

# Planning and Rights of Way Panel

Tuesday, 2nd February,  
2021 at 5.30 pm

**PLEASE NOTE TIME OF MEETING**

This will be a 'virtual meeting', a link to which will be available on website at least 24hrs before the meeting

## Virtual Meeting

This meeting is open to the public

### **Members**

Councillor Mitchell (Chair)  
Councillor Coombs (Vice-Chair)  
Councillor L Harris  
Councillor Prior  
Councillor Savage  
Councillor Vaughan  
Councillor Windle

### **Contacts**

Democratic Support Officer  
Ed Grimshaw  
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Development  
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## **PUBLIC INFORMATION**

### **ROLE OF THE PLANNING AND RIGHTS OF WAY PANEL**

The Panel deals with various planning and rights of way functions. It determines planning applications and is consulted on proposals for the draft development plan.

### **PUBLIC REPRESENTATIONS**

Procedure / Public Representations

At the discretion of the Chair, members of the public may address the meeting on any report included on the agenda in which they have a relevant interest. Any member of the public wishing to address the meeting should advise the Democratic Support Officer (DSO) whose contact details are on the front sheet of the agenda.

### **Southampton: Corporate Plan 2020-2025** sets out the four key outcomes:

- Communities, culture & homes - Celebrating the diversity of cultures within Southampton; enhancing our cultural and historical offer and using these to help transform our communities.
- Green City - Providing a sustainable, clean, healthy and safe environment for everyone. Nurturing green spaces and embracing our waterfront.
- Place shaping - Delivering a city for future generations. Using data, insight and vision to meet the current and future needs of the city.
- Wellbeing - Start well, live well, age well, die well; working with other partners and other services to make sure that customers get the right help at the right time

### **Dates of Meetings: Municipal Year 2020/2021**

<b>2020</b>	
2 June	15 September
23 June	6 October
14 July	3 November
4 August	24 November
25 August	15 December

**SMOKING POLICY** – The Council operates a no-smoking policy in all civic buildings

**MOBILE TELEPHONES:-** Please switch your mobile telephones to silent whilst in the meeting

**USE OF SOCIAL MEDIA:-** The Council supports the video or audio recording of meetings open to the public, for either live or subsequent broadcast. However, if, in the Chair's opinion, a person filming or recording a meeting or taking photographs is interrupting proceedings or causing a disturbance, under the Council's Standing Orders the person can be ordered to stop their activity, or to leave the meeting.

By entering the meeting room you are consenting to being recorded and to the use of those images and recordings for broadcasting and or/training purposes. The meeting may be recorded by the press or members of the public.

Any person or organisation filming, recording or broadcasting any meeting of the Council is responsible for any claims or other liability resulting from them doing so.

Details of the Council's Guidance on the recording of meetings is available on the Council's website.

**FIRE PROCEDURE** – In the event of a fire or other emergency a continuous alarm will sound and you will be advised by Council officers what action to take.

**ACCESS** – Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

<b>2021</b>	
12 January	16 March
2 February	20 April
23 February	

## CONDUCT OF MEETING

### TERMS OF REFERENCE

The terms of reference of the Planning and Rights of Way Panel are contained in Part 3 (Schedule 2) of the Council's Constitution

### BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

### RULES OF PROCEDURE

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

### QUORUM

The minimum number of appointed Members required to be in attendance to hold the meeting is 3.

## DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Pecuniary Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

### DISCLOSABLE PECUNIARY INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:  
Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.
- (iv) Any beneficial interest in land which is within the area of Southampton.
- (v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.
- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.
- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:
  - a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
  - b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

## **OTHER INTERESTS**

A Member must regard himself or herself as having an, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

## **PRINCIPLES OF DECISION MAKING**

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.



## AGENDA

### **1 APOLOGIES AND CHANGES IN PANEL MEMBERSHIP (IF ANY)**

To note any changes in membership of the Panel made in accordance with Council Procedure Rule 4.3.

### **2 DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS**

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

### **3 STATEMENT FROM THE CHAIR**

### **4 MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)** (Pages 1 - 2)

To approve and sign as a correct record the Minutes of the meetings held on 12 January 2021 and to deal with any matters arising.

### **5 TREE WORK APPLICATION BY THE GREGG SCHOOL** (Pages 3 - 20)

Report of the Head of City Service seeking approval to grant consent to the felling of 1 Monterey Pine and the refusal to the felling of 2 Norway Maples.

### **6 TREE WORK APPLICATIONS AND NOTIFICATIONS FOR SAFETY WORK AT MARLHILL COPSE** (Pages 21 - 44)

Report of the Head of Service seeking approval to grant consent to the work detailed within the independent tree report for work on trees subject to tree protection and conservation area protection at Marlhill Copse.

## CONSIDERATION OF PLANNING APPLICATIONS

### **7 PLANNING APPLICATION - 20/01460/FUL - 26 BUTTERFIELD ROAD** (Pages 49 - 70)

Report of the Interim Head of Planning and Economic Development recommending that the Panel delegate approval in respect of an application for a proposed development at the above address.

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PLANNING AND RIGHTS OF WAY PANEL  
MINUTES OF THE MEETING HELD ON 12 JANUARY 2021

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Present: Councillors Mitchell (Chair), Coombs (Vice-Chair), L Harris, Prior, Savage, Vaughan and Windle

42. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

**RESOLVED:** that the minutes for the Panel meetings held on 24<sup>th</sup> November and 1<sup>st</sup> December 2020 be approved and signed as a correct record.

43. **PLANNING APPLICATION - 20/01415/FUL - 27 BRONTE WAY**

The Panel considered the report of the Head of Planning and Economic Development recommending that conditional planning permission be granted in respect of an application for a proposed development at the above address.

Conversion of dwelling to four bed assisted living dwelling for young persons (class C2).

Grace Nikandu (applicant) and Councillors Houghton and Keogh (ward councillors) were present and with the consent of the Chair, addressed the meeting.

The presenting officer reported an amendment to the wording of condition number 3, as set out below. Following a discussion on access to the proposed cycle shed it was agreed that the wording of condition 6 would also be amended, as set below. The Panel agreed, after a vote, not to restrict client's from having friends and visitors outside of the hours stipulated for professionals.

The Panel then considered the recommendation to grant conditional planning permission. Upon being put to the vote the recommendation was carried.

RECORDED VOTE to grant planning permission

FOR: Councillors Coombs, L Harris, Prior, Savage, Windle and Mitchell

AGAINST: Councillor Vaughan

**RESOLVED** that planning permission be approved subject to the conditions set out within the report and any additional or amended conditions set out below:

**Amended Conditions**

**Condition 3)**

Notwithstanding the Town and Country Planning (Use Classes) Order 1987 (as amended) or any Order revoking, amending, or re-enacting that Order, in accordance with the agreed Management Plan (correspondence dated 08/12/2020 and 12/01/2021) the development hereby approved shall be occupied by a maximum of 3 clients between the agree range of 16 to 21 years old, with one carer residing at the property during each care shift. With the exception of the live in carer and a health emergency, the professional visitors in relation to the care and wellbeing of the residents shall not visit the property outside the hours of 08:00 to

17:00 every day. The 3 clients shall not have access to a private vehicle whilst living at the property and the allocated parking space shall only be used by the carer on duty.

REASON: In the interest of the amenities of neighbouring occupiers, the prevention of overspill parking and highways safety.

**Condition 6)**

Before the development hereby approved first comes into occupation, secure and covered storage for bicycles, with access from the rear of the property via a gate, shall be provided in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The access and storage shall be thereafter retained as approved.

REASON: To encourage cycling as an alternative form of transport.

44. **PLANNING APPLICATION - 20/01205/FUL - 65 ATHELSTAN ROAD**

The Panel considered the report of the Head of Planning and Economic Development recommending that conditional planning permission be granted in respect of an application for a proposed development at the above address.

Erection of a single storey side extension and replacement rear conservatory.

The presenting officer reported noted that Councillor Keogh had withdrawn his objection to the application.

The Panel then considered the recommendation to grant conditional planning permission. Upon being put to the vote the recommendation was carried unanimously.

**RESOLVED** that planning permission be approved subject to the conditions set out within the report

# Agenda Item 5

<b>DECISION-MAKER:</b>	PLANNING AND RIGHTS OF WAY PANEL
<b>SUBJECT:</b>	Tree work application to fell three trees within Marlhill Copse that are protected by a tree preservation order
<b>DATE OF DECISION:</b>	2 <sup>nd</sup> February 2021
<b>REPORT OF:</b>	HEAD OF CITY SERVICES

<b><u>CONTACT DETAILS</u></b>			
<b>Head of Service</b>	<b>Title</b>	Executive Director Place	
	<b>Name:</b>	David Tyrie	Tel: 023 8083 3005
	<b>E-mail</b>	David.Tyrie@southampton.gov.uk	
<b>Author:</b>	<b>Title</b>	City Tree Officer	
	<b>Name:</b>	Gary Claydon-Bone	Tel: 023 8083 3005
	<b>E-mail</b>	Gary.Claydon-Bone@southampton.gov.uk	

<b>STATEMENT OF CONFIDENTIALITY</b>	
NONE	
<b>BRIEF SUMMARY</b>	
To consider the content within application 20/00184/TPO for the felling of 1 x Monterey Pine and 2 x Norway Maples both located within Marlhill Copse.	
<b>RECOMMENDATIONS:</b>	
	(i) To grant consent to the felling of one Monterey Pine within Marlhill Copse with an attached condition to replant one native tree species.
	(ii) To refuse consent to the felling of 2 Norway Maple's within Marlhill Copse.
<b>REASONS FOR REPORT RECOMMENDATIONS</b>	
1.	The requested work in connection with the Monterey Pine accords with the practice of good forestry and secures the maintenance of the special character of the woodland and the woodland character of the area.
2.	The requested work in connection with the Norway Maples does not accord with the practice of good forestry on the grounds of safety.
<b>ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</b>	
	To refuse the consent to fell the Monterey Pine would put the public and neighbouring properties at risk. To approve the felling of the Norway Maples would have a negative impact to the amenity.
<b>DETAIL (Including consultation carried out)</b>	
1	An application was received at the council from an agent acting on behalf of the Gregg School. The application was registered and has reference number 20/00184/TPO.

2	The applicant seeks permission to fell one Monterey Pine and two Norway Maples that are protected under A1 of The Southampton (Townhill Park House) (No 2) Tree Preservation Order 1995.
3	An Area order classification, such as A1 of this order, will only protect trees that were present at the time of making the order and relating to the description applied. In this case, it protects all hardwood and coniferous trees that were present in 1995 and before. Any tree younger that grew after the making of this order will not be protected.
4	The majority of Marlhill Copse is designated as a Site of Importance to Nature Conservation (SINC) however the three trees that are subject of the application are not within the SINC. The three trees do however fall within the Itchen Valley Conservation Area.
4	There have been three objections to this application and the main points of the objections are as follows. <ul style="list-style-type: none"> <li>• The Gregg School do not own the trees</li> <li>• Poor form is not a justification to fell a tree</li> <li>• Loss of amenity</li> <li>• Impact on wildlife</li> <li>• Works being within a conservation area</li> <li>• Unclear why trees are requested to be felled</li> <li>• No Maples in the area identified on the application.</li> </ul>
5	The Councils Historic Environment Officer has been consulted and has provided the following comments. ‘the loss of a small number of individual trees within this much larger grouping would not adversely harm the overall character or appearance of the conservation area, providing the works can be demonstrated to be necessary as per the advice above, and that any loss of trees would be replaced or better managed’
6	5/11/20 – A site visit was made by two tree officers from the council’s tree team for the purpose of assessing the detail within the application and to review the condition of the trees in relation to what has been stated.
7	The Monterey pine, which was marked as T1 in the application has been described as poor form with a large section of the canopy missing.
8	This tree is a single stemmed tree that bifurcates to two co-dominant stems at around 5 metres from ground level.
9	The southern stem has had several limbs removed which has resulted in an unbalanced and high canopy on the southern and western aspect of the tree. The pruning cuts are poor and have not been completed to a decent standard that will allow the tree to occlude over the pruning cuts This has resulted in several stubs with no growth. It is not known if the limbs were removed due to failures or for alternative reasons. There are signs of branch failure in the canopy, some of which are recent.
10	The northern stem is clear of growth until it reaches its full height where there are two lateral limbs growing which extend outward over the access path leading up to the gated entrance of the Gregg School.

11	It is evident that these two stems have both fractured and formed hazard beams with horizontal splits along the branches. These are directly over the access path to the school.
12	On its own, a request to remove these two damaged limbs would be perfectly reasonable, due to the risk they present to users of the wood and path.
13	Given that the removal of the hazard beams is acceptable for safety reasons, this then leads to the question as to what impact such work would have on the remaining tree.
14	After the hazard beams have been removed, this would leave this stem of the tree void of any growth and as these trees will not naturally produce new growth from dormant buds, the stem would remain void of growth and would decline over time as the tree would naturally shut down the vascular system of the stem. Given enough time, if this stem is not completely removed, it would naturally degrade which would cause a safety issue once the structural integrity of the wood is lost
15	The other issue noted with the tree is the union where it bifurcates on the main stem. There is evidence of a compression union with additional growth being formed on one side of the tree. Although this is not a significant concern at present, it will continue to form a weak point on the stem and with the additional exposure, may place additional stress on this point and a potential failure is possible.
16	Given that the northern stem canopy has already shown signs of failures and accompanied with a compression union, there are concerns that the remaining tree would be in a higher risk of failure occurring, therefore officers accept that there are strong grounds to justify that the tree should be removed based on safety concerns with the addition of future issues relating to exposure making the tree more susceptible for failures
17	Additional to this is the tree's age and species as it is understood that Monterey Pines that are old are at a higher risk of branch failures. This is not to say that just because of its age and species it must be removed, however if there are signs of this occurring, it must be a consideration at some point. Signs of failures are present around the canopy of this tree.
18	The issues that relate to limb failure is not only the risk that they pose to people beneath the tree if a limb fails, but also what the impact is to the tree.
19	Trees grow reactively and adjust to their surroundings. This can be seen by a leaning out from a group of trees as it searches for light, or by putting on additional wood in areas that are under greater strain, however this is something that happens gradually and over a number of annual grow periods.
20	What trees are not very good at is adapting to sudden changes. Therefore, the continual loss of limbs in the canopy can be of concern due to the changes in the wind dynamics around the canopy. This sudden change can then lead to additional failures of limbs that have previously benefited from relative protection from its neighbours. The sudden change in stresses can cause failure, and then the cycle may start again with other limbs.
21	The two other trees that are subject of the application are Norway Maples that are growing on the boundary of the site adjoining 25 Wilmington Close.

22	The application describes these trees as being poor form and leaning on fences and garden outbuildings.
23	The officers are not in agreement with this statement and consider that both trees' form is due to being woodland edge trees that are growing outwardly toward the sun, which is known as phototropic growth. Therefore, the growth is considered natural and poor form is subjective.
24	Neither of the two trees are in contact with the outbuilding and therefore not causing any direct damage.
25	Officers are of the opinion that both trees are healthy and that the issues relating to the neighbouring property could easily be addressed by lesser tree surgery works to lift the canopy to clear the outbuilding roof.
26	When assessing the application to fell trees that are within a woodland, officers must apply regulation 17(3) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012.
27	This regulation states – ‘Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area’.
28	The officers have considered the required tests set out within this regulation and have formed the following opinion.
29	<b>Does the application relate to an area of woodland?</b> The TPO is not a ‘woodland’ TPO. However, the Department for Environment, Food and Rural Affairs (DEFRA) classifies the location to be a Broadleaved Woodland and the definition of ‘woodland’ within the UK Forestry Standard (UKFS) leads officers to agree that the trees are within a woodland.
30	<b>Does the work accord with good forestry practice?</b> The practice of good forestry” is not defined in the TPO regulations. However, the UKFS is a guidance document prepared by the Forestry Commission which sets out the Government’s approach to sustainable forestry. It is referred to the within the national planning practice guidance on TPOs (“the PPG”) and it is therefore relevant when assessing what is good forestry practice. The term ‘Forestry’ is described in the UKFS as ‘The science and art of planting, managing and caring for forests’.  The UKFS states that the UKFS requirements are divided into legal requirements and good forestry practice requirements. The requirements are



	<p>categorised into different elements of sustainable forest management, each supported by guidelines for managers. It makes it clear that they should be interpreted and applied flexibly: “Some aspects of forest management lend themselves to ‘yes or no’ compliance, but most do not, and so the UKFS has not attempted to condense all the complexities of forest management into an over-simplistic format. The UKFS has therefore been written to be interpreted with a degree of flexibility and applied with an appropriate level of professional expertise.”</p>
31	<p>Of relevance to this application is section 6.5 of the UKFS, which refers to people and includes guidance on access, including visitor safety. Page 134 refers to employer’s health and safety legal requirements. Visitor health and safety is set out at page 135. The UKFS states the following</p> <p><i>The Occupiers’ Liability Acts 1957 and 1984 in Great Britain and the 1957 Act and 1987 Order in Northern Ireland direct landowners and managers to ensure that visitors to forests and woodlands are not put at risk. This includes visitors exercising rights of access or using permissive ways and dedicated land, and covers responsibilities to people who are not invited or permitted to be on the land in question. In this case, a duty of care still exists if: • the landowner or manager is aware of a danger or risk, and it is known that people may be in, or come into, the vicinity of the danger; • the risk is one against which the landowner or manager may reasonably be expected to offer some protection. The landowner or manager must discharge their statutory duty of care in relation to people visiting land, whether they are there with or without permission. In England and Wales, reasonable care must be taken to ensure the safety of visitors using permissive ways and land dedicated under the Countryside and Rights of Way Act 2000. Forest environments can present a range of natural and man-made hazards that could put visitors at risk. Natural hazards include old trees and unstable rock faces. Man-made hazards include quarries, mineshafts and abandoned structures, as well as potentially hazardous activities such as forest operations, pest control measures and some sports. The Forestry Commission has produced detailed guidance, endorsed by FISA, on managing public safety in relation to forest operations, such as that required for harvesting sites.</i></p>
32	<p>It is therefore the officers’ opinion that the condition of the Monterey pine presents a risk to visitors or trespassers and that the landowner must discharge their duty of care by taking appropriate action, which may involve the felling of the tree. On this basis, it is accepted that the work does accord with good forestry practice.</p>
33	<p>In relation to the request to fell the two Norway maples, officers felt that there was no underlying condition that rendered them unsafe and therefore the duty under the Occupiers Liability Act is not engaged. As such it is not accepted that the felling of these two trees is regarded as good forestry practice in terms of the safety risks to the public based on their form or their location adjacent to an outbuilding. No other reasons have been given for their felling.</p>

34	<p>Officers have gone on to consider the remaining elements of regulation 17(3) of the TPO regulations and whether the felling of the trees would fail to secure (a) the maintenance of the special character of the woodland or (b) the woodland character of the area. Although officers do not agree that the felling of the Norway Maples meets with good forestry practice and therefore does not satisfy the test in the first limb of regulation 17(3) , the further assessment of (a) and (b) above, have also been considered.</p>
35	<p><b>The special Character</b> - Officers have considered what the special character of the area is and agree that in a large section of the copse, it conforms with the description as detailed by DEFRA as being a broadleaved ancient semi-natural woodland (ASNW). The area that the three subject trees are growing is just outside of the boundary of the ASNW, therefore may have a special character of its own. The Monterey pine was probably planted around 100 years or so ago and appear to one of the trees that would have lined the driveway to the house. It could be said of this individual area that the character is that of being pine dominated, therefore this character assessment will be considered alongside the desire of the UKFS to increase the footprint of the ASNW.</p>
36	<p>Considering if the work would fail to secure the maintenance of the special character of the woodland or the woodland character of the area, the officers have formed the following opinion.</p> <p><b>Does the work fail to secure the maintenance of the special character of the area?</b></p> <p>As mentioned above, the Monterey pine sits in an area of other pine trees, therefore it is felt that the loss of one of these trees would not fail to secure the special character as many other such trees would remain. After the removal of the Monterey Pine, visitors would still enjoy the other remaining pines and the character would remain to be that of a predominantly pine dominated area.</p> <p>In respect of the two Norway maples, these are on the boundary of the area where the cluster of pines are growing to where it transitions to the main woodland type, which is a mixed broadleaved woodland.</p> <p>The two trees are on the copse boundary and growing amongst several linear planted conifers, which were probably planted as a screen for the residential properties.</p> <p>This area or woodland is of a relatively young age class and does not have any redeeming features that would be classified as a special character. Therefore, if members are minded to grant consent to their removal, officers are of the opinion that the loss of these two trees would not fail to secure the maintenance of a special character.</p>
37	<p>The final test to consider is if the felling of the trees would remove the woodland character of the area.</p>

38	<p><b>Does the proposed felling remove the woodland character of the area?</b></p> <p>Officers consider that the removal of the three trees in this location would not remove the woodland character of the area, due to much of the copse still being present. Although these trees are not under the same ownership as much of the Copse, it is regarded as being within the same woodland, therefore these trees form part of the 9000 square metres of woodland that is known as Marlhill Copse.</p> <p>The Monterey pine is partially shielded from view from the public street due to other protected pine trees located in rear gardens of the adjacent properties. Internally to the site, it occupies a section of woodland on the boundary with other coniferous trees in the near vicinity with Marlhill copse as the main body of woodland surrounding the tree. The loss would open a section of the sky; however, it would not result in the loss of the woodland, and the character would still one of being a woodland.</p> <p>Although officers are not in support of the removal of the two Norway maples, if members are minded in granting consent to their removal, officers have also assessed their loss to the woodland character of the area.</p> <p>The two Norway Maples are growing amongst other trees and if removed, then the neighbouring trees would act as the face of the woodland. As above, the trees are regarded as being part of Marlhill Copse therefore these two trees are part of the same 9000 square metres as the Monterey Pine and the removal of the trees, although not supported, would not result in the loss of the woodland, and the character would still one of being a woodland.</p>
39	As all three trees are within The Itchen Valley Conservation Area, officers must also consider the impact of the felling on the conservation area.
40	The conservation area test states that the council must also pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area in accordance with section 72 of the Planning (Listed Building and Conservation Area) Act 1990.
41	To be able to assess the impact, first there must be a consideration as to what the character of the conservation area is. The Itchen Valley Conservation Area strategy document of 1993 was used to supply the details of the character of Marlhill Copse. This can be found in sections 17.2 and 17.3
42	<b>Section 17.2</b> – <i>‘Marlhill Copse itself originally formed part of the Townhill Park Estate and is shown on the 1st Edition Ordnance Survey Plan dated 1871, as a woodland block running along the Itchen Escarpment. The size of the trees suggest that they were planted around 1800 and the woodland is now a fine example of mature Oak trees grown as standards. During the 1920's and 30's these were thinned, and the glades were planted up with many unusual trees</i>

	<i>and shrubs, in particular Rhododendrons, Magnolia and Nothofagus, some of which remain today’.</i>
43	Historically the copse was not the same size as it is today as the 1871 map shows that it did not extend as far to the south as present day. It appears that at some point in the 1920-30’s the driveway to the house was installed and the pine trees appear to have been planted around this time, possibly to line the driveway or mark the boundary The description of the trees in section 17.2 is in relation to woodland that existed on the 1871 map and not that of the current extended copse that now incorporates the pine trees. 17.2 gives detail over the trees within the copse that form a feature of the conservation area. It is noted that the pines have not been referenced as a notable tree species.
44	<b>Section 17.3</b> – <i>‘The Copse itself lies on an escarpment and its mature trees form a very important element in the landscape of this part of the City, providing a very effective transition in visual terms between the City and its surrounding countryside’.</i>
45	For the purpose of this application and assessing the impact that it has to the conservation area, officers consider that section 17.3 to be the most relevant section as the subject trees are not part of the old copse, which is referenced in section 17.2.
46	Officers have assessed the loss of the trees and the impact that this would have on the ‘effective transition in visual terms between the City and its surrounding’ and the impact on the character and appearance of the wider conservation area.
47	As can be seen earlier within this report, officers had to assess the loss of the Monterey Pine and how this would impact the woodland character of the area as part of the assessment under section 17(3) of the TCPA.  As it is considered by the officers that the loss of the three trees would not remove the woodland character of the area, it therefore stands to reason in officers’ opinion that the removal of the trees within the conservation area woodland, would not remove the visual transition between the woodland and the surrounding area. Accordingly, if the trees were to be felled, the action would preserve the character of the conservation area as the effective transition in visual terms between the City and its surrounding would remain.
48	<b>Compensation.</b>  The Council can be liable for compensation in the event it refuses an application to consent. However, under Regulation 24(3) of The Town and Country Planning (Tree Preservation) (England) Regulations 2012, compensation is limited where the works are “forestry operations” in a woodland area. Regulation 24(3) states as follows:  <i>(3) Where the authority refuse consent under these Regulations for the felling in the course of forestry operations of any part of a woodland area—</i>

*(a) they shall not be required to pay compensation to any person other than the owner of the land;*

*(b) they shall not be required to pay compensation if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is subject to an appeal to the Secretary of State, the date of the final determination of the appeal; and*

*(c) such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.”*

There is no definition of forestry operations for the purposes of the TPO Regs or in the Town and Country Planning Act 1990. Given the broad dictionary definition of forestry (as used in the UKFS), it is the officers' view that these are forestry operations in a woodland area and therefore any compensation is limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

If these works are not considered forestry operations, then there is a risk of exposure to liability for a greater level of compensation as Regulation 24(1) states:

*(1) If, on a claim under this regulation, a person establishes that loss or damage has been caused or incurred in consequence of—*

*(a) the refusal of any consent required under these Regulations;*

*(b) the grant of any such consent subject to conditions; or*

*(c) the refusal of any consent, agreement or approval required under such a condition, that person shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.*

*(2) No claim, other than a claim made under paragraph (3), may be made under this regulation—*

*(a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or*

*(b) if the amount in respect of which the claim would otherwise have been made is less than £500.*

	<p>In relation to the request to fell the Monterey Pine, it is the officers' opinion that the felling of the tree accords with the practice of good forestry and that the felling would maintain the special character and woodland character of the area and thus regulation 17(3) states that the local authority must grant consent in such circumstances. Having regard to the statutory duty under s72 of The Planning (Listed Building and Conservation Area) Act 1990, the felling of the Monterey Pine will preserve the character and appearance of the Conservation Area. On this basis, subject to a condition to replant a replacement Scots Pine in the interests of good practice, the application in this respect should be approved.</p> <p>For the Norway Maples, officers are of the opinion that the work to fell the trees, for the reason stated, does not accord with good forestry practice, therefore the local planning authority are not required to approve under regulation 17(3). However, whilst their felling will preserve the character and appearance of the conservation area, the trees are in good health and condition, have amenity value and there is no other reason to justify their felling. As such, the application in this respect should be refused.</p>
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**RESOURCE IMPLICATIONS**

**Capital/Revenue**

NONE

**Property/Other**

NONE

**LEGAL IMPLICATIONS**

**Statutory power to undertake proposals in the report:**

The statutory duties in connection with determining the application are set out in the body of the report.

The Council may impose conditions in accordance with the Town and Country Planning Act 1990 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012

**Other Legal Implications:**

NONE

**RISK MANAGEMENT IMPLICATIONS**

NONE

**POLICY FRAMEWORK IMPLICATIONS**

NONE

**KEY DECISION?**

Yes/No

**WARDS/COMMUNITIES AFFECTED:**

**SUPPORTING DOCUMENTATION**

<b>Appendices</b>	
1.	Photographs of Monterey Pine
<b>Documents In Members' Rooms</b>	
1.	
2.	
<b>Equality Impact Assessment</b>	
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	Yes/No
<b>Data Protection Impact Assessment</b>	
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	Yes/No
<b>Other Background Documents</b>	
Other Background documents available for inspection at:	
<b>Title of Background Paper(s)</b>	<b>Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)</b>
1.	
2.	

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Monterey Pine subject of application



Damage in upper canopy of failure liable to fall





Hazard Beam formed in canopy





Dead section of tree causing hazard to footpath and nearby property



Overall poor quality of tree from past poor pruning and failures





View looking east showing other pines ion area



Pines in rear garden to the south east of subject tree





View to the north of the subject tree showing woodland



# Agenda Item 6

<b>DECISION-MAKER:</b>	PLANNING AND RIGHTS OF WAY PANEL
<b>SUBJECT:</b>	Tree work application for trees within Marlhill Copse that are protected by a tree preservation order and a tree work notification for trees within a conservation area.
<b>DATE OF DECISION:</b>	2 <sup>nd</sup> February 2021
<b>REPORT OF:</b>	HEAD OF CITY SERVICES

<b><u>CONTACT DETAILS</u></b>			
<b>Head of Service</b>	<b>Title</b>	Head of City Services	
	<b>Name:</b>	<b>David Tyrie</b>	Tel: 023 8083 3005
	<b>E-mail</b>	David.Tyrie@southampton.gov.uk	
<b>Author:</b>	<b>Title</b>	<b>City Tree Officer</b>	
	<b>Name:</b>	<b>Gary Claydon-Bone</b>	Tel: 023 8083 3005
	<b>E-mail</b>	Gary.Claydon-Bone@southampton.gov.uk	

<b>STATEMENT OF CONFIDENTIALITY</b>	
NONE	
<b>BRIEF SUMMARY</b>	
To consider the content within application 20/00303/TPO, 20/00305/TPO and 20/00077/TCA for the felling of 61 individual trees and 7 groups of trees located within Marlhill Copse.	
<b>RECOMMENDATIONS:</b>	
	In respect of the 59 individual trees and 6 groups of trees:
(i)	To grant consent to the TPO application for the felling with an attached condition for suitable replacement tree planting scheme, and,
(ii)	To raise no objection to the notification of felling of trees in the Conservation Area.
(iii)	To consent to a 1.5 metres lift but refuse a 3 metre lateral reduction in respect to T18.
<b>REASONS FOR REPORT RECOMMENDATIONS</b>	
1.	The requested work has been identified by an independent arboricultural consultant who carried out a site survey to conduct a survey of trees within falling distance of properties on the western side of Hill Cottage Gardens and those trees within Marlhill Copse that are within falling distance of the carriageway and public footpath of Mansbridge Road.
<b>ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</b>	
2.	To refuse the consent to fell the trees would put the public and neighbouring properties at risk and would also to prevent the land owner undertaking reasonable management of their land.

3	To make a TPO in respect of those trees not subject of a TPO. Due to trees condition, it would be inappropriate for the local authority to make an order to prevent their felling. Furthermore, local authorities should also not make tree preservation orders in order to secure replacement tree planting.
<b>DETAIL (Including consultation carried out)</b>	
4	An independent report that had been carried out on request of the land owner was submitted to the council from Southampton International Airport Limited (SIAL) accompanied by an application to fell trees protected by a tree preservation order and a notice to fell trees within a conservation area.
5	The report has highlighted trees that require a level of work and has also assigned a priority to each. The two priorities are Red, for 3 months and Yellow for 12 months. These priorities are for the tree owner and not used in determining the application/notification. Any permission given by the council has a standard condition allowing for the work to be completed at any time within 12 months, therefore if the tree owner wishes to carry out the yellow works alongside the red works, the permission notice would allow for this.
6	The report identifies that a total of 61 trees and 8 groups have been given the red priority and there are 7 trees and 1 group with the yellow priority. There is a small discrepancy in the report and the following corrections should be applied.
7	Oak shown as number 2 should have been highlighted in yellow with the other 12 month works. Trees 2 and 7 do not require any formal permission to sever the ivy and therefore are not included within the officer's decision.
8	<p>The plan in appendix 2 of the survey report has located the trees which are listed in appendix 1, of the same report. Please note that groups G1 to G4 are shown on the plan with a polygon drawn to show the extent of the group feature. However not all the group features have been drawn with polygons. In areas where there are trees near to each other and neighbouring trees, it is not been suitable to draw a polygon, however the consultant has added the number of trees that relates to the group. Therefore, the following group features, listed in appendix 1, are to be located on the plan by its corresponding number, with the 'G' prefix removed.</p> <p>G23 = 23 – 2 Trees  G45 = 45 – 2 Trees  G49 = 49 – 5 Trees  G54 = 54 – 8 Trees  G59 = 59 – 13 Trees  G61 = 61 – 9 Trees</p>
9	The application identifies trees within W1 of The Southampton City Council (Hill Cottage Gardens) Tree Preservation Order 2013 along with W1 of The Southampton (Townhill Park - Cutbush Lane) Tree Preservation Order 1956. The notification of works is for trees that are within The Itchen Valley Conservation area but that are not subject of the TPO.
10	The majority of Marlhill Copse is designated as a Site of Importance to Nature Conservation (SINC). All of the trees, with the exception of T1, are within the SINC. The council's Planning Ecologists has been informed of the proposed works within the SINC.



11	<p>Part of the application includes trees within a nationally registered park or garden, therefore Historic England are to be informed of the proposed works. An email was sent to Historic England and the following response was received.</p> <p><i>'This doesn't appear to fall within our remit which can be found in Table 1 and 2. If you have not done so already, I would recommend talking to your Historic Environment Officer who may have comments to make'.</i></p>
12	<p>The Councils Historic Environment Officer has been consulted and has provided the following comments. <i>'the loss of a small number of individual trees within this much larger grouping would not adversely harm the overall character or appearance of the conservation area, providing the works can be demonstrated to be necessary as per the advice above, and that any loss of trees would be replaced or better managed'</i></p>
13	<p>There have been no objections to the applications or notifications from the public, however the Woodland Trust have given comments in relation to the trees that are subject of the conservation area and raised a concern regarding works that are within the ancient woodland. The Woodland trust have concerns <i>that 'the work may not align with the protection afforded the area through its status as ancient woodland' Appendix (1)</i></p> <p>The comments made by the Woodland Trust were in relation to the notification 20/00077/TCA, however the trees that are subject to this notification are not within the area designated as being an ancient woodland. The Woodland Trust have been informed that this is the case but have not provided any further comments.</p>
14	<p>The applicant seeks work for several trees that have been identified to pose a risk of failure, impacting the highway or causing a nuisance to the neighbouring properties. All the detail is included within the Tree Surveys report.</p>
16	<p>The main body of work is to fell trees that are infected with Ash die back (<i>Chalara fraxinea</i>), to give clearance to the public highway and the felling of 2 Sycamores within G23. These are extremely low quality and are requested to be felled. These trees are located within the Itchen Valley Conservation area and are as follows.</p> <p><i>G3, G4 and G23</i></p> <p><i>Trees 24 through to 87, with groups 45, 49, 54, 59 &amp; 61 inclusive</i></p> <p><i>The remaining trees that are protected by the tree preservation orders (TPO) have been identified with defects and supporting evidence has been supplied.</i></p> <p>Members should be made aware that part of group G4 and trees from tree 50 through to tree 88 are not on land owned and managed by the applicant but are on land belonging to Southampton City Council. In planning, anyone can apply or notify the council to carry out works to a protected tree and they need not be the owner. In these cases, the local authority must consider the application/notification presented to it and without any influence over land or tree ownership. Any permission given to trees on third party land does not give the applicant the right to enter onto third party land in order to carry out consented works but must first seek the permission of the land owner, which in this instance is the City Council.</p>

17	As the trees identified with Ash die back are within the conservation area, the council cannot refuse the work, but would have to make a tree preservation order to prevent the notified work from being completed. As part of the consideration of making a tree preservation order, the council must assess the trees condition. It is the officer's opinion that, in this instance, the condition of the trees would discount them from formal protection by making a TPO and therefore the work should not be prevented. The notification also includes the removal of a limb from a Sycamore, which is marked as tree number 25 in the report. The tree is very poor form and has been unsympathetically pruned in the past leaving a tree with very little value. The work that has been requested is also a fair request, therefore it is the officer's opinion that it is not suitable to make a TPO to prevent the work from commencing.
18	If members are minded to object to the work being completed, members should consider and decide whether to make a TPO. The test for making a TPO is whether it is expedient in the interests of amenity.
19	As the above works are within a conservation area and do not relate to an application for TPO consent, regulation 17(3) of the TPO regulations 2012 does not apply.
20	The trees that are within the Itchen Valley conservation area require the council to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area in accordance with section 72 of the Planning (Listed Building and Conservation Area) Act 1990.
21	To be able to assess the impact, first there must be a consideration as to what the character of the conservation area is. The Itchen Valley Conservation Area strategy document of 1993 was used to supply the details of the character of Marlhill Copse. This can be found in sections <b>17.2</b> and <b>17.3</b> of the document.
22	<b>Section 17.2</b> – <i>'Marlhill Copse itself originally formed part of the Townhill Park Estate and is shown on the 1st Edition Ordnance Survey Plan dated 1871, as a woodland block running along the Itchen Escarpment. The size of the trees suggest that they were planted around 1800 and the woodland is now a fine example of mature Oak trees grown as standards. During the 1920's and 30's these were thinned, and the glades were planted up with many unusual trees and shrubs, in particular Rhododendrons, Magnolia and Nothofagus, some of which remain today'</i> .
23	Historically the copse was not the same size as it is today as the 1871 map shows that it did not extend as far to the north as present day. It appears that the land to the north of the 1871 extent of Marlhill Copse did not appear to have been woodland and may possibly have been used for farming purposes.  The description of the trees in <b>section 17.2</b> is in relation to woodland that existed on the 1871 map and not that of the current extended copse that now incorporates the self-seeded ash trees and sycamore. 17.2 gives detail over the trees within the copse that form a feature of the conservation area. It is noted that the ash trees have not been referenced as a notable tree species.
24	As the trees subject of the notification were not within the woodland, as shown on the 1871 map, and was also not part of Marlhill Copse, then they

	cannot be included in the character assessment of the conservation area and are also not listed as a notable species.
25	<b>Section 17.3</b> – <i>‘The Copse itself lies on an escarpment and its mature trees form a very important element in the landscape of this part of the City, providing a very effective transition in visual terms between the City and its surrounding countryside’.</i>
26	For the purpose of this notification and assessing the impact that it has to the conservation area, officers consider that section 17.3 to be the most relevant section as the subject trees are not part of the old copse, which is referenced in section 17.2.
27	Officers have assessed the loss of the trees and the impact that this would have on the ‘effective transition in visual terms between the City and its surrounding’ and the impact on the character and appearance of the wider conservation area
28	It is the officers’ opinion that the loss of the trees would not remove the entire visual transition between the woodland and the surrounding area, however there will be some impact through tree felling. There will naturally be some loss of woodland on the boundary of the copse, however this is already being lost naturally by the spread of Chalara. Through careful consideration of replacement planting and the natural regeneration, this transition would return. With having a more diverse species selection added with replacement planting, this will build in resilience into the woodland for future and for it to have a level of protection for pest and diseases to ensure the longevity of the woodland and the conservation area.
29	The remaining work that has been requested has been detailed in applications 20/00303/TPO and 20/00305/TPO which are protected by W1 of The Southampton City Council (Hill Cottage Gardens) Tree Preservation Order 2013 along with W1 of The Southampton (Townhill Park - Cutbush Lane) Tree Preservation Order 1956.
30	The trees that are subject to a tree a preservation order is group feature G2 and trees 1 – 5 – 6 – 8 – 14 – 17 & 18. These are considered below.
31	The trees within G2 of the report are a small group of willows that are generally of a poor condition and quality. The felling of these trees will effectively result in them being coppiced and I fully expect to see an abundance of new growth arise from the coppice which will ultimately be more beneficial to the woodland and ecology. Officers are not objectionable to this form of management as this is likely to have been completed in other parts of the copse. One usage of the term ‘Copse’ relates to coppicing; therefore, it is very fitting for the area.
32	Tree marked as T1 is not on land that is owned or managed by the applicant and they have confirmed that they are aware of this, however it was picked up as part of the survey undertaken and submitted with the application, therefore it will still be considered within this report. Officers have made the tree owner aware of the condition of this tree.  As the trees is dead, it technically does not require permission via an application as the tree owner can issue a written 5-day notice to the council under section 14(1)(a)(i) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012. However, as this has been submitted on the application it will be considered. The tree is on third party

	land that does not form part of Marlhill Copse, however it is within the woodland classification of the tree preservation order. The tree is part of a linear boundary group feature that is separated from the main body of Marlhill Copse. There is a clear gap between this boundary feature and the woodland, and the canopies of each feature do not meet. Officers therefore do not consider this tree to be within a woodland for the purpose of determining the application. The tree is dead and therefore the council should not refuse its felling.
33	The oak marked T5 is a very prominent tree in the local area, however it is clear from the report that there are considerable concerns over the safe retention of the tree, especially as it is leaning toward the rear of the private properties and is within striking distance, should it fail.
34	The tree is infected with the decay fungi Ganoderma which can lead a mechanical failure of the stem or root plate, therefore there is concern with this tree given its location. Drill data has been provided and there are clear signs that the internal structure of the tree is in decline and the potential for failure increases with the decrease of healthy unaffected wood.
35	Contact with the consultant was made to ask if further forms of management were considered. A copy of the response has been included. See appendix (2)
36	It is the officers' opinion that the tree will continue to decline in its structural condition and given its location, it is regrettable, but the officer must accept that there are suitable grounds for its loss. A replacement tree will be replanted within 5 metres of the tree to be felled, therefore replacing the amenity for future.
37	The Douglas Fir marked as T6 is not a significant tree within the surroundings of the other trees and the canopy condition shows signs of the tree being in decline. This would certainly indicate that there are health issues with this tree which may potentially be root related. At the time of the survey, there were no fungal fruiting bodies seen, however it is the officer's opinion that the most likely cause of the decline is either being infected with Phaelous schweinitzii, Sparassis crispa or Hetrobasidion annosum. All these decay fungi are serious and cause brittle fracture of the main stem of the tree. It is the officers' opinion that the loss of the tree is acceptable. A replacement tree would be requested to replace its loss and to replace the amenity for the future.
38	Oak tree, which is marked as T8, has been shown to be infected with the decay fungi Inonotus dryadeus and the request to reduce the canopy is in relation to the decay. However, the drill data that has been supplied, does not indicate that there is extensive decay in the central core of the tree, which, if present and extensive, would give greater support to the crown reduction request. The tree is in a low usage area of the woodland and not near to properties, therefore there is an argument that the work should be refused as the reduction of the tree may cause additional stress which can increase the rate of its decline. However, this tree is in close proximity to its neighbour which is of a similar age class, therefore I have also considered the impact to the neighbouring tree, both now and the future.  As T8 will naturally decline over time, it may come to a point when felling is appropriate and there can be issues in relation to the sudden change in the wind dynamics to the neighbouring trees. Therefore, whilst having this in

	mind, the officers feel that, what amounts to a relatively small canopy reduction, is appropriate on the basis that it will gradually introduce the neighbouring tree to different wind dynamics and allow it to respond. It is therefore the opinion of the officers that the crown reduction should be supported.
39	The ash marked as T14 is a low-quality tree in amongst other trees of better quality. It has a natural lean towards the rear of the properties. Given that there is a very high incidence of Chalara within the woodland, and in very close proximity to this tree, it is the officers' opinion that the loss of this tree would not have an impact to the amenity of the woodland or remove the woodland character of the area. The officer does not object to the loss of the tree and would look to have a suitable native tree planted nearby to enhance the woodland diversity and to preserve the amenity for future
40	The trees marked as T17 is a very poor group of willows that appear to be an old coppice. The felling of these trees will effectively result in them being coppiced and I fully expect to see an abundance of new growth arise from the coppice which will ultimately be more beneficial to the woodland and ecology. Officers are not objectionable to this form of management as this is likely to have been completed in other parts of the copse. One usage of the term 'Copse' relates to coppicing; therefore, it is very fitting for the area and request
41	The oak tree marked as T18 is in close proximity to the rear of a property in Hill Cottage Gardens. The agent has suggested that the canopy of the tree can be reduced back by up to 3 metres, which would take it back to the boundary. It is the officers' opinion that this is not necessary and may be detrimental to the visual amenity from internal and external of the woodland. The canopy can be crown lifted to provide a 1.5 metre separation between the canopy and the top of the 2-metre fence. This will result in the canopy being removed off from the fence and remove the risk of damage, whilst maintaining the current canopy shape. Therefore, it is the officers' opinion that the reduction of the lower canopy be refused but a crown lift to provide the necessary separation, be consented.
42	When assessing the application to fell trees that are within a woodland, officers must apply regulation 17(3) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012.
43	This regulation states – 'Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area'.
44	The officers have considered the required tests set out within this regulation and have formed the following opinion.
45	<b>Does the application relate to an area of woodland?</b> The TPO is a 'woodland' TPO and the Department for Environment, Food and Rural Affairs (DEFRA classify the location to be a Broadleaved Woodland, added with the definition of 'woodland' within the UK Forestry Standard (UKFS), it leads officers to agree that the trees are within a woodland.
46	<b>Does the work accord with good forestry practice?</b>

	<p>There is no definition in the TPO Regulations of what “the practice of good forestry” means. However, the UKFS is a guidance document prepared by the Forestry Commission which sets out the Government’s approach to sustainable forestry. It is referred to the within the national planning guidance on TPOs (“the PPG”) and it is therefore relevant when assessing what is good forestry practice. The term ‘Forestry’ is described in the UKFS as ‘The science and art of planting, managing and caring for forests’.</p> <p>The UKFS states that the UKFS Requirements are divided into legal requirements and good forestry practice requirements. The Requirements are categorised into different elements of sustainable forest management, each supported by Guidelines for managers. It makes it clear that they should be interpreted and applied flexibly: “Some aspects of forest management lend themselves to ‘yes or no’ compliance, but most do not, and so the UKFS has not attempted to condense all the complexities of forest management into an over-simplistic format. The UKFS has therefore been written to be interpreted with a degree of flexibility and applied with an appropriate level of professional expertise.”</p>
47	<p>Of relevance to this application is section 6.5 of the UKFS, which refers to people and includes guidance on access, including visitor safety. Page 134 refers to employer’s health and safety legal requirements. Visitor health and safety is set out at page 135. The UKFS states the following</p> <p><i>The Occupiers’ Liability Acts 1957 and 1984 in Great Britain and the 1957 Act and 1987 Order in Northern Ireland direct landowners and managers to ensure that visitors to forests and woodlands are not put at risk. This includes visitors exercising rights of access or using permissive ways and dedicated land, and also covers responsibilities to people who are not invited or permitted to be on the land in question. In this case, a duty of care still exists if:</i></p> <ul style="list-style-type: none"> <li><i>• the landowner or manager is aware of a danger or risk, and it is known that people may be in, or come into, the vicinity of the danger;</i></li> <li><i>• the risk is one against which the landowner or manager may reasonably be expected to offer some protection. The landowner or manager must discharge their statutory duty of care in relation to people visiting land, whether or not they are there with permission. In England and Wales, reasonable care must be taken to ensure the safety of visitors using permissive ways and land dedicated under the Countryside and Rights of Way Act 2000. Forest environments can present a range of natural and man-made hazards that could put visitors at risk. Natural hazards include old trees and unstable rock faces. Man-made hazards include quarries, mineshafts and abandoned structures, as well as potentially hazardous activities such as forest operations, pest control measures and some sports. The Forestry Commission has produced detailed guidance, endorsed by FISA, on managing public safety in relation to forest operations, such as that required for harvesting sites.</i></li> </ul>
48	<p>It is therefore the officers’ opinion that the requested work is in direct relation to safety and is being proposed to prevent harm from occurring to visitors to the woodland and to the neighbouring properties, therefore it is the officers’ opinion that this does accord to the practice of good forestry.</p>
49	<p>It must be understood that this assessment has been carried out to the following trees – T1, T6, T8, T14 and T17 as they are in relation to safety. The</p>

	requested crown reduction of T18 does not accord with the practice of good forestry as the work is requested due to encroachment over a neighbouring property boundary and is not safety related. This type of work is not considered to be a forestry operation and therefore is not included within the UK forestry standard, which has been used to determine good forestry practices.
50	The officer has gone on to consider the remaining elements of regulation 17(3) of the TPO regulations and whether the felling of the trees would fail to secure (a) the maintenance of the special character of the woodland or (b) the woodland character of the area.
51	<b>The special Character</b> – The officer has considered what the special character of the area is and agrees that in a large section of the copse, it conforms with the description as detailed by DEFRA as being a broadleaved ancient and semi-natural woodland (ASNW). The area that the trees, subject to TPO protection, are growing, sit within the boundary of the ASNW, therefore are appropriate for the assessment of the special character.
52	Considering if the work would fail to secure the maintenance of the special character of the woodland or the woodland character of the area, the officer has formed the following opinion.
53	<b>Does the work fail to secure the maintenance of the special character of the area?</b> As mentioned above, the trees protected by the tree preservation order lie within the main body of the ASNW and are amongst a mixed woodland of broadleaved and coniferous, with the broadleaved trees being the dominant. After the felling, of coppicing of the willow, is completed the remaining trees surrounding will then retain the character.  A lot of the surrounding woodland is of a mixed age classification of mixed broadleaved trees, therefore is considered to be in line with the special character of the area. For this reason, the officer's opinion is that the work would not fail to secure the maintenance of the special character of the area.
54	The final test to consider is if the felling of the trees would remove the woodland character of the area.
55	<b>Does the proposed felling remove the woodland character of the area?</b>  The officer considers that the removal of the trees in this location would not remove the woodland character of the area, due to a vast majority of the copse still being present, which amounts to somewhere in the region of 9000 square meters of woodland, that is known as Marlhill Copse. The oak tree that is marked as number 5 and the Douglas fir marked as number 6 on the tree surveys plan have the highest amenity of the trees that are subject to the TPO application. The felling of these trees would not have a significant impact to the amenity, when being assessed from the public's view external to the woodland as there is a backdrop of other mature trees that form Marlhill Copse. It is also the officers' opinion that the impact to the character of the woodland internally will also not be significantly altered. If the trees are removed, the officers' opinion is that, in large, the woodland

	<p>character of the area remains and, with replacement planting, the future woodland character of the area will be continued.</p>
56	<p><b>Compensation.</b></p> <p>The Council can be liable for compensation in the event it refuses an application to consent. However, under Regulation 24(3) of The Town and Country Planning (Tree Preservation) (England) Regulations 2012, compensation is limited where the works are “forestry operations” in a woodland area. Regulation 24(3) states as follows:</p> <p><i>(3) Where the authority refuse consent under these Regulations for the felling in the course of forestry operations of any part of a woodland area—</i></p> <p><i>(a) they shall not be required to pay compensation to any person other than the owner of the land;</i></p> <p><i>(b) they shall not be required to pay compensation if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is subject to an appeal to the Secretary of State, the date of the final determination of the appeal; and</i></p> <p><i>(c) such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.”</i></p> <p>There is no definition of forestry operations for the purposes of the TPO Regs or in the Town and Country Planning Act 1990. Given the broad dictionary definition of forestry (as used in the UKFS), it is the officers’ view that these are forestry operations in a woodland area and therefore any compensation is limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.</p> <p>If these works are not considered forestry operations, then there is a risk of exposure to liability for a greater level of compensation as Regulation 24(1) states:</p> <p><i>(1) If, on a claim under this regulation, a person establishes that loss or damage has been caused or incurred in consequence of—</i></p> <p><i>(a) the refusal of any consent required under these Regulations;</i></p> <p><i>(b) the grant of any such consent subject to conditions; or</i></p> <p><i>(c) the refusal of any consent, agreement or approval required under such a condition, that person shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.</i></p> <p><i>(2) No claim, other than a claim made under paragraph (3), may be made under this regulation—</i></p> <p><i>(a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or</i></p>



	<i>(b) if the amount in respect of which the claim would otherwise have been made is less than £500.</i>
57	<p><u>Conclusion</u></p> <p>In relation to the request to carry out the proposed work contained within the Tree Surveys report, which covers both felling and crown reductions of trees subject to TPO and Conservation area protection, it is the officers' opinion that the work accords with the practice of good forestry and that the felling would maintain the special character and woodland character of the area and thus regulation 17(3) states that the local authority must grant consent in such circumstances.</p> <p>Having regard to the statutory duty under s72 of The Planning (Listed Building and Conservation Area) Act 1990, the felling and crown reductions would still preserve the character and appearance of the Conservation Area. On this basis, subject to a condition to replant replacement native trees, in the interests of good practice, the notification and both applications in this respect should be approved.</p>
<b>RESOURCE IMPLICATIONS</b>	
<u>Capital/Revenue</u>	
	As set out above.
<u>Property/Other</u>	
	NONE
<b>LEGAL IMPLICATIONS</b>	
<u>Statutory power to undertake proposals in the report:</u>	
	The statutory duties in connection with determining the application are set out in the body of the report.
	The Council may impose conditions in accordance with the Town and Country Planning Act 1990 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012
<u>Other Legal Implications:</u>	
	NONE
<b>RISK MANAGEMENT IMPLICATIONS</b>	
	NONE
<b>POLICY FRAMEWORK IMPLICATIONS</b>	
	NONE

<b>KEY DECISION?</b>	<b>Yes/No</b>
<b>WARDS/COMMUNITIES AFFECTED:</b>	
<u>SUPPORTING DOCUMENTATION</u>	

<b>Appendices</b>	
1.	Letter from Woodland Trust
2.	Letter from consultant
3.	Site photos
4.	Tree Location Plan

**Documents In Members' Rooms**

1.	
2.	

**Equality Impact Assessment**

<b>Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.</b>	<b>Yes/No</b>
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**Data Protection Impact Assessment**

<b>Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.</b>	<b>Yes/No</b>
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**Other Background Documents**

**Other Background documents available for inspection at:**

<b>Title of Background Paper(s)</b>	<b>Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)</b>
1.	
2.	



**WOODLAND  
TRUST**

Planning,  
Southampton City Council,  
Civic Centre,  
Southampton,  
SO14 7LS

10<sup>th</sup> December 2020

Dear Mr Claydon-Bone

**Application: 20/00077/TCA**

**Proposal: Tree works | Marlhill Copse, Mansbridge Road, Southampton**

### **Comment – Ensuring tree works align with the essential protection of ancient woodland**

As the UK's leading woodland conservation charity, the Woodland Trust aims to protect native woods, trees and their wildlife for the future. We own over 1,000 sites across the UK, covering around 29,000 hectares (71,000 acres) and we have over 500,000 members and supporters.

The Trust is concerned that the tree works in planning application (20/00077/TCA) may not wholly correspond to those required for the protection of the flora and fauna of the south-eastern part of the site that is ancient woodland. This wood is known as Marlhill Copse (grid ref: SU45071536), and is designated as an area of Ancient Semi Natural Woodland on Natural England's Ancient Woodland Inventory (AWI). The trees within the AW appear to be T2-12 and those in G1.

#### **Ancient Woodland**

Natural England<sup>1</sup> and the Forestry Commission defines ancient woodland "*as an irreplaceable habitat [which] is important for its: wildlife (which include rare and threatened species); soils; recreational value; cultural, historical and landscape value [which] has been wooded continuously since at least 1600AD.*"

#### **Planning Policy**

National Planning Policy Framework, paragraph 175 states: "*When determining planning applications, local planning authorities should apply the following principles:*

*c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons<sup>58</sup> and a suitable compensation strategy exists;*

Footnote 58, defines exceptional reasons as follows: "*For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.*"

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<sup>1</sup> <https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences>

**Southampton City Council's Adopted Core Strategy** (amended 2015) Policy CS 22 – Promoting Biodiversity and Protecting Habitats states that the “*Council will promote biodiversity through:*

*1. Ensuring development does not adversely affect the integrity of international designations, and the necessary mitigation measures are provided; or the development otherwise meets the Habitats Directive;*

*2. Ensuring development is unlikely to have an unacceptable impact on a national or local designation; and that any such impact (on these or other features of biodiversity value) is avoided, mitigated or as a last resort compensated for.”*

### **Impacts on Ancient Woodland**

It is difficult to determine the general state of maturity of trees within the ancient woodland from the tree survey, as no stem diameters have been provided. Understanding the age of a tree often signifies value due to the decay features associated with the aging process. While the tree survey does give detailed information about potential decay, internal cracks and hollowing within tree stems, the proposals also involve recommendations for felling and removing some of those trees found to have such features.

Branch shedding and deadwood is a dynamic aspect of healthy tree growth which plays a part in the maturation of a tree's crown. After maturity, the crown of an aging tree will naturally reduce further in the process called retrenchment. This process, alongside increasing trunk girth, enables many trees to remain biomechanically stable as they reach great age, without the need for human intervention. The aging process creates habitat of great value for biodiversity; decaying wood habitat, with aging bark and old root systems, provides habitat for rare species, including specialist wood decay fungi and invertebrates, which in turn support important and threatened species of flora and fauna.

The Trust therefore recommends that, where possible, old trees displaying veteran characteristics are retained within the ancient woodland. It is important that signs of decay are not necessarily used as justification for felling of trees which such features. Other options for retention of trees should be explored, such as removal of particularly dangerous limbs, crown reductions and as a last resort monolithing, which is the process of removing a tree's crown but leaving the main stem standing to become a monolith of deadwood; this can help retain decaying wood habitat for biodiversity purposes, but still improve safety. Further to this, rather than removing cut deadwood from the area, retaining it within the ancient woodland enables crucial habitat for specialist fungi and invertebrates to be retained.

### **Conclusion**

In summary, the Woodland Trust is concerned that the proposed tree works may not align with the protection afforded the area through its status as ancient woodland; a habitat known to be important for its ecological value.

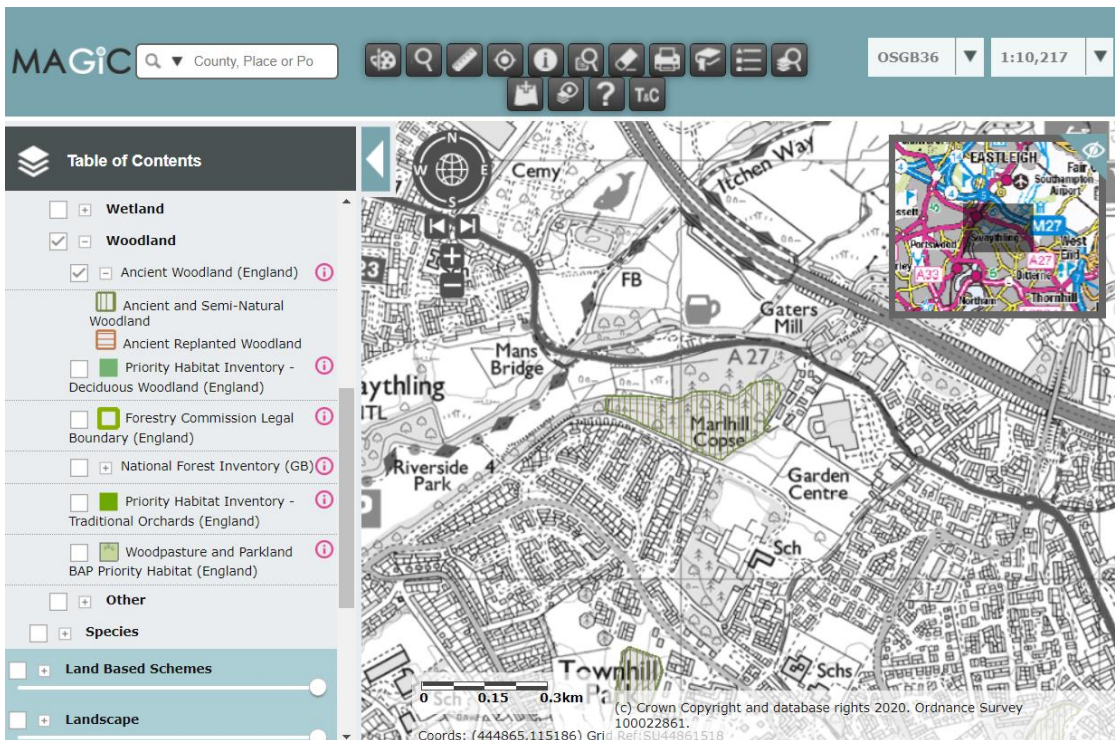
The information provided to date is not quite detailed enough in determining the maturity of the trees and their potential ecological importance. As such, we trust that the council will consider the general recommendations we have proposed above that are aimed at minimising the loss of biodiversity, whilst ensuring any necessary tree works are carried out.

If you would like clarification of any of the points raised please contact us via [campaigning@woodlandtrust.org.uk](mailto:campaigning@woodlandtrust.org.uk)

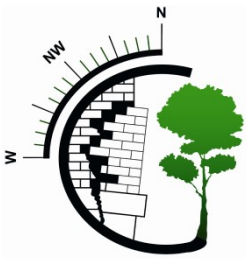
Yours sincerely,

The Campaigning Team

Enc. Screen shot from Magic Maps showing postcode Marhill Copse, named and the area designated Ancient and Semi-Natural Woodland marked in green hatching.



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# Tree Surveys

BS5837 – Pre Planning – Mortgage – Risk Management & Prediction

Bramley House  
Newnham Bridge  
Tenbury Wells  
WR15 8NX  
Tel: 0118 \*\*\* \*\*\*\*  
Mobile: 0778 \*\*\* \*\*\*\*

## APPENDIX 3

4 January 2020

Mr G Claydon-Bone  
City Tree Officer  
Tree Team  
City Services  
Southampton City Council

Ref: SN/VTA-20/20/01.10

Dear Mr Claydon-Bone

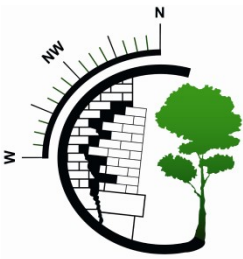
### Re: Oak tree behind 19 Hill Cottage Gardens

Thank you for your enquiry relating to the tree located behind 19 Cottage Hill Gardens. Please find set out below my response in reply to your request for further clarification on the decision-making process.

As you rightly point out decay was detected around the base of the tree and from the micro drilling results is confined to the northern side, with the tension side of the base mostly unaffected. However, it is important to note that fungal mycelium was observed throughout the wood within the failed stem union at approximately 5 metres above ground level (AGL) on the south west side of the stem, see Figure 1 attached to this letter. In our opinion this fungal mycelium is similar to that of *Ganoderma sp.* and is most probably the primary factor in the failure of the scaffold stem.

We considered the tree to be typical of a woodland grown specimen as it exhibits a well-formed slender stem and a high canopy. Trees with such features are prone to high levels of biomechanical stress (leverage). The extent to which the stem is wind loaded will have been significantly altered following the shedding of a large scaffold stem in September 2020. The lateral limb you refer to was a significant canopy component and in excess of 600 millimetres in diameter, see Figure 2.

Prior to making our recommendations we considered the trees landscape character, biodiversity and amenity value, proximity to the target area and risk should it fail. We then consulted the British Standard (BS) 3998:2010, Tree work – Recommendations, and arboricultural best practice guidance.



# Tree Surveys

BS5837 – Pre Planning – Mortgage – Risk Management & Prediction

We first considered pruning (crown reduction) however, the extent to which the canopy would have to be reduced to lower the bio-mechanical loading on the stem would exceed arboricultural best practice guidance. Furthermore, such a reduction would result in a substantial loss of photosynthetic area (leaves), and having already lost a major part of the canopy there will be a significant loss in the trees ability to photosynthesise. Reduced levels of photosynthesis will result in a loss of vitality and this may also speed up the rate of fungal decay and will result in stress, a combination of factors that can speed up the trees decline. The risk of uprooting due to a combination of decay and waterlogging (a lack of soil cohesion) remains high.

Pollarding was another management option considered, to leave the tree as a monolith. Pollarding is not recommended for mature oak trees that have not been subjected to a regular regime of pollarding. The extensive loss of photosynthetic area (leaves) will result in a sudden loss of vitality and rapid decline. As the tree is not considered a veteran (this term is not precisely defined), it has a low level of biological, cultural and historical features and does not warrant retention as it poses a significant risk to third parties should it fail.

When considering the management options, we consider the loss of the scaffold stem to have significantly altered the wind loading characteristics of this tree. Excess wind loading and the loss off a significant counterbalance increases the potential for premature failure at, or close to ground level. This is further compounded by the topography, culvert and wet nature of the area that the tree is located within. The wound created by the scaffold stem failure has created an opportunity for further opportunistic decay pathogens to colonise the main stem at 5 metres AGL and this added complication was considered when making my recommendations.

An annual inspection, to monitor the decay may have provide an opportunity to prolong the trees lifespan however, in my opinion, the potential for failure over time becomes significantly more likely and therefore outweighs its retention.

In summary:

- The retention of the tree without taking remedial action is not realistic.
- The reduction of the tree to reduce the biomechanical loading on the base is not a practical solution and an ongoing inspection regime is outweighed by the high-risk nature and, therefore, it is recommended that the tree is felled to ground level. A suitable replacement(s) must be considered in the woodland management plan.

I trust that my response and recommendations are of reassurance and assistance to you. Should you have any queries or concerns please do not hesitate to contact me.

Yours sincerely

\*\*\*\*\*

Arboricultural Consultant  
Tree Surveys and Urban Tree Experts  
07748 \*\*\*\*\*  
01189 \*\*\*\*\*



Oak tree number 5





Sycamores G23





General appearance of trees from Mansbridge Road looking east



General appearance of woodland looking from Mansbridge Road looking West



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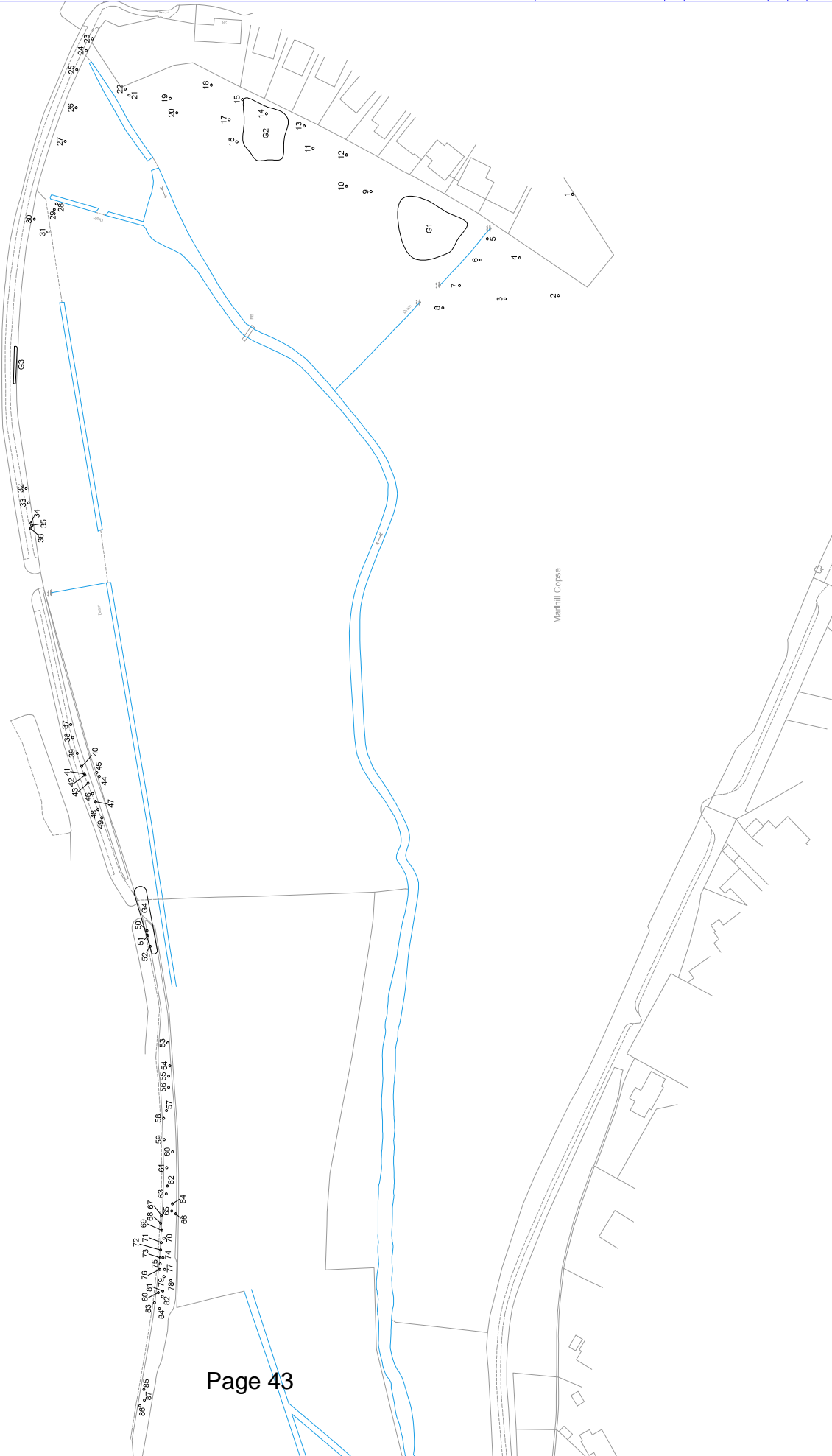
**NOTES**

- All dimensions must be checked on site and not scaled from this drawing.
- The original of this drawing was produced in colour, a monochrome copy should not be relied upon.
- Information on this drawing is based on a site visit report.
- Based on OS data, Licence number 100022432.



**Key:**


- Tree number - refer to report for information
- Open number - refer to report for information
- Existing site features



Malhill Copse


# Agenda Item 4

## Appendix 4



**Tree Survey**  
10187  
Worcestershire, WR12 9NS  
email: [tree@tree-survey.com](mailto:tree@tree-survey.com)

**Tree Location**



Client	Hill Cottage Gardens, Southampton		
Job Title	Tree Location		
Scale	1:500 @ A3	Drawn	MJE
Date	October 2020	Checked	SN
Drawn No.	SNMTPA01610	Rev.	

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## INDEX OF PLANNING APPLICATIONS FOR DECISION

DATE: 2<sup>nd</sup> February 2021 – 5:30pm

Main Agenda Item Number	Officer	Recommendation	PSA	Application Number / Site Address
7	AC	DEL	5	20/01460/FUL 26 Butterfield Road

PSA – Public Speaking Allowance (mins); CAP - Approve with Conditions: DEL - Delegate to Officers: PER - Approve without Conditions: REF – Refusal: TCON – Temporary Consent: NOBJ – No objection

### Case Officers

SB – Stuart Brooks

AC – Anna Coombes

## **Southampton City Council - Planning and Rights of Way Panel**

### **Report of Service Lead – Planning, Infrastructure & Development**

#### **Local Government (Access to Information) Act 1985**

#### **Index of Documents referred to in the preparation of reports on Planning Applications:**

##### **Background Papers**

1. **Documents specifically related to the application**
  - (a) Application forms, plans, supporting documents, reports and covering letters
  - (b) Relevant planning history
  - (c) Response to consultation requests
  - (d) Representations made by interested parties
  
2. **Statutory Plans**
  - (a) Hampshire, Portsmouth, Southampton and New Forest National Park Minerals and Waste Plan (Adopted 2013)
  - (b) Amended City of Southampton Local Plan Review (Adopted March 2015)
  - (c) Local Transport Plan 3 2011-2031
  - (d) Amended City of Southampton Local Development Framework – Core Strategy (inc. Partial Review) (adopted March 2015)
  - (e) Adopted City Centre Action Plan (2015)
  - (f) Community Infrastructure Levy Charging Schedule (2013)
  - (g) Bassett Neighbourhood Plan (Adopted 2016)
  
3. **Statutory Plans in Preparation**
  
4. **Policies and Briefs published and adopted by Southampton City Council**
  - (a) Old Town Development Strategy (2004)
  - (b) Public Art Strategy
  - (c) North South Spine Strategy (2004)
  - (d) Southampton City Centre Development Design Guide (2004)
  - (e) Streetscape Manual (2005)
  - (f) Residential Design Guide (2006)
  - (g) Developer Contributions SPD (September 2013)
  - (h) Greening the City - (Shoreburs; Lordsdale; Weston; Rollesbrook Valley; Bassett Wood and Lordwood Greenways) - 1985-1995.
  - (i) Women in the Planned Environment (1994)
  - (j) Advertisement Control Brief and Strategy (1991)
  - (k) Biodiversity Action Plan (2009)
  - (l) Economic Development Strategy (1996)
  - (m) Test Lane (1984)
  - (n) Itchen Valley Strategy (1993)



- (o) Portswood Residents' Gardens Conservation Area Character Appraisal (1999)
- (p) Land between Aldermoor Road and Worston Road Development Brief Character Appraisal(1997)
- (q) The Bevois Corridor Urban Design Framework (1998)
- (r) Southampton City Centre Urban Design Strategy (2000)
- (s) St Mary's Place Development Brief (2001)
- (t) Ascupart Street Development Brief (2001)
- (u) Woolston Riverside Development Brief (2004)
- (v) West Quay Phase 3 Development Brief (2001)
- (w) Northern Above Bar Development Brief (2002)
- (x) Design Guidance for the Uplands Estate (Highfield) Conservation Area (1993)
- (y) Design Guidance for the Ethelburt Avenue (Bassett Green Estate) Conservation Area (1993)
- (z) Canute Road Conservation Area Character Appraisal (1996)
- (aa) The Avenue Conservation Area Character Appraisal (1997)
- (bb) St James Road Conservation Area Character Appraisal (1996)
- (cc) Banister Park Character Appraisal (1991)\*
- (dd) Bassett Avenue Character Appraisal (1982)\*
- (ee) Howard Road Character Appraisal (1991) \*
- (ff) Lower Freemantle Character Appraisal (1981) \*
- (gg) Mid Freemantle Character Appraisal (1982)\*
- (hh) Westridge Road Character Appraisal (1989) \*
- (ii) Westwood Park Character Appraisal (1981) \*
- (jj) Cranbury Place Character Appraisal (1988) \*
- (kk) Carlton Crescent Character Appraisal (1988) \*
- (ll) Old Town Conservation Area Character Appraisal (1974) \*
- (mm) Oxford Street Conservation Area Character Appraisal (1982) \*
- (nn) Bassett Green Village Character Appraisal (1987)
- (oo) Old Woolston and St Annes Road Character Appraisal (1988)
- (pp) Northam Road Area Improvement Strategy (1987)\*
- (qq) Houses in Multiple Occupation (revised 2016)
- (rr) Vyse Lane/ 58 French Street (1990)\*
- (ss) Tauntons College Highfield Road Development Guidelines (1993)\*
- (tt) Old Woolston Development Control Brief (1974)\*
- (uu) City Centre Characterisation Appraisal (2009)
- (vv) Parking standards (2011)

\* NB – Policies in these documents superseded by the Residential Design Guide (September 2006, page 10), albeit character appraisal sections still to be had regard to.

## 5. Documents relating to Highways and Traffic

- (a) Hampshire C.C. - Movement and Access in Residential Areas
- (b) Hampshire C.C. - Safety Audit Handbook
- (c) Cycling Strategy – Cycling Southampton 2017-2027
- (d) Southampton C.C. - Access for All (March 1995)

- (e) Institute of Highways and Transportation - Transport in the Urban Environment
- (f) I.H.T. - Traffic Impact Assessment Guidelines
- (g) Freight Transport Association - Design for deliveries
- (h) Department for Transport (DfT) and Highways England various technical notes
- (i) CIHT's Manual for Streets and Manual for Streets 2

6. Government Policy Planning Advice

- (a) National Planning Policy Framework (February 2019)
- (b) National Planning Policy Guidance Suite

7. Other Published Documents

- (a) Planning for Daylight and Sunlight - DOE
- (b) Coast and Countryside Conservation Policy - HCC
- (c) The influence of trees on house foundations in clay soils - BREDK
- (d) Survey and Analysis - Landscape and Development HCC
- (e) Root Damage to Trees - siting of dwellings and special precautions – Practice Note 3 NHDC
- (f) Shopping Policies in South Hampshire - HCC
- (g) Buildings at Risk Register SCC (1998)
- (h) Southampton City Safety Audit (1998)
- (i) Urban Capacity Study 2005 – 2011 (March 2006)
- (j) Strategic Housing Land Availability Assessment (March 2013)

# Agenda Item 7

## Planning and Rights of Way Panel 2<sup>nd</sup> February 2021 Planning Application Report of the Head of Planning & Economic Development

<b>Application address:</b> 26 Butterfield Road, Southampton			
<b>Proposed development:</b> Extensions and alterations to existing garage, including a front extension, raising the roof and the insertion of dormer windows to facilitate the formation of a 2-bedroom self-contained dwelling.			
<b>Application number:</b>	20/01460/FUL	<b>Application type:</b>	FUL
<b>Case officer:</b>	Anna Coombes	<b>Public speaking time:</b>	5 minutes
<b>Last date for determination:</b>	EOT 10.02.2021	<b>Ward:</b>	Bassett
<b>Reason for Panel Referral:</b>	Request by Ward Members & Five or more letters of objection have been received	<b>Ward Councillors:</b>	Cllr John Hannides Cllr Beryl Harris Cllr Les Harris
<b>Referred to Panel by:</b>	Cllr John Hannides Cllr Beryl Harris	<b>Reason:</b>	Over-development & Out of character.
<b>Applicant:</b> Mr Patel		<b>Agent:</b> SC Architecture Ltd	

<b>Recommendation Summary</b>	Delegate to the Head of Planning & Economic Development to grant planning permission subject to criteria listed in report
-------------------------------	---

<b>Community Infrastructure Levy Liable</b>	Yes
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### Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 39-42 and 46 of the National Planning Policy Framework (2019). Policies – SDP1, SDP4, SDP5, SDP7, SDP9, SDP10, SDP12, SDP13, H1, H2, and H7 of the City of Southampton Local Plan Review (Amended 2015) and CS4, CS5, CS13, CS16, CS19, CS20, CS22, CS25 of the Local Development Framework Core Strategy Development Plan Document (Amended 2015).

<b>Appendix attached</b>			
1	Habitats Regulation Assessment	2	Development Plan Policies

## **Recommendation in Full**

1. That the Panel confirm the Habitats Regulation Assessment in Appendix 1 of this report.
2. Delegate to the Head of Planning & Economic Development to grant planning permission subject to the planning conditions recommended at the end of this report and the completion of a S.106 Legal Agreement to secure either a scheme of measures or a financial contribution to mitigate against the pressure on European designated nature conservation sites in accordance with Policy CS22 of the Core Strategy and the Conservation of Habitats and Species Regulations 2010.
3. That the Head of Planning & Economic Development be given delegated powers to add, vary and /or delete conditions as necessary, and to refuse the application in the event that item 2 above is not completed within reasonable timescales.

### **1. The site and its context**

- 1.1 The application site comprises a two-storey, detached family dwelling on a large corner plot with an attached garage and a paved front driveway, providing parking for at least 2 cars.
- 1.2 The application site fronts onto Butterfield Road with Beaumont Close, a cul-de-sac of 5 detached houses, wrapping around the side and part of the rear boundaries of the property.
- 1.3 Butterfield Road lies within a medium accessibility area for access to public transport routes on Burgess Road, Bassett Avenue and Winchester Road, and is characterised as a residential area with predominantly detached dwellings of varying styles and sizes.

### **2. Proposal**

- 2.1 The proposal is to extend and convert the existing attached double garage to form a new dwelling with two bedrooms. The proposal involves the following elements:
- 2.2
  - A 2m front extension to the existing garage and 1.0m increase in height;
  - New front and rear dormer windows;
  - Alterations to the arrangement of existing ground floor doors and windows;
  - Construction of a bin store to the front of the garage;
  - Subdivision of the rear gardens to form two private gardens;
  - Cycle storage for both the existing and new dwellings;
  - Extension of the existing driveway parking area;
  - Tree and shrub planting to the front of the existing property.
- 2.3 The proposal will create a bedroom, bathroom and kitchen / living area at ground floor and a main bedroom with en-suite at first floor. The new dwelling will benefit from two off-road parking spaces and a private rear garden.
- 2.4 The proposed plans were amended during the application process as follows:
  - Rear bathroom window reduced in size in response to concerns from neighbouring residents.
  - Additional planting to the front garden to improve the streetscene.

- Introduction of a low-level planting bed between the parking spaces to create 2 pairs of 2 spaces with improved visibility and to break up the visual appearance the parking area.
- Addition of further cycle and bin storage details
- Inclusion of an outline of the existing garage added to the proposed elevations.

### **3. Relevant Planning Policy**

3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at **Appendix 2**.

3.2 The National Planning Policy Framework (NPPF) was revised in 2019. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

### **4. Relevant Planning History**

4.1

<b>Case Ref:</b>	<b>Proposal:</b>	<b>Decision:</b>	<b>Date:</b>
20/01090/FUL	Erection of a two-storey side extension, front and roof extension to garage to facilitate conversion of the property into 3 x 2 bed dwellings and associated parking	Withdrawn	07.10.2020
08/01515/FUL	Part 2-storey part single storey side and rear extensions and 2-storey front extension	Conditionally Approved	17.12.2008
08/00721/FUL	Erection of two storey front, side and rear extensions.	Application Refused	01.07.2008
1559/M30-3	The erection of 8 detached houses on site of former reservoir, Butterfield Road.	Conditionally Approved	01.10.1979
1553/M21(RD)-4	Erection of 10 dwellings	Application Refused	24.04.1979

4.2 A previous scheme for development on this site was withdrawn in October last year. The withdrawn scheme involved the extension of both the main house and the garage in order to form 2x 2-bed flats within the main house and a 2-bed self-contained dwelling within the converted garage. The current application now preserves the main house as a large family dwelling and proposes the conversion of the garage into a self-contained unit.

4.3 Most notably, a larger extension of the existing garage was conditionally approved in December 2008 (08/01515/FUL) as part of a scheme of extensions to the whole property, although that permission was never implemented and has since lapsed. This approved scheme involved larger increases in ridge height and a more significant forward extension of the garage, along with larger dormer windows to

the front and rear garage roof slopes to provide two new bedrooms within the enlarged roof space.

## **5. Consultation Responses and Notification Representations**

5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners via letter. A site notice was later erected on **08.01.2021**, giving an extended period for neighbour comments until **29.01.2021**. At the time of writing the report, **2** Ward Cllr representations and **14** representations from surrounding residents have been received. The following is a summary of the points raised:

5.2 ***Out of character, scale and proportion with existing large detached family homes, characterised by large gardens & gaps between properties. Creates semi-detached dwellings & introduces dormer windows. The extensions will create a solid mass of building from No.26 – No.24. This should not be rental flats and there are no other such conversions on Butterfield Road.***

### **Response**

These issues are discussed in the Planning Considerations below.

5.3 ***Loss of half the front garden and green character, is contrary to the spirit of SCC Green City Plan 2020/30. View of distant trees would be blocked by raising the garage roof height. Bins for 2 houses would clutter the frontage.***

### **Response**

The proposal has since been amended to improve the streetscene with additional tree and shrub planting to the front garden and with a new low planting bed to break up the parking area. The existing narrow gap between No's 26 and 24 Butterfield Road does not provide any significant view of trees behind the site. The new bin store is to serve only the new dwelling. Further details of a modest brick bin store have been added to the amended plans. The existing dwelling has space to store bins in their rear garden, along the northern side elevation. The existing frontage could be changed under permitted development allowances without the need for planning permission and so this is not a valid objection to the proposals.

5.4 ***Loss of privacy for the rear gardens of No.5 Belmont Close, and No's 26 and 24 Butterfield Road, and to the front windows of properties on the opposite side of Butterfield Road. Reduced light to the side windows of No.24.***

### **Response**

These issues are discussed in the Planning Considerations further below. The proposed first floor rear dormer window is an obscurely glazed bathroom window, offering no view over neighbouring properties. Nevertheless, the applicant has reduced the size of this rear window in response to concerns from neighbouring residents. Front windows of properties to the opposite side of Butterfield Road are already overlooked from the public road, and from the numerous front windows of No's 26 and 24. The addition of 2 front bedroom windows are not considered to significantly change this situation.

The development is to the North of the affected side windows of No.24 Butterfield Road, and these windows have been identified on site as small obscurely glazed bathroom windows at first floor and obscurely glazed secondary windows and door to a kitchen at ground floor, which also benefits from a rear window facing into the

garden. Whilst there will be some impact from the proposed development, these windows do not enjoy the same level of protection as the windows of habitable rooms (bedrooms, living rooms etc).

- 5.5 ***Reduced plot size of No.26 Butterfield Road. Reduces attractiveness of both No's 26 and 24 and future property values. Increased noise and vehicle movements from new dwelling. Construction noise, pollution, disruption, and heavy traffic.***

**Response**

The remaining garden serving No.26 Butterfield Road still exceeds our minimum standards. The future market value of a property is not a material planning consideration. Noise impacts are discussed in the Planning Considerations further below.

- 5.6 ***Cramped living space. No second reception room, only an open plan kitchen/diner/living room. Poor natural light, being sandwiched between 2 large properties and poor outlook onto parking area. No window to downstairs bathroom, so no natural light or ventilation. The garden is too small. The bin store area is too small to serve both properties.***

**Response**

The quality of living accommodation is discussed in the Planning Considerations further below. Whilst it is not an ideal arrangement, it is not uncommon to have a bathroom reliant on mechanical ventilation only. The new garden exceeds our minimum size standards, as given in the Residential Design Guide SPD (RDG). The bin store is only intended to serve the new dwelling.

- 5.7 ***The application form states 4 existing parking spaces and 4 proposed spaces. Plan 3939-P-02 shows space for 6 vehicles (2 in the garage and 4 double parked). Loss of 2 spaces overall. Concern that vehicles will encroach onto pavement due to extension of the garage. SCC should be promoting cycling, in line with SCC Green City plan, but no cycle storage provided.***

**Response**

The level of parking provision is discussed in the Planning Considerations further below. The remaining driveway parking spaces are longer than our minimum size standards, to ensure that cars do not overhang the pavement. The plans have since been amended to indicate cycle storage for both the new and existing dwellings.

- 5.8 ***Butterfield Road is already a 'rat run' between Burgess Road and Winchester Road. A new dwelling will exacerbate this and increase road traffic, noise and air pollution. Vehicles parking opposite No.33 already make access difficult and more parking could prevent safe access for disability transport service.***

**Response**

The Highways Development Management Team have no objections to the scheme in terms of highway safety. The highway and parking impact of this development is discussed in the Planning Considerations further below.

- 5.9 ***The Bassett Neighbourhood Plan and the Southampton Housing Needs Survey both highlight the need to preserve the character and number of the existing stock of family homes. Also "no net loss of family homes on sites capable of accommodating a mix of residential units"***

***The Annex to the Plan - Para 2.28 describes the character of Butterfield Road: "The houses either side of this road are all detached family houses".***

**Response**

The proposal retains the existing large family dwelling on site with a large garden that exceeds the minimum amenity standards outlined in the Residential Design Guide. The impact on character of the local area is discussed in the Planning Considerations further below.

- 5.10 ***The additional surface area of the extended garage roof will collect more water. A soak-away would be inadequate. Loss of front garden drainage through enlarging the parking hardstanding placing further pressure on street drainage. Surface water drain in front of No.26 drain is sometimes inundated and is frequently blocked. This already causes a hazard. Increased demand on utilities, in particular water and sewers.***

***Air quality is monitored from the end of Butterfield Road to the junction of Burgess Road and The Avenue. The proposal will deteriorate air quality.***

**Response**

The increased surface area of the garage roof is not significantly greater than the existing situation. The increased parking hardstanding can be conditioned to be formed of permeable materials, to ensure that surface water run-off is minimised and is absorbed within the site. Drainage and air quality impacts are discussed in more detail in the Planning Considerations further below.

- 5.11 ***Restrictive Covenant states no more than 8 dwellings could be built on the site. New dwelling will be difficult to sell & mortgage.***

***The proposal is not an 'extension', nor is it a 'family home' as defined in Core Strategy policy CS16.***

***This would set a precedent for similar projects in Butterfield Road.***

***Number of neighbour objections should be an indicator of unacceptable development.***

***Old site notice still on display. No new site notice for this application, causing confusion and not enough time for neighbour comments.***

**Response**

A restrictive covenant is not a material Planning consideration, and should be taken up through the legal system.

The description of development is considered to accurately represent the proposed extensions and alterations to the existing garage. The existing family home, No.26, is being retained on site.

All applications are considered on their own merits and this would not set a precedent.

The number of neighbour objections are noted and all comments are taken into consideration. All applications must be assessed against the relevant policy framework.

A site notice has since been displayed on site and the period for comments has been extended to allow for further public comments.



- 5.12 ***The landlord lives elsewhere. A bathroom on both floors suggests intended use as a rented HMO. This is a resubmission of a previously withdrawn scheme, so there is a concern that the original scheme could be pursued.***

**Response**

The status of the applicant is not a material planning consideration. The proposed conversion of the garage does not provide sufficient facilities for two flats, nor does it have 3 bedrooms to qualify as an HMO use. If the converted garage is altered and used as two flats or as an HMO in future, then it would require planning permission and the Planning Enforcement team have powers to investigate this.

**Consultation Responses**

- 5.13 **SCC Environmental Health (Pollution & Safety)** – No objection. The following planning conditions are recommended: Working hours; Bonfires.

- 5.14 **SCC Environmental Health (Contaminated Land)** – The proposed land use is sensitive to the effects of land contamination. Records indicate historical land use: Clay Pit (on site). There is potential for these off-site hazards to migrate from source, so recommend that the site be assessed for land contamination risks and remediated where appropriate.

***Response:*** *The development site has already been developed and occupied for many years as a residential use. The proposal is not considered to present a significantly different intensity or form of occupation to justify a full ground survey. Instead, an ‘unsuspected contamination’ performance condition would be suitable.*

- 5.15 **Highways Development Management** – No objection. Although we do not usually support 3 or more consecutive spaces, in this instance the spaces are somewhat set back from the footway. This would allow for a buffer space where vehicles can reverse out onto before they encroach on the public footway. This gives both the driver and footway users time and space to be aware of one another.

***Response:*** *In response to these comments, the plans have been amended to include a low-level planting strip to break up the parking area into 2 bays of 2 spaces, to further improve visibility and the visual impact of the development.*

- 5.16 **CIL Officer** – The development is CIL liable as there is a net gain of residential units. The residential CIL rate is currently £104.38 per sq m, to be measured on the Gross Internal Area floorspace of the building.

- 5.17 **SCC Archaeology** – No objection. No conditions required.

- 5.18 **Southern Water** – No objection. A formal application is required for connection to the public sewer. The exact position of the sewer must be determined on site. Should any sewer be found during construction, an investigation will be required before any further works commence on site.

- No development or tree planting within 3 metres of the sewer.
- No soakaways etc. within 5 metres of the sewer.
- All existing infrastructure should be protected during construction.

**6.0 Planning Consideration Key Issues**

- 6.1 The key issues for consideration in the determination of this planning application are:

- The principle of development;
- Design and effect on character;
- Residential amenity;
- Parking highways and transport;
- Air Quality and the Green Charter; and,
- Likely effect on designated habitats.

### Principle of Development

- 6.2 Whilst the site is not identified for development purposes, the Council's policies promote the efficient use of previously developed land to provide housing. As detailed in Policy CS4 an additional 16,300 homes need to be provided within the City between 2006 and 2026 and this scheme would assist the Council in meeting its targets. However it should also be noted that up to 2021/22 the Council has sufficient completions and allocations without needing to rely on windfall housing.
- 6.3 Policy CS16 of the Core Strategy resists the loss of family dwellings. This is supported by the Bassett Neighbourhood Plan. The proposal would comply with these policies by retaining the existing large family dwelling on site (No.26 Butterfield Road). The subdivision of the existing garden provides sufficient space and privacy to ensure the existing dwelling still qualifies as a family home. Due to the small scale of the development, there is no specific policy requirement for the new dwelling to also be a family dwelling, so the proposed 2 bedroom unit would comply with local policy.
- 6.4 As a result of this proposal, the application site would have a residential density of 40 dwellings per hectare (dph), which is in accordance with policy CS5 and the Bassett Neighbourhood Plan, which seek a residential density of 35 - 50 dph in this medium accessibility area, however the overall quality of development must still be assessed. This is discussed in more detail below.
- 6.5 The principle of development is supported as it optimises the use of the previously developed land to deliver a windfall site to contribute towards the City's housing need, and this scheme contributes to the mix and balance of households in the local community.

### Design and effect on character

- 6.6 The proposed extensions to the existing garage building are modest in scale and the design would ensure that the new converted dwelling would remain subservient and would not dominate the existing dwellings to either side. The modest 1m ridge height increase of the garage building would ensure that the appearance of the converted garage would remain subservient and sympathetic to the existing dwelling and would not compete with the roof lines of No's 26 and 24.
- 6.7 Butterfield Road does contain a number large detached dwellings, however the use of the existing garage building to provide a new dwelling, and it's position, set back from the main elevation of No.26, would ensure the development remains subservient to the more dominant detached dwellings surrounding the site. As such, the proposal is not considered to visually detract from the character and appearance of the properties lining Butterfield Road.
- 6.8 The parking area to the front of the site has been amended to provide a central, low-level planting bed to break up the visual dominance of four car wide driveway.

The scheme has also been amended to improve the green landscaping offering with additional tree and shrub planting to the front garden of No.26, in order to help offset the increased parking within the streetscene. The use of landscaping is considered to mitigate the visual appearance of the enlarged driveway.

- 6.9 The proposed bin store is a modest brick-built structure, tucked into the flank wall of No.26. As such, it is not considered to result in visual clutter of the street frontage.
- 6.10 Furthermore, the proposed residential density complies with policy guidelines and has the positive benefit of making effective use of land to contribute towards the City's housing delivery targets. Given the details discussed above, the proposal is not considered to present significant harm to the character and appearance of Butterfield Road, or the wider local area.

#### Residential amenity

- 6.11 New dormer windows are proposed in the front and rear of the converted garage. The proposal would not overlook neighbouring properties to the rear, as the first floor rear dormer window is an obscurely glazed bathroom window. Notwithstanding this, the applicant has amended the plans to reduce the size of this window in response to neighbour concerns. The front dormer window serves a bedroom and would comprise of clear glass, however this is not considered to present a significantly more harmful level of overlooking to No's 35 and 37 Butterfield Road than the existing situation of overlooking from the public road and from the existing dwellings No's 26 and 24 Butterfield Road. As such, the proposal is not considered to result in harmful loss of privacy to neighbouring residents.
- 6.12 The proposed new dwelling is small in scale with only 2 bedrooms. The comings and goings associated with this small size of dwelling are not considered to present a significantly harmful impact on neighbouring residents in terms of noise and disturbance.
- 6.13 The increased ridge height and forward extension of the existing garage building will have an impact on the north-facing side windows of No.24 Butterfield Road, however the development is to the North of this neighbouring property and the increases are relatively modest in scale. In addition, these neighbouring windows have been identified on site, and from the original 1979 approved plans, as being obscurely glazed and serving non-habitable rooms (two small bathroom windows at first floor and 2 small secondary windows and a door serving a kitchen at ground floor, which also benefits from a rear window looking out into the garden). Given the above, the proposal is not considered to present overbearing or overshadowing impacts to neighbouring residents.
- 6.14 The retained rear garden of existing dwelling No.26 measures approximately 145sqm, which is more than doubles the minimum size standard of 70sqm for an attached dwelling, as given in the Residential Design Guide SPD (RDG). The new garden provided for the new dwelling measures approximately 75sqm which again exceeds the minimum size standard of 70sqm.
- 6.15 The proposed new dwelling will benefit from a dual aspect to the front and rear, and has an acceptable level of privacy, outlook and light. In addition, the proposed internal floorspace for the new dwelling will comply with the minimum floor space sizes given in the National Described Space Standards. It is worth noting that the

Council have not formally adopted these space standards; however they are used as a general indicator of the suitability of living accommodation.

- 6.16 Whilst the front bedroom window in the proposed new dwelling would look out over the parking area, there is ample space to ensure that cars would not be parked right in front of the window, allowing for an acceptable level of outlook.
- 6.17 Given the above, the proposal is not considered to have a significantly harmful impact on the amenity of neighbouring residents, and it would provide a suitable quality of living environment for future occupants of the new dwelling.

#### Parking highways and transport

- 6.18 The Highways Officer has raised no objection to the new parking arrangements and access in terms of the impact on highways safety. Given the length of the new driveway parking areas, and the intervening low-level planting bed, the arrangement will provide good visibility for vehicles entering and leaving the site.
- 6.19 Butterfield Road lies within a medium accessibility area for access to public transport routes on Burgess Road, Bassett Avenue and Winchester Road. The site lies approximately 500m from local facilities within the Winchester Road designated local centre. Street parking on Butterfield Road and surrounding roads is controlled via a residential permit scheme, operating 11am - 3pm, Monday - Friday.
- 6.20 The Council's Parking Standards SPD sets maximum parking standards, rather than minimum standards and states that parking provision below the maximum standards may be acceptable in certain circumstances. The proposal provides 4 parking spaces. The maximum standard for a 4 bed dwelling is 3 spaces and 2 spaces for a 2 bed dwelling, giving a total maximum standard of 5 spaces.
- 6.21 Cycle storage facilities are indicated for both the existing and new dwellings, further details of which could be secured by condition. The amended plans show an appropriate brick-built bin store to the front of the new dwelling. The plans also indicate the existing bin storage area for the existing dwelling, No.26.
- 6.22 Given the sustainable location of the application site with public transport routes and local facilities nearby, the controlled parking on surrounding roads, and given the provision of cycle storage on site to encourage sustainable modes of transport in accordance with policies SDP5 and CS19 and the City's Green Charter, the shortfall of 1 parking space is not considered to present significant harm to local parking amenity in terms of potential overspill parking.

#### Surface water drainage

- 6.23 Concern has been raised by neighbouring properties regarding surface water drainage. The use of permeable / porous materials can be secured by condition for use in the proposed extension to the parking hardstanding, therefore ensuring that there is no increase on the existing level of surface water run-off to the road or public sewers. In addition, the modest increase to the roof area of the existing garage building is not considered to represent a significantly greater impact on surface water run-off than existing, indeed the current situation will be improved with the provision of a new soakaway.

### Likely effect on designated habitats

- 6.24 The proposed development, as a residential scheme, has been screened (where mitigation measures must now be disregarded) as likely to have a significant effect upon European designated sites due to an increase in recreational disturbance along the coast and in the New Forest. Accordingly, a Habitat Regulations Assessment (HRA) has been undertaken, in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, see **Appendix 1**. The HRA concludes that, provided the specified mitigation of a Solent Recreation Mitigation Strategy (SRMP) contribution and a minimum of 5% of any CIL taken directed specifically towards Suitably Accessible Green Space (SANGS), the development will not adversely affect the integrity of the European designated sites.

## **7. Summary**

- 7.1 In summary, the proposed scheme has been designed in such a way to make effective use of land to deliver new housing, whilst the development is designed to maintain the residential amenity of neighbouring residents and future occupiers. The scale and design respond to that of the host building and would not be considered to cause harm to the character of the local area. Furthermore, the development is considered to maintain an acceptable level of highways safety and local parking amenity and the scheme is, therefore, recommended for approval.

## **8. Conclusion**

- 8.1 It is recommended that planning permission be granted subject to appropriate mitigation contribution and conditions set out below.

### **Local Government (Access to Information) Act 1985**

#### **Documents used in the preparation of this report Background Papers**

1. (a) (b) (c) (d) 2. (b) (d) (f) (g) 4.(f) (g) (vv) 6. (a) (b)

**AC for 02/02/2021 PROW Panel**

## **PLANNING CONDITIONS to include:**

### **01. Full Permission Timing Condition (Performance)**

The development hereby permitted shall begin no later than three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

### **02. Approved Plans**

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning.

### **03. Materials to match (Performance Condition)**

The materials and finishes to be used for the external walls, windows (including recesses), drainage goods and roof in the construction of the building hereby permitted shall match in all respects the type, size, colour, texture, form, composition, manufacture and finish of those on the existing building.

Reason: To enable the Local Planning Authority to control the development in detail in the interest of the visual amenities of the locality and to endeavour to achieve a building of high visual quality and satisfactory visual relationship of the new development to the existing.

### **04. Landscaping detailed plan (Pre-Commencement)**

Notwithstanding the submitted details, before the commencement of any site works a detailed landscaping scheme and implementation timetable shall be submitted to and approved by the Local Planning Authority in writing, which includes:

- i. proposed hard surfacing materials;
- ii. planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/planting densities where appropriate. This shall include native and/or ornamental species of recognised value for wildlife;

The approved hard and soft landscaping scheme (including parking) for the whole site shall be carried out prior to occupation of the building or during the first planting season following the full completion of building works, whichever is sooner. The approved scheme implemented shall be maintained for a minimum period of 5 years following its complete provision.

Any trees, shrubs, seeded or turfed areas which die, fail to establish, are removed or become damaged or diseased, within a period of 5 years from the date of planting shall be replaced by the Developer in the next planting season with others of a similar size and species unless the Local Planning Authority gives written consent to any variation. The Developer shall be responsible for any replacements for a period of 5 years from the date of planting.

Reason: To enhance the biodiversity of the site and improve the appearance of the site and enhance the character of the development in the interests of visual amenity, to ensure that the development makes a positive contribution to the local environment and, in accordance with the duty required of the Local Planning Authority by Section 197 of the Town and Country Planning Act 1990.

**05. Water efficiency**

With the exception of site clearance, demolition and preparation works, no development works shall be carried out until written documentary evidence demonstrating that the development will achieve a maximum of 105 Litres/Person/Day internal water use (Equivalent of Code for Sustainable Homes Level 3/4) in the form of a water efficiency calculator shall be submitted to the Local Planning Authority for its approval, unless an otherwise agreed timeframe is agreed in writing by the LPA. The appliances/ fittings to be installed as specified.

Reason: To ensure the development minimises its overall demand for resources and to demonstrate compliance with policy CS20 of the Local Development Framework Core Strategy Development Plan Document Adopted Version (Amended 2015)

**06. Cycle storage facilities (Pre-Occupation)**

Before the development hereby approved first comes into occupation, secure and covered storage for bicycles shall be provided in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The storage shall be thereafter retained as approved for the lifetime of the development.

Reason: To encourage cycling as an alternative form of transport.

**07. Unsuspected Contamination (Performance)**

The site shall be monitored for evidence of unsuspected contamination throughout construction. If potential contamination is encountered that has not previously been identified, no further development shall be carried out unless otherwise agreed in writing by the Local Planning Authority. Works shall not recommence until an assessment of the risks presented by the contamination has been undertaken and the details of the findings and any remedial actions has been submitted to and approved by the Local Planning Authority. The development shall proceed in accordance with the agreed details unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure any land contamination not previously identified is assessed and remediated so as not to present any significant risks to human health or, the wider environment.

**08. Obscure Glazing (Performance)**

The proposed first floor bathroom window within the rear dormer of the hereby approved development, shall be obscurely glazed and fixed shut up to a height of 1.7 metres from the internal floor level before the development is first occupied. The windows shall be thereafter retained in this manner.

Reason: To protect the amenity and privacy of the adjoining property.

**09. Residential - Permitted Development Restriction (Performance Condition)**

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any Order amending, revoking or re-enacting that Order, no building or structures within Schedule 2, Part 1, Classes as listed below shall be erected or carried out to any dwelling house hereby permitted without the prior written consent of the Local Planning Authority

Class A (enlargement of a dwelling house), including a garage or extensions,

Class B (roof alteration),

Class C (other alteration to the roof),

Class D (porch),

Class F (hard surface area)

Reason: To protect residential amenity and visual amenities of the area.

**10. Parking (Performance)**

The parking and access shall be provided in accordance with the plans hereby approved before the development first comes into occupation and thereafter retained as approved for the lifetime of the development.

Reason: To prevent obstruction to traffic in neighbouring roads and in the interests of highway safety.

**11. Driveway material (Performance)**

The proposed driveway/access shall be constructed of non-migratory material and incorporate surface water disposal on site. No surface water from the site shall be permitted to run onto the public highway.

Reason: In the interests of Highway Safety

*Note: Any works on the public highway will require consent and licence from our Highway Partners Balfour Beatty.*

**12. Refuse & Recycling (Performance)**

Before the development hereby approved first comes into occupation, the storage for refuse and recycling shall be provided in accordance with the plans hereby approved and thereafter retained as approved.

Reason: In the interest of visual and residential amenity.

*Note: In accordance with para 9.2.3 of the Residential Design Guide (September 2006): if this development involves new dwellings, the applicant is liable for the supply of refuse bins, and should contact SCC refuse team at [Waste.management@southampton.gov.uk](mailto:Waste.management@southampton.gov.uk) at least 8 weeks prior to occupation of the development to discuss requirements.*

**13. Hours of work for Demolition / Clearance / Construction (Performance)**

All works relating to the demolition, clearance and construction of the development hereby granted shall only take place between the hours of:

Monday to Friday      08:00 to 18:00 hours

Saturdays              09:00 to 13:00 hours

And at no time on Sundays and recognised public holidays.

Any works outside the permitted hours shall be confined to the internal preparations of the buildings without audible noise from outside the building, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenities of the occupiers of existing nearby residential properties.

**14. Amenity Space**

The garden spaces and associated access shown on the approved plans shall be provided prior to the first occupation of the development. These spaces shall be retained thereafter.

Reason: In the interests of residential amenity



## Habitat Regulation Assessment (HRA) Screening Matrix and Appropriate Assessment Statement

**PLEASE NOTE: Undertaking the HRA process is the responsibility of the decision maker as the Competent Authority for the purpose of the Habitats Regulations. However, it is the responsibility of the applicant to provide the Competent Authority with the information that they require for this purpose.**

HRA completion date:	See Main Report
Application reference:	See Main Report
Application address:	See Main Report
Application description:	See Main Report
Lead Planning Officer:	See Main Report
Please note that all references in this assessment to the 'Habitats Regulations' refer to The Conservation of Habitats and Species Regulations 2017.	

### Stage 1 - details of the plan or project

European site potentially impacted by planning application, plan or project:	Solent and Southampton Special Protection Area (SPA) and Ramsar site. Solent Maritime Special Area of Conservation (SAC). Collectively known as the Solent SPAs. New Forest SAC, SPA and Ramsar site.
Is the planning application directly connected with or necessary to the management of the site (if yes, Applicant should have provided details)?	No. The development consists of an increase in residential dwellings, which is neither connected to nor necessary to the management of any European site.
Are there any other projects or plans that together with the planning application being assessed could affect the site (Applicant to provide details to allow an 'in combination' effect to be assessed)?	Yes. All new housing development within 5.6km of the Solent SPAs is considered to contribute towards an impact on site integrity as a result of increased recreational disturbance in combination with other development in the Solent area.  Concerns have been raised by Natural England that residential development within Southampton, in combination with other development in the Solent area, could lead to an increase in recreational disturbance within the New Forest. This has the potential to adversely impact site integrity of the New Forest SPA, SAC and Ramsar site.  The PUSH Spatial Position Statement ( <a href="https://www.push.gov.uk/work/planning-and-infrastructure/push-position-statement/">https://www.push.gov.uk/work/planning-and-infrastructure/push-position-statement/</a> ) sets out the scale and distribution of housebuilding which is being planned for across South Hampshire up to 2034.

### Stage 2 - HRA screening assessment

Screening under Regulation 63(1)(a) of the Habitats Regulations – The Applicant to provide evidence so that a judgement can be made as to whether there could be any potential significant impacts of the development on the integrity of the SPA/SAC/Ramsar.

### **Solent SPAs**

The proposed development is within 5.6km of the collectively known European designated areas Solent SPAs/Ramsar sites. In accordance with advice from Natural England and as detailed in the Solent Recreation Mitigation Strategy, a net increase in housing development within 5.6km of the Solent SPAs is likely to result in impacts to the integrity of those sites through a consequent increase in recreational disturbance.

Development within the 5.6km zone will increase the human population at the coast and thus increase the level of recreation and disturbance of bird species. The impacts of recreational disturbance (both at the site-scale and in combination with other development in the Solent area) are analogous to impacts from direct habitat loss as recreation can cause important habitat to be unavailable for use (the habitat is functionally lost, either permanently or for a defined period). Birds can be displaced by human recreational activities (terrestrial and water-based) and use valuable resources in finding suitable areas in which to rest and feed undisturbed. Ultimately, the impacts of recreational disturbance can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites.

### **The New Forest**

The New Forest National Park attracts a high number of visitors (13.3 million annually), and is notable in terms of its catchment, attracting a far higher proportion of tourists and non-local visitors than similar areas such as the Thames Basin and Dorset Heaths. Research undertaken by Footprint Ecology, Sharp, J., Lowen, J. and Liley, D. (2008) Changing patterns of visitor numbers within the New Forest National Park, with particular reference to the New Forest SPA. (Footprint Ecology.), indicates that 40% of visitors to the area are staying tourists, whilst 25% of visitors come from more than 5 miles (8km) away. The remaining 35% of visitors are local day visitors originating from within 5 miles (8km) of the boundary.

The report states that the estimated number of current annual visits to the New Forest is predicted to increase by 1.05 million annual visits by 2026 based on projections of housing development within 50km of the Forest, with around three quarters (764,000) of this total increase originating from within 10km of the boundary (which includes Southampton).

Residential development has the potential to indirectly alter the structure and function of the habitats of the New Forest SAC, SPA and Ramsar site breeding populations of nightjar, woodlark and Dartford warbler through disturbance from increased human and/or dog activity. The precise scale of the potential impact is currently uncertain however, the impacts of recreational disturbance can be such that they affect the breeding success of the designated bird species and therefore act against the stated conservation objectives of the European sites.

## **Stage 3 - Appropriate Assessment**

Appropriate Assessment under Regulation 63(1) - if there are any potential significant impacts, the applicant must provide evidence showing avoidance and/or mitigation measures to allow an Assessment to be made. The Applicant must also provide details which demonstrate any long term management, maintenance and funding of any solution.

### **Solent SPAs**

The project being assessed would result in a net increase of dwellings within 5.6km of the Solent SPAs and in accordance with the findings of the Solent Recreation Mitigation Strategy, a permanent significant effect on the Solent SPAs due to increase in recreational disturbance as a result of the new development, is likely. This is contrary to policy CS 22 - Promoting Biodiversity and Protecting Habitats, of the Southampton Core Strategy Partial Review, which states that,

*Within Southampton the Council will promote biodiversity through:*

*1. Ensuring development does not adversely affect the integrity of international designations, and the necessary mitigation measures are provided; or the development otherwise meets the Habitats Directive;*

In line with Policy CS22, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

Southampton City Council formally adopted the Solent Recreation Mitigation Strategy (SRMP) in March 2018. The SRMP provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development. This strategy represents a partnership approach to the issue which has been endorsed by Natural England.

As set out in the Solent Recreation Mitigation Strategy, an appropriate scale of mitigation for this scheme would be:

Size of Unit	Scale of Mitigation per Unit
1 Bedroom	£346.00
2 Bedroom	£500.00
3 Bedroom	£653.00
4 Bedroom	£768.00
5 Bedroom	£902.00

Therefore, in order to deliver the an adequate level of mitigation the proposed development will need to provide a financial contribution, in accordance with the table above, to mitigate the likely impacts.

A legal agreement, agreed prior to the granting of planning permission, will be necessary to secure the mitigation package. Without the security of the mitigation being provided through a legal agreement, a significant effect would remain likely. Providing such a legal agreement is secured through the planning process, the proposed development will not affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites.

### **New Forest**

The project being assessed would result in a net increase in dwellings within easy travelling distance of the New Forest and a permanent significant effect on the New Forest SAC, SPA and Ramsar, due to an increase in recreational disturbance as a result of the new development, is likely. This is contrary to policy CS 22 - Promoting Biodiversity and Protecting Habitats, of the Southampton Core Strategy Partial Review, which states that,

*Within Southampton the Council will promote biodiversity through:*

*1. Ensuring development does not adversely affect the integrity of international designations, and the necessary mitigation measures are provided; or the development otherwise meets the Habitats Directive;*

In line with Policy CS22, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

At present, there is no scheme of mitigation addressing impacts on the New Forest designated sites, although, work is underway to develop one. In the absence of an agreed scheme of mitigation, the City Council has undertaken to ring fence 5% of CIL contributions to fund footpath improvement works within suitable semi-natural sites within Southampton. These improved facilities will provide alternative dog walking areas for new residents.

The proposed development will generate a CIL contribution and the City Council will ring fence 5% of the overall sum, to fund improvements to footpaths within the greenways and other semi-natural greenspaces.

#### **Stage 4 – Summary of the Appropriate Assessment (To be carried out by the Competent Authority (the local planning authority) in liaison with Natural England**

In conclusion, the application will have a likely significant effect in the absence of avoidance and mitigation measures on the above European and Internationally protected sites. The authority has concluded that the adverse effects arising from the proposal are wholly consistent with, and inclusive of the effects detailed in the Solent Recreation Mitigation Strategy.

The authority's assessment is that the application coupled with the contribution towards the SRMS secured by way of legal agreement complies with this strategy and that it can therefore be concluded that there will be no adverse effect on the integrity of the designated sites identified above.

In the absence of an agreed mitigation scheme for impacts on the New Forest designated sites Southampton City Council has adopted a precautionary approach and ring fenced 5% of CIL contributions to provide alternative recreation routes within the city.

This represents the authority's Appropriate Assessment as Competent Authority in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Article 6 (3) of the Habitats Directive and having due regard to its duties under Section 40(1) of the NERC Act 2006 to the purpose of conserving biodiversity. Consideration of the Ramsar site/s is a matter of government policy set out in the National Planning Policy Framework 2012.

Natural England Officer: Becky Aziz (email 20/08/2018)

Summary of Natural England's comments:

Where the necessary avoidance and mitigation measures are limited to collecting a funding contribution that is in line with an agreed strategic approach for the mitigation of impacts on European Sites then, provided no other adverse impacts are identified by your authority's appropriate assessment, your authority may be assured that Natural England agrees that the Appropriate Assessment can conclude that there will be no adverse effect on the integrity of the European Sites. In such cases Natural England will not require a Regulation 63 appropriate assessment consultation.

**POLICY CONTEXT**

Core Strategy - (as amended 2015)

CS4	Housing Delivery
CS5	Housing Density
CS13	Fundamentals of Design
CS16	Housing Mix and Type
CS19	Car & Cycle Parking
CS20	Tackling and Adapting to Climate Change
CS22	Promoting Biodiversity and Protecting Habitats
CS25	The Delivery of Infrastructure and Developer Contributions

City of Southampton Local Plan Review – (as amended 2015)

SDP1	Quality of Development
SDP4	Development Access
SDP5	Parking
SDP7	Context
SDP9	Scale, Massing & Appearance
SDP12	Landscape & Biodiversity
SDP13	Resource Conservation
H1	Housing Supply
H2	Previously Developed Land
H7	The Residential Environment

Bassett Neighbourhood Plan (Adopted 2016)

BAS1	New Development
BAS4	Character and Design
BAS5	Housing Density
BAS14	Drainage

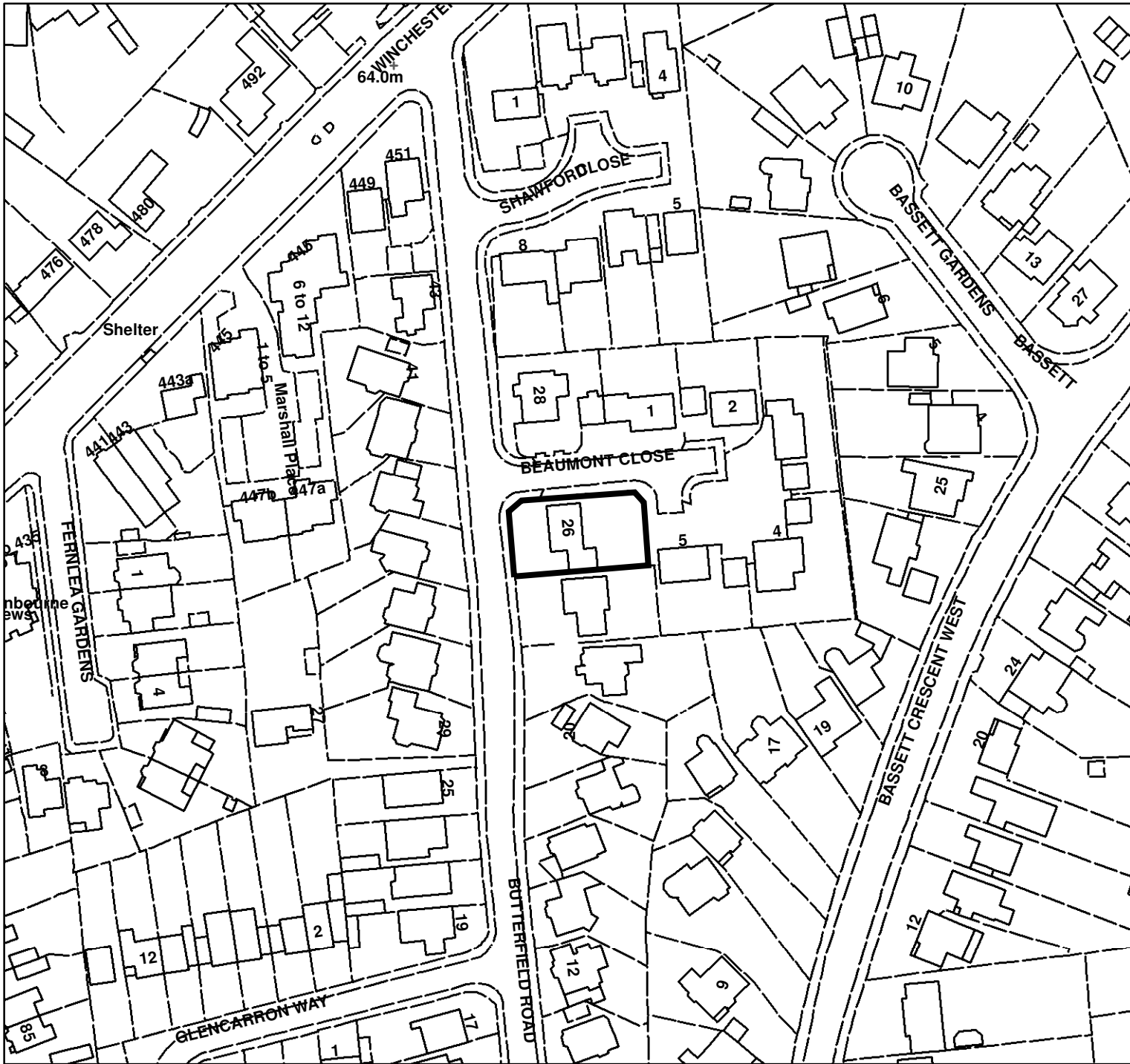
Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)  
Planning Obligations (Adopted - September 2013)  
Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework (2019)  
The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

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