CONDITIONS AND REASONS:

(1) The development hereby permitted shall start no later than three years from the date of this decision. 15.071 001 Rev.B, 15.071 002, 15.071 041, 15.071 202 Rev.B & 15.071 241. Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

(2) The development hereby permitted shall start no later than three years from the date of this decision. Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

(3) The development hereby approved shall not be implemented until details of the appearance, colour and finish of the fence which will surround the approved beer garden/external seating area have been submitted to and approved in writing by the Local Planning Authority. These approved details must then be implemented in full prior to opening of the public house. Reason: In the interests of amenity and to protect the setting of the listed building.

(4) Notwithstanding the details submitted, the fence to be erected around the beer garden/external seating area hereby approved shall be no more than 1.0 metre in height, and only land within the confines of this fenced area - i.e. between the fence and public house - shall be used for the purposes of a beer garden/external seating area. Reason: In the interests of amenity and to protect the public open space.

(5) Should the public house close or its approved use change, the land hereby approved for use as a beer garden/external seating area shall be reinstated to its former use as public amenity land and all structures and boundary treatment removed within a period of three months. Reason: In the interests of amenity and to protect the setting of the listed building.

Note to Applicant: In accordance with paragraphs 186 and 187 of the National Planning Policy Framework, Eastleigh Borough Council takes a positive approach to the handling of development proposals so as to achieve, whenever possible, a positive outcome and to ensure all proposals are dealt with in a timely manner.

Report:

This application has been referred to Committee by Councillors Atkinson, Grajewski and Hughes and because it has proved controversial.

Description of Application

1. The application is split into two main elements, the first of which seeks approval for a number of alterations to the pub building in order to improve its kitchen facilities, including the provision of an external cold store and installation of external extractor fans. The second element of the application seeks the formation of an enclosed beer garden area by using a portion of the adjoining open space land and erecting a 1.2 metre high timber palisade fence, which would amount to a change of use of the relevant land.

Site Characteristics

2. The Hiltonbury Farmhouse is a Grade II listed building which was enlarged and converted into a public house in the early 1980s to serve the then new North Millers Dale estate. To the rear north-eastern side is a small yard area bounded by a brick wall and used for bin storage and where it is intended to place the external cold store. To the south-western side looking onto the adjoining open space is a patio/terrace area with no form of boundary treatment at present. To the north-west is the front of the old farmhouse with a small paved area which provides a few parking spaces. However, the most used entrance to the pub is from the car park on its eastern side. While this car park is used by most customers using the pub it is in fact a public car park for the use of anyone and is not specifically for the sole use of the pub.

3. The adjoining open space to the south is an informal grass area with a number of large shrubs and some trees with and around its edge. While not suitable for any formal recreation space, for sport, etc. it nonetheless does provide an attractive outlook for surrounding properties which look onto it and for informal play and recreation.

Character of Locality

4. There is a small hall currently used as a children's nursery next to the application site and a further car park associated with this just to the north. However, the surrounding area is predominantly residential in nature and made up of mainly two storey detached dwellings dating from the early 1980s.

Relevant Planning History

5. In addition to this current planning application are concurrent listed building and advertisement applications (L/16/78285 & A/16/78508) both of which it is intended to consider at the same Local Area Committee meeting.

6. Earlier this year planning and listed building consent was granted for alterations to the south-western elevation to enlarge the existing French doors and construct an open timber pergola. Prior to this are a number of planning and listed building applications from the early and

mid-1980s when the farmhouse was converted into the present public house.

Representations Received

7. A total of 21 representations were received from immediate and surrounding neighbours to the originally submitted proposals, including the North Millers Dale Community Association and one letter of support. While most had no issue with the works required in order to improve and refurbish the building, some concerns were raised regarding the noise of extractor fans. However, the overriding concern was the intended enclosure of the adjoining open space for sole use of the pub.

8. Following these initial objections an amended scheme has been submitted by the applicant which much reduces the area it is intended to enclose and use as a beer garden. Neighbours and those who commented on the original proposals were informed of the amendment and asked to comment. To date 17 further representations have been received which essentially raise the same concern that any of the existing open space be encloses and turned over for the sole use of the pub.

Consultation Responses

9. **Head of Regeneration & Planning Policy (Conservation Officer)** – The erection of the proposed fencing and enclosure of the adjoining open space will have a negative impact upon the listed building and its setting. However, “Any building needs occupation and use to keep it healthy with the fabric of listed buildings benefitting more than the average. Given the unusual circumstances of this building, alternative uses are going to be difficult if not impossible to find but these circumstances do not affect its use as a pub, however with many pubs closing each week due to modern-day social and financial pressures any assistance will be of help. The introduction of a picket fence around part of the open space in which the building stands will affect the setting of this building and therefore count as harm to the listed building but it will not be across the front of the building which is the most important elevation and set closer to the building than the previous scheme will allow a large portion of the grassed area to remain as public open space without causing substantial harm to the setting.

10. Taking a long term view, the introduction of a low timber fence which is temporary in nature, is a small price to pay for the wellbeing of this valuable heritage asset by means of assisting the viability of the existing use which is unlikely to prosper by reliance on the immediate inhabitants only and no passing trade.”

11. **Head of Environmental Health** – “The proposals for the use of open space as private pub garden have the potential to lead to the

generation of noise associated with this use. Incorporating this area as part of the pub has the potential to increase and intensify its use, which may have an adverse impact on neighbouring residential properties. We are not seeking to attach planning conditions in relation to the noise generation potential as this matter is something that needs to be managed under the licensing conditions of the premises. However should Environmental Health receive complaints relating to noise from the pub garden we would have a duty to investigate and if necessary require the pub operator to abate the noise nuisance."

12. **Head of Transportation & Engineering** – No highway objection.

13. **Chandler's Ford Parish Council** – "The Parish Council objects to this application for change of use of open space to a private, fenced in, beer garden due to the loss of valued community space that was protected in an earlier planning condition for housing development. It also objects, as a result of parishioner representation due to increased noise and the potential for increased conflict between the neighbouring community and owners/users of the pub."

Policy Context: Designation Applicable to Site

- Within Built-up Area Boundary
- Within Established Residential Area
- Affects Setting of Listed Building
- Listed Building Grade II

Development Plan Saved Policies and Emerging Local Plan Policies

- Eastleigh Borough Local Plan Review 2001-2011 saved Policies: 59.BE, 145.OS, 146.OS & 174.LB

- Submitted Eastleigh Borough Local Plan 2011-2029, July 2014 Policies: DM1, DM10 & DM31

14. The Submitted Local Plan comprises: the Revised Pre-submission Eastleigh Borough Local Plan 2011 - 2029, published February 2014; and the Schedule of Proposed Minor Changes, submitted to the Secretary of State in July 2014.

Supplementary Planning Documents

- Supplementary Planning Document: Quality Places
- Supplementary Planning Document: Chandler's Ford and Hiltingbury Character Areas

National Planning Policy Framework

15. The National Planning Policy Framework (NPPF) states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Para 14 sets out a general presumption in favour of sustainable development and states that development proposals which accord with the development plan should be approved without delay. Where the development plan is absent, silent, or relevant policies are out-of-date planning permission should be granted unless the adverse impacts of the development would outweigh the benefits; or specific policies in the Framework indicate development should be restricted (paragraph 14). Local plan policies that do not accord with the NPPF are now deemed to be "out-of-date". The NPPF requires that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. In other words the closer the policies in the plan accord to the policies in the Framework, the greater the weight that may be given.

16. Paragraph 17 states that one of the twelve core principles of the NPPF is that planning should "proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs." Paragraph 19 states that "The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system."

17. It goes on to state in paragraph 126 that "Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats, in doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance."

National Planning Practice Guidance

18. Where material, this guidance should be afforded weight in the consideration of planning applications.

Policy Commentary

19. The above policies and guidance combine to form the criteria against which this application will be assessed with particular regard to planning policy and the principle of that proposed, the layout, design and appearance of that proposed, the proposed change of use of land, impact upon the listed building, impact upon the residential amenity of neighbouring properties, as well as the general amenity and character of the surrounding area.

Comment on Consultation Responses and Representations Received

20. All comments are noted and responded to where appropriate below.

Assessment of Proposal: Development Plan and / or Legislative Background

21. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

22. *"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

23. In addition, the proposal affects a Listed Building or its setting and section 66(1) of the Planning (Listed Building & Conservation Areas) Act 1990 states:

24. *"In considering whether to grant planning permission for development which affects a Listed Building or its setting, the Local Planning Authority … shall have regard to the desirability of reserving the building or its setting or any features of special architectural or historic interest which it possesses".*

25. In this case policy issues for consideration include:

Planning Policy & Principle

26. The application site lies within the urban edge where the basic principle of development is considered to be acceptable, with any formal planning approval being based upon the exact nature, design and impact of that proposed being considered appropriate and in accordance with the relevant Local Plan policies and Supplementary Planning Documents. The most relevant policies in this case are saved Policies 59.BE, 145.OS, 146.OS & 174.LB of the adopted Eastleigh Borough Local Plan Review (2001-2011).

27. Policy 59.BE of the Local Plan is a wide ranging policy which requires development to take full and proper account of the context of the site including the character and appearance of the locality and be appropriate in mass, scale, materials, layout, design and siting. It also requires a high standard of landscape design, a satisfactory means of access and layout for vehicles, cyclists and pedestrians, to make provision for refuse and cycle storage and avoid unduly impacting on neighbouring uses through overlooking, loss of light, loss of outlook, and noise and fumes. Also of relevance is Policy DM1 of the Submitted

Eastleigh Borough Local Plan 2011-2029, July 2014, which essentially reiterates the above requirements.

28. Saved Policy 145.OS is intended to prevent the loss of public open space and sets out a number of criteria which must be met before any loss would be considered acceptable. The loss of open space land will only be considered acceptable if: the proposed development is ancillary to the principle use of the site and will not result in the loss of any sports pitches; it only affects land incapable of forming a playing field/pitch; the space lost can be suitably replaced; and the proposed development on its own would be sufficient to mitigate for the loss of the open space land. These requirements are reiterated within Policy DM31 of the Submitted Local Plan.

29. The area of land adjacent to the pub is not formal adopted public open space. It is not owned or controlled by the Council but was retained by the original land owners, Cranbury Estates, to be used as an open green amenity area for the North Millers Dale estate and to assist in preserving the setting of the listed farmhouse. The land in question is not capable of forming a sports pitch and is not large enough to be used as a formal recreation ground. Strictly speaking therefore, saved Policy 145.OS is not directly relevant as it is really intended to protect formal sports and recreation space. However, the land does nonetheless provide an attractive green amenity space for use of the estate.

30. Saved Policy 146.OS of the adopted Local Plan states that, “Development proposals which would have a detrimental impact on the green network will be refused.” Given the prominence of the area of open space for the estate, the issue relating to the proposed change of use element of this application is whether it would result in a detrimental impact.

31. Finally, saved Policy 174.LB is also relevant and relates to development affecting listed buildings and states that development “will not be permitted if it would result in a detrimental impact on the building or its setting.” These requirements are reiterated within Policy DM10 of the Submitted Local Plan.

32. In simple principle terms therefore, the proposed alterations and improvements to the building are acceptable, dependent upon the exact details of that proposed. With regards to the intended change of use of the adjoining open space land, this is not as clear cut because it could be argued that saved Policy 145.OS is not directly relevant in this case. However, Policy 146.OS is but sets out that detrimental impact will not be acceptable. The issue therefore is what impact would this proposal have and would it be detrimental in planning terms?

Layout, Design & Appearance

33. Planning and listed building consent was granted earlier this year for alterations to the existing French doors on the south-west elevation of the building to widen the opening, together with some internal works to open up and improve the space available. This latest application seeks approval for the provision of an external cold store within the rear yard area, together with the replacement and addition of a number of intake and extract vents to the exterior of the building which would serve the enlarged and improved kitchen. Given that the cold store and vents are all to be located within the rear walled yard area away from public view and within the 1980s extension to the original building, this element of the application proposals is considered to be acceptable and will result in no visual or physical harm. As such these elements of the application are considered to meet the requirements of saved Policies 59.BE and 174.LB of the adopted Local Plan.

34. The other and more contentious element of the application is the proposed enclosure and change of use of part of the adjoining open space land for use as a beer garden. Given that there is already a paved patio/terrace area immediately adjacent to the building the only physical change would be the erection of a 1.2 metre high round topped timber palisade fence around the area intended for use as the beer garden. While the change of use of the land does require formal planning consent, the physical erection of the fence, at under 2.0 metres in height and not being adjacent to a highway, does not require planning approval and can be erected via permitted development under Class A of Part 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Change of Use of Land

35. To the south of the old Farmhouse is an area of open space consisting of grass, shrubbery and trees which provides an attractive setting for the listed building and a general informal amenity area for local residents. Due to its size, shape and where trees and planting are located, it is not suitable for any formal recreational space such as a sports pitch or play area but nonetheless is important for locals and the character of this part of the North Millers Dale estate, as well as the setting of the listed building.

36. Ownership of the land was retained by Cranbury Estates when the North Millers Dale estate was built in the early 1980s. Part of this planning permission, as well as preserving Hiltonbury Farmhouse and converting it into a public house included the provision of an area of public open space around the farmhouse. The legal agreement relating to this original planning permission states in clause 7. “The owner (Cranbury Estates) hereby agrees to lay out landscape and subsequently maintain as car park and public open space the land around the proposed village hall and Hiltonbury Farmhouse within the area edged in blue on the attached plan”. The plan referred to clearly identifies the area of open space to the south of the Farmhouse.

37. This area of land is approximately 1750sqm in total area, with approximately 600sqm being covered by trees and large shrubs. It is proposed that around 300sqm of this land immediately adjacent to the south side of the Farmhouse be enclosed and used as a beer garden/external dining area, which equates to between 20% and 25% of the total area, with the remainder being left open for public use.

38. While this would still leave the majority of the usable open space available for general recreational purposes, it would result in a loss of open space contrary to saved Policy 145.OS and in contravention of the original legal agreement signed in 1980. However, the situation may not be quite as clear cut as it initially appears, as a further significant material consideration is Hiltonbury Farmhouse itself (see below). There is also a question of how enforceable a 36 year old legal agreement actually is, particularly given that no clear timescales are set out.

39. Although there is no indication that the applicant intends to use this land without planning consent there is nothing in planning terms to prevent a fence from being erected on the land or the intended garden area being demarcated in some other way, i.e. planting. Equally, if there is no defined garden area there is nothing to prevent tables and chairs or patrons from spilling out onto the open space. That being the case, it could be argued that physically enclosing a garden area will ensure that there is a clear distinction between what is public and what is associated with the Farmhouse. If approved, conditions to this affect could be applied spelling out exactly where the fence can be positioned and what land is or is not permitted for use by the pub. Condition could also be applied to ensure that the fence, etc. is removed should the pub close again or the garden area no longer required, thereby ensuring that the open space land is not lost forever.

Impact on Listed Building

40. Given the minor nature of the physical alterations to the buildings, and that they are to the rear of the later 1980s extension, it is considered that there would be no adverse physical impact upon the building itself. However, the proposed change of use of the adjoining land and erection of the fence will have an impact upon the setting of the listed Farmhouse.

41. Presently the Farmhouse has no form of boundary treatment to its southern side, allowing uninterrupted views of the building across the open space. While the proposed fence would only be 1.2 metres in height it will impact upon the building's setting, as would the presence of tables, chairs and parasols which would be contained within the garden area. Although not unexpected in the context of a public house or restaurant, these features/items would have a negative impact upon the setting of the listed building. However, Policy 174.LB states that

proposals which affect a listed building will not be acceptable if they would “result in a detrimental impact on the building or its setting.” The proposed fence, etc. are all temporary features which could be easily removed without resulting in any lasting harm to the building. It would therefore be hard to argue that they would have a detrimental impact.

42. As has been highlighted by the Borough’s Conservation Officer, while there may well be harm to the setting of the building, there is a longer term view which must be taken into consideration. As a listed building the Farmhouse is designated for its age, architectural quality and importance in terms of local history. As such the Local Planning Authority has a duty to assist in its protection. The best and most effective way to ensure that an important building such as the Farmhouse is protected and properly maintained is to ensure that it remains in use.

43. By submitting this and the other recent and concurrent applications, the applicant has demonstrated a desire to refurbish and reopen the pub. The Farmhouse is an attractive building with significant character and good setting which has the potential to be a successful business. However, it is hampered by its location in the middle of a modern housing estate on a road with very little or no real passing trade. While seemingly popular with local residents, relying purely on local trade obviously was not sufficient to keep the pub in business. As such, if it is to be a success the new Hiltonbury Farmhouse will need to use word of mouth and the creation of a good reputation if it is to remain open. Part of this would be providing an attractive environment for its patrons, which would include an external seating area.

44. As such a balance needs to be achieved between what is acceptable harm to the building and its setting verses ensuring its long term survival. In this instance, while it is acknowledged that the creation of a beer garden and the associated paraphernalia which goes with such a use would result in some harm to the building, it would be a small price to pay to help ensure the building’s future wellbeing and protection. If in future the new Farmhouse does not prove to be a success, the fence, seating, etc. can all be easily removed and a condition to this effect could be included as part of any planning approval. As such it is considered that the intensions of saved Policy 174.LB of the adopted Local Plan would be met in this instance.

Residential Amenity

45. While the pub is currently closed, it had been in continuous operation since it opened in the mid-1980s. Its use as a pub has therefore been long established and it would seem accepted by most neighbours, many of whom have commented on how they are looking forward to it reopening. The amenity concerns raised relate to the proposed extractors and external cold store, as well as the intended use of the open space as a garden area.

46. The building already has a number of extractor vents which served its original kitchen area. Those proposed will be much more modern examples which are quieter and more efficient and mounted within the building which will provide some noise attenuation. The vents would also direct expelled air into the existing walled rear service yard, the majority of which is in turn screened from neighbouring residential properties by trees and planting. The boundary wall and planting should provide good acoustic screening, thereby minimising disturbance to neighbouring residential properties. This is also considered to be the case for the proposed external cold store. Its condenser unit is mounted to the bottom of the store which will be positioned immediately next to the two metre high brick boundary wall. This should ensure that noise is kept to a minimum. No objection on this element of the application has been raised by the Head of Environmental Health.

47. With regards to the proposed beer garden, some concerns have been raised that this will result in increased noise and disturbance to surrounding properties. While there has always been an external patio/terrace area, that proposed could intensify external activities, with the area being used for more formal dining, rather than a 'traditional' beer garden. However, it is proposed that the reopened Farmhouse will be more food orientated rather than purely a drinking establishment. That being the case, the nature of future patrons is unlikely to result in any significant issues of disturbance for immediate neighbours in the same way a traditional drinking based pub would, particularly in the evenings.

48. As such it is considered that the minor alterations to the building and creation of a formal pub garden are unlikely to result in any unacceptable disturbance or amenity issues for residents. This view has been backed up by the Head of Environmental Health who always has the ability to intervene and apply restrictions and use Environmental Health or licencing legislation if required in future.

Amenity & Character of Area

49. Both the open space and Hiltonbury Farmhouse are important and prominent parts of North Millers Dale's character, of which harm to either would have a negative impact upon the area's visual amenity. The initial reaction to the proposed change of use of part of the current open space land for use as a beer garden/external seating area may well be to resist. However, as has been discussed above, there is also a longer term impact to take into consideration relating to the protection of the listed building.

50. It is accepted that there is significant local opposition to the change of use but committee Members will also have to take into consideration the Local Planning Authority's duty to ensure the protection of a

valuable heritage asset. Paragraph 140 of the NPPF states that “Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.”

51. Also of importance is the Local Planning Authority’s duty to support the local economy and business. NPPF paragraph 19 states that “The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.”

52. If planning consent is not granted for the proposed change of use, there is the risk that the reopened Farmhouse will not be a success and close again or that the applicant will decide not to undertake the refurbishment of the Farmhouse and reopen the pub. This then raises the question of what would happen to the building. Given the residential nature of the surrounding area, suitable alternative uses are very limited. Past experience has shown that if a building is not occupied it will gradually fall into disrepair and can very quickly begin to have a negative impact upon the character and amenity of an area, attracting vandalism, antisocial behaviour and vermin.

53. That being the case, it is considered that the sacrifice of a portion of the existing open space and the short to medium term harm caused by allowing the change of use proposed will in fact help to ensure the longer term protection of the character and amenity of North Millers Dale and the Hiltonbury Farmhouse.

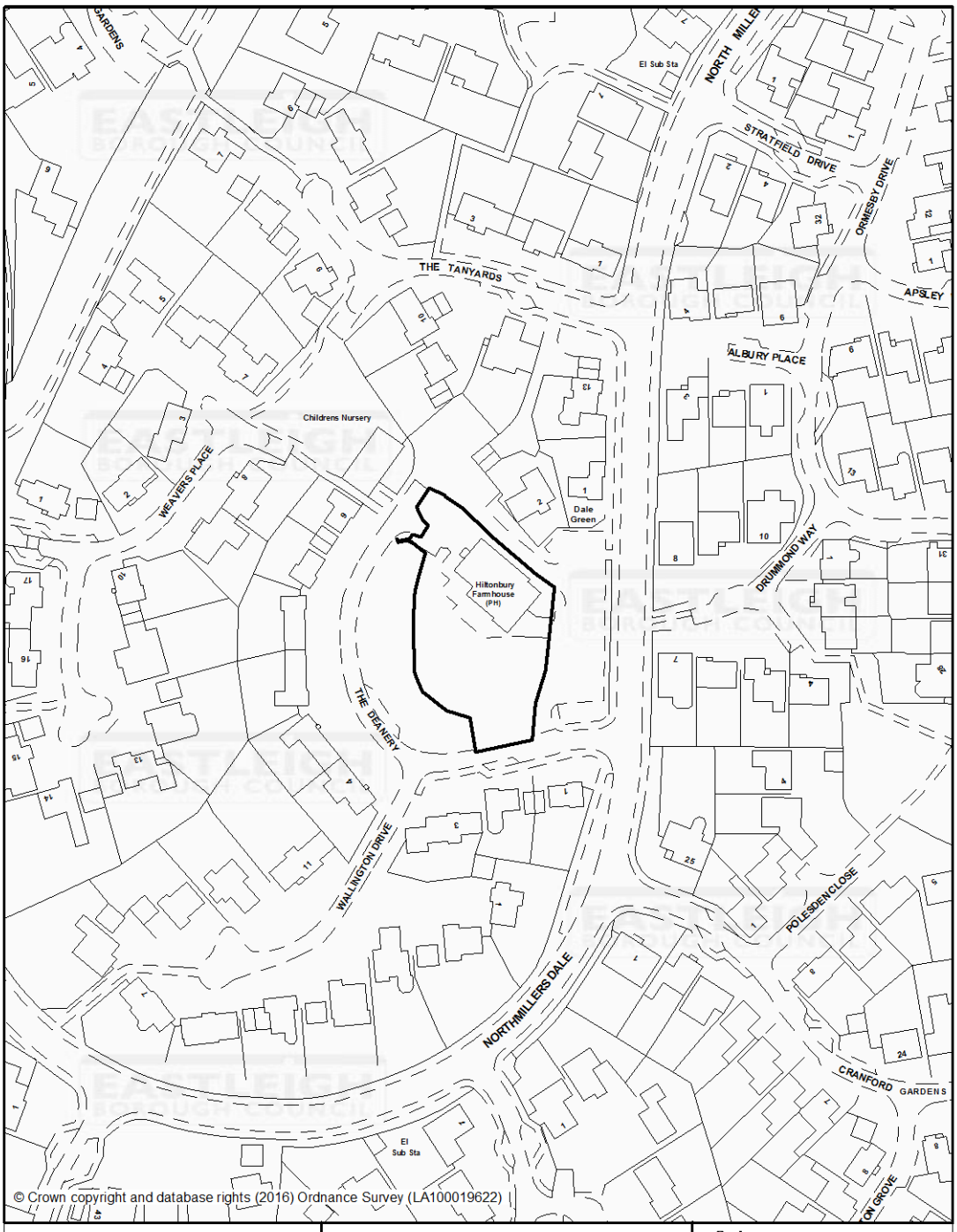
Other Material Considerations

54. Reference needs to be made the Submitted Eastleigh Borough Local Plan 2011 - 2029, July 2014. However very little weight can be given to these policies as, although the Submission Local Plan has not been withdrawn the Council has confirmed that it has decided to prepare a new local plan which will cover the period up to 2036. With regards to this application, the new policies essentially echo those of the current plan and are not considered to affect the recommendation put forward.

Conclusion

55. While certainly not a clear cut decision, on balance it is considered that the planning application should be approved, including the proposed change of use of the current open space land, in order to help ensure the long term viability of the Farmhouse and in turn the character and amenity of the surrounding area. By approving the application the Local Planning Authority can apply much clearer conditions and restrictions, such as the exact position of the fence and what land can and cannot

be used by the pub, thereby ensuring that the remainder of the public open space is protected from possible further encroachment. Conditions can also be applied to ensure that if the pub should go out of business or its use change that the fencing is removed and land reinstated back into general public use. As such the application is recommended for approval subject to the conditions set out above.



EASTLEIGH BOROUGH COUNCIL

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