

**Application No:** 21/2178/FH

**Location of Site:** Units 6A, 6B, 8A, and 8B Defiant Close, Hawkinge, CT18 7SU.

**Development:** Alterations and change of use of 6A, 6B, 8A and 8B Defiant Close from commercial uses (Classes A1, A2, A3 and B1) to residential (Class C3) creating 6 no. apartments.

**Applicant:** Pentland Homes Ltd.

**Agent:** Tracey Dixon, TaDPlanning Ltd. 51 Bayham Road, Tunbridge Wells, TN2 5HU.

**Officer Contact:** Ross McCardle

## **SUMMARY**

This application seeks planning permission for conversion of existing redundant commercial/retail units to 4 residential flats. The Town Council has objected to the scheme on the grounds that they consider there to be a need for employment opportunities in the village, but the Town Council has not provided any evidence to support that assertion and the applicant has provided full details of a robust and extensive marketing exercise proving there to be no demand for the units in their existing use. The application is considered to be acceptable in all respects, and recommended for approval subject to the conditions set out at the end of the report.

## **RECOMMENDATION:**

**That planning permission be granted subject to the conditions set out at the end of the report and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.**

## **1. INTRODUCTION**

1.1. The application is reported to Committee because of an objection from Hawkinge Town Council, as set out at section 5 below.

## **2. SITE AND SURROUNDINGS**

2.1. This application relates to units 6A, 6B, 8A, and 8B Defiant Close, which are ground floor commercial units situated within the village centre development off Hurricane Way. The units comprise the ground floor of a block situated adjacent to Spitfire Way, opposite the Lidl building:



Fig.1: Aerial view of site

2.2. The building is of a contemporary design with mono-pitch roofs and a mix of brick, render, and cladding across the external surfaces. The ground floor units are allocated for commercial uses while the upper floors are occupied by residential flats, as with the other buildings on the wider estate. Car parking spaces are provided to the front and rear of the building, as well as pedestrian walkways and landscaped areas.



Fig.2: Front elevation



Fig.3: Front elevation



Fig.4: Flank elevation

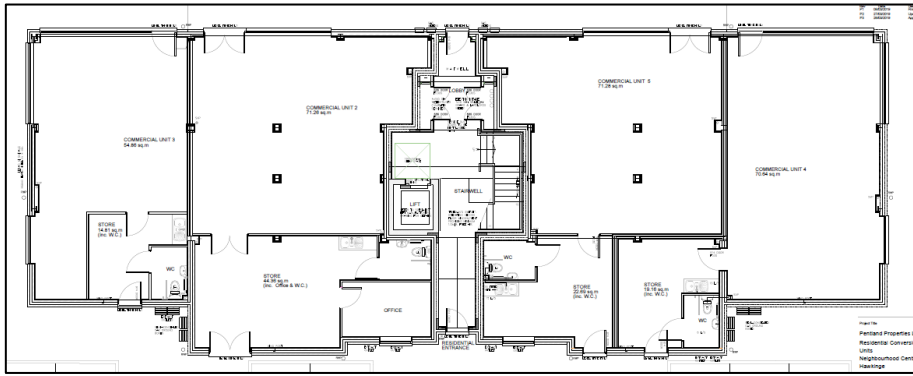


Fig.5: Flank and rear

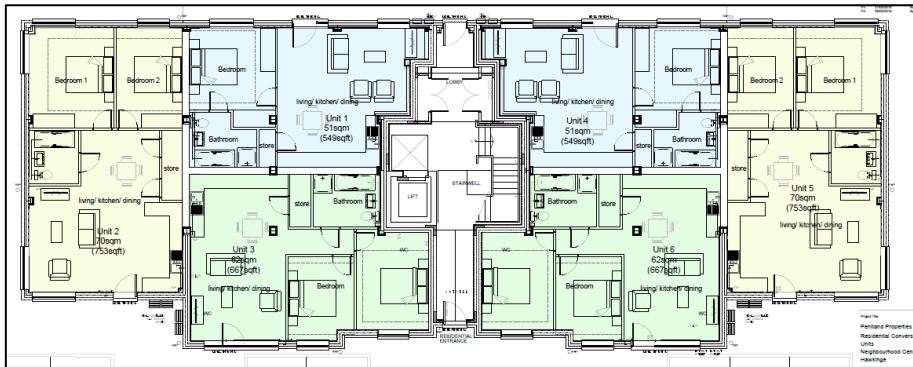
2.3. A site location plan is attached to this report as **Appendix 1**.

### **3. PROPOSAL**

- 3.1 Full planning permission is sought for alterations and change of use of units 6A, 6B, 8A and 8B from commercial uses (Use Classes A1, A2, A3 and B1 when first approved, but now all included within Class E of the 2020 amendment to the Order) to create six residential flats (Use Class C3).
- 3.2 The existing commercial shopfronts would be removed and replaced with typical residential doors and windows, providing individual access and light for each unit. Internally the space would be divided to provide six flats, four facing northwards and two facing southwards. Two units would be one-bed while the other four would be two-bed, each with open-plan living space and separate bedrooms and bathrooms. Access to the existing flats on the upper floors remains unaffected, and is independent from access to the proposed flats.
- 3.3 Six parking spaces would be allocated for the development within the existing parking layout; one per flat.
- 3.4 Bin storage would be provided within a new compound on the existing hardstanding to the front, adjacent to the existing parking bays.



**Fig.6: Existing floor plan**



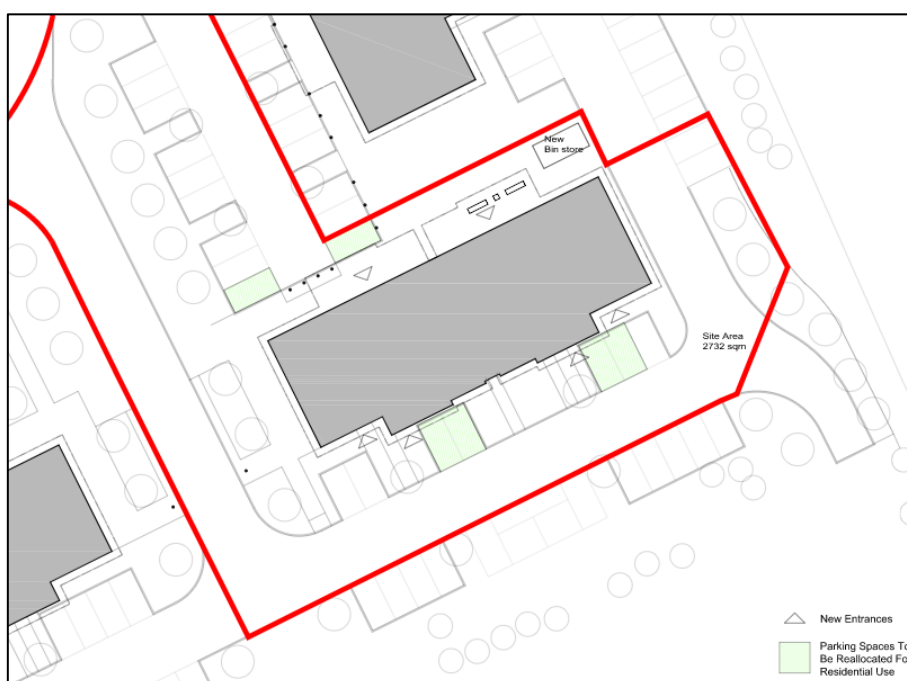
**Fig.7: Proposed floor plan**



**Fig.8: Existing elevations**



**Fig.9: Proposed elevations**



**Fig.10: Proposed block plan**

3.5 The following reports were submitted by the applicant in support of the proposals:

Planning Statement

3.6 This sets out the site description and planning history, describes the proposed development and the planning policy context to the proposals, and sets out how the submitted marketing report illustrates that there is no demand (nor likely to be a demand) for the units in a commercial use.

Marketing Viability Report

3.7 This has been prepared by Sibley Pares, a recognised and respected Chartered surveyor and estate agency. It sets out that the units were first advertised for sale (at market rates) in October 2018, including by way of advertisement on all relevant websites (Rightmove, Zoopla, etc.) and direct mailing to ~300 applicants on the agency's records as being interested in properties such as this. Marketing has

continued to the present day, but very limited interest has resulted and totals 4 unique enquiries, all of which resulted in no viewings and no offers.

- 3.8 The report highlights that *“the feedback received was consistent, stating the property was deemed to be too far outside any established commercial area which in turn would make their business propositions unviable due to low levels of footfall and passing trade.”* It also explains that the location of Hawkinge so close to Folkestone and Dover is a significant drawback to potential investors/tenants, as the larger towns offer better potential in terms of footfall – and consequently the viability of any enterprise – and thus attracts investment away from the village.
- 3.9 The report is accompanied by copies of the advert particulars for the units and details of the four enquiries that were received, setting out that each individual considered the site to be *“too far outside any established commercial area which in turn would make a business proposition unviable due to low levels of footfall and passing trade.”*

#### 4. RELEVANT PLANNING HISTORY

4.1 The relevant planning history for the site is as follows:

20/0657/FH	Change of use of office blocks A, B, C, Hurricane Way to 23 residential flats, along with public realm improvements at Terlingham Forum.	Approved
Y19/0446/FH	Change of use of nos. 6A, 6B, 8A and 8B Defiant Close from commercial (Classes A1, A2, A3 and B1) uses to 6 residential flats (Class C3).	Refused
Y14/0544/SH	Variation condition 11 Y10/0739 to allow use of ground floor in Block 2 Unit A and Block 3 units A & B as D1 Doctor’s surgery.	Approved
Y10/0739/SH	Mixed use development comprising the erection of 4 three-storey blocks providing 8 ground floor commercial units (Classes A1, A2, A3 & B1 uses) and 48 2-bedroom apartments above, together with associated access, parking, landscaping and open space.	Approved
Y10/0738/SH	Outline planning permission for a mixed use development comprising 5800sq.m of business units (Class B1/B8), 3 2-storey office buildings (Class B1) totalling 5960sq.m of accommodation and a retirement village (class C2), providing 69 cottages, 52 apartments and associated administration and facilities building, together with access and indicative landscaping with all other matters reserved for future consideration.	Approved

4.2 The most relevant historic application of the above is Y19/0446 which sought permission for the same change of use as the current application, and was refused on the basis that no justification had been provided to support a change of use and no affordable housing was being offered. The reasons for refusal read as follows:

1. The proposal would result in the loss of existing business and commercial floorspace on a site which is protected as an employment allocation and neighbourhood shopping centre in adopted development plan policies. Adequate justification has not been provided to demonstrate that the existing use is genuinely redundant and incapable of meeting the needs of alternative business uses and there are no identified public benefits that would outweigh the loss of allocated employment and commercial floorspace. The proposed change of use is therefore contrary to saved policies E2 of the Local Plan Review and SS4 of the Core Strategy, and emerging policies HB1, E1 and RL7 of the Places and Policies Local Plan Submission Draft which seek to retain local community services and business floorspace to secure sustainability and economic growth in the district.
2. The application proposes a net gain of 6 new dwellings with 0% affordable housing contribution, contrary to emerging policy CSD1 of the Core Strategy which states that development proposing 6 to 10 dwellings within the Kent Downs Area of Outstanding Natural Beauty should provide financial contributions towards the provision of affordable housing equivalent to one affordable dwelling. No viability assessment has been submitted to demonstrate that such a provision would not be financially viable.

## 5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

### Consultees

**Hawkinge Town Council:** Object *“on the basis it would lead to a lack of employment opportunities for the town. No evidence has been provided on the advertising of these premises and the commercial viability.”*

The applicant and case officers contacted the Town Council to point out that a full marketing and viability report had been submitted as part of the application (as above). The Town Council reconsidered the application at a subsequent meeting, but they maintain their objection, commenting:

*“...strongly object to the application to change the use from commercial to residential on the basis it would lead to a lack of employment opportunities, and retail and service provision, for the town.*

*The developer should offer more flexible terms. Businesses should be encouraged that do not rely on passing trade. The committee notes that the enterprises currently occupying space are destination businesses, which are not reliant on passing trade.”*

**KCC Archaeology:** No objection.

**FHDC Economic Development officer:** No objection. *“The location of these units, which are close to the large Lidl superstore, would have been most suitable for retail or local services. However, in view of the pandemic and the decline of high streets generally, the potential for a ‘district’ centre at Hawkinge has diminished. I can therefore understand that conversion to residential is likely to be the best commercial option for the success of this site and do not have any objections to this.”*

**FHDC Environmental Health officer:** No objection.

## **Local Residents Comments**

- 5.2 75 neighbours directly consulted. 3 letters of objection and 1 letter neither supporting nor objecting have received.
- 5.3 I have read all of the letters received. The key issues are summarised below:

### **Objections**

- Should be retained for employment use.
- Village needs local employment, retail, and services.
- Small businesses can't afford to buy units such as this, but they are not offered for rent.
- Could be occupied by businesses that do not rely on passing trade.
- Loss of employment/retail will force residents to travel out of the village.
- Local services need improving before more residential units are provided.
- Lack of local infrastructure.

### **General Comments**

- Could be occupied by facilities for residents, such as a doctor's surgery.
- 5.4 Responses are available in full on the planning file on the Council's website:

<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

## **6. RELEVANT PLANNING POLICY**

- 6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Local Plan 2013.
- 6.2 The Folkestone & Hythe District Core Strategy Review Submission Draft was submitted to the Secretary of State on 10 March 2020. Inspectors were appointed to examine the plan on 19th March 2020 and public hearings were held from 15th to 18th December 2020, from 5th to 12th January 2021 and from 29th June to 1st July 2021. The Inspectors' final report was received 23rd February 2022; it finds the plan to be 'sound' and to "provide an appropriate basis for the planning of the District." In accordance with National Planning Policy Framework (2021) paragraph 48, the policies in the Core Strategy Review should therefore be afforded significant weight, having regard to the Inspectors' report.
- 6.3 The relevant development plan policies are as follows:-

### **Places and Policies Local Plan 2020**

- HB1 (Quality places through design)
- HB2 (Cohesive design)
- HB3 (Internal and external space standards)
- HB8 (Alterations and extensions)
- E2 (Existing employment sites)
- C1 (Creating a sense of place)
- C3 (Open space provision)
- C4 (Children's play space)
- T2 (Parking standards)
- T5 (Cycle parking)



NE2 (Biodiversity)  
NE5 (Light pollution)

HB1, HB2, HB8, and C1 require developments to be of an appropriate standard in terms of scale, design, layout, etc. and to contribute positively towards creating a definitive sense of place to enable the local community to flourish, rather than simply a collection of attractive buildings.

HB3 ensures all new residential development accords with the minimum floor space standards set out by the Nationally Described Space Standard.

E2 seeks to ensure that existing employment uses are protected:

*Existing employment sites are protected for business purposes under classes B1 and B8. Proposals to fully or partly redevelop existing employment sites for alternative uses will be permitted provided that it is demonstrated that:*

- 1. The existing or former employment use is no longer appropriate in terms of neighbouring uses or impacts on the natural environment; or*
- 2. The site or premises has been subject to sustained marketing over a 12 month period prior to the submission of the planning application but the site or premises has remained unlet or unsold for all appropriate types of B class employment use and no reasonable offers have been received;*
- 3. It does not prevent or limited opportunities for any remaining land left undeveloped coming forward for employment purposes;*
- 4. Any established businesses are relocated to appropriate alternative premises within the local area; and*
- 5. The site is unviable for redevelopment for an alternative employment use.*

*In addition, proposals should demonstrate that the proposed new use does not undermine neighbouring employment uses or their future development.*

C3 and C4 seek to ensure that appropriate provision is made for open space and play equipment to serve new developments, often through the collection of proportionate financial contributions.

#### Core Strategy Local Plan (2013)

DSD (Delivering sustainable development)

SS1 (Spatial strategy)

SS2 (Housing and economy)

SS3 (Place shaping and sustainable settlements)

SS4 (Priority centres of activity)

CSD1 (Balanced neighbourhoods)

CSD2 (District residential needs)

SS1 and SS3 direct new residential development to the defined built up areas and sustainable urban locations within the borough, while SS2 sets out how the Council will meet its housing and employment requirements through delivery of target numbers of units/floor space. The loss of commercial floor space proposed by this application therefore needs to be weighed against providing additional housing within a sustainable urban location.

CSD1 sets out the requirements for affordable housing provision, stating that developments of 15 or more dwellings will provide 30% on-site affordable housing.

CSD2 sets out the Council's aim of meeting housing requirements for specific target groups, and states that 50% of the housing provision should be three-bed or more by 2026.

SS4 states that development will be allowed in priority centres of activity where it does not result in a net loss of on-site B class uses. Hawkinge is identified as a District Centre where its purpose is to accommodate appropriate development to maintain its mix of uses and improve vitality, viability and public realm.

#### Core Strategy Review Submission draft (2019)

SS1 (Spatial strategy)

SS2 (Housing and economy)

SS3 (Place shaping and sustainable settlements)

CSD1 (Balanced neighbourhoods)

CSD2 (District residential needs)

The requirements of the above policies in the emerging Core Strategy are similar to what is set out within the adopted Core Strategy.

SS1 and SS3 direct new residential development to the defined built up areas and sustainable urban locations within the borough, while SS2 sets out how the Council will meet its housing and employment requirements through delivery of target numbers of units/floor space. The loss of commercial floor space proposed by this application therefore needs to be weighed against providing additional housing within a sustainable urban location.

Emerging policy CSD1 differs from the adopted policy in that it requires developments of 15 or more dwellings to provide a minimum of 22% affordable housing on site. Emerging policy CSD2 steers away from explicitly requiring three-bed units to a more balanced approach, requiring a split of 1/2/3/4+ bed dwellings across both private and affordable tenures, weighted towards 2 and 3-bed units.

6.4 The following are also material considerations to the determination of this application.

#### **Government Advice**

##### National Planning Policy Framework (NPPF) 2021

Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF. The following sections of the NPPF are relevant to this application:

Paragraph 11 - Presumption in favour of sustainable development.

Paragraph 47 - Applications for planning permission be determined in accordance with the development plan.

Paragraph 64 - *"to support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount."* Footnote 30 then clarifies that the *"proportionate amount"* is *"equivalent to the gross floor space of the existing buildings."* (I have clarified this particular point with my colleagues in Planning Policy and firmly

established that, because this current application does not propose any additional floor space, there is no additional floor space beyond the “gross floor space of the existing buildings” on which to justify the provision of affordable housing as part of this development.)

The NPPF generally supports the provision of new residential dwellings within sustainable urban locations, subject to amenity considerations. It also aims to resist the loss of employment uses unless justifiable.

#### Technical housing standards – nationally described space standard (March 2015)

This sets the minimum internal floorspace requirements for all new residential development.

## **7. APPRAISAL**

7.1 In light of the above the main issues for consideration are:

- a) Principle of development and sustainability
- b) Design / layout / residential amenity
- c) Highways and parking
- d) CIL and s.106 contributions

### **a) Principle of development**

7.2 The provision of new dwellings within this very sustainable urban location is acceptable in principle, and officers have no concerns in that regard.

7.3 As noted above: the units were originally approved for Class A1, A2, A3 and B1 uses, but those use classes have now been subsumed by the much broader Class E of the 2020 amendment to the Use Classes order 1987. This is a technicality and does not affect consideration of the merits of the scheme.

7.4 Loss of the approved (but currently vacant) commercial units is resisted by policy E2 unless it can be demonstrated that the units are not viable or no longer required. In this regard the applicant has provided evidence of a thorough marketing exercise (as set out above) which sets out that the units have been extensively advertised (at market rates) since October 2018 but resulted in a total of 4 unique enquiries, none of which resulted in viewings or offers. The marketing report also highlights that the site is too far from established commercial areas, and too close to the more commercially-desirable areas of Folkestone and Dover to be viable for potential occupants; the much greater footfall potential of those areas is more attractive to investors.

7.5 The Council’s economic development officer has no objection to these findings, and (as above) comments themselves on the very limited potential for Hawkinge to attract investment. This is unfortunate, and officers have sympathy with the Town Council and local resident’s views in regards needing to attract investment, but this is outside of the applicant’s control.

7.6 Officers therefore consider that the applicant has complied with the requirements of policy E2 in clearly demonstrating that the units are unlikely to be occupied by or

suitable for commercial purposes. In this regard the application overcomes the first reason for refusal of historic application Y19/0446.

### **b) Design / layout / residential amenity**

- 7.7 External changes to the buildings would be minor, amounting to replacement of the large display windows with smaller residential-style windows and doors to match neighbouring units. This would be acceptable in design terms and would not be harmful to visual amenity within the context of the wider site and the neighbouring buildings against which this block is viewed.
- 7.8 The proposed internal layout is appropriate and floor spaces exceed the minimum requirements set by national policy and adopted policy HB3. The units would provide an acceptable standard of amenity for future occupants. No private gardens or balconies are to be provided, nor could they be provided due to the nature of the site. However, the site sits very close to a large existing public open space which runs from Haven Drive to Corbett Road, and which is easily accessible to all residents of the proposed flats. Due to these circumstances I consider the level of outdoor amenity space to be acceptable in this instance and the lack of private amenity space could not be considered harmful to future residents' amenity.
- 7.9 Details are required to ensure the proposed bin store area is appropriately finished and screened to prevent harm to the visual amenity. This is secured by condition below.

### **c) Highways and parking**

- 7.10 Allocated parking spaces would be provided within the existing parking areas of the site by repurposing customer / staff bays allocated to each unit. Parking provision would accord with the requirements of current adopted policies and would be acceptable.
- 7.11 Due to the nature of the site, the current approved use, and surrounding land uses (i.e. the Lidl store and public house nearby) there would be no noticeable or unacceptable impacts to the highway network arising from residential use of these units.

### **d) CIL and s106 contributions**

- 7.12 The original development of this site secured contributions of £92,077.44 towards local services (including the extension of Hawkinge Primary School and library funding) but this was calculated solely on the basis of the no. of dwellings proposed at the time (47). Such contributions would now be contained within the Council's CIL contribution requirements rather than specific contributions; the current development creates additional dwellings and is therefore liable for CIL at a rate of £59.04 per sqm.
- 7.13 As set out in the policy section above, in the interest of bringing redundant existing buildings back in to productive use, vacant building credit (VBC) is applied to any existing floor space in accordance with the terms set out by the NPPF. This development provides no additional floor space and there is therefore no requirement for it to provide a proportion of the units as affordable housing, as stipulated by NPPF footnote 28. It would be unreasonable and unjustified to require the applicant to offer affordable housing as part of this application.
- 7.14 The development does not generate a need for contributions to play equipment, and the units would have access to good quality open space nearby (as above). Therefore

in this instance there is no justifiable need to secure contributions towards open space or play equipment. This position can be reviewed if further applications for residential units come forward, but at this stage the development is considered to have contributed significant funds by the contributions previously paid in respect of developing the wider site.

### **Environmental Impact Assessment**

7.15 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

### **Local Finance Considerations**

7.16 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.

7.17 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces planning obligations for infrastructure improvements in the area. The CIL levy in the application area is charged at £59.04 per square metre for new residential floor space.

### **Human Rights**

7.18 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

### **Public Sector Equality Duty**

7.19 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

### **Working with the applicant**

7.20 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

## **8. CONCLUSION**

8.1 This application seeks planning permission for change of use of unoccupied commercial units to six residential flats. The applicant has provided evidence of a comprehensive marketing exercise which has yielded no offers, and in that regard the proposal complies with the Council's adopted policies. The proposed flats would provide a good standard of amenity for future occupants without harming the amenity of existing neighbouring residents, and appropriate parking and outdoor amenity space are available within the wider site and nearby. Therefore, while objections are noted, the proposal is considered acceptable and is recommended for approval subject to the conditions set out below.

## **9. BACKGROUND DOCUMENTS**

9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

## **10. RECOMMENDATIONS**

**That planning permission be granted subject to the following conditions and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.**

### Conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall take place other than in complete accordance with drawings 29399A 003 rev P3, 011 rev P4, 111 rev P3, 112 rev P3, and 113 rev P3.

Reason: For the avoidance of doubt.

3. Prior to first occupation of the flats hereby permitted details to demonstrate that the dwellings hereby permitted shall use no more than 110 litres of water per person per day shall be submitted to and approved in writing by the District Planning Authority. The details shall be implemented as agreed.

Reason: In the interest of sustainable development and minimising water consumption.

4. Prior to erection of the bin store area hereby permitted details of the external materials to be used in the construction thereof shall be submitted to and approved in writing by the Local Planning Authority. The details shall thereafter be implemented as agreed and the bin store shall be provided prior to the first occupation of any of the flats hereby permitted.

Reason: In the interest of visual amenity.

5. The materials to be used on the external surfaces of the development hereby permitted shall match those on the existing building in terms of type, colour and texture.

Reason: In the interests of visual amenity.

6. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the District Planning Authority.

Reason: In the interests of residential amenity.

7. The car parking spaces shown on the submitted drawings shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

## **Appendix 1 – Site Location Plan**