeable Floorspace (sq/m)	Rate	Total
Dwelling houses	779	0	779	779	£80/sqm	£64,956.62 *
Subtotal:	£64,956.62					
Relief:	£0.00					
Total Payable:	£64,956.62					

\* The formula used to calculate the amount of CIL payable allows for changes in building costs over time and is Index Linked using the All-in Tender Index Price published by the Build Cost Information Service (BICS) and is:

*Net additional new build floor space (A) x CIL Rate (R) x Inflation Index (I)*

## 15. RECOMMENDATION

### Refuse

#### Reason(s) for Refusal:

1. The application site forms part of an identified Town Centre Opportunity Site that Policy TOT15.13 of the Local Plan Part 2: Sites and Development Management indicates should be developed primarily for office and community uses. The residential development that is proposed would be contrary to this policy, and would therefore also be contrary to Policy DM16 of the Local Plan Part 2: Sites and Development Management which seeks to ensure that residential development in town centres does not prejudice the specific redevelopment opportunities identified in the Local Plan.
2. The proposed development would be a poor and contextually inappropriate design that would cause significant harm to the character and appearance of the area, in particular because:-
  - a) the size, scale and footprint of the building would appear incongruous and intrusive in this setting, appearing too dominant relative to adjacent buildings.
  - b) the building would be of an unsympathetic and poorly proportioned appearance, with weak and awkward elements and details that would mean that the building would not be of an appropriate design quality for this prominent site at the entrance to Totton Town Centre.
 As such, the proposal would be contrary to Policy CS2 of the Core Strategy for New Forest District outside of the National Park.



3. The proposed development would result in the unjustified loss of a poplar tree that is protected by a Tree Preservation Order, and which makes an important contribution to the visual amenities of the area. The development would also be set in close proximity to a protected oak and a protected cedar tree. As a result of this proximity and in the absence of any supporting arboricultural assessment, it is considered probable that the proposed development would be harmful to the root system of these protected trees, as well as necessitating significant pruning of these trees. It is also considered likely that future occupants of the proposed building would seek to have significant works undertaken to the cedar tree due to the perceived dominance of this tree. As such, due to both the immediate effects of the development on the poplar tree, and the longer term effects of the development on the other 2 trees, the development is one that would cause significant harm to the visual amenities of the area, without offering a layout and design that could mitigate or justify these harmful effects. Accordingly, the proposal would be contrary to Policy CS2 of the Core Strategy for New Forest District outside of the National Park.
4. In the absence of an appropriate ecological survey, the Local Planning Authority is not satisfied that the proposed development could be implemented without adversely affecting protected species, specifically protected bat species for which the application site (particularly the protected trees) has the potential to provide suitable habitat. As such, the proposal would be contrary to Policy CS3 of the Core Strategy for New Forest District outside the National Park and Policy DM2 of the Local Plan Part 2: Sites and Development Management.
5. The proposed development would be detrimental to the amenities and privacy of neighbouring properties. Specifically:-
  - a) the adjacent property to the north of the site at 41 Salisbury Road would be harmfully overlooked to the detriment of the privacy of the occupants of this property, having regard to the proximity of a number of balconies and upper floor windows to this property and its private rear garden.
  - b) the proposed development would appear visually intrusive from the neighbouring property at 37 Salisbury Road, with upper floor windows in the proposed development resulting in a harmful perception of overlooking the neighbouring property's rear garden.As such, the proposed development would be contrary to Policy CS2 of the Core Strategy for New Forest District outside of the National Park.

**Notes for inclusion on certificate:**

1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case, the application proposals were not the subject of pre-application discussions. The proposal gives rise to significant objections, which cannot reasonably be addressed through negotiation as part of this planning application.

**Further Information:**

Major Team

Telephone: 023 8028 5345 (Option 1)



**New Forest**  
DISTRICT COUNCIL

Tel: 023 8028 5000  
[www.newforest.gov.uk](http://www.newforest.gov.uk)

David Groom  
Service Manager  
Planning and Building Control  
New Forest District Council  
Appletree Court  
Lyndhurst  
SO43 7PA

**Planning Development  
Control Committee  
October 2016**

**Item No: 3p**

**39**

**Salisbury Road  
Totton**

**16/11048  
SU3513**

**Scale 1:1250**

**N.B. If printing this plan from  
the internet, it will not be to  
scale.**

