

PLANNING DEVELOPMENT CONTROL COMMITTEE

17 FEBRUARY 2009

ST. PAUL'S HOSPITAL, WINCHESTER

REPORT OF HEAD OF LEGAL SERVICES

Contact Officer: HOWARD BONE Tel No: 01962 848552

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report gives details on two issues relating to this development. The first issue relates to the locking of a gate between Oram's Arbour and the development, and the second refers to the maintenance of the landscape banks fronting Clifton Road.

RECOMMENDATIONS:

- 1 That Members consider the matters set out in this report and the legal advice and options included in the Exempt Appendix 4 and determine what action (if any) should be taken.

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### ST. PAUL'S HOSPITAL, WINCHESTER

### REPORT OF HEAD OF LEGAL SERVICES

#### DETAIL:

#### 1 Introduction

- 1.1 Planning permission was granted in 1999 to permit the residential redevelopment of the former St. Paul's Hospital site, St. Paul's Hill, Winchester, by the conversion of various redundant hospital buildings and the construction of several new buildings. The site is shown on the location plan in Appendix 1.
- 1.2 The development was subject to various planning obligations set out in Section 106 legal agreements, one of which covered various matters including public access through the development, together with the laying out and maintenance of common areas.
- 1.3 The Council has long had a practice of seeking to secure public access through developments, rather than allowing them to become "gated" or private communities. This is especially the case for redevelopment of historic sites, or where the development will facilitate a public benefit in terms of pedestrian movement across the City.
- 1.4 The Council has also sought to ensure that common areas are properly maintained. Usually this is done by the Council "adopting" these areas once they have been laid out by the developer, with the developer paying a commuted capital payment to the Council to offset the future maintenance costs. In recent years, developers have set up residents' management companies, and transferred these common areas to the management company. Under the sale documents, residents are required to pay a service charge to the management company to meet the expenses of maintenance. In the case of the St. Paul's Hospital development, a management company ("Kempthorne") was formed, and residents (together with A2 Housing and the medical and dental practices on the development) contribute to the running costs incurred by Kempthorne.
- 1.5 This report deals with two issues which are covered by the Section 106 agreement, namely:-
  - a) public access through a gate in the boundary wall onto Oram's Arbour;  
and

- b) the maintenance of the banks comprised within the development adjacent to Clifton Road and St Paul's Hill.

The first issue is a recent one which has arisen as a result of the installation of a lock on the gate. The question of the banks has been ongoing for some time (albeit not directly involving the City Council). Officers have taken the opportunity of this report to cover both matters, including (in respect of the second matter) clarifying the situation from the local planning authority's viewpoint.

## 2 Public Access under Section 106 Agreement

- 2.1 The St Paul's Hospital development adjoins Oram's Arbour, a public open space owned by the Council. As Members will be aware, the Arbour serves as a recreation area for the housing surrounding it (to the West and North West, as well as housing in St Paul's Hill adjacent to the Church and housing on the other side of the railway line). It also acts as a pedestrian route for residents in this housing to the Railway Station and Winchester Town Centre.
- 2.2 The Section 106 agreement secured public access over specified roads and footpaths within the development. The access roads and footpaths shown on the plan in Appendix 2 (drawing number A734/2.3/16 Rev C, the plan included in the agreement) are required to remain open at all times for use by members of the public "as if they had been dedicated as public highways" (subject to certain permitted temporary closures). The effect of the Agreement is not to require the dedication of these roads and footpaths as highways, but rather to ensure that they should be available for use by the public, thereby achieving the same result. These roads and footpaths provide access to the local area for play (LAP) shown on the plan, and the agreement requires this facility to be open at all times to the public. In addition, the roads and footpaths provide access to the medical and dental practices on the development.
- 2.3 The designated roads and footpaths also include the path and road which provides a route along that marked with a dashed line on the plan in Appendix 2. This route uses the estate access roads and pavements, but has a series of steps at its westerly end, leading up to a gate in the boundary wall of the development, and through the gate onto Oram's Arbour. Kempthorne point out that these steps would be required to give access to the Chimney and a lightning conductor, although the steps clearly are also necessary to link the lower level of the site to the upper level of Oram's Arbour to achieve the access to and from Oram's Arbour which was required under the Development Brief.
- 2.4 When the Hospital was still operational, it is understood that there was no public access across the site. The Development Brief which was prepared prior to the redevelopment application made it clear that the Council expected the developer to secure permeability through the site, and as a result of this the application included the provision of the gate. This gate was in the same place as a previous opening, which had subsequently been bricked up whilst

the Hospital was still in use, and therefore at the time of the application, the boundary wall around the site was continuous. The submitted plans show the gate as "Pedestrian route from Oram's Arbour" to comply with the requirements of the Development Brief.

- 2.5 The plans for the development (including installation of the new gate) were approved and planning permission granted subject to the Section 106 agreements mentioned in paragraph 1.2 above. Public Access through the development was secured under these Agreements over the estate roads and footpaths as set out above, and the development was completed in early 2000. Since then, public access has been permitted through the gate.

### 3 Interruption of Public Access

- 3.1 Following completion of the development in 1999/2000, Kempthorne took over the maintenance of the common areas, including these access routes. The routes were used by the public for some eight years, and public access was not questioned at any time during this period. In early 2008, apparently as a result of alleged anti-social behaviour, Kempthorne took the decision to install a keypad and lock on the gate, thereby allowing residents (with knowledge of the correct code) to continue to use the gate, whilst preventing members of the public using this route. No contact was made with the Council before this action was taken by Kempthorne.
- 3.2 The Council's Enforcement Team investigated a complaint about the installation of the lock and the fact that public access was not therefore always available. The lock was vandalised and repaired on a number of occasions. Although the gate has often been left open, it is occasionally locked, and concerns have been expressed by local residents that this uncertainty causes difficulties, especially for those walking up through the development (as, if the gate is locked, they must retrace their steps and walk around the development). Appendix 3 incorporates a submission from Kempthorne which sets out details of the consultations and other actions which Kempthorne took prior to installing the lock.
- 3.3 Council officers and one of the Ward Councillors (Councillor Barratt) have met with representatives of Kempthorne. This meeting explored the concerns of Kempthorne (as a representative body of all the residents of the development) and discussed its interpretation of the legal position.
- 3.4 In summary, Kempthorne's position is as follows:-
- (a) the wording of the S106 Agreement does not require them to provide public access "through" the Estate and their legal obligations begin and end with this Agreement;
- (b) as a direct result of the direct access the adjacent resident is frequently forced to hose down the area immediately on the Estate side of the gate which is within a few feet of his property in order to remove the stench arising from its use a public toilet.

(c) the plan attached to the S106 Agreement shows a continuous wall at the point of the gate;

(d) the Estate's roads and footpaths are open to public access as required by the S106 Agreement and they are well used;

(e) access to the Arbour has been the direct cause of persistent public nuisance, including intimidation and damage to private and Kempthorne property;

(f) the communal areas immediately on the Estate side of the gate are frequently used as a public toilet, for drug injection and for sexual activity;

(g) a long-standing parallel and adequate public footpath runs to the south of the Estate's perimeter wall; the dis-benefits of closing the gate are negligible (arguably none at all) because the time taken to get to Clifton Terrace from the Arbour is the same or less, there are no steps to navigate, there is no mix between pedestrians and vehicles, there are fewer road junctions to navigate and there is no impact on the public's rightful enjoyment of the Arbour;

(h) the steps taken are an appropriate and proportionate response to the security and public nuisance issues arising and are fully consistent with the objects in their Memorandum of Association which include "To do all such things as may be.....calculated to enhance the value and beneficial advantage of the Site....";

(i) the steps taken are supported by the residents including those in the social housing.

- 3.5 Officers have met representatives of Kempthorne to discuss these points. During these discussions, the views of the local Police were raised, and it was suggested that the Police themselves were sympathetic to the residents' concerns and believed that it would be preferable (from a crime prevention viewpoint) for the gate to be closed, particularly at night.
- 3.6 The local Inspector at North Walls has written to Kempthorne confirming that any views expressed by individual officers are personal views, and do not reflect the view of Hampshire Constabulary. He states that the Police consider the issue of whether the gate is open or closed is a planning matter. Kempthorne have replied saying they accept that the nub of the issue is a planning one but emphasise that their interest has been in the professional views of [police] officers who have to deal on the ground with the problems created by the additional access to the Arbour.
- 3.7 Officers have also met with the Police's crime prevention staff. It is not possible to identify and distinguish from the local crime statistics those incidents which occur on Oram's Arbour itself, and those which take place inside the development because of the presence of the gate. It was not felt

that this area was particularly significant in terms of anti-social behaviour problems, compared to other parts of the urban area of Winchester. The Police pointed out that in responding to new planning applications, they worked according to the “Secured by Design” Manual, which points out that *“Pedestrian access routes are often problematic from a crime deterrent point of view, and the planning issues can be challenging to resolve”*. It also points out that *“Multiple points of access can make crime easier to commit by giving a choice of alternative escape routes”* and *“It may on occasion be necessary to restrict access to one main point, and it is always advisable to carefully consider the desirability and design of secondary access routes.”*

- 3.8 This guidance dates from 2004, although comments from crime prevention officers have been taken into account for a number of years. These potential issues would have been considered (albeit not against exactly the same criteria) when the development was at the planning stage, and Circular 5/94 (Planning Out Crime), which gave similar advice on taking into account crime prevention issues when dealing with planning applications, was in force when planning permission was granted. Now, as then, when considering planning applications, a balance has to be struck between the needs of residents of the development and their visitors for access to the development and enjoyment of their properties, against the desirability to prevent and reduce crime, and against the other planning issues which must be considered (including in this case the desirability for an open and permeable development).
- 3.9 Some 25 unsolicited representations have been received from St Paul’s Hill residents. The points made in these include:-
- a) Path was required as part of planning permission and residents should not be permitted to frustrate the intention to achieve permeability through the site;
  - b) Path is shorter and safer (especially at night) than the alternative path around the development;
  - c) Do not consider that anti-social behaviour is any worse than elsewhere – if St. Paul’s Hospital can have a gate to control access, other areas and paths should be gated similarly;
  - d) More convenient route to doctors’ surgery and pharmacy;
  - e) Path is easier to walk up than the alternative, especially in damp/icy conditions;

One letter from a resident in the development supports the action to lock the gate, citing the problems of nuisance, anti-social behaviour and fouling of the area previously referred to in this report.

Appendix 3 sets out the details of consultation which Kempthorne carried out prior to installing the lock on the gate. It should be pointed out that the Council itself has not carried out any formal consultation exercise, and it is assumed

that the residents of the development are leaving Kempthorne to speak on their behalf. The fact that (apart from the response from Kempthorne) only one representation has been received from residents of the development should be taken in that light.

- 3.10 The views of the Planning Management Division remain that public access through this gate should be maintained, for the same reasons as it was originally sought when the development was approved.
- 3.11 Advice from Counsel has been taken on the interpretation of the Agreement and the options open to the Council to secure public access through the gate. Detailed legal advice is set out in the Exempt Appendix 4 to this report.

#### 4 Maintenance of Banks and Landscaped Areas

- 4.1 A second issue which has been raised concerns Kempthorne's liability to maintain the landscaped banks which form part of the development and lie adjacent to Clifton Road and St. Paul's Hill. It is understood that this issue has been raised by Oram's Arbour Residents' Association and residents of Clifton Road some time ago, and County Councillor Dickens had been discussing the issue with officers at the County Council.
- 4.2 The areas in question are shown on the plan attached to the Section 106 Agreement as to be owned and maintained by Kempthorne. However, the banks shown hatched on the plan are subject to separate arrangements (being owned by the adjacent healthcare interests, although Kempthorne have an obligation and access rights to maintain these areas). It is understood from Kempthorne that the legal arrangements are such that although Kempthorne are required to maintain the banks shown hatched on the plan, the healthcare interests are not required to contribute to the costs of doing so, which are therefore borne by the residents of the development.
- 4.3 These areas were included in the defined "Common Areas" set out in the Section 106 Agreement. The Agreement required the developer to submit to the Council, prior to commencement of the development:-
- a) a plan and specification for the management of the existing trees on the site;
  - b) a plan specification and programme for laying out the Common Areas;
  - c) a scheme for the future maintenance and management of the Common Areas, to include a transfer of the ownership of the Common Areas to [Kempthorne].

Development was not to commence until these matters had been approved by the Council.

- 4.4 After this approval had been given, the developer was required to lay out the Common Areas and subsequently vest the Common Areas in [Kempthorne].

Until that date, the developer was required to maintain the Common Areas. The agreement required the developer to ensure that [Kempthorne] would assume responsibility for the maintenance and use of the Common Areas in accordance with the provisions of the Agreement.

- 4.5 Kempthorne have pointed out that given the absence of a formal handover from the developer (despite an obligation to the contrary) they had no opportunity to question the condition of the banks before assuming maintenance responsibility for them. As a result they were presented with a problem from the outset and without any money to deal with it.
- 4.6 Kempthorne also point out that as recently as July 2005 the local planning authority informed them that they were “satisfied that there were no outstanding planning issues relating to the site or the embankment and that this was confirmed by the officer who monitored the site during construction.
- 4.7 Concern has been expressed that the soil from these banks is washing down onto the highways, thereby weakening the roots of the trees in the bank and increasing the possibility that they may fall in high winds. It has been suggested that a more vigorous maintenance programme needs to be put in place to deal with this issue. It is also claimed that the self-seeded trees which have grown up (allegedly as a result of a lack of maintenance by Kempthorne) have affected the amenity of neighbouring properties by blocking out natural light.
- 4.8 The County Council has written to Kempthorne, pointing out the liabilities which Kempthorne have in respect of these trees, and suggesting that a management plan is put in place, to include regular inspections by a suitably qualified arboriculturalist.
- 4.9 In response, Kempthorne have confirmed that:-
  - a) It fully acknowledges its responsibilities for the banks and this is reflected in its Management and Development Plan for the Estate but it is severely constrained by the significant costs involved.
  - b) It met with the City Council’s former Arboricultural Officer in March 2007 together with a professional tree surgeon to discuss the condition of the banks and the scope of remedial work. The work which has been advised is extensive and quotations suggest expenditure in the region of £20k.
  - c) As a first step Kempthorne contractors have felled numerous dead trees and removed ivy from others to facilitate proper inspection of the trees and to make them safer in the meantime KMC contractors also regularly trim back lower level foliage where the bank abuts St Paul’s Hill and at its junction with Clifton Road.
- 4.10 Kempthorne have also advised that they have had discussions with County Councillor Phrynette Dickens to discuss the possibility of related steps that



could be taken by the Highway Authority to deal with the unfinished boundary between the bank and Clifton Road (which Kempthorne considered is the root cause of the soil overspill).

- 4.11 As respects the alleged loss of natural light to residents in Clifton Road, Kempthorne point out that they have a similar problem with the Arbour trees overhanging some of their private gardens. However, in a letter dated 14 November 2008 from one of the Council's Environmental Officers and following a site visit, a resident was told that no one has a right to natural light, any potential problems should have been considered when the property was purchased and trees should be expected to overhang as they develop.

#### OTHER CONSIDERATIONS:

##### 5 CORPORATE STRATEGY (RELEVANCE TO):

- 5.1 This report relates to issues concerning the key objectives of "Safe and Strong Communities" and "High Quality Environment".

##### 6 RESOURCE IMPLICATIONS:

- 6.1 See Exempt Appendix 4.

#### BACKGROUND DOCUMENTS:

Letters of representation received from local residents.

Letter of representation from Kempthorne.

#### APPENDICES:

Appendix 1 – Location Plan

Appendix 2 – Site Layout Plan

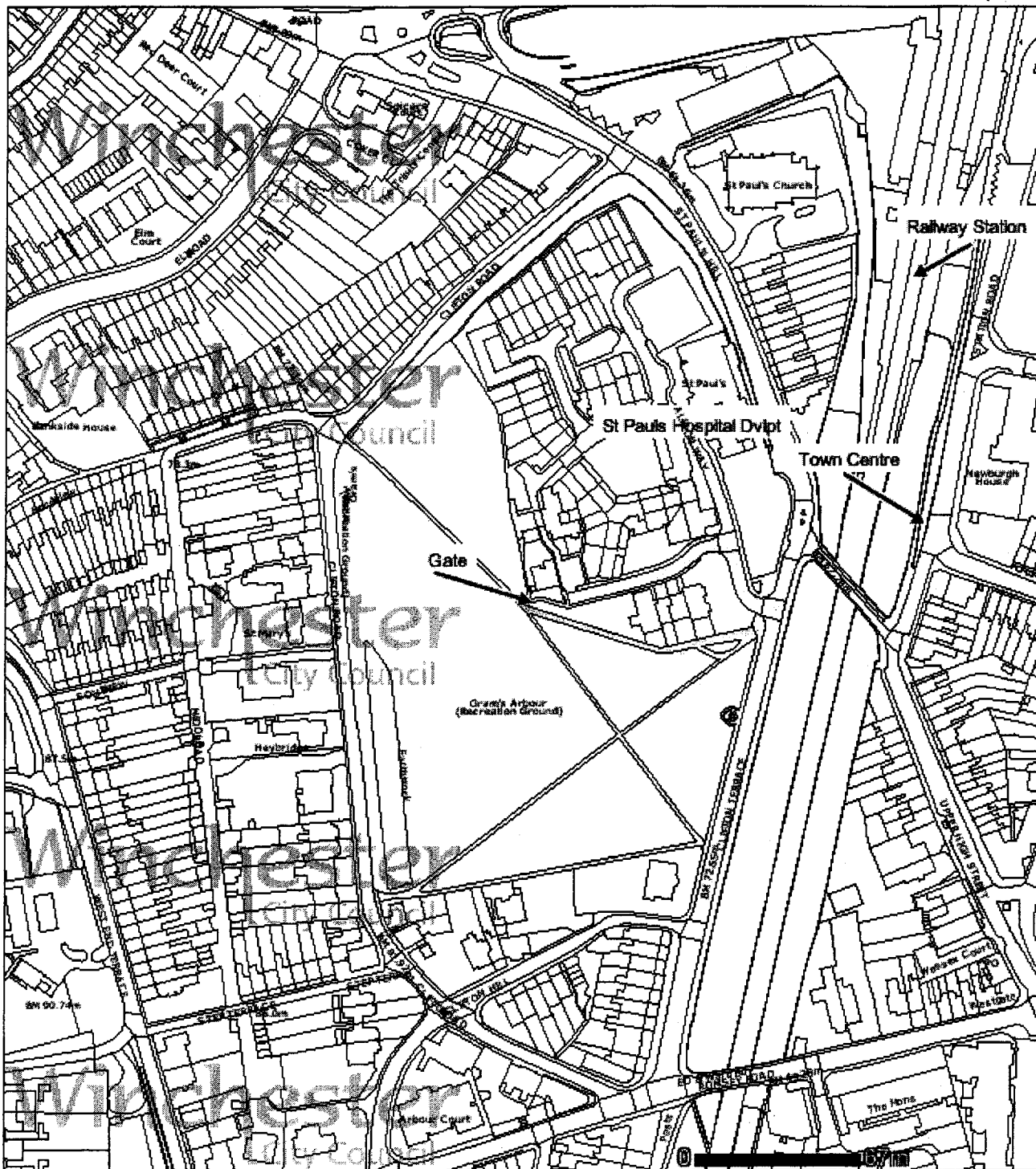
Appendix 3 – Additional Notes of Action taken by Kempthorne

EXEMPT Appendix 4 – Legal Advice



St Pauls Hospital Winchester

Location plan showing gate and paths across Oram's Arbour



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- Map Text
- Map Lines
- Rights of way

Scale = 2457

Date = 5.11.2008

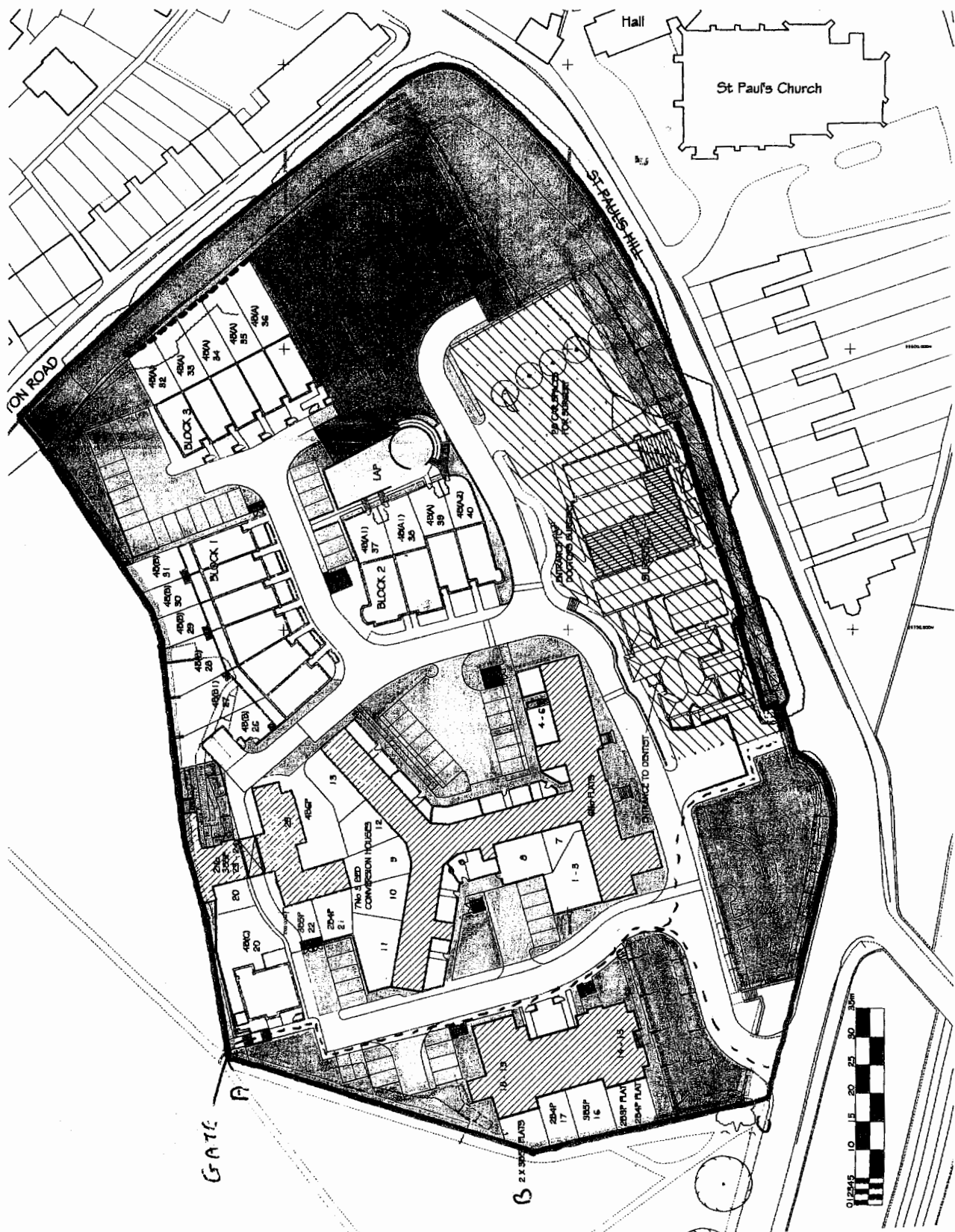
City Offices  
Colebrook Street  
Winchester  
Hampshire  
SO23 9LJ

APPENDIX 2  
POC 784



**KEY**

- Affordable housing land owned and within responsibility of Registered Social Landlord.
- Surgery Land - Surgery owners responsible for maintenance but also party to other management responsibilities.
- Private Ownership - Owners responsible for maintenance but also party to other management responsibilities.
- Boundary landscaped areas, boundary walls and fences to be within the Management company's ownership and responsibility.
- Public vehicular and pedestrian rights of way over private roads and footpaths all within the Management company's ownership and responsibility.
- Private roads and residents' parking spaces within the Management company's ownership and responsibility.
- Common hard and soft landscaped area internal to the scheme, within the Management company's ownership and responsibility.
- Common bin stores - maintenance the responsibility of the Management Company.
- Boundary landscaped area within healthcare ownership - management company to have obligation and access rights to maintain.
- Local area for play.
- Boundary wall to be retained within Management Company for future maintenance.
- Boundary fence - the maintenance this responsibility of the Housing Association.
- Boundary fence - the maintenance the responsibility Management Company.
- Surgery Land Boundary - boundary fence to be maintained by surgery landowner.
- Boundary of property.



purpose of issue: FOR INFORMATION

date	REV.	revision/author/checker	scale	NTS	project title	ST. PAULS HOSPITAL SITE WINCHESTER
01/24/15			date	FEB 99	drawing no.	A754/2.3/16
			drawn by	CAD	checked by	
			Tel:	0181 481 8100		REV. C
			Fax:	0181 481 8111		
			E-mail:	prp@prp.co.uk		
PRP Architects © 82 Bridge Road Hampton Court East Molesey Surrey KT8 9HF						

--- Part of S.106 access route



## Additional Information Supplied by Kempthorne

### 1 Introduction

- 1.1 The main report incorporates views and statements submitted by Kempthorne. This Appendix sets out additional information submitted by Kempthorne.

### 2 Action Taken Prior to Installation of Lock.

- 2.1 In August 2004 Kempthorne took over management responsibility for the Estate from the developers. In the light of experience over the following two years Kempthorne asked for residents' views on how best it could respond to the security and public nuisance issues arising. It did this through their Newsletter in the summer of 2006 which is given to all residents (including those in the social housing). Kempthorne consulted the residents further in subsequent Newsletters before concluding in the one issued at the beginning of 2008 that, no resident having objected it had concluded that the most practicable solution was to fit a key pad and lock. This additional security paid immediate and welcome dividends for the residents but (and importantly) without causing any inconvenience to the public given the adjacent parallel footpath.
- 2.2 However, the lock was then vandalised by the use of heavy tools which Kempthorne consider was the action of an adult rather than of youths (they consider the distinction to be important). The lock was repaired on a number of occasions and has since been vandalised beyond repair. This criminal damage has been reported to the police on several occasions. The problem is that it has left the gate open and shut at different times and those who may have wished to use it uncertain although responsibility for this rests with the vandal rather than Kempthorne.

### 3 Application of Policy.

- 3.1 Kempthorne point out that the unintended consequences (such as anti-social behaviour) of a policy such as this (permeability through developments) should be considered and the policy reviewed in appropriate circumstances.
- 3.2 It also states that similar developments in Winchester have locked gates where these have had unacceptable public nuisance consequences.