

**Planning and Rights of Way Panel 23<sup>rd</sup> February 2021**  
**Planning Application Report of the Head of Planning & Economic Development**

<b>Application address:</b> Chapel Riverside, Former Town Depot Site, Albert Road North			
<b>Proposed development:</b> Implementation of planning permission 16/02016/OUT (for the redevelopment of the site) not in accordance with condition 4 (odour). Variation of condition 4 sought to enable residential accommodation in phase 3 of the development to be occupied in advance of the new wastewater tanks being finalised and the existing tanks being decommissioned			
<b>Application number:</b>	20/01810/FUL	<b>Application type:</b>	Variation of Condition
<b>Case officer:</b>	Jenna Turner	<b>Public speaking time:</b>	15 minutes
<b>Last date for determination:</b>	25.03.2021	<b>Ward:</b>	Bargate
<b>Reason for Panel Referral:</b>	Referred by the Service Lead – Infrastructure, Planning & Development due to wider public interest	<b>Ward Councillors:</b>	Cllr Bogle Cllr Noon Cllr Paffey
<b>Applicant:</b> Chapel Riverside Developments Limited		<b>Agent:</b> Inland Homes	

<b>Recommendation Summary</b>	<b>Delegate to the Head of Planning &amp; Economic Development to grant planning permission subject to criteria listed in report</b>
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<b>Community Infrastructure Levy Liable</b>	<b>Yes</b>
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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 in the report 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 186-187 of the National Planning Policy Framework (2012).

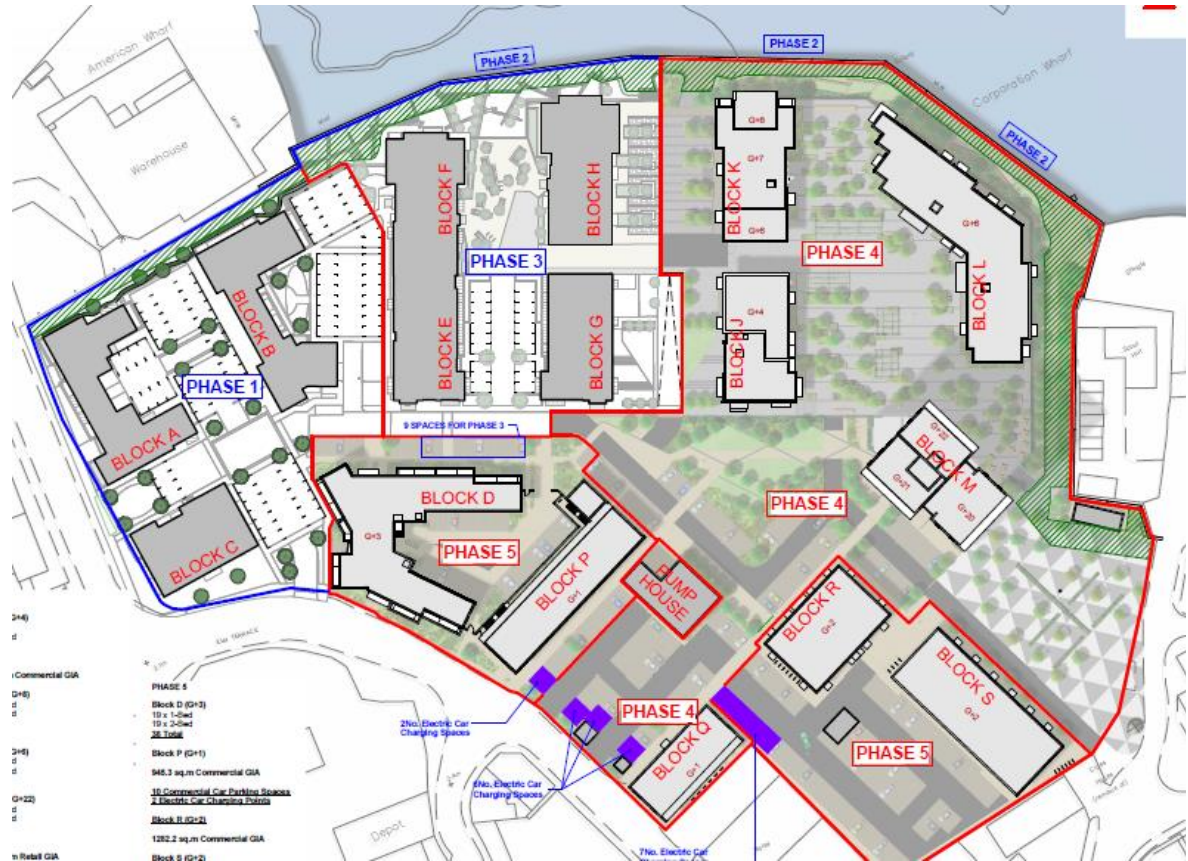
<b>Appendix attached</b>			
1	Development Plan Policies	2	Relevant Planning History
3	Panel Report – 16/02016/OUT	4	Panel Minutes – 16/02016/OUT

## **Recommendation in Full**

1. Approve the amended Habitats Regulations Assessment, which will be provided by way of update ahead of the Panel meeting.
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 Deed of Variation to the original S.106 Legal Agreement to secure:
  - (i) any outstanding planning obligations from the original s.106 legal agreement under LPA ref: 16/02016/OUT together with any ongoing requirements;
  - (ii) to secure the cleaning of the existing wastewater tanks at specified times and specified events with agreement from Southern Water;
  - (iii) to ensure the submitted programme of works is adhered to ensure full removal and suitable replacement within agreed timescales; and,
  - (iv) To enable the occupation of the development in line with the condition hereby recommended for approval on this basis.
3. That the Head of Planning & Economic Development be given delegated powers to add, vary and /or delete relevant parts of the Section 106 agreement and/or conditions as necessary.
4. In the event that the s.106 legal agreement is not completed by the 25<sup>th</sup> March 2021 – the application target date - the Head of Planning & Economic Development be authorised to:
  - (i) refuse permission on the ground of failure to secure the provisions of the Section 106 Legal Agreement that would result in a poor residential environment for occupiers of the development, due to the odour effects of the existing wastewater tanks not being adequately mitigated; and
  - (ii) Issue a Breach of Condition Notice, as required, in line with current scheme of delegation

### **1. Background**

- 1.1 The site is as described in the attached Panel report and was a former Council depot. The applicant is the Council's development partner for the redevelopment of this site. Outline planning permission has been granted for the redevelopment of the whole site (application reference 16/02016/OUT) to provide a mixed use residential and commercial development. The different phases and blocks are shown in the layout plan below.



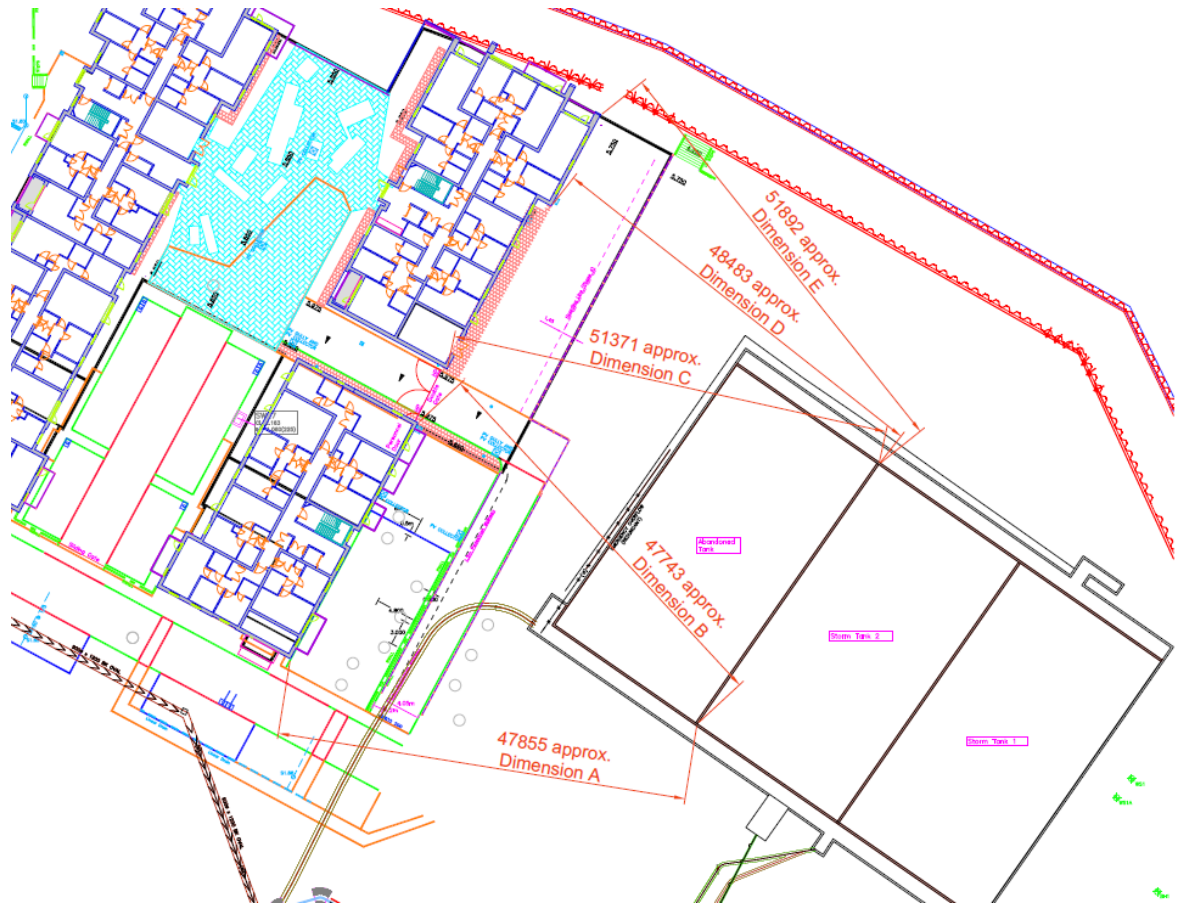
- 1.2 Phase 1 of the development, which was fully detailed in the outline application, included 72 flats (24 x 1 beds and 48 x 2 beds with 321 sq.m of retail space). Phase 1 of the development is complete and occupied.
- 1.3 Phase 2 of the outline permission comprised a new river wall (approved by application 16/01699/R3CFL) and has also been completed.
- 1.4 Phase 3 of the outline permission, which benefits from reserved matters approval, (application 18/00788/REM) comprised 132 units (10 x 3 beds, 52 x 2 beds and 70 x 1-beds) and two small commercial (Use Class A2) units. Work is well underway on this element, with blocks E and F complete and occupied and blocks G and H almost ready for occupation.
- 1.5 Condition 4 of the outline planning permission, subject of this application, requires the construction of new, below-ground wastewater storage tanks and the demolition of the existing above-ground wastewater storage tanks before any flats in phase 3 start to come into occupation. Works on the new underground tanks has commenced with a below-ground caisson (a retaining structure) having been constructed to date. However, construction of the new tanks stopped during the March covid-19 lockdown, and since this time there has been an issue with water ingress into the new caisson which prevents the continuation of construction. Previous attempts to de-water the caisson have failed. Following engineering advice, the developer has now constructed a cofferdam around the caisson to prevent further water ingress and enable the caisson to be de-watered. De-watering is due to commence imminently. If the de-watering is successful, works can recommence on the construction of the new wastewater storage tanks.

Given that the Phase 4 flats are ready for occupation, but the works to the Southern Water tanks are not complete, an amendment to the condition that restricts occupation is required. This can only be agreed if appropriate mitigation, a full programme for delivery, and the support of the Council's Environmental Health team can be secured in order to ensure that residents are not put into an unacceptable residential environment. This application seeks to provide these assurances.

- 1.6 Full planning permission was recently granted for an amended scheme for the later phases of the development (application reference 19/01875/FUL) which comprises a further 316 flats together with retail and commercial floorspace). No development within Phase 4 could be physically accommodated on the site before the existing tanks are demolished.

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

- 2.1 The application site, formally the City Council's main depot and waste recycling centre, is a 3.5 hectares site and located on the west back of the River Itchen and within the defined City Centre. As set out above, development is underway for the previous planning permission. Part of the site also comprises a temporary installation of affordable housing units, known as Hugg Homes (see planning permission 17/01246/FUL).
- 2.2 The site also contains three combined Southern Water sewer overflow sediment tanks. During rare or high rainfall, the sediment tanks are used to divert overflow foul and surface water. The tanks can result in a significant, unpleasant odour across the site. Condition 4, subject of this application, relates to these three tanks. The existing tanks are between 48 and 51 metres from the flats contained within Blocks G and H, which are almost ready for occupation. The plan below shows the location of the existing tanks in relation to Blocks G and H.



### 3. Proposal

3.1 The application seeks to vary condition 4 of the outline planning permission which is set out as follows:

#### **04. Odour Control & Phasing (Pre-commencement and pre-occupation condition)**

Residential units in the area currently designated as Phase 3 and any subsequent Phases (as shown on drawing ref: 1348-D9130-revP1) as may be subsequently amended, shall not be occupied until the existing settlement tanks have been decommissioned, demolished and relocated to Phase 6 the site (as shown on drawing ref: 1348-D9130-revP1) and made operational. The detailed design of the relocated settlement tanks, to include odour management and mitigation details shall be submitted to and approved in writing by the Local Planning Authority prior to their construction. The replacement tanks shall be provided and retained as agreed.

Residential units in the area currently designated as Phase 4 and any subsequent Phases (as shown on drawing ref: 1348-D9130-revP1) as may be subsequently amended, shall not be occupied until an odour report has been submitted and approved to the Local Planning Authority. The report should include an assessment of any potential odour impacts from the pump house on residential amenity and any necessary commensurate odour mitigation measures. Any necessary odour mitigation measures shall be implemented prior to the occupation of Phase 4 or any

**subsequent Phase and be retained thereafter unless otherwise agreed in writing by the Local Planning Authority.**

**Reason: To ensure that residents of the development are not adversely affected by odour, to secure an acceptable residential environment for future occupants of the development.**

3.2 The application requests that condition 4 to be varied to enable phase 3 to be occupied, irrespective of whether or not the new wastewater tanks are complete, and irrespective of whether or not the existing tanks are removed or not. This is not acceptable to officers and so an alternative is recommended that requires a s.106 legal agreement to ensure that the works are legally enforceable.

3.3 The proposed variation of condition 4, as submitted by the applicant, is set out as follows:

**Residential units in the area currently designated as Phase 3 block G and H and any subsequent Phases (as shown on drawing ref: 1348-D9130-revP1) as may be subsequently amended, shall not be occupied until:**

**a) In relation to Phase 3G and 3H: the LPA will be provided with a complete and validly executed set of construction contracts (including those contracts relating to Mechanical and Engineering works) for the construction of the New Water Tanks and the New Water Tanks Cofferdam; and The LPA will be provided with a detailed programme for completion of the New Water Tanks and the New Water Tanks Cofferdam containing fortnightly milestones and the LPA will be provided with weekly progress updates as against those milestones.**

**b) In relation to Phase 3H: construction of the New Water Tanks Cofferdam has been completed in relation to Southern Water cleaning of the Tanks that it will be undertaken as and when required to comply with the Planning Permission and in any event within 48 hours of a storm event requiring the Tanks being utilised, with the Developer covenants:-**

- **that if the Tanks are not cleaned by Southern Water at least 10 days prior to the first occupation of Phase 3G by the Developer the Developer shall on the occupation date notify Southern Water that the Developer will request that the Environment Agency commence enforcement action and the Developer shall duly make this request of the Environment Agency within five Working Days of first occupation of Phase 3G. The Developer will provide the Council with copies of all material correspondence;**
- **if within 72 hours of each use of the Tanks, the Tanks have not been cleaned out to forthwith notify the Environment Agency of Southern Water's breach of its discharge licence and request that the Environment Agency take enforcement action against Southern Water. The Developer will provide the Council with copies of all material correspondence**

**The detailed design of the relocated settlement tanks, to include odour management and mitigation details shall be submitted to and approved in writing by the Local Planning Authority prior to their construction.**

**The replacement tanks shall be provided and retained as agreed. Residential units in the area currently designated as Phase 4 and any subsequent Phases (as shown on drawing ref: 1348D9130-revP1) as may be subsequently amended, shall not be occupied until an odour report has been submitted and approved to the Local Planning Authority.**

**The report should include an assessment of any potential odour impacts from the pump house on residential amenity and any necessary commensurate odour mitigation measures. Any necessary odour mitigation measures shall be implemented prior to the occupation of Phase 4 or any subsequent Phase and be retained thereafter unless otherwise agreed in writing by the Local Planning Authority.**

**Reason: To ensure that residents of the development are not adversely affected by odour, to secure an acceptable residential environment for future occupants of the development.**

- 3.4 Officers consider that this amended condition fails to provide the certainty that the works will be completed and that residents will be protected from odour nuisance in the interim period. A programme has been submitted with the application which would see works on the new tanks being completed in August 2021 and the demolition of the old tanks occurring in October 2021. A completed s.106 legal agreement can hold the applicant to these dates and offer mitigation in the interim period
- 3.5 An odour report, submitted with the application, sets out the proposed odour mitigation which includes the process for the cleaning and maintenance of the tanks. It is also proposed that the developer could install an odour control system to control and contain odours which could be utilised in the following circumstances:
1. Following the initial clean if there has been another event;
  2. Southern Water do not clean the tanks within 48 hrs;
  3. The Environment Agency fail in enforcing the permit and making Southern Water clean within 4 weeks;
  4. There are complaints to the council from residents.
- 3.6 Officers propose the following revised condition 4 in addition to a s.106 legal agreement:

#### **4. Odour Control and Phasing (Amendment to 16/02016/OUT)**

The underground wastewater storage tanks shall be completed in accordance with the details submitted pursuant to application and the construction milestones and programme hereby approved. The existing wastewater storage tanks shall be demolished and decommissioned in accordance with the submitted programme hereby approved. For the avoidance of doubt, the new tanks shall be complete before the 5th August 2021 and the existing tanks demolished by the 11th October 2021 unless an alternative programme is subsequently first submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that residents of the development are not adversely affected by odour, to secure an acceptable residential environment for future occupants of the development.

#### **4. Relevant Planning Policy**

4.1 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 1**.

4.2 The site is identified for development by Policy AP26 of the adopted City Centre Action Plan. This policy supports a high-quality landmark waterfront development which incorporates a continuous public promenade along the waterfront. The policy supports a mix of uses.

#### **5. Relevant Planning History**

5.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.

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

6.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, placing a press advertisement (5<sup>th</sup> February 2021) and erecting a site notice (5<sup>th</sup> February 2021). At the time of writing the report **1** representation have been received from surrounding residents. The following is a summary of the points raised:

##### **6.2 *The site is floodplain and should not be developed* Response**

The principle of development has been established by the outline planning permission. Essentially, the site was identified for development within the adopted Development Plan and matters of flood risk were addressed by a combination of land raising across the site and the construction of a new river wall. This issue is not directly relevant to the consideration of condition 4 and has been addressed previously.

#### **Consultation Responses**

6.3 **SCC Ecology** – No objection

6.4 **SCC Environmental Health** – Detailed comments to follow. Discussion with the Environmental Health Team set out that they did not disagree with the conclusions of the submitted Odour Report although express concerns with the management measures set-out therein would be adhered to. A verbal update will be given at the meeting and it is anticipated that the revised condition (as set out at paragraph 3.3 above will be acceptable).



- 6.5 **Natural England** – A fresh Habitats Regulation Appropriate Assessment is required before planning permission can be issued.

Officer Response: This will be carried out prior to the Panel meeting and an update provided to enable Recommendation (1) above to be met.

## 7. **Planning Consideration Key Issues**

- 7.1 The application to vary condition 4 of the outline planning permission seeks an independent permission to carry out the same development as previously approved, albeit with the requested change to the condition. The original planning permission remains as a significant material consideration, since it has been implemented, and the adopted planning policy framework remains the same as when the original planning permission was determined. As such, the considerations set out in the previous report to the Planning and Rights of Way Panel (see **Appendix 3**) remain applicable. The key issue for consideration, therefore, is the effect of the requested variation of condition on the quality of the residential environment for existing and prospective occupiers on and around the site.
- 7.2 Subsequent to the grant of outline planning permission, the detailed design for the replacement Southern Water wastewater storage tanks has been agreed with both the Council's Environmental Health Team and Southern Water, who will ultimately adopt and be responsible for the new tanks. The new tanks will be located underground and will eliminate the existing odour issue which arises from the existing above-ground, open-air tanks.
- 7.3 As set out above, whilst works have commenced on the replacement wastewater tanks, their progress has been hindered, firstly the covid-19 lockdown and secondly, by an unforeseen issue with water ingress which has required a re-think of the construction approach. The design and construction of the cofferdam, which will enable de-watering to take place, has resulted in a significant delay to the construction of the new tanks. Meanwhile work has continued on the residential elements of the development, including that within phase 3. This means that residential blocks within phase 3 of the development are starting to be occupied in breach of condition 4 of the planning permission. The applicant now seeks to regularise this breach and enable further residential occupations in phase 3 to take place in a satisfactory manner.
- 7.4 The retention of the existing open-air tanks whilst residential occupation of phase 3 takes place would predominantly impact on Blocks G and H due to their proximity of the tanks (approximately 50 metres) and the positioning of windows and balconies directly facing the tanks. The submitted odour report set out that the tanks would have an adverse effect on residents, however, were the tanks to be better managed with regular cleaning, this impact would be negligible. The Council's Environmental Health Team do not disagree with this conclusion but stress the importance of securing the cleaning regime as identified. A s.106 legal agreement is legally binding and enforceable and secures the current offer.
- 7.5 The tanks are owned and operated by Southern Water and the responsibility to clean the tanks would fall to them. Since Southern Water are not the developer, a planning condition to secure the cleaning of the tanks would not, therefore, be

enforceable were they to fail in their duties to clean the tanks, as has happened in the past. That said, Southern Water are currently in the process of carrying out a deep clean of the tanks and have confirmed, in writing, their willingness to carry out further relevant cleaning. In addition to this, the wording for a varied condition 4, as suggested by the applicant, would not secure cleaning of the tanks in respect of Block G unless Block H has come into occupation. This means that if Block G is occupied and H is not, for whatever reason, the tanks would not be cleaned following use. This would create an extremely poor environment for residents of Block G in this instance and is not acceptable. As such, it is instead recommended that the occupation of Phase 3 be permitted providing the requirement for the tanks to be cleaned is placed within the section 106 legal agreement, which Southern Water could be signatories to. This is a crucial management technique which would ensure that residents of Block G and H would not be subject to adverse odour conditions.

7.6 The permanent retention of the existing open-air tanks would not meet the standards for high-quality residential design that is set out in the Council's adopted policies and guidance. As such, it is also recommended that condition 4 only be varied providing the new tanks are constructed in accordance with the agreed design and within the programme supplied with the application. Similarly, the condition should also stipulate that the revised programme for the decommissioning and demolition of the new tanks be adhered to. Whilst the applicant's suggested wording for the revised condition 4 captures the submission of a construction programme, without stipulating that the programme is adhered to, it is ineffective. Officers have sought a more prescriptive amendment and can recommend approval only on that basis. Delegation is sought should the s.106 not be completed to enable a refusal of the planning application and ensure that future residents are not subject to a poor living environment.

## 7.7 Likely effect on designated habitats

7.7.1 The Conservation of Habitats and Species Regulations 2010 (as amended) provides statutory protection for designated sites, known collectively as Natura 2000, including Special Areas of Conservation (SAC) and Special Protection Areas (SPA). This legislation requires competent authorities, in this case the Local Planning Authority, to ensure that plans or projects, either on their own or in combination with other plans or projects, do not result in adverse effects on these designated sites. The Solent coastline supports a number of Natura 2000 sites including the Solent and Southampton Water SPA, designated principally for birds, and the Solent Maritime SAC, designated principally for habitats. Research undertaken across south Hampshire has indicated that current levels of recreational activity are having significant adverse effects on certain bird species for which the sites are designated. An updated Habitats Regulations Assessment will be provided in advance of the Planning and Rights of Way Panel meeting.

## 8. Summary

8.1 The application as submitted cannot be supported. However, the variation of condition 4 as suggested below, with an accompanying section 106 agreement, would strike an appropriate balance between securing an acceptable residential environment for a temporary period whilst providing a pragmatic approach to

facilitate the continuation of the development on the site whilst enabling the developer to occupy completed flats thereby maintaining a viable scheme.

## **9. Conclusion**

9.1 It is recommended that planning permission be granted subject to a Section 106 agreement 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) (c) (d) (e) (f) (g) 4.(f) (g) (vv) 6. (a) (b) 7. (a)

**JT for 23/02/21 PROW Panel**

### **PLANNING CONDITIONS**

With the exception of the condition amended below all conditions imposed on planning permission 16/02016/OUT and 18/00788/REM will be restated (*as may have been updated following the submission of details to discharge the conditions under 17/01471/DIS, 17/01529/DIS, 18/00287/DIS, 18/00891/DIS, 18/01102/DIS and 19/00054/DIS*):

#### **4. Odour Control and Phasing (Amendment to 16/02016/OUT)**

The underground wastewater storage tanks shall be completed in accordance with the details submitted pursuant to application and the construction milestones and programme hereby approved. The existing wastewater storage tanks shall be demolished and decommissioned in accordance with the submitted programme hereby approved. For the avoidance of doubt, the new tanks shall be complete before the 5<sup>th</sup> August 2021 and the existing tanks demolished by the 11<sup>th</sup> October 2021 unless an alternative programme is subsequently first submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that residents of the development are not adversely affected by odour, to secure an acceptable residential environment for future occupants of the development.