

Application Number: 16/11638 Full Planning Permission

Site: St JOHNS CAR PARK, ST JOHNS STREET, HYTHE SO45 6DA

Development: Lidl foodstore (Use Class A1); parking; associated landscaping; access works; demolition of existing

Applicant: Lidl UK

Target Date: 05/04/2017

Extension Date: 12/05/2017

1 REASON FOR COMMITTEE CONSIDERATION

Contrary to Town Council View.

2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS

Built-up area
Site bounded by Hythe Conservation Area

3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES

Core Strategy

Objectives

1. Special qualities, local distinctiveness and a high quality living environment
2. Climate change and environmental sustainability
4. Economy
6. Towns, villages and built environment quality

Policies

- CS1: Sustainable development principles
- CS2: Design quality
- CS3: Protecting and enhancing our special environment (Heritage and Nature Conservation)
- CS4: Energy and resource use
- CS6: Flood risk
- CS10: The spatial strategy
- CS17: Employment and economic development
- CS20: Town, district, village and local centres
- CS24: Transport considerations

Local Plan Part 2 Sites and Development Management Development Plan Document

- DM1: Heritage and Conservation
- DM16: Within town centres, outside Primary Shopping Areas and Secondary Shopping Frontages
- HYD4: Hythe town centre opportunity sites
- HYD5: Car park extensions

4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Section 38 Development Plan

Planning and Compulsory Purchase Act 2004

National Planning Policy Framework

Planning (Listed Buildings and Conservation Areas) Act 1990

Section 66: General duty as respects listed buildings in exercise of planning functions:

- (1) In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- (2) Without prejudice to section 72, in the exercise of the powers of appropriation, disposal and development (including redevelopment) conferred by the provisions of sections 232, 233 and 235(1) of the principal Act, a local authority shall have regard to the desirability of preserving features of special architectural or historic interest, and in particular, listed buildings.
- (3) The reference in subsection (2) to a local authority includes a reference to a joint planning board
- (4) Nothing in this section applies in relation to neighbourhood development orders.

Section 72: General duty as respects conservation areas in exercise of planning functions:

In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

The provisions referred to in subsection (1) are the planning Acts and Part I of the Historic Buildings and Ancient Monuments Act 1953 and sections 70 and 73 of the Leasehold Reform, Housing and Urban Development Act 1993.

In subsection (2), references to provisions of the Leasehold Reform, Housing and Urban Development Act 1993 include references to those provisions as they have effect by virtue of section 118(1) of the Housing Act 1996.

Nothing in this section applies in relation to neighbourhood development orders.

5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS

SPG - Hythe - A Conservation Area Appraisal

SPD - Parking Standards

6 RELEVANT PLANNING HISTORY

None

7 PARISH / TOWN COUNCIL COMMENTS

Hythe & Dibden Parish Council: recommend refusal - object to the loss of the St John's Street Car park as the loss of car parking spaces would have a significant effect on the economic wellbeing of Hythe; Object to the design - consider the size and design of the building is not suitable on this important site that is surrounded by the Conservation Area and directly adjacent to a Grade 2 Listed Church; consider the design to be in conflict with the Council's adopted Conservation Area appraisal; the design would not respond to local distinctiveness; concerns about the current infrastructure's ability to cope with delivery lorries accessing the site; conflict between delivery lorries and pedestrians; concerns about future advertising; concerns about noise levels generated by plant, machinery and delivery lorries; concerns about lighting; concerns about antisocial behaviour in the car park; loss of raised wall and trees would not be appropriate.

8 COUNCILLOR COMMENTS

None

9 CONSULTEE COMMENTS

- 9.1 Hampshire County Council Highway Engineer: no objection subject to conditions on parking, and construction management and subject to securing transportation contributions and green travel plan requirements through a Section 106 legal agreement.
- 9.2 Natural England: no objection
- 9.3 Southern Gas Networks: advise of site's proximity to gas main
- 9.4 Conservation Officer: recommends refusal - the proposal would have a negative and harmful impact on adjacent heritage assets.
- 9.5 Urban Design Officer: objects - the design is inappropriate and unsympathetic to its setting in terms of scale, layout, appearance, and in its relationship to adjoining buildings and landscape features; the development is visually intrusive and harmful to the character and appearance of the area.
- 9.6 Tree Officer: objects - the proposal would result in the loss of important amenity trees, in particular the Pine and Horse Chestnut at the New Road entrance to the car park.
- 9.7 Environmental Health (air quality): no objection subject to condition
- 9.8 Environmental Health (noise): further information is requested - noise management plan should be submitted to look at all noise and to consider what mitigation can be used.
- 9.9 Environmental Health (contaminated land): no objection subject to conditions
- 9.10 Ecologist: no objection subject to conditions.
- 9.11 Hampshire County Council (Surface water drainage): final views awaited.

10 REPRESENTATIONS RECEIVED

- 10.1 61 letters of objection/ concern from local residents:- adverse impact on neighbours' privacy from overlooking windows and CCTV cameras; development will have an overbearing impact on neighbours and will result in a loss of light and outlook; noise intrusion arising from HGV and traffic movements and general activities associated with the proposed use; increased litter nuisance; odour nuisance from cigarettes; increased risk to security of adjacent properties; disruption during construction; light pollution; increased traffic and HGV movements to detriment of highway safety; loss of public car park / inadequate on-site parking to meet demand, which would be to the detriment of highway safety; poor and contextually inappropriate design; scale would be out of keeping; adverse visual impact; adverse impact on Conservation Area; adverse impact on setting of adjacent Listed church; store will adversely affect unique character of Hythe; design quality has been significantly reduced from the design that was promoted at a public consultation; adverse impact on other businesses; potential increases in antisocial behaviour due to late night opening hours; increased pressure on inadequate drainage infrastructure; adverse impact on blue badge holders and visitors to adjacent cancer centre; loss of trees; lack of need; proposal would be contrary to Council's own policies including its own Conservation Area Appraisal.
- 10.2 1 letter of objection from Parochial Church Council: objection similar to those raised above with particular concerns about the design of the development and its impact on the setting of St John the Baptist's church.
- 10.3 6 letters of support from local residents: proposal will provide more retail choice that will be of benefit to local residents.
- 10.4 1 petition with 28 signatories expressing concerns that development could lead to additional parking pressures in Mousehole Lane

11 CRIME & DISORDER IMPLICATIONS

See Assessment below

12 LOCAL FINANCE CONSIDERATIONS

Local financial considerations are not material to the decision on this application

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, there were lengthy pre-application discussions with the applicant. Unfortunately, the submitted application does not respond positively to that pre-application advice, but nonetheless, as set out in the report below, it is felt, on balance, that the scheme is acceptable. On receipt of the application it was noted that the submitted drawings did not reflect the advice and in fact showed a wholly unacceptable approach based on adding discordant elements to an otherwise "standard" Lidl store. Officers suggested that if the bespoke approach was no longer an option, that the application be amended to show a "standard" store.

14 ASSESSMENT

Introduction

- 14.1 This application relates to the St John's Street public car park in the centre of Hythe. The application site also encompasses an enclosed storage yard, forming part of the PC Builders site, on which there is an unsightly existing pitched roofed storage building. The existing public car park has a frontage onto both St John's Street to the east and New Street to the west. The car park lies immediately to the south of the St John the Baptist's Church, which is a Grade II Listed Building. To the south-west of the application site are a number of residential dwellings at Court House Close, whilst to the south-east the site is bounded by other land occupied by PC Builders. The site is outside of the Hythe Conservation Area, but is bounded by the Hythe Conservation Area on its northern, eastern and south-western sides. 13-17 St John's Street, which are set close to the northern corner of the site, are also Grade II Listed. On the site itself, there are a number of mature trees, particularly adjacent to the site's northern boundary and adjacent to New Street. There are also a number of younger, recently planted trees along the site's frontage with St John's Street.
- 14.2 The submitted application seeks to redevelop the site with a new Lidl retail foodstore. The new store would have a gross internal floorspace of 2178 square metres and a sales area of 1377 square metres. The application also proposes a reconfiguration and widening of the existing site access onto New Street. 104 car parking spaces are proposed in association with the proposed development.

Site Specific and Town Centre Policy considerations

- 14.3 The site is, in part, affected by Policy HYD4.1 of the Local Plan Part 2, which identifies land in the vicinity of St John's Street Car Park as a Town Centre Opportunity site where development should be primarily for retail purposes. The retail development that is proposed is therefore supported by this policy.
- 14.4 Part of the application site (the land occupied by PC Builders) is also subject to Policy HYD5 of the Local Plan Part 2. This policy, which also extends to adjacent land to the south, identifies this land for a possible public car park extension. The submitted application would not meet this policy aspiration. However, the policy is expressed only as an aspiration (that is not now likely to be pursued) rather than as a firm allocation, and in these circumstances, it is not felt the proposed development would conflict unacceptably with this policy.
- 14.5 As the whole of the application site is inside the Hythe Town Centre boundary, Policy DM16 of the Local Plan is also relevant to this proposal. This policy allows for retail development in town centre locations. The proposal is therefore in accordance this policy.
- 14.6 The proposal would result in the loss of one employment use on the site (PC Builders) and it's replacement with a new employment use. PC Builders have been granted planning permission (ref 16/11637) to develop a new building at Hardley Industrial Estate, which would enable this business to continue to operate.

Retail Impact & Economic Considerations

- 14.7 In considering any new retail store, it is necessary to have regard to the advice of the National Planning Policy Framework (NPPF) and National Planning Policy Guidance. The NPPF expects Local Planning Authorities to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date Local Plan. Thus, Local Planning Authorities should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered.
- 14.8 In this case, the application site is a Town Centre site as defined by the Council's own Local Plan, although it is not within a Primary Shopping Area or a defined Shopping Frontage. The applicants have submitted a detailed retail assessment which suggests the site should be viewed as an edge of centre site, and where any consideration of Sequentially Preferable alternative sites should be focused on the Primary Shopping Area. They have been unable to locate any areas within the Primary Shopping Area that would be suitable to accommodate the scale of development proposed, and looking at other sites within Hythe Town Centre, they have concluded that there are no alternative suitable and available sequentially preferable sites to accommodate the proposed development. The applicant's conclusions on this matter are accepted, and, as such, it is considered that sequential test requirements are satisfied.
- 14.9 The National Planning Policy Framework also requires the submission of a retail impact assessment for retail development outside of town centres where the development is over thresholds specified in Local Plans. The

Council's Local Plan seeks the submission of a retail impact assessment for retail developments of over 1000 square metres that are outside of town centre boundaries. As previously indicated the site is inside a town centre boundary, so based on the Council's own definition of a town centre, a retail impact assessment is not required. However, the applicants have applied a tighter definition of a town centre as defined in the NPPF and have carried out a retail impact assessment. This report concludes that levels of trade diversion will be modest and all resulting impacts will be minor. There is considered no reason to disagree with the conclusions of the applicant's retail impact assessment. In essence, it is not felt that the proposal would be likely to have a significant adverse impact on town centre vitality and viability and therefore the retail impact of this proposed development is considered to be in accordance with both national and local policy.

- 14.10 Core Strategy Policy CS20 identifies a need for 350 square metres of additional convenience retail floorspace in Hythe between 2012 and 2018. However, the more recent New Forest Retail Study Update from 2010 concluded that "Within Totton, New Milton and Hythe, there could be reasonable scope for reasonable sized foodstores (over 1000 square metres net)". Indeed, the study identifies £10.45 million of convenience goods expenditure capacity in Hythe at 2018 based on the area's existing market share, which is significantly higher than the expected turnover of the proposed Lidl. Furthermore, an assessment commissioned by the Council in 2015 has concluded that a new discount foodstore in the village "will have a positive rather than negative impact on Hythe" and that "an increase in convenience goods turnover should benefit the majority of retail and service businesses within the town centre". The report concludes that "a discount foodstore will strengthen rather than harm the vitality and viability of Hythe Town Centre as a whole". Having regard to these various assessments, it is clear that the development that this application proposes will meet a clear and justified need for additional convenience retail floorspace in the centre of Hythe that will result in significant benefits to the vitality of Hythe town centre, as well as bringing significant economic benefits through the provision of significant new employment opportunities.

Highway & Transportation Considerations

- 14.11 The Highway Authority have confirmed that the widened access onto New Road would be acceptable from a highway safety perspective. Initially, they had raised concerns about the impact of widening the access on pedestrians. However, following the submission of additional information that shows that the widened access will include tactile crossings, and that there will be formal pedestrian crossings within the site, the Highway Authority are satisfied that the New Road access arrangements will not be to the detriment of pedestrians. The St John's Street access would be an entrance only, with no access permissible onto this street. The Highway Authority are therefore satisfied that this access would also be appropriate.
- 14.12 The applicants have submitted a detailed Traffic Impact Assessment. This data indicates that there is typically spare capacity at both the St John's Street car park and the nearby New Road car park. A parking accumulation exercise has demonstrated that the typical number of vehicles currently parking at St John's Street could be satisfactorily accommodated within the nearby New Road car park. As such, the Highway Authority have confirmed that the loss of the St John's Street car park as a public car park would not be detrimental to highway safety. Furthermore, the Highway Authority are satisfied that the redistribution of car parking within Hythe is unlikely to

significantly impact on the capacity, safety, or operation of the local highway network.

- 14.13 The Council's Parking Standards Supplementary Planning Document recommends that 98 car parking spaces should be provided on the site on the basis of the total sales area. The 104 car parking spaces that this development proposes would therefore be marginally in excess of the Council's recommended guidelines which is considered to be acceptable. The Highway Authority has also confirmed that the development makes adequate disabled parking provision, as well as providing adequate parking areas for cyclists.
- 14.14 The Highway Authority has confirmed that the applicants have provided adequate information by way of swept path analyses to show that large articulated vehicles making deliveries to the site can enter and leave the site in a safe manner.
- 14.15 The applicants have submitted a Travel Plan. The Highway Authority has confirmed that this is generally of very good standard, but that there are a few areas that need to be reviewed before the Travel Plan can be approved as fit for purpose. It is felt that the outstanding Travel Plan requirements could reasonably be resolved through either a condition or a Section 106 legal agreement.
- 14.16 The Highway Authority advise that the applicant needs to provide a financial contribution towards highway improvements in Hythe in order to mitigate the impacts of the development. Based on the fact that the development would be expected to generate in excess of 330 additional daily pedestrian and cycle movements together with 1299 additional daily vehicle movements, the Highway Authority advise that the contribution should be £140,000, and they have duly identified schemes to which this contribution would be put. This requirement is considered to be reasonable and one that should be secured through a Section 106 legal agreement.
- 14.17 Overall, having regard to the Highway Authority's detailed assessment of the applicant's proposals, it can be reasonably concluded that the proposed development would not have an adverse impact on highway safety.

Design & Heritage Considerations

- 14.18 The building would be neither a traditionally responsive building nor a well-designed contemporary proposal. Moreover, the design of the building and in particular the glazed north- west elevation, the main entrance and the trolley park would be commercially assertive and insensitive in such close proximity to a place of community worship. The grounds of the church are culturally associated with a pattern of reflective remembrance and the building would be strikingly at odds with and detract from the significance of the grade 2 listed church and its setting.

In respect of the setting of Nos 13 and 17 St Johns Street, when viewed from the street the fronts of these listed dwellings are seen in the context of the church and its grounds and the public car park. The car park currently has a neutral impact on the setting of the dwellings. The proposed retail building situated within the car park will intrude into this view to some extent and would thereby have a small but negative impact on the setting of these listed buildings.

The desirability of preserving or enhancing the character or appearance of the adjoining conservation area and its setting is also a material consideration, and great weight should be given to the area's conservation. In this respect, the public car park, the existing builder's yard building and the dwellings at 1-3 Court House Close have a negative impact on the conservation area. The openness of the car park allows for views into and across the conservation area, providing a visual link between the church and the buildings of St Johns Street which tells the story of the village and its development. The proposed building pays no regard to this context and would harmfully detract from the setting of the conservation area due to its poor quality design.

- 14.19 Overall, it is recognised that the development is quite an intensive development, and the depth of building, in particular, means that the development is somewhat at odds with the surrounding context. While the conclusion reached by the Council's Conservation Officer is understood, it is felt that, in identifying harm, insufficient weight has been given to the harmful impact of the existing buildings. When one considers the design of the proposed development in relation to the status quo, it is felt that there will be significant visual improvements that weigh strongly in the development's favour. It is accepted that because elements of the development's design are not entirely comfortable there would be less than substantial harm to adjacent heritage assets, albeit that the harm would be at the low end of the harmful spectrum. However, with the significant visual improvements that are proposed, and with the significant public (social and economic) benefits that would arise from the provision of much needed additional sheltered accommodation for the elderly, it is considered that the benefits of the development would materially outweigh the limited harm. In this respect, the proposal would accord with Paragraph 134 of the National Planning Policy Framework.
- 14.20 The development's adverse visual impact would be compounded by its rather austere car park setting. The car park should be a good space in its own right, but instead it would be largely a functional space for motor vehicles that would suffer from a lack of greenery. The loss of 2 mature trees to accommodate the widened New Road access would be particularly unfortunate. Overall, the proposed external spaces would have an unsympathetic appearance that would add to the development's visual harm.
- 14.21 It is clear that the design of the development as whole is poor. Its standard design format seeks to meet the needs of customers within the store, but fails to respond positively to the public realm into which the store would be inserted. The proposal would be detrimental to local distinctiveness and the character and appearance of the area, and in this respect the proposal would therefore be contrary to Local and National Planning policies. The proposal would also be harmful to adjacent Heritage assets. On balance, and considering the proposal in the light of the National Planning Policy Framework, it is felt that the harm would be less than substantial rather than substantial. Having reached this conclusion, planning permission should not be granted for this proposal unless the public benefits of the proposal outweigh the harm.

Neighbour Amenity Considerations

- 14.22 The long south-west side elevation of the building would be set in close proximity to the side of 1 and 4 Court House Close. The building would be materially higher than the existing buildings within the PC builders yard that would be demolished. The building would also have a longer and more unbroken roof form. As such, the proposed building would appear as quite a dominant and intrusive feature from both of these adjacent properties. Due to its height and mass, it is felt the building would have an adverse impact on the outlook on both of these nearest adjacent dwellings, contrary to Policy CS2 of the Council's Core Strategy. From a privacy perspective, however, the development would not be harmful as there are no main windows or openings on the side elevation facing Court House Close.
- 14.23 The application is accompanied by a Noise Impact Assessment. This confirms that noise from deliveries will have a significant adverse impact on the proposed dwellings to the south-east (that are the subject of planning application 16/11639). However, the report suggests that this significant adverse impact will only be an occasional impact limited to 2 deliveries a day between 7am and 11 pm. The Noise Impact Assessment also suggests that the impact could be mitigated if a good (acoustic) window design is installed on the adjacent proposed residential dwellings. The Council's environmental health officer has considered the applicant's noise assessment and feels that they should be doing more to look at ways in which significant adverse impacts can be avoided, potentially through a noise management plan. The applicants have recently submitted additional information in an attempt to address the concerns of the Council's environmental health officer, and the consideration of this additional information will need to be the subject of a further update.

Arboricultural Considerations

- 14.24 As indicated above, a number of trees would be removed to accommodate the proposed development. This includes a mature Austrian Pine and a mature Horse Chestnut tree adjacent to the site's New Road entrance. The Council's tree officer has objected to the loss of these 2 trees. It is accepted that these 2 trees make a positive contribution to the area and their loss would be harmful to the visual amenities of the area. Furthermore, it is felt that the new landscape planting proposed by the applicant would not adequately mitigate for the loss of these 2 trees.

Ecological Considerations

- 14.25 The submitted application is accompanied by an ecological assessment, which highlights that there are some low bat potential features affected and lost through the proposal. The applicant's ecologist has recently provided further information which has enabled the ecologist to support the application subject to condition.

Flood Risk & Drainage Considerations

- 14.26 A small part of the application site is within Flood Zone 2, and a tiny slither of the site adjacent to St John's Street is within Flood Zone 3. Importantly, the whole of the proposed building is outside of these Flood Zones. Therefore, the proposed building is not one that is likely to flood, and nor should it increase flood risk elsewhere. A small part of the car park may flood in a flood risk event, but this is no different to at present. The

applicants have submitted a Flood Risk Assessment which concludes that the development would be acceptable from a Flood Risk perspective and there is considered no reason to disagree with this conclusion.

- 14.27 The applicant's Flood Risk Assessment also considers surface water drainage. Because the application would result in an increase in impermeable area, Sustainable Drainage Measures (SUDs) are proposed to ensure that surface water is managed effectively and thereby ensure that there is no additional impact on the existing drainage regime. The principles that are suggested within the applicant's Surface Water Strategy appear to be acceptable, although through consultation with Hampshire County Council, there is a need to ensure that the detail is acceptable as well. This matter needs to be the subject of further update as feedback from Hampshire County Council's drainage team is still awaited.

Sustainability Considerations

- 14.28 To accord with Policy CS4 of the Council's Core Strategy, the development (as a commercial building of over 1000 square metres) is one that is required to meet a BREEAM 'excellent' standard. The applicant's Design and Access Statement indicates that various sustainable measures will be incorporated into the development but is silent on BREEAM. However, there does not seem to be any reason why a BREEAM 'excellent' rating would be unachievable, and it is felt this requirement can reasonably be secured through a condition of any planning permission.

Balancing the different considerations & Conclusions

- 14.29 It is clear from the above that there are significant points in the development's favour, particularly in terms of the improved retail provision that this development will bring to Hythe, together with the associated economic benefits which will be good for town centre vitality. However, weighed up against these positives, there are also some significant negatives. The development would have a poor and contextually inappropriate design that would be harmful to local distinctiveness, the character and appearance of the adjacent Hythe Conservation Area, and the setting of the Grade II Listed Building to the north and north-east of the site. The development would also cause some harm to the amenities of the immediately adjacent dwellings in Court House Close, while the relationship of the proposed service yard to the proposed flats to the south would be far from ideal. In addition, there would be an adverse impact on trees. For these reasons, the proposal would be contrary to policies CS2 and CS3 of the Council's Core Strategy, Policy DM1 of the Local Plan Part 2 and indeed Paragraph 64 of the National Planning Policy Framework that suggests that poor designs should be refused planning permission.
- 14.30 Given the scheme's contrasting positive and negative impacts, this is ultimately a very finely balanced decision. However, on balance, it is considered that the public (economic and social) benefits of the proposed development outweigh the environmental harm. For this reason, it is considered that the less than substantial harm to adjacent heritage assets that has been identified is a justifiable harm in the context of Paragraph 134 of the National Planning Policy Framework.
- 14.31 On balance, therefore, this application is recommended for permission subject to first securing transportation contributions and green travel plan requirements through a completed Section 106 legal agreement. This

recommendation for permission is made on the basis that some of the more technical issues raised by consultees are ultimately capable of being satisfactorily mitigated by condition. There will be a need for a number of detailed conditions to ensure that the development is of a high a quality as it reasonably can be and to ensure adequate compliance with policy.

- 14.32 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 there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed. In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

Section 106 Contributions Summary Table

Proposal:			
Type of Contribution	NFDC Policy Requirement	Developer Proposed Provision	Difference
Affordable Housing			
Transportation Improvements	£140,000	£140,000	0

15. RECOMMENDATION

That the Service Manager Planning and Building Control be **AUTHORISED TO GRANT PERMISSION** subject to:

- i) the prior completion of a Section 106 legal agreement to secure a Travel Plan and associated set-up and monitoring fees and bond; and a financial contribution of £140,000 towards identified transportation schemes;
- ii) the imposition of the conditions set out below:

Proposed Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development permitted shall be carried out in accordance with the following approved plans: 3341 12 M, 3341 18 N, 3341 11 A, 3341 06 A, PR-011 rev G, PR-012, PR-013, PR-014, 3341 01 F, 3341 13 A, 3341 07 L, 3341 05 AB, 3341 03 G.

Reason: To ensure satisfactory provision of the development.

3. Written documentary evidence demonstrating that the development hereby approved has achieved as a minimum a rating of EXCELLENT against the BREEAM standard shall be submitted to the Local Planning Authority and verified in writing prior to the first occupation of this aspect of the development, unless an otherwise agreed time frame is agreed in writing by the Local Planning Authority. The evidence shall take the form of a post construction certificate as issued by a qualified BREEAM certification body.

Reason: In the interests of resource use and energy consumption in accordance with policy CS4 of the Core Strategy for the New Forest District outside the National Park.

4. Before development commences, samples or exact details of the facing and roofing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be implemented in accordance with the approved details.

Reason: To ensure an acceptable appearance of the development in accordance with policy CS2 of the Core Strategy for the New Forest District outside the National Park.

5. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or species, unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure the appearance and setting of the development is satisfactory and to comply with Policy CS2 of the Local Plan for New Forest District outside the National Park (Core Strategy)

6. No development hereby permitted shall commence until a Construction Traffic Management Plan, to include details of provision to be made on site for contractor's parking, construction traffic access, the turning of delivery vehicles within the confines of the site, lorry routeing and a programme of works has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented before the development hereby permitted is commenced and retained throughout the duration of construction.

Reason: In the interests of highway safety and to comply with Policy CS24 of the Core Strategy for New Forest District outside of the National Park.

7. Full details of the vehicle cleaning measures proposed to prevent mud and spoil from vehicles leaving the site shall be submitted in writing to the Local Planning Authority for written approval prior to the commencement of the development. The approved measures shall be implemented before the development commences. Once the development has been commenced, these measures shall be used by all vehicles leaving the site and maintained in good working order for the duration of the development.

Reason: In the interests of highway safety and to comply with Policy CS24 of the Core Strategy for New Forest District outside of the National Park.

8. The development hereby permitted shall not be brought into use until all of the spaces shown on the approved plans for the parking and turning of motor vehicles and the parking of cycles have been provided. These spaces and areas shall thereafter be retained and kept available for their intended purpose at all times.

Reason: To ensure adequate parking provision is made for both cars and cycles, in the interest of highway safety, and to comply with Policies CS2 and CS24 of the Local Plan for the New Forest outside of the National Park (Core Strategy).

9. Prior to the commencement of development (including any demolition) a written Dust Management Plan (DMP) shall be submitted to and approved by the Local Planning Authority. The approved DMP shall consider all aspects of the works being undertaken on site, and include mitigation measures which follow good practice and are site specific. The approved DMP shall be adhered to at all times thereafter until the demolition and construction phases have been completed.

Reason: To safeguard the amenities of nearby residents and businesses and to comply with Policies CS2 and CS5 of the Core Strategy for New Forest District outside of the National Park.

10. Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions relating to contamination no 11 to 12 have been complied with.

If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 13 relating to the reporting of unexpected contamination has been complied with in relation to that contamination.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy CS5 of the Local Plan for the New Forest District outside the National Park (Core Strategy) and Policy DM5 of the Local Plan For the New Forest District outside the National Park. (Part 2: Sites and Development Management).

11. A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site

management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy CS5 of the Local Plan for the New Forest District outside the National Park (Core Strategy) and Policy DM5 of the Local Plan for the New Forest District outside the National Park. (Part 2: Sites and Development Management).

12. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy CS5 of the Local Plan for the New Forest District outside the National Park (Core Strategy) and Policy DM5 of the Local Plan for the New Forest District outside the National Park. (Part 2: Sites and Development Management).

13. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. Where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 11, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 12.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy CS5 of the Local Plan for the New Forest District outside the National Park (Core Strategy) and Policy DM5 of the Local Plan for the New Forest District outside the National Park. (Part 2: Sites and Development Management).

14. The works hereby approved shall be undertaken in full accordance with the provisions set out within the RPS Arboricultural Impact Assessment and Method Statement reference JSL2663_780B dated 13th April 2017 or as may otherwise be agreed in writing with the Local Planning Authority.

Reason: To ensure the retention of existing trees and natural features and avoidance of damage during the construction phase in accordance with Policy CS2 of the Local Plan for the New Forest District outside of the National Park (Core Strategy).

15. The proposed slab levels of the development shall be strictly in accordance with the level details indicated on the approved drawings unless an alternative slab level detail has first been submitted to and approved in writing by the Local Planning Authority in which case the development shall only take place in accordance with those details which have been approved.

Reason: To ensure that the development takes place in an appropriate way in accordance with policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any subsequent re-enactment thereof, no additional floor space by way of the creation of a mezzanine floor shall be formed within the building hereby approved, other than that shown on the approved plans.

Reason: To safeguard the amenities of the area, in the interests of highway safety and to comply with policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

17. Before the commencement of development, a precise specification of the biodiversity mitigation and enhancement measures that are to be incorporated into the development, as outlined in the RPS Preliminary Ecological Appraisal dated November 2016 (Ref JSL2663_871b), shall be submitted to and approved in writing by the Local Planning Authority. Development shall only take place in accordance with the approved details.

Reason: To safeguard ecological interests in accordance with Policies CS3 of the Core Strategy for New Forest District outside of the National Park and Policy DM2 of the Local Plan Part 2: Sites and Development Management.

18. Other conditions as may be deemed necessary in the light of outstanding consultation responses in respect of noise and drainage.

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, there were lengthy pre-application discussions with the applicant. Unfortunately, the submitted application does not respond positively to that pre-application advice, but nonetheless, as set out in the case officer assessment report, it is felt, on balance, that the scheme is acceptable.

Further Information:

Major Team

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DISTRICT COUNCIL

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**Planning Development
Control Committee
May 2017**

Item No: 3a
St Johns Car Park
St Johns Street
Hythe
16/11638
SU4207

Scale 1:1250

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