

Planning Committee



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| Application Address | 30-34 Panorama Road, Poole, BH13 7RD |
| Proposal | Demolition of existing buildings and erection of 4 storey block comprising - Basement - parking, cycle and bin stores to serve residential development - Ground floor - boat yard cafe/restaurant and office (as part of the Sandbanks Yacht Company composite boat yard use) and estate agents office - First, 2nd and 3rd floors - 15 residential apartments (12 x 2 bed and 3 x 1 bed) |
| Application Number | APP/19/00818/P |
| Applicant | Phoenix Spencer (Sandbanks) Ltd |
| Agent | Ken Parke Planning Consultants |
| Ward and Ward Members | Canford Cliffs Councillor John Challinor and Councillor Gavin Wright |
| Status | Public |
| Meeting Date | 16/01/2025 |
| Summary of Recommendation | Refuse as, on balance, the principle of additional residential units in this site at risk of future flood is unacceptable, design and scale would be detrimental to the character and appearance of the area and failure to demonstrate compliance with the retail hierarchy. |
| Reason for Referral to Planning Committee | The application was originally referred to the committee as more than 20 third party representations have been submitted, objecting the proposal. This criteria no longer applies as officer's recommendation is for refusal. Notwithstanding the above, it is recommended that the application is considered by the Planning Committee, given the history of deferrals and as the application is potentially contentious and raise material planning issues. |

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| Case Officer | Jon Bishop |
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Description of Development

1. Outline Planning consent is sought for demolition of existing buildings and erection of a 4-storey block comprising the following:
 - Basement: Parking, cycle and bin stores to serve residential development
 - Ground floor: boat yard, café / restaurant, and office (as part of the Sandbanks Yacht Club Company composite boat yard use) and estate agents office
 - First, 2nd and 3rd floors: 15 residential apartments (12 x 1 bed and 3 x 2 bed).
2. Matters to be considered are those relating to layout, access and scale with appearance and landscaping being reserved matters.

Key Issues

3. The main considerations involved with this application are:
 - The principle of residential development in this location
 - The principle of non-residential uses in this location
 - Flood risk
 - The impact on the character and appearance of the area
 - The impact on the amenities of existing and future neighbours/ occupants
 - The impact on highway safety
 - The impact on the retained boatyard facility
 - Provision for affordable housing
 - Section 106 agreement/ CIL compliance/SAMM

Planning Policies

4. Poole Local Plan (Adopted 2018)

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| PP01 | Presumption in favour of sustainable development |
| PP02 | Amount and broad location of development |
| PP08 | Type and mix of housing |
| PP11 | Affordable housing |
| PP12 | Housing for ageing population |
| PP22 | Retail and Main Town Centre Uses |
| PP27 | Design |
| PP28 | Flats and plot severance |
| PP31 | Poole's coast and countryside |
| PP32 | National, European and internationally important sites |
| PP33 | Biodiversity and geodiversity |
| PP34 | Transport strategy |
| PP35 | A safe, connected and accessible transport network |
| PP37 | Building sustainable homes and businesses |
| PP38 | Managing flood risk |
| PP40 | Viability |

5. Sandbanks Peninsula Neighbourhood Plan

SAND1 Landscape Character
SAND2 Views
SAND4 Biodiversity
SAND5 Design
SAND7 Public Realm
SAND9 Services and Community Facilities

6. Supplementary Planning Documents

Standards for Waste Container Storage and Access (July 2023)
Parking Standards SPD (Adopted January 2021)
Dorset Heathlands Interim Air Quality Strategy 2020-1025 (Adopted February 2021)
The Dorset Heathlands Planning Framework 2020-2025 (Adopted March 2020)
Poole Harbour Recreation 2019-2024 (Adopted February 2020)
Poole Strategic Flood Risk Assessment (2017)
Nitrogen Reduction in Poole Harbour (Adopted February 2017)
Affordable Housing SPD (Adopted November 2011)
Shoreline Character Areas SPG (Jun 2004)
Design Code (Adopted August 2001)

7. National Planning Policy Framework (December 2024)

8. National Planning Policy Guidance

9. Emerging BCP Local Plan

The Local Authority as part of Bournemouth Christchurch and Poole Council submitted the draft BCP Local Plan to the Secretary of State on 27 June 2024 for examination. If approved by the Inspectors, the BCP Local Plan will replace the current Local Plans around mid-2025. Given the high level of uncertainty that future revisions of the draft BCP Local Plan will echo the version submitted for examination, the policies are given very limited weight in the consideration of this application

Constraints

10. The application site is within 400m and 5km of a Site of Special Scientific Interest (SSSI). This SSSI is also part of the designated Dorset Heathlands SPA (Special Protection Area) and Ramsar site and is also part of the Dorset Heaths SAC (Special Area of Conservation). The proximity of these European sites (SPA and SAC) means that determination of the application should be undertaken regarding the requirements of the Conservation of Habitats and Species Regulations 2017.

11. The application site is within the Poole Harbour Special Protection Area (SPA), Site of Special Scientific Interest (SSSI) and Ramsar site. The proximity of this further European site also means that determination of the application should be undertaken regarding the requirements of the Conservation of Habitats and Species Regulations 2017.
12. Currently the application site falls within Flood Risk Zone 1, however it will be integrally at risk of flood in future flood risk modelling which will result in the site being at a higher risk of flooding.
13. The site is also located within the Coastal Zone and Shoreline Character Area, as defined by the Poole Local Plan.

Public sector Equalities Duty

14. In accordance with section 149 Equality Act 2010, in considering this proposal due regard has been had to the need to —
 - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Other relevant duties

15. For the purposes of this application in accordance with regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitat Regulations) appropriate regard has been had to the relevant Directives (as defined in the Habitats Regulations) in so far as they may be affected by the determination.
16. In accordance with section 40 Natural Environment and Rural Communities Act 2006, in considering this application, regard has been had, so far as is consistent with the proper exercise of this function, to the purpose of conserving biodiversity.
17. With regard to sections 28G and 28I (where relevant) of the Wildlife and Countryside Act 1981, to the extent consistent with the proper exercise of the function of determining this application and that this application is likely to affect the flora, fauna or geological or physiographical features by reason of which a site is of special scientific interest, the duty to take reasonable steps to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.
18. For the purposes of this application, in accordance with section 2 Self-build and Custom Housebuilding Act 2015, regard has been had to the register that the Council maintains of individuals and associations of individuals who are seeking to acquire serviced plots in the Council's area for their own self-build and custom housebuilding.

19. For the purposes of this application, in accordance with section 17 Crime and Disorder Act 1998, due regard has been had to, including the need to do all that can reasonably be done to prevent, (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); (b) the misuse of drugs, alcohol and other substances in its area; and (c) re-offending in its area.

Relevant Planning Applications, Enforcement and Appeals

17-19 and 30-34 Panorama Road

- 20.2002: 17-19 Panorama Road - planning permission was **refused** at appeal to demolish existing dwellings and erect 12 x 3 storey semi-detached houses with integral parking and associated car parking/boat storage, to be accessed from Panorama Road – (ref: 01/35959/000/P).
- 21.30-32 Panorama Road- planning permission was **refused** at appeal to erect 12 flats, restaurant and club house, boat lift and slipway, boat workshop, chandlery and office, with underground car parking and boat storage together with associated parking – (ref: 01/03718/039/P).
- 22.2010: Demolish 3 existing houses and replace with 9 houses and boatyard with associated workshop, restaurant, chandlery and underground car park. **Approved** (APP/09/00946/F)
- 23.2012: Non material amendment following approval of APP/09/00946/F to request for a condition listing all approved drawings as follows:- 1137 / P04A, P05A, P06A, P07A, P08A, P09, P10A, P11A, P12, P13, P14, P15, P16, P17, FL01A. **Approved** (ref: APP/12/00754/F)
- 24.2013: Minor material amendment to Planning Permission APP/09/00946/F and Condition 1 of APP/12/00754/F to substitute drawings 1137/PO4A, PO6A, PO8A & PO11A with the following drawings 2406/504B, 506, 511, 550 & 551, for elevational amendments to Plots 7, 8 & 9 (as amended plans received 18th February 2013). **Granted** (ref: APP/13/00047/F)
- 25.2013: Non Material amendment re permission app/13/00047/F (ref: 09/00946/F) for alterations to glazing configuration at 1st floor level on north elevation. Indication of proposed kitchen extract cowl at roof level. **Granted** (ref: APP/13/00612/F)
- 26.2013: Variation of Condition 5 of permission app/13/00047/F (re: app/09/00946/F & app/12/00754/F) to add the use 'Gymnasium' to the list of uses. **Approved** (APP/13/00609/F).
- 27.2016: Variation of Condition 5 of Permission APP/13/00047/F to add the use 'offices', use class B1 (business), to the list of uses listed in condition 5 was **Refused**. (ref: APP/15/01765/F)

28.2019: Non Material Amendment following approval of original application APP/09/00946/F & subsequent applications APP/12/00754/F, APP/13/00047/F & APP/13/00609/F to change plan references (ref: APP/19/01291/F was **Approved**).

30-38 Panorama Road

29.2017: Demolition of the existing buildings and the erection of a 5-storey replacement mixed use building (Commercial/Restaurant on the ground floor with 31 residential flats above) with associated access, cycle and bin stores (Outline). **Refused** (ref: APP/16/01679/P)

30.2017: Outline application for the demolition of the existing buildings and the erection of a mixed use building with three commercial units and replacement Sandbanks Yacht Club restaurant on the ground floor with 31 residential flats above with associated access, cycle and bin stores. (Revised Scheme). **Withdrawn** (ref: APP/17/00925/F)

31.2018: Outline application for the demolition of the existing buildings and the erection of a mixed use building with two commercial units, a new marina office & chandlery and a replacement restaurant for The Sandbanks Yacht Co. Club on the ground floor with 31 residential flats above with associated access, cycle and bin stores. (Revised Scheme which now includes the buildings, slipways, boat park/storage etc in association with Sandbanks Yacht Co. Club). **Refused** (ref: APP/18/00506/P).

36-38 Panorama Road

32.2002: Demolition of two dwellings and erection of 3 storey block of flats - 38 Panorama Road. Was **Refused** on appeal ref: 00/05772/028/P.

33.2016: Demolition of the existing buildings and the erection of a 4-storey replacement mixed use building with 2 commercial units on the ground floor; 12 flats above and associated basement parking, cycle and bin stores (outline). **Refused** (APP/15/01233/P).

34. This application was subsequently **Dismissed** at appeal. The Inspector concluded that the proposed restaurant uses at ground floor would not meet the requirements of Policy DM3 (now replaced by Policy PP22 in the Poole Local Plan 2018) as it would be 250 sq m and was therefore a town centre use. No sequential test was provided to support the proposals and the Inspector concluded that a restaurant in this locality could attract patrons from further afield and would therefore have an impact on Town Centre. Furthermore, he disagreed with the appellants argument regarding location stating that the small group of shops containing the new Rick Stein restaurant were not considered a Local Centre and were in any event removed from the site. The Inspector also concluded that although parking would not impact on character, the shortfall in spaces would be detrimental to Highway safety.

35.2016: Demolition of the existing buildings and the erection of a 4 storey replacement mixed use building with a replacement car showroom on the ground

floor with 12 flats above with associated basement parking, cycle and bin stores (revised Outline scheme). **Approved** (APP/16/00512/P)

36.2019: Reserved matters application following approval of Outline application ref: APP/16/00512/P to erect 4 storey mixed used building, car showroom on the ground floor with 12 flats above. Landscaping (ref: APP/19/00755/R) was **Approved (Now lapsed)**.

34 Panorama Road

37.2022: Certificate of Lawfulness for Proposed use or operation to: Change the use to Cafe/restaurant use (Class E). The proposed change of use would not be lawful as part of the ground floor is residential and would involve a material change of use; and part of the existing use (estate agent) would involve a material change to residential use; both would require planning permission/ prior approval. Lack of clarity over 34C use. **Refused** (ref: APP/20/01014/K).

30-32 Panorama Road

38.2024: Change of use of the first floor commercial space into an office (Use Class E). **Approved** (ref: APP/24/00041/F). Following a judicial review this decision was quashed and the application has been returned to the Council for determination. The application is currently pending a decision.

Pre-application Enquiry

39.PREA/19/00018 for demolition of existing and erection of 4 storey block comprising commercial/restaurant use at ground floor and 15 residential flats, access and basement parking was submitted. Comments were generally negative with areas which required to be addressed including:

- Strong horizontal emphasis, bulky, jarring with existing buildings.
- Basement access did not allow vehicles to wait
- Reallocating of parking spaces required
- Potential issues with narrowing of boatyard access
- Parking numbers required to meet SPD
- Secure cycle parking required

Representations

40.65 representations have been received, in which the following concerns are raised:

- The application is not a valid submission and plans are not accurate
- Inconvenience of piling and disruption this will cause during the build
- Potential flooding issues of basement

- Additional cars cannot be sustained and there is insufficient level of parking for both the proposed flats and the existing uses
- Will result in illegal parking on the streets blocking driveways
- Scale and height are too large
- Will set a precedent for the area
- Car park entrance is not to standard and will be dangerous/ accident risk
- Second homes are likely and will not contribute to the economy
- No improvement to street scene
- Size and nature of restaurant is self-contained and not acceptable with no restrictions on it
- Extent of building will affect viability of boatyard, including reducing boat storage capacity leading to the loss of the facility
- Unsafe one-way access and egress
- No provision for boatyard waste and nowhere for refuse lorries to stop and private bin collection is not workable on this site/ location
- No replacement trees or landscaping
- Reduced access to seaside
- Footprint is bigger and excessive for the site
- No set back to frontage
- Restaurant will be a public nuisance
- Flats are excessive in size and will not be affordable
- Overlooking of neighbouring properties
- Traffic is already over capacity
- Potential Air B&B
- Will block views
- Increase in pollution, noise, light and traffic
- Set precedent
- Insufficient parking
- Ecological impact caused by the construction
- Overdevelopment of site/plot
- Mechanical plant will have a noise impact
- Insufficient parking
- Excessive density for the area
- Mass out of keeping
- Over tree line
- Design is out of character with the area
- Taxi rank or drop off for restaurant not catered for
- No pedestrian access to boatyard
- Lift is of an insufficient size to cater for refuse bins, disabled or cycles
- Contrary to the new Sandbanks Neighbourhood Plan

41. Several Counsels' opinions have been submitted on behalf of both the applicant and third-party representatives commenting on issues relating to this application and the original officer report produced in relation to it.

42. Some of the submissions in these opinions also relate to an application for a Certificate of Proposed Use submitted in relation to part of this site (see Relevant Applications and Appeals – 34 Panorama Road) above. Additional opinions have

also been submitted on behalf of the applicant and the third party in relation to various previous applications.

43. The opinions submitted in relation to the current application raise a number of issues and matters of disagreement between the applicant and the third party, in particular:

- issues relating to the red line area required for the application and whether the application as submitted forms a lawful submission;
- the extent to which the existing boatyard use is a mixed/composite use, or whether the boatyard is the primary use and other uses are ancillary - and the operative conditions relating to this issue, including issues relating to their lawfulness;
- the status of the existing ground floor commercial units;
- the presence of a fallback position and the degree of weight which can be attributed to this;
- whether the permission would have the effect of permitting a self-standing primary restaurant use and whether a condition which sought to retain the restaurant as part of the existing boatyard use would be unlawful, unenforceable and fail the relevant legal and national policy tests on conditions;
- the extent to which policy PP22 is relevant to the application;
- the extent to which a highway assessment should assume a new A3 (restaurant) use.

44. Each of the issues raised in the submissions from Counsel are addressed, at appropriate points, in the relevant sections of the report below.

Consultations

45. BCP Highway Authority – No objection to the proposal, subject to appropriate conditions.

46. FCERM – Notes current guidance requires that developments have at least an assumed 100-years lifetime, not 50 years as considered in the submission. Only access onto the site is via Banks Road, which already floods and will possibly be inaccessible in the future. Notes the guidance in relation to developments that increase the scale of any rescue are unlikely to be regarded as safe by emergency services; and in relation to reliance on emergency plans to mitigate residual risk. Further notes that whilst currently replacement dwellings are acceptable, the proposal increases significantly the number of dwellings.

47. Environmental Services- The proposals are on a former garage site which still houses three underground fuel tanks and therefore there is potential for contamination. This should be addressed by conditions.

48. Potential impact of noise between restaurant and flats above and existing neighbours. An acoustic report should be submitted and a further condition post construction to that levels of attenuation have been achieved.

49. Waste Authority – Objects. The plans show that bins will be serviced via private collections which in our experience are not always sustained in the long term. The Council has a Statutory duty to collect waste if private collections fail. In this instance the bin store is shown in the basement which the Local Authority collection vehicle is unable to access and exceeds 10 m from the stopping point of the vehicle.
50. Natural England – No objection subject to mitigation and biodiversity enhancements.
51. Poole Harbour Commissioners – Boatyard should continue to operate.
52. Environment Agency – No comments on the Sequential and Exception Test as these are for the LPA to determine. Reiterate their request for conditions and notes to the LPA and the applicant on their letter sent on 24 July 2019.

Planning assessment

Site and Surroundings

53. The application site comprises nos. 30-34 Panorama Road which are occupied by a mix of uses comprising a shop/ office, estate agent and an office. On the first floor above, there is a residential flat which has a separate residential access at ground floor situated between 34D and 34E and storage space linked to the neighbouring boatyard. The application also includes part of nos. 30-32 which are currently occupied as a boatyard involving permitted uses for boat storage, parking, chandlery, restaurant, gym and workshop forming the Sandbanks Boatyard complex.
54. The character of the area is predominantly residential, mainly in the form of detached houses which vary in design and massing with a mixture of one, two-storey and three-storey buildings, except for the small parade of commercial units included in the application site (34C, D and E).
55. The application site is mostly within flood zone 1, however the Council's Strategic Flood Risk Assessment indicates that most of the site will be at risk of future flooding by 2133.

The Proposed Development

56. Policy SAND9 of Sandbanks Peninsula Neighbourhood Plan states that development proposals should avoid the loss of certain local services and community facilities. SAND9 continues under paragraph c) that listed Sandbanks Yacht Company Boat Yard and Café/Restaurant (the application site) can only be changed to alternative use '*in an accessible location for users of no less quality and capacity*'. Principle of alternative uses on site would be discussed later in this report.
57. The proposals are a mixed-use development including office and restaurant at ground floor and three floors of flats above (15 in total). Basement parking is

proposed with access from Panorama Road shared with the existing boatyard access. The front of the site would include landscaping, four parking spaces and a separate commercial unit with an identified proposed use as estate agent.

58. The restaurant is to replace that which currently exists as part of the boatyard originally permitted in 2010 (ref: APP/09/00946/F). The proposed office use is also to replace existing facilities at the Boatyard on site.
59. The application is outline with matters of access, layout and scale being considered and appearance and landscaping as reserved matters.
60. The application was amended in 2020 with an amended red line plan submitted. Third party representations have questioned the validity of the application based on the application site plan as submitted. The applicant has subsequently amended the application site plan. In this respect, it is considered that the location plan submitted accords with article 7 of the Town and Country Planning (Development Management Procedure) Order 2015 and the relevant provisions in the NPPG in that it identifies the extent of the land to which the application relates by incorporating in red all the land necessary to carry out the proposed development.

2010 Planning Permission and subsequent permissions and amendments

61. The Sandbanks Yacht Company land was part of an application in 2010 to demolish 3 existing houses and replace with 9 houses and boatyard with associated workshop, restaurant, chandlery and underground car park which led to approval of a number of residential properties (ref: APP/09/00946/F) but retained the 'boatyard' use in line with then current policy L12 of the Poole Local Plan First Alteration Adopted 2004 (as amended by Secretary of State Direction 2007). This permission included condition 4 which stated:

“Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) Order 1995 or any subsequent re-enactments thereof, the development hereby approved within the area outlined in GREEN on the approved plans (dwg no.s 1137/P01B, 1137/P03B & 1137/P13 dated 13/11/09) shall be used for a boatyard consisting of a composite range of uses including boat storage, parking, chandlery, restaurant and workshop only and for no other use purposes, whatsoever, without formal planning permission first being obtained.

Reason -

To retain a boatyard and associated activities on the site and in accordance with Policy L12 of the Poole Local Plan First Alteration Adopted 2004 (as amended by Secretary of State Direction September 2007).”

62. Following the grant of that permission there have been a number of approved amendments/variations to both the original permission and this condition. Issues have been raised in the counsels' opinions referred to above as to the consequence of the grant of some of these permissions and the interpretation of the various iterations of condition 4 of the 2010 PP. These include criticism / points

as to the detailed wording and effect of the original condition 4 and the amendments to it in subsequent permissions in 2013 and a non-material amendment in 2019. In particular, it is argued by the applicant that there is a composite boatyard use, including boat storage, parking, restaurant, workshop and gym, and argued by the third party that the boatyard is the primary use of the site, and the other uses are ancillary to that primary use.

63. As set out above, the 2010 consent granted permission to demolish 3 existing houses and replace with 9 houses and boatyard with associated workshop, restaurant, chandlery and underground car park and the purpose and effect of condition 4 was to secure retention of the boat yard and its associated facilities. There have been 3 further iterations of condition 4 in subsequent permissions and a non-material amendment.
64. The first, in March 2013, incorporated in permission ref: APP/13/00047/F, adopted the same wording (in condition 5) as condition 4 in the 2010 permission. The subsequent permission of July 2013 ref: APP/13/00609/F amended the wording, as follows:

“Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) Order 1995 or any subsequent re-enactments thereof, the development hereby approved within the area outlined in GREEN on the plans (drwg no.s 1137/P01B, 1137/P03B & 1137/P13 dated 13/11/09) approved under Planning Permissions APP/09/00946/F and APP/13/0047/F shall be used for a boatyard consisting of a composite range of uses which could include any or all of the following, namely boat storage, parking, a gymnasium, chandlery, restaurant and/ or a workshop. The composite range of uses listed shall be ancillary to the Sandbanks Yacht Club and for the benefit of its members only.”

65. Finally, the 2019 amendment (ref: APP/19/01291/F) altered the condition in the July 2013 permission so that it read as follows:

“Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) Order 1995 or any subsequent re-enactments thereof, the development hereby approved within the area outlined in RED on plan ref: 1454-SYM-00-ZZ-DR-A-0250 P01 received 15/10/2019 approved under Planning Permission APP/13/00609/F shall, with the exception of the 15 parking spaces marked in Purple on the approved plan, be used for a boatyard consisting of a composite range of uses which could include any or all of the following, namely boat storage, parking, a gymnasium, chandlery, restaurant and/ or a workshop. The composite range of uses listed shall be ancillary to the Sandbanks Yacht Club and for the benefit of its members only.”

66. Regard has been had to the various arguments raised by respective counsel, and it is considered that (i) the 2010 permission was for a composite use that included boat storage, parking, chandlery, restaurant and workshop and (ii) that the purpose and effect of the various conditions set out above was to define and control the various elements of the permitted uses.

67. The wording of the condition was amended by latter consents stating that the '*The composite range of uses listed shall be ancillary to the Sandbanks Yacht Club and for the benefit of its members only.*' Although the 2010 permission was for a composite range of uses and all versions of the relevant condition do expressly refer to a composite range of uses existing at the boatyard it is considered that the effect of the amended condition was to ensure that the primary use of the site is a boatyard with ancillary uses.
68. This is an important distinction since if one component became sufficiently dominant it could give rise to an argument that there was a material change of use. The applicant has suggested that measures to control the operation of the restaurant, as part of the composite use of the site and, in particular, the relationship of the restaurant to the boatyard and any further increase in the size of the proposed restaurant can be controlled by planning condition taking account of land within the ownership and control of the applicant.
69. This current application was deferred from a previous planning committee meeting to address concerns raised in one of the counsels' opinions submitted by a third-party representative just prior to the meeting – relating to the proposed restaurant use and conditions.
70. The application was again deferred in January 2022, as there had been insufficient time to consider issues raised regarding the report in the days prior to the meeting. Given the time that has elapsed, regard has been had to those previous reports in assessing the position now as well as all the other relevant new information /changes since then including representations made by third parties, information with respect of the non-residential uses, clarification regarding the boatyard storage space, and the changes in the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG), particularly in relation to flood risk.

Principle of Residential Use

71. The principle of residential development on the site would in principle be accepted as it is an appropriate use in view of the context of the Sandbanks area. This is however subject to compliance with other relevant development plan policies, assessed in the following paragraphs.
72. The NPPF (2024) requires local planning authorities to identify and update a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing, or a minimum of four years' worth of housing if the local planning authority has an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need. The Draft BCP Local Plan (Regulation 19) consultation launched on 20 March 2024 and included a policies map and allocations. The land supply position is therefore set out in relation to a four year housing land supply.

73. At the heart of the NPPF is the presumption in favour of sustainable development. NPPF paragraph 11 states that in the case of decision making, the presumption in favour of sustainable development means that where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, planning permission should be granted unless policies in the Framework that protect areas of assets of particular importance provide a clear reason for refusing the development proposals or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
74. The 1 April 2024 marks the fifth anniversary of when BCP Council came into existence. As such, government planning guidance requires publication of a single BCP Council housing land supply calculation, as opposed to a separate supply for each predecessor authority. At 1 April 2024 BCP Council had a housing land supply of 1.6 years against a 4 year housing requirement that includes a 20% buffer (a shortfall of 8,078 homes). For the purposes of paragraph 11 of the NPPF, it is therefore appropriate to regard relevant housing policies as out of date as the local planning authority is unable to demonstrate a four-year supply of homes.
75. For this planning application the benefits provided from the supply of new homes will have significant weight. For the purpose of assessing this application footnote 7 is relevant given the application site is located in an area at risk of flood as such the tilted balance is not engaged.
76. Policy PP2 identifies broad locations for housing development, the majority of which will be directed to the most accessible locations within Poole. These are defined in PP2 (2) (a) as Poole town centre; the district and local centres; and sustainable transport corridors.
77. PP2 (2) (b) states that developments outside of these areas will be permitted provided that the scheme is capable of delivering sustainable patterns of development, including achieving a policy compliant level of affordable housing. At paragraph 4.13 of the Poole Local Plan it also confirms that there is potential for other sites outside of these areas to come forward to contribute towards housing needs with the Council encouraging the development of brownfield sites.
78. The site does not fall within any of the most accessible locations defined in PP2 (2) (a) and therefore is to be considered under PP2 (2) (b). The policy is clear that development can come forward in PP2 (2) (b) locations subject to the development being capable of delivering sustainable patterns of development. In this case, the planning history on the site has demonstrated in the past that additional residential development can be acceptable on what is a brownfield site. Developing brownfield land is considered to be more sustainable than developing non-brownfield land. The proposals also make provision for cycle parking with Electric Vehicle charging proposed to be conditioned. The area is serviced by two bus routes, the Breezer 50 and 60 which are half hourly through the main part of the day and provide sustainable access to Poole and Bournemouth town centres.

79. The development has been assessed for its ability to provide affordable housing in line with policies PP11 and PP40. It has been demonstrated through a viability appraisal, independently viewed by the District Valuers, that the development cannot make a contribution towards affordable housing and is therefore policy compliant. The applicant has agreed to enter into a section 106 agreement containing an overage clause in respect of the affordable housing (see further on this in the Affordable Housing section below), which raises the possibility of this scheme providing some contribution in the future should market conditions improve.
80. The proposal will also provide 15 dwellings (net 14 units) in an area where the delivery of housing is significantly below the housing requirement. The contribution of additional dwellings is considered to be a benefit in terms of social objectives of sustainable development.
81. Notwithstanding the above, the residential use is classified as 'more vulnerable' within Annex 3 of the NPPF and, in line with the NPPF and Policy 38 of the Poole Local Plan, given the number of net additional dwellings proposed in this area of future risk, a sequential test was submitted. The sequential test argues for the inexistence of reasonably available sites and as further explained in the relevant section of this report, it was concluded that this is not the case in Poole. The sequential test therefore was not passed for this application. In addition, not sufficient area of lower risk would remain for this site in future flooding modelling, and no overriding reasons were found to justify the additional dwellings in areas at risk of flooding, as set out by paragraph 173 (a) of the NPPF.
82. In conclusion, whilst the development could contribute to the housing provision in Poole, and have potential to be made more sustainable and acceptable from the point of view of sustainable travel and the delivery of affordable housing in accordance with PP2 (2) (b), the application fails to pass the Sequential Test and is therefore in conflict with Policy 38 of the Local Plan, as well as the NPPF, when aiming to address climate change and flood risk.

Principle of Non-residential Uses

83. The proposal includes commercial use at ground floor to include an Estate Agents that replaces an existing estate agents; a restaurant to replace the restaurant/ café currently at the Sandbanks Yacht Company (SYC) and a SYC Office.
84. The application form accompanying the current proposals identifies a proposed restaurant /café size of 352.5 m². The application form that accompanies the application, identifies an existing 438.45 m² used as restaurant/ café. The applicant's position is that the current proposals therefore are identifying a potential decrease in floorspace of 85.95 m², or *circa* 20% of the existing floorspace. In reaching this figure the applicant has included the existing café restaurant (located at ground floor level) as well as the space at first floor level which is currently being used as storage/ back of house for the restaurant.

85. It is apparent when visiting the site and looking at the planning history that the composition of the permitted uses has evolved overtime. The original consent identified the restaurant located on the first floor with the chandlery at the ground floor. Subsequent NMA's and S73 applications also show this arrangement. The restaurant was approximately 220m² (As part of a range of uses permitted). There is no chandlery on the site and it would appear that the space which would have been utilised by this use has been subsumed into the restaurant/ café use. When taking this into account there would be an increase in size of the restaurant by approximately 156m² (70%) when compared to the size of the restaurant as permitted which is contrary to the applicants position that the proposal would result in a decrease in floorspace of the café/ restaurant.
86. It is acknowledged that changes to the Town and Country Planning (Uses Classes) Order 1987 provides that buildings or land used for class A1, A2, A3 or B1 as at 31st August 2020 should from 1st September 2020 be treated as if used for a purpose within a new Class E.
87. In addition to a variety of other uses, the new use Class E includes a use for offices and the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises. This is reflective of wordings previously used in classes B1 (a) for office and A3 for restaurant type uses. As a result of the new Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended September 2020), the range of possible uses has increased to which the existing uses (in the commercial units that are to be demolished as part of this proposal) could be put (if the buildings were to remain on site), including potentially restaurant type uses.
88. As set out earlier in this report under the current implemented planning approvals on the site, it is considered that the existing restaurant is part of the range of uses at the boatyard however, the range of uses is restricted by condition stating that, '*The composite range of uses listed shall be ancillary to the Sandbanks Yacht Club and for the benefit of its members only.*' Notwithstanding the use class order it is considered that the condition restricts the uses which can be undertaken to be ancillary to the main boatyard use.
89. The existing café/restaurant is located with a side elevation, is accessed from within the site and has no frontage with Panorama Road. The main trading area is located on the ground floor with the first floor area being utilised for storage/ back of house functions. As noted in the preceding paragraphs the restaurant element was identified as being located on the first floor only with the chandlery located on the ground floor. As part of the current proposal the restaurant location has moved so that it has a frontage onto Panorama Road and it has a larger floor area/ main trading area over a single level. The increase in trading area and change in the siting of the restaurant will significantly increase its prominence in the street. Having a main frontage and a much larger single level trading area is considered to result in the restaurant use being much more prominent on the site. As noted the condition requires that the restaurant use remains ancillary to the boatyard, on balance it is considered that the restaurant use has changed to a degree that it would constitute a material change of use as it would amount to a restaurant use

in its own right. This is considered to be a main town centre use to which the provision of Policy PP22 would apply. The applicants have not provided a sequential test in this regard and in the absence of such the proposal is considered to be contrary to PP22. As such it is considered that the location of the development would undermine the Council's retail strategy which focuses such development in town centre, district centres, local centres and neighbourhood parades in accordance with the retail hierarchy contrary to policy PP22 of the Poole Local Plan (November 2018)

Flood Risk

90. The Local Plan is supported by a Strategic Flood Risk Assessment (SFRA). In terms of flood risk, the site is in a future flood zone as identified in the Council's SFRA. The majority of the site could be at risk of flooding by 2133.

91. In line with Annex 3 of the NPPF, residential development is classified as more vulnerable development that, in line with paragraph 173 of the Framework, *'should only be allowed in areas at risk of flooding where, in the light of the site-specific FRA (and the sequential and exception tests as applicable), it can be demonstrated that:*

a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;

b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;

c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;

d) any residual risk can be safely managed; and

e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.'

92. In addition to the submitted information it is evident that this application is proposed to remain part of the boatyard use, of which the residential use has not previously been part, considering the conditions attached to the previous permissions on the site. Notwithstanding the fact that the wider site under the same ownership had in the past been granted permission to erect residential units, these areas fall outside the current application site, where a net addition of residential dwellings are proposed, and the risk of flooding is expected to increase by 2133. A Sequential test therefore in fact applies, in line with the NPPF and Policy PP38 of the Local Plan.

93. The applicant has submitted a Flood Risk Assessment (FRA) that acknowledges the future risk of flooding on the site and includes a sequential test. It is clear from the Council's SFRA future modelling mapping that there would be no remaining area on the site capable of including the additional, if any, residential units. The submitted sequential test therefore looks into reasonably available sites within Zone A of the Community Infrastructure Levy, and on the basis of the most recent Council's Housing and Economic Land Availability Assessment. This restricts the

search area to the least sustainable locations for development in the Local Plan, outside of the sustainable transport corridors and town centre.

94. In searching for reasonably available sites, the sequential test considered the 'harbour type residential' development proposed, in reference to the use of the boatyard, restaurant and slipway access in connection to the residential uses. The total area of 1,200 m² was also part of the criteria established on the sequential test, and 5 sites were identified following this size and location within Zone A. Of the 5 sites identified, 3 would deliver in excess number of residential units and were for this reason considered unsuitable. The other 2 remaining sites are located inland within an urban setting therefore considered inappropriate for the harbour type residential development.

95. Whilst the Poole Local Plan encourages in Policy PP7 provision of a wide range of housing types, the 'harbour type' residential development described in the submitted sequential test is not one identified in the Local Plan or the specific Strategic Housing Market Assessment (SHMA) which informs the Plan. Policy PP8 sets out that on schemes of more than 11 or more homes, proposals should aim to meet the identified need in Poole, 30% of which comprising of flats, and only 8% comprising 1-bedroom in terms of size. Leaving aside the fact that the proposals could aim to achieve a mix which better reflected the one indicated in Policy PP8, the need for housing which is 'harbour-type' was not identified. Moreover, the residential use has not been indicated as part of the boatyard use composite in previous permissions, and there is no evidence - financial or otherwise - that the future of the boatyard is dependent on the proposed residential use be retained, as noted in the consultation response by the Poole Harbour Commissioners. As the residential use would not depend on the boatyard use, the search for reasonably available sites for the erection of 15 flats (or additional 13 flats) can reasonably be extended beyond CIL Zone A.

96. The guidance on flood risk in the National Planning Practice Guidance (NPPG) was amended on 25 August 2022, after publication of the previous committee report. In para. 27 of the NPPG on "How should the Sequential Test be applied to planning applications?", the Guidance states:

"For individual planning applications subject to the Sequential Test, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases, it may be identified from other Plan policies. For example, where there are large areas in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives."

97. In the case of Poole, the areas affected by flood risk are comparatively small measured against the whole of the existing urban area and is predominantly restricted unsurprisingly to its coastal, harbourside and riverside areas. It is noted that a compelling need is established in the Local Plan and the SFRA for residential

development within Poole town centre – also vulnerable to flooding - due to the inability of the Plan to meet its housing target without development within the town centre. Consequently, the Local Plan identifies a Sequential Test area for the town centre and a strategy for strategic flood defences to protect the area.

98. There is no such Sequential Test area for Sandbanks. The Local Plan does not identify a compelling sustainability need for further residential development in the area in respect of flood risk and places the area within the least sustainable locations for development in Policy PP2 as previously noted. Therefore, if the search area or criteria for sequentially preferable sites is unjustifiably limited in scope, the Sequential Test process is likely to be self-defeating. This would not comply with the stated policy aim in para. 11.17 of the Local Plan & the NPPF to direct development to areas of lower risk of flooding.
99. In view of the information submitted and assessment of locational restrictions of the site alongside the potential availability of land for residential use in Poole, it is concluded that the sequential test is not passed. As the sequential test is not passed, an assessment of the exception test is not required. We consider that the proposal does not comply with the fundamental objective of para. 165 & 168 of the Framework and PP38 to steer new development to areas with the lowest risk of flooding from any source and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
100. The proposed non-residential uses are considered 'less vulnerable' forms of development within Flood Zones and are therefore considered appropriate uses for the ground floor of the building.
101. The Environment Agency have noted that the sequential and exception test is a matter for the local planning authority to determine and had no comments on this regard. This was reiterated by the Lead Local Flood Authority (LLFA). The LLFA noted that a shorter lifetime of development has been used in the FRA. They also highlighted that in the event of flood, the only access to the area is via Banks Road, which is likely to be flooded to a level that would leave the site inaccessible. On this matter, the LLFA notes that Planning Practice Guidance (PPG) paragraph 44 sets out *"The emergency services are unlikely to regard developments that increase the scale of any rescue that might be required as being safe. Even with defences in place, if the probability of inundation is high, safe access and escape should be maintained for the lifetime of the development."* Furthermore, the LLFA also quotes PPG paragraph 42 stating that *"It will not be appropriate to rely solely on emergency plans to mitigate residual risk"*. These comments are noted however they would be a matter of assessment under the exception test. Given the proposal has not passed the sequential test, this is sufficient to conclude that the proposals would not be acceptable in flood risk terms and Policy PP38 of the Local Plan and the NPPF.
102. Notwithstanding that weight has not been given to the emerging BCP Local Plan in this assessment due to its early stage, officers note that the draft Local Plan states applications with a net increase in the number of residential units will not be permitted on the Sandbanks peninsula until there is an updated, adopted and

funded strategy to protect Sandbanks and its access from tidal risk. The draft Local Plan notes as a peninsula, access and egress by land is via Shore Road and Banks Road and access onto the peninsula is at high risk of flooding due to predicted sea level rise.

103. The draft Local Plan confirms currently there is no agreed long-term funding to deliver a strategy to defend Sandbanks from sea level rise and wave overtopping. Consequently the draft LP policy Strategic Policy P8: Canford Cliffs 6. is to allow no further intensification of residential development within the Policy area, which includes the application site.

104. The weight to be attached to the draft Local Plan at this time is reflects its position of being at Examination. Nonetheless it is also correct that the issues identified in the draft LP over the vulnerability of Shore Road/Banks Road will apply during the lifetime of the development as noted by the LLFA above and in the predicted future events of Banks Road being overtopped, proposed residents would be cut off. This adds to concern on the part of officers that even if the Sequential Test could be passed, the proposals could not comply with the requirements of the Exception Test in the Council's adopted Strategic Flood Risk Assessment that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall." (para. 170).

105. The scheme therefore fails to comply with Policy PP38 and the guidance in the NPPF & NPPG on flood risk.

Impact on Character of the street scene

106. PP27 (1) requires a good standard of design and that development should; "(a) *reflects or enhances local patterns of development and neighbouring buildings in terms of: (i) layout and siting, including building line and built site coverage; (ii) height and scale; (iii) bulk and massing, including that of the roof; (iv) materials and detailing; (v) landscaping; and (vi) visual impact.*"

107. PP28 (1) requires flatted development ensures; 'a) *the scale and massing of the building(s), including the width, height and roof profile and spacing between buildings is in keeping with neighbouring buildings and the established pattern of development in the street, or part of the street, where the site is located*'.

108. According to the Character Map of Sandbanks Peninsula Neighbourhood Plan (SPNP), the application site sits within the area of '*large wide blocks, some with mixed use*'. The neighbourhood plan continues that '*the local environment is not suitable for any material increase in such developments*'.

109. Policy SAND1 requires that '*proposals must demonstrate that the development will not have a significant adverse impact on the following highly valued and important landscape characteristics of the area*'. Furthermore, Policy SAND2 of SPNP does not support developments affecting the locally valued views that are

freely accessible to the general public views. Then, SAND3 ensures that the ecological or landscape value is not negatively affected by development proposals.

110. Policy SAND5 of Sandbanks Peninsula Neighbourhood Plan requires that development demonstrates a high standard of design. The development should; *'a) respond to the height, scale and character of buildings in the surrounding area generally and of adjacent properties in particular; [and] c) be in harmony with the pattern and spacing of buildings in the existing streetscene'*.

111. It is acknowledged that this is an outline planning application with matters of scale and layout being reserved. The applicant has however, submitted illustrative material to demonstrate how the development could come forward at reserved matters stage. The proposals as submitted are to demolish existing commercial and residential buildings at the site including the existing café/restaurant. The material submitted with the application shows that the existing buildings would be replaced with a four-storey flat-roofed building in a contemporary style, to include commercial units and a restaurant at ground floor and three floors of residential accommodation above consisting of 15 flats.

112. The submitted elevations demonstrate how the proposed development would sit in the area when considering the existing streetscene and previous approved permissions for the neighbouring sites, showing that the proposals would result in a significant increase in massing on site.

113. There is no one single prevailing architectural character within the immediate context and the character and appearance is mixed owing to the way the area has developed incrementally over time. Although there are some commercial uses in the area (including the application site itself) the immediate context has a residential character and is characterised in the main by 2 to 3 storey residential dwellings of a domestic scale. It is acknowledged that there are some larger buildings in the wider context and building heights do vary from between 1 and 4 storeys in the main however, the immediate context is defined by residential properties. As noted there is a variety of architectural styles prevalent in the immediate context and there is no objection in principle to adopting a contemporary design approach.

114. In order to achieve the quantum of development proposed the proposed development comprises a single 4 storey block with a considerable depth. It is considered that the height and scale of the building in combination with the depth would appear incongruous in the street scene grossly out of scale with the buildings in the immediate context and fail to contribute positively to the character of the area.

115. The size of the resulting building which would be necessary to accommodate the level of development proposed would be significantly higher than the immediate neighbours and the depth of the building will further emphasise the scale of the building as it would be visible in longer views from the east. The combination of height and scale is considered to result in a building which would appear

incongruous in the street scene and will significantly detract from the character and appearance of the area. As a result of the height and scale it will break the tree skyline, from strategic views 23 & 24 and along the length of Banks Road towards the Peninsula and it will also be visible in view 8 in infilling the gap between buildings.

116. It is acknowledged that the adjacent site has a previous approval of a four-storey building (APP/16/00512/P). This permission has now lapsed and as such this is given limited weight furthermore since this consent was granted the Sandbanks Neighbourhood Plan has been adopted and now forms part of the development plan and is required to be taken into account by the decision maker.
117. In summary it is considered that the proposed design which would be necessary to accommodate the quantum of development proposed has resulted in a scheme which fails to take proper account of its location and the character of the street scene. Having regard to the character of this part of Panorama Road the proposals would have an adverse impact on the character and appearance of the street scene and views from the Harbour. The proposed development would be contrary to policies PP27, PP28 of the Poole Local Plan and Policies SAND1, SAND2 and SAND5 of the Sandbanks Peninsula Neighbourhood Plan and the NPPF.

Impact on the amenities of existing and future neighbours/occupiers of the site

118. Policy SAND5 of Sandbanks Peninsula Neighbourhood Plan requires that development should *'not significantly negatively impact on the reasonable use and enjoyment of neighbouring residential properties in terms of daylight, sunlight or overlooking'*.
119. The proposals will be four storeys in height. The proposals will either adjoin the existing development at 36 Panorama Road The proposals will not result in harm to the amenities of existing or future occupiers of these sites. The top floor is set in from no.36 and the flat roof areas at first and third floor are shown for maintenance only. This can be conditioned to preserve neighbouring amenities.
120. To the rear of the site the proposals are angled away from 10-12 The Horseshoe with a parapet wall screening balconies on this elevation. Views from this elevation will principally be across the existing boatyard and towards the Harbour.
121. Adjacent to the access to the boatyard is 28 Panorama Road, this has permission for a new dwelling, which was under construction by the time officers visited the application site. The existing dwelling has a blank elevation adjoining the boatyard, the proposed dwelling has its principal rooms to the front and rear of the dwelling and as such the proposals will not cause loss of privacy.
122. Subject to conditions to prevent areas of flat roof from being used as balconies and obscure glazed balcony screens, the proposals would not result in harmful

overlooking of neighbouring amenities areas, elsewhere there is sufficient distance to residential properties to protect their privacy and amenities.

123. A restaurant exists at the site and has a relationship with existing residential properties in the local area. The proposals however seek to introduce flats above the restaurant. In this respect a condition to require noise attenuation within the building to reduce this impact and hours of operation would be imposed should the application be considered acceptable.
124. Furthermore, whilst an outside seating area currently exists at the site it is considered reasonable to put an additional restriction on its use having regard to the number of additional residential units which this proposal would result in directly above the restaurant. This aspect should also be covered in the attenuation report.
125. Environmental Services have also requested a condition relating to post completion testing to ensure that the required level of attenuation have been achieved prior to occupation.
126. Whilst the existing permissions on site also allow use of the boatyard as a workshop, the impacts of this too could change as a result of the current application allowing an increase in residential units within close proximity. This should be addressed by the attenuation report and a restriction on hours of operation conditions which would have been recommended, in case the recommendation was for approval.
127. In respect of accessible and safe environments (PP27 (1) e), the proposals will have windows in all elevations giving good surveillance of public or shared areas.
128. The proposal would be also required to comply with the provisions of Policy PP12 of the Poole Local Plan, which states that in order to meet the needs of the ageing population Policy PP12 (3) requires at schemes for 11 or more houses/flats must provide at least 20% of a mix of the housing types to comply with Part M4 (2) of the Building Regulations, in order to deliver adaptable and accessible homes. The details of the provision for the accessible homes could have been secured by condition, had the proposal been recommended for approval.
129. For the above reasons it is considered that the proposals accord with those parts of policies PP27c) d) e) and PP28 1) relating to impact on local residents and future occupiers of the site.

Function of the Boatyard

130. Previous officers' notes have concluded the proposals would result in the loss of approximately 7 boat storage spaces from the front of the site along the access. Most recently amended plan however shows this is no longer the case, as the boat storage at ground floor is proposed to remain as existing. Elsewhere to the rear of the application site as well as the underground parking opposite Panorama Road are not areas included within the current application.

131. Under the current boatyard use, the boatyard consists of a number of uses including boat storage; parking; chandlery; restaurant; and workshop. A condition was attached to planning approval APP/09/00946/F restricting the boatyard to such uses in order to seek to retain the boatyard's future viability. Neither this consent nor those that followed contained a condition specifying a minimum number of boat storage spaces and therefore there is flexibility in the number that has to be provided.
132. It is noted that the applicant has confirmed that the number of boats stored is fluid and reactive to circumstances and which boats need to be stored, a matter that changes due to owners' intent and the season. The operators are experienced and use mini tractors to move boats in and out of position and can double stack and store them in the space available. Furthermore, they have recently installed racks for storage of paddle boards and kayaks.

Affordable Housing

133. The applicant has submitted a viability appraisal, as set out by Policy PP40 of the Poole Local Plan, which has been independently assessed by the District Valuers. The conclusion is that the proposals cannot make a contribution towards affordable housing in line with Policy PP11 of the Poole Local Plan. The assessment was prepared for the initial submission of 2019, and an updated advice from the DVS confirms that the outcome would not change having regard to the UK House Price index for BCP and the BCIS indices. Considering a further period of time lapsed, if the recommendation was for approving the scheme, an updated DVS review would be recommendable.
134. As it has been in principle demonstrated that the scheme cannot make a contribution towards affordable housing, a S106 legal agreement to secure a review mechanism would be required, in the event the further DVS review confirmed no net surplus.
135. Within Policy PP8 schemes of more than 11 homes should consider the needs set out in the SHMA and other relevant evidence including self-build and custom housing. It is noted that within Poole, provision of self/build custom housing is currently exceeding identified demand. As this proposal is for a block of flats it is not considered the scheme would be suitable for self-build / custom housing.

Highways

136. Policy SAND5 of Sandbanks Peninsula Neighbourhood Plan requires that development should '*g) provide sufficient external amenity space, refuse and recycling storage and off-street car and bicycle parking to ensure a high quality and well managed streetscape and road safety in accordance with BCP Parking Standards SPD (2021) or as superseded*'.

137. The proposals include replacement of commercial uses, with reduced restaurant and office floorspace, as well as 15 flats. Surface parking is provided to the front of the ground floor commercial units, basement parking is provided for the residential units with access from a revised vehicle access point, shared with the boatyard.
138. The proposals result in the following parking arrangements:
- Residential Parking – 18 basement spaces (an over provision of 3 spaces in line with the Council's Parking SPD 2021)
 - Proposed Office Parking (SYC Office and Estate Agents) 4 spaces (over provision of 2).
 - At least 2 basement spaces are disabled adaptable and 1 surface space for disabled parking is provided.
139. Although there is a slight over provision for the commercial and residential units this is considered acceptable. Officers note that although the application form indicates otherwise, during the site visit in September 2023, 3 parking specs were identified to the front of the site, serving the commercial units.
140. With regard to parking provision for the restaurant, as previously identified, as part of an existing use, there exists some flexibility to the size of the existing café/restaurant, without giving rise to a material change in use. Like similar previous applications, this use will be tied to the overall composite use of the boatyard by appropriate planning condition and to that extent is considered not to be materially different than occurs /could occur at present for the existing restaurant use.
141. As identified above, the application form indicates a decrease in all types of non-residential uses existing on the site. The 4 surface parking spaces will provide parking for the SYC office and estate agent use, these have been amended in their orientation during the application process to provide safe access onto the highway.
142. Were there no commercial uses in place, the current requirements for car parking would amount of 1.5 spaces for office use and 14 spaces for the proposed restaurant/ café, in addition to the 15 car parking spaces currently required by the Parking SPD. The Council's Highway Unit has advised that given that there are existing pay and display parking bays along the main road in the area, it is not considered the impact of the proposed development could justify its refusal on parking provision or highway safety grounds. Notwithstanding this position, in the event this recommendation is overturned, it is recommendable that the submitted 'Access Note' be expanded to a Transport Assessment/ Report, including a parking survey and developing further on how the submission envisages to address parking provision for cars, as well as for cycles and deliveries, alongside other transport issues raised, including access and traffic surveys, discussed in the next paragraphs.

143. Assuming the office uses takes up 1 surface cycle parking opportunity as per the SPD figure, then the residential units would have access to a total of 19 cycle parking opportunities. The SPD requires 26 cycle spaces for the residential units and therefore there is shortfall of cycle parking spaces in the proposal. There are local policies requiring development to support cycle use including Policy PP2 and the Council is currently investing in improving cycle infrastructure across the conurbation.
144. Addressing the shortfall of cycle parking spaces in this proposal appears easily achievable with the removal of 1 basement parking space and replacing it with a cycle store, noting that there is a slight over provision of car parking to the SPD so loss of 1 parking space would be acceptable. This is pending clarification of the parking strategy for the site, including information regarding all parking currently available for the boatyard composite. It is suggested that this information is part of a Transport Assessment/ Report, otherwise that cycle spaces to meet the standards are secured by condition, in the event the application is approved.
145. Likewise, the provision of Electric Vehicle Charging requirements in the new SPD can be dealt with by way of condition, in the event the application is approved. Any frontage landscaping to the main road should be kept at a height of no more than 1m in order to ensure adequate visibility from the boatyard and parking exits, which would have been secured by condition.
146. Significant amendments have been made to the basement parking during the application including, provision of at least 2 basement parking spaces which are disabled adaptable and there is surface level disabled parking provision. Re-siting of parking spaces has also been done to allow for easy and safe access and eliminate potential conflicts with the in/out access. As part of the revisions a raised kerb has also been added to ensure there is separation between a vehicle coming down the ramp and a car waiting in the basement. This would also guide an exiting car to the correct waiting spot and also avoid a vehicle coming down the ramp driving over any traffic light sensor in the basement floor at the waiting bay. The default setting for any traffic signal should be green for vehicles entering off Panorama Road. The basement ramp has also been revised to overcome previous concerns with the gradient, this is now acceptable.
147. Concern has been raised as to the potential for vehicle conflicts at the proposed access which includes the basement access and access to the boatyard. In order to address this, the applicant has submitted a technical highway report which provides further details to clarify the likely occurrence of vehicle conflicts at the access. Those conflicts are likely to be minimal, even factoring up to the peak season use of the boat yard. Another consideration is that the boat yard access/use is existing and the entrance/exit will not operate much differently from the existing arrangements should the development go ahead. Measures to reduce conflict are to be implemented such as prioritising a "green" traffic signal entrance to the residential basement car park at all times, unless a vehicle is on the exit ramp. Vehicle speeds turning into and out of both the boat yard and residential basement car park will be very low which reduces safety risks. A further measure of having 2 different surface materials to distinguish between

the 2 accesses would also enhance safety – eg. 2 differing block paviour details for each access. This could have been secured by condition, had this been a recommendation for approval of the scheme.

148. Existing accesses onto Panorama Road, which involve vehicles reversing directly out onto the road are to be closed and this represents a highway safety gain.
149. It is noted that within their submission the applicant acknowledged that the traffic survey was not taken at a peak time for vehicle movements in the area. The Council assessed the applicant's data but also carried out its own judgement on the traffic activity likely to occur as a result of the proposal. There are many material considerations that came into this assessment but in particular the existing restaurant use, size and the existing parking situation and servicing arrangements by delivery vehicles. There is in fact limited existing parking and servicing arrangements for the existing restaurant, which is partially used, as noted by the applicant.
150. Notwithstanding the Local Highways Authority positions that the proposals would not justify refusal on highways safety or parking grounds, a Transport Assessment/ Report would help officers understand the impact of the proposed uses, in the context of a reduction of commercial floorspace, and changes in transport habits which may have occurred since the submission in 2019. In light of the Highways Authority position, at present the proposal would have been acceptable in terms of Policies PP27 (1) f) and g) (see further in this respect assessment below in relation to waste) and PP28 (1) c) and d) relating to highway matters, including cycle storage and car parking, subject to compliance with conditions, as well as with policies PP34 and PP35 of the Poole Local Plan (2018), and Policy SAND5 g) relating to highway matters of Sandbanks Peninsula Neighbourhood Plan (2024).

Bin Storage

151. Bin storage is provided within the basement. This is not within 10 metres of the highway and as such the Local Authority Waste team object and would not provide collection. The applicant has offered a private collection. Due to the nature and constraints of the site it has been difficult to provide a solution whereby the bins could be collected by the Local Authority without detriment to the character of the area. In this instance collection by a private company, which the applicant has agreed to and can be conditioned is accepted. The proposed condition would address both residential and commercial waste elements.
152. The applicant has also been advised that if in the future the Local Authority are required to provide collection this may not be possible as it does not meet current guidance however given the emphasis of the NPPF on delivering development it would not be sufficient justification to refuse the application on the grounds of bin storage. The proposal is therefore considered to comply with Policy PP27(f) and (g).

Biodiversity

153. Policy SAND4 of Sandbanks Peninsula Neighbourhood Plan states that development proposals will be supported where they protect and enhance biodiversity. Also, in case of the current application a scheme for biodiversity enhancements at the site in accordance with Policy PP33 of the Poole Local Plan could have been secured by condition, in case the development was granted permission. Officers acknowledge the limitations of the site in respect of likelihood of wildlife currently existing at the site and seeks measures such as bat and swift boxes which could be attached to the new building.

Section 106 Agreement/CIL compliance

154. Mitigation of the impact of the proposed development on recreational facilities; Dorset Heathlands and Poole Harbour Special Protection Areas; and strategic transport infrastructure is provided for by the Community Infrastructure Levy (CIL) Charging Schedule adopted by the Council in February 2019. This confirms that dwellings are CIL liable development and are required to pay CIL in accordance with the rates set out in the Council's Charging Schedule.
155. The site is within 5km (but not within 400m) of Heathland SSSI and the proposed net increase in dwellings would not be acceptable without appropriate mitigation of their impact upon the Heathland. As part of the Dorset Heathland Planning Framework a contribution is required from all qualifying residential development to fund Strategic Access Management and Monitoring (SAMM) in respect of the internationally important Dorset Heathlands. This proposal would require such a contribution, without which it would not satisfy the appropriate assessment required by the Habitat Regulations.
135. In addition, the proposed net increase in dwellings would not be acceptable without appropriate mitigation of their recreational impact upon the Poole Harbour SPA and Ramsar site. A contribution is required from all qualifying residential development in Poole to fund Strategic Access Management and Monitoring (SAMM) in respect of the internationally important Poole Harbour. This proposal would require such a contribution, without which it would not satisfy the appropriate assessment required by the Habitat Regulations.
136. The applicant has indicated willingness to seek to secure the relevant contributions towards Dorset Heathlands and Poole Harbour Recreation SAMMs; however the applicant had not entered into a Section 106 Agreement or unilateral undertaking towards both Heathland and Poole Harbour SAMMs to seek compliance with Policies PP32 and PP39 of the Poole Local Plan in this sense.
137. In addition, as identified in the affordable housing section above the applicant has agreed to enter into a planning obligation to secure an overage clause in respect of affordable housing. Had this recommendation been for the approval of the scheme, the completion of the legal agreement would be required to secure such SAMM and affordable housing contributions, to ensure the

scheme's compliance with the provisions of Policies PP12 and PP40 of the Poole Local Plan.

RECOMMENDATION

It is therefore recommended that this application be refused for the following reasons:

- 1) The principle of additional residential units in this site at risk of future flooding would not be acceptable, in light of the requirements of Policy PP38 of the Local Plan and paragraph 172 (a) of the NPPF. The risk imposed to the additional residential units is not considered to, on balance, outweigh the benefits of the contribution to housing in Poole. The proposal would introduce more vulnerable residential development within an area at future risk of flooding. The proposal has failed the Sequential Test and Exception Test and as such failed to demonstrate non-availability of suitable land in an alternative low flood risk zone. The proposal would exacerbate the challenges with flooding of this land and neighbouring areas contrary to policy PP38 of the Poole Local Plan (2018) and the NPPF.
- 2) The proposal by virtue of the height, scale, bulk and massing as a whole results in a dominant and unduly prominent building which would be incongruous in the street scene resulting in material harm to the character and appearance of the area. contrary to Policies PP27, PP28 of the Poole Local Plan (2018), Policies SAND1, SAND2 and SAND5 of the Sandbanks Peninsula Neighbourhood Plan and the NPPF (2024).
- 3) The proposed development includes a main town centre use and the applicant has not demonstrated how the development proposed would satisfy the sequential test, as required by Policy PP22. Consequently, the location of the development would undermine the Council's retail strategy which focuses such development in town centre, district centres, local centres and neighbourhood parades in accordance with the retail hierarchy contrary to Policy PP22 of the Poole Local Plan (November 2018)
- 4) The proposal fails to make provision for any affordable housing, contrary to paragraph 66 of the NPPF 2024 and Policies PP11 and PP40 of the Poole Local Plan (November 2018).
- 5) The application site is within 5Km of a Site of Special Scientific Interest (SSSI). This SSSI is also part of the designated Dorset Heathlands SPA (Special Protection Area) and Ramsar site, and is also part of the Dorset Heaths SAC (Special Area of Conservation). The proximity of these European sites (SPA and SAC) means that determination of the application should be undertaken with regard to the requirements of the Conservation of Habitats and Species Regulations 2017. The applicant has failed to demonstrate in accordance with the Habitat Regulations that the proposals will cause no harm to the SPA and SAC heathland. It is clear, on the basis of advice from Natural

England that, notwithstanding the CIL contribution, no avoidance or mitigation of adverse effects through Strategic Access Management and Monitoring (SAMM) has been secured. In the absence of any form of acceptable mitigation it is likely to have an adverse effect on the heathland special features including those which are SPA and SAC features. Having regard to the Waddenzee judgement (ECJ case C-127/02) the Council is not in a position to be convinced that there is no reasonable scientific doubt to the contrary. For these reasons, and without needing to conclude the appropriate assessment, the proposal is considered contrary to the recommendations of the Berne Convention Standing Committee on urban development adjacent to the Dorset Heathlands, and Policy PP32 and PP39 of the Poole Local Plan (November 2018).

- 6) The application site is within close proximity to Poole Harbour which is a Special Protection Area (SPA), Site of Special Scientific Interest (SSSI) and Ramsar site and the determination of the application should be undertaken with regard to these European designations and the requirements of the Conservation of Habitats and Species Regulations 2017. The applicant has failed to demonstrate in accordance with the Habitat Regulations that the proposals will cause no harm to the SPA. It is clear, on the basis of advice from Natural England that, notwithstanding the CIL contribution, no avoidance or mitigation of adverse effects through Strategic Access Management and Monitoring (SAMM) has been secured. In the absence of any form of acceptable mitigation it is likely to have an adverse effect on the special features of Poole Harbour including those which are SPA features. Having regard to the Waddenzee judgement (ECJ case C-127/02) the Council is not in a position to be convinced that there is no reasonable scientific doubt to the contrary. For these reasons, and without needing to conclude the appropriate assessment, the proposal is considered contrary to the provisions of Policy PP32 and PP39 of the Poole Local Plan (November 2018).

INFORMATIVE NOTES

- 1) In accordance with the provisions of paragraph 39 of the NPPF the Local Planning Authority (LPA) takes a positive and creative approach to development proposals focused on solutions. The LPA work with applicants in a positive and proactive manner by;
 - offering a pre-application advice service, and
 - advising applicants of any issues that may arise during the consideration of their application and, where possible, suggesting solutions.

Also:

- In this case the applicant was advised how the proposal did not accord with the Development Plan, and that no material considerations were apparent that would outweigh these matters.
 - In this case the applicant and BCP have worked together to minimise the reasons for refusal.
- 2) The applicant is advised that if this application had been acceptable in all other respects, the scheme would be Liable to the Community Infrastructure

Levy Schedule which became a material planning consideration on 2nd January 2013. Therefore, if this decision is appealed and subsequently granted planning permission at appeal, this scheme will be liable to pay the Council's CIL upon commencement of development.

- 3) The applicant is advised that if this application had been acceptable in all other respects, a financial contribution towards Strategic Access Management and Monitoring (SAMM) would have been required in accordance with the Dorset Heathlands Framework 2020-2025 SPD (2020), Policies PP32 and PP39 of the Poole Local Plan (November 2018). This would overcome refusal reason No. 5.
- 4) The applicant is advised that if this application had been acceptable in all other respects, a financial contribution towards harbour mitigation would have been required in accordance with the Poole Harbour Recreation SPD 2019-2024 and with Policy PP32 and PP39 of the Poole Local Plan (November 2018). This would overcome refusal reason No. 6.
- 5) This application is subject to a project level Appropriate Assessment in accordance with the Conservation of Habitats and Species Regulations 2017, concluding that the likely significant effects arising from the development can be mitigated but have not been mitigated as such allowing the development would result in an adverse effect on the identified designated sites of Nature Conservation Interest.
- 6) The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition ("the biodiversity gain condition") that development may not begin unless: (a) a Biodiversity Gain Plan has been submitted to the planning authority, and (b) the planning authority has approved the plan. The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be Bournemouth, Christchurch and Poole Council. There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are listed in paragraph 17 of Schedule 7A of the Town and Country Planning Act 1990 and the Biodiversity Gain Requirements (Exemptions) Regulations 2024.

Based on the information available this permission does not require the approval of a biodiversity gain plan before development is begun because one of the statutory exemptions or transitional arrangements listed is relevant.

- 7) The development is hereby refused in accordance with the following plans:

Site Plans ref: 1454-SYM-00-XX-DR-A-0400 P04 received 05/05/2020

Basement and Ground Floor ref: 1454-SYM-00-ZZ-DR-A-0401 P06 received 24/10/2019

Upper Floors ref: 1454-SYM-00-XX-DR-A-0402 P04 received 03/10/2019

Elevations Sheet 1 ref: 1454-SYM-00-XX-DR-A-0403 P04 received 03/10/19

Elevations Sheet 2 ref: 1454-SYM-00-XX-DR-A-0404 P03 received 03/10/19

Street scene ref: 1454-SYM-00-XX-DR-A-0405 P03 received 03/10/19

Existing Floor Plans, ref: 1454-SYM-00-XX-DR-A-0409 P03 received
07/01/2022

Extent of Boatyard Plan. Ref: 1454-SYM-00-XX-DR-A-0413 P01 received
07/04/2021

Background Documents:

APP/19/00818/P

Documents uploaded to that part of the Council's website that is publicly accessible and specifically relates to the application the subject of this report including all related consultation responses, representations and documents submitted by the applicant in respect of the application.

Notes.

This excludes all documents which are considered to contain exempt information for the purposes of Schedule 12A Local Government Act 1972.

Reference to published works is not included.