

PLANNING APPLICATION REPORT

Case Officer: Mr Alex Sebbinger

Parish: Salcombe

Application No: 41/1262/15/F

Agent/Applicant:

Hunter Page Ltd
18 High Street
Cheltenham
GL50 1DZ

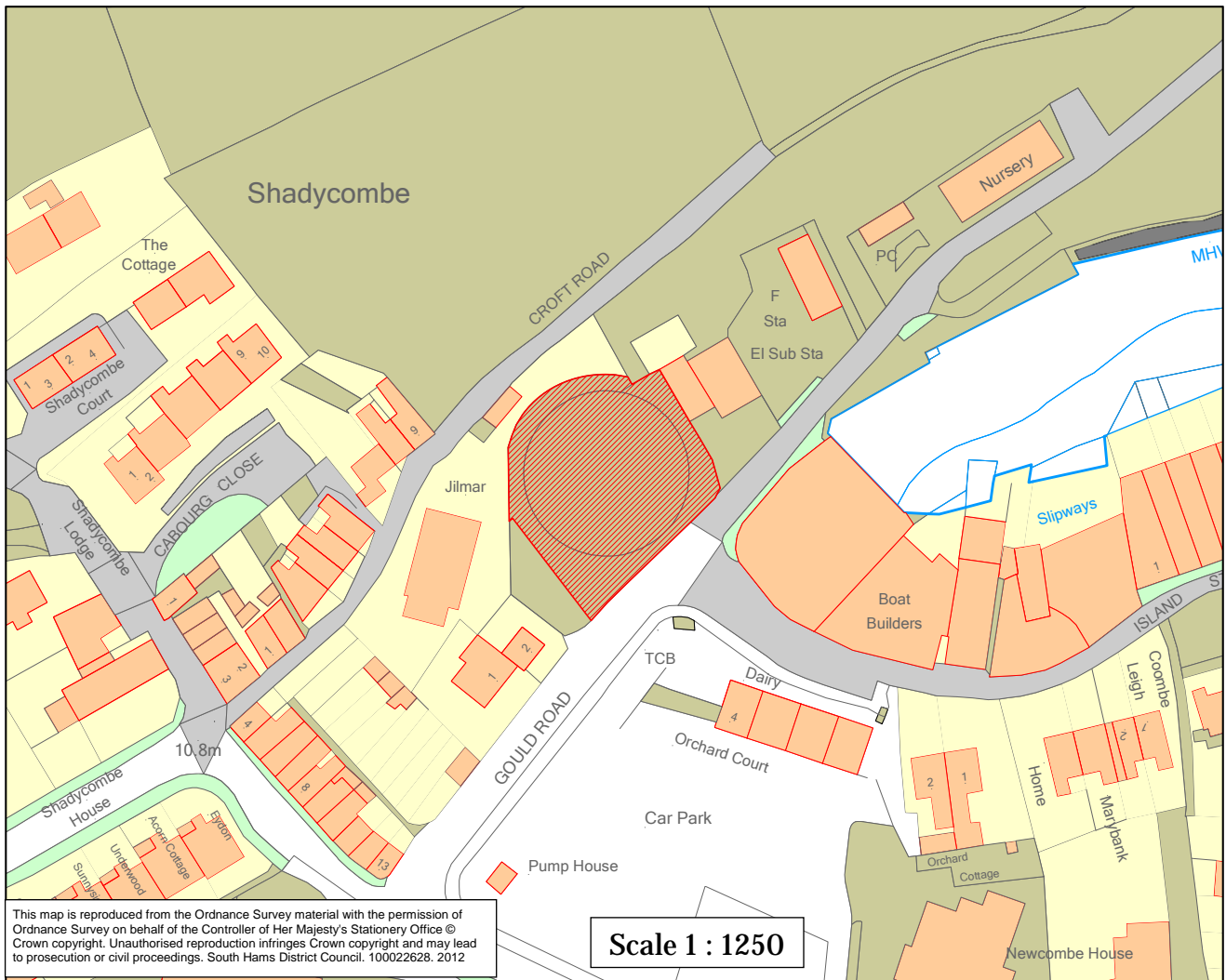
Applicant:

Freemantle Developments (Salcombe) Ltd
c/o agent

Site Address: Development Site at SX 738 392, Former Gas Works, Gould Road, Salcombe, TQ8 8DU

Development: Demolition of existing stone boundary wall and redevelopment of site to form 300sqm of A1, A2 and A3 ground floor commercial space and 5no. residential units above, new vehicular access and parking

Reason item is being put before Committee: *This application is before Committee at the request of Councillor Pearce mindful of the representations received in light of the concerns relating to the design of the building and that it is not possible for the development to accommodate marine-based uses.*



Recommendation:

Conditional approval subject to Section 106 Legal Agreement in respect of financial contributions and Section 278 Legal Agreement for highway works.

Conditions:

Time limit for commencement

In accordance with plans

Materials

Details of surfacing

Construction Management Plan

Highway works to be completed prior to occupation

Submission of combined Stage 1 and Stage 2 safety audit

Use Class of commercial units to be A1/A2/A3 and no other permitted changes.

Flood Warning and Evacuation

Contaminated Land

Unsuspected Contamination

Details of inbuilt provisions for birds to be agreed.

Vegetation removal to be outside of bird nesting season

Key issues for consideration:

The main issues with this application are the acceptability in principle of development, particularly in light of the previously refused scheme which was dismissed on appeal and whether or not this mixed-use development of commercial and residential uses is sufficient to overcome the reasons for the previous refusal. Further issues are the design and appearance of the proposed building, together with any impacts upon the Conservation Area and AONB, any impact on neighbours, flooding and flood-risk and highway issues.

Site Description:

The site lies within the Development Boundary of Salcombe and is also within the Salcombe Conservation Area, South Devon Area of Outstanding Natural Beauty (AONB) and Flood Zones 2 & 3. It lies approximately 20 metres from the Salcombe/Kingsbridge Estuary Site of Special Scientific Interest.

The site is a former gas cylinder site and the shape of the site broadly follows the circular shape of the base of the previous cylinder. The site fronts onto Gould Road, opposite the junction with Island Street and, is enclosed by stone walling, to a height of approximately 1.5 – 1.8 metres, along this boundary. Immediately east of the site is a currently disused business premises (formerly Bangers Boat yard), where planning permission for a replacement industrial building has recently been granted. The site is enclosed, in part, by stone walling along this boundary, with the remaining part being concrete block. There is a "Gas Governor" immediately south west of the site, which replaced the gas storage in 1993, beyond which is residential development consisting of numbers 1 and 2 Gould Road. Jilmar, a bungalow on Croft Road, is situated to the west of the site and is at a higher level than the site. Numbers 1 and 2 Gould Road follow the slope of the road upwards from the site towards Shadycombe Road. To the east of the site, Island Street consists of a mix of business, commercial, retail and residential development and there is a public car park to the south of the site.

The site is a level area of ground, with the sunken footprint of the former gas cylinder, which banks up towards the North West. It is enclosed to the north and west by chain link fencing. The site measures approximately 30 metres along its frontage and widens to a maximum of 38 metres. It covers an area of approximately 0.12 hectares.

The Proposal:

This application is for the demolition of the existing stone boundary wall, and for the redevelopment of the site to form 300 square metres of A1, A2 and A3 ground floor commercial space with five dwellings above with new vehicular access and parking.

Consultations:

- County Highways Authority – No objections subject to conditions.
- Drainage Engineers – No objections.
- Affordable Housing Officer – Off-site contribution of £138,856 (£27,771 per dwelling) required.
- Natural England – No objections.
- Environment Agency – No objection in terms of flood mitigation subject to conditions. Council must be satisfied that the proposal passes the Sequential Test.
- Devon County Council Education – Contribution required for secondary school provision to the sum of £13,680.75. Contribution required for secondary school transport provision to the sum of £3,287.00.
- Town Council – Objection: It was noted that the plans for five residential units with four retail properties beneath were virtually identical to a set of plans put forward by the same architect under another applicant. The Cedar wood and render were not felt to be of a design reflective of an industrial area. There were concerns that the rear of the properties proposed at first floor level to have a row of balconies which would be built right up to the neighbouring fence and overlooking their garden. Also with residential and industrial units there was a lack of parking with only 5 spaces. Town Council felt that this was a designated employment area known as RA4 and as such should be used to further the demand for commercial property within Salcombe taking into consideration District Council's evidence for the demand for industrial use. A1, 2 and 3 were applied for but it was felt they should be for all commercial uses as proper industrial use units were needed. It was suggested that the removal of the historic wall adjacent to the Conservation Area would need to be carried out if purpose built commercial units were incorporated as part of the vernacular. If planning was permitted a condition should ensure that the commercial units are let before the residential units are sold and be conditioned to be tied together. Town Council felt if approval was considered this application should be considered by the full District Planning Committee as this is an extremely sensitive employment area. It was further noted that the plan provided illustrated uses of properties on Island Street was not correct and skewed to show more retail than was actual.

Representations:

Two letters of representation from making the following broad points in no particular order:

- Distorts the character of Salcombe's economic activities and the nature of the Conservation Area.
- Earlier application was rejected on grounds of continuing need for the marine industry and prominent three storey development being out of keeping with the Conservation Area.
- Ground floor is designated as retail when the Inspector stated light industrial space.
- Massing of the building is out of keeping and compromises the Conservation Area.
- Overlooking of Jilmar and its garden from balconies to the north-western elevation.
- Use of the ground floor as retail rather than light industrial
- Overdevelopment of the site and insufficient parking
- Out of keeping.
- Salcombe is crying out for manufacturing and light engineering
- Development will have an unintended consequence on Salcombe as a boating centre.
- Should be providing three or four workshop units and be restricted to B2.

Relevant Planning History

23/2364/13/F – Redevelopment of former gas works to comprise erection of five dwellings. Refused planning permission on 30/04/2014 and subsequently dismissed on appeal on 17/11/2014.

ANALYSIS

Principle of Development/Sustainability:

The application site lies within the Salcombe Development Boundary and is close to the town centre, with its associated facilities. It cannot be argued that the site is not located in a sustainable position. What must be addressed is the matter of principle, which was a key aspect in the previous appeal.

The previous appeal decision:

The fundamental issue which arose at the time of the previous application was that the site's position, close to the estuary has led to its protection and allocation for employment uses, given the marine based economy within the area. It was stated at the time of the previous submission that there are limited sites benefiting from this proximity to the water and that a non-employment use of the site would be unsustainable were the local marine-based economy to continue. What must be emphasised was that at the time of the previous application, no employment-based use was being proposed whatsoever, and that the application was refused and subsequently dismissed on appeal as being contrary to Local Plan Policy DP14, which seeks to protect employment land.

This application once again proposes residential development but now seeks to provide 300 square metres of commercial floorspace. The amount of residential floorspace proposed is 625 square metres, so the amount of employment generating floorspace represents approximately one third of the total development area.

The applicant has provided viability evidence which considered alternative uses of the site, either that of a marine workshop or an office use. It is stated by the applicant that using the Community Infrastructure Levy (CIL) template for viability, the report robustly demonstrates that both development options are financially unviable at the site. At the time of the previous appeal, this was a point that was agreed in principle by the Council, and the Inspector acknowledged that no developer-built employment development would be viable in Salcombe.

However, the Inspector subsequently stated (para 16):

“However, just such a development is under construction on land on the edge of the Town adjacent to the small park-and-ride site within what I understand to be RA Proposal RA3: Bonfire Hill. Mr Elwell gave evidence about this (as the land owner) and uncontested written evidence that Hillborough Properties have planning permission to replace their existing building next to the appeal site with a new commercial building. This is within the Proposal RA4 site and the building was fenced off at the time of my site inspection. Mr Elwell also explained that he had been unsuccessful with a bid of about £173,000 for the appeal site although he understood that he was not the nearest under bidder. He outlined his plans for the appeal site as being the provision of basic sheds for boat builders in order to encourage a resurgence of this traditional and important trade within Salcombe. He confirmed that in doing so he was aware of the extent of contamination and the likely remediation costs for the use proposed and accepted that there was an element of philanthropy in his scheme. He however simply took a different and longer term commercial view of the development to the appellant”.

The Inspector continued (para 17):

“There is therefore clear and credible evidence that employment development within the Proposal RA4 site is going ahead now and may in future pursuant to a planning permission. There is also credible evidence that the appeal site would come forward for marine-based employment development under different ownership and/or a different business model. That in my view amounts to a reasonable prospect of the site being used for the purpose for which it is allocated in the development plan”.

The Inspector therefore concluded that the development of residential properties would result in the loss of land which in his view has a reasonable prospect of being developed for that purpose.

It is clear, from the appeal decision that the Inspector gave significant weight to the potential and in his view, probable chance that the site would come forward for marine-based employment uses and refused permission on that particular basis.

Reference to allocation RA4: Shadycome states:

“Development is proposed by 2016, to include:

- *0.5ha of employment land; and*
- *Cycle and footpath provision including enhanced access to the town centre”*

What must be emphasised is that the allocation does not specifically dictate that the employment uses must be marine-related, notwithstanding the stance adopted by the Inspector.

The applicants have provided a supplementary comment after being asked to comment specifically on the Inspector's comments cited above.

They state:

"As you are aware, the Inspector acknowledges at paragraph 15 of his decision that the provision of employment development would be unviable and that the commercial development assessed in the viability appraisal would make a loss."

"However, in contrast with that conclusion, at Paragraph 16 of the decision it is highlighted that verbal evidence provided by Mr Elwell at the appeal hearing indicated that a commercial building was currently under construction within the allocated site known as Proposal RA3: Bonfire Hill. The Inspector therefore considered that this verbal evidence demonstrated that there was clear evidence of commercial buildings being developed on the edge of the town, irrespective of the evident viability issues."

*"However, since this verbal evidence was raised at the appeal hearing, it has become apparent that the commercial building was actually part of a wider full planning application for mixed use development, including the erection of 44 residential dwellings and the creation of 269m² of office/workshop space (application reference 41/1915/13/F). Here it is important to note that the Inspector was not made aware of the fact that the **commercial space was coming forward as part of a mixed use development (where the commercial element represented approximately 7% of the proposed development on a greenfield site). It is therefore evident that the development of this modest commercial building, as part of a wider residential scheme, cannot be considered to demonstrate that the development of new commercial office or workshop space within the area is viable or deliverable in its own right.**" (emphasis added).*

The applicant essentially makes the claim that the Bonfire Hill development referenced at the appeal was not a development in its own right, but was brought forward as part of a wider residential scheme.

The applicant continues:

"In contrast to this, we are redeveloping a far more complex contaminated brown field site but, in recognition that the site is an allocated employment site, the proposal does include a high level of commercial floor space (300m² of commercial space against 625m² of residential space which represents approximately 1/3 of the scheme)."

*In addition to the above, the Inspector highlighted that uncontested written evidence had been provided that an application for a replacement industrial building had been granted planning permission in October 2013 (ref: 41/1876/13/F) at the Proposal RA4 site which is the wider allocated site in which the application site is situated. As a result, the Inspector noted that he considered there to be **'clear and credible evidence that employment development within the Proposal RA4 site is going ahead now and may in the future, pursuant to a planning permission.'**"*

With regard to the above, we would clarify that this development has still yet to come forward on the site, even though the permission for a replacement industrial building is due to expire in October 2016. Furthermore, following discussions with Hillborough Properties, we have been advised that the owner had alternative reasons for submitting the application proposal which related to a dispute with an existing tenant. The owner has also recognised that the

development permitted is unviable and the replacement industrial building is therefore unlikely to come forward in the near future.

It is also important to note that the same site obtained outline planning permission (reference: 41/0603/01/O) for light industrial and office development on 31st May 2001. On 2nd October 2002 an application for Reserved Matters was subsequently approved (ref: 41/1544/02/RM), nearly 13 years ago. However the site lays empty and, to date, we are not aware of any activity to suggest that this site is being developed."

Thus the claim is made that the extant approval for an industrial building is unlikely to come forward as a consequence of the viability of the site (caused primarily by the need to decontaminate the site).

The applicant's continue further, commenting on the likelihood of the development being proposed by a third party:

"At Paragraph 16 of the decision, the Inspector also highlights that Mr Elwell had unsuccessfully bid for the appeal site and that Mr Elwell would have built a commercial scheme consisting of basic sheds for boat builders if he had been successful. With regard to this, the Inspector noted that Mr Elwell accepted that he would lose money and that there was an element of philanthropy with this approach."

"With the above in mind, it is important to note that Mr Elwell was not the next nearest bidder for the site, as accepted by the Inspector in the appeal decision. As such, there were other bidders next in line to acquire the site. Moreover, when we bid for the site we were also not the highest bidder. The highest bidder for the site was in contract for a number of months but eventually pulled out due to the onerous environmental conditions which were required to be entered into by the vendor, National Grid. That condition namely required the owner to take full responsibility for the contaminated condition of the land and indemnify National Grid in respect of all liabilities arising from, or consequent upon, the condition of the land."

"In other words, should environmental damage have occurred in the past and be associated with the site then the purchaser would take the liability for that damage from the point of completion onwards. It was important to National Grid that the purchaser was a sound developer with a substantial track record and business behind it for these conditions to be met and for a bid to be accepted. When we submitted a bid we had to go through a thorough process of providing evidence of our experience as developers and ability to develop the site in order for National Grid to feel confident that they had sold the site to a company able to achieve these overage conditions. As such we do not believe that Mr Elwell's offer would ever have been accepted as a loss making commercial enterprise."

In light of this information, whilst the Inspector made a judgement based upon evidence provided at the time, it is considered that due to the constraints and contractual agreements between the original land owner that any form of philanthropic or altruistic development to provide marine-based uses would not have a reasonable prospect of being developed.

The proposed use:

As already stated, this proposal seeks to provide 300 square metres of commercial floorspace, and the application has been submitted to seek consent for a mixture of A1, A2 and A3 uses. Whilst these are not marine-based uses, for the reasons above it is considered that it cannot be justified for the Council to insist on such a specific use taking place as the

likelihood of any development coming forward is minimal, primarily due to the viability and costs of decontaminating the site. In comparison to the previous application this site brings employment generating uses forward and in light of the viability information provided with the application, it is considered that, in principle, it would now be very difficult to sustain an objection to this proposal based solely upon the fact that no marine-based uses are to occur.

Since the application has been originally submitted, the applicants have provided evidence that a single end user of the entire ground floor area has been found (a major food retailer) and agreements are being entered into by the parties involved to move this forward. It is therefore the case that this is not speculative employment floorspace and in light of an end-user for the employment area, there is significant likelihood that the employment-generating use will occur.

It is noted that the Town Council wish for an agreement for the commercial uses to be brought forward ahead of the residential units being occupied – this is not considered to be a reasonable requirement, and in light of the evidence that has been submitted to Officers, would be unnecessary.

It is considered that the development would not result in the loss of employment land and would enable re-use of this currently and long-standing (since 1993) vacant site and subject to complying with all other development control policies, the principle of developing this site with a mixed use of residential and A1/2/3 class uses is acceptable.

Design/Landscape:

The previous application proposed a three storey building, which was arranged as a set of five gables, with quite significant vertical emphasis. On appeal, the Inspector stated that the elevation of the building “*would not be typical of the appearances of other terraces in the street scene within the Conservation Area*” and that “*it is typically the modest two-storey element that faces the street with the three or more storey element to the rear*” (para 27). The Inspector concluded that the three storey element facing the road would be a “*marked contrast to the adjacent two dwellings that would be read in the same street scene view*”, and concluded that the character and appearance of the Conservation Area would not be preserved.

Although this proposal once again proposes a development of three storeys overall with five gables, there exists less vertical emphasis, and the form of the building has been revised so that the upper two floors (the residential element) is set further back from the frontage. In other words, the retail element projects closer towards the street than do the upper levels. With reference to the dwellings adjacent to the site to the south (Nos. 1 & 2 Gould Road), these properties have the two storey element set further back, with retaining walls/steps projecting further forward towards the rear edge of the pavement. In light of the comment made by the Inspector, it is now considered that this revised design approach would ensure that the building is read in the same street-view, as those properties.

Roof-lines are comparable to No. 2 Gould Road, and although of a more contemporary appearance, the aesthetics and choice of materials (timber and render) are considered appropriate. The revised design proposes stonework on the ground floor element, which is respective of the existing wall to be demolished, and is comparable to existing buildings (Yeoward Boatyards) opposite the site.

In terms of the original boundary wall, which is to be demolished, this appears to have been constructed as part of the original gas works in the 1860s however it did then not have its present appearance as a continuous boundary wall but formed part of the lower south wall of the gasometer. The gasometer was demolished in 1950 to make way for the replacement gasholder and the wall was remodelled to its present form with a coped top. In historic terms, the addendum to the Heritage Statement states that the wall is a fragmentary remnant of the history of the site and in terms of architectural significance is considered to be low in historic terms, due to the way in which it has been altered over time.

Overall, it is considered that the application is now acceptable in design terms, and that the character and appearance of the Conservation Area will be maintained. At the time of the previous application, no impact was considered to occur on the wider landscape value of the AONB, and that continues to be the case with this proposal.

Neighbour Amenity:

The previous application was refused (in addition to the reasons discussed above) on the basis of serious and adverse levels of overlooking to the neighbouring property, Jilmar. On appeal, the Inspector (para 32) stated that he did not consider there would be any reason to justify a refusal of permission on that basis. With this revised submission, it is noted that balconies are proposed, however on the gable closest to Jilmar there exists no projecting balcony at the second floor level (it is noted that a Juliet style balcony with inward opening doors is provided however), and therefore levels of overlooking would be no different to those considered at the time of the previous appeal.

Given that the Inspector previously concluded that the building the subject of the previous submission would not be overbearing from Jilmar, it is considered that this remains the case with this application and refusal would therefore be very difficult to defend on this basis.

Highways/Access:

Highway Officers raise no objections to the application citing the fact that there are two car parks in close proximity to the site, and visiting motorists use these facilities. The A1 uses consequently have sufficient parking available. Highway Officers state that the roads near to the site are restricted and would not object on highway safety grounds.

Although five parking spaces are proposed to serve the five dwellings, it is acknowledged by Highway Officers that this is a reduction in the level of parking standards, however they cite the restricted roads and two public car parks in close proximity as offering a suitable alternative for the occupants.

The proposals for the new loading bay for the retail units, and a new pavement so that adequate visibility is achieved for the access to the residential properties will require a Section 278 agreement to allow the works to commence on the existing public highway. Overall, no objections are raised to the development subject to conditions requiring the demarcation of the existing public highway, submission of a Construction Management Plan and the access works to be completed prior to occupation of any part of the site.

Flooding/Flood Risk:

The site is located within Flood Zone 3 and it therefore falls for the Council to apply the Sequential and Exceptions Tests as set out within the NPPF. Ordinarily a “more vulnerable”

use, such as residential would not be sequentially acceptable within Flood Zone 3 and it would be desirable for the proposal to be located in an area of lesser flood risk. However, given the situation that South Hams District Council does not have a five year housing land supply, it is considered that were the application refused on sequential test reasons, it would be very difficult to justify on appeal. The site lies within a development boundary, and will make use of previously developed land. In this particular case, given the lack of a five year housing land supply, and on the merits of the case, in this instance, the sequential test is considered to be passed. It should be noted that at the time of the previous application, the Council raised no objections in terms of flooding and flood-risk.

Turning towards the exception test (whether or not the development can then adequately mitigate against flooding and flood risk), the Environment Agency raise no objections subject to conditions. The application is therefore considered to pass both sequential and exception tests, and flooding and flood risk are able to be adequately mitigated against.

Ecology

The site lies within close proximity to an SSSI, however the Council's Ecologist raises no objections and advises that the submitted Ecological Assessment makes reasonable conclusions and places pollution measures to avoid any impacts. Conditions are recommended, and therefore no undue effects on ecology arise.

Financial Contributions:

At the time of the previous application, the Council refused permission based upon lack of the appropriate financial contributions for Affordable Housing, Open Space, Sport and Recreation and towards education provision. During the appeal however, a draft Section 106 was submitted and agreement was given to these contributions. The Inspector duly determined the appeal in accordance with this.

- Affordable Housing:

Due to the size of the development, it becomes eligible for a financial contribution towards the provision of off-site affordable housing. The Council's Affordable Housing Officer has advised that the contribution due is £138, 856.

- Open Space, Sport and Recreation:

The Council's Natural Environment and Recreation Team have advised that it is not possible to provide On Site Sport and Recreation facilities as part of the development. Given the scale of the proposed development, an additional 20 residents (based from calculations) would contribute to existing deficiencies towards Open Space, Sport and Recreation (OSSR) within Salcombe.

The nearest play facility to the proposed development site is at Courtenay St (circa 250m straight line, or 400m walking distance). In order to sustain this facility for continued use (the facility requires renewal of equipment), and to meet the play facility requirements from the new residents at the proposed development the Council's Natural Environment and Recreation Team has advised that an off-site contribution is sought to improve this facility. Based upon the additional 20 residents, and using Table 6 of the SHDC OSSR SPD as a guide on current costs, the sum of £7,600 is sought for 'improvements to play facilities at Courtenay Park, Salcombe.'

Playing pitch facilities in Salcombe are focused around 'The Berry' area (which includes open space, football pitch and play facilities). Based on up to date and robust evidence presented in the South Hams and West Devon Plain Pitch Strategy (Consultation Draft – Jan 2015), there is an identified requirement to improve drainage and create changing facilities at the football pitch at 'The Berry' to enable this facility to meet existing needs and the additional pressure from new residents. Based upon the additional 20 residents and the needs outlined above, and using Table 6 of the SHDC OSSR SPD as a guide on current costs, the sum of £11,900 is sought for 'improvements to football facilities at The Berry, Salcombe.'

- Education:

Devon County Council's Children's Services have advised that the secondary school that would serve the area of development is Kingsbridge Academy, which currently has a shortfall of pupil spaces, so a contribution of £13,680.75 is sought towards additional school facilities. In addition, as the development is further than the recognised safe walking distance to school for the secondary aged pupil, it is further required for the development to contribute to transport costs to the sum of £3,287.00.

The applicant has agreed to these contributions, all of which comply with the relevant Community Infrastructure Levy Regulations, and this recommendation is made subject to the completion of a Section 106 Legal Agreement to secure these payments.

Conclusion:

The application is considered to be acceptable and will not see the loss of employment land, will be of an appropriate and acceptable design that will preserve and enhance the character of the Conservation Area and AONB. The amenities of neighbouring properties will not be harmed, and the development will satisfactorily provide for off-site affordable housing, improvements to education and open-space, sport and recreation.

The application is therefore recommended for APPROVAL subject to the completion of the necessary legal agreements.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004 and with Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Planning Policy

NPPF
NPPG

South Hams LDF Core Strategy

CS1 Location of Development
CS6 Affordable Housing
CS7 Design
CS8 Infrastructure Provision
CS9 Landscape and Historic Environment
CS11 Climate Change

Development Policies DPD

DP1 High Quality Design
DP2 Landscape Character
DP3 Residential Amenity
DP4 Sustainable Construction
DP5 Conservation and Wildlife
DP6 Historic Environment
DP7 Transport, Access & Parking
DP8 Open Space Sport and Recreation
DP14 Protection of Employment Land

South Hams Local Plan

SHDC 1 Development Boundaries
KP 7 Employment Development in Salcombe

Rural Areas Site Allocations DPD

RA4 Shadycombe

LDF Affordable Housing DPD

AH1 Affordable Housing Provision
AH3 Unallocated Sites

Affordable Housing SPD

Open Space, Sport and Recreation SPD

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.