

Statement of Case

on behalf of

AJC Group

In respect of the refusal of a full planning application for demolition of the existing buildings; erection of 25 dwellings with associated access, landscaping and parking at Orchard Gate, Noads Way, Dibden Purlieu, Hythe, SO45 4PD

By New Forest District Council (ref. 22/10813)

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1. Introduction

1.1 This statement of case has been prepared on behalf of AJC Group [“the Appellant”] in support of a planning appeal against the refusal of planning application 22/10813 by New Forest District Council [the “LPA”] for the ‘demolition of the existing buildings; erection of 25 dwellings with associated access, landscaping and parking’ [the “proposed development”] at Orchard Gate, Noads Way, Dibden Purlieu, Hythe, SO45 4PD [the “appeal site”].

1.2 The application was validated by the LPA on the 15th July 2022, and refused by notice dated 19th December 2022. This appeal is supported by a draft Statement of Common Ground which sets out the following, such that they need not be exhaustively covered here other than where required to support the Appellant’s submission:

- The appeal site and its surroundings
- The proposed development
- Application plans and documents
- Background and reasons for refusal
- Planning History
- List of Potential Planning Conditions and their Reasons
- Matters not in dispute
- Matters that remain in dispute
- Planning Condition and Obligations
- Core Documents

1.3 The decision notice includes 7 reasons for refusal, the Appellant considers the key matters to be:

- The application of the presumption in favour of sustainable development influences, positively, the proposal. The Appellant is in disagreement with the first reason for refusal and will demonstrate through detailed contextual analysis that the development will respect the appearance of the area, be of an optimum density –

making efficient use of land and will deliver a proposal of an architecturally high quality, creating a sense of place within a landscaped setting.

- The second and third reasons for refusal are matters that can be addressed with a technical submission to demonstrate that safe highway access can be achieved at the site and that via a Walking, Cycling and Horse-Riding assessment (WCHAR) the proposal supports modes of travel other than the private car. The Appellant will demonstrate that there is a workable solution for surface water drainage. These matters are essentially matters left outstanding at the point of refusal, which the Appellant, LPA and relevant consultees will be working to address before the Inquiry.
- Reasons for refusal four and five are in the Appellant's view procedural and, in the event of a planning approval, would have been satisfied by way of a completed legal agreement.
- There is a significant dispute in relation to the sixth reason for refusal between the Appellant and the LPA's advisors with regard to viability matters, such matters which influence the ability of the proposal to deliver affordable housing, these matters concern build costs rates, sales revenue and benchmark land value and the strength of the evidence that the LPA's advisor relies upon.
- The seventh reason for refusal demonstrates a difference in approach within the LPA (this being between LPA consultees and the Case Officer), to assessing the proposal and the acceptability of the relationship of the proposal and retained trees. The extent to which the proposal will, in relation to tree loss, alter, if at all, the character of the area is also relevant to the consideration of the seventh reason for refusal.

Main Issues

1.4 The Main Issues in this appeal are considered by the Appellant to be:

- Conformity with the Development Plan in respect of
 - Policies for the supply and location of housing and their weight given the lack of a five year housing land supply
 - Character and appearance
 - The provision of affordable housing

- The assessment of character and what attributes contribute to the character of the area.
- The lack of consistency in the LPA's approach to the assessment of character
- The appropriate evidence to inform an assessment of viability and the correct approach, having regard to relevant guidance to assessing viability.

Appeal Site and Surrounds

- 1.5 The site, as confirmed in the Case Officer's report (section 10) falls within the settlement boundary of Hythe Village. The application site is 0.9 hectares in area (2.2 acres) with the plot being an L-shape. The site is broadly level.
- 1.6 The site is in a sustainable location being well positioned to access several town and local centres and the shops, services and public transport facilities located therein. Including:
- Dibden Purlieu Village local centre (0.3 miles to the south-west)
 - Hythe Village local centre (1.8 miles to the north-east)
- 1.7 The site is located within a short walking distance of a good level of amenities to meet the day-to-day needs of residents, which is set out below in the figure 1.

Local Amenity	Address	Distance(miles)	Distance(kilometres)
Foodstore	Tesco Esso Express, Beaulieu Road	0.3	0.5
Post Office	Dibden Purlieu Post Office, Beaulieu Road	0.4	0.6
GP Surgery	Forestside Medical Practice, Beaulieu Road	0.5	0.75
Schools	Noadswood School, Water Lane	0.3	0.5
	Orchard Infant / Junior School, Water Lane	0.3	0.5
Pharmacy	Jays Pharmacy, Beaulieu Road	0.3	0.5
Bus Stop	North Road	0.15	0.25

Figure 1: Walking distances to local amenities

- 1.8 The site is accessible by public transport with the nearest bus stops located circa 250 metres to the south-west of the site on North Road. These bus stops provide frequent services to Southampton City Centre, Hythe and Beaulieu. Beaulieu Road train station is located circa 4.8 miles to the east of the site, and this provides access to the national rail network.

- 1.9 A single residential property occupies the site with several outbuildings and stables clustered in the central eastern portion of the site.
- 1.10 A 'garden area' immediately surrounds the property and contains several small ornamental trees and shrubs and a disused concrete pond. There are two large paddocks to the south and west of the site, with the remainder of the site used for stabling and other associated equestrian activity.
- 1.11 The site benefits from perimeter screening from mature trees and vegetation to most of its boundaries, however there are gaps in several areas and screening is notably absent to the boundary with the rear gardens of Lime Close.
- 1.12 A single-track vehicular access into the site is located on the east of the site's Noads Way frontage. Parking arrangements on site are currently ad hoc utilising areas of hardstanding and amenity space in the areas surrounding the stables and bungalow.
- 1.13 The area is in an established residential suburb and all the surrounding uses are all residential properties accordingly.
- 1.14 The character and density of surrounding developments vary, there are however two broad character types;
 - I. A suburban street frontage comprising the larger detached properties on Noads Way and Lime Walk that are a mixture of bungalows or 2 storey houses.
 - II. Historic back land development such as Lime Close and Lime Walk comprising of smaller detached bungalows, chalet bungalows and two storey properties built at a higher density.

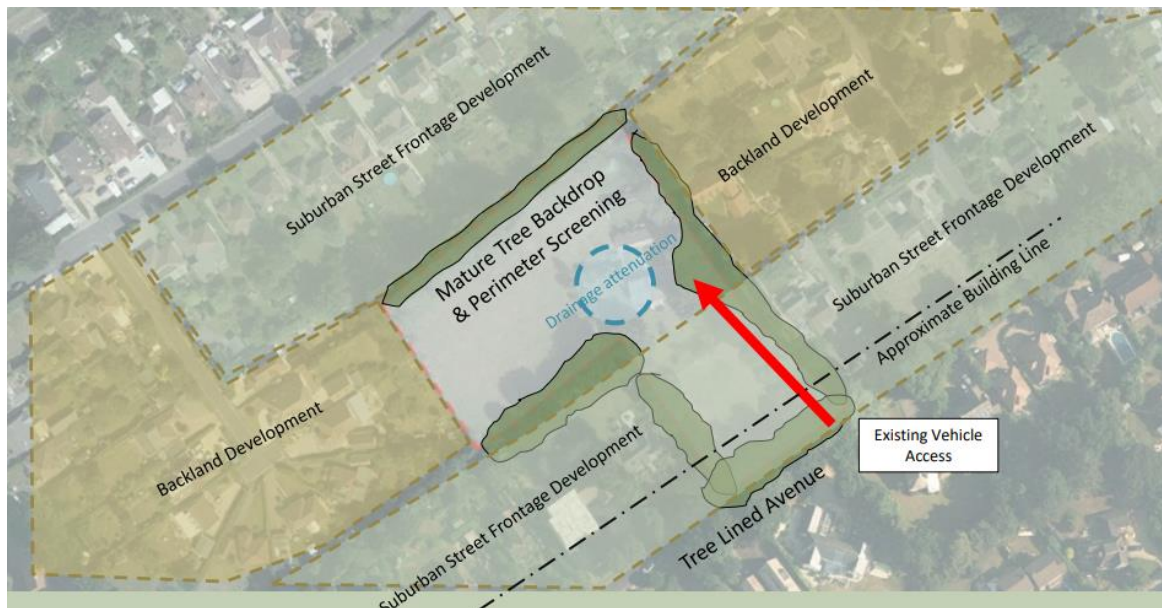


Figure 2: Extract from Design and Access Statement

1.15 Figure 2 illustrates the development constraints and opportunities and the differing character areas. There is a good level of screening from mature trees and hedgerows on most of the site's boundaries.

Proposed Development

1.16 This appeal concerns a full planning application for the erection of 25 dwellings (following the demolition of the existing buildings) at Orchard Gate, Noads Way, Dibden Purlieu, Hythe.

1.17 The proposed development consists of:

- 4 x 2 bedroom houses
- 17 x 3 bedroom houses
- 4 x 4 bedroom house
- A total of 25 dwellings.

1.18 The houses are all two storey, provided in a varied form of linked detached, semi-detached and terrace properties.

1.19 The scheme has been carefully conceived to ensure that the proposal when viewed from Noads Way represents a single dwelling set within a spacious plot, but then transitions into

its own character within the rear part of the site maintaining a relationship with neighbouring properties that does not result in the loss of amenity or privacy.

- 1.20 The layout of the proposal presents an arrangement of built form commensurate with the scale and massing of the detached properties along Noads Way, the frontage unit is designed to integrate with the prevailing character of Noads Way. The frontage unit is designed with simple but formal, traditional detailing: a red brick porch, painted brick walls under a tiled roof with expressed barge rafters. As the transition into the site takes place the grassed verge in front of the new homes helps create a semi-rural character and the retained trees which are set within a wide planted margin frame the limited vista into the site.
- 1.21 The visual reference at the head of the access is a pair of gabled cottages which are viewed deeper into the site, referencing local traditional forms. Within the site, away from the frontage unit, design features such as bay windows, low front garden walls and sheltered porches add interest and help natural surveillance of the street and open space.
- 1.22 The green is a focal space within the centre of the site. Simple terraced cottages address the space, the cottages have defensible front garden spaces, sheltered porches and footways to the front and rear for bicycle/bin access. The palette of materials comprises timber boarding, painted brickwork and red brick with a mixture of low brick walls and railings. They have traditional forms but it is envisaged that the detailing (large windows for natural daylight, modern porches and crisp detailing) will be contemporary and simple.

2. Planning Policy Context

Development Plan Policy Context

- 2.1 The Appellant contends that the most important policies for the determination of this planning application are (by document):
- **New Forest Local Plan Part 1 – 2016-2036**
 - Policy STR1: Achieving Sustainable Development
 - Policy STR2: Protection of the countryside, Cranborne Chase Area of Outstanding Natural Beauty and the adjoining New Forest National Park
 - Policy STR3: The strategy for locating new development
 - Policy STR4: The settlement hierarchy

- Policy STR5: Meeting our housing needs
- Policy ENV1: Mitigating the impacts of development on International Nature Conservation sites
- Policy ENV3: Design quality and local distinctiveness
- Policy ENV4: Landscape character and quality
- Policy HOU1: Housing type, size, tenure and choice
- Policy HOU2: Affordable housing
- Policy IMPL1: Developer Contributions
- Policy IMPL2: Development standards
- Policy CCC1: Safe and healthy communities
- Policy CCC2: Safe and sustainable travel
- **New Forest Local Plan Part 2 – 2014**
 - DM2: Nature conservation, biodiversity and geodiversity
 - DM3: Mitigation of impacts on European nature conservation sites
- **New Forest District Core Strategy – 2009**
 - CS07: Open spaces, sport and recreation
- **Hythe and Dibden Neighbourhood Plan 2018-2026**
 - Policy D1 - High Standards of Design and Architecture
 - Policy WEL1 - Development proposals should seek to support public health, active lifestyles and community wellbeing
 - Policy T5 - New footpaths and cycleways should be designed to a high standard.
 - Policy C1 - Layout and design to reduce negative impact of crime, nuisance and anti-social behaviour

2.2 The LPA's reasons for refusal reference policies (by document);

- **New Forest Local Plan Part 1 – 2016-2036**
 - Policy STR1: Achieving Sustainable Development
 - Policy ENV1: Mitigating the impacts of development on International Nature Conservation sites
 - Policy ENV3: Design quality and local distinctiveness
 - Policy ENV4: Landscape character and quality
 - Policy HOU2: Affordable housing
 - Policy CCC2: Safe and sustainable travel

- New Forest Local Plan Part 2 – 2014
 - Mitigation of impacts on European nature conservation sites
- New Forest District Core Strategy – 2009
 - CS07: Open spaces, sport and recreation
- Hythe and Dibden Neighbourhood Plan 2018-2026
 - Policy D1 - High Standards of Design and Architecture

Material Considerations

2.3 The Appellant contends that the following are Material Considerations in the determination of this appeal:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Air Quality in New Development SPD 2022
- Housing Design, Density and Character SPD 2006
- Mitigation for Recreational Impacts on New Forest European Sites SPD 2021
- Parking Standards SPD 2022
- Interim Strategy for Ecology & Bio-diversity Net Gain 2020.
- Bird Aware Solent Strategy

Relevance of identified planning policies

2.4 Provided below is an analysis of the planning policies identified in section 2.1, the relevance to the appeal proposals and how the proposal complies with the aims of the policy (detailed in italics).

- **New Forest Local Plan Part 1 – 2016-2036**
 - Policy STR1: Achieving Sustainable Development

Policy STR1 reflects the overarching aims of national policy in that it seeks to achieve sustainable development within the plan area. The proposal makes specific reference to meeting most development needs within settlement boundaries, the appeal site, as referenced above, is within the identified settlement of Hythe Village (a top tier settlement – as per policy STR4). The proposal helps to safeguard the Green Belt and AONB from development pressure and a case will be advanced, building on the

information and evidence submitted with the application, to demonstrate how a context and landscape-led approach to the proposal creates a new high quality landscape and townscape. The appeal proposal details a mechanism to deliver biodiversity net gain and to ensure that appropriate mitigation is provided to mitigate the impacts of the proposal on the integrity of International Nature Conservation sites. The evidence which supports this appeal sets out to demonstrate, through a WCHAR that local services and facilities are accessible via sustainable transport modes, minimising reliance on the private car. The proposal has been designed to ensure energy efficiency and adaptability to safeguard the needs of future occupiers.

- Policy STR2: Protection of the countryside, Cranborne Chase Area of Outstanding Natural Beauty and the adjoining New Forest National Park

The proposal achieves the aims of ensuring that the character, quality and scenic beauty of the Cranborne Chase Area of Outstanding Natural Beauty and the adjoining New Forest National Park are protected – the appeal proposal is contained within an established settlement and will not have any visual or functional impact on the designated areas. Furthermore, the appeal scheme, by proposing housing in an established settlement, away from the designated areas releases pressure that the LPA may face to identify sites to deliver housing that would have an impact.

- Policy STR3: The strategy for locating new development

Policy STR3 has a clear aim to “locate and direct new development to accessible locations that help to sustain the vitality and viability of the towns and villages of the Plan Area as the focal points of commercial activity and community life, and as safe, attractive and accessible locations to use and visit”. The proposal is, as evidenced in this appeal, in an accessible location with good access to local services and facilities which will help to sustain the vitality and viability of Hythe Village.

- Policy STR4: The settlement hierarchy

Policy STR4 identifies three tiers of settlements, Hythe Village (in which the appeal site sits) is a top tier settlement. These settlements are identified as being the most sustainable locations with the plan area for large-scale development, including

residential, which supports and consolidates their (the settlements) local service offer. The proposal fully accords with the LPA's adopted settlement hierarchy.

○ Policy STR5: Meeting our housing needs

The LPA identifies in policy STR5 in the period 2016/2017 to 2020/2021 1,500 homes will be delivered and in the period 2021/2022 to 2025/2026 2,000 homes will be delivered, there is then a significant step change in 2026/2027 to 2035/2036 with 7,000 homes being identified for delivery. The policy then goes onto identify where suitable sites for housing delivery of more than 10 units could come forward, including “around 400 homes on sites to be identified in other towns and large villages”. The appeal site is a suitable site which falls within this category. In addition to the identified trajectory for housing delivery set out in policy STR5 it is acknowledged that the LPA are unable to demonstrate a 5 year housing land supply, with a published supply figure of 3.07 years and as such the benefits that the appeal scheme would deliver, in making a meaningful contribution towards the aims of policy STR5 should be given significant weight.

○ Policy ENV1: Mitigating the impacts of development on International Nature Conservation sites

Policy ENV1 identifies that development will only be permitted where the LPA is satisfied that any necessary mitigation, management or monitoring measures in relation to the following International Nature Conservation sites are secured in perpetuity;

- *The New Forest Special Area of Conservation (SAC), the New Forest Special Protection Area (SPA) and the New Forest Ramsar site;*
- *The Solent Maritime SAC, Solent and Isle of Wight Lagoons SAC, the Solent and Southampton Water SPA, and the Solent and Southampton Water Ramsar site;*
- *The River Avon SAC, Avon Valley SPA and Ramsar site; and*
- *The River Itchen SAC.*

Policy ENV1 goes on to identify that for residential development adverse effects can be adequately mitigated by implementing approved measures relevant to the site location, including as set out in the Mitigation for Recreational Impacts SPD and in the

Solent Recreation Mitigation Strategy and in supplementary guidance on nutrient management. Through an appropriately worded legal agreement the appellant will secure the required mitigation to address the adverse impact arising from the proposal.

○ Policy ENV3: Design quality and local distinctiveness

The requirements of policy ENV3 are that development should achieve high quality design that contributes positively to local distinctiveness, quality of life and enhances the character and identity of the locality by creating buildings, streets, places and spaces that are:

- Functional: well connected to surrounding uses, and logically laid out so that different elements work well together in a manner that is safe to access, easy to navigate, convenient to use and that makes effective use of both developed land and open spaces;*
- Appropriate: sympathetic to its environment and context, respecting and enhancing local distinctiveness, character and identity; and*
- Attractive: visually appealing and enjoyable to be in.*

The policy then sets out a series of seven tests detailing requirements, in relation to design quality and local distinctiveness, that development should achieve. This submission and proofs of evidence will demonstrate how the proposal achieves these aims and the appeal process will examine why the LPA feel there is a conflict with this policy in relation to the first and seventh reasons for refusal.

○ Policy ENV4: Landscape character and quality

Policy ENV4 sets out a requirement to retain and/or enhance the landscape features and characteristics through sensitive design, mitigation and enhancement measures, to successfully integrate new development into the local landscape context. Much like policy ENV3, there are seven identified aims to and attributes against which compliance with policy ENV4 is assessed. Again, this submission and proofs of evidence will demonstrate how the proposal achieves these aims and the appeal process will examine why the LPA feel there is a conflict with this policy in relation to the first and seventh reasons for refusal.

- Policy HOU1: Housing type, size, tenure and choice

Policy HOU1 sets out to ensure that all residential development helps to address the diversity of housing needs of local people at all stages of life – taking into account the location, size and characteristics of the site, the form of development proposed and the viability of the scheme. The proposal provides a mix of 2, 3 and 4 bedroom properties which provide a range of housing opportunities for future residents, whether residents are looking for their first home, a family home or looking to down size. The properties allow for future adaption, if required, with opportunities to the installation of lifts or ground floor living. This diversity ensures compliance with policy HOU1. The LPA have accepted, as evidenced in the Case Officer's report that informed the refusal, that it would not be appropriate, in terms of character, for the proposal to include 1 bedroom units.

- Policy HOU2: Affordable housing

Policy HOU2 relates to the provision of affordable housing and identifies a target of 35% provision (the site being within the Waterside area). Policy HOU2 is clear that the viability of development will be taken into account when Policy HOU2 is considered. As part of the application the Appellant has provided evidence to demonstrate why a target provision of 35% cannot be achieved. Policy HOU2 references policy IMPL1 with regard to the assessment of viability.

- Policy IMPL1: Developer Contributions

Policy IMPL1 sets out the LPA's approach to the consideration of contributions and viability. Policy IMPL1 states;

In exceptional circumstances where it is demonstrated in a robust and independently tested viability study that there are previously unidentified cost considerations that render development unviable, the LPA will work with the applicant to explore options to restore viability in the following order of preference. The starting position is that there will be a proportionate reduction in returns to the developer and land owner for any reduction in developer contributions agreed, within acceptable margins of profitability relative to development risk.

- i. Varying the development proposal if development costs could be reduced without unacceptably compromising design quality or sustainability.*
- ii. Where it is possible, phase or defer the required contributions in whole or part, including by the use of Grampian planning conditions.*
- iii. Vary, reduce or remove contributions that would have the least impact on the achievement of sustainable development.*

In line with policy IMPL1 the Appellant has submitted a viability report to demonstrate that without variance to the LPA's required level of affordable housing (clause iii of policy IMPL1) the proposal would not be viable. As detailed in section 1 of this statement, there is significant dispute with regard to the assessment (carried out on behalf of the LPA) of the submitted viability report and the appropriate evidence to inform such an assessment together with its subsequent assessment having regard to relevant guidance to assessing viability. Through the appeal process, including testing via cross-examination the Appellant will demonstrate compliance with policy IMPL1.

○ Policy IMPL2: Development standards

Policy IMPL2 sets out five development criteria (standards) for new development, four of which are relevant to this proposal (the third criteria relates to commercial development). The proposal achieves the requirement of visitable dwelling standards of Part M4(1), water efficiency can be secured by way of an appropriate condition to ensure a maximum of 110 litres per person per day, provision can be made for high speed broadband and the provision of electric vehicle charging points can be safeguarded. These design solutions will ensure that the proposal is compliant with policy IMPL2.

○ Policy CCC1: Safe and healthy communities

Policy CCC1 relates to the health and safety of communities and their environments. The appeal proposal does not conflict with the aims of the policy as it will not result in pollution of hazard which prejudices the health and safety of communities and their environments and no remedial works are required to on site contaminates.

- Policy CCC2: Safe and sustainable travel

Policy CCC2 has six separate aims which include prioritising the provision of safe and convenient pedestrian access within developments, provide or contribute to dedicated cycle routes, minimise the impact on bridle ways and horse riders, provide sufficient car and cycle parking, incorporate infrastructure to support the use of electric vehicles and provide or contribute proportionally to enable the development to be accommodated in a safe and sustainable manner. The Appellant's appeal submissions will demonstrate that the proposal provides safe and convenient pedestrian access, this will be by way of a WCHAR. The proposed layout provides sufficient car and cycle parking and the proposal has not been identified, by the LPA, as being required to provide mitigation to offsite sustainable transport.

- **New Forest Local Plan Part 2 – 2014**

- DM2: Nature conservation, biodiversity and geodiversity

Policy DM2 is an 'all encompassing' policy that relates to nature conservation, biodiversity and geodiversity – of relevance to the appeal proposal is the aim of the LPA to use conditions and/or planning obligations to minimise the damage, provide mitigation and site management measures and, where appropriate, compensatory and enhancement measures. The Appellant will provide an appropriately worded legal agreement to secure the requisite mitigation contributions in relation to recreational and air quality impacts, thereby securing compliance with policy DM2.

- DM3: Mitigation of impacts on European nature conservation sites

Much like policy DM2, policy DM3 is an overarching policy which relates to ecological matters, specifically in relation to mitigating the impact on European nature conservation sites. The policy sets out a series of mitigation projects and associated monitoring. As with policy DM3, the Appellant will provide an appropriately worded legal agreement to secure the requisite mitigation contributions in relation to mitigation of the impact on European nature conservation sites thereby securing compliance with policy DM3.

- **New Forest District Core Strategy – 2009**

- CS7: Open spaces, sport and recreation

Policy CS7 sets out an aim to provide a minimum of 3.5 hectares of public open space per 1000 population and also seeks to make improvements to enhance recreation, play and sports facilities. Relevant to the appeal proposals are sections (b) and (c) of policy CS7 which identify the improvement to play/sport provision and open space will be implemented;

(b)through requiring all new residential developments to make provision for appropriately designed public open space, either through on site provision of new open space or by financial contribution to enhance or create off-site provision and management of public open space (based on a minimum level of provision of 3.5ha per 1000 population);

(c) through requiring all new residential developments on sites of 0.5ha or over to provide appropriately designed informal public open space on site and to include the provision of designed good quality play spaces

The appeal proposal provides circa 0.07ha of public open space and the Appellant will secure (as detailed in the policy mechanism) an appropriate contribution to secure the enhancement of off site provision, securing compliance with policy CS7.

- **Hythe and Dibden Neighbourhood Plan 2018-2026**

- Aim 2 of the Neighbourhood Plan states ‘to support the provision of suitable housing opportunities for the local community’.

Paragraph 2.3 of Aim 2 sets out an objective to provide a mix of housing types including suitable downsizing properties for local residents to retire to and for young families, couples and single people to start their first home. This reflects the aims of paragraph 6.18 which identifies there is a shortage of housing for first time buyers, particularly single people and a shortage of smaller sized houses such a one and two bedroomed properties. The proposal provides a predominant mix of 2 and 3 bedroom properties, reflective of the objectives of ‘Aim 2’.

- Policy D1 - High Standards of Design and Architecture

Policy D1 relates to proposal seeking to achieve exemplary standards of design and architecture to recognise that local character and context has been fully recognised, the proposal responds to it (local character and context) and that what is valued

locally is respected. The submissions which accompanied the planning application explored the attributes of local character and how the appeal proposal reflects this. The appeal evidence will build on this analysis to demonstrate compliance with policy D1 of the Neighbourhood Plan.

- Policy WEL1 - Development proposals should seek to support public health, active lifestyles and community wellbeing

Policy WEL1 provides examples of how developments should seek to support public health, this includes encouraging greater levels of physical activity by promoting active travel – the location of the appeal proposal does this, being in easy and convenient reach of local services and facilities and providing secure cycle storage, encouraging residents to use bicycles. The layout of the proposals ensures that residents will feel comfortable using footpaths and the provision of the public open space increases opportunities for interaction. This approach reflects the aims of policy WEL1.

- Policy T5 - New footpaths and cycleways should be designed to a high standard.

Policy T5 requires that where new footpaths and cycleways are provided, they are designed to a high standard, with careful consideration of gradients that are suitable for all users – the proposed layout ensures that all footpaths are well designed and easily accessible, providing a legible route around the site and connecting to the wider footpath network on Noads Way.

- Policy C1 - Layout and design to reduce negative impact of crime, nuisance and anti-social behaviour.

Policy C1 requires that the layout and design of all new development demonstrates what steps have been taken to reduce the negative impact of crime, nuisance and anti-social behaviour. The proposal has been designed in such a way to ensure that there are active frontages on the primary routes within the site and the public open spaces benefit from passive surveillance, complying with the aims of policy C1.

3. Appellant's Case and Response to the Reasons for Refusal

- 3.1 The Appellant maintains that this proposed development should be granted planning permission; the proposal being sustainable development benefitting from the tilted balance.

Reason for Refusal No.1

- 3.2 The first strand of the Appellant's case in respect of reason for refusal 1 (RfR1) is that the tilted balance is engaged, and the presumption in paragraph 11d)ii) of the NPPF requires the LPA to demonstrate that any adverse impacts would significantly and demonstrably outweigh the benefits of the appeal proposals. This is evidenced by the LPA's statement in the Case Officer report;

The LPA cannot currently demonstrate it has a 5 year supply of land for housing. Proposing 25 residential units, in a mix of sizes, the scheme makes a positive contribution to the availability of housing in the District and the current Housing Delivery Target of 400 units per year. A significant benefit of the scheme. The scheme does not include any 1-bed homes and prioritises 3-bed houses, contrary to the indicative mix that seeks schemes provide a much higher proportion of smaller 1 and 2 bed homes. In the absence of flats within the scheme, which would not be characteristic of the area, the lack of 1-bed units is not unacceptable.

- 3.3 The LPA's assessment also identifies and confirms that there is no objection to the proposed housing mix and accepts that the provision of flats, to deliver 1 bedroom units, would not be characteristic of the area.

- 3.3 The Appellant will provide evidence to demonstrate that the proposal is a well planned and high quality design that results from an iterative design approach. With regard to urban character evidence will be produced to demonstrate how the varied character of the immediate area has influenced the site layout and scale, reference will be made to the LPA's pre-application advice provided in April 2022 which states;

I acknowledge that the character of the centre of the site could take a different approach, being higher density as shown.

- 3.4 The appellant will evidence that the site is surrounded by existing development with limited public vistas and the character and density varies. Through a detailed analysis evidence will

be produced to demonstrate that whilst the character and density of surrounding developments vary, there are two broad character types;

- *A suburban street frontage comprising the larger detached properties on Noads Way and Lime Walk that are a mixture of bungalows or 2 storey houses.*
- *Historic back land development such as Lime Close comprising of smaller detached bungalows built at a higher density.*

- 3.5 The depths of the rear gardens of the properties which surround the appeal site (those properties in Noads Way, Lime Walk and Lime Crescent) are not visible from their respective street scenes or the wider public realm and as such plot depths do not form a contributing trait in the character of the area.
- 3.6 The layout of the proposal has responded to the pre-application advice provided by the LPA (attached as appendix 3). To reflect the established rhythm which informs the character of Noads Way a single dwelling is proposed, which will have dual frontage, to address both Noads Way and the new access road into the site. The trees on the front boundary with Noads Way will largely be retained in situ, framing the access into the site, both maintaining and reinforcing the sylvan character of the site. The proposal includes the provision of significant areas of soft landscaping to the front and west side of unit 1, providing a setting which is reflective of the dwellings which front onto Noads Way. Units 2 and 3 would sit behind unit 1 linked by pitched roof car ports which sit subservient within respective plots. Unit 1 would have its pedestrian access from Noads Way, addressing the principal road and providing legibility to the layout as well as reflecting the character of Noads Way, where dwellings generally address this road.
- 3.7 The central part of the site would accommodate the mainstay of the units, reflecting the two broad character traits that have been identified. This denser form of development would not be visible from the existing public realm in Noads Way. This part of the site would form its own distinct character, and in doing so would meet the Policy requirements of the local plan and the aims of the Local Neighbourhood Plan in providing smaller family homes.
- 3.8 The proofs of evidence will set out how the varied character of the immediate area has influenced the site layout and scale and how the proposal is an appropriate response, responding to the site opportunities and constraints.

- 3.9 The LPA's assessment of the appeal proposals do not raise any concerns or objections to the architectural form of the proposals in relation to the design approach, detailing and vernacular.
- 3.10 One of the principal site constraints are the established sylvan boundaries and their associated mature trees. The proofs of evidence will demonstrate how, through a landscape led approach, the mainstay of the mature trees have been retained, with no significant tree loss proposed and as such maintaining this established character trait of the site's sylvan setting. Furthermore, the proposal provides an opportunity to enhance and reinforce the screening provided by the sylvan site boundaries and to secure a management strategy to ensure the retention and maintenance of this green infrastructure asset.
- 3.11 Evidence will be provided to demonstrate that the layout of the appeal proposal provides for well planned amenity space for each of the individual properties that is practicable, accessible and proportionate.
- 3.12 The evidence to be advanced in the Architect's proof will demonstrate that the appeal proposals are in accordance with Policies STR1 & ENV3 of the NFDC Local Plan Part 1, Policy D1 of the Hythe & Dibden Neighbourhood Plan 2019.

Reason for Refusal No.2

- 3.13 RfR2 states that "due to the proximity of the proposed access to the existing access to the east and the failure to demonstrate the visibility splays are based on actual vehicle speeds along Noads Way the scheme has failed to demonstrate that the works are sufficient". The RfR goes on to state, "furthermore, on site highway and pedestrian safety has not been demonstrated, nor has the scheme considered or demonstrated support for modes of travel other than the private car".
- 3.14 RfR2 references policy CCC2 of the New Forest District Local Plan Part 1 in support of the refusal.
- 3.15 Appended to this statement of case (as appendix 4) is the submission from Bellamy Roberts, Highway Transportation & Infrastructure Consultants which responds to the LPA's concerns associated with RfR2. The appended submission includes a road safety audit and a WCHAR assessment which demonstrates that the proposal provides safe access to the wider highway network for both pedestrians and motorists.

- 3.16 Evidence will be provided, expanding upon the appended submission from Bellamy Roberts, that the amended plan (reference 5577/001 E) submitted to the LPA during the determination of the planning application to which this appeal relates demonstrates that a visibility splay of 46m (for the Y dimension) can be achieved and is commensurate with the recorded speeds (recorded on 15th and 21st July 2022).
- 3.17 RfR2 alleges that the proposal has not considered or demonstrated support for modes of travel other than the private car. Through the inquiry process the appellant will demonstrate that provision has been made for each individual property to have secure cycle parking which is easily accessible, encouraging future occupants to use bicycles to access local facilities and services. The WCHAR demonstrates that the appeal site is well connected, via easily navigable routes which supports the use of modes of travel other than the private car.
- 3.18 The LPA has not raised any objection with regard to the level of proposed parking and although, as referenced in paragraph 2.4, policy CCC2 relates to parking provision, there is no dispute that the appeal proposal provides sufficient levels of parking.
- 3.19 The Appellant's proof of evidence will build upon the points detailed above to demonstrate full compliance with policy CCC2 of the New Forest District Local Plan Part 1.

Reason for Refusal No.3

- 3.20 The submitted drainage design was originally produced using infiltration methods for the surface water drainage as required by the SUDS hierarchy. This included two large infiltration tanks and several areas of permeable paving within parking spaces and driveways. The infiltration results were informed from a Site Investigation and were marginal in respect of whether this method would work in the event of repeat storm events.
- 3.21 In order to ascertain more detailed infiltration results the Appellant undertook overwinter infiltration testing and ground water monitoring to evaluate the condition of the ground at its most saturated. This additional testing reported a drop in the infiltration rate but also high ground water levels. This evidence does not support the use of infiltration measures for this site.
- 3.22 The Appellant's appointed drainage engineers then examined how the site could be drained using an attenuated and flow controlled discharge to the public foul sewer. A capacity check was submitted to Southern Water and they (Southern Water) have reported that there is

insufficient capacity within the public foul sewer for the proposed surface water discharge. Options are now being explored with Southern Water with regard to the upgrade of the public foul sewer with a flow controlled discharge and also the possibility of providing a new surface water sewer along Noads Way.

- 3.23 A revised drainage strategy will be submitted as part of this appeal and, subject to liaison with the Lead Local Flood Authority, a planning condition requiring further details prior to commencement can be agreed through the Statement of Common Ground. This would resolve RfR 3 and ensure compliance with policy STR1 of the New Forest District Local Plan Part 1.

Reason for Refusal No. 4

- 3.24 RfR 4 is associated with the recreational and air quality impacts that would arise from the proposed development. The Appellant will evidence that by securing the appropriate mitigation contributions as set out in the LPA's Mitigation for Recreational Impacts on New Forest European sites SPD, Air Quality Monitoring SPD and the Bird Aware Solent Strategy that impacts arising from the development will be adequately addressed so that the integrity of the New Forest and Solent Coast European sites are, in conjunction with other developments, protected.
- 3.25 As such, with the requisite contributions it is possible, in respect of recreational impacts, to reach a conclusion that adverse effects on European sites would be avoided.
- 3.26 With regard to the Air Quality impact on habitats, the Appellant will evidence that the impacts arising from the development on international nature conservation sites are adequately mitigated, by way of a financial contribution towards monitoring and, if appropriate managing or mitigating air quality effects within the New Forest SPA, SAC and Ramsar site.
- 3.27 With regard to nitrate neutrality and the associated impact on Solent SAC and SPAs the Appellant will provide evidence to demonstrate that the proposal, by way of securing appropriate mitigation within the Solent catchment area, achieves nutrient neutrality. The appellant will evidence that there is certainty in them securing the requisite mitigation contributions and as such a Grampian style condition would be an appropriate mechanism to secure the associated mitigation credits.

- 3.28 The Appellant proofs will evidence that through a suitably worded legal agreement to be progressed as part of the appeal and through the use of Grampian style conditions suitable mitigation can be secured to avoid any conflict with policies ENV1 of the New Forest District Local Plan Part 1 and policy DM3 of the New Forest District Local Plan Part 2.

Reason for Refusal No. 5

- 3.29 RfR 5 is associated with the recreational and open space needs of the future occupants of the development.
- 3.30 RfR 5 relies upon policy CS7 of the New Forest District LPA Core Strategy 2009 which sets out an aim to provide a minimum of 3.5 hectares of public open space per 1000 population and also seeks to make improvements to enhance recreation, play and sports facilities.
- 3.31 The LPA have identified that 0.26 ha of open space is required to be delivered by the proposal, this is split into three categories, (1) informal public open space: 0.15 ha, (2) play space: 0.02 ha and (3) formal public open space: 0.09 ha. The proposed layout provides 0.07ha of informal public open space.
- 3.32 Policy CS7 identifies that the improvement to play/ sport provision and open space will be implemented;
- (b)through requiring all new residential developments to make provision for appropriately designed public open space, either through on site provision of new open space or by financial contribution to enhance or create off-site provision and management of public open space
- 3.32 The Appellant will evidence that by securing an appropriate level of contribution towards the enhancement and/ or management of existing open space, as set out in policy CS7, the aims of the policy are met. Noads Way recreation ground is within easy walking distance of the appeal site and would be an appropriate site for the LPA to identify for enhancement in relation to the secured contribution arising from the appeal.

Reason for Refusal No. 6

- 3.33 The Appellant will provide evidence to demonstrate that the Bruton Knowles (BK) advice on which the LPA have based RfR 6 is unsound.

- 3.34 The planning application to which this appeal relates was accompanied by a viability statement which considered the ability for the proposal (from a viability perspective) to deliver affordable housing – an approach underpinned by policy HOU2 of the New Forest District Local Plan Part 1.
- 3.35 BK assessed the Appellant’s viability report, however, the Appellant, through proofs will evidence the incorrect use of build costs (by BK) and that BK’s assessment of sales revenue is not correct. Evidence will also be provided to demonstrate that BK have not adopted an appropriate mechanism to assess land value and that their (BK) assessment is based on incorrect data.
- 3.36 The conclusion of BK’s advice to the Local Planning Authority has resulted in RfR 6 forming part of the LPA’s decision notice as the LPA’s expectation is that the proposal would be able to, viably, deliver a ‘policy compliant’ (i.e. 35%) level of affordable housing. Evidence will be provided to demonstrate why this is not correct and that it is not viable for the proposal to deliver 35% affordable housing.

Reason for Refusal No. 7

- 3.37 As with RfR 1, there is a conflict with the LPA’s assessment of the proposal and the advice that was provided at the pre-application stage and the approach taken in the assessment of the application. The LPA’s pre-application advice states,

I believe the revised layout largely addresses the concerns of the relationship between the dwellings and the trees and the impact on amenity of residents and poor tree-building relationship raised in the refused application.

- 3.38 The comments from the LPA’s Arboricultural Officer (in their consultation response to the planning application) state,

I currently object to this proposal on tree grounds. The applicant could make some minor amendments to the scheme: Remove the parking under T23, the path and benches under T25 and amend the landscaping scheme to include larger growing trees within the site

and replacement trees along Noads Way to overcome my objection. If you are minded to grant consent, without amendments to the scheme, then please include the following conditions.

- 3.39 The Appellant will evidence that through the submission of amended plans (which form appendix 5 i-vi) , in accordance with the Wheatcroft principles, which includes the provision of a car port in relation to the parking spaces at T23 and the relocation of the proposed benches, together with the provision of a revised landscaping plan/ species list the alleged conflict with policies ENV3 and ENV4 of the New Forest District Local Plan Part 1 can be addressed.

4. Confirmation of Choice of Procedure

- 4.1 The appellant considers that this appeal should be conducted by means of a Public Inquiry.
- 4.2 Having regard to Annexe K of the PINS Procedural Guide (Updated December 2022), and notwithstanding the potential for some matters to be discussed via round table discussions within the overall inquiry procedure, the reasons for this appeal being conducted by means of a Public Inquiry are as follows.
- 4.3 The weight which the LPA have applied to out of date policies, having regard to paragraph 11 of the National Planning Policy Framework (NPPF) needs detailed examination.
- 4.4 The identified issues raise complex issues concerning the interpretation of, and assessment against, the most important policies for the determination of the appeal along with their weight in view of the operation of the tilted balance or otherwise.
- 4.5 The consultation responses from the LPA's Environmental Design Team (both Urban and Landscape design) require examination to fully understand, the LPA's assessment of character and the presumption in favour of sustainable development which would see the delivery of much needed family housing in a sustainable location.
- 4.6 The need to forensically consider viability and supporting evidence and data. This will necessarily require detailed and complex expert evidence, presentation and cross-examination by an experienced advocate.

- 4.7 The potential for detailed debate and examination on character, what the character of the area is, its component parts and how the proposal assimilates with this.
- 4.8 The appeal will generate substantial local interest, particularly in view of the Neighbourhood Plan (as evidenced during the application process with 193 comments being submitted to the LPA). This level of interest reinforces the suitability and necessity for the appeal to progress via the inquiry procedure.
- 4.9 The appellant proposes to call expert witnesses to address the following:
- The existence and extent of the 5YHLS (unless agreed within the statement of common ground).
 - The planning policy context, relevant material considerations and the Planning Balance.
 - The ability for the proposal, from a viability perspective to deliver affordable housing and how viability should be assessed.
 - That the proposal can deliver a safe access to Noads Way that will not prejudice highway safety.
 - That the proposal supports modes of transport other than the private car.
 - To establish and evidence the character of the area and that the proposal is an appropriate response to the sites context (including landscaping).
- 4.10 It is anticipated that presentation of the respective parties' cases, Third Party representations and submissions will take 3-4 days (not including the possibility that the Parish LPA may wish to be a Rule 6 Party).

5. Conclusion

- 5.1 This Statement of Case provides the framework for the Appellant's case in this appeal and further detailed evidence will be produced through the subsequent proofs of evidence to support the Appellant's case.
- 5.2 The Appellant will demonstrate, with evidence, that the weighting to be given to significantly boosting the supply of housing was not appropriately considered in the local planning authority's decision making.
- 5.3 The Appellant's statement of case demonstrates, having regard to the requirement of section 38(6) of the Planning and Compulsory Purchase Act 2004, that the proposal is in accordance

with the development plan overall. The proposal is within the boundaries of a 'top tier settlement' as defined in the LPA's settlement hierarchy, is an appropriate response to the character and appearance of the area and as such achieves a sustainable form of development contributing to the LPA's housing needs. The NPPF is an important material consideration in the determination of the appeal and given the absence of a five year housing land supply the tilted balance, as detailed in the NPPF, applies.

- 5.4 The Appellant contends that paragraph 11(d)(i) of the NPPF is not engaged as the appeal proposal (i.e. the project) will secure suitable mitigation, in accordance with the LPA's adopted policies, to enable the Planning Inspector, as the competent authority, to undertake an appropriate assessment and conclude that the integrity of the habitats site is not adversely affected (in accordance with paragraph 182 of the NPPF).
- 5.5 The Appellant contends that as the local planning authority cannot demonstrate a 5 year housing land supply this development benefits from the tilted balance and, with no harm (to be demonstrated through the inquiry procedure), should be classed as sustainable development and granted consent without further delay.
- 5.6 The proposed development will provide 25 new homes across a mix of housing sizes (being 2, 3 and 4 bedroom properties) in a highly sustainable location, in a form and layout that does not harm and will successfully integrate with the character and appearance of the area. The Appellant contends that these benefits should be given significant weight in the overall planning balance of the appeal. Furthermore, the proposal will not result in a loss of privacy or amenity to neighbouring properties and will provide safe access and egress to the highway – both of these factors should be given weight in the determination of the appeal.
- 5.7 The Appellant requests this appeal proceed by public inquiry because of the level of local interest (193 representation letters) and because of the forensic interrogation of topics such as viability, character and developmental impacts which cannot readily be carried out by written submissions or roundtable discussions. Although, conscious of the Rosewell recommendations, the Appellant is aware and content that, at the Inspector's discretion, certain subjective topics may proceed via roundtable discussions such as drainage and securing relevant mitigation contributions.
- 5.8 The Appellant respectfully requests that the Inspector allow this appeal and grant planning permission for this sustainable development.