

<b>REFERENCE NO - SW/14/0124</b>		
<b>APPLICATION PROPOSAL</b> Variation to clause 5.1.1 of Section 106 Agreements dated 1997 and 2005 which restrict the use of the lower ground floor to B1 (business) use.		
<b>ADDRESS</b> Former Upper Brents Shipyard, Upper Brents, Faversham, Kent, ME13 7DZ		
<b>RECOMMENDATION</b> – The planning obligations shall continue to have effect without modification		
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b> 1) Would result in incompatible mix of residential and industrial uses causing mutual conflict 2) Adverse effect on character of Faversham creekside		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Variation of a section 106 agreement		
<b>WARD</b> Davington Priory	<b>PARISH/TOWN COUNCIL</b> Faversham	<b>APPLICANT</b> Waterside Residents Association Ltd <b>AGENT</b> Nicholas Kingsley Smith
<b>DECISION DUE DATE</b> 3 <sup>rd</sup> April 2014	<b>PUBLICITY EXPIRY DATE</b> 20 <sup>th</sup> March 2014	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>		
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>
SW/96/0031&0032	Erection of 31 business units with associated residential accommodation and 2 support units	Refused on 6 grounds (full reasons given later in the report) 1) relating to incompatible mix of residential and industrial use 2) relating to residential development not being in accordance with local plan policy 3) Adequate land available for housing growth in Faversham elsewhere 4) Lack of public open space and private amenity required for residential properties 5) Highway safety 6) Highway safety
SW/96/647&648	Erection of 27 business units with associated residential accommodation and 2 support units	Refused on 6 grounds (full reasons given later in the report) 1) relating to incompatible mix of residential and industrial use

## ITEM 1.1

		<p>2) relating to residential development not being in accordance with local plan policy</p> <p>3) Adequate land available for housing growth in Faversham elsewhere</p> <p>4) Lack of public open space required for residential properties</p> <p>5) Highway safety</p> <p>6) Inadequate security or natural surveillance to detriment of crime prevention</p>
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SW/97/202&203	25 business units with associated residential accommodation, two support units and two B1 units	Approved subject to the legal agreement the subject of this proposed variation
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SW/00/1235	Revision to approved layout of units 1, 18 and 20 to 29 to provide 11 business units with associated residential accommodation and one B1 use unit, and associated highways/parking.	Approved subject to an additional legal agreement covering changes to layout etc, also subject of this proposed variation
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### 1.0 DESCRIPTION OF SITE

- 1.01 Waterside Close is a small development of twenty-one “business units with associated living accommodation” located on the northern bank of Faversham Creek on the creekside frontage part of the former Upper Brents shipyard. To the north, Waterside Close immediately abuts the Upper Brents industrial estate and to the south, Faversham Creek. To the west is Faversham Reach, an earlier development of similar live work units.
- 1.02 The development was granted planning permission originally in 1997, and then an amended scheme for part of the site was approved in 2005. These two planning permissions jointly approved the scheme built today. The approved schemes include a further five un-built business units with associated living accommodation at the northern end of the site, together with a three storey solely B1 building at the (southern) entrance of the site. Whilst none of these units have been built the permissions have been commenced and they could be completed at any time.

- 1.03 The site lies adjacent to the remainder of the former shipyard which benefits from a 1980 Established Use Certificate for a shipyard, a general industrial use, without limitations in terms of noise or hours of work. Much of this area has since been redeveloped. For those areas of the former shipyard closest to its entrance and thus closest to established residential areas on Upper Brents, the Council has for many years sought to minimise harm to amenity by approving new B1 Business uses at this end of the area. However, further from the shipyard entrance noisier uses have normally been permitted and significant open areas close to the boundary with Waterside Close have not been redeveloped and still retain their unfettered General Industrial use rights.

## 2.0 Background

- 2.01 As can be seen from the summary information above, the proposal for partly residential re-development at what is now Waterside Close was refused planning permission twice before planning permission was granted in 1997 alongside one of the section 106 agreements to which this application for variation relates. This was at a time when the first refusals were heading for appeal inquiries and the boatyard on the site was in financial trouble. The aim of the approval was to reinvigorate the employment value of the site, and overcome the Council's concerns over the residential bias of previous schemes.

- 2.02 The reasons for refusal stated for the first 1996 scheme were as follows:

*“The application site is located in close proximity to an area of existing B2 general industrial uses and the proposed business units would be accommodated in new buildings with a high proportion of residential use. The proposal would therefore result in an incompatible mix of residential and industrial uses contrary to policy E2 of the Swale Borough Local Plan (deposit draft) which, inter alia, seeks to minimise the impact of noise between new and existing uses.*

*1. In the Council's opinion, the residential element of the proposed development is by far the major part of the development. The development would therefore conflict with Policy 3.2E of the Faversham Local Plan 1982 which, inter alia, states that industrial or commercial (but not retailing) development will normally be permitted on the site and Policy B17 of the Swale Borough Local Plan (deposit draft) which states, inter alia, that employment development will normally be permitted at the shipyard.*

*2. In the Council's view adequate land is available for development at present to permit the continuation of a moderate rate of housing growth in Faversham in accordance with the objectives of the local plan. The redevelopment of this land in the manner proposed would therefore conflict with the objectives of the local plan and the Kent Structure Plan of restraining growth at Faversham in order to protect its historic character.*

*3. The proposed development relates primarily to a residential land use, but it would provide an unacceptable low level of residential amenity by reason of the extensive and unrelieved vehicle parking areas in front of the units, the lack of adequate private amenity areas for the family sized dwellings and the lack of adequate public open space which accords with Policy R5 of the Swale Borough Local Plan (Deposit Draft).*

4. *In the opinion of the District Planning Authority the proposed junction between the site access and Faversham Reach without improvement will increase potential for vehicular conflict to the detriment to highway safety.*

5. *The geometric layout of the road which serves 34 business units and associated residential accommodation does not meet highway design standards and is therefore likely to increase the risk of accidents to the detriment of highway safety.”*

2.03 The reasons for refusal stated for the second 1996 application were as follows:

*“ 1. The application site is located in close proximity to an area of existing B2 general industrial uses and the proposed business units would be accommodated in new buildings with a high proportion of residential use. The proposal would therefore result in an incompatible mix of residential and industrial uses contrary to policy E2 of the Swale Borough Local Plan (deposit draft) which, inter alia, seeks to minimise the impact of noise between new and existing uses.*

*2. In the Council’s opinion, the residential element of the proposed development is by far the major part of the development. The development would therefore conflict with Policy 3.2E of the Faversham Local Plan 1982 which, inter alia, states that industrial or commercial (but not retailing) development will normally be permitted on the site and Policy B17 of the Swale Borough Local Plan (deposit draft) which states, inter alia, that employment development will normally be permitted at the shipyard.*

*3 In the Council’s view adequate land is available for development at present to permit the continuation of a moderate rate of housing growth in Faversham in accordance with the objectives of the local plan. The redevelopment of this land in the manner proposed would therefore conflict with the objectives of the local plan and the Kent Structure Plan of restraining growth at Faversham in order to protect its historic character.*

*4 The proposed development relates primarily to a residential land use, but it would provide an unacceptably low level of residential amenity by reason of lack of adequate public open space which accords with Policy R5 of the Swale Borough Local Plan (Deposit Draft).*

*5 In the opinion of the District Planning Authority the proposed junction between the site access and Faversham Reach without improvement will increase potential for vehicular conflict to the detriment to highway safety.*

*6 The proposed units, by reason of their siting and orientation, would provide inadequate security for their occupants or natural surveillance of the proposed creekside public footpath, to the detriment of crime prevention.”*

2.04 The amendments contained within the third (approved) proposal (1997) sought to overcome these reasons for refusal and included the following;

- Reduction in the number of units and the introduction of two additional units exclusively for B1 employment use
- Significant increase in proportion of B1 to residential floorspace to more than 40%
- Highway, security, open space and footpath improvements

NOTE: B1 Use refers to “Business” Use as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) which is for use as “Offices (other than those that fall within A2), research and development of products and processes, light industry appropriate in a residential area” It is thus specifically compatible with a residential area.

- 2.05 The applicant’s agent stated in the application papers relating to the 1997 approved scheme;

*“we are aware that despite our efforts to promote this scheme as primarily one for economic development combining B1 workspace with associated residential accommodation, the Council has viewed the development as primarily a residential one”.*

*“The live and work units can be financed with normal residential mortgages, a fact which assists with the individual businesses viability.”*

*“The ground floor work areas will be business rated and my clients are prepared to enter into a Section 106 agreement to ensure that the ground floor commercial floorspace of the business/ residential units is restricted to B1 use and not used for residential purposes.”*

- 2.06 The 1997 Section 106 agreement included several clauses aimed at promoting the site as a place of business, and of promoting the creekside as a business location. The part that this variation seeks to alter states at clause 5.1.1, where the words “Business Units” means the ground floor areas of the properties excluding hallways, stairwells etc. Units 18 and 19 were at that time approved solely as B1 use units;

*“The use of the Business Units and of the buildings comprised in the Development numbered 18 and 19 on the Application Plan shall be restricted to purposes within Class B1 of the Town and Country Planning (Use Classes) Order 1987 as amended together with any ancillary uses relating thereto”.*

- 2.07 A further section 106 agreement was entered into in 2005 following a planning application to revise the layout (SW/00/1235). Here Unit 1 was a replacement B1 only block to replace Units 18 and 19 in the earlier scheme. This legal agreement also stated at clause 5.1.1;

*“The use of the Business Units and of the buildings comprised in the Development known as Application A under reference SW/00/1235 and shown as Unit 1 on the Application Plan shall be restricted to purposes within Class B1 of the Town and Country Planning (Use Classes) Order 1987 as amended together with any ancillary use relating thereto”*

- 2.08 The section 106 agreements also provide that the ground floor areas cannot be used for B1 use other than by the occupiers of the residential accommodation above.

- 2.09 It is worth noting that the arrangement of the units with B1 use on the ground floor and residential use above neatly overcame concerns over flood risk at the time, and that floor levels were controlled by the planning permissions to minimise flood risk.
- 2.10 It is also worth remembering that in view of the Established Use Certificate rights on adjacent land the layout and design of the Waterside properties is very specifically designed. Features of the design intended to minimise conflict between the uncontrolled area and new properties containing living spaces include gardens shielded from noisy areas by the units themselves, most bedrooms facing away from the uncontrolled areas, and the single (smallest) bedroom facing that way being triple-glazed. There is also a high acoustic fence between the two areas to minimise impact on amenity. All these features are built in to the Waterside Close scheme as a way of recognising the potential for a new form of mixed-use unit to be built in what was effectively a potentially very noisy area where ordinary residential use would not be acceptable.

### 3.0 PROPOSAL

- 3.01 This application seeks to vary the two section 106 agreements which affect the business units with associated residential use in Waterside Close which were entered into in 1997 (between Larchline Limited & Swale Borough Council) and 2005 (between Swale Borough Council, Propan Properties Limited and the individual owners of the six then completed properties built on the basis of the 2005 application). Whilst the agreements contain several clauses, the specific part of the agreements that the residents wish not to comply with is the requirement for exclusively B1 use of the ground floor areas of their properties. They wish to amend the agreements to allow a flexible use of either B1 “Business” or C3 “Dwellinghouses” use so that the whole building can be used for residential purposes, or as currently approved with B1 use on the ground floor and residential use above.
- 3.02 The applicants have proposed the following amended clause;

*“the use of the business units and of the buildings comprising in the development numbered 18&19 on the application plan shall be restricted to purposes within class B1 and class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended together with any ancillary uses relating thereto provided that any C3 use of the ground floor shall exclude sleeping accommodation.*

This suggestion is out of date in respect of Units 18 and 19 which were never built, but the intention for both business and residential use options on the ground floors is nevertheless clear.

- 3.03 The applicants’ case is that recent changes in legislation and national planning policy, including new permitted development rights for change of use from offices to residential use, and the NPPF’s aim of sustainable development, mean that flexible use of the ground floor areas is now in line with current thinking and will make better use of this brownfield site, especially as only two

of the units have the ground floors in current business use. It is also said that the mixed use restriction makes mortgages difficult and that the variation to the section 106 agreements will assist with this problem.

- 3.04 The application was accompanied by letters from local estate agents seemingly responding to a question regarding whether they get many enquiries or requests for properties involving a mix of live and work unit. All appeared to generally be saying no.

#### 4.0 PLANNING CONSTRAINTS

Faversham conservation area

Flood Zones 2 & 3

Swale Borough Local Plan 2008 E13 - Coastal Zone & Undeveloped Coast

Swale Borough Local Plan 2008 AAP2 - Area Action Plan, - Faversham Creekside

#### 5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 The legislative position regarding section 106 agreements and modifications of them is set out within the Town and Country Planning Act 1990.

- 5.02 The National Planning Policy Guidance (NPPG) explains;

*“Planning obligations mitigate the impact of unacceptable development to make it acceptable in planning terms”. In order to be used, a planning obligation must “meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.”*

- 5.03 Upon receipt of a valid application to vary or modify a section 106 agreement, the local planning authority must consider whether the obligation(s) contained in the section 106 agreement still serves a "useful purpose". In making such a determination, the local planning authority can reach one of three conclusions:

- that the planning obligation shall continue to have effect without modification;
- that the obligation no longer serves a useful purpose, in which case the local planning authority shall discharge it; or
- that the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, in which case it shall have effect subject to those modifications.

- 5.04 Guidance from the Secretary of State (in the now-cancelled circular 05/2005) previously stated that the phrase "useful purpose" should only be considered

within the context of land-use planning. There has been no updated guidance in this respect.

**5.05 The National Planning Policy Framework (NPPF)**

5.06 The NPPF sets out the national policy position for determining planning applications. In this case, it is also relevant in determining whether the legal agreements still serve a useful purpose. The golden thread running through the NPPF is the encouragement of sustainable development which has three threads to it – an economic, social and environmental role. The NPPF also encourages mixed use developments recognising the multiple benefits that can be achieved and facilitate flexible working practices such as the integration of residential and commercial uses within the same unit.

**5.07 Swale Borough Local Plan 2008:**

E1 – General Development Criteria  
E15 - Development affecting a conservation area

**Policy B1;**

B1 – Supporting and retaining existing business uses is particularly relevant in this case. It states;

*“Land and buildings currently in employment use will be retained for that use unless it is:*

- a. inappropriately located for any employment use, and having an unacceptable environmental impact in an area; or*
- b. demonstrated by expert advice that the site is no longer suitable for any employment use; or*
- c. demonstrated by market testing that there is insufficient demand to justify its retention for any employment use; or*
- d. allocated in the Plan for other purposes.*

*In cases involving a change of use or redevelopment for residential purposes, the Council will additionally require proposals to: (a) demonstrate, by reference to 1a) to d) above, that a mixed use approach to the site, involving a viable level of replacement or alternative employment provision, is not appropriate; and (b) that there is no conflict with Policy SH1.”*

**Policy AAP2**

In addition the site is located within the Area Action Plan (AAP)2 relating to Faversham Creekside. Policy AAP2 states;

*“Planning permission will not be granted for proposals that would result in the loss of land or buildings suitable for employment uses or, on appropriate sites, would not involve active use or management of the creek itself. All development proposals will:*



1. *maintain or enhance a mix of uses and activity that respect the maritime, industrial and residential character, as appropriate to the varied parts of the AAP area”*

*Policy FAV1 deals specifically with the Faversham area, which the Local Plan recognises is quite different from the rest of the Borough which is defined as the Thames Gateway area. FAV1 explains;*

*“Within the Faversham and Rest of Swale Planning Area, conservation of the historic and natural environment is the prime and overriding consideration. Within this context, the Borough Council will enhance the role of the market town to support its own local needs and those of its rural hinterland. This will be achieved by promoting development proposals that can retain and harness local skills to achieve a greater diversity in employment, housing and community life, in scale and character with Faversham and its surrounding countryside and communities. Within this planning area, within the identified Area Action Plans and elsewhere, the following planning priorities will be pursued:*

1. *to set scales of development that reflect local needs and environmental character to achieve a better balance between the population and employment opportunities alongside a reduction in commuting to other areas;*
2. *to retain and improve existing employment land and buildings that would otherwise exacerbate the population and employment imbalance if lost to housing development;*
3. *to safeguard and enhance the diversity of Faversham's small-scale historic character and its maritime traditions, alongside that of its surrounding countryside, landscape and communities;*
4. *to enhance Faversham creek and creekside so that it functions as a place of special interest and activity with strong associations with the water;*
5. *to raise the standard of the environment through high quality design, and the protection, enhancement, and management of environmental resources, including the creation of a network of accessible open spaces (a green grid);*
6. *to support proposals that can meet as much of Faversham's development needs as possible from land and buildings within the existing urban area so as to minimise greenfield land development;*
7. *to provide for employment development, at a scale appropriate to the environment, on sites well related to the communication network, the existing urban framework and rural settlements;*
8. *to support and diversify the services and activities, including tourism, in Faversham town centre so as to enhance its economic health;*
9. *where appropriate, to promote rural sites and initiatives for employment and protect and improve rural services and facilities, to diversify the rural economy and support the role of the market town;*
10. *to effectively manage the risk of flooding; and*
11. *avoiding any significant adverse environmental impacts, and where possible, enhancing the biodiversity interest of internationally designated sites for nature conservation.”*

### **Faversham Creek Neighbourhood Plan**

The Faversham Creek area is the subject of advanced preparation of a Neighbourhood Plan. The emerging Swale Borough Local Plan recognises the importance of this and states;

*“The Creek at the heart of Faversham. Faversham Creek is leading the regeneration of the town; a place where we can celebrate its rich history and attractive appearance; a place where we enjoy spending time, both on and off the water; a place where boats, residents and visitors want to be. A place where developments integrate the needs of people and nature and where its distinctive character and identity is rooted in its traditional industries and enriched by new businesses.”*

Neighbourhood Plan policy NP1 – Faversham Creek Neighbourhood Plan states;

*“Within the Faversham Creek Neighbourhood Plan area, as shown on the Proposals Map, priority will be given to the regeneration of Faversham Creek by retaining maritime activities (including the retention and improvement of wharfs and moorings, including for large craft) with complementary redevelopment opportunities for workshops/business uses, residential, small scale retail and restaurant uses. Where relevant, development of the area will:*

- *Accord with the Neighbourhood Plan (once it has taken effect);*
- *Provide for the restoration of and enhancement to the settings of listed and other important historic buildings;*
- *The protection of open space and nature conservation interests and upgrading of the public realm;*
- *Navigation improvements to the Creek (subject to appropriate mitigation of the impacts on the adjacent International Designations and the Shellfish Waters);*
- *The provision of a publicly accessible creekside walkway;*
- *High quality designs which respect their context;*
- *Proposals which are acceptable in terms of flood risk; and*
- *The remediation of contaminated sites.”*

The submission draft of the Neighbourhood Plan recognises that;

*“Loss of local employment, together with relatively low property prices and a high-speed rail link to London, have led to an increase in out-commuting. There are also areas with low income, low skills and high unemployment, one of which is adjacent to the Creek (Davington Priory Ward, which includes the Brents area)”*

*“Other sites within the area are NOT being considered for redevelopment/change of use, on the grounds that they have already been redeveloped, are in active use for employment, or are open spaces and natural areas of heritage, environmental and community value. These are:*

- *Recent residential and live-work unit development at Waterside Close, Faversham Reach, Provender Walk, Belvedere Road, Belvedere Close and Goldings Wharf*

Adding vitality to the area

*“The vitality of the creekside area has declined over recent years with the closure of employment sites and the increase in private housing development. There are opportunities to reverse this trend with improved access, including footpaths and additional moorings, and new activities and amenities, encouraging and enabling greater use of the area by local residents and attracting revenue-generating visitors.”*

Generating economic growth

*“Bringing existing buildings back into use, and new business and residential developments, could enable the creekside to make a greater contribution to Faversham’s economy. The intention is to encourage existing businesses to remain in the area, the development of additional employment capacity, particularly for light industrial activities and workshops/studios for crafts and creative activities, and facilities for training and apprenticeships.”*

*“Create living and working environments that respond to the Creek’s rich and outstanding maritime heritage, the demands for high-performing standards of sustainable development, whilst supporting existing businesses and their aspirations”.*

## **6.0 LOCAL REPRESENTATIONS**

6.01 None

## **7.0 CONSULTATIONS**

7.01 Faversham Town Council say that they are unable to comment without a clearer understanding of the implications of altering the S106 agreement.

7.02 Natural England raises no objection but recommends the Council refer to their standing advice in respect of protected species.

7.03 The Environment Agency has considered the applicants’ Flood Risk assessment and raises no objection, but recommends a condition requiring the development to only be carried out in accordance with submitted flood risk assessment which details no sleeping accommodation at ground floor.

7.04 The Council’s Economy and Community Services Manager had concerns regarding the potential loss of employment space and made enquiries regarding the potential for the units to be occupied by other businesses independent from the residential accommodation. However, these enquiries resulted in the conclusion that this would not be possible, with shared access

and no separate metering for utilities. He considers that whilst in theory this could be addressed it is highly likely that the cost of doing so would render any such consideration impractical. Therefore, with the occupation of units restricted to business use by those occupying the associated residential accommodation he considers that, in reality, there will be little impact from this proposal on the use of the space and thus upon employment in the town.

7.05 However, he has raised concern about the ongoing potential for conflict between long-term existing businesses and residents of the scheme. Such conflict is impacting upon individual businesses perception of the area and may threaten the opportunity to retain businesses and/or future investment.

7.06 The Council's Environmental Health Manager has commented as follows;

*"Thank you for the opportunity to comment on the above application.*

*The application seeks to vary the section 106 agreements which if approved would allow use of the lower ground floor of properties in Waterside Close for residential purposes.*

*Consideration to the original design layout and orientation of these properties was given to take account of the potential impact of noise from the adjoining industrial estate.*

*Properties in Waterside Close share a boundary with a long established industrial estate and one where this department has been recently involved in dealing with a complaint from residents of excessive noise from a general industrial use on the adjacent site.*

*When assessing the significance of the impact of noise from the industrial estate account is taken of a number of factors including local attitudes to the source of the sound and the overall character of the neighbourhood.*

*In my view this proposal could effectively significantly alter the characterisation of this development from business units with associated residential use and potentially the tolerance of future residents to the noise generated by the neighbouring industrial estate.*

*I am therefore unable to support this application."*

## **8.0 APPRAISAL**

8.01 In the determination of this case, Members must consider why the section 106 agreements were entered into in the first place and whether that part which the applicants seek to vary still serves a useful purpose today. In the absence of any recent Government or legal advice, I would advise Members that useful purpose means in terms of the context of land-use planning. As explained earlier in the report, development of this site was very carefully considered by the Council over a series of planning applications in the late 1990s when the Council had serious concerns about the type of accommodation being

proposed and its impact on loss of employment potential at the site. The Council was also concerned about the impact that a residentially based scheme could have on existing nearby businesses in respect of amenity due to noise and conflict with Local Plan policy at the time in respect of the area being identified for industrial or commercial development. These concerns formed reasons for refusal (amongst others) in the first two schemes considered on the site. As a direct result of these refused planning applications, a third application sought to overcome these (and the other) reasons for refusal, and the applicant offered to enter into a legal agreement which offered comfort to the Council that the ground floors of all the mixed use properties would be safeguarded for B1 use, with other units in exclusively B1 use. It is quite clear that the Council felt strongly at the time that purely residential development on this site was not appropriate, neither in terms of mutual impact on existing businesses nor on proposed occupiers. It was also the case that the Council felt that the Creekside area ought to retain its commercial and industrial identity, and that purely residential uses here would dilute that character.

8.02 That was over seventeen years ago (although the terms of the legal agreements were reaffirmed ten years ago) and there has been quite significant changes in national and regional policy, a new Local Plan adopted and one currently emerging. It is therefore important to consider whether those changes render the aims of the clauses in question no longer useful, and whether the change in policy has brought in additional considerations that the agreements may help to protect.

8.03 Members will also note that the design of the approved schemes sought to minimise flood risk as it was understood at that time, although the applicants' recently produced Flood Risk Assessment has satisfied The Environment Agency on this point. I do not consider that flood risk should be a factor in the decision on this matter.

#### **8.04 Concerns raised by the Council historically**

8.05 With regards to the impact on existing businesses, the position does not appear to have significantly changed. At the time of the original applications, the Council was concerned about a possible conflict between the existing business uses within the Upper Brents Industrial Estate, which immediately abuts the site, and new residential accommodation. It was felt at the time that the unrestricted General Industrial uses contained within the industrial estate would not be compatible with a full residential use of the buildings, and as a direct result the scheme was amended to ensure the B1 part of the units was a significant part of the floorspace of the buildings so that they were in fact business units with living accommodation, not residential buildings with ancillary business uses. The logic behind this is that the units are approved as business units where the people running them live above. The Council considered that in situations such as that, where the residential use is a component in the overall use of a building and the businesses are run and the accommodation lived in by the same occupiers, some business noise and impact from a non-residential use could be accepted and tolerated. However, this same level of tolerance would not reasonably be expected from residents of

a purely residential area, who have a right to normal standards of residential amenity, away from noisy and potentially smelly industrial uses. I consider this concern is just as valid today as it was when the agreements were entered into. This is a concern that has been raised by the Council's Economy and Community Services Manager and the Environmental Health Manager.

- 8.06 It is also relevant to note that even recently there have been complaints raised by residents within the Waterside Close area to the Council of noise problems from proposed commercial uses on the other side of the creek, and to noise from MME engineering in the former shipyard area. MME engineering is an established and successful B2 General Industrial use which abuts the boundary with the undeveloped part of the Waterside Close site. The business is a provider and key supporter of local employment, with many employees walking to work from the surrounding area. Members may also wish to note that MME has unrestricted operating hours for its B2 use and the operations could be intensified and hours extended without the need for a planning permission. More worrying indeed is the prospect of the remaining five approved mixed-use units being completed in a position immediately adjacent to the very part of the former shipyards that retains its unfettered General Industrial use (adjacent to MME Engineering), leading to poor standards of amenity and/or a real threat to the prospect for those businesses which currently exist here. There is already clear evidence that creeping residential development is resulting in conflict with employment areas.

**8.07 Current additional Concerns**

- 8.08 As this development is now built, it is for the Council to assess the impact of the potential loss of employment space on this site. Prior to this site being developed as it is currently, it was operating as a boat repair yard with an active Creekside frontage, that was suffering from financial difficulties. Therefore, to have replaced the former use with an entirely residential use would have resulted in a quite significant loss of employment potential. I am now satisfied based on the comments of the Economy and Community Services Manager that if the agreements were to be varied as proposed, it would not result in a significant loss of employment floorspace. The applicants point out that there are new permitted development rights for change of use from office use to residential use. However, these do not apply to mixed-use building such as these and I do not consider this reference relevant to the arguments that need to be considered here.

**8.09 Current local policy position**

- 8.10 The second concern raised during the original applications related to the proposal involving a large proportion or percentage of residential accommodation, which was considered to be contrary to the Local Plan at the time, which sought commercial and employment uses in the area. Policy B2 of the Swale Borough Local Plan 2008 is a general business policy for the whole of the Borough rather than being specific to this area. It does, however, clearly set out the Council's position in terms of loss of employment space. It states

that buildings currently in employment use will be retained unless it meets one of four criteria.

- 8.11 The first is if the building is inappropriately located for any employment use, and having an unacceptable environmental impact in an area. That has not been argued in this case, and I am of the opinion that it is appropriately located for continuing employment use.
- 8.12 The second is if it can be demonstrated by expert advice that the site is no longer suitable for any employment use. Again the applicants have not sought to demonstrate this.
- 8.13 The third is if it is demonstrated by market testing that there is insufficient demand to justify its retention for any employment use. It is this point that I believe the applicants have sought to demonstrate through the submission of letters from local estate agents. Whilst these letters cannot be dismissed as offering no insight at all into the local market situation, these are opinions of individuals rather than based on factual evidence resulting from a marketing exercise where figures of viewings and interest or lack of can be obtained. Also, as the properties have not been marketed, it may be that interested parties have not come forward because they are not available. Notwithstanding that, all of the units are occupied, in itself demonstrating that there has not been difficulty in selling the properties in their current approved mixed use form.
- 8.14 The fourth point is if it is allocated in the Plan for other purposes, which is not the case here.
- 8.15 The Local Plan provides post-development published advice regarding this area under policies FAV 1 and AAP2 which directly relate to the Faversham area and to Faversham Creekside. The fact that Faversham Creekside has its own specific policy is testimony to its unique and special character within the Borough. This policy quite clearly states that proposals that result in the loss of buildings suitable for employment uses will not be supported.
- 8.16 The emerging Local Plan (Bearing Fruits 2031) also contains policies relevant to this case and specific to the Creekside area. Policy NP1 requires proposals to accord with the Neighbourhood Plan once adopted and encourages opportunities for workshops and business uses.
- 8.17 The draft Neighbourhood Plan recognises the problems that Faversham has had economically as a result of out commuting. This it considers has been caused by a loss of employment in the area and that the vitality of the creekside area has declined over recent years with the closure of employment sites and the increase in private housing development. It notes that there are opportunities to reverse this trend and encourages economic development in this area.

**8.18 National Policy Position – NPPF**

- 8.19 The NPPF, as Members will be aware, places a strong emphasis on determining applications depending on whether they are considered to be sustainable or not. This involves considering the three strands of sustainable development – economic, social and environmental. There have been no serious economic arguments put forward or viability concerns.
- 8.20 I note the arguments put forward by the applicants, that the proposal would not result in the loss of employment floorspace, as they are proposing a flexible use, however, it appears unlikely that if the clauses were relaxed to allow full residential use that the properties would be as attractive as mixed-use units. Instead, in my view it would be inevitable that the properties would all be used exclusively as dwellinghouses very soon. This would lead to loss of all vestiges of employment use, loss of working character and an inevitable increase in the risk of complaints against noise from nearby legitimate businesses which might tip matters even further away from a working creekside.
- 8.21 As already stated, the Faversham Creek area is unique and has a special historic character which is recognisable by its mix of industrial and creekside activities interspersed with some supporting residential uses. This development was carefully designed and considered to fit in with the mixed character of this area and at the same time add to the mix of uses and encourage the regeneration and vitality of the area. The amendments to the legal agreement to potentially allow exclusively residential use of these buildings would, in my view, dilute the commercial character of the area and lead to the degradation of its creekside character.
- 8.22 Members may also wish to note that this application to amend the legal agreements is not accompanied by a planning application to change the use of the units. The planning permission granted permission for mixed use buildings and therefore to use them solely for B1 use would require the benefit of planning permission as well as the variation of the legal agreements.

**9.0 CONCLUSION**

- 9.01 I conclude on several different points including mutual conflict with other Creekside uses and impact on the creekside character, that the legal clauses still serve a useful purpose and therefore recommend that the section 106 agreements are not varied.

**10.0 RECOMMENDATION – REFUSE** request for amendment to the section 106 agreements for the following reasons:

**Reason for Refusal**

1. The application site is located in close proximity to an area of existing unrestricted B2 General Industrial uses and the application properties comprise of a proportion of residential use. However, these have been designed to minimise mutual conflict and to recognise the fact that mixed-use units may not



enjoy the same standards of amenity as purely residential units. The proposal would result in an incompatible juxtaposition of residential and industrial uses, which would likely result in an unacceptably low level of amenity for the application properties and be likely to give rise to adverse pressure on existing businesses in the vicinity to change their methods of working, which could negatively affect their viability. The proposal is therefore contrary to policies E1, B1, FAV1 and AAP2 of the Swale Borough Local Plan 2008 and policy NP1 of the emerging Faversham Creek Neighbourhood Plan.

2. The potential for exclusive residential use of the properties would be likely to result in the unacceptable loss of business use in an area which is characterised by industrial and maritime uses and has historically suffered from under-provision of employment uses and an over-provision of dwellings. The application has not provided sufficient justification to override established Local Plan policy, failing to maintain or enhance a mix of uses and activity in the area. The proposal is therefore contrary to policies E1, B1, AAP2 & FAV1 of the Swale Borough Local Plan 2008.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website. The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.