

# PLANNING APPLICATION REPORT



**ITEM: 03**

**Application Number:** 12/02014/FUL

**Applicant:** Urban Splash

**Description of Application:** Change of use from exhibition/arts area to restaurant and café use (Use class A3)

**Type of Application:** Full Application

**Site Address:** UNITS 3-5 BREWHOUSE, 8 ROYAL WILLIAM YARD  
PLYMOUTH

**Ward:** St Peter & The Waterfront

**Valid Date of Application:** 04/12/2012

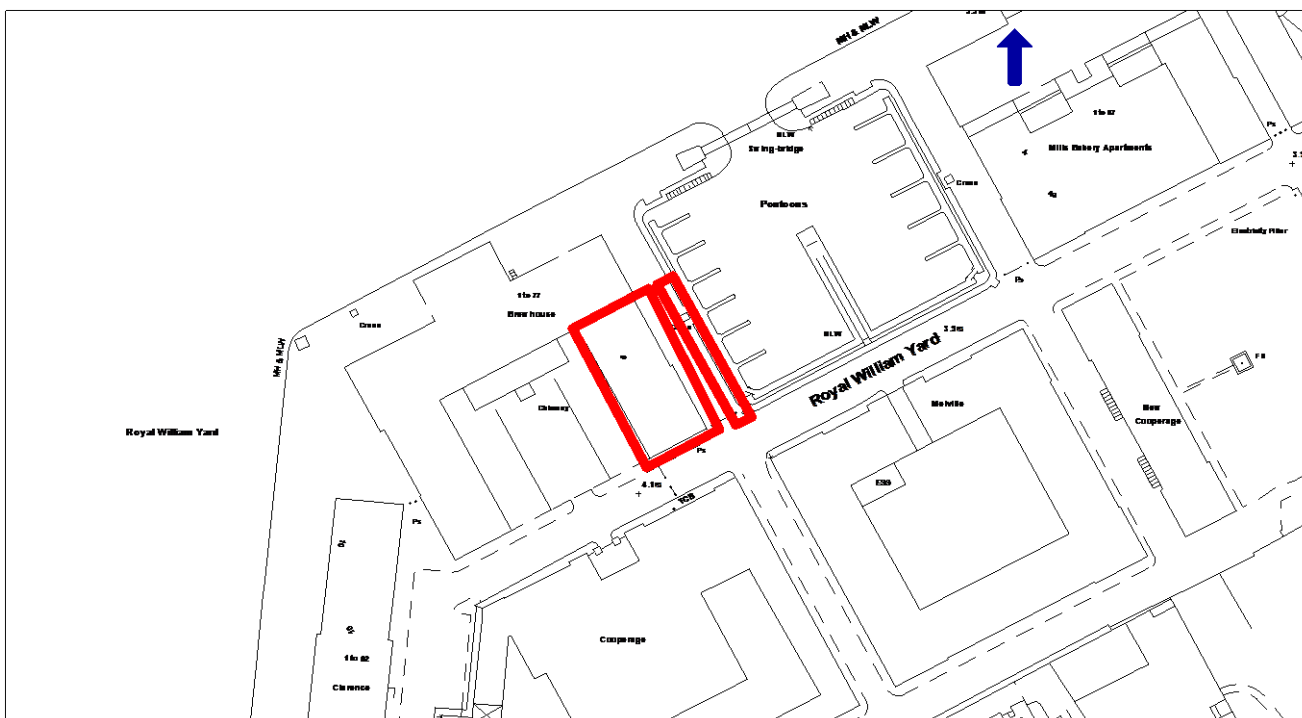
**8/13 Week Date:** **29/01/2013**

**Decision Category:** Assistant Director of Development Referral

**Case Officer :** Adam Williams

**Recommendation:** Grant conditionally subject to S106 Obligation with delegated authority to the Assistant Director of Planning to refuse if the S106 obligation is not signed by 28th March 2013.

**Click for Application Documents:** [www.plymouth.gov.uk](http://www.plymouth.gov.uk)



**This application has been referred to Planning Committee by the Assistant Director of Planning because it raises some finely balanced policy issues**

### **Site Description**

The Brewhouse is part of the Royal William Yard, designed by Sir John Rennie, and constructed between 1825 and 1831. The Brewhouse was designed for brewing beer, as part of the victualing needs of the navy at the time. Beer rations were discontinued, however, and therefore it was never used for its intended purpose. The site is within the Durnford Street Conservation Area. The Brewhouse buildings are listed - Grade I.

Units 3-5 of the Brewhouse have had permission for the operation of an exhibition and arts area. It is understood an office has operated within unit 5 until relatively recently. Unit 2 adjacent to these units has had permission for A3 use and has been operating as a bakery until relatively recently.

### **Proposal Description**

Change of use from exhibition/arts area to form restaurant and café use (Use class A3)

### **Pre Application Enquiry**

None

### **Relevant Planning History**

02/01684 - Change of use, conversion and alterations to Clarence and Brewhouse buildings to form 133 residential units, change of use of parts of ground floor Brewhouse to exhibition/arts facility and to retail/hot food units (A1/A3) use of adjoining land for car parking. Permitted (includes condition 15 which requires the exhibition/arts area in Brewhouse – the subject of this current application to be primarily used for art and exhibition purposes)

02/01681 - Works of conversion and alterations to form a show flat in the North block, second floor. (LBC). Reported to last Committee. Minded to Grant Conditionally, defer for final negotiations, and referral to GOSW, del authority to Director of Development. Permitted

02/01682 - Works of conversion and alterations (associated with change of use of buildings to 130 residential units and use parts of ground floor Brewhouse to exhibition/arts facility and to retail/hot food units (A1/A3) use of adjoining land for car parking). Permitted

02/01683/FUL - Change of use, conversion and alterations to buildings to form 130 residential units, change of use of parts of the ground floor of the Brewhouse to an exhibition/arts facility and to retail/hot food units (Classes A1/A3). Permitted

12/01294/FUL - Retention of 130 residential units with café/bar and restaurant units on the ground floor of the Brewhouse building: Variation of condition 15 of 02/01683/FUL to state that the café/bar and restaurant uses on the ground floor shall only be used for hot food retail (A3) or general retail (A1) and for no other purpose - Withdrawn

## **Consultation Responses**

English Heritage – No objections to the application however comments were made about the loss of exhibition space and where these uses could go within the yard. It also notes potential further parking problems with the uses identified.

Public Protection Service – Despite objections to the previous application in terms of noise and odour disturbance there were no objections to this revised application. Only a condition was recommended to comply with the Council's code of practice.

Transport – Recommended refusal initially however their stance has been amended. (Details within the Transport section of this report)

Devon and Cornwall Police – No objection

Environment Agency – No objection

## **Representations**

8 Letters of Representation were received in objection to the change. The objections were surrounding the nature of the establishment which would occupy the unit (Las Iguanas) as this is believed to be a primarily drinking led chain and as such would impact on the residential apartments in terms of noise and anti-social behaviour. Other objections were surrounding parking and the likely increase in visitors.

## **Analysis**

1.1 This application turns upon Policy CS03, CS13, CS22, CS28 and CS34 of the Core Strategy 2006-2021, Policy MS01 of the Millbay and Stonehouse Area Action Plan and the National Planning Policy Framework. The primary planning considerations for this application are: impact upon neighbouring amenity; impact upon character of the conservation area and the Royal William Yard; and local transport considerations.

## **2. Strategic Vision and Policy**

2.1 Whilst the Brewhouse is not mentioned directly in the Millbay and Stonehouse AAP, the desire for the Yard is for a diverse mix of uses. The Brewhouse currently is predominately made up of residential, A3 (Hot food Retail) and A1 (General Retail) uses, including an exhibition space (which is the subject of this change of use) and B1 office uses.

2.2 The Millbay and Stonehouse Area Action Plan 2006 – 2021 includes proposal MS01:-

### Proposal MS01 – Royal William Yard

*The sensitive restoration and reuse of the Royal William Yard will be completed as a vibrant part of the Stonehouse Peninsula. The final phases of the restoration should provide for uses, which ensure an authentically mixed-use development. The uses should combine the following: Retail, which is small scale to meet local needs and leisure or tourism related*

- Leisure
- Offices
- Craft workshops
- Other B1 use classes
- Community uses
- Public open space.

2.3 Proposal MS01 goes on to specify the nature of uses expected in the buildings which in 2007 had then to be occupied, and then comments of the general nature of developments expected in the Yard. Brewhouse had been converted to its approved uses by this time, and does not feature by name in this policy. Nevertheless, the uses listed in the extract quoted above are relevant to the current application.

2.4 It is relevant to note that a current planning application to change the use of part of the Factory Cooperage to community art studios, gallery space and workshops will, if granted planning permission, add further variety to the uses in the Yard. The creation of community and gallery space in this building would mitigate, in part, for the loss of exhibition space to the proposed A3 use, in the Brewhouse.

2.5 The original planning condition, which is the subject of change by virtue of this planning application, states "The café/bar and restaurant units on the ground floor of the Brewhouse building shall only be used for hot food retail (use class A3), or general retail (use class A1) and for no other purpose, and the exhibition space shall be primarily used for art and exhibition purposes." The applicants wish for this exhibition space to be used for A1/A3 use. These Brewhouse east wing units (to which the condition relates) have been periodically occupied by different temporary uses since 2003 on very short term agreements. The applicants wish for this to change in order to secure a long term tenant. The original master plan for the Yard planned for ground floor and waterside A1 and A3 commercial units to bring about an active waterside frontage.

2.6 Whilst it may be argued that the proposed change from exhibition space to café/restaurant is contrary to the mixed use intention for the yard, members are advised that the mixture of uses is evolving and changing, and officers consider that it would be inappropriate to refuse this proposed change of use, given the ongoing changes and developments.

2.7 The Government amended the Use Categories in DPM Circular 03/2005, its stated aim of which is: "to ensure that the scope of each class accurately reflects the impact on the environment of that class"

2.8 The circular recognises the very different impacts of A3 restaurant use compared to A4 bar use and provides guidance to Local Planning Authorities to assist in controlling uses to avoid adverse impact on local amenity and the environment. It recognises that where Conditions restricting changes of use are justified they should be so drafted so as to prohibit a change to a particular potentially unacceptable use or uses.

2.9 It notes that the new A3 class is designed specifically for restaurants and cafes and recognises that these may include an ancillary bar. Although some commenters have suggested a planning condition to ensure drinks are served only with a meal, it is in the opinion of officers that such a condition would not be enforceable and the conditions of use outlined within the Use Class Order should stand on their own. As such a condition is proposed to restrict the uses to A3 only.

### **3. Neighbouring Amenity**

3.1 There have been objections to the potential tenant (Las Iguanas) due to the understanding they are a primarily drinking led establishment and therefore under A4 use. This appears to be the case in some other cities (Milton Keynes for example). The

applicants have stressed that the proposed use would fall within Use Class A3 (café and restaurant use). References to Las Iguanas have been removed from this new planning application (planning application no 12/01683/FUL was withdrawn, but included information on the method of operation of the Las Iguanas company).

3.2 The consideration of the nature of the proposed use has to look at the predominant activity. A restaurant whose trade is primarily in-house dining but which has ancillary bar use will be in Class A3. Where the pub or bar activity is a minor component of the business and will not affect environmental amenity, it will be treated as ancillary to the primary (restaurant) use of the premises. An A4 class on the other hand relates to premises with a predominately drinking led offering with no restaurant component. The applicants have expressly requested permission for A3 use and as such considerations relate to the impacts of an A3 use and not towards the probability of an A4 use taking place.

3.3 With regards to noise and impact on residential amenity, an element of control can be introduced through the use of a condition to control business hours, in line with nearby uses such as River Cottage and Seco Lounge. Policy CS13 seeks to encourage evening and night time uses subject to cumulative impact considerations, in addition to ensuring the uses are complementary and in balance. The area currently does not have a concentration of A4 uses (Bars and Pubs) and as such the uses proposed will not exacerbate a problem with an increase in A4 use. Whilst the A3 use in particular is synonymous with the evening economy, which can be detrimental to impacts to neighbouring domestic uses, it is considered that the imposition of a planning condition controlling opening hours would be appropriate.

3.4 This application has no external seating proposals; the red line which defines the boundary of the application site surrounds the extent of units 3-5 within the Brewhouse and does not extend into the public realm outside of this building. As such there are no impacts to neighbouring amenity in this regard. If outdoor seating is proposed, then this would require a separate planning consent.

#### **4. Transport**

4.1 In terms of transport considerations, Members are drawn to attention to a resolution at the committee dated 20/9/12 which stated:

‘The Council will expect any future application coming forward for consideration by the Planning Committee to be accompanied by a satisfactory Transport Statement (TS), when relevant to the application in question.’

4.2 The transport assessment submitted with this application does not relate to an updated wider transport strategy for the Yard and this is a major weakness of the application. Whilst there is an existing TS in place which was produced by Mott McDonald several years ago, this document primarily focused on trips being made to and from the RWY in the peak traffic hours on the highway network (8-9am and 5-6pm) as a result of the TA that was produced. The reason for focussing on these hours was the assumption that in addition to residential uses, much of the floor space within the RWY would be taken up with B1 Office floor space which generates most of its’ associated trips in the am and pm peak traffic hours. However it has become clear as the yard has moved forward that there is now a greater emphasis on leisure uses (and in particular restaurants including Prezzo, Seco, River Cottage etc) which has changed the arrival and departure profile for journeys being made to and

from the RWY, with more trips now occurring at lunchtimes, evenings and weekends. Consequently the sustainable transport alternatives (such as possible subsidised bus services) now need to focus on these times of the day hence the need for the original Mott McDonald TS to be updated.

4.3 In addition, no additional off-street car parking is proposed to serve the proposed use and it is intended that the associated parking demands would be met by the existing on-street car parking provision found within the RWY. It is accepted that the current use of the units in Brewhouse as an exhibition/arts area would have generated very few dedicated traffic movements and consequently very little demand for car parking as visitors to the former use are likely to have already been at the RWY for another purpose, with the most likely being visiting one of the restaurants.

4.4 However the proposed use would generate further demand for car parking at a time when it is most needed (lunchtimes and evenings) and therefore add to the car parking difficulties that are already experienced within the RWY. The trip generation data provided by the applicant seems to suggest that the proposed use could generate demand for as many as 40 spaces in the evening which seems reasonable considering that there would be a total of 186 seats internal.

4.5 It has also come to light that Urban Splash has administered a considerable number of permits/season tickets (270 in total for allocated and unallocated parking). Therefore whilst acknowledged as being unlikely, if all of these permits/season tickets were in use at the same time the number of visitor car parking spaces serving the RWY would total just 54.

4.6 Despite these apparent problems, surveys have been carried out recently on the parking situation and numerous site visits have been undertaken at different times of the day by the Highway Authority and generally the current parking provision meets current demand. It is also worth noting that a further 98 spaces are proposed within the courtyard area of the Factory Cooperage building, 48 of these spaces are required to serve the new units which are currently being occupied within New Cooperage. This effectively leaves 50 additional parking spaces. Negotiations are currently on going between Urban Splash and the Highways Authority on a revised and updated Transport Strategy for the Yard.

4.7 Whilst the Planning Committee resolved in September 2012 that future applications should be accompanied by a satisfactory Transport Statement (TS) (See para 4.2 above), and such a TS has not been submitted, your officers have explained with the applicant possible methods by which the highway and parking aspects of this development might be mitigated. An option which has emerged from these discussions is for the applicant to pay for alterations which are required to traffic regulation orders in the Stonehouse peninsula. This is a strategy which would allow the development to proceed, whilst addressing one of the impacts which this proposed use (and other similar new uses) have on the traffic and parking conditions in the streets which surround the Yard. On street car parking problems have become more acute in these streets in recent months, and your officers are sure that this is a consequence of the increasing popularity of the activities in the Yard. Members are therefore recommended to accept and require the applicant to pay for alterations to the Traffic Regulation Orders in existing streets through a S106 Obligation attached to the recommended planning permission for this development (the S106 legal implications are explored further in para 6.1 below). Members are also advised to continue to have regard to the resolution described in para 4.1 in considering future planning applications because it

will continue to be necessary to require appropriate Transport Statements on future cases. It will also be very important for the Transport Strategy which is currently being prepared, to be completed and implemented as a matter of urgency.

## **5. Other Considerations**

In terms of servicing and refuse collections proposals both Public Protection and the Local Authority Highways Department were consulted and neither had any objections with regards to these considerations.

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

## **6. Section 106 Obligations**

6.1 Section 106 Obligations are required for alterations to traffic regulation orders within the Stonehouse Peninsula. The obligations are necessary for the development to be acceptable, are fair and reasonable, directly related to the development and regulation 122 compliant. The amount is estimated to be between £35,000 and £50,000, the exact amount will be reported in an addendum report prior to the date of committee.

## **Equalities & Diversities issues**

None

## **Conclusions**

Recommended for conditional approval subject to section 106 contributions with delegated authority to the Assistant Director of Planning to refuse if the S106 obligation is not signed by 28<sup>th</sup> March 2013.

## **Recommendation**

In respect of the application dated **04/12/2012** and the submitted drawings GA-001 PL2, GA-003 PL2, Design and Access Statement, Heritage Statement, Ventillation and Extraction Statement, Acoustic Submission, Refuse Procedures, Delivery Procedures, Community Consultation Statement, Transport Statement, it is recommended to: **Grant conditionally subject to S106 Obligation with delegated authority to the Assistant Director of Planning to refuse if the S106 obligation is not signed by 28th March 2013.**

## **Conditions**

### **DEVELOPMENT TO COMMENCE WITHIN 3 YEARS**

(1)The development hereby permitted shall be begun before the expiration of three years beginning from the date of this permission.

Reason:

To comply with Section 51 of the Planning & Compulsory Purchase Act 2004.

Planning Committee: 31 January 2013

## CONTROL OF NOISE

(2) The noise emanating from the fans/ventilation equipment/air conditioning/ plant (LAeqT) should not exceed the background noise level (LA90) by more than 5dB, including the character/tonalities of the noise, at anytime as measured at the façade of the nearest residential property.

### Reason:

To ensure that the proposed dwellings hereby permitted achieve a satisfactory living standard and do not experience unacceptable levels of noise disturbance to comply with policies CS22 and CS34 of the adopted City of Plymouth Core Strategy Development Plan Document 2007

## ODOUR FROM KITCHEN EXTRACTION SYSTEMS

(3) Before the occupation and use hereby permitted is first implemented, details of the specification and design of equipment to control the emission of fumes and smell from the premises shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the use first commences and shall be retained at all times thereafter. Any alteration or variation to the equipment should receive the written approval of the Local Planning Authority. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.

### Reason:

To ensure that the proposed dwellings hereby permitted achieve a satisfactory living standard and do not experience unacceptable levels of odour nuisance to comply with policies CS22 and CS34 of the adopted City of Plymouth Core Strategy Development Plan Document 2007

## DELIVERIES AND REFUSE COLLECTION

(4) Deliveries and refuse collections are restricted to the following times: -

Monday to Saturday - No deliveries or refuse collection between 6pm and 8am

Sundays and Bank Holidays - No deliveries or refuse collection

### Reason:

To protect the residential and general amenity of the area from noise emanating from delivery and waste collection activities and avoid conflict with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

## OPENING HOURS

(5) The use hereby permitted shall not be open to customers outside the following times: 9am until 00:00 hours Mondays to Saturdays inclusive and 9am until 22:00 hours on Sundays and Bank or Public Holiday with the exception of New Years Eve to which the hours permitted shall be 9am until 2am hours.

### Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, including noise and disturbance likely to be caused by persons arriving at and leaving



the premises, and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

#### NO AMPLIFIED MUSIC

(6) No amplified (live) music shall be played in the premises outside the following times: 6pm to 22:30pm hours Monday to Saturday inclusive and 10am to 10pm hours on Sundays and Bank or Public Holidays.

#### Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, such as noise and vibration, and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021)2007.

#### CONTROL OF USE

(7) The part of the building which is the subject of this planning permission shall be used for A3 restaurants and café purposes only (as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended)) Under no circumstances shall the premises be used as a Drinking Establishment, as defined in Use Class A4.

#### Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, including noise and disturbance, and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

#### APPROVED PLANS

(8)The development hereby permitted shall be carried out in accordance with the following approved plans:(GA-001 PL2, GA-003 PL2, Design and Access Statement, Heritage Statement, Ventillation and Extraction Statement, Acoustic Submission, Refuse Procedures, Delivery Procedures, Community Consultation Statement, Transport Statement)

#### Reason:

For the avoidance of doubt and in the interests of good planning, in accordance with policy CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

#### CODE OF PRACTICE

(9) During development of the scheme approved by this planning permission, the developer shall comply with the relevant sections of the Public Protection Service, Code of Practice for Construction and Demolition Sites, with particular regards to the hours of working, crushing, piling and noisy operations, control of mud on roads and the control of dust.

#### Reason:

The proposed site is in immediate vicinity to existing residential properties, whose occupants will likely be disturbed by noise and/or dust during demolition or construction work and to avoid conflict with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

#### REFUSE STORAGE

(10) The development shall not be commenced until details of waste and recycling storage enclosures showing the design, location, external appearance and size have been submitted

to and approved by the Local Planning Authority. The approved enclosures shall be provided before the commencement of the use and thereafter permanently retained.

Reason:

To provide satisfactory refuse storage provision in the interests of the appearance of the site and locality.

#### WINDOWS

(11) Openable windows serving the customer seated areas must be closed and must remain closed during trading hours.

Reason:

To safeguard the amenity of the occupiers of adjoining properties and to comply with policy CS22 of Plymouth City Council's Local Development Framework.

#### INFORMATIVE - OUTSIDE SEATING

(1) This grant of planning permission must not be taken as planning consent to place tables and chairs outside of the premises. Planning permission may be required for this, and the intended occupier is strongly recommended to make a separate planning application to seek permission for this aspect or submit a lawful development certificate application to seek confirmation of the legal position.

#### INFORMATIVE: CONDITIONAL APPROVAL (NO NEGOTIATION)

(2) In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and proactive way and has imposed planning conditions to enable the grant of planning permission.

#### INFORMATIVE: CODE OF PRACTICE

(3) A copy of the Public Protection Service, Code of Practice for Construction and Demolition Sites is available on request from the Environmental Protection and Monitoring Team on 01752 304147

or from:

<http://www.plymouth.gov.uk/homepage/environmentandplanning/pollution/noise/construction.htm>

#### INFORMATIVE: WINDOWS

(4) Noise caused by patrons has the potential to negatively impinge on local residents in the reasonable use and enjoyment of their properties. Keeping windows and doors closed during trading hours will help to minimise the impact of this noise on residents and it is advisable to ensure that windows are not openable. This condition may adversely impact on the ventilation of restaurant areas which may require further mechanical ventilation or air conditioning.

#### **Statement of Reasons for Approval and Relevant Policies**

Having regard to the main planning considerations, which in this case are considered to be: impact upon neighbouring amenity and impact upon character of the conservation area and the Royal William Yard, the proposal is not considered to be demonstrably harmful. In the absence of any other overriding considerations, and with the imposition of the specified

conditions, the proposed development is acceptable and complies with (a) policies of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and supporting Development Plan Documents and Supplementary Planning Documents (the status of these documents is set out within the City of Plymouth Local Development Scheme) and the Regional Spatial Strategy (until this is statutorily removed from the legislation) and (b) relevant Government Policy Statements and Government Circulars, as follows:

CS28 - Local Transport Consideration  
CS34 - Planning Application Consideration  
CS22 - Pollution  
CS13 - Evening/Night-time Economy Uses  
CS03 - Historic Environment  
MS01 - Royal Williams Yard  
NPPF - National Planning Policy Framework March 2012